



# Town of Windham

Town Offices  
8 School Road  
Windham, Maine

## Meeting Minutes - Final

### Planning Board

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Monday, December 9, 2019

7:00 PM

Council Chambers

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1 Call To Order

2 Roll Call and Declaration of Quorum

*The meeting was called to order by Vice Chair, Keith Elder. Other members present were: Drew Mayo, Kaitlyn Tuttle, and Colin Swan.*

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

### **Public Hearings & Continuing Business**

- 3 [PB 19-104](#) 19-23 Town of Windham Official Zoning Map Amendment. RMills, LLC to request a change to the zoning for a portion of the lot from Farm Residential to Medium-Density Residential. The subject property is located on Junco Drive and identified on Tax Map: 5, Lot: 1-1, Zones: Farm Residential (FR) and Medium Density Residential (RM).

**Attachments:** [PB Memo Zone Change TM 5 L1-1 12-06-19](#)

[RMills Rezone Request 2019 10 25](#)

[Town Council Minutes 2018-03-27](#)

[Town Council Minutes 2018-01-30](#)

[2019-11-25 Rezoning Request McLemore](#)

*Dustin Roma, a civil engineer with DM Roma Consulting Engineers, was present representing the applicant. He explained:*

- The zone change request had been before the Planning Board and Town Council previously. The Planning Board had voted on it favorably. There had been a split vote from Town Council.*
- They had some buildings on the front of the property and would like to finish the project with that type of project.*
- The project would all be on one property, one field area. The property was bisected by the zone line, which didn't occur on any of the other properties in the area. The area was predominantly Medium Density Residential (RM) and had a mix of businesses, multi-family homes, and a restaurant.*

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

*The Board commented:*

- *The Planning Board had voted for it before. More duplexes would fit in with the area.*
- *The Planning Board couldn't set zoning. Why did they review it instead of the Town Council?*
- *What would the Long Range Planning committee recommend?*
- *It didn't make much sense to have different zoning running through the property.*
- *This was a good start for zoning in South Windham.*
- *What about the snowmobile trail there?*
- *Farm was an odd buffer between industrial and residential. This was at the edge of the South Windham Growth area.*

*Kaitlyn Tuttle made a motion to approval of the proposed zoning map amendment to rezone a portion of the property identified as Tax Map 5; Lot 1-1, from FR to RM.*

*Seconded by Colin Swan.*

*Vote: Three in favor. Drew Mayo opposed.*

- 4**      [PB 19-106](#)      19-21 Depot Street Subdivision. Major site plan and subdivision preliminary plan review. MCL Realty, LLC to request review of 32 dwelling units in 6 buildings. The subject property is located on Depot Street and identified on Tax Map: 38, Lot: 37A, Zone: Village Commercial (VC).

**Attachments:**    [19-21 Depot Street Prelim 12-5-19](#)  
[Depot Street Major Preliminary Subdivision Application 2019\\_11\\_18](#)  
[Depot Street Plan Set 2019\\_11\\_18](#)  
[Peer Review Comments 11-27-19](#)  
[Response to comments 12-3-19](#)  
[Communication from DEP Stormwater 12-4-19](#)  
[Windham L.C. Andrews Lumber Mill VRAP COC 12-05-03](#)

*Dustin Roma, a civil engineer with DM Roma Consulting Engineers, was present representing the applicant. He explained:*

- *They proposed 31 dwelling units on about 2.1 acres. There would be two, three story buildings with 12 units each, and four duplexes.*
- *Parking would provide two spaces per unit and four extra spaces.*
- *Sidewalks would go through the project and out to Depot Street.*
- *The town and Portland Water District (PWD) were installing a new sewer pump station on the property.*
- *The parking lot and buildings would have lighting.*
- *They requested waivers for:*
  - o *The requirement of a second means of access for projects with more than 30 dwelling units. The ordinance seemed applicable for subdivisions with lots and long roads. This project had a through connection; it was not a dead end situation. It was less than 500 feet to Depot Road. The fire department had access through the back of the site.*
  - o *The submission requirement for a high intensity soil survey. Their assumption was the soils were very poorly drained throughout the lot and they were designing for that. All the lots there were on public sewer.*
  - o *The requirement that all utilities be underground. Their intent was to put existing*

overhead utility lines underground. They weren't sure they could do that yet.

