

# Town of Windham

Planning Department  
8 School Road  
Windham, ME 04062

voice 207.894.5902

fax 207.892.1916

## MEMO

DATE: January 13, 2021

TO: Windham Staff Review Committee

FROM: Jenn Curtis, Planner

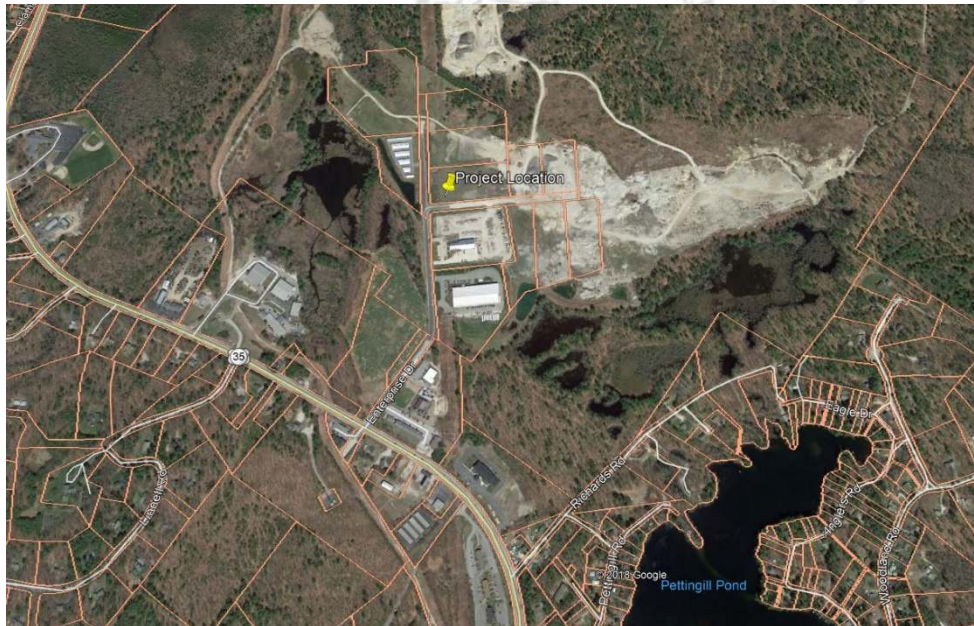
Cc: Craig Burgess, PE, Sebago Technics - Consulting Engineer  
Mark Arienti, PE – Town Engineer

RE: 20-28 – Paul's Boutique Cultivation Facility: Minor Site Plan, Final Plan Review  
Staff Review Committee Meeting: January 15, 2021

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### Overview –

This application is for development of a new 12,350 sf building for a marijuana cultivation facility, with an associated parking area and other associated development on the corner of Enterprise Drive and Bedrock Terrace. The property is identified as Lot 3-A on the Quarry Ridge Business Park, 4<sup>th</sup> Amended Subdivision. Development of the Quarry Ridge Business Park is subject to a Maine Department of Environmental Protection Site Location of Development Approval Order #L-18029-39-L-N dated November 16, 2005 as amended by L-18029-39-T-M on December 4, 2020 to approve of the above referenced subdivision amendment, splitting Lot 3 into 3-A and 3-B.



Aerial View of the subject parcel relative to surrounding properties and street network.

This application has been classified as a minor development as the total gross non-residential floor area is greater than 5,000 square feet within an approved subdivision

Tax Map: 21; Lot 15-3-A. Zone: Enterprise Development (ED).

### SITE PLAN REVIEW

#### Staff Comments:

1. Waivers:

a) None

2. Complete Application:

**MOTION:** The application for project 20-28 Paul's Boutique Cultivation Facility is found complete in regard to the submission requirements based on the application checklist, but the Staff Review Committee retains the right to request more information where review criteria are not fully addressed.

3. Public Hearing: The Staff Review Committee should determine if a public hearing is necessary for this project. A public hearing is not required by ordinance for Minor Site Plans, but the Staff Review Committee has the authority to hold a public hearing, depending on the scope and location of the project.

4. Site Walk: A site walk has not been scheduled for this project.

Findings of Fact and conclusions for the

#### **Windham Staff Review Committee,**

**MOTION:** The Site Plan application for 20-28 Paul's Boutique Cultivation Facility on Tax Map: 21, Lot 15-3-A is to be **(approved with conditions/denied)** with the following findings of fact and conclusions.

### FINDINGS OF FACT

#### **Utilization of the Site**

- The subject parcel is approximately 1.84 acres and is currently undeveloped. The property is Lot 3-A of the Quarry Ridge Business Park, a 13 lot commercial subdivision. The site is a reclaimed mineral extraction area and is generally flat with short grass. The parcel is encumbered by a 100 foot wide power line easement and a 50 foot wide gas line easement along the Enterprise Drive frontage, and 30 foot wide drainage easements along the northerly and easterly side of the lot.

