

2009

# Land Use Ordinance, Chapter 140 from the Code of the Town of Windham

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# LAND USE ORDINANCE

Chapter 140

From the

CODE

of the

TOWN OF WINDHAM

**Adopted September 22, 2009**

**Effective October 22, 2009**

COUNTY OF CUMBERLAND

STATE OF MAINE

(Amendments: See end of each section)

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## SECTION 100 – GENERAL

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### **101 Title**

This chapter shall be known and cited as the "Land Use Ordinance of the Town of Windham, Maine" and will be referred to herein as "this chapter," or, "this Ordinance."

### **102 Purpose**

- A. This chapter, adopted in accordance with a Comprehensive Plan pursuant to the provision to 30-A M.R.S.A. § 4326 et seq. is designed,
1. to encourage the most appropriate use of land throughout the municipality,
  2. to promote traffic safety; to provide safety from fire and other elements,
  3. to prevent overcrowding of real estate,
  4. to prevent housing development in unsanitary areas,
  5. to promote coordinated development,
  6. to encourage the formation of community units,
  7. to provide an allotment of land area in new developments for all the requirements of community life,
  8. to conserve natural resources, and
  9. to provide for adequate public services.
- B. This chapter does not excuse any person of the necessity of complying with other applicable laws and regulations.

### **103 Severability Clause**

In the event that any section, subsection or any portion of this chapter shall be declared by any court of competent jurisdiction to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection or other portion of



this chapter; to this end, the provisions of this chapter are hereby declared to be severable.

#### **104 Conflicts**

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute, the more restrictive provision shall control.

#### **105 Conformance Required**

- A. All buildings or structures hereinafter erected, reconstructed, altered, enlarged, or moved, and uses of premises, in the Town of Windham shall be in conformity with the provisions of this chapter.
- B. No building, structure, land or water area shall be used for any purpose or in any manner except as permitted within the district in which such building, structure, land or water area is located.
- C. Notwithstanding any other provisions of this Ordinance, any alteration of an existing building which is required in order to meet the requirements of the Americans with Disabilities Act (ADA) and/or the State Fire Code is not considered to be an enlargement or expansion of a structure, or expansion of a use, and is therefore not required to meet otherwise applicable setback requirements, provided that the Code Enforcement Officer determines that the alterations are the minimum necessary to satisfy the ADA and/or State Fire Code.
- D. All areas located within shoreland areas governed by the Shoreland Zoning Ordinance are exempt from this chapter.

#### **106 Rules of Construction**

For the purposes of this Ordinance:

- A. The word "person" includes a firm, association, organization, partnership, trust, company or corporation as well as an individual;
- B. The present tense includes the future tense;
- C. Words used in the singular include the plural and words used in the plural include the singular;
- D. The word "shall" is mandatory, the word "may" is permissive;
- E. The words "used" or "occupied" include the words "intended", "designed" or "arranged to be used or occupied";
- F. The word "dwelling" includes the word "residence";
- G. The word "lot" includes the words "plot" and "parcel";

- H. In case of any difference of meaning or implication between the text of this chapter and any map or illustration, the text shall control;
- I. Terms not defined shall have their customary dictionary meaning.

### **107 Amendment Procedure**

After review and recommendation by the Planning Board, this chapter may be amended in accordance with the Town Charter.

### **108 Conditional or Contract Zoning**

- A. **Authority and Purpose.** Pursuant to 30-A M.R.S.A. § 4352(8), conditional or contract zoning is hereby authorized for development where, for reasons such as the unusual nature or unique location of the development proposed, the Town Council finds it necessary or appropriate to impose, by agreement with the property owner or otherwise, certain conditions or restrictions not generally applicable to other properties similarly zoned. All contract or conditional zoning under this section shall establish rezoned areas which are compatible with the existing and permitted uses within the original zones. Nothing in this section shall authorize a rezoning, or an agreement to change or retain a zone, which is inconsistent with the Town's Comprehensive Plan.
- B. **Applicable Conditions and Restrictions.** All conditions and restrictions imposed shall relate only to the physical development and/or operation of the property. This includes, but is not limited to, the following:
  - 1. Limitations on the number and types of uses permitted;
  - 2. Restrictions on the scale and density of the development;
  - 3. Specifications for the design and layout of the buildings, structures, and other improvements;
  - 4. Schedules for commencement and completion of construction, including anticipated schedules (i.e. beginning and completion dates) for all construction phases;
  - 5. Performance guarantees securing completion and/or maintenance of public and private improvements, and guarantees against defects;
  - 6. Preservation and enhancement of open spaces and buffers, and protection of natural areas and historic sites;
  - 7. Contributions toward the provisions of municipal services required by the development; and,
  - 8. Provisions for enforcement and remedies for breach of any condition or restriction.
- C. **Submission Requirements.** All applications for conditional or contract zoning shall contain, at minimum, twenty (20) copies of the following plans and related information:
  - 1. A detailed written description of the proposal that includes the following information:
    - (a) The reason or reasons for the rezoning request;

- (b) How the proposal is in conformance with the Town's most recently adopted Comprehensive Plan;
  - (c) The current zoning district(s) applicable to the property.
  - (d) The proposed conditions or restrictions regarding the use and/or development;
  - (e) Land uses on abutting property and how they relate to the proposed use.
2. Application forms, as required;
  3. A non-refundable application fee in such amount(s) as the Town Council may from time to time establish in the fee schedule, see (*Appendix A, Fee Schedule*);
  4. A consulting and review fee in such amount as the Town Council may from time to time establish in the Fee Schedule. The fee shall be placed in escrow with the Town when the application is filed with the Planning Board. The fee shall be used by the Town in accordance with Subsection 810.C;
  5. Evidence of right, title or interest in the property proposed for contract or conditional zoning;
  6. A copy of the tax map on which the property is located.
  7. A draft contract agreement, if the Town Staff, Planning Board or Council determines it to be necessary.
- D. Rezoning Procedure. This subsection governs the procedure to be followed after the Town has received a conditional or contract zone application.
1. Town Council. All required submission material shall be submitted to the Windham Town Council at least twenty-one (21) days prior to the meeting at which the applicant wishes to be heard by the Council.
    - (a) The Town Council may choose to send the application to the Planning Board with, or without, suggested amendments.
  2. Planning Board. All required submission material shall be submitted to the Windham Planning Board at least twenty-one (21) days prior to the date at which the petitioner/property owner wishes to be heard by the Board.
    - (a) The Planner, within fourteen days, shall determine if the application is complete. An application shall not be placed on the Planning Board's agenda until it is found to be complete.
  3. Public Hearing. The Planning Board shall hold a public hearing.
    - (a) Notice Content. The public hearing notice shall contain the following information:

- (1) The date, time and place of the public hearing;
  - (2) A copy of the proposed conditions or restrictions with a map indicating the property to be rezoned.
- (b) Notification Requirements. The Planning Board shall publicize the public hearing as stated, below. Notices shall be deemed given when said notices are mailed and the failure of any petitioner and/or property owner to receive such notice shall not necessitate another hearing, shall not constitute grounds for objections by such petitioner, and shall not invalidate any recommendation by the Planning Board on such zoning matter or any final action taken by the Town Council thereon.
- (1) To the owner(s) of abutting property at least seven (7) days prior to the hearing;
  - (2) Posted in the municipal office at least thirteen (13) days before the hearing;
  - (3) Published, at least two (2) times, in a newspaper having general circulation in the Town of Windham. The date of the first publication must be at least seven (7) days before the hearing;
  - (4) To a public drinking water supplier if the area to be rezoned is within the supplier's source water protection area:
4. Planning Board Recommendation. The Planning Board shall use the following procedure when making a recommendation to the Council on a conditional or contract zone application.
- (a) The Planning Board shall forward its report and recommendations on the proposal to the Town Council after the Planning Board has taken its final vote on the application.
  - (b) The Planning Board's recommendation to the Town Council shall address the proposal's conformance with the Town's comprehensive master plan.
  - (c) The Planning Board's recommendation to the Town Council shall address how the change establishes a rezoned area that is consistent with the existing and permitted uses within the original zoning district.
  - (d) The Planning Board's report shall include all proposed conditions and restrictions, including those recommended by the Planning Board.
- E. Town Council Approval. The Town Council may approve a Conditional or Contract Zoning if it finds that:
1. The change establishes a rezoned area that is consistent with the existing and permitted uses within the original zoning district.

2. The change is consistent with the comprehensive master plan.
  - (a) In making its determination that the conditional or contract zone application is in conformance with the Town of Windham's Comprehensive Plan, the Town Council shall consider the following:
    - (1) The Planning Board's report and recommendation;
    - (2) Any proposed plot plans, site plans and/or subdivision plans reflecting the proposed use, development or redevelopment of the property under consideration for rezoning.
- F. Additional Requirements. The following additional requirements and standards shall apply to conditional or contract zone applications:
  1. All property or development receiving a contract rezoning is not exempt from the otherwise applicable standards in Section 800 Site Plan Review or Section 900 Subdivision Review of this Ordinance.
  2. No proposal to amend the official zoning map shall be entertained within one (1) year from the date of denial of the same request, unless the Planning Board determines that the application is a substantial change from the previously denied rezoning application.

#### Section 100 Amendments

Order 14-223; Date 07-08-2014    Change in submission deadlines

## SECTION 200 – NONCONFORMING PROVISIONS

### Sections

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### **201 General Provisions**

- A. The use of land or structures that are existing and lawful at the time of adoption, or subsequent amendment, of this Ordinance may continue and be expanded subject to the provisions of this Section.
- B. **Transfer of Ownership.** Ownership of land and structures which remain lawful but become nonconforming by the adoption or amendment of this Ordinance may be transferred and the new owner may continue the nonconforming use subject to the provisions of this Section.
- C. **Restoration of Unsafe Property.** A nonconforming structure declared unsafe by the Code Enforcement Officer, or damaged by fire or other casualty, shall be permitted to be strengthened or restored to safe condition.

### **202 Nonconforming Structures**

- A. **Expansion of a Nonconforming Structure.** A nonconforming structure may be expanded, repaired, maintained or improved subject to the provisions of this Section.
  - 1. The expansion shall be attached to the existing structure,
  - 2. **Nonconforming front, side or rear yard setback:** A structure may be expanded within a nonconforming yard area so long as the expansion does not further extend into a nonconforming front, side or rear yard setback,
  - 3. **Nonconforming height limit:** Where a structure contains a portion that is nonconforming in its height at the time of the adoption of this ordinance, the height of the remaining portion of the building may be increased so long as the expansion does not extend further than the existing height of the structure.
  - 4. All other setback requirements in the appropriate zoning district shall be met.

5. An expansion of a nonconforming use within an expanded nonconforming structure must meet the standards of Section 203,
6. Expansion with a variance:
  - (a) An applicant for an expansion that cannot meet the standards of Subsection 2. or 3., above must seek a variance from the Board of Appeals.
  - (b) The Board of Appeals shall use the appropriate variance standards of Section 1100 for the review of applications under this Section.
- B. Reconstruction or Replacement: A nonconforming structure that is damaged or destroyed by any cause, or is demolished, may be reconstructed or replaced, provided that a building permit is obtained within two (2) year of the date of damage, destruction, or demolition. The replacement or reconstruction of any nonconforming portion of the structure must be located within the original building footprint. The replacement or reconstruction may increase or decrease the number of square feet of floor area, but may not create any additional, or expand any existing, nonconformity, except as allowed by Section 202.A., above.
  1. The Code Enforcement Officer shall grant a one (1) year extension for the reconstruction or replacement of structures that are involved in litigation.

### **203 Nonconforming Uses**

- A. Expansion of a Nonconforming Use. The structure(s) in which a nonconforming use is located may be cumulatively expanded subject to the provisions of this section.
  1. General Provisions. The following provisions shall apply to all non-conforming uses:
    - (a) The expansion shall not allow for the introduction of new, or increase the number of, nonconforming uses on the property.
    - (b) The expansion shall not cause a structure to become non-conforming according to the dimensional requirements of the applicable zoning district.
    - (c) Expansion within an existing nonconforming structure shall meet the requirements of Section 202.
  2. Non-Residential Uses. A nonconforming non-residential use may be expanded as follows:
    - (a) By ten percent (10%) of the size existing on July 8, 1976 with approval from the Code Enforcement Officer,

- (b) Between eleven percent (11%) and one-hundred percent (100%) of the size existing on July 8, 1976 with approval from the Board of Appeals. The Board of Appeals shall use the following standards in granting approval:
    - (1) That the expanded use shall not reduce the Level of Service, as defined, on adjacent roadways or intersections,
    - (2) That the property has adequate sight distance for the location and type of expanded use,
    - (3) That the amount of parking required to meet the minimum ordinance requirements for the expanded use shall be provided,
    - (4) That the amount of noise, odors, vibrations, smoke, dust and air discharges of the expanded use shall be equal to or less than the present use,
    - (5) That the amount of surface water runoff from the site shall not be increased,
    - (6) That an adequate buffer has been provided to screen an expanded commercial or industrial use from any abutting residential use.
    - (7) The Board of Appeals may impose conditions of approval that are specific to the standards in this Subsection 203.A.1.(b).
  3. Residential Uses - A nonconforming residential use may be expanded as long as the building in which it is located meets either:
    - (a) The dimensional standards of the zoning district in which it is located, or
    - (b) The nonconforming structures or buildings standards in Section 202, above.
- B. Discontinuance of a Nonconforming Use
1. A nonconforming use which is discontinued for a period of two (2) year may not be resumed. Use of the land, building or structure shall thereafter conform to the provisions of this chapter.
  2. When a nonconforming use is changed to a permitted use the following provisions shall apply:
    - (a) The use shall thereafter conform to the provisions of this Ordinance, and
    - (b) The nonconforming use may not thereafter be resumed.



- C. Change of a Nonconforming Use. The Board of Appeals may grant permission for the conversion of an existing nonconforming use into another nonconforming use subject to the following provisions:
1. The new nonconforming use will be more conforming to the intent of the Land Use Ordinance,
  2. The existing non-conforming use shall be discontinued and shall not thereafter be resumed if the Board of Appeals approves the conversion.
  3. In determining whether the proposed use is in greater conformance with the Ordinance, the Board of Appeals must find:
    - (a) That the existing use was made non-conforming by the adoption or amendment of the Land Use Ordinance and is not a home occupation,
    - (b) That the proposed use shall not reduce the Level of Service on adjacent roadways or intersections,
    - (c) That the property has adequate sight distance for the location and type of proposed use,
    - (d) That the amount of parking required to meet the minimum ordinance requirements for the proposed use shall be provided,
    - (e) That the amount of noise, odors, vibrations, smoke, dust and air discharges of the proposed use shall be equal to or less than the present use,
    - (f) That the amount of surface water runoff from the site shall not be increased,
    - (g) That the hours of operations of the proposed use are compatible with the surrounding land uses.
    - (h) That an adequate buffer has been provided to screen a proposed commercial or industrial use from any abutting residential use.
  4. The Board of Appeals may impose conditions of approval that are specific to the standards in Subsection 203.C.3.

#### **204 Nonconforming Lots of Record**

- A. A single family dwelling may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance, provided that such lot shall be in separate ownership and not contiguous with any other lot in the same ownership and that all other dimensional standards of this chapter shall be met. In the event that all other

dimensional standards cannot be met, the property owner may apply for a variance in accordance with Section 1100 of this Ordinance.

- B. If two (2) or more contiguous lots or parcels are in single ownership of record at the time of adoption or amendment of this chapter and if all or part of the lots do not meet the dimensional and area requirements of this chapter, the lands involved shall be considered to be a single parcel for the purpose of this chapter, and no portion of said parcel shall be built upon or sold which does not meet dimensional and area requirements of this chapter; nor shall any division of the parcel be made which creates any dimension or area below the requirements of this chapter. Two (2) contiguous lots in single ownership prior to July 8, 1976, which each have an existing residential structure(s) on them and which do not meet the requirements of this Ordinance are exempt from this section and may be divided. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.
- C. Lots in subdivisions approved by the Windham Planning Board after February 7, 1972, are exempt from the provisions of Section 204.A. and Section 204.B., above.

## **205 Nonconforming Mobile Home Parks**

- A. Expansion of a nonconforming mobile home park shall conform to the dimensional standards of the zoning district in which the park is situated; granted,
  - 1. No lot within the Park that is served by public sewer shall be less than the smaller of 6,500 S.F. or the area of the smallest residential lot size allowed in the Town of Windham.
  - 2. No lot within the Park that is served by septic shall be less than twenty thousand (20,000) square feet in size; or
  - 3. The size of any lot served by a central on-site subsurface waste water disposal system approved by the Department of Health and Human Services shall be at least 12,000 s.f. in area, provided that the overall density of the mobile home park is not greater than one home for every 20,000 s.f.

## **206 Non-Conforming Shipping Containers**

- A. Residential Districts
  - 1. No more than one (1) non-conforming shipping container shall be allowed on any lot.
  - 2. Any shipping container located in a residential district on, or prior to, September 21, 2000 may continue to be used if it meets the following requirements:

- (a) The property owner shall provide documentation, to the satisfaction of the Code Enforcement Officer, that the shipping container was located on the site on, or prior to, September 21, 2000.
  - (1) Information from abutting property owners, in the form of a letter stating the existence of the shipping container on or around a specific date, could assist in this documentation.
- (b) Permit Required
  - (1) A non-conforming shipping container shall obtain a permit from the Code Enforcement Officer. The permit shall document the following:
    - (i) The container's existence, size, and location on the property.
  - (2) The permit must be acquired by March 21, 2001 unless good cause can be shown to the Code Enforcement Officer
    - (i) If a permit is not requested by September 21, 2001, the shipping container must be removed, unless the shipping container was located on the property prior to November 9, 1999.

Section 200 Amendments

Order 11-153; Date 09-13-2011 Change to Nonconforming Structures

**SECTION 300 – DEFINITIONS**

In this chapter, the following terms shall have the following meaning unless a contrary meaning is required by the text or is specifically prescribed. In addition to the following definitions, performance standards regulating specified land uses should be reviewed in the, “District Standards,” for each zoning district (*Sec. 400*) and the, “Performance Standards,” (*Sec. 500*) that apply to all zoning districts in the Town.

**Abutting Land.** A lot of land currently listed by the Windham Tax Assessor having a common border with, or being separated from such a common border by a right-of-way or easement, another lot of land currently listed by the Windham Tax Assessor. For the purposes of this Ordinance, the owners of properties shall be considered to be those parties currently listed by the Windham Tax Assessor against whom taxes are assessed.

**Accessory Apartment.** An independent dwelling unit that has been added onto, or created within, a single-family house.

**Accessory Building.** See definition of, “Building, Accessory.”

**Accessory Use.** See definition of, “Use, Accessory.”

**Adult Amusement Device.** Any device capable of showing by audio or visual reproduction, projection or otherwise, and used primarily to display materials containing details, descriptions or narrative accounts of acts of sexual stimulation, intercourse or deviation, the dominant theme of which is an appeal to the prurient interest of the listener or viewer within a cubicle or other enclosed area.

**Adult Business Establishment.** Any retail business, including but not limited to any bookstore, newsstand, novelty store, night club, bar, cabaret, amusement arcade or theater which:

- Keeps for public patronage or permits or allows the operation of any adult amusement device as defined in this section;
- Customarily exhibits motion pictures or displays any other visual representation described or advertised as being X-rated or for adults only or which customarily excludes persons from any portion of the premises by reason of immaturity of age by the use of such or similar phrases;
- Maintains a substantial inventory of sexually oriented or sexually explicit materials;
- Customarily provides entertainment primarily involved with the explicit depiction or description of sexual intercourse or sexual acts (as defined in Title 17-A M.R.S.A. § 251).

**Agriculture.** The production, storage, keeping, harvesting, grading, packaging, processing, boarding, or maintenance, for sale, lease, or personal use, of plants and animals useful to humans, including but not limited to: forages and sod crops, grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horse, ponies, mules, or goats or any mutations or hybrids thereof, including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees, and forest berries; vegetables; nursery, floral, ornamental, and greenhouse products. Agriculture does not include forestry or sawmills, as defined in this Ordinance. (*See Sec. 500 Performance Standards*)

**Agriculture, Piggery.** A premises, area, fenced enclosure, building or structure, or portion thereof, used or designed for the keeping of pigs. (*See Sec. 500 Performance Standards*)

**Agriculture, Poultry Facility.** A premises, area, fenced enclosure, building or structure, or portion thereof, used or designed for the keeping of poultry or fowl. (*See Sec. 500 Performance Standards*)

**Antenna.** Any structure or device used for the purpose of wireless transmitting or receiving electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunication signals, including but not limited to directional antennas, such as panels, microwave dishes, and satellite dishes, and omni-directional antennas, such as whip antennas.