- The site layout had been reconfigured to improve vehicle flow and to meet the required 20 foot rear setback.
- Stormwater management would funnel run off to one location. Water quality treatment and storage would be under the parking lot. It would then be discharged.
- They had approximately 11,000 square feet of wetland impact. DEP thought the impact was acceptable if the wetlands were appropriately culverted.
- They were conducting a traffic study.

Jenn Curtis explained that a nearby parcel may have contaminated soil from previous uses. Staff recommended that excavated soil on the site be evaluated by an environmental professional for hazardous substances. If those were found DEP would be notified.

Public Comment:

Bill Walker – The Board may want to allow people to comment at a later date because the plan was not yet finalized. Lighting on the site should be considered. Would there be greenspace set aside?

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

The Board commented:

- Were geotechnical borings for soil samples required?
- If the project was reduced by one dwelling unit the waiver for a second access wouldn't be needed.
- The second access wasn't a concern; one unit wouldn't make that much difference.
- The high intensity soil survey waiver request made sense.
- If the utilities couldn't be underground, it would be good to see a letter from CMP explaining why.
- The Board would like to see a design of the buildings.
- The second point of access being used for emergency vehicles was fine as long as the traffic study was ok with it.
- The idea of open space for kids to play was a good one.

Kaitlyn motion to approve the waiver request for the high intensity soil survey.

Seconded by Drew Mayo.

Vote: All in favor.

- 5      [PB 19-105](#)      Town of Windham Land Use Ordinance Chapter, 140, Sections 300, 550 and Appendix B, related to the creation, extension, and improvement of private roads, and development along and accessed by private roads.

**Attachments:** [PB packet Private Roads 12-04-19](#)  
[Pednault - 12-04-2019 - Private Road Ordinance Amendment](#)

Amanda Lessard explained:

- The Private Road Ad Hoc Committee had worked on amending changes to the ordinance, which had been approved in October 2017. The proposed amendments to the ordinance would affect definitions, performance standards, and Appendix B, Street Standards. The current amendment was related to private roads that were not in a subdivision.

- *If additional dwelling units were to be built, the previous approval had required a private road to be upgraded to the public street standard, from the point of the nearest public road. The current amendment would require an upgrade to be only as long as the length of the new private road.*
- *For streets serving 10 to 30 homes the standard would be similar to existing major private road standards except pavement wouldn't be required.*
- *A street serving over 30 homes must meet the public street standard.*
- *There was a one-time exemption provision for the frontage requirement if the land had been owned for the previous five years.*
- *There was a waiver provision for when the standard couldn't be met.*
- *Recording of the road plan and maintenance agreement at the Registry of Deeds was a requirement.*
- *The applicant must maintain the condition of the road.*

#### *Public Hearing*

*Dustin Roma – He suggested, if there was a one time exemption it should be made clear where the road ended on the effective date of the ordinance. He would like to see the amendments enacted as soon as possible and elimination of private roads off public roads. Too many people were being forced to build short private roads. People should be able to apply the same standard to subdivisions. The language was still, “upgrade everything”. It told people not to go through subdivision or they would have to upgrade the whole road, pushing them to avoid subdivision review.*

*Bill Walker – He would prefer that the Ad Hoc Committee start new, without the 2017 ordinance. The current ordinance had mismatched themes and created ambiguity and a lack of clarity. He recommended they take more time to make the ordinance more prescriptive and similar to other parts of the ordinance. The current amendments wouldn't prevent the occurrences that had caused the situation in the first place.*

*Submission requirements for private roads should establish how many lots would be serviced off of the road. The lots should be pinned along the road. It would prevent lots from coming to the center line of the road, or from one person owning the road. It would create a baseline and a system of checks and balances for Code Enforcement. Homeowners/Road Associations should be encouraged.*

*The expense of a paved road made it not affordable to build. If the economics didn't work, then people wouldn't build it. The new regulations created costs that were more friendly to developers than landowners.*

*The criteria for waivers didn't address what the results should be, only what it wouldn't be. There should be a road inventory that categorizes roads in terms of what was needed. If a gravel road was well constructed, why limit it to 30 homes? Gravel roads were cheaper to maintain. Why limit the options for people in town?*