- The applicant is proposing a new 12,350 sf building for a marijuana cultivation facility, and associated development

### **Vehicular and Pedestrian Traffic**

- The Quarry Ridge Business Park is accessed by a paved public road, Enterprise Drive. The applicant proposes to construct a 25-foot-wide entrance onto Bedrock Terrace, a private road, approximately 100 feet from the Enterprise Drive intersection, to serve the project. The paved portion of Bedrock Terrace terminates just beyond the proposed driveway. Both Enterprise Drive and Bedrock Terrace have been constructed to the industrial street standard. The Town of Windham holds a performance guarantee for the construction of the required improvements of the Phase 1B approved subdivision, which includes completing the construction of Bedrock Terrace across the frontage of Lot 3-A.
- The site shows a total of 16 parking spaces- fifteen (15) 9' x 18', and one (1) 12' x 18' handicap accessible space. It should be noted that 30% of these spaces must measure 10'x20' and the plan currently does not show any spaces that meet this dimensional requirement.
- The revised site plan dated January 12, 2021 shows eight (8) 10'x20' spaces, which includes 1 ADA space.
- The project is subject to the North Route 302 Road Improvements Impact Fee (Section 1204). A traffic analysis shall be conducted in order to determine the traffic impact and requisite impact fee total, as measured by additional vehicle trips to be generated by a development project that pass through the North Route 302 Capital Improvement District in the peak commuter hour.
- A Condition of Approval for the Quarry Ridge 4<sup>th</sup> Amended Subdivision is that Each of the two created lots shall be developed to attract no more than ½ of the number of anticipated total peak hour trips per lot... which calculates out to 10 AM peak hour trips and 10 PM Peak hour trips for each lot 15-3-A and 15-3-B.
- The subdivision's traffic movement permit requires a signal warrant analysis once the subdivision is at 75% buildout.
- The trip generation calculation, performed by Darek Caldwell, P.E., dated October 28, 2020 states that because of the specialty nature of this proposed land use, it does not correspond to a published land use code in the ITE Trip Generation Manual, so the expected trip generation was based upon the number of employees and corresponding shifts. The facility is anticipated to have a total of 14 employees. The employees arrive and leave in three cohorts – 6AM -3PM, 7AM-4PM, and 8AM-5PM. From this data it is concluded that the use will generate a total of 6 trips during both the AM and PM peak hours.
- It does not appear that this project will move the subdivision to the 75% buildout level and the amount of traffic generated by the project would not warrant a signal at the intersection of Enterprise Drive and Route 302.
- A revised Traffic Memo dated January 12, 2021, includes a calculation of the North Route 302 Road Improvement Impact fee, in the amount of \$1,147.95 (see COA #2)

### **Sewage Disposal, Water Quality and Groundwater Impacts**

- The development will be served by a private subsurface wastewater disposal (septic) system.
- The applicant stated that water used in cultivation purposes will be collected in a holding tank, reused multiple times, before the residues will be collected in an evaporation system. The condensed residual will be kept in a smaller residue holding tank that is emptied once or twice per year. A plan sheet for the evaporation system was included in a response to comments dated January 13, 2021.
- The Maine Department of Environmental Protection Site Location of Development Permit included the provision for up to a 1,000 gallon-per-day subsurface wastewater disposal system on the property, and the anticipated design flow is 300 gallons per day. Staff note that the HHE form, dated October 9, 2020, indicates that the septic is designed for 25 employees. The applicant explained in an email on January 11, 2020 that it was meant to accommodate the weekly washdown, in addition to the employees. The test pit location is shown on the plan in front the proposed building.
- The applicant submitted an HHE application for a subsurface wastewater disposal system signed by licensed Site Evaluator Gary M. Fullerton, dated October 9, 2020. The application states that the system is designed to accommodate 300 gallons per day.

### **Stormwater Management**

- The Maine Department of Environmental Protection Site Location of Development Permit #L-18029-39-L-N dated November 16, 2005 as amended, the design of stormwater ponds and stormwater conveyance infrastructure for the entire Quarry Ridge Business Park development and including #L-18029-39-T-M authorizing the creation of Lot 3-A, dated December 4, 2020.
- Each lot within the subdivision was given an allocation for allowable impervious surface and developed area under the DEP Site Law permit. The 4<sup>th</sup> Amended Quarry Ridge Business Park Subdivision allocates .95 acres of impervious surface, of the previously approved impervious area for parent lot. A Stormwater narrative signed by Craig Burgess, P.E., dated November 2, 2020, was provided with the final plan application. It states that the applicant is proposing .53 acres of impervious area, and that;
  - The westerly side of the proposed building is to be graded to shed runoff towards the existing ditch on Enterprise Drive.
  - The east side of the building will have a 4' roof drip edge. Water over-topping the drip edge will run into the shallow ditch running parallel to the proposed building, towards the roadside ditch on Bedrock Drive.
- 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 as there is more than one (1) acre of development proposed.

### **Erosion Control**

- Erosion Control Measures are included in Final Plan set on sheet 7 of 12. This included a narrative best management practices and in addition, construction details of the proposed erosion control measures on sheet 8 of 12.

