

Town of Windham

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MEMO

DATE: April 8, 2021

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

RE: 21-04 – Frost Lane Major Subdivision, Sketch Plan
Planning Board Meeting: April 12, 2021

Overview –

The applicant, MB Contracting, LLC, is proposing a 7-lot subdivision on a 28.7 acre portion of a 48-acre parcel, located at Frost Lane.

This project will be reviewed under the Conservation Subdivision ordinance language at §911.K. Per §907.a.3.(b), The Board shall review the submission to determine if the information provides a clear understanding of the site and identifies opportunities and constraints that help determine how it should be used and developed. Ordinance procedure requires the applicant use the design process summarized below, which is described in detail at §911.K.3.(a):

- First, the open space shall be delineated. It should include all primary conservation areas and some secondary conservation areas with the highest resource significance. The applicant has not yet delineated secondary conservation areas.
- Then, open space design considerations should include setbacks, the inclusion of the highest value natural resources, the context of the resources in relation to neighboring properties, connectivity, size, and potential boundary markings
- Then, building sites shall be tentatively located, considering all prescribed setbacks, such as generally 100 feet from primary and 50 feet from secondary conservation areas; 100 feet from existing streets, and 50 feet from the external property perimeter.
- Then, alignment of the streets and creation of a trail system to complement the open space and promote connectivity of the open space and building sites.
- Then, based on the tentative building locations, the lot lines shall be drawn.

Tax Map: 13; Lot 51 (portion). Zoning District: Farm Residential (FR).



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

SUBDIVISION REVIEW

Staff Comments:

1. Jurisdiction: Due to the number of lots in the proposed development, the project is classified as a Major Subdivision, which the Planning Board is authorized to review and act on by Section 903.A. of the Town of Windham Land Use Ordinance.
2. Title, Right or Interest: The applicant submitted a letter of authorization from the property owner and a Property Deed which appears to reference the subject property.
3. Waivers Requested: *The Planning Board cannot act on waivers or potential waiver requests at the Sketch/Preapplication review phase. It is appropriate to discuss potential waiver requests to give the applicant guidance.. Per §908.B.2. The Board is not required to use any criteria in making its determination on the granting of a waiver of the submission requirements. Per §908.C. The Planning Board may waive the requirements of Section 911 Performance and Design Standards, when the applicant demonstrates that the performance standards of these regulations and the criteria of the subdivision statute have been or will be met, the public health, safety and welfare are protected, and provided the waivers do not have the effect of nullifying the intent and purpose of the land use ordinance. In granting site waivers, the Planning Board shall utilize the criteria in §908.C.2*

a) §910.C.1.C.1 – High Intensity Soil Survey. Submission Requirement.

The applicant states that the soils on the property are all relatively poorly drained with a hydrologic soil rating of C or D and each lot will have a test pit performed by a licensed site evaluator to determine site suitability that will aid in classification of soils. A high intensity soils map would not provide significant additional information.

§911.M.B.5.ii Cul-de-sac required on dead-end road. Performance Standard.

Applicant states that the waiver will reduce the impervious area and wetland impacts, to benefit the impaired watershed

§911.M.5.A.1. Street build to Appendix B Standards. Performance Standard.

Applicant is proposing a 1,400' long 20' wide paved travel way with 1' paved shoulders and 2' gravel shoulders. This decreases the minor local street standard for paved shoulder by 1' on both sides. The applicant states that this will decrease the impact of the development on Highland Lake.

Additional waivers required:

911.M,5.B,6,ii,c Sidewalk Optional. Performance Standard. requires that 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 applicable design and construction standards for shoulders or sidewalks are located in Appendix B, Table 3 and Table 4

4. Complete Application: *N/A with Sketch Plan*

MOTION: ~~The application for project 21-04 Frost Lane 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.~~

5. Public Hearing: No public hearing has been scheduled for this project. The Board must determine whether to hold a public hearing on the Preliminary Plan.

6. Site Walk: A site walk must be scheduled for this project. *Staff propose scheduling in the next couple weeks, so that feedback can be incorporated into the Preliminary Plan.*

Findings of Fact and conclusions for the

Windham Planning Board,

MOTION: ~~The Subdivision application for 21-04 Frost Lane Subdivision on Tax Map 13, Lot 51, is to be (approved with conditions/denied) with the following findings of fact and conclusions:~~

FINDINGS OF FACT

A. POLLUTION

- Zone A Floodplain is mapped in the area of the subject property – the applicant has included the Floodplain on the Resource Inventory Map. The applicant should indicate whether the Floodplain is based on the FEMA mapped Floodplain or was interpolated.
- This subdivision is not located over a significant sand and gravel aquifer.
- As the proposed subdivision is in a Direct Watershed of a Lake Most at Risk from New Development (Highland Lake), independent professional review is required. An independent third-party reviewer, a Professional Engineer at Gorrill Palmer, Inc, is performing peer-review of the application in addition to the staff review.
- 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 applicant has requested a waiver from the hydrogeologic analysis submission requirement.