*People should be made accountable for their choices. Private roads got damaged during construction and developers didn't want to accept responsibility. They should be tied to a performance guarantee. Shouldn't there be included in the ordinance a reference to the subdivision ordinance and a requirement to upgrade private roads leading to the subdivision?*

*Mike Manning, Bruschi Road – The AD Hoc Committee had looked for middle ground. They wanted individual homeowners to be able to provide a piece of property to family but prevent unscrupulous developers from doing developments without subdivision review on*

private roads, and to improve standards and the process. It wasn't perfect, but it was a start. They wanted infrastructure and a plan to continue to move forward. The impact of development to schools and bus stops should be added to the discussion.

Cory McDonald, Inland Farm Road – This would not solve any problems that the Committee had set out to solve, but he hoped it would pass because it was better than what was done in 2017. It didn't identify the problems in town but lumped them together in the ordinance.

Development on private roads had been stopped. They hoped to get rid of private roads. Some people wanted to live on a private road; that was why they bought land on a gravel road.

No matter how long a private road was, there needed to be an in-family exemption for families with multiple kids. A five year exemption should be included. With the one time exemption it was a one time shot for frontage. One kid would get land and then all you could do was sell to a developer.

Another shortfall was it didn't stop existing roads that were in bad shape. New people were responsible for upgrades to the road and people who didn't take care of it weren't affected. People had to be held accountable for damage to existing roads. Some roads couldn't be owned by road associations because the road was part of the lot density.

Amanda Lessard said a written comment had been received which encouraged the Board to recommend removal of the requirement for no private roads off public streets.

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

The Board commented:

- This was a starting point. Stopping developers wasn't the goal.
- There would be unintended consequences.
- There were concerns with affordability. Pavement wasn't always the answer.
- How many subdivisions on new roads had been created off private roads due to the enacted rules? There had been zero improvements, which got back to affordability.
- If existing private roads were not in good shape and they needed to be upgraded and if it wasn't coming from the homeowners/road associations or the town they would look for another mechanism to get the roads upgraded. By excluding subdivision in the new ordinance, they were limiting the ability to upgrade. If the intent was to get a road upgraded there should be some carry over to subdivision.
- This would encourage people to locate houses before the 30th house on a road so they wouldn't have to pave.
- There was a concern for new homeowners who couldn't get a certificate of occupancy because the road hadn't been upgraded as required.
- Accountability had been a problem. This would address that.
- How would the town know what the road construction was?
- The idea of pinning properties along the road was a good one.
- The ordinance should make it affordable to develop so upgrades to roads were possible.
- The provision for a waiver from the Planning Board should be reconsidered because everyone would want one.
- There should be an exemption available every five years, not just one time.

Board recommendations for Town Council:

- Require pinning of the front property line.

- A 50 foot right-of-way was preferable.
- Require outside inspections of the road.
- A bond/surety should be required for upgrades to guarantee the road would be in as good condition as when construction started.
- The town should have a final inspection.
- It was unfair to burden subdivision review. Subdivisions should be able to mirror these rules.
- There was a question of requiring Planning Board review for a waiver.
- There should be a recurring exemption every five years for original homestead property owners who have owned the property for five years as of the effective date of the ordinance. This exemption would apply for gift lots to immediate family members. It should mirror the subdivision ordinance, so the recipient had to keep own the lot for five years.

Drew Mayo made a motion to move it to Town Council with Board comments.

Seconded by Colin swan.

Vote: All in favor.

**New Business**

- 6      [PB 19-108](#)      19-30 Peterson Subdivision. Minor subdivision sketch plan review. Tom Peterson to request review of the creation of two (2) new lots. The subject property is located at 48 and 49 Johnson Road and identified on Tax Map: 10, Lots: 50A, 51, Zone: Farm Residential (FR).

**Attachments:**    [19-30 Johnson Rd Sketch 12-05-19](#)  
                           [Johnson Rd Subdivision Sketch Plan](#)  
                           [Minor Sketch Plan Application 11-18-19](#)

The applicant had requested the application not be considered at this meeting.

**Other Business**

- 7 Adjournment

Drew Mayo made a motion to adjourn.

Seconded by Keith Elder.

Vote: All in favor.