### **Utilities**

- All new utilities run to the building must be underground. Utilities are shown on the Grading and Utility Plan Sheet 5 of 12 dated December 11, 2020.
- There are existing fire hydrants on Enterprise Drive at corner of Bedrock Terrace and on Bedrock Terrace at the property line between Lots 2 and 5. The hydrant locations are shown on the plan
- Robert Bartels, PE at the Portland Water District supplied an "Ability to Serve" letter dated October 28, 2020.

### **Technical and Financial Capacity**

- The final plan application estimates the project cost at \$3 Million.
- Evidence of financial capacity has been provided in the form of a Money Market Account Statement for the applicant dated September 1, 2020.
- The applicant has retained the services of Sebago Technics, to perform Site Design and Permit Acquisition and Compliance work. Sebago Technics has been in business over 35 years and has a variety of professionals on staff with the required experience and expertise.

### **Landscape Plan**

- The applicant submitted an updated Landscaping Plan on January 7, 2020, indicating that there would be several plantings of Juniper bushes in the required Landscaped Buffer Strip area, in compliance with the performance standards at §511, and some additional planting between the building and sidewalk, and screening plantings around the transformer and dumpster enclosure.

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

1. Land Use
  - The proposed use is considered a Marijuana Cultivation Facility which is allowed as a Permitted Use in the Enterprise Development District (ED).
  - This project meets the minimum lot size requirements and minimum lot frontage requirements of the ED zoning district.
  - This project has met the setback, and maximum building coverage (50%) and maximum impervious area (75%) requirements of the ED zoning district. Enterprise Development District Standards, Section 406.I
    - All parking lots shall maintain a 30 ft setback from all property lines
    - Air Pollution: All uses shall comply with minimum Federal, State and local air pollution requirements. Applicants shall submit information demonstrating compliance with any applicable federal, state or local requirements.

- In a response to comments dated December 23, 2020, Aaron Radziucz, EI, of Sebago Technics, on behalf of the applicant, stated that: “At this time we do not believe an air emissions permit is required for this project. Chapter 115 of the Maine DEP Regulations state that a minor air emissions license is required if stationary combustion engines have a total max design input of greater than 5 million BTUs/hr. As can be seen on page 59 of the application, titled “NxxV4-10 Specifications” the total system throughput is 118,750 BTUs/hr. We also believe that the emissions from the evaporator will be less than the 10 lb/hr that are specified in the Regulations. We have left a phone message with DEP to confirm that nothing else is required for this facility and we are awaiting a response.
- Electromagnetic Interference. No use, activity or process shall be conducted which produces electromagnetic interference in the transmission or reception of electrical impulses beyond any lot lines, including radio and television.
- Fire Protection. All building shall be connected to the public water supply.
- Groundwater and Surface Water Protection. See FOF Sewage Disposal, Water Quality and Groundwater Impacts.
- Lighting. See FOF Impacts to Adjacent/Neighboring Properties.
- Noise. The average dBA count resulting from any activity shall not exceed at any point on or beyond any lot line, sixty (60) dBA during the day and fifty (50) dBA at night.
- Odors. The emission of odorous or toxic matter in such quantities as to be readily detectable at any point along any lot lines so as to produce a public nuisance or hazard is prohibited.
- Marijuana Cultivation Facility. Cultivation facilities may be of the following types: Tier 1, Tier 2, Tier 3, and Tier 4. The proposed use is defined as Tier 4 (not more than 20,000 square feet of plant canopy).
- Marijuana Businesses Performance Standards, Section 537
  - The Marijuana Business will not be located within 1,000 feet of a public or private school.
  - The business shall not have any odor of marijuana detectable beyond the area controlled by the business.
    - The applicant submitted an email dated January 13, 2020, from Jane E. Gilbert, P.E., of Maine DEP Bureau of Air Quality stating that the applicant was not required to obtain an air emission license at this time. Ms. Gilbert included the emission thresholds that would trigger air emission licensing requirements.
  - Marijuana shall be grown indoors only.
- The development is subject to the following Section 1200 Impacts Fees, to be paid at with the issuance of a building permit: North Route 302 Road Improvements Impact Fee, Public Safety Impact Fee, Municipal Office Impact Fee.

## 2. Comprehensive Plan

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

3. Others:

- Chapter 160 Marijuana Business Licensing Ordinance: A Marijuana Business shall not begin operations unless it has received and is in possession of a license issued pursuant to this Ordinance.

### Impacts to Adjacent/Neighboring Properties

- The applicant has submitted a photometric plan indicating compliance with the standard of no more than 0.5-foot candles at the property boundary line.
- The impacts of the proposed use to neighboring properties should be negligible.

### 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** 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 dependant upon, and limited to, the proposals and plans contained in the application dated December 29, 2020, amended January 12, 2021, and supporting documents and oral representations submitted and affirmed by the applicant, and conditions, if any, imposed by the Staff Review Committee, and any variation from such plans, proposals and supporting documents and representations are subject to review and approval by the Staff Review Committee or the Town Planner in accordance with Section 814.G. of the Land Use Ordinance.
2. Before building permits may be issued, the developer must pay the North Route 302 Road Improvement Impact fee to the Town of Windham, as noted in the site plan review findings on traffic, calculated in the traffic assessment to be \$1,147.95
3. 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.