B. WATER

- All lots will be served by public water from a water main extended from the existing water main in Albion Road.
- An Ability to Serve letter from the Portland Water District approving the public water service to the subdivision must be submitted with the Final Plan.
- Existing and proposed hydrants should be shown on the plan.
- At the Development Review Team meeting on April 2, 2021, Fire Chief Brent Libby recommended a fire hydrant located near Lot 1.

C. SOIL EROSION & SEDIMENTATION CONTROL & STORMWATER MANAGEMENT

- A soil erosion and sediment control plan must be submitted as part of the Preliminary Plan.
- Chapter 144 Surface Water Protection requires that projects within the Highland Lake watershed incorporate double temporary erosion control measures at the perimeter of the project.
- §907.B.4.c.(4) The project shall be reviewed in compliance with the stormwater standards included in the Maine Department of Environmental Protection Chapter 500 including basic, general, phosphorus, flooding, and other standards
- This project is in the NPDES (National Pollutant Discharge Elimination System) urbanized 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 Maine DEP stormwater permit needs to be included with the Final Plan submission.
- An Army Corps wetlands alteration permit needs to be included with the Final Plan submission.

- The applicant stated that the wetlands delineation was performed by JRK Soil Search Inc. The applicant should quantify the impacts that the project will have on the wetlands, and seek a NRPA permit, if necessary. If a NRPA permit is required, it must be submitted with the final plan.
- At the Development Review Team meeting on April 2, 2021, Will Haskell, P.E. of Gorrill Palmer, recommend field survey topography data for stormwater management purposes.

D. TRAFFIC

- The applicant is proposing a 1,400 foot long roadway with a hammerhead at the terminus. The road is to be built to the public standard, but will not be offered to the Town for acceptance. *Staff note that this not allowed by the Performance Standards for Streets at 555.C: "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."*
- §911.M.3.(a) The public street or public street system of the proposed subdivision shall be designed to coordinate with existing, proposed, and planned streets. Where a proposed development abuts unplatted land, or a future development phase of the same development, the Board may require the dedication of a right-of-way equal to the right-of-way width of the internal subdivision street to provide continuation of the road where future development is possible.
- No right-of-way to the abutting property is shown on the plan.
- Sight distances should be shown for both directions along Albion
- The project will need a water main opening permit.
- Section §911.M.3.d states that streetlights may be required at intersections with existing public streets. At the Development Review Team Meeting on April 2, 2021, Police Captain Bill Andrew stated that a light would be good to have at that location. Staff determined there are no street lights near the proposed intersection. The Planning Board should decide if it will be required.
- Town-approved street names shall be shown on the Final Plan.
- §911.K.3.(a) The street layout shall bear a logical relationship to topographic conditions. Impacts of the street plan on proposed conservation lands shall be minimized, particularly with respect to crossing environmentally sensitive areas such as wetlands and minimizing cut and fill. Street connections shall generally be encouraged to minimize the number of new cul-de-sacs and to facilitate access to and from buildings in different parts of the subdivision.
- The applicant proposes a long 20' wide paved travel way with 1' paved shoulders and 2' gravel shoulders. The Minor Local Street Standard requires 20' of paved travel way, with either both shoulders with 2' of pavement and 2' of gravel, or one shoulder that way and another shoulder that is 2' paved with curb and/or 5' minimum esplanade and 5' minimum sidewalk). The applicant should provide a proposed road profile with the Preliminary Plan Submission, and request any necessary waivers from the applicable road standards.
- The Planning Board should determine if the property is within 1,000' to uses that would generate pedestrian trips, to determine if sidewalks are needed. When sidewalks are not required for local streets, §911.M.5.b.6.ii requires that the applicant construct a sidewalk or a street with a widened shoulder.

- The road must include a hammerhead, per §911.M.5.b.(5).(i)(a) There is no maximum length limit for streets served by the Portland Water District that have fire hydrants and hammerhead turnarounds installed every 1,000 linear feet.
- A trail system shall be created within the Open Space to provide access from the subdivision homes to the open space network created by the subdivision, per 911.K.3.(4) (See FOF under H related to Conservation Subdivision Ordinance)
- Mailbox locations should be coordinated with the USPS Post Master. If a gang style mailbox is required, it's location should be shown on the Final Plan.

E. SEWERAGE

- The proposed lots will be served private septic systems.
- The Preliminary 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.

F. SOLID WASTE

- The applicant should indicate how solid waste will be handled.