**Area of Special Flood Hazard.** The land in the flood plain having a one per cent (1%) or greater chance of flooding in any given year, as specifically identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study - Town of Windham, Maine, Cumberland County."

**Arterial Street.** See definition of, "Street Classification: Arterial Street"

**Artist Studio.** A place of work for an artist, artisan, or craftsperson, including persons engaged in the application, teaching, or performance of fine arts such as, but not limited to, drawing, vocal or instrumental music, painting, sculpture, writing, woodworking, sewing, and saw sharpening.

**Assisted Living Facility.** Residences for the frail elderly that provide rooms, meals, personal care, and supervision of self-administered medication. They may provide other services, such as recreational activities, financial services, and transportation.

**Auction House.** A place where objects or art, furniture, and other goods are offered for sale to persons who bid on the object in competition with each other.

**Automobile Auction Facility.** Any parcel of land, building or other premises, or portion thereof, which is used for the temporary storage of whole, wrecked automobiles that are offered for sale by an automobile auction business. This use does not include Automobile Graveyards,

automobile recycling businesses or Junkyards, as defined according to 30-A M.R.S.A. §3752, of the Maine Revised Statutes, as amended from time to time.

**Automobile Gas Station.** Any building, land area, or other premises, or portion thereof, used for the retail dispensing or sales of vehicular fuels; and as an accessory use the sale of lubricants, tires, batteries, and similar vehicle accessories. The sale of additional items or services on the same site must also be allowed by the applicable zoning district(s). (*See definition of "Retail Store, Minimart"; "Automobile Repair Services, Minor"*)

**Automobile Graveyard.** An automobile graveyard shall be defined according to 30-A, M.R.S.A. § 3752, of the Maine Revised Statutes, as amended from time to time.

**Automobile Repair Services.** Establishments primarily engaged in the maintenance and repair of passenger vehicles, pickup trucks, all classes of commercial trucks and similar vehicles. The type of work typically provided includes, but is not limited to engine tune-ups and overhauls, transmission repairs, glass repair and replacement, oil changes, tire repairs and replacement, brake and muffler work, bodywork, painting and diagnostic tune-ups. (*See Sec. 500 Performance Standards*)(*See definition of "Small Engine Repair"*)

**Automobile Sales.** See "Retail Sales, Automobile Sales."

**Automobile Storage Lot.** A parcel of land, building, or facility that is used for the temporary storage of wrecked, towed or impounded motor vehicles usually awaiting insurance adjustments, reclamation by titleholders or their agents, or transport to a repair shop. (*See Sec. 500 Performance Standards*)

**Bank.** A bank or similar financial institution.

**Backlot.** See definition of, "Lot, Backlot"

**Base Flood.** The flood having a one-percent (1%) chance of being equaled or exceeded in any given year, commonly called the "one-hundred year flood."

**Bed and Breakfast Inn.** Overnight accommodations and a morning meal in a dwelling unit provided to transients for compensation. (*See Sec. 500 Performance Standards*).

**Boarding Home for Sheltered Care.** A group home for the sheltered care of persons with special needs, which, in addition to providing food and shelter, may also provide some combination of personal care, social or counseling services, and transportation. This definition does not include facilities for the treatment of substance abuse. (*See Sec. 500 Performance Standards*)

**Buffer Strip.** Open spaces, landscaped areas, fences, walls, berms, or any combination thereof used to physically separate or screen one use or property from another so as to visually shield or block noise, lights, or other nuisances.

**Buffer Strip, Landscaped.** A landscaped area adjacent to and parallel with the front property line of a lot or parcel. (*See Sec. 500 Performance Standards*)

**Building.** Any structure having a roof supported by columns or wall and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or materials of any kind. (*See definition of "Structure"*)

**Building, Accessory.** A subordinate building detached from but located on the same lot as the principal building, the use of which is incidental to that of the principal building.

**Building, Principal.** A building in which is conducted the principal use of the lot on which it is located.

**Building Coverage.** The ratio of the horizontal area, measured from the exterior surface of the exterior walls of the ground floor, of all principal and accessory buildings on a lot to the total lot area.

**Building Footprint.** The area encompassed by a building's outer wall at ground level.

**Building Height.** The vertical distance from grade plane to the average height of the highest roof surface.

**Business and Professional Office.** The place of business of lawyers, accountants, financial advisors, architects, surveyors, real estate and insurance businesses, psychiatrists, counselors, and the like, or in which a business conducts its administrative, financial or clerical operations including banks, other financial services and call centers. This also includes the office functions of publishing and media businesses (*See definition of "Manufacturing, Light" for printing operations*).

**Call Center.** A functional area within an organization or an outsourced, separate facility that exists solely to answer inbound or place outbound telephone calls; usually a sophisticated voice operations center that provides a full range of high-volume, inbound or outbound call-handling services, including customer support, operator services, directory assistance, multilingual customer support, credit services, card services, inbound and outbound telemarketing, interactive voice response and web-based services. (*See definition of "Business and Professional Office"*)

**Campground, Commercial.** Any premises providing temporary accommodation to the public for a fee in a recreational vehicle or tent.

**Campground, Personal.** Any premises providing temporary accommodation on three (3) or fewer campsites in a recreational vehicle or tent and used exclusively by the owner of the property and his or her family and friends. The definition of a personal campground does not include the storage of recreational vehicles. (*See Sec. 500 Performance Standards*)

Central Sewage System. A wastewater disposal system that receives wastewater from two (2) or more structures. *(See Sec. 500 Performance Standards)*

Child Care, Facility. A building in which a person maintains or otherwise carries out a regular program, for consideration, for any part of a day providing care and protection for children under thirteen (13) years of age. *(See Sec. 500 Performance Standards)*

Child Care, Family Home. A home used to provide child care in the resident's home on a regular basis, for consideration, for three (3) to twelve (12) children under thirteen (13) years of age who are not the children of the provider. *(See Sec. 500 Performance Standards)*

Clear Zone. The area adjacent to a street (measured from the edge of the travel lane) in which fixed objects or obstructions are not permitted. Fixed objects include, but are not limited to, trees, signs, utility poles, walls, boulders, and mailboxes. *(See Sec. 900 Subdivision Review)*

Club. A group organized for a common purpose, goal, interest, or activity, usually social, religious, cultural or educational in nature, usually characterized by certain membership qualifications, payment of fees and dues, regular meetings, a constitution, and by-laws.

Cluster Subdivision. A form of development that permits a reduction in lot area and bulk requirements, and the remaining land area is devoted to open space, active recreation, preservation of environmentally sensitive areas, or agriculture. *(See Sec. 400 Zoning Districts)* *(See Sec. 900 Subdivision Review)*

Collector Street. See definition of, "Street Classification: Collector Street"

Comprehensive Plan. A document or interrelated documents adopted by the Municipal Officers, containing the elements established under 30-A M.R.S.A. § 4326 sub-1 to 4, including the strategies for an implementation program which are consistent with the State goals and guidelines established under 30-A M.R.S.A. §4311 through § 4350.

Complete Substantial Construction. The completion of a portion of the improvements which represents no less than thirty (30) percent of the costs of the proposed improvements within a subdivision. If the subdivision is to consist of individual lots to be sold or leased by the subdivider, the cost of construction of buildings on those lots shall not be included. If the subdivision is a multifamily development, or if the applicant proposes to construct the buildings within the subdivision, the cost of building construction shall be included in the total costs of proposed improvements.

Conditional Use. A use which shall be authorized when all of the conditions of Section 516 and other applicable provisions of this Ordinance have been met. *(See "Conditional Use" in Sec. 500 Performance Standards)*

Construction Services. The performance of work or the furnishing of supplies to members of the building trades which requires the storage of materials and/or the location of commercial vehicles on the property of the construction services business. This includes, but is not



limited to, plumbing, painting, building, well drilling, carpentry, masonry, or electrical installation.

Controlled Access Street. See definition of, "Street Classification: Controlled Access Street"

Convention Center. A building, or portion thereof, designed to accommodate 300 or more people in assembly. For the purposes of this Chapter, this definition does not include "Places of Worship."

Corner Lot. See definition of, "Lot, Corner."

Correctional Facility, Public. A publicly operated facility housing persons awaiting trial or persons serving a sentence after being found guilty of a criminal offense.

Curb Cut. The connection to a street, or opening along the curb line, at which point vehicles may enter or leave the roadway. (*See Sec. 500 Performance Standards*)

Daytime Hours. Those hours between 7:00 a.m. and 7:00 p.m.

Dead-End Street. See definition of, "Street Classification: Dead-End Street"

Demolition. The removal of part, or all, of a building or structure.

Developable Land. Parcels, lots or sites that meet the requirements of "Developable Land" in Section 500 Performance Standards.

Development. Any change of land use including but not limited to the construction of buildings, parking lots, streets or utilities or the filling or cutting of land areas, or the cutting of trees which is done as part of the site preparation. "Development" does not, however, include normal agricultural operations, e.g., cultivation of soil, the raising of livestock, or the erection of fences, nor does it include for the purpose of subdivision or site plan review, the erection of barns and other accessory farm buildings.

Distribution Center. An establishment in which a building is used for the receipt, storage, and distribution of goods, products, cargo, and materials, including transshipment by boat, rail, air, or motor vehicle. Included in this definition are the breakdown and/or consolidation of orders for shipment. However, the retail sale, assembly, or processing of goods, products, cargo, or materials are not considered part of the distribution process.

Drive-through Facility. Any portion of a structure from which business is transacted, or is capable of being transacted, directly with customers located in a motor vehicle during such business transactions. (*See Sec. 500 Performance Standards*)

Driveway. A route that provides access to a lot(s) from either a public or private right-of-way. (*See Sec. 500 Performance Standards*).

Dwelling. A structure, or portion thereof, that is used exclusively for human habitation.

Dwelling, Mixed Use. A building containing one (1) or more dwelling unit(s) and one (1) or more non-residential use(s) where residential uses are located above the first story of a building that contains a non-residential use on at-least the first story. (*See definition of, "Story"*)

Dwelling, Multifamily. A building containing three (3) or more dwelling units. A multifamily dwelling may be attached to a non-residential use.

Dwelling, Single-Family Detached. A freestanding building containing one (1) dwelling unit.

Dwelling, Two-Family. A building containing two (2) attached dwelling units. A two-family dwelling may, or may not, be attached to a non-residential use.

Dwelling Unit. One or more rooms, designed, occupied, or intended for occupancy as separate living quarters, with cooking, sleeping, and sanitary facilities provided within the dwelling unit for the exclusive use of a single family.

Engineer. A civil engineer licensed by the State of Maine.

Family. One (1) or more persons occupying a premise and living as a single housekeeping unit as distinguished from a group occupying a boardinghouse, lodging house, motel, or hotel as herein defined.

Fisheries, Significant. Areas identified by a government agency such as the Maine Department of Inland Fisheries and Wildlife, Atlantic Salmon Authority, or Maine Department of Marine Resources as having significant values as fisheries or any areas identified in the Town's Comprehensive Plan.

Fitness Center. An establishment that provides facilities for aerobic exercises, running and jogging, exercise equipment, game courts, swimming facilities, and saunas, showers, massage rooms, and lockers to members and their guests.

Flood Insurance Rate Map (FIRM). The official map on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the Town of Windham.

Forestry. The operation of timber tracts, tree farms, forest nurseries, the gathering of forest products, or the performance of forest services.

Frontage. The length of the front lot line measured at the street right-of-way. (*See "Developable Land" in Section 500 Performance Standards*)

Front Lot Line. See definition of, "Lot Line, Front."

**Funeral Home.** A building used for the preparation of the deceased for burial and the display of the deceased and rituals connected therewith before burial or cremation.

**Golf Course.** A tract of land laid out for at least nine (9) holes for playing the game of golf that may include a clubhouse, dining and snack bars, pro shop, and practice facilities.

**Grade Plane.** A reference plane representing the average of finished ground level adjoining the building at all exterior walls.

- Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by one of the following:
- The lowest points within the area between the building and the lot line; or
- Where the lot line is more than six (6) feet from the building, the lowest points between the building and the lot line as measured at a point six (6) feet from the building.

**Gross Floor Area (GFA).** The sum of the gross horizontal areas of all enclosed stories of a building, including cellars, basements, mezzanines, penthouses, corridors, and lobbies from the exterior face of the exterior walls, or from the centerline of a common wall separating two buildings, but excluding any space with a floor-to-ceiling height of less than 6 feet 6 inches.

**Groundwater Sensitive Area.** An area that has been identified as being particularly vulnerable to the discharge of pollutants from on-site sewerage disposal systems due to its proximity to a ground water aquifer and/or a well head.

**Hazardous Material.** Hazardous material includes the following:

- Highly combustible or explosive products or materials that are likely to burn with extreme rapidity or that may produce poisonous fumes or explosions;
- Highly corrosive, toxic, or noxious alkalis, acids, or other liquids or chemicals producing flame, fume, or poisonous, irritant, or corrosive gases;
- Materials producing explosive mixtures of dust or that result in the division of matter into fine particles subject to spontaneous ignition.
- Any substance that is a present or potential danger to people or to the natural environment when deposited on land or discharged on or into water or ambient air.

**Historic or Archaeological Resources.** Areas identified by a government agency such as the Maine Historic Preservation Commission as having significant value as a historic or archaeological resource or any areas identified in the Town's Comprehensive Plan.

**Home Occupation 1.** An occupation or profession which is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit and clearly incidental and secondary to the use of the dwelling unit for residential purposes. See “Home Occupation 1” in section 500 Performance Standards.

**Home Occupation 2.** An occupation or profession which is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit and clearly incidental and secondary to the use of the dwelling unit for residential purposes. Home Occupation 2 uses must be approved by the Board of Appeals. (*See Sec. 500 Performance Standards*)

**Hospital.** An institution providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, deformity, and other abnormal physical or mental conditions and including as an integral part of the institution related facilities, such as laboratories, outpatient facilities, training facilities, medical offices, and staff residences.

**Hotel.** A facility offering transient lodging accommodations to the general public for a fee. Hotels may include additional facilities and services, such as restaurants, meeting rooms, entertainment, personal services, and recreational facilities in those zoning districts in which these facilities are permitted. (*See Sec. 500 Performance Standards*)

**Household Pets.** Those animals normally considered as household companions, but not including horses, cows, sheep, goats, mink, swine, chickens, turkeys, or any animals raised for sale or for the sale of their products.

**Impervious Surface.** A surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water. Examples include, but are not limited to, buildings, structures, pavement. Surfaces with a percolation rate faster than 120 minutes per inch shall not be considered impervious.

**Impervious Area.** The ratio of the horizontal area, of all impervious surfaces on a lot to the total lot area.

**Industrial or Commercial Street.** See definition of, “Industrial or Commercial Street”

**Industry, Heavy.** A use engaged in the basic processing and manufacturing of materials or products predominately from extracted or raw materials, or a use engaged in storage or, or manufacturing processes using flammable or explosive materials, or storage or manufacturing processes that potentially involve hazardous or commonly recognized offensive conditions. (*See definition of “Manufacturing”; and “Manufacturing, Hazardous”*)

**Industry, Light.** A use engaged in the manufacture, predominantly from previously prepared materials, or finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, incidental sales and incidental distribution of such

products, but excluding basic industrial processing. (*See definition of “Manufacturing”*) (*See Sec. 500 Performance Standards*)

**Junkyard.** A yard, field or other outside area used to store, dismantle or otherwise handle:

- Discarded, worn-out or junked plumbing, heating supplies, electronic or industrial equipment, household appliances or furniture;
- Discarded, scrap and junked lumber; and
- Old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste and all scrap iron, steel and other scrap ferrous or nonferrous material.

**Kennel, Major.** An establishment in which five (5) or more dogs, cats, or domesticated animals are boarded for a fee or compensation. (*See Sec. 500 Performance Standards*)

**Kennel, Minor.** An establishment in which four (4) or fewer dogs, cats, or domesticated animals are boarded for a fee or compensation. (*See Sec. 500 Performance Standards*)

**Landscaped Buffer Strip.** See definition of, “Buffer Strip, Landscaped.”

**Landscaped Green Area.** An area of land which is landscaped with a ground cover of bark mulch, grass or other natural green plant material and which is then covered with trees or shrubs for all or part of its area. For the purposes of this ordinance, the definition of a landscaped green area do not include materials such as concrete, asphalt, or hardscapes that have been painted green.

**Legislative Body.** The Town Council of Windham, Maine.

**Level of Service.** The operational or service level of transportation infrastructure as determined by the most current edition of the, “Highway Capacity Manual” published by the Transportation Research Board.

**Loading Bay.** An off-street space or berth used for the loading or unloading of cargo, products, or materials from vehicles.

**Local Street.** See definition of, “Street Classification: Local Street”

**Lot.** A designated parcel, tract, or area of land established by plat, subdivision, or as otherwise permitted by law, to be separately owned, used, developed, or built upon.

**Lot, Backlot.** A lot that meets the standards of Section 529 Lot, Backlot. (*See Sec. 500 Performance Standards*)

**Lot, Corner.** A lot abutting on and at the intersection of two or more streets. (*See Sec. 500 Performance Standards*)

Lot, Developable. (*See definition of “Developable Land”*)

Lot, Frontage. The length of the front lot line measured at the street right-of-way line. (*See “Developable Land” in Section 500 Performance Standards*)

Lot, Interior. A lot other than a corner lot.

Lot, Through. A lot that fronts on two parallel streets or that fronts on two streets that do not intersect at the boundaries of the lot.

Lot Line. The boundary line of a lot.

Lot Line, Front. The lot line separating a lot from a street right-of-way or the portion of a lot that abuts a street right-of-way.

Lot Line, Rear. The lot line opposite and most distant from the front lot line. In the case of triangular or otherwise irregularly shaped lots, a line 10 feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line.

Lot Line, Side. Any lot line other than a front or rear lot line.

Lot Width. The horizontal distance between side lot lines, measured at (1) the front lot line, and (2) the required front setback line of the applicable zoning district.

Lumber Yard. An area and structures used for the storage, distribution, and sale of finished or rough-cut lumber and lumber products. Lumber yards shall be classified as “Retail Sales.” (*See definition of “Retail Sales”*)

Manufactured Housing. Manufactured housing shall be defined according to 30-A, M.R.S.A. § 4358, as amended from time to time. (*See Sec. 500 Performance Standards*)

Manufacturing. Establishments engaged in the mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the creation of products, and the blending of materials, such as oils, plastics, resins, or liquors.

Manufacturing, Hazardous. A building or structure or any portion thereof that is used for the storage, manufacture, or processing of the following:

- Highly combustible or explosive products or materials that are likely to burn with extreme rapidity or that may produce poisonous fumes or explosions;
- Highly corrosive, toxic, or noxious alkalis, acids, or other liquids or chemicals producing flame, fume, or poisonous, irritant, or corrosive gases;

- Materials producing explosive mixtures of dust or that result in the division of matter into fine particles subject to spontaneous ignition.

Major Subdivision. Any subdivision containing five (5) or more lots or dwelling units.

Minor Subdivision. Any subdivision containing not more than four (4) lots or dwelling units.

Medical Office. A building housing one (1) or more offices of doctors, such as doctors of medicine, dentistry, or non-boarding veterinary clinics.

Mineral Extraction. The removal, processing and storage of topsoil, loam, rock, sand, gravel, stone, and other earth materials. (*See Sec. 600 Mineral Extraction*)

Mobile Home Park. Manufactured housing shall be defined according to 30-A, M.R.S.A. § 4358, as amended from time to time. (*See "Mobile Home Park Overlay District" in Sec. 400 Zoning Districts*)

Motel. A building or group of attached or detached buildings containing guest rooms or dwelling units most of which have separate outside entrances and parking spaces nearby intended to be used by automobile transients for compensation. (*See Sec. 500 Performance Standards*)

Municipal Officer. Any member of the Town Council of the Town of Windham.

Municipal Official. Any elected or appointed member of the Town of Windham.

Municipal Reviewing Authority. The board designated by either the State of Maine or this Ordinance to hear and decide upon specified applications.

Natural Areas and Natural Communities, Unique. Areas identified by a government agency such as the Maine Department of Conservation Natural Areas Program as having significant value as a natural area or any areas identified in the Town's Comprehensive Plan.

Net Residential Area or Acreage. The area of a parcel which is suitable for division as determined by the standards for "Net Residential Density" in Section 500.

Net Residential Density. The number of dwelling units per net residential acre.

Nonconforming Lot. A lot, the area, dimensions, or location of which was lawful prior to the adoption, revision, or amendment of the zoning ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

Nonconforming Structure or Building. A structure or building, the size, dimensions, or location of which was lawful prior to the adoption, revision, or amendment of the zoning ordinance

but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning ordinance.

**Nonconforming Use.** A use or activity that was lawful prior to the adoption, revision, or amendment of the zoning ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

**Nursing Home.** An institution or a part of an institution that is licensed or approved to provide health care under medical supervision for 24 or more consecutive hours to two or more patients who are not related to the governing authority or its members by marriage, blood, or adoption.

**Official Map.** The zoning map adopted by the Town of Windham, Maine on May 25, 1976, as amended from time to time.

**Official Shoreland Zoning Map.** The most current map delineating the shoreland zones adopted by the Town of Windham, Maine, as amended from time to time, in accordance with the provisions of 38 M.R.S.A. § 435 through § 439

**Off-Street Parking Space.** A temporary storage area for a motor vehicle that is not located on a dedicated street right-of-way.

**Open Space.** Land set aside for passive and/or active use, including recreation purposes, preservation of environmentally sensitive areas, common open space in cluster subdivisions, undevelopable land and buffers.

**Outside Sales or Outdoor Sales.** See definition of, “Retail Sales, Outdoor.”

**Parcel.** (1) a piece or area of land formally described and recorded with map, block and lot numbers, by metes and bounds, by ownership, or in such a manner as to specifically identify the dimensions and/or boundaries; (2) informally, as land in general. (*See definition of, “Plot”*)

**Park, Public.** A tract of land available to the general public for recreational purposes. Public parks do not include recreation facilities that are fully enclosed.

**Permitted Use.** The use of any building or land in a manner subject to the express conditions and limitations stated in this Ordinance.

**Person.** Includes an individual, firm, association, organization, partnership, trust, company or corporation.

**Place of Worship.** A church, synagogue, temple, mosque, or other facility that is used for prayer by persons of similar beliefs. This definition shall also include a special-purpose building that is architecturally designed and particularly adapted for the primary use of conducting formal religious services on a regular basis. Educational and child care activities that are



conducted outside of the facility's religious services or gatherings shall be defined separately in this Chapter.

Principal Use. See definition of, "Use, Principal."

Private Road. See definition of, "Street Classification: Private Road."

Private Way. See definition of, "Street Classification: Private Way."

Public Building. (1) Any building used exclusively for public purposes by any department or branch of government; (2) buildings of an institutional nature and serving a public need, such as schools; libraries; museums; post offices; public safety, public works, and public utilities and services.

Public Street. See definition of, "Street Classification: Public Street."

Public Utility Facility. Buildings, structures, or facilities, including switching stations, relating to the furnishing of utility services, such as electric, gas, telephone, water, and sewer to the public. This definition shall not include the following buildings, structures or facilities (*See Sec. 500 Performance Standards*):

- Wireless Telecommunications Tower and Facility (*See definition*),
- Pump Station (*See definition of "Pump Station"; See "Pump Station" in Sec. 500 Performance Standards*)

Pump Station. A building or structure containing the necessary equipment to pump sanitary sewerage or public water to a higher elevation.

Recreation, Passive. Activities that involve relatively inactive or less energetic activities, such as walking, sitting, picnicking, board and table games.

Recreation Facility, Indoor. The use of a building for play, sports, games, and other similar diversions. (*See definition of "Fitness Center"*)

Recreation Facility, Outdoor. The use of a land outside of a fully enclosed building, as defined, for play, sports, games, and other similar diversions.

Research Laboratory. A facility for investigation into the natural, physical or social sciences, which may include engineering and/or product development.

Restaurant. An establishment where food and drink are prepared, served and consumed. A restaurant may serve food to be taken from the premises for consumption.

Retail Sales. Establishments engaged in the selling or rental of goods or merchandise and in rendering services incidental to the sale of such goods.

**Retail Sales, Accessory.** The sale of goods or merchandise that are directly related to, or are the product of, the primary use located on the property.

**Retail Sales, Automobile Sales.** The use of any building, land area, or other premise principally for the display, sale, rental, or lease of new or used automobiles, light trucks, vans, trailers or recreation vehicles. This use includes any vehicle preparation, warranty, or repair work conducted as an accessory use. *(See Sec. 500 Performance Standards)*

**Retail Sales, Convenience.** A retail establishment of up to one-thousand five-hundred (1,500) square feet selling primarily food products, household items, newspapers and magazines, candy, and beverages, and a limited amount of freshly prepared foods such as sandwiches, pizzas, and salads. *(See Sec. 500 Performance Standards)*

**Retail Sales, Minimart.** A convenience store that is located on the same lot and is accessory to an automobile gas station. *(See definition of “Retail Store, Convenience”)*

**Retail Sales, Nursery.** The growing, cultivation, storage, and sale of garden plants, flowers, trees, shrubs, and fertilizers, as well as the sale of garden tools and similar accessory and ancillary products, to the general public. A nursery may also include a greenhouse structure in which plants, vegetables, and flowers are grown for sale.

**Retail Sales, Outdoor.** The display or sale of products and services outside of a building. This includes, but is not limited to, vehicles; garden supplies, flowers, shrubs, and other plant materials; boats and aircraft; farm equipment; motor homes; burial monuments; building and landscape materials; and lumber. This definition does not include yard sales conducted on residential properties. *(See Sec. 500 Performance Standards)*

**Retirement Community.** Any age restricted development, which may be in any housing form, including detached and attached units, apartments, and residences, offering private and semiprivate rooms. *(See Sec. 500 Performance Standards)*

**Riding Stable.** Any land or structure designed, intended or used for the keeping of horses or ponies for hire, either with or without instruction in riding.

**Roadside Stand.** A structure for the display and sale of agricultural products. *(See definition of, “Agriculture”; and standards for, “Agriculture” in Sec. 500 Performance Standards)*

**Rockery (or “rockeries”).** Rough rocks stacked in an “interlocking” pattern without concrete, mortar, or steel reinforcement. Neither mechanical nor physical connections are made between the individual rocks; “interlocking” is accomplished through proper rock layout, rock weight, and frictional interaction.

**Rooming House.** A building used for temporary occupancy of individuals who are lodged with or without meals and in which bathroom and kitchen facilities may be shared. *(See Sec. 500 Performance Standards)*

Sawmill, Permanent. A facility where logs are cut into boards or timbers; a mill or machine for sawing logs or producing firewood that is in operation on a permanent basis. (*See Sec. 500 Performance Standards*)

Sawmill, Temporary. A facility where logs are cut into boards or timbers, a mill or machine for sawing logs or producing firewood that is in operation for a cumulative duration of two (2) months or fewer in any twelve month period. This definition does not include the use of handheld chainsaws. (*See Sec. 500 Performance Standards*)

Self-Storage Facility. A building or group of buildings containing separate, individual, and private storage spaces of varying sizes available for lease or rent for varying periods of time. (*See definition of, "Warehousing, Public"*)

Service Business. Establishments primarily engaged in providing assistance, as opposed to products, to individuals, business, industry, government, and other enterprises.

Service Business, Commercial. Establishments primarily engaged in providing services to business establishments on a fee or contract basis. This includes, but is not limited to, advertising and mailing, building maintenance, employment services, management and consulting services, protective services, equipment rental and leasing.

Service Business, Landscaping. The business location of a person engaged in the commercial practice of landscaping and who performs or furnishes the labor, and/or materials necessary to maintain or beautify land by contact or consent of the landowner, including, but not limited to; lawn care, planting, care of trees and shrubs, and winter maintenance services such as snow plowing.

Service Business, Personal. Establishments primarily engaged in providing services involving the care of a person or his or her personal goods or apparel. This includes, but is not limited to, laundry or dry cleaning services, beauty shops, barbershops, shoe repair, and clothing rental.

Setback. The distance between any structure and the nearest lot line or street.

Setback Line. That line that is the required minimum distance from any lot line and that establishes the area within which any structure may be erected or placed.

Setback, Rear. The distance between any structure and the rear lot line or street and measured perpendicular to the structure to the closest point of the rear lot line or street.

Setback, Required. The minimum distance between any structure and a lot line or street within which no structure is permitted to be located except as provided in this Ordinance.

Setback, Side. The distance between any structure and the side lot line or street and measured perpendicular from the side lot line or street to the closest point of the structure.

**Sexually Explicit.** The display or depiction of sex organs during actual or simulated sexual intercourse or sexual acts as defined in 17-A M.R.S.A. § 251.

**Shipping Container.** A free standing container typically assembled with steel and/or aluminum. The container typically does not have wheels, but rather, is transported via a flatbed truck, rail cars, or ship. The container is used for the transportation and/or storage of goods and materials. (*See Sec. 500 Performance Standards*)

**Sidewalk.** A paved way for pedestrian traffic which is constructed parallel to a road. (*See Sec. 900 Subdivision Review*)

**Sign.** A name, identification, description, emblem, trade name, trademark, display or illustration which is affixed to, painted or represented, directly or indirectly upon a building, structure, parcel or lot and which relates to an object, product, place, activity, person, institution, organization or business.

**Slaughterhouse.** A structure, building, or facility used to process live animals for human consumption.

**Small Engine Repair.** The maintenance and repair of engines or motors used for the following types of equipment: power tools, lawn mowers, snowblowers and wood splitters. Small engine repair shall not include the maintenance or repair of engines or motors used in passenger vehicles, all terrain vehicles (ATV's), mopeds, motorcycles and snowmobiles is prohibited.

**Smokehouse.** A structure, building, or facility used to process or cure animal meat or products through the use of smoke.

**Story.** That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above.

**Story, Basement.** That portion of a building which is partly or completely below grade.

**Story, First.** The lowest story having its finished floor surface entirely above grade, except that a basement shall be considered the first story where the finished surface of the floor *above* the basement is:

- More than six (6) feet (1829 mm) above grade plane;
- More than six (6) feet (1829 mm) above the finished ground level for more than fifty (50) percent of the total building perimeter; or
- More than twelve (12) feet (3658 mm) above the finished ground level at any point.

Story, Mezzanine. An intermediate level or levels between the floor and ceiling of any story with an aggregate floor area of not more than one-third of the area of the room in which the level or levels are located.

Story, Second. The story directly above the first story of a structure.

Street. Public or private roads or ways such as alleys, avenues, boulevards, highways, roads, and other rights-of-way, as well as areas on subdivision plans designated as rights-of-way for vehicular access other than driveways. (*See Sec. 500 Performance Standards*)

Street Classification:

Arterial Street. A major thoroughfare which serves as a major traffic way for travel between and through the Town. For the purpose of this Ordinance, only the following roadways shall be classified as arterial streets: Route 302, Route 202, Route 115, Route 35, River Road, and Falmouth Road.

Collector Street. A street with average daily traffic of between 200 and 3,000 vehicles per day or greater, or streets which serve as feeders to arterial streets, and collectors of traffic from local streets.

Controlled Access Street. A street which serves primarily as a major traffic way for travel within the Town between two arterial streets. (*See Commercial I and Commercial II District Standards*) (*See "Controlled Access Street" in Sec. 500 Performance Standards*)

Dead-End Street. A street with a single common ingress and egress.

Industrial or Commercial Street. Streets servicing industrial or commercial uses.

Local Street. A street servicing only residential properties and which has an average daily traffic of less than 200 vehicles per day.

Private Road. A street constructed on or after October 22, 2009 that complies in width and construction with the specifications for private roads in Section 911.M.5 "Traffic Conditions and Streets," and that has not been, or intended to be, accepted by the Town of Windham.

Private Way. A street that was constructed prior to October 22, 2009, that does not meet the specifications for private roads in Section 911.M.5 "Traffic Conditions and Streets," and that has not been accepted by the Town of Windham. Private ways do not include access ways typically referred to as tote roads or woods roads.

Public Street. Any street that complies in width and construction with the standards for public streets in Section 900 Subdivision Review, or a street meeting lesser standards that the Town of Windham agrees to accept. (*See Sec. 900 Subdivision Review*)

**Structure.** A combination of materials that form a construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of land or water. For the purpose of this chapter, antennas shall be considered "structures"; however, fences, doghouses, tree houses designed for children's use, and bus shelters shall not be considered "structures."

**Subdivision.** A subdivision is a division of a tract or parcel of land as defined in 30-A, M.R.S.A. § 4401, as amended from time to time; provided, however, that the Town of Windham does hereby elect to count lots of 40 or more acres as lots for purposes of subdivision review.

**Subdivision, Amended.** The division of an existing subdivision or any change of to an approved subdivision that requires Planning Board approval.

**Substantial Improvement.** Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. For purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or structural part of the building commences, whether or not that alteration effects the external dimensions of the structure. The term does not, however, include any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or for any alteration of a structure listed on the National Register of Historic Places or a State or Local Inventory of Historical Places.

**Theater.** A building, or part of a building, used to show motion pictures or for drama, dance, musical, or other live performances.

**Truck Terminal.** An area and building where trucks load and unload cargo and freight and where the cargo and freight may be broken down or aggregated into smaller or larger loads for transfer to other vehicles or modes of transportation.

**Unfinished Area.** The vertical interior of the exterior walls which, may include, rough wiring and rough plumbing, but no insulation, ceiling, inside partitions or heat.

**Use.** The purpose or activity for which land or structures are designed, arranged, or intended or for which land or structures are occupied or maintained.

**Use, Accessory.** A use customarily incidental and subordinate to the principal building or use and located on the same lot with such principal building or use. For the purposes of this ordinance, the following structures, either attached or detached to the primary use, shall be considered accessory uses: porches, garages, pools, and decks.

**Use, Principal.** The primary or predominant use of any lot or parcel.

Variance. Permission to depart from the literal requirements of the Land Use Ordinance. (*See Sec. 1100 Board of Appeals*)

Waiver. A relaxation of the terms of either Section 800 Site Plan Review or Section 900 Subdivision Review. (*See Sec. 800 Site Plan Review; See Sec. 900 Subdivision Review*)

Warehousing Private. A building used primarily for the storage of goods and materials by the owner of the goods or operated for a specific commercial establishment or group of establishments in a particular industrial field.

Warehousing, Public. A building or lot used primarily for the storage of goods and materials and available to the general public for a fee. This use definition includes self-storage facilities, as defined.

Water Body. (1) Any natural or artificial collection of water, whether permanent or temporary; (2) any body of water that meets the definition of “Water Body” in the Windham Shoreland Zoning Chapter. This definition does not include swimming pools (*See Chapter 199 Windham Shoreland Zoning*)

Wetland. (1) An area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support – an that under normal circumstances does support – a prevalence of vegetation adapted for life in saturated soil conditions; (2) An area that meets the definition of a “Freshwater Wetland” in the Windham Shoreland Zoning Chapter. (*See Chapter 199 Windham Shoreland Zoning*)

Wildlife Habitat, Significant Wildlife Habitat. Areas identified by a government agency such as the Maine Department of Inland Fisheries and Wildlife as having significant value as habitat for animals or any areas identified in the Town’s Comprehensive Plan.

Wireless Telecommunications Tower and Facility. (1) A parcel of land containing a tower, sending and receiving antennas attached to the tower, and a prefabricated or modular structure or cabinets containing electronic equipment; (2) a Federal Communications Commission (FCC)-licensed facility, designed and used for the purpose of transmitting, receiving, and relaying voice and data signals from various wireless communication devices and equipment. For purposes of this Ordinance, amateur radio transmission facilities and facilities used exclusively for receive-only antennas are not classified as wireless telecommunications towers and facilities.

Yard. An open space that lies between the any structure and the nearest lot line.

Yard, Front. An open space extending the full width of the lot between any structure and the front lot line and measured perpendicular to the structure at the closest point to the front lot line..

Yard, Rear. A space extending across the full width of the lot between any structure and the rear lot line and measured perpendicular to the structure to the closest point of the rear lot line.

**Yard, Required.** The minimum open space between a lot line and the yard line within which no structure is permitted to be located except as provided in this Ordinance.

**Yard, Side.** A space extending from the front yard to the rear yard between any structure and the side lot line and measured perpendicular from the side lot line to the closest point of the structure.

**Zone.** A specifically delineated area or district in the Town within which uniform regulations and requirements govern the use, placement, spacing, and size of land and buildings.

**Zoning.** The delineation of districts and the establishment of regulations governing the use, placement, spacing, and size of land and buildings in the Town of Windham.

**Zoning District.** See definition of, “Zone.”

#### Section 300 Amendments

Order 10-075; Date 04-27-2010	Changes to Central Sewer System; Child Care Facility; Net Residential Density; and Dead End Streets
Order 10-164; Date 09-14-2010	Change to Outdoor Sales
Order 12-014; Date 02-14-2012	Change to Backlot
Order 12-148; Date 10-23-2012	Addition of Retirement Community
Order 12-149; Date 10-23-2012	Addition of Accessory Apartment
Order 14-164; Date 07-08-2014	Changes to Automobile Repair Services, Addition of Automobile Storage Lots
Order 14-387; Date 10-14-2014	Addition of Automobile Auction Facility
Order 14-463; Date 11-18-2014	Addition of Rockery
Order 14-491; Date 12-16-2014	Change to definition of Cluster Subdivision



## SECTION 400 – ZONING DISTRICTS

### Sections

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#### **401 Districts Enumerated**

To implement the provisions of this Ordinance, the Town of Windham is hereby divided into the following Districts:

- A. Shoreland Zoning (*See Chapter 199 from the Code of the Town of Windham*)
  - 1. Resource Protection District (RP)
  - 2. General Shoreland Development District (GD)
  - 3. Limited Residential-Recreation District (LR)
  - 4. Stream Protection District (SP)
  
- B. Zoning Districts
  - 1. Farm District (F)
  - 2. Farm-Residential District (FR)
  - 3. Light-Density Residential District (RL)
  - 4. Medium Density Residential District (RM)
  - 5. Commercial District I (C1)
  - 6. Commercial District II (C2)
  - 7. Commercial District III (C3)
  - 8. Industrial District (I)
  - 9. Enterprise Development District (ED)
  - 10. Village Commercial (VC)
  
- C. Overlay Districts
  - 1. Aquifer Protection Overlay District Zone A (APA)
  - 2. Aquifer Protection Overlay District Zone B (APB)
  - 3. Manufactured Housing Park Overlay District (MHPO)
  - 4. Roosevelt Trail Business and Professional Office Overlay Zone
  - 5. Retirement Community and Care Facility Overlay District (RCCFO)
  
- D. Contract Zones
  - 1. Village at Little Falls Contract Zone (VLF)
  - 2. Windham Center Contract Zone (WCC)
  - 3. Amendment to Windham Contract Zoning Agreement between RKR LLC, and the Town of Windham (WCC)

#### **402 Location of districts; Zoning Map**

- A. District Location. The districts identified in Section 401 are located and bounded as shown on the Official Land Use District Map, entitled "Land Use Map of Windham, Maine", dated May 25, 1976, as amended from time to time, and on file in the office of the Municipal Clerk. Said map is hereby incorporated in and made part of this chapter.
  
- B. Official Land Use Map. Shall be filed in the Office of the Municipal Clerk. Copies of the Land Use Map may be filed in the Assessing, Code Enforcement, or Planning Departments.

**403 Uncertain Boundary Locations**

- A. Where uncertainty exists with respect to the boundaries of the various districts as shown on the Land Use Map, the following rules shall apply:
1. Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to be following such center lines.
  2. Boundaries indicated as approximately following well established lot lines shall be construed as following such lot lines.
  3. Boundaries indicated as approximately following municipal lines shall be construed as following municipal limits.
  4. Boundaries indicated as following railroad, power, or pipelines shall be construed as following such lines.
  5. Boundaries indicated as following shorelines shall be construed as following such shorelines and, in the event of natural change in the shoreline, shall be construed as moving with the actual shoreline; boundaries indicated as approximately following the center line of streams, rivers, canals, lakes or other bodies of water shall be construed as following such center lines.
  6. Boundaries on the Land Use Map indicated as being parallel to, or extensions of, features indicated in Subsections 1. through 5., above, shall be determined by the scale of the map.
  7. Where physical features existing on the ground are at variance with those shown on the Land Use Map, or other circumstances not covered by Subsections 1. through 5., above, the Board of Appeals shall interpret the district boundaries.

**404 Division of Lots by Districts**

- A. Where a land use district boundary line divides a lot or parcel of land of the same ownership the following standards shall apply:
1. The regulations applicable to the less restricted portion of the lot may not be extended more than fifty (50) feet into the more restricted portion of the lot. However,
  2. Extension of the regulations applicable to the less restricted portion of the lot may be extended more than fifty (50) feet subject to approval by the Board of Appeals. The Board of Appeals shall use the standards for a variance in Section 1106 in making its decision.

**405 Shoreland Zoning Districts**

The following zoning districts shall be governed by the provisions of the Town of Windham Shoreland Zoning Ordinance.

- A. Resource Protection District (RP)
- B. General Development District (GD)
- C. Limited Residential District (LR)
- D. Stream Protection District (SP)

**406 Zoning Districts****A. Farm District (F)****1. Intent**

The Farm district is intended primarily for rural and residential land uses. Development is restricted in order to protect farmlands, woodlands, open space, wildlife habitat and scenic areas.

**2. Permitted Uses**

The following uses, as they are defined in Section 300, shall be permitted in the Farm District as a matter of right. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- Agriculture
- Agriculture, Piggery
- Agriculture, Poultry Facility
- Building, Accessory
- Campground, Commercial
- Campground, Personal
- Cemetery
- Child Care, Family Home
- Dwelling, Single-Family Detached
- Dwelling, Two-Family
- Dwelling, Multifamily
- Forestry
- Golf Course
- Home Occupation 1
- Home Occupation 2
- Kennel, Minor
- Mineral Extraction
- Place of Worship
- Public Building
- Research Laboratory
- Retail Sales, Nursery
- Riding Stable
- Sawmill, Permanent
- Sawmill, Temporary
- Service Business, Landscaping
- Shipping Container
- Use, Accessory
- Wireless Telecommunications Tower and Facility

**3. Conditional Uses**

The following uses, as defined in Section 300, shall be allowed as a Conditional Use in accordance with Section 516. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- Assisted Living Facility
- Bed and Breakfast Inn
- Boarding Home for Sheltered Care
- Kennel, Major
- Medical Office
- Nursing Home
- Public Utility Facility

- Recreation Facility, Indoor
- Recreation Facility, Outdoor
- Retail Sales, Convenience
- Rooming House

**4. Prohibited Uses**

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

**5. Dimensional Standards**

The following dimensional standards shall apply in the Farm District:

- (a) Minimum Lot Size:
  - (1) Standard (Non-Cluster) 80,000 s.f.
  - (2) Cluster Subdivision:
    - (a) All Subdivision lots connected to public water 30,000 s.f.
    - (b) Subdivision served by wells or a private system 30,000 s.f.
  - (3) Rooming House 4 acres
- (b) Maximum Lot Size:
  - (1) Cluster Subdivision 50,000 s.f.
  - (2) Cluster Subdivision: one (1) lot within subdivision 60,000 s.f.
- (c) Net Residential Density: 60,000 s.f.
- (d) Minimum Frontage:
  - (1) Standard (Non cluster) 200 ft.
  - (2) Cluster Subdivision 100 ft.
  - (3) Cluster Subdivision, where frontage is entirely on cul-de-sac 50 ft.
- (e) Minimum Front Setback:
  - (1) Standard (Non cluster) 40 ft.
    - (i) The minimum front Setback of a lot may be reduced to the average setback distance of the existing buildings located on the lots to either side of said lot.
  - (2) Cluster subdivision 25 ft.
  - (3) Non-Residential Use: Minimum Landscaped Buffer Strip 15 ft.
- (f) Minimum Side Setback:
  - (1) Standard (Non cluster) 10 ft.
  - (2) Cluster Subdivision: 10 ft.
- (g) Minimum Rear Setback:
  - (1) Standard (Non cluster): 10 ft.
  - (2) Cluster Subdivision: 10 ft.

- |  |          |
|--|----------|
| (h) Maximum Building Height:                       | 35 ft.   |
| (1) Agriculture, Public Buildings, Church Steeples | No Limit |
| (i) Maximum Building Coverage:                     | 25%      |

## 6. District Standards

In addition to Section 500, Performance Standards, these standards shall apply to the following uses in the Farm District:

- (a) Automobile Repair Services in existence prior to August 7, 2014.
  - (1) All repair operations shall be conducted inside an enclosed building.
  - (2) No more than three vehicles shall be serviced or stored on the property at any one time.
  - (3) Hours of operation shall be Monday through Saturday from 8:00 A.M. to 5:00 P.M.
- (b) Cluster Subdivision. (*See Sec. 900 Subdivision Review*)
  - (1) Cluster subdivisions shall only be permitted on lots with a minimum of 5 acres of gross land area.
  - (2) Cluster subdivisions are eligible for a density bonus of 20% to be applied after the Net Residential Density calculation, if the subdivision open space meets the criteria in Section 911.K.4.e.2.
- (c) Curb Cuts. See “Curb Cuts and Driveway Openings” in Section 500 Performance Standards for standards applicable to the Farm District
- (d) Dwelling, Two-Family and Dwelling, Multifamily. These uses shall only be allowed for the conversion of an existing dwelling or accessory building that was in existence prior to May 13, 1986. The following standards shall apply:
  - (1) No more than three (3) dwelling units may be created per lot.
  - (2) All dwelling units shall have a minimum area of 500 s.f.
- (e) Medical Office. See “Medical Office” in Section 500 Performance Standards for size limitations.
- (f) Research Laboratory. This use in the Farm District must conduct investigative research that is primarily related to the items defined in the definition of, “Agriculture.” Refer to Section 300 Definitions.

- (g) Service Business, Landscaping. This use shall be an accessory use to a Retail Sales, Nursery use under the following conditions:
  - (1) The Service Business, Landscaping use shall not exceed fifty (50) percent of the gross area (both interior and exterior areas) occupied by the principle Retail Sales, Nursery use.
  
- (h) Buffer Requirements for Specific Non-residential Uses. The following uses shall provide a buffer strip, as defined, from all abutting properties that are solely occupied by a residential dwelling(s):
  - (1) Boarding Home for Sheltered Care
  - (2) Medical Office
  - (3) Nursing Home
  - (4) Retail Sales, Convenience
  - (5) Retail Sales, Nursery
  - (5) Service Business, Landscaping



## **B. Farm-Residential District (FR)**

### **1. Intent**

The Town, as a rapidly growing community, recognizes that certain areas of the town will experience residential growth while the basic rural agricultural orientation remains. It is the intent of this chapter to allow these uses to coexist and develop harmoniously.

### **2. Permitted Uses**

The following uses, as they are defined in Section 300, shall be permitted in the Farm-Residential District as a matter of right. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- Agriculture
- Building, Accessory
- Campground, Commercial
- Campground, Personal
- Cemetery
- Child Care, Family Home
- Dwelling, Two-Family
- Dwelling, Multifamily
- Dwelling, Single-Family Detached
- Forestry
- Golf Course
- Home Occupation 1
- Home Occupation 2
- Kennel, Minor
- Mineral Extraction
- Place of Worship
- Public Building
- Sawmill, Temporary
- Shipping Container
- Use, Accessory
- Wireless Telecommunications Tower and Facility

### **3. Conditional Uses**

The following uses, as defined in Section 300, shall be allowed as a Conditional Use in accordance with Section 516. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- Agriculture, Piggery
- Agriculture, Poultry Facility
- Assisted Living Facility
- Bed and Breakfast Inn
- Boarding Home for Sheltered Care
- Kennel, Major
- Medical Office
- Nursing Home
- Public Utility Facility
- Recreation Facility, Indoor
- Recreation Facility, Outdoor
- Retail Sales, Convenience
- Retail Sales, Nursery
- Riding Stable
- Sawmill, Permanent

#### 4. **Prohibited Uses**

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

#### 5. **Dimensional Standards**

The following dimensional standards shall apply in the Farm-Residential District:

- |   |             |
|---|-------------|
| (a) Minimum Lot Size:   |             |
| (1) Standard (Non cluster)  | 50,000 s.f. |
| (2) Cluster Subdivision:  |             |
| (i) All subdivision lots connected to public water  | 20,000 s.f. |
| (ii) Subdivision served by wells or a private system  | 20,000 s.f. |
| (b) Maximum Lot Size:   |             |
| (1) Cluster Subdivision   | 35,000 s.f. |
| (2) Cluster Subdivision, one (1) lot within subdivision   | 45,000 s.f. |
| (c) Net Residential Density:  | 40,000 sf.  |
| (d) Minimum Frontage:   |             |
| (1) Standard (Non cluster)  | 150 ft.     |
| (2) Cluster Subdivision   | 75 ft.      |
| (3) Cluster Subdivision, where Frontage is entirely on cul-de-sac   | 50 ft.      |
| (e) Minimum Front Setback:  |             |
| (1) Standard (Non cluster)  | 30 ft.      |
| (i) The minimum front Setback of a lot may be reduced to the average setback distance of the existing buildings located on the lots to either side of said lot. |             |
| (2) Cluster Subdivision   | 25 ft.      |
| (3) Non-Residential Use: Minimum Landscaped Buffer Strip  | 15 ft.      |
| (f) Minimum Side Setback:   |             |
| (1) Standard (Non cluster)  | 10 ft.      |
| (2) Cluster Subdivision:  | 10 ft.      |
| (g) Minimum Rear Setback:   |             |
| (1) Standard (Non cluster):   | 10 ft.      |
| (2) Cluster Subdivision:  | 10 ft.      |
| (h) Maximum Building Height:  | 35 ft.      |
| (1) Agriculture, Public Buildings, Church Steeples  | No Limit    |
| (i) Maximum Building Coverage:  | 20%         |

## 6. District Standards

In addition to Section 500, Performance Standards, these standards shall apply to the following uses in the Farm-Residential District:

- (a) Agriculture, Poultry Facility
  - (1) A facility may raise twenty-five (25) or fewer birds at any one time.
- (b) Agriculture, Piggery. Piggeries shall conform with the standards for “Agriculture, Piggery” in Section 503 of the Performance Standards.
- (c) Cluster Subdivision (*See Sec. 900 Subdivision Review*)
  - (1) Cluster subdivisions shall only be permitted on lots with a minimum of 5 acres of gross land area:
    - (i) Lots completely contained by the FR District: 5 acres
    - (ii) Lots with area in both the F and FR Districts: 5 acres
  - (2) Cluster subdivisions are eligible for a density bonus of 20% to be applied after the net Residential Density calculation, if the subdivision open space meets the criteria in Section 911.K.4.e.2.
- (d) Curb Cuts. See “Curb Cuts and Driveway Openings” in Section 500 Performance Standards for standards applicable to the Farm Residential District
- (e) Dwelling, Two-Family and Dwelling, Multifamily. These uses shall only be allowed for the conversion of an existing dwelling or accessory building that was in existence prior to May 13, 1986. The following standards shall apply:
  - (1) No more than three (3) dwelling units may be created per lot.
  - (2) All dwelling units shall have a minimum area of 500 s.f.
- (f) Medical Office. See “Medical Office” in Section 500 Performance Standards for size limitations.
- (g) Buffer Requirements for Specific Non-residential Uses. The following uses shall provide a buffer strip, as defined, from all abutting properties that are solely occupied by a residential dwelling(s):
  - (1) Boarding Home for Sheltered Care
  - (2) Medical Office
  - (3) Nursing Home
  - (4) Retail Sales, Convenience
  - (5) Retail Sales, Nursery

### C. Light-Density Residential District (RL)

#### 1. Intent

It is the intent of this district to ensure the proper development of residential areas by encouraging the formation of community units while developing, protecting, and preserving open spaces.

#### 2. Permitted Uses

The following uses, as they are defined in Section 300, shall be permitted in the Light-Density Residential District as a matter of right. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- Agriculture
- Building, Accessory
- Cemetery
- Child Care, Family Home
- Dwelling, Single-Family Detached
- Dwelling, Two-Family
- Dwelling, Multifamily
- Forestry
- Home Occupation 1
- Home Occupation 2
- Place of Worship
- Public Building
- Sawmill, Temporary
- Shipping Container Use, Accessory
- Wireless Telecommunications Tower and Facility

#### 3. Conditional Uses

The following uses, as defined in Section 300, shall be allowed as a Conditional Use in accordance with Section 516. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- Assisted Living Facility
- Bed and Breakfast Inn
- Boarding Home for Sheltered Care
- Hotel
- Nursing Home
- Medical Office
- Mineral Extraction
- Motel
- Public Utility Facility
- Recreation Facility, Indoor
- Recreation Facility, Outdoor
- Retail Sales, Convenience
- Retail Sales, Nursery

#### 4. Prohibited Uses

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

#### 5. Dimensional Standards

The following dimensional standards shall apply in the Light-Density Residential District:

- |   |             |
|---|-------------|
| (a) Minimum Lot Size:   |             |
| (1) Standard (Non cluster)  | 40,000 s.f. |
| (2) Cluster Subdivision:  |             |
| (i) All subdivision lots connected to public water  | 20,000 s.f. |
| (ii) Subdivision served by wells or a private system  | 20,000 s.f. |
| (b) Maximum Lot Size:   |             |
| (1) Cluster Subdivision   | 30,000 s.f. |
| (2) Cluster Subdivision, one (1) lot within subdivision   | 35,000 s.f. |
| (c) Net Residential Density:  | 30,000 s.f. |
| (c) Minimum Frontage:   |             |
| (1) Standard (Non cluster)  | 150 ft.     |
| (2) Cluster Subdivision   | 75 ft.      |
| (3) Cluster Subdivision, where Frontage is entirely on cul-de-sac   | 50 ft.      |
| (e) Minimum Front Setback:  |             |
| (1) Standard (Non cluster)  | 30 ft.      |
| (i) The minimum front Setback of a lot may be reduced to the average setback distance of the existing buildings located on the lots to either side of said lot. |             |
| (2) Cluster Subdivision   | 25 ft.      |
| (3) Non-Residential Use: Minimum Landscaped Buffer Strip  | 15 ft.      |
| (f) Minimum Side Setback:   | 10 ft.      |
| (g) Minimum Rear Setback:   | 10 ft.      |
| (h) Maximum Building Height:  | 35 ft.      |
| (1) Agriculture, Public Buildings, Church Steeples  | No Limit    |
| (i) Maximum Building Coverage:  | 20%         |

## 6. District Standards

In addition to Section 500, Performance Standards, these standards shall apply to the following uses in the Light-Density Residential District:

- (a) Curb Cuts. See “Curb Cuts and Driveway Openings” in Section 500 Performance Standards for standards applicable to the Light-Density Residential District
- (b) Dwelling, Two-Family and Dwelling, Multifamily. These uses shall only be allowed for the conversion of an existing dwelling or accessory building that was in existence prior to May 13, 1986. The following standards shall apply:
  - (1) No more than three (3) dwelling units shall be erected per lot.
  - (2) All dwelling units shall have a minimum area of 500 s.f.
- (c) Cluster Subdivision (*See Sec. 900 Subdivision Review*)
  - (1) Cluster subdivisions shall only be permitted on lots with a minimum of 5 acres of gross land area.
  - (2) Cluster subdivisions are eligible for a density bonus of 20% to be applied after the Net Residential Density calculation, if the subdivision open space meets the criteria in Section 911.K.4.e.2.
- (d) Medical Office. See “Medical Office” in Section 500 Performance Standards for size limitations.
- (e) Buffer Requirements for Specific Non-residential Uses. The following uses shall provide a buffer strip, as defined, from all abutting properties that are solely occupied by a residential dwelling(s):
  - (1) Boarding Home for Sheltered Care
  - (2) Medical Office
  - (3) Retail Sales, Convenience
  - (4) Retail Sales, Nursery

## **D. Medium-Density Residential District (RM)**

### **1. Intent**

It is the intent of this ordinance to assure the proper development of residential areas by encouraging the formation of community units while developing and preserving open space.

### **2. Permitted Uses**

The following uses, as they are defined in Section 300, shall be permitted in the Medium-Density Residential District as a matter of right. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- Agriculture
- Building, Accessory
- Cemetery
- Child Care, Family Home
- Dwelling, Single-Family Detached
- Dwelling, Two-Family
- Dwelling, Multifamily
- Forestry
- Home Occupation 1
- Home Occupation 2
- Housing for Older Persons
- Place of Worship
- Public Building
- Sawmill, Temporary
- Shipping Container
- Use, Accessory

### **3. Conditional Uses**

The following uses, as defined in Section 300, shall be allowed as a Conditional Use in accordance with Section 516. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- Assisted Living Facility
- Bed and Breakfast Inn
- Boarding Home for Sheltered Care
- Medical Office
- Mineral Extraction
- Nursing Home
- Recreation Facility, Indoor
- Recreation Facility, Outdoor
- Retail Sales, Convenience
- Public Utility Facility

### **4. Prohibited Uses**

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

## 5. Dimensional Standards

The following Dimensional standards shall apply in the Medium-Density Residential District:

Type	Public Water	Well
(a) Minimum Lot Size:		
(1) Standard:	20,000 s.f.	30,000 s.f.
(2) Housing for Older Persons	None	n/a
(3) Cluster Subdivision	20,000 s.f.	20,000 s.f.
(b) Maximum Lot Size in Cluster Subdivision	30,000 s.f.	30,000 s.f.
(1) Cluster Subdivision, one lot within the Cluster subdivision	35,000 s.f.	35,000 s.f.
(c) Net Residential Density:		
(1) Standard:	15,000 s.f.	15,000 s.f.
(2) Housing for Older Persons:		
(a) One (1) Bedroom Unit:	8,000 s.f.	n/a
(b) Each Additional Bedroom:	6,000 s.f.	n/a
(d) Minimum Frontage:	100 ft.	100 ft.
(1) Cluster Subdivision:	50 s.f.	50 s.f.
(e) Minimum Front Setback:	30 ft.	30 ft.
(1) The minimum front Setback of a lot may be reduced to the average setback distance of the existing buildings located on the lots to either side of said lot.		
(2) Non-Residential Use:		
Minimum Landscaped Buffer Strip	15 ft.	15 ft.
(f) Minimum Side Setback:	10 ft.	10 ft.
(g) Minimum Rear Setback:	10 ft.	10 ft.
(h) Maximum Building Height:	35 ft.	35 ft.
(i) Maximum Building Coverage:	20%	20%

## 6. District Standards



In addition to Section 500, Performance Standards, these standards shall apply to the following uses in the Medium-Density Residential District:

- (a) Curb Cuts. See “Curb Cuts and Driveway Openings” in Section 500 Performance Standards for standards applicable to the Medium-Density Residential District
- (b) Cluster Subdivision (*See Sec. 900 Subdivision Review*)
  - (1) Cluster subdivisions shall only be permitted on lots with a minimum of 5 acres of gross land area.
  - (2) Cluster subdivisions are eligible for a density bonus of 20% to be applied after the Net Residential Density calculation, if the subdivision open space meets the criteria in Section 911.K.4.e.2.
- (c) Housing for Older Persons. The State of Maine Minimum Lot Size Law of 12 M.R.S.A. §4807 to §4807-G shall apply to the Housing for Older Persons use.
- (d) Medical Office. See “Medical Office” in Section 500 Performance Standards for size limitations.
- (e) Buffer Requirements for Specific Non-residential Uses. The following uses shall provide a buffer strip, as defined, from all abutting properties that are solely occupied by a residential dwelling(s):
  - (1) Boarding Home for Sheltered Care
  - (2) Medical Office
  - (3) Nursing Home
  - (4) Retail Sales, Convenience

## E. Commercial District I (C1)

### 1. Intent

To provide general retail sales, services and business space within the Town of Windham in locations capable of conveniently servicing community-wide and/or regional trade areas, with safe, well-regulated automobile access and pedestrian access where appropriate.

### 2. Permitted Uses

The following uses, as they are defined in Section 300, shall be permitted in the Commercial District I as a matter of right. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- Agriculture
- Assisted Living Facility
- Adult Business Establishment
- Bank
- Building, Accessory
- Business and Professional Office
- Child Care, Facility
- Child Care, Family Home
- Club
- Construction Services
- Convention Center
- Dwelling, Existing Single-Family Detached
- Dwelling, Existing Two-Family
- Dwelling, Existing Multifamily
- Dwelling, Mixed Use
- Fitness Center
- Forestry
- Funeral Home
- Home Occupation 1
- Home Occupation 2
- Hospital
- Housing for Older Persons
- Medical Marijuana Dispensary
- Medical Office
- Mineral Extraction
- Nursing Home
- Place of Worship
- Public Building
- Recreation Facility, Indoor
- Research Laboratory
- Restaurant
- Retail Sales
- Retail Sales, Convenience
- Retail Sales, Nursery
- Retail Sales, Outdoor
- Sawmill, Temporary
- Service Business, Commercial
- Service Business, Landscaping
- Service Business, Personal
- Theater
- Use, Accessory
- Wireless Telecommunications Tower and Facility

### 3. Conditional Uses

The following uses, as defined in Section 300, shall be allowed as a Conditional Use in accordance with Section 516. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- Automobile Gas Station
- Automobile Repair Services
- Distribution Center
- Drive-through Facility
- Hotel
- Industry, Light
- Industry, Heavy
- Motel
- Public Utility Facility
- Recreation Facility, Outdoor
- Retail Sales, Automobile Sales
- Retail Sales, Minimart
- Shipping Containers
- Small Engine Repair
- Warehousing, Private
- Warehousing, Public

### 4. Prohibited Uses

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

### 5. Dimensional Standards

The following dimensional standards shall apply in the Commercial District I:

- |   |             |
|---|-------------|
| (a) Minimum Lot Size:   | None        |
| (1) Dwelling, Existing  | 20,000 s.f. |
| (2) Dwelling, Mixed Use   | 15,000 s.f. |
| (b) Net Residential Density:  |             |
| (1) Housing for Older Persons:  |             |
| (i) One (1) Bedroom Unit  | 8,000 s.f.  |
| (ii) Each Additional Bedroom  | 6,000 s.f.  |
| (2) Dwelling, Mixed Use   | 15,000 s.f. |
| (c) Minimum Frontage:   | 100 ft.     |
| (d) Minimum Front Setback:  | 40 ft.      |
| (1) Minimum Landscaped Buffer Strip   | 20 ft.      |
| (2) Dwelling, Existing: (All associated structures)   | 30 ft.      |
| (i) The minimum front Setback of a lot governed by Subsection 406.E.5.(d) may be reduced to the average setback distance of the existing structures located on the lots to either side of said lot. |             |

- (ii) A landscaped buffer strip is not required for lots with existing dwelling units.
- (e) Minimum Side Setback: 6 ft.
  - (1) Dwelling, Existing (All associated structures) 10 ft.
- (f) Minimum Rear Setback: 6 ft.
  - (1) Dwelling, Existing (All associated structures) 10 ft.
- (g) Maximum Building Height: None
  - (1) Dwelling, Existing (All associated structures) 35 ft.

## 6. District Standards

In addition to Section 500, Performance Standards, these standards shall apply to the following uses in the Commercial District I:

- (a) Aquifer Protection Overlay District. (*See Subsec. 407.A or 407.B*) – Aquifer Protection Overlay District and the Town’s Official Map.
- (b) Buffer Requirement. All properties in the C1 district that abut a residential use, or undeveloped parcel, located in a residential zoning district shall provide a fifty (50) foot buffer along the zoning district boundary line.
- (c) Controlled Access Street. For standards pertaining to controlled access streets in the C1 District see Section 300 Definitions and Section 500 Performance Standards.
- (d) Curb Cuts. See “Curb Cuts and Driveway Openings” in Section 500 Performance Standards for additional standards applicable to the C1 District
  - (1) New, enlarged or rebuilt uses on an arterial road, as defined in Section 300, shall be limited to one (1) curb cut. In addition, the following standards shall apply to these curb cuts:
    - (i) A minimum centerline turning radius of 25’ must be provided.
    - (ii) A larger turning radius shall be provided if the curb cut will be used by vehicles with a wheel base of 35.8 feet or larger. In this case, the latest American Association of State Highway and Transportation Officials (AASHTO) standard shall apply.
    - (iii) Paved deceleration and acceleration lanes must be provided unless an alternative traffic design, prepared by a licensed civil engineer, is approved by the Town. (*See Sec. 500 Performance Standards for additional curb cut criteria*)

- (e) Dwelling, Existing Single-Family, Two-Family and Multifamily. For the purposes of Section 406.E – Commercial District I, these uses must have been constructed on, or prior to, July 8, 1976.
- (f) Housing for Older Persons. The following standards shall apply to this use:
- (1) Dwelling units shall not be permitted in the basement or first story of a building, except
- (i) Dwelling units that are classified as “affordable” shall be permitted on all stories of a building. To be classified as “affordable,” the project must be funded via Section 202 of the Federal Housing Act of 1959.
- (g) Industry, Heavy. In the C1 district, this use shall not involve any activity defined in Section 300 as “Manufacturing, Hazardous.” (*See Sec. 300 Definitions*)
- (h) Minimum Lot Size. The State of Maine minimum lot size, and minimum lot size waiver, standards apply in the C1 district when the Town’s minimum lot size requirements are less restrictive than those of the State of Maine.
- (i) Retail Sales, Outdoor. The display or sale of products outside of a building shall meet the standards of Section 500. (*See Sec. 500 Performance Standards*)
- (j) Sidewalks. The following commercial development activities shall pay the North Windham Sidewalk Impact Fee in Section 1201(I) to provide safe pedestrian conditions in the Commercial 1 District:
- The construction or placement of new building(s) with a cumulative area that is greater than, or equal to, five-hundred (500) s.f.
  - The enlargement of existing buildings by more than five-hundred (500) s.f., or
  - As required by the Planning Board as part of a Site Plan approved in accordance with Section 800 of this Ordinance.

**F. Commercial District II (C2)****1. Intent**

The intent of this district is to provide for a mixed commercial and residential zone as a buffer zone between the Commercial District I and the abutting residential areas.

**2. Permitted Uses**

The following uses, as they are defined in Section 300, shall be permitted in the Commercial II District as a matter of right. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- Agriculture
- Adult Business Establishment
- Bank
- Building, Accessory
- Business and Professional Office
- Child Care, Facility
- Child Care, Family Home
- Convention Center
- Dwelling, Single-Family Detached
- Dwelling, Two-Family
- Dwelling, Multifamily
- Dwelling, Mixed Use
- Fitness Center
- Forestry
- Funeral Home
- Home Occupation 1
- Home Occupation 2
- Housing for Older Persons
- Medical Office
- Public Building
- Recreation Facility, Indoor
- Research Laboratory
- Retail Sales
- Retail Sales, Convenience
- Retail Sales, Nursery
- Retail Sales, Outdoor
- Service Business, Personal
- Theater
- Use, Accessory
- Wireless Telecommunications Tower and Facility

**3. Conditional Uses**

The following uses, as defined in Section 300, shall be allowed as a Conditional Use in accordance with Section 516. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- Bed and Breakfast Inn
- Club
- Drive-through Facility
- Hotel
- Motel
- Public Utility Facility
- Recreation Facility, Outdoor
- Restaurant
- Shipping Container

#### 4. **Prohibited Uses**

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

#### 5. **Dimensional Standards**

The following dimensional standards shall apply in the Commercial District II:

(a) Minimum Lot Size:	None
(1) Dwelling, Single-Family; Two-Family; Multifamily	40,000 s.f.
(b) Net Residential Density:	30,000 s.f.
(1) Housing for Older Persons:	
(i) One (1) Bedroom Unit	8,000 s.f.
(ii) Each Additional Bedroom	6,000 s.f.
(c) Minimum Frontage:	150 ft.
(d) Minimum Front Setback:	40 ft.
(1) Minimum Landscaped Buffer Strip	20 ft.
(e) Minimum Side Setback:	10 ft.
(f) Minimum Rear Setback:	10 ft.
(g) Maximum Building Height:	None
(1) Dwellings (All associated structures)	35 ft.

#### 6. **District Standards**

In addition to Section 500, Performance Standards, these standards shall apply to the following uses in the Commercial District II:

- (a) **Controlled Access Street.** For standards pertaining to controlled access streets in the C2 District see Section 300 Definitions and Section 500 Performance Standards.
- (b) **Curb Cuts.** See “Curb Cuts and Driveway Openings” in Section 500 Performance Standards for standards applicable to the C2 District
- (c) **Minimum Lot Size.** The State of Maine minimum lot size, and minimum lot size waiver, standards apply in the C2 district when the Town’s minimum lot size requirements are less restrictive than those of the State of Maine.

- (d) **Minimum Side Setback Reduction.** The required minimum side setback shall be permitted to be reduced to zero (0) where a common wall is proposed between buildings.
- (e) **Retail Sales, Outdoor.** The display or sale of products outside of a building shall meet the standards of Section 500. (*See Sec. 500 Performance Standards*)
- (f) **Zoning District Boundary Buffer.** Lots on which non-residential uses are located shall require a fifty (50) foot buffer from all property lines that abut a residential zoning district. The buffer shall meet the following requirements:
  - (1) No development shall be allowed within the buffer. This includes, but is not limited to, parking lots, signage, and light fixtures.
  - (2) The buffer must provide screening as described in the definition of buffer, (*see Sec. 300 Definitions*).



## G. Commercial District III (C3)

### 1. Intent

The intent of the Commercial District III is to provide areas for a mixture of light, low-traffic generating commercial uses and single-family housing.

### 2. Permitted Uses

The following uses, as they are defined in Section 300, shall be permitted in the Commercial District III as a matter of right. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- Agriculture
- Adult Business Establishment
- Building, Accessory
- Business and Professional Office
- Child Care, Facility
- Child Care, Family Home
- Dwelling, Single-Family
- Dwelling, Two-Family
- Dwelling, Multifamily
- Dwelling, Mixed Use
- Forestry
- Home Occupation 1
- Home Occupation 2
- Medical Office
- Place of Worship
- Public Building
- Recreation Facility, Indoor
- Retail Sales
- Retail Sales, Convenience
- Retail Sales, Nursery
- Retail Sales, Outdoor
- Service Business, Personal
- Theater
- Use, Accessory
- Warehousing, Private
- Warehousing, Public
- Wireless Telecommunications Tower and Facility

### 3. Conditional Uses

The following uses, as defined in Section 300, shall be allowed as a Conditional Use in accordance with Section 516. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- Assisted Living Facility
- Automobile Repair Services
- Bed and Breakfast Inn
- Campground, Commercial
- Campground, Personal
- Club
- Hotel
- Industry, Light
- Motel
- Nursing Home
- Public Utility Facility
- Restaurant
- Shipping Container
- Small Engine Repair

**4. Prohibited Uses**

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

**5. Dimensional Standards**

The following dimensional standards shall apply in the Commercial District III:

- (a) Minimum Lot Size:
  - (1) Dwelling, Single-Family; Two-Family; Multifamily 80,000 s.f.
  - (2) Dwelling, Mixed Use 80,000 s.f.
  - (3) Non-Residential 20,000 s.f.
- (b) Net Residential Density: 60,000 s.f.
- (c) Minimum Frontage:
  - (1) Dwelling, Single-Family; Two-Family; Multifamily 200 ft.
  - (2) Non-Residential 100 ft.
- (d) Minimum Front Setback:
  - (1) Arterial Street 60 ft.
  - (2) Non-Arterial Street 40 ft.
  - (3) Minimum Landscaped Buffer Strip 20 ft.
- (e) Minimum Side Setback: 10 ft.
- (f) Minimum Rear Setback: 10 ft.
- (g) Maximum Building Height:
  - (1) Dwellings (All associated structures) 35 ft.
  - (2) Non-Residential None

**6. District Standards**

In addition to Section 500, Performance Standards, these standards shall apply to the following uses in the Commercial District III:

- (a) Automobile Repair Services. The repair of commercial trucks shall be limited to those vehicles with a Gross Vehicle Weight Rating equal to, or less than, 26,000 lbs.
- (b) Controlled Access Street. For standards pertaining to controlled access streets in the C3 District see Section 500 Performance Standards.

- (c) Curb Cuts. See “Curb Cuts and Driveway Openings” in Section 500 Performance Standards for standards applicable to the C3 District.
- (d) Dwelling, Two-Family and Dwelling, Multifamily. These uses shall only be allowed for the conversion of an existing dwelling or accessory building that was in existence prior to May 13, 1986. The following standards shall apply:
  - 1) No more than three (3) dwelling units may be created per lot.
- (e) Minimum Side Setback Reduction. The required minimum side setback shall be permitted to be reduced to zero (0) where a common wall is proposed between buildings.
- (f) Retail Sales, Outdoor. The display or sale of products outside of a building shall meet the standards of Section 500. (*See Sec. 500 Performance Standards*)
- (g) Zoning District Boundary Buffer. Lots on which non-residential uses are located shall require a fifty (50) foot buffer from all property lines that abut a residential zoning district. The buffer shall meet the following requirements:
  - 1) No development shall be allowed within the buffer. This includes, but is not limited to, parking lots, signage, and light fixtures.
  - 2) The buffer must provide screening as described in the definition of “Buffer Strip”, in Section 300 Definitions.

## **H. Industrial District (I)**

### **1. Intent**

The intent of this district is to provide districts within the Town of Windham for manufacturing, processing, treatment, research, warehousing, storage and distribution.

### **2. Permitted Uses**

The following uses, as they are defined in Section 300, shall be permitted in the Industrial District as a matter of right. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- Agriculture
- Agriculture, Piggery
- Agriculture, Poultry Facility
- Automobile Repair Services
- Building, Accessory
- Distribution Center
- Dwelling, Existing Single-Family
- Dwelling, Existing Two-Family
- Dwelling, Existing Multifamily
- Home Occupation 1
- Home Occupation 2
- Industry, Heavy
- Industry, Light
- Mineral Extraction
- Research Laboratory
- Retail Sales
- Small Engine Repair
- Truck Terminal
- Use, Accessory
- Warehousing, Private
- Warehousing, Public
- Wireless Telecommunications Tower and Facility

### **3. Conditional Uses**

The following uses, as defined in Section 300, shall be allowed as a Conditional Use in accordance with Section 516. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- Automobile Storage Lot
- Correctional Facility, Public
- Public Building
- Public Utility Facility
- Shipping Container

### **4. Prohibited Uses**

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

## 5. Dimensional Standards

The following dimensional standards shall apply in the Industrial District:

- |   |   |
|---|---|
| (a) Minimum Lot Size:   | 20,000 s.f.                                 |
| (b) Minimum Frontage:   | 100 ft.                                     |
| (c) Minimum Front Setback:  | 100 ft.                                     |
| (1) Dwelling, Existing  | 40 ft.                                      |
| (d) Minimum Side Setback:   | Greater of 25 ft. or 50% of Building Height |
| (1) Dwelling, Existing (All associated structures):   | 15 ft.                                      |
| (i) Either side Setback of for an existing dwelling may be reduced one (1) foot for every foot that the lot's other side Setback is increased. However, no side Setback shall be less than ten (10) feet. |   |
| (e) Minimum Rear Setback:   | Greater of 25 ft. or 50% of Building Height |
| (1) Dwelling, Existing (All associated structures)  | 10 ft.                                      |
| (f) Maximum Building Height:  | None  |
| (1) Dwelling, Existing (All associated structures)  | 35 ft.                                      |
| (g) Maximum Building Coverage:  | None  |
| (1) Non-residential Buildings   | See Subsection 406.H.5.(c) below.           |

## 6. District Standards

In addition to Section 500, Performance Standards, these standards shall apply to the following uses in the Industrial District:

- (a) Curb Cuts. See "Curb Cuts and Driveway Openings" in Section 500 Performance Standards for standards applicable to the I District.
- (b) Industry, Heavy. In accordance with the Conditional Use standards in Section 500, the appropriate Review Authority may approve the manufacturing or use of hazardous material, as defined in Section 300. (*See Sec. 300 for definition of "manufacturing, hazardous"*)
- (c) Open Space Requirement. All non-residential uses, except for agriculture, must provide two (2) square feet of open space, as defined, for every one (1) square foot of floor area. (*See Sec. 300 Definitions*)

- (d) Zoning District Boundary Buffer. Lots on which non-residential uses are located shall require a fifty (50) foot buffer from all property lines that abut a residential zoning district. The buffer shall meet the following requirements:
- (1) No development shall be allowed within the buffer. This includes, but is not limited to, parking lots, signage, and light fixtures.
  - (2) The buffer must provide screening as described in the definition of “Buffer Strip”, in Section 300 Definitions.

## I. Enterprise Development District (ED)

### 1. Intent

The intent of this district is to provide a unique area within the Town of Windham to allow manufacturing, processing, treatment, warehousing, storage, research and distribution with safe, well regulated vehicle access located off a major street which can conform to the performance standards set forth in this section and in all other applicable ordinances of the Town of Windham.

### 2. Permitted Uses

The following uses, as they are defined in Section 300, shall be permitted in the Enterprise Development District as a matter of right. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- Auction House
- Automobile Auction Facility
- Automobile Repair Services
- Building, Accessory
- Business and Professional Office
- Construction Services
- Convention Center
- Distribution Facility
- Forestry
- Hotel
- Industry, Heavy
- Industry, Light
- Mineral Extraction
- Motel
- Public Utility Facility
- Retail Sales, Accessory
- Small Engine Repair
- Use, Accessory
- Warehousing, Private
- Warehousing, Public
- Wireless Telecommunications Tower and Facility

### 3. Conditional Uses

The following uses, as defined in Section 300, shall be allowed as a Conditional Use in accordance with Section 516. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- Automobile Storage Lot
- Shipping Container

### 4. Prohibited Uses

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

**5. Dimensional Standards**

The following dimensional standards shall apply in the Enterprise Development District:

- (a) Minimum Lot Size: None
- (b) Minimum Frontage: 100 ft.
- (c) Minimum Front Setback: 40 ft.
  - (1) Minimum Landscaped Buffer Strip 40 ft.
- (d) Minimum Side Setback: Greater of 30 ft. or 50% of Building Height
- (e) Minimum Rear Setback: Greater of 30 ft. or 50% of Building Height
- (f) Maximum Building Height: 40 ft.
  - (1) Maximum Building Height Exemption See District Standards
- (g) Maximum Building Coverage: 50%
- (h) Maximum Impervious Area: 75%

**6. District Standards**

In addition to Section 500, Performance Standards, these standards shall apply to the following uses in the Enterprise Development District:

- (a) **Access Management**
  - (1) Any parcel of land which is divided or developed may be required by the Town to provide one (1) or more sixty (60) foot right-of-ways to abutting land in the Enterprise Development Zone.
  - (2) An Enterprise Development District may have one (1) or more dead-end access streets from an existing public right-of-way.
    - (i) If two (2) or more entrances to an Enterprise Development District are proposed, such entrances shall be separated by at least one thousand (1000) linear feet, unless waived by the Planning Board.
  - (3) The Town may require that one (1) or more turning lanes be provided on the public right-of-way from which the Enterprise District is accessed. The need for these lanes will be based on proposed traffic volumes and conditions.



- (4) Access to all lots within an Enterprise Development District shall be limited to the District's interior road system.
- (b) **Convention Center.** Convention Centers shall only be permitted as an Accessory Use to a Hotel or Motel.
- (c) **Buffers and Screening**
- (1) **Residential District Boundary Buffer.** Where a lot abuts, or is within one hundred (100) feet of the side or rear boundary line of any residential district (including any residential district in an adjacent municipality), or within one hundred (100) feet of the side or rear boundary line of an existing improved residential lot within an ED District a fifty (50) foot wide buffer strip shall be provided. The following standards shall apply to the required buffer:
- (i) Twenty (20) feet nearest the boundary shall be used and maintained as a landscaped buffer strip, as defined.
- a) Within the landscaped buffer strip, screening of adjoining properties must be achieved as defined for a Buffer in Section 300 Definitions.
- (ii) The remaining thirty (30) feet of the landscaped buffer strip shall also be used and maintained as a suitable planting area for lawns with trees, shrubs or other landscape material. Within this portion of the buffer strip, underground utilities such as septic systems, sewer pipes, storage tanks and wells shall be allowed. Employee picnic tables shall also be permitted in this area.
- (iii) No building, structure, parking area, storage area, or display of equipment or materials shall be constructed, located or otherwise placed within any portion of the buffer strip.
- (2) **Commercial District Boundary Buffer.** In an ED District where a lot abuts or is within one hundred (100) feet of the side or rear boundary line of any commercial zone, there shall be provided on those sides facing the commercial zone a buffer strip fifteen (15) feet wide which shall be used and maintained as a suitable planting area for lawns, trees, shrubs or other landscape materials.
- (i) Within the landscaped buffer strip, screening of the adjoining commercial district properties must be achieved as defined for a Buffer Strip in Section 300 Definitions.
- (3) **Frontage on Existing Public Rights-of-Way Buffer.** A landscaped buffer strip of at least one hundred (100) feet shall be required where the District,

or a lot within the District, has frontage on an improved public right-of-way that was in existence prior to the creation of the Enterprise Development District.

- (i) One (1) sign that identifies the establishments within the Enterprise Development District shall be permitted within the landscaped buffer strip. See Section 800 Signs and Graphic Displays.
  - (ii) No equipment, vehicles, materials, articles for sale or signs in addition to that allowed in Subsection 400 I.6.(c)(1)(ii) above, shall be placed within any portion of the landscaped buffer strip unless otherwise provided for in this chapter.
- (4) **Screening of Outdoor Storage.** Outdoor storage shall be completely screened from adjoining properties by means of evergreen trees at least six (6) feet in height at time of planting.
- (i) **Automobile Auction Facility.** Opaque fencing six (6) feet in height shall enclose any outdoor storage area in lieu of evergreen trees.
- (5) **Screening of Lighting:** See Subsection 400 I.6.(g)(5) below.
- (d) **Industry, Heavy.** In accordance with the Conditional Use standards in Section 500, the appropriate Review Authority may approve the manufacturing or use of hazardous material, as defined in Section 300. (*See Sec. 300 for definition of "manufacturing, hazardous"*)
- (e) **Maximum Building Height Exemption.** Buildings over 40 ft. high shall be allowed if approved by the Zoning Board of Appeals.
- (1) The Zoning Board of Appeals shall use the Conditional Use standards in Section 516 to make its findings on the application.
- (f) **Parking Lot Setback.** Parking lots shall maintain a 30 ft. setback from all property lines.
- (g) **Performance Standards**
- (1) **Air Pollution:** All uses shall comply with minimum Federal, State and local air pollution requirements.
    - (i) Applicants shall submit information demonstrating compliance with any applicable federal, state or local requirements. If the application does not require subdivision or site plan review, the information shall be submitted to the Code Enforcement Officer for approval before a building permit is issued.

- (ii) The maximum permitted density of smoke, dust and other particulate emissions during normal operations of any activity shall not exceed the maximum allowable under the regulations of the Maine Department of Environmental Protection. In case of doubt, the Code Enforcement Officer may employ such independent, recognized consultants as necessary, at the expense of the applicant, to assure compliance with performance standards and all other requirements of this chapter related to the public health, safety and welfare and the abatement of nuisances.
- (2) 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. In all cases, Federal, State and local requirements shall be met. Violations of this standard shall be considered a public nuisance.
- (3) Fire Protection.
  - (i) All buildings or structures shall be connected to the public water supply and have a sprinkler system or a fire suppression system installed when required by the Town of Windham Building Code.
  - (ii) Storage, utilization, or manufacture of solid materials or products including free burning and intense burning is permitted provided that said materials or products shall be stored, utilized, or manufactured within completely enclosed buildings having incombustible walls and protected throughout by an automatic fire-extinguishing system.
  - (iii) The storage, utilization, or manufacture of flammable liquids, or materials which produce flammable or explosive vapors or gases shall be permitted in accordance with the most current edition of the National Fire Protection Association Standards for Flammable and Combustible Liquids (NFPA 30) or the most current edition of the Building Officials and Code Administrators (BOCA) Fire Prevention Code. The most restrictive standards shall apply.
  - (iv) Any change in use or occupancy shall require a review and approval by the Code Enforcement Officer and the Fire Chief.
  - (v) Tanks or other underground storage facilities abandoned or not in use for a period exceeding one (1) year shall be removed or otherwise assured safe conditions are present. In all cases, applicable Federal, State and local regulations shall prevail.
- (4) Groundwater and Surface Water Protection.

- (i) **Water Pollution.** No activity shall locate, store, discharge, or permit the discharge of any treated, untreated or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity or temperature that run off, seep, percolate, or wash into surface or ground waters so as to contaminate, pollute or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste, or unsightliness or be harmful to human, animal, plant or aquatic life.
  - a) All provisions of 38 M.R.S.A. Chapter 3, Protection and Improvements of Waters and such rules and regulations adopted by the Maine Board of Environmental Protection pursuant to the referenced purpose shall apply.
  - b) No development or use shall result in the existing groundwater quality becoming inferior to the physical, biological, chemical and/or radiological levels for raw and untreated drinking water supply sources specified in the Maine State Drinking Water Regulations, pursuant to 22 M.R.S.A., §2601 et seq. If the existing groundwater quality is inferior to the State Drinking Water Regulations, the developer or land owner will not degrade the water quality any further.
  - c) Representatives of the municipality or the Maine Department of Environmental Protection may enter the premises for the purpose of gauging, sampling and testing any waste water systems which may enter into water courses.
  - d) No development or use of land shall lower the groundwater table more than ten (10) feet.
- (ii) **Subsurface Wastewater Disposal.** The Enterprise Development District has been determined by the Town of Windham to be particularly sensitive to the discharge of pollutants from on-site subsurface sewage disposal systems and is therefore designated as a groundwater sensitive area. When the sewage contains effluent other than usual bathroom and/or on-premises food preparation water, the Town of Windham may require a pretreatment system of the effluent before its entry into any subsurface sewage disposal system
  - a) The Town may hire a third party consultant to review any subsurface wastewater disposal applications. The costs for this review shall be the responsibility of the applicant.
  - b) The Town of Windham may require groundwater monitoring of the project at the owner's expense.

- (5) Lighting
- (i) No lights shall be placed in view of any public roadway or street so that its beams or rays are directed at any portion of the roadway when the light is of such brilliance and so positioned as to impair the vision of the driver of any motor vehicle upon said roadway.
  - (ii) Lighting with a lumen output equal to or greater than a two-hundred watt mercury light shall not be directed towards the sky or adjacent residential properties.
  - (iii) No rotating or flashing lights or signals, except safety signaling devices as required by law, are permitted.
  - (iv) Adequate buffers using either the natural landscape or artificial screening are required to prevent unnecessary light from being directed beyond any lot lines onto adjacent residential properties.
- (6) Noise. Noise is required to be muffled so as not to be objectionable due to emission, beat frequency or shrillness. 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. The average dBA count for any activity shall be computed based on samples taken at intervals over a twenty-four hour period.
- (i) During the peak activity of sixty (60) minutes in a twenty-four hour period, a noise may not exceed these average dBA counts by more than ten (10) dBA.
  - (ii) Temporary activities that are unable to meet these requirements shall require a special permit from the Code Enforcement Officer. The noise standards shall not apply to the temporary use of such machinery as chainsaws, lawn mowers and snowmobiles.
- (7) 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.
- (i) Such activities shall comply with applicable minimum Federal, State and local requirements.
  - (ii) Detailed plans shall be submitted to the Code Enforcement Officer for approval before a permit is granted.
  - (iii) Violations of this standard shall be considered a public nuisance.

- (8) Vibrations. No vibration shall be produced which is transmitted through the ground and is discernible without the aid of instruments at or at any point beyond any lot line.
  
- (h) **Street and Road Design**
  - (1) All streets in the Enterprise Development District shall be designed and constructed to meet the industrial road standards set forth in Section 900 Subdivision Review.
  
  - (i) **Utilities.** All utilities, including telephone and electrical services, shall be placed underground. If the development is being reviewed by the Planning Board as either a site plan or subdivision, the applicant may request a waiver under the applicable waiver standards of either Section 800 Site Plan or Section 900 Subdivision.

## **J. Village Commercial District (VC)**

### **1. Intent**

The intent of the Village Commercial District is to serve as a primarily residential area with a mix of stores, services and commercial enterprises. Growth, at a village scale, is to be well planned in this area of town served by public water and sewer.

### **2. Permitted Uses**

- Agriculture
- Artist Studio
- Assisted Living Facility
- Bank
- Bed & Breakfast Inn
- Boarding Home for Sheltered Care
- Building, Accessory
- Business & Professional Office
- Child Care Facility
- Child Care, Family Home
- Construction Services
- Convention Center
- Dwelling, Mixed Use
- Dwelling, Single-Family Detached
- Dwelling, Two-Family
- Dwelling, Multifamily
- Fitness Center
- Funeral Home
- Home Occupation 1
- Home Occupation 2
- Hotel
- Housing for Older Persons
- Industry, Light
- Medical Office
- Nursing Home
- Park, Public
- Place of Worship
- Public Building
- Public Utility Facility
- Recreation Facility, Indoor
- Recreation Facility, Outdoor
- Research Laboratory
- Restaurant
- Retail Sales
- Retail Sales, Convenience
- Retail Sales, Nursery
- Senior Citizen Housing
- Service Business, Commercial
- Service Business, Personal
- Theater
- Use, Accessory
- Wireless Telecommunications Facility

### **3. Conditional Uses**

- Auto Repair Services
- Drive-through Facility
- Small Engine Repair

### **4. Prohibited Uses**

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

## 5. Dimensional Standards

- (a) Minimum Lot Size:
- (1) Standard
    - (i) Lots connected to public water & sewer 5,000 s.f.
    - (ii) Lots served by wells or a private sanitary system: 20,000 s.f.
- (b) Net Residential Density
- (1) Lots connected to public water & sewer: 2,500 s.f.
  - (2) Lots served by wells or a private sanitary system: 20,000 s.f.
- (c) Minimum Frontage 50 ft.
- (d) Minimum Front Setback No Minimum
- (1) New buildings constructed in the Village Commercial District shall be located in such a manner as to maintain the established relationship of buildings to the street. No building shall be setback further than the average of the existing setbacks in the block in which the building is located or if an existing building is being demolished, than the pre-existing setback, whichever is greater.
- (e) Minimum Side Setback No Minimum
- (1) Structures that share a common wall shall meet the requirements of the building code adopted by the Town of Windham.
- (f) Minimum Rear Setback 20 ft.
- (g) Maximum Building Height 35 ft.
- (1) Public Buildings, Church Steeples No Limit
- (h) Maximum Building Coverage: No Limit

## 6. District Standards

- (a) Buffer Requirement. New buildings or structures containing, or accessory to, commercial, duplex dwelling or multifamily dwelling uses constructed on properties in the Village Commercial District that abut a residential zoning district shall provide a fifty (50) foot natural buffer from the zoning district boundary line. This buffer requirement shall not apply to property lines that abut the Presumpscot River.
- (b) Design Guidelines: Designs for new and rehabilitated structures and building sites are encouraged to use the objectives and guidelines contained in the Town of Windham's 2005 Design Guidelines.



- (c) Parking:
  - (1) Uses shall meet the parking standards of section 537 Parking and Loading, except for the following:
    - (i) Dwellings: Single Family and Duplex: 1 per dwelling unit
    - (ii) No portion of the lot in front of a commercial use shall be used for off-street parking, service or loading.
- (d) Restaurant:
  - (1) Maximum seating for any bar area shall be 20 seats.
  - (2) Restaurants shall not be permitted to include a drive-through facility.
- (e) Retail Sales: The maximum area of a building dedicated to retail sales shall be 10,000 s.f.

**407 Overlay Districts****A. Aquifer Protection Overlay District Zone A (APA)****1. Intent**

The purpose of this section is to protect the Town of Windham's well water supply by restricting the uses and activities on land overlying aquifer and aquifer recharge areas in proximity to Chaffin Pond.

**2. Permitted Uses**

The following uses, as they are defined in Section 300, shall be permitted in the Aquifer Protection Overlay District A as a matter of right. Uses allowed in the underlying zoning district shall only be permitted if allowed in the Aquifer Protection Overlay District Zone A. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- Forestry
- Recreation Facility, Passive
- Public Utility Facility

**3. Conditional Uses**

The following uses, as defined in Section 300, shall be allowed as a Conditional Use in accordance with Section 516. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- None

**4. Prohibited Uses**

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

## 5. Dimensional Standards

The following dimensional standards shall apply in the Aquifer Protection Overlay District Zone A:

- (a) Maximum Building Height:
  - (1) The maximum building height of the underlying zoning district shall not apply to the public utility facilities allowed in the overlay district.

## 6. District Standards

In addition to Section 500, Performance Standards, these standards shall apply to the following uses in the Aquifer Protection Overlay District Zone A:

- (a) Except as otherwise required by state law, no person shall use herbicides or pesticides in this district except for herbicides and pesticides in non-persistent amounts normally associated with individual households.
  - (1) Non-persistent amounts shall have a half-life of less than twenty (20) days in soil under aerobic conditions.
- (b) All spreading or disposal of manure and fertilizers shall conform to the Best Management Practices handbook published by the Maine Department of Agriculture, 1988, and subsequent revisions and amendments.
- (c) Erosion and sedimentation shall be minimized by adherence to erosion control management practices contained in the Environment Quality Handbook, 1986, published by the Maine Soil and Water Conservation Commission, and subsequent revisions and amendments.
- (d) Zone Change Request. Any person who wishes to remove or include his property in the AP District Zone A may apply to the Town of Windham for a zone change as provided by Section 107 of this Ordinance. In addition to the requirements of Section 107, a person who applies for zone change must send notification of said application to the Portland Water District to the attention of the Director of Quality Control. The applicant shall bear the burden of proof to demonstrate that the property should not be included within the AP District Zone A.

**B. Aquifer Protection Overlay District Zone B (APB)****1. Intent**

The purpose of this section is to protect the Town of Windham's well water supply by restricting the uses and activities on land overlying aquifer and aquifer recharge areas in proximity to Chaffin Pond.

**2. Permitted Uses**

The following uses, as defined in Section 300, shall be permitted in the Aquifer Protection Overlay District Zone B as a matter of right. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information.

- All permitted uses allowed in the underlying zoning district

**3. Conditional Uses**

The following uses, as defined in Section 300, shall be allowed as a Conditional Use in accordance with Section 516. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- All conditional uses allowed in the underlying zoning district

**4. Prohibited Uses**

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

**5. Dimensional Standards**

The following dimensional standards shall apply in the Aquifer Protection Overlay District Zone B:

- (a) Minimum Lot Size:
  - (1) Dwellings: Greater of the underlying district or 80,000 s.f.
- (b) Maximum Impervious Area:
  - (1) Non-Residential Uses: 50%

## 6. District Standards

In addition to Section 500, Performance Standards, these standards shall apply to the following uses in the Aquifer Protection Overlay District Zone B:

- (a) The use or storage or manufacture of hazardous material, as defined in Section 300 for the Industry, Heavy use, in amounts in excess of those normally associated with individual households is prohibited.
- (b) Except as otherwise required by State or Federal Law, below-ground storage of petroleum products is prohibited.
- (c) Salt and sand piles are prohibited.
- (d) All spreading or disposal of manure and fertilizers shall conform to the Best Management Practices handbook published by the Maine Department of Agriculture, 1988, and subsequent revisions and amendments.
- (e) Erosion and sedimentation shall be minimized by adherence to erosion control management practices contained in the Environment Quality Handbook, 1986, published by the Maine Soil and Water conservation Commission, and subsequent revisions and amendments.
- (f) Zone Change Request. Any person who wishes to remove or include his property in the AP District Zone B may apply to the Town of Windham for a zone change as provided by Section 107 of this Ordinance. In addition to the requirements of Section 107, a person who applies for zone change must send notification of said application to the Portland Water District to the attention of the Director of Quality Control. The applicant shall bear the burden of proof to demonstrate that the property should not be included within the AP District Zone B.

### C. Manufactured Housing Park Overlay District (MHPO)

#### 1. Permitted Uses

The following uses, as defined in Section 300, shall be permitted in the MHPO District as a matter of right. Refer to Section 500 Performance Standards or Subsection 5. District Standards for additional use information.

- All permitted uses allowed in the underlying zoning district
- Mobile Home
- Mobile Home, Double Wide

#### 2. Conditional Uses

The following uses, as defined in Section 300, shall be allowed as a Conditional Use in accordance with Section 516. Refer to Section 500 Performance Standards or Subsection 5. District Standards for additional use information.

- All conditional uses allowed in the underlying zoning district

#### 3. Prohibited Uses

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

#### 4. Dimensional Standards

The following dimensional standards shall apply in the MHPO District:

(a) Minimum Lot Size:

- |                              |             |
|------------------------------|-------------|
| (1) Public Sewer             | 6,500 s.f.  |
| (2) Individual Septic System | 20,000 s.f. |
| (3) Central Sewage System    | 12,000 s.f. |

(b) Net Residential Density:

- |  |                  |
|--|------------------|
| (1) Septic and Central Sewage Systems  | 20,000 s.f./unit |
| (2) Public Sewer. For mobile home parks in which all units shall be served by public sewer, at least 10% of the combined area of all individual lots shall be reserved or improved for open space, storage or recreational purposes. |                  |
| (3) In addition to the standards for calculating net residential density in Section 500 "Net Residential Area or Acreage", land within any required buffer shall not be used for the calculation of net residential density.         |                  |

- |  |         |
|--|---------|
| (c) Minimum Frontage:                        |         |
| (1) Public Sewer                             | 50 ft.  |
| (2) Individual Septic System                 | 100 ft. |
| (3) Central Sewage System                    | 75 ft.  |
| <br>   |         |
| (d) Minimum Unit Setbacks Requirements:      |         |
| (1) Front Setback                            | 30 ft.  |
| (2) Side and Rear Setback:                   |         |
| (i) Lot size equals 10,000 s.f. or less:     | 10 ft.  |
| (ii) Lot size equals 10,001 s.f. or greater: | 15 ft.  |

## 5. District Standards

- (a) **Applicability.** New mobile home parks may be located, and existing parks expanded, only in the Mobile Home Park Overlay Districts (MHPO). This overlay district is delineated on the Town's Official Zoning Map.
- (b) **Sale of Individual Lots.** The sale of any individual lot or lots in an approved "mobile home park" is prohibited unless the status of the park as a whole is changed, with the approval of the Planning Board, to other permissible residential uses under the provisions of this chapter.
- (c) **Planning Board Review Requirement.** No mobile home park may be established, and no existing mobile home park may be enlarged, unless the Planning Board finds that the following standards have been met:
- (1) A buffer strip of at least the required front setback for the underlying zoning district shall be required along the mobile home park's exterior public or private street frontage.
    - (i) The buffer strip shall be used and maintained as a suitable planting area for lawns, with trees, shrubs or other landscape materials or left in its natural state,
    - (ii) No building or structure shall be constructed or otherwise placed on or under any portion of the buffer strip,
    - (iii) No equipment, vehicles, materials, articles for sale or signs shall be placed on any portion of the buffer strip unless otherwise provided for in this chapter.
    - (iv) No building within the mobile home park shall be closer than fifty (50) feet from any abutting residential land.

- (v) Water and sewage facilities for the park shall comply with all applicable regulations of the Town and the State of Maine, and all other applicable standards as set forth in the State of Maine Rules and Regulations of the Department of Health and Welfare relating to Mobile Home Parks and Camping Areas, approved and adopted November 6, 1972.
- (vi) New or enlarged mobile home parks shall meet the standards of Section 900 Subdivision Review, except where exempted by State Statute.
- (vii) All mobile homes within the park shall be accessed by interior minor streets owned and maintained by the park owner,
  - a) Road layout and entrance requirements shall conform with the street design standards of Section 900 Subdivision Review, except that
    - 1) The right-of-way may be reduced to twenty-three (23) feet, and
    - 2) The width of pavement may be reduced to twenty (20) feet.
- (viii) Where a Central Sewage System is proposed, the following standards shall be met:
  - a) Additional land shall be set aside in the event of a system failure,
    - 1) The amount of land set aside shall be based upon an independent analysis from a licensed engineer,
    - 2) The cost of the independent engineering analysis shall be the responsibility of the applicant.
  - b) The system shall be approved by the Maine Department of Health and Human Services.
- (ix) All other applicable standards of 30-A M.R.S.A. § 4358 presently effective or as hereinafter amended shall apply.
- (x) The development will not pollute a public water supply or aquifer.
- (xi) Wherever feasible, all new or enlarged mobile home parks shall be served by a public water supply provided by the Portland Water District or assignee.



**D. Roosevelt Trail Business and Professional Office Overlay Zone****1. Intent**

The purpose of this overlay district is to allow business offices and personal service businesses within the portions of the Medium Residential, Farm, and Farm Residential Zoning Districts that are located on Roosevelt Trail between the Pleasant River and Page Road. Businesses seeking to locate in this overlay district must meet the standards for both the zoning district and Conditional Uses.

**2. Area of Zone**

The area to be included in the Roosevelt Trail Business & Professional Office Overlay Zone is depicted on the Windham Zoning Map.

**3. Permitted Uses**

The following uses, as they are defined in Section 300, shall be permitted in the Roosevelt Trail Business and Professional Office Overlay Zone as a matter of right. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- None

**4. Conditional Uses**

The following uses, as defined in Section 300, shall be allowed as a Conditional Use in accordance with Section 516. Notwithstanding the provisions of Section 516, the Planning Board shall be responsible for review and approving all conditional use applications in the overlay zone. Refer to Section 500, Performance Standards or Subsection 6 District Standards for additional use information.

- Business and Professional Office
- Service Business, Personal – excluding laundry or dry cleaning services

**5. Prohibited Uses**

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

## 6. Dimensional Standards

In addition to the standards of the underlying zoning district, the following dimensional standards shall apply in the Roosevelt Trail Business and Professional Office Overlay District:

- (a) Maximum Building Size: 5,000 S.F.

## 7. District Standards

In addition to Section 500, Performance Standards, these standards shall apply to the uses in the Roosevelt Trail Business and Professional Office Overlay District.

- (a) Signs: The regulations in Section 709 Signs Permitted in All Residential Districts, shall apply to all uses in the Roosevelt Trail Business and Professional Overlay Zone.
- (b) Parking: The minimum off-street parking standards in Section 800(C) of the Land Use Ordinance shall apply to all uses allowed in the overlay district.
- (c) Windham Design Guidelines: The design guidelines of Section 813 shall apply to the following activities:
- New structures over 500 square feet in cumulative area.
  - Exterior improvements to existing structures.
    - Exterior improvements to existing structures shall be reviewed and approved by the Staff Review Committee as established in Section 803 of the Ordinance.
- (1) In addition to the Windham Design Guidelines, the following design features shall be required standards for uses allowed by the overlay district:
- Building Materials. Traditional, high-quality building materials including brick, clapboard, shingles or other similar projects shall be used as the primary siding material. Contemporary materials that have the same visual characteristics as traditional materials such as cement plank clapboards or vinyl clapboard siding are also acceptable.
  - Rooflines. Pitched roofs that are compatible with the surrounding residential uses shall be required. The minimum pitch of all rooflines shall be at least 5/12.
- (d) Screening/Buffering: Buildings and parking areas shall be screened from adjoining residential properties located at the side and rear of the property. Screening shall consist of either vegetation or fencing that is opaque and at least six (6) feet in height at the time of installation.
- (e) Lighting: All exterior lighting shall use a ninety (90) degree cut-off fixture.

## **E. Retirement Community and Care Facility Overlay District (RCCFO)**

### **1. Intent**

The intent of the Retirement Community and Care Facility Overlay District (RCCFO) is to provide areas in the Town of Windham where housing for older persons can be provided at higher residential densities. The RCCFO includes land adjacent to arterial roadways. The proximity to arterial roads is intended to provide housing for older persons suitable access to commercial establishments and public safety services.

### **2. Permitted Uses**

The following uses, as defined in Section 300, shall be permitted in the RCCFO District as a matter of right. Refer to Section 500 Performance Standards or Subsection 5 District Standards for additional use information.

- Assisted Living Facility
- Boarding Home for Sheltered Care
- Retirement Community
- Nursing Home

### **3. Prohibited Uses**

Uses that are not expressly enumerated herein, or in the underlying zoning district, as either permitted uses or conditional uses are prohibited.

### **4. Dimensional Standards**

Notwithstanding the dimensional standards set forth in the underlying zoning district, the following dimensional standards shall apply to uses permitted by the RCCFO District.

- |   |                                  |
|---|----------------------------------|
| (a) Minimum Lot Size:                     | 200,000 s.f.                     |
| (b) Net Residential Density:              |                                  |
| (1) Assisted Living Facility              | None                             |
| (2) Nursing Home                          | None                             |
| (3) Board Home for Sheltered Care         | None                             |
| (4) Retirement Community                  | 5,000 s.f.                       |
| (d) Minimum Setback Requirements:         |                                  |
| (1) Duplex Dwelling; Multifamily Dwelling | See Subsec. 5 District Standards |

## 5. District Standards

### (a) Standards applicable in the RCCFO district:

- (1) **Public Water.** All nursing home facilities or assisted living facilities shall be served by a utility connection to the Portland Water District system. All retirement community uses shall be connected to a public drinking water supply, as defined by the Maine Department of Health and Human Services. No retirement community dwelling units or facilities utilizing the standards of this overlay district shall be served by a private well. This standard does not apply to retirement community dwelling units or facilities developed in accordance with the standards of the underlying zoning district.
- (2) **Public Street Lot Width.** Lots that contain uses permitted by the overlay district shall meet the minimum lot width requirement of the underlying zoning district.
- (3) **Street Connection Requirement.** Uses permitted by the overlay district shall meet the street connection requirements of Section 911(M)(5)(b)(7).
- (4) **Parking Requirements.** All uses in the overlay district shall meet the applicable off-street parking requirement contained in Section 812(C).
- (5) **Site Design/Building Orientation:** When the development proposal provides for the construction or expansion of a building within one-hundred (100) feet of an existing road on the perimeter of the site, the project shall incorporate the following design features:
  - Buildings shall be designed so that they front on the existing road, or as an alternative, do not turn their backs to the road. A site that has frontage on two (2) or more existing streets shall use the street with the greater traffic volume for the purpose of this standard.
  - No service or storage areas shall be located between the building and the road.
  - Vehicular access shall be from internal streets or combined entrances where practical.
  - Parking lots shall not be located, where practical, between the building and the existing road.
  - If a sidewalk or pedestrian way exists along the existing road, provisions shall be made to link it with the planned buildings.
- (6) **Buffer Requirement:** The following site features shall be screened with either solid fencing or vegetation from any existing residential dwelling located on an abutting property:
  - Storage Areas
  - Dumpsters or trash collection areas
  - Service areas or access ways for emergency vehicles
  - Parking lots, and their associated access drives, that contain spaces for five (5) or more vehicles

- (7) Lighting: All exterior lighting shall use a ninety (90) degree cut-off fixture.
- (8) Solid Waste Collection: Collection of solid waste from exterior dumpsters shall only occur during daytime hours, as defined in Section 300 of this Ordinance.
- (b) Standards Applicable where the underlying zoning district is the Farm, Farm Residential, Light Residential, or Medium Residential Districts:
- (1) Setback Requirements: Setbacks for multifamily facilities or multifamily dwelling units:
- (i) No building or part of a building shall be located within one hundred (100) feet of the external perimeter of the overall site.
  - (ii) The minimum setback from the external perimeter of the overall site shall vary depending on the height of the building as follows:

<b>Building Height</b>	<b>Minimum Setback</b>
0 feet to 30 feet	100 feet
31 feet to 35 feet	150 feet

- (2) Services and Retail Sales: Any service and retail sales shall be designed as an integral part of the building. Such facilities shall be designed for use by the residents and not to serve those living outside the facility.
  - (3) Number of Bedrooms: Retirement Community dwellings shall be limited to 3 or fewer bedrooms per dwelling unit.
- (c) Standards Applicable where the underlying zoning district is the Commercial 1, Commercial 2, or Commercial 3 Districts:
- (1) Setback Requirements: Setbacks for multifamily facilities or multifamily dwelling units:
    - (i) Multifamily buildings permitted by the overlay district that are located on a lot that abuts a residential zoning district, or abuts a property occupied by an existing dwelling, shall not be located within one hundred (100) feet of said abutting lot.
  - (2) Basement and First Story Dwelling Units: Notwithstanding the standards set forth Section 406(E)(6)(f) of the Commercial 1 Zoning District, dwelling units permitted in the overlay district shall be permitted in the basement or first story of a building in the RCCFO.

**408 Contract Zones**

*(See Section 108 for Contract Zone Standards and Procedures)*

**A. Village at Little Falls Contract Zone (VLF)**

*Copies of the recorded contract zone may be obtained from the Windham Town Manager's Office or the Cumberland County Registry of Deeds.*

VILLAGE AT LITTLE FALLS  
CONTRACT ZONING AGREEMENT

This Contract Zoning Agreement dated as of June 1, 2005, between and among the **TOWN OF WINDHAM**, a body of corporate and politic, located in the County of Cumberland and State of Maine (the "Town") with a mailing address of 8 School Road, Windham, Maine, and **VILLAGE AT LITTLE FALLS, LLC**, a Maine limited liability company ("VLF, LLC") with a mailing address of 2 Market Street, Portland, Maine 04101, and **SOUTH WINDHAM HOUSING CORPORATION**, a Maine non-profit corporation ("SWHCorp") with a mailing address of 307 Cumberland Avenue, Portland, Maine 04101 (VLF, LLC and SWHCorp are collectively referred to herein as "Owner" or "Owners").

WHEREAS the Town is authorized to enter into contract zoning agreements pursuant to the Windham Shoreland Zoning Ordinance (Section 199-8(B)(2)), the provisions of the Windham Land Use Ordinance incorporated therein by reference (Section 140-5.1) (*Renumbered to Sec. 108 as of October 22, 2009*) and the provisions of 30-A M.R.S.A. Section 4352(8);

WHEREAS, VLF, LLC either owns or has entered into contracts to purchase parcels of real estate located on Route 202 and Depot Street Windham, Maine fronting on the Presumpscot River consisting of approximately 9.1 acres, generally being shown on the Town's Tax Map 38, Parcels 6, 7 and 8, and SWHCorp has separately entered into a contract to purchase a portion of Parcel 7, all of which property is shown on the attached Exhibit A (collectively hereinafter the "Property");

WHEREAS, the Property is currently located in the Shoreland Zone General Development District Zone ("GD Zone"), a portion of the Property having been heretofore rezoned from the Industrial Zone by action of the Town Council;

WHEREAS the poor condition and squalid appearance of the derelict industrial building, which is currently the most prominent portion of the Property, constitutes a blight preventing the development of the Property and is inhibiting the redevelopment of other properties in the South Windham Little Falls neighborhood;

WHEREAS, Owner proposes to construct an attractive mixed-income multi-unit residential development with attached and senior housing and apartments (the "Project");

WHEREAS the existing industrial uses are designated as being "marginally useful" under the Town's Comprehensive Plan, and the cost of demolition of the derelict industrial building has prevented the Project from moving forward;

WHEREAS the proposed residential use is in keeping with the historic close knit pattern of development in the South Windham Little Falls neighborhood and the abutters have expressed a strong desire to see the existing derelict building eliminated;

WHEREAS the Town's Comprehensive Plan cites the "potential to expand high density residential development" and historic settlement pattern which creates a "neighborhood feel" for the Little Falls neighborhood, but notes the lack of a critical mass of nearby residential development;

WHEREAS, the Project serves the goals of the Comprehensive Plan by using public sewer and water facilities;

WHEREAS, the roads within the development will remain private and maintenance and plowing will be the responsibility of the then owners of the Property, further minimizing the Town's costs;

WHEREAS, the rezoning provided in this Agreement, therefore, would be consistent with the Windham Comprehensive Plan; and

WHEREAS, the Town of Windham, by and through its Town Council, therefore, has determined that the said rezoning would be pursuant to and consistent with the Town's local growth program and Comprehensive Plan adopted pursuant to Title 30-A, Maine Revised Statutes, Chapter 187, Sub-part 6-A, and consistent with the existing and permitted uses within the GD Zone and has authorized the executive of this Contract Zoning Agreement.

NOW, THEREFORE, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

**1. Zoning Map Amendment.** The Town hereby amends the Zoning Map of the Town of Windham, by adopting the zoning map change amendment shown on Exhibit B.

**2. Village at Little Falls Contract Zoning District.** The Town hereby creates a Village at Little Falls Contract Zoning District as defined herein which shall apply to the Property. For purposes of this Agreement, the Village at Little Falls Contract Zoning District means a residential development which may include multi-unit residences (apartment and condominiums), age restricted senior housing with traditional short blocks and interconnecting local streets, enhanced river views, and space and bulk standards consistent with traditional village design, all as further set forth in this Agreement.

The general schematic street layout, open space and distribution of uses in the Project shall conform to the Contract Zone Plan as hereinafter defined.

### **3. Permitted Densities, Uses and Dimensional Criteria.**

#### **A. Density:** The density of the Project shall be as follows:

Up to 24 apartment units located in one building on a separate Lot, reserved for residents with persons 55 years of age or older or households with at least one resident who is 55 years of age or older; and

Up to 85 residential units located in multi-unit buildings on a separate Lot, one of which buildings may contain up to 16 units and with the remaining buildings containing up to 4 units each, with no age restrictions for any of these 85 units.

The Project shall be connected to public sanitary sewer services.

All buildings shall have an automatic fire sprinkler system installed by the Owners, contractors or developers. The construction of the system shall meet the standards of the National Fire Protection Agency as determined by the Chief of the Town of Windham's Fire & Rescue Department. The location and number of hydrants within the Project shall be subject to the approval of the Fire Chief.

#### **B. Uses.** The permitted uses in the Project shall be:

One Family and Multi-Family Dwellings;

Elderly Housing;

Those Uses and Special Exceptions to the extent allowed and subject to the conditions and restrictions applicable to the underlying GD Zone as it may be amended, subject to such review which would otherwise be required if the Property were not subject to this Agreement, and excluding Industrial and Manufacturing uses;

Home Occupations, Residential Recreational Facilities and community building and Association office maintenance facilities;

Public Utilities Facilities; and

Accessory Uses.

#### **C. Residential Dimensional, Parking and Design Criteria.**

- i) Multi-Family Lot Size: No restriction on lot size or number of Dwelling Units per lot, but no more than 24 Dwelling Units per building for Elderly Housing and 16 dwelling units per building for other Multi-Family Dwellings shall be allowed.
- ii) Minimum front Setback all buildings: 5 feet.
- iii) Minimum side Setbacks all buildings: 5 feet.
- iv) Minimum rear Setbacks all buildings: 5 feet.



- v) Presumpscot River setback and frontage: New Dwelling Units and accompanying improvements may be built in the locations as shown on Contract Zone Plan as they may be subsequently varied with Planning Board approval under Section 5, without need for Code Enforcement Officer approval under Section 199-12 of the Ordinance for the demolition of the existing nonconforming structures, the construction of the new structures shown on the Contract Zone Plan and change in use to multi-unit residential. In addition, existing utility lines located on the Property may be relocated closer to the river in order to lower their visual profile. Applicable minimum shore frontage per family shall not apply to the number of dwellings permitted under this Agreement.
- vi) Maximum structure, parking and non-vegetated surface coverage: 75% measured over the Project as a whole.
- vii) Height: 65 feet, measured from the mean "as completed" finished grade to the highest point on the roof for the 24 unit and the 16 unit buildings and 35 feet for all other buildings, such measurement otherwise to be in accordance with the Ordinance.
- viii) Notwithstanding the construction of multiple structures on a single lot, the compliance with dimensional requirements shall be calculated for each structure with respect to the lot as a whole and not with respect to each structure and dwelling separately.
- ix) The style of the buildings shall be substantially in accordance with the proposed building elevation plans prepared by Gawron Turgeon Architects dated June 1, 2005 attached hereto as Exhibit D, as they may be further approved and amended from time to time in accordance with the Town's Site Plan Ordinance and Subdivision Ordinance and with this Agreement (the "Elevation Plans").

**D. Parking.** The dimensions of the parking spaces shall be a minimum of 9 feet by 18 feet but need not measure more than a minimum of 9 feet by 18 feet (except as otherwise required by law for handicapped parking). Parking spaces shall include garage spaces and spaces located in private driveways leading into garages, notwithstanding the otherwise applicable provisions of the Ordinance. For Elderly Housing, no more than one parking space per unit shall be required, and for a multifamily structure of more than three floors, no more than one and one-half parking spaces per unit shall be required.

**E. Streets, Roads and Sidewalks.** All streets and roads within the Project shall remain private, and shall not be maintained by Town. The paved surface for private streets and internal travel aisles may range from 22-30 feet in width, exclusive of turn around and pull off parking areas, in accordance with the Contract Zone Plan for the Property. The required "right of way" for each street under the Subdivision Ordinance including the pavement, sidewalk and utility installation area need only be a minimum of 30 feet in total width, which need not be centered on the pavement, and may otherwise have the locations and dimensions as shown on the Contract Zone Plan notwithstanding the otherwise applicable Ordinance requirements for such streets.

Each Owner shall construct the sidewalks as shown on the Contract Zone Plan, including without limitation the sidewalks running along the Town's abutting Depot Street right of way and the sidewalks located within the Project.

The then owners of the Property shall be responsible for the maintenance of the streets, roads and sidewalks. The portions of the Property in common ownership shall be considered a single lot notwithstanding their separation by private streets and roads.

Streets, roads and sidewalks providing access to a permitted Structure, parking and pedestrian walkways and other improvements shown on the Contract Zone Plan shall be permitted, even if located within 100 feet of the Presumpscot River. Use of existing drainage lines and structures shall be permitted.

**4. Contract Zone Plan.** The Property shall be generally developed and used in accordance with the Contract Zone Plan, reduced copies of which are attached hereto as Exhibit C as it may be further approved and amended from time to time pursuant to the provisions of the Windham Site Plan Ordinance and Subdivision Ordinance and this Agreement (the "Contract Zone Plan"). Notwithstanding any other provisions of the Ordinance, the physical layout, dimensions, setbacks, parking and proposed uses and improvements shown on Contract Zone Plan as they may be varied in accordance with Section 5 shall be permitted under the Ordinance.

**5. Status of Approvals/Amendments.**

The Contract Zone Plan has received pre-application Site Plan - Subdivision review for the entire Property under the Town's Site Plan and Subdivision Ordinance. Any amendment which involves the following changes to the terms of this Agreement will require an amendment approved by the Town Council after a public hearing:

- i) any change in the permitted uses; and
- ii) any increase in the number of dwelling units beyond the maximum number permitted.

Except for the forgoing, any other changes and any subsequent site plan approvals or subsequent site plans and/or subdivision amendments need only be approved by either (i) the Planning Board after a public hearing in accordance with this Agreement, or (ii) for changes that would otherwise only require Code Enforcement Officer approval under the Ordinance, then the approval by such officer, all without need for further Town Council approval of such changes.

Following the approval of this Agreement, the Owner will then submit the detailed design, landscaping, traffic, and engineering plans and specifications for Planning Board review and approval in accordance with the otherwise applicable provisions of the Ordinance. Such review and approval shall include attention to the specifics of sewer and utilities, streets (including turning radii), sidewalks, drainage facilities, hydrants, street lighting, storm water and drainage systems, recreational facilities or impact fees, river safety, snow removal and disposal areas, on street parking designations and restrictions, trash removal, and landscaping, but the improvements and uses contemplated under this Agreement as they may be varied in accordance with the foregoing shall be allowed.

## **6. Infrastructure.**

**A. General.** Within each lot it owns, each Owner shall construct or cause to be constructed sewer and utilities, streets, drainage facilities, esplanades, sidewalks, street lighting, drainage systems, and landscaping to the standards set forth in the final site plan/subdivision approval following the execution of this Agreement.

The streets shall remain private, subject to an easement for Town emergency access.

**B. Maintenance.** The infrastructure located on the Property shall be maintained by its respective Owner.

**C. Sewer Pump Station.** Owner shall grant to the Town of Windham or its designee title to land necessary for construction of an underground sewer pump station with accompanying easements for mains and access in a mutually agreed upon location to be coordinated with other proposed improvements.

**D. Depot Street Storm Drain.** Owner shall grant to the Town of Windham an easement for an underground storm drain running from Depot Street towards the Presumpscot River, which easement shall be coordinated with the location of the proposed improvements.

**E. Depot Street Sidewalk.** Owners shall construct a public sidewalk running along Depot Street in the public right of way area adjoining each portion of their Property.

**F. S D Warren Co. Easement and Fence.** Owners shall permit emergency vehicle access over the Property over the 30 foot wide easement located on adjoining land of S.D. Warren Company (d/b/a "Sappi Fine Paper North America") originally reserved in a deed recorded in the Cumberland County Registry of Deeds in Book 2641, Page 44, which runs easterly from Route 202.

Owner shall construct and maintain a fence along the foregoing easement at the boundary of their Property with the land of S D Warren in order to prevent inappropriate public access to the dam area but shall construct an emergency access with traffic flow restriction devices approved by the Town Fire Chief on its Property permitting access by emergency vehicles through the fence.

**7. Commencement/Phasing Schedule/Bonding.** Unless extended by the Town, a building permit shall be issued and the construction of the initial Phase shall commence within two (2) years after Owner's receipt of final land use approvals for the Property and shall complete the construction of the final Phase under this Agreement within fifteen (15) years of the date of receipt of such approvals.

An Owner need only post a performance guaranty in accordance with the Ordinance Section 140-39 (H) assuring the completion of "Required Improvements" for those Required Improvements to be constructed within each Phase or sub-Phase of the Property or which are required to be completed in conjunction with such Phase or sub-Phase under this Agreement.

**8. Definitions.** Note: Capitalized terms not otherwise defined herein shall have the meaning set forth in the Town of Windham Zoning Ordinance.

Agreement: This Contract Zoning Agreement entered into among the Owner and the Town.

Association: The nonprofit corporation which may be formed pursuant to the Maine Condominium Act to operate and administer a portion of the Property.

Contract Zone Plan: The plans entitled "Exhibit C - Contract Zone Plan" prepared by Northeast Civil Solutions dated May 11, 2005 consisting of sheets #1 (site) and #2 (phasing), the accompanying notes and related materials approved by the Town Council, reduced copies of which are attached hereto as Exhibit C, as they may be amended from time to time pursuant to the provisions of the Windham Site Plan Ordinance (Chapter 140-38) and Subdivision Regulations (the "Contract Zone Plan").

Lot: The Lots composing individual portions of the Property as shown on Exhibit C, designed for separate subsequent Planning Board approval, development and use as set forth herein.

Multi-Family Dwelling: A building with two or more Dwelling Units, subject to the limitations on numbers of units, units per building, location and age restrictions set forth in this Agreement.

Ordinance: The Town of Windham Land Use, Shoreland Zoning and as applicable the Subdivision Ordinances as set forth in Chapters 140 (now Section 900), 199 and 215 of the Town's Code of Ordinances.

Owner(s): Collectively, VLF, LLC and SWHCorp, and their respective successors and assigns.

Parking Space: See Subsection 3 (E) regarding modifications to the otherwise applicable definitional restrictions under the Ordinance.

Phase: Each portion of the Property designated on Exhibit C to be separately developed in stages substantially as shown on Exhibit C.

Planning Board: The Planning Board of the Town of Windham.

Property: The real property located on Route 202 and Depot Street as described in Exhibit A.

SWHCorp: South Windham Housing Corporation, a Maine non-profit corporation, also being an Owner.

Town: The Town of Windham, a municipal corporation located in the County of Cumberland and State of Maine.

Town Council: The Town Council of the Town.

VLF, LLC: Village At Little Falls, LLC a Maine limited liability company, being an Owner.

### **9. General.**

A. Owners shall record this Contract Zoning Agreement in the Cumberland County Registry of Deeds within 30 days after receipt of final land use approvals for the development on the Property. For purposes of identification only, the Town Manager shall sign the full size copies of the plans attached hereto as Exhibits C and D, marked with the legend:

"Exhibit [C or D, as applicable] to the Village at Little Falls Contract Zoning Agreement dated June 1, 2005, subject to modification pursuant to said Agreement."

B. The provisions of this Contract Zoning Agreement shall be deemed restrictions on the use of the Property, and this Contract Zoning Agreement may be amended by future written agreement between the Town of Windham and the Owner affected or its successors in interest without need for approval of any other party. In the event all or any portion of the Property is subjected to the Maine Condominium Act (33 M.R.S.A. Section 1601-101 et seq.), then the Association organized may act on behalf of all condominium owners.

C. The provisions of this Contract Zoning shall operate as an "overlay" zone and all other requirements of the underlying Zoning District shall apply except as otherwise set forth herein.

D. The restrictions, provisions and conditions of this Agreement are an essential part of the rezoning, shall run with the Property, shall bind Owners, their heirs, successors in interests and assigns of said Property or any part thereof, and shall inure to the benefit of and be enforceable by the Town of Windham.

E. Except as expressly modified herein, the use and occupancy of the Property shall be governed by and comply with the provisions of the Land Use, Shoreland Zoning and Subdivision Ordinances of the Town of Windham (as applicable) and any applicable amendments thereto or replacement thereof, provided however that this Agreement and the Ordinance shall be interpreted so as to allow the improvements and uses shown on Exhibit C. The applicable provisions of the Town's Building Code Ordinances shall not be affected by this Agreement.

F. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. However the provisions of this Agreement are severable, and if any one clause or provision hereof shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

G. The captions in this Agreement are for convenience of reference only and shall not define or limit the provisions hereof.

H. No waiver of any of the terms of this Agreement no extension thereof will be deemed to have occurred, or to be effective unless in writing signed by the parties. No course of dealing heretofore or hereafter between the parties, or any failure or delay on the part of any party in exercising any rights or remedies under this Agreement shall operate as a waiver or preclusion of the exercise of any rights or remedies under this Agreement.

I. The Town shall have the power to enforce all conditions and restrictions of this Agreement, both through enforcement action pursuant to 30-A M.R.S.A. §4452 and through legal action for specific performance of this Agreement. In the event that an Owner or its heirs, successors or assigns fail to construct the Property in accordance with this Contract, or in the event of any other breach hereof, and such failure or breach continues for a period of thirty (30) days after written notice of such failure or breach cannot reasonably be remedied or cured within such thirty (30) day period, if such Owner, its heirs, successors or assigns, fails to commence to cure or remedy such failure or breach within said thirty (30) day period and thereafter fails to diligently prosecute such cure or remedy to completion in a reasonable time, then the Town may enforce the performance of this Agreement and recover the costs and expenses of performance from such Owner or its, heirs, successors or assigns violating this Agreement, which recovery may include the Town's reasonable attorney's fees and expenses.

Witness our hands and seals on June 1, 2005.

**TOWN OF WINDHAM**

Nancy J. Johnston  
Witness

by: Anthony T. Plante  
Anthony T. Plante, Town Manager

**VILLAGE AT LITTLE FALLS, LLC**

Denise Coyer  
Witness

by: Rence Lewis  
Rence Lewis, its Manager

**SOUTH WINDHAM HOUSING CORPORATION**

Dana Totman  
Witness

by: Dana Totman  
Dana Totman, its President

- Exhibit A - Copy of Survey Plan
- Exhibit B - Amended Zoning Plan
- Exhibit C - Reduced Copies of "Exhibit C – Contract Zone Plan" prepared by Northeast Civil Solutions dated May 11, 2004, consisting of 2 sheets labeled "Phasing" and "Site."
- Exhibit D - Reduced Copies of "Exhibit D – Proposed Elevations " prepared by Gawron Turgeon Architects consisting of 2 sheets

Contract Zone Agmt Vill at Little Falls 5-24-05 clean doc  
5/25/2005

State of Maine  
Cumberland, ss

June 1, 2005

Then personally appeared before me the above named Anthony I. Plante in his said capacity and acknowledged the foregoing to be his free act and deed and the free act and deed of said town.

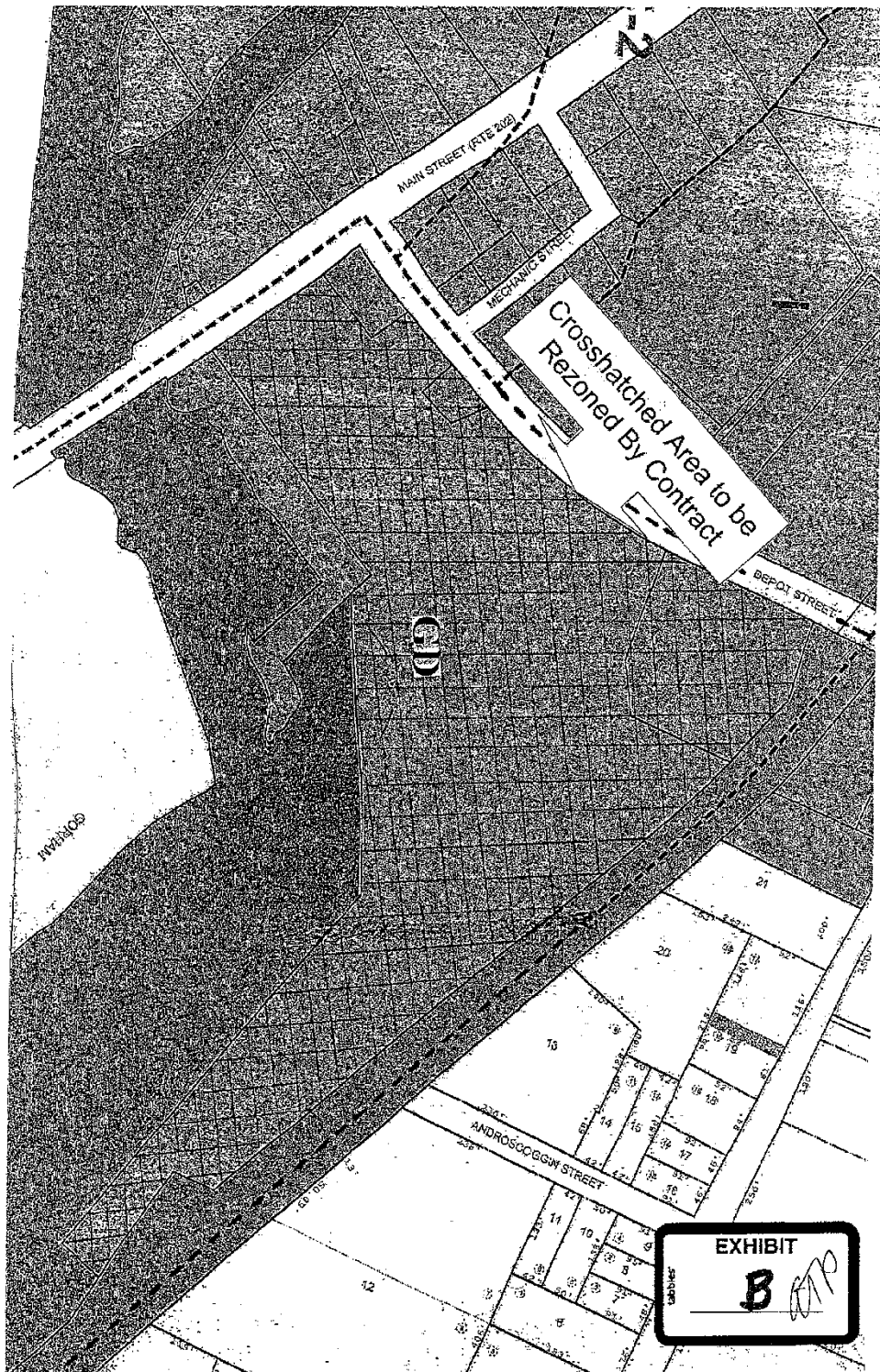


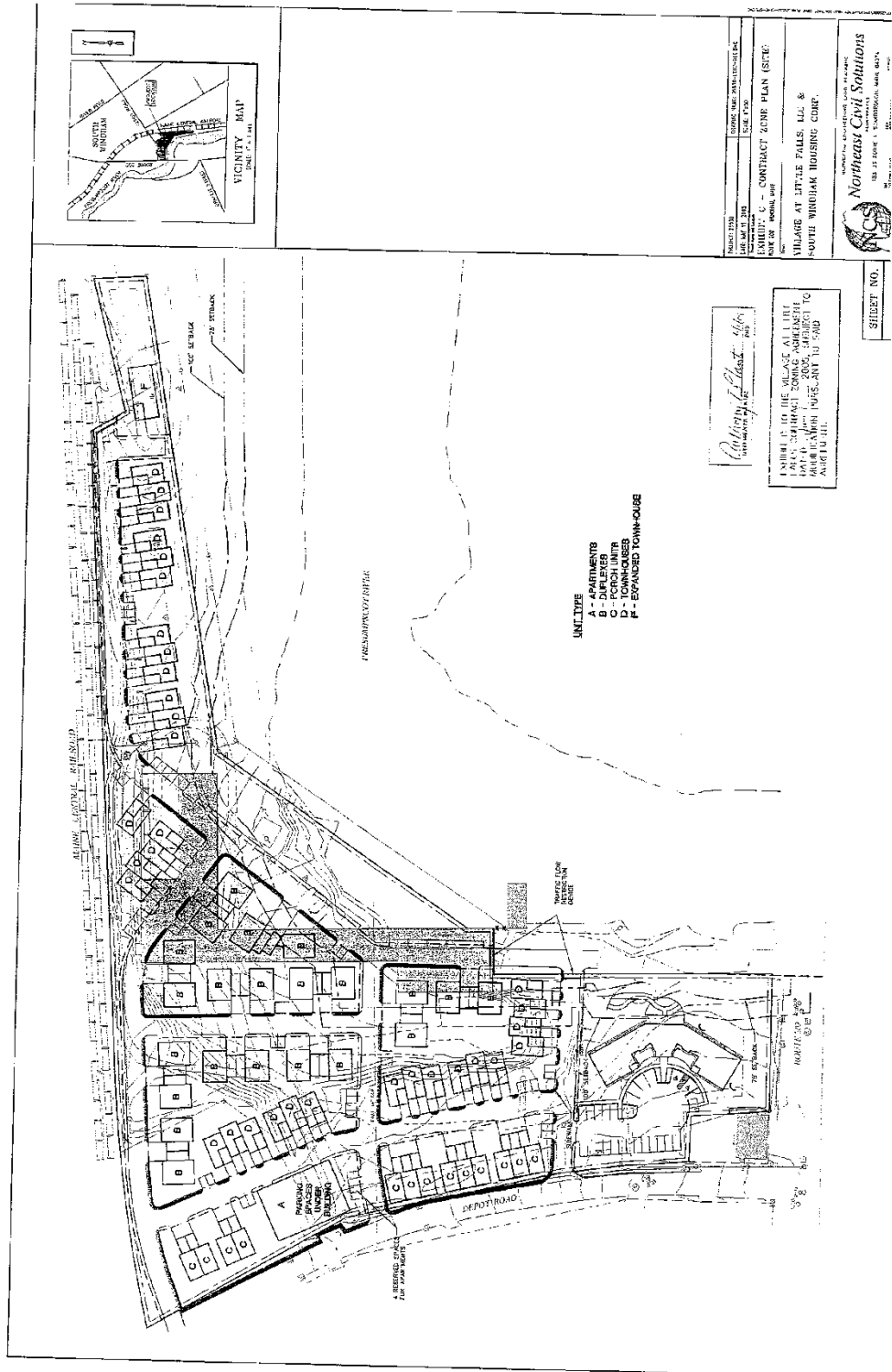
Attorney at Law

Name: Lawrence R. Clough











Proposed Building 'A' Front Elevation-Apartments  
1/8" = 1'-0" scale

Proposed Building 'B' Front Elevation-Duplexes  
1/8" = 1'-0" scale

Proposed Building 'C' Front Elevation-Porch Units  
1/8" = 1'-0" scale

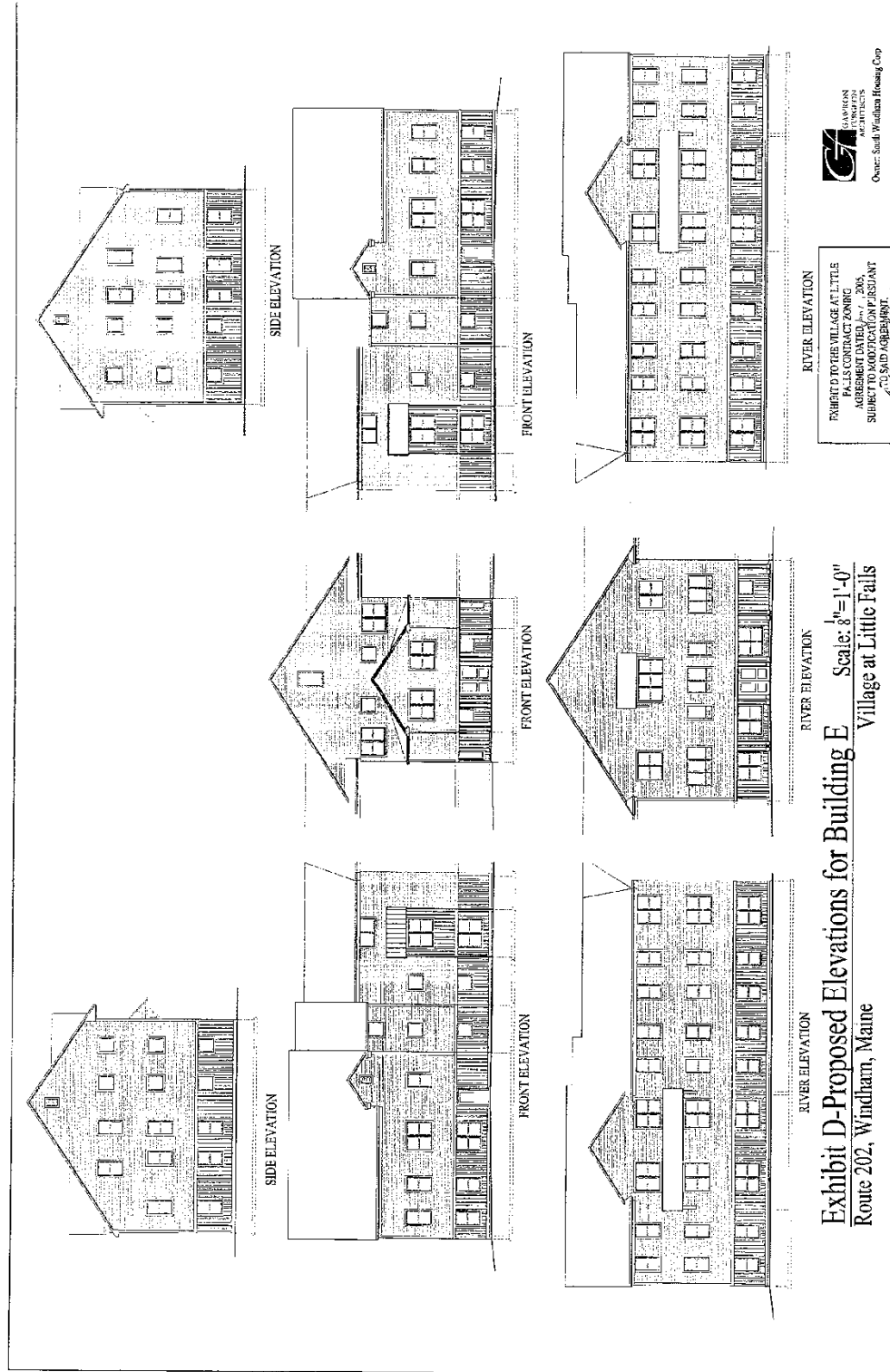
Proposed Building 'D' Front Elevation-Townhouses  
1/8" = 1'-0" scale

Proposed Building 'F' Front Elevation-2,000 SF  
1/8" = 1'-0" scale

Exhibit D-Proposed Elevations for Buildings A,B,C,D and F  
Route 202, Windham, Maine

EXHIBIT D TO THE VILLAGE AT LITTLE FALLS CONTRACT ZONING AGREEMENT DATED 4-11-2005, SUBJECT TO AMENDATION PURSUANT TO SAID AGREEMENT.

GAMBRIN ARCHITECTS  
Center Village at Lake Park, LLC



**B. Windham Center Contract Zone (WCC)****CONTRACT ZONING AGREEMENT BETWEEN THREE STONES, LLC. and THE TOWN OF WINDHAM**

This Contract Zoning Agreement made this 25<sup>th</sup> day of October, 2010 by and between the TOWN OF WINDHAM, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter the "Town") and THREE STONES, LLC. (hereinafter "Three Stones"), a Maine limited liability corporation with an address of 225 Pope Road, Windham, Maine 04062.

WHEREAS, Three Stones seeks to redevelop and reutilize a parcel of real estate located at 354 Gray Road, Windham, Maine (the "Property") which is shown on Tax Map 9, Lot 27C.

WHEREAS, the Property is currently located in a Farm Residential District as established by the Windham Land Use Ordinance.

WHEREAS, the Property has been the site of a commercial/industrial use.

WHEREAS, Three Stones wishes to renew commercial activity on the Property.

WHEREAS, Three Stones and the Town have agreed that it is desirable that the Property be rehabilitated for commercial use.

WHEREAS, the Town has the authority to enter into a contract zone for the Property pursuant to 30-A M.R.S.A. § 4352 and Section 108 of the Windham Land Use Ordinance.

WHEREAS, after notice and hearing and due deliberation of this re-zoning proposal, the Windham Planning Board recommended the re-zoning of the Property.

WHEREAS, the Town, by and through its Planning Board and Town Council, have determined that the re-zoning is consistent with the Comprehensive Plan.

WHEREAS, this re-zoning has been authorized by the Town Council.

NOW THEREFORE, in consideration of the mutual promises made by each party, the parties covenant and agree as follows:

1. The Town will amend the Land Use Ordinance and Zoning Map of the Town of Windham to create and to make reference to the Windham Center Contract Zone, as shown on Exhibit A, attached hereto and hereby incorporated by reference.
2. Three Stones, its successors and assigns, shall use the property in compliance with all applicable requirements set forth in Exhibit B, attached hereto and hereby incorporated by reference. Curb cuts and parking shall be established substantially in accordance with Exhibit C, attached hereto and hereby incorporated by reference.

3. Three Stones shall record the fully executed Contract Zoning Agreement and all Exhibits thereto in the Cumberland County Registry of Deeds and shall submit proof of recording to the Town's Code Enforcement Officer and Planner before any site work is undertaken or any building permits are issued.
4. The provisions of this Contract Zoning Agreement shall be deemed restrictions on the use of the Property and shall be amended only upon further written agreement of the Town and Three Stones or its successors in interest to the Property and after compliance with State law for adoption or amendment of contract zones.
5. The restrictions, provisions and conditions of this Contract Zoning Agreement are an essential part of the rezoning, shall run with the Property and shall bind Three Stones, its successors in interest and any assigns of the Property or any party in possession or occupancy of the Property or any part thereof and shall inure to the benefit of and be enforceable by the Town.
6. If any of the restrictions, provisions, conditions or portions of this Agreement is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portions shall be deemed as separate, distinct and independent provisions and such determination shall not affect the validity of the remaining portions hereof.
7. Except as expressly modified herein, the use and occupancy of the Property shall be governed by and comply with the provisions of the Town of Windham Land Use Ordinance.
8. In the event that Three Stones or its successors or assigns fail to complete the project within three (3) years or operate the project in accordance with this Agreement or in the event of any other breach of any conditions set forth in this Agreement, the Town Council of the Town shall have the authority, after written notice to Three Stones, and reasonable opportunity to cure, to terminate this Agreement and to rezone the Property to Farm Residential or any successor zone. In the event of such a rezoning, the Property shall then be used for only such uses as otherwise allowed by law. The Town shall also have the ability to enforce any breach of this Agreement or any other violation of the Land Use Ordinance through the provisions of 30-A M.R.S.A § 4452.



NOW THEREFORE, this Agreement is hereby made official by the signature below:

**TOWN OF WINDHAM**

*Bud Mac*  
Witness

*APL*  
Anthony Plante  
Its Town Manager

**THREE STONES, LLC**

*Bud Mac*  
Witness

*Jay P. Hackett*  
Jay P. Hackett  
Print Name

Its member