G. AESTHETICS

- The subject property is located on a vacated farm. Aerial images indicate that the area proposed to be developed is mostly vegetated with trees. The applicant should show the existing treeline.
- Street trees must be planted at least every 50-feet along the length of the new subdivision street.
- 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.
- The Final Plan shall include a boundary survey, certified by a Maine Licensed Professional Surveyor.
- The plan should show all parcels in common ownership within the last 5 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 must meet the minimum lot size of 20,000 sf in the FR for Conservation subdivisions connected to public water. The sketch plan incorrectly indicates minimum lot size is 10,000 sf.
 - Front, side and rear setbacks are shown on the Sketch Plan.
 - Net residential density calculations are shown on the Plan.

- Net residential acreage, 9.28ac (404,641 sf.) divided by the net residential density of 40,000 sf = 10.11 (10 lots allowable). The applicant is proposing 7 lots
- 75' of frontage is required in a conservation subdivision; 50' where entirely on a cul-de-sac
- The Farm Residential and Resource Protection Zoning District boundaries should be shown on the plan.
- The 19.46 ac shown on the sketch plan as proposed to be retained by record owner would create a non-conforming lot as it does not have road frontage. The applicant should demonstrate how this land will conform with the Land Use Ordinance.
- The development is subject to the following Section 1200 Impacts Fees, to be paid at with the issuance of a building permit: Recreation Impact Fee, Open Space Impact Fee, Public Safety Impact Fee, Municipal Office Impact Fee.
- Subdivision Ordinance
 - 911.K, Conservation Subdivisions:
 - The applicant should develop primary and secondary conservation areas in conformance with 911.K.3.(a)
 - 911.K.3.(a)(2)e The boundaries of Open Spaces shall be marked by natural features wherever possible, such as hedgerows, stone walls, edges of woodlands, streams, or individual large trees. Where no such existing demarcations are present, additional plantings, fences, or other landscape features shall be added to enable residents or the public, if applicable, to distinguish where the Open Space ends and private lot areas begin. These boundaries should be shown on the Preliminary Plan.
 - Building envelopes should be shown on the plan that meet the requirements of 911.K.3.(a)(3) and §911.K.3.(a)4.(e).
 - Road alignment and design shall meet the requirements at §911.K.3.(a)(4)
 - .
 - The minimum amount of Open Space must be all of the areas of the parcel deducted from the gross area ($52,555 + 7,649 + 785,632 = 845,836 / 43,560 = 19.42\text{ac}$. The applicant has rounded up to 5.95 ac. And 50% of the net residential area, $9.28\text{ac} / 2 = 4.64\text{ac}$. Total required open space = $19.42\text{ac} + 4.64\text{ac} = 24.06\text{ac}$. The applicant is currently proposing 24.07 ac of open space.
 - 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 must be submitted as part of the Final Plan submission.
 - 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.
 - Utilities shall be installed underground
- Others:
 - Refer to Chapter 221 - Street Naming and Addressing: A street name approved by the Town Addressing Officer shall be shown on the Final Plan.

- Chapter 144 Post-Construction Stormwater Ordinance: The site is in the NPDES MS4 urbanized area.
- Chapter 116 Growth Management Ordinance: Growth permits are required prior to the issuance of a building permit for the construction, creation or placement of each new dwelling unit within the Town of Windham.

I. FINANCIAL AND TECHNICAL CAPACITY

- Evidence of financial capacity must be provided as part of the Final Plan submission.
- Evidence of technical capacity must be provided as part of the Final Plan submission.

J. RIVER, STREAM OR BROOK IMPACTS

- The project is located in the Highland Lake watershed.
- The applicant should demonstrate that the project will not adversely impact any river, stream, or brook.

CONCLUSIONS (N/A)

1. ~~The proposed subdivision will/will not result in undue water or air pollution.~~
2. ~~The proposed subdivision has/does not have sufficient water available for the reasonably foreseeable needs of the site plan.~~
3. ~~The proposed subdivision will/will not cause an unreasonable burden on an existing water supply.~~
4. ~~The proposed subdivision will/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/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/will not provide for adequate sewage waste disposal.~~
7. ~~The proposed subdivision will/will not cause an unreasonable burden on the municipality's ability to dispose of solid waste.~~
8. ~~The proposed subdivision will/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/does not conform with a duly adopted site plan regulation or ordinance, comprehensive plan, development plan, or land use plan.~~
10. ~~The developer has/does not have adequate financial and technical capacity to meet the standards of this section.~~
11. ~~The proposed subdivision is/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/will not** alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.~~
13. ~~The proposed subdivision **is/is not** situated entirely or partially within a floodplain.~~
14. ~~All freshwater wetlands within the proposed subdivision **have/have not** been identified on the plan.~~
15. ~~Any river, stream, or brook within or abutting the subdivision **has/has not** been identified on any maps submitted as part of the application.~~
16. ~~The proposed subdivision **will/will not** 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.~~
18. ~~The long term cumulative effects of the proposed subdivision **will/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.~~
20. ~~Timber on the parcel being subdivided **has/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 March 22, 2021 as amended _____, 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. 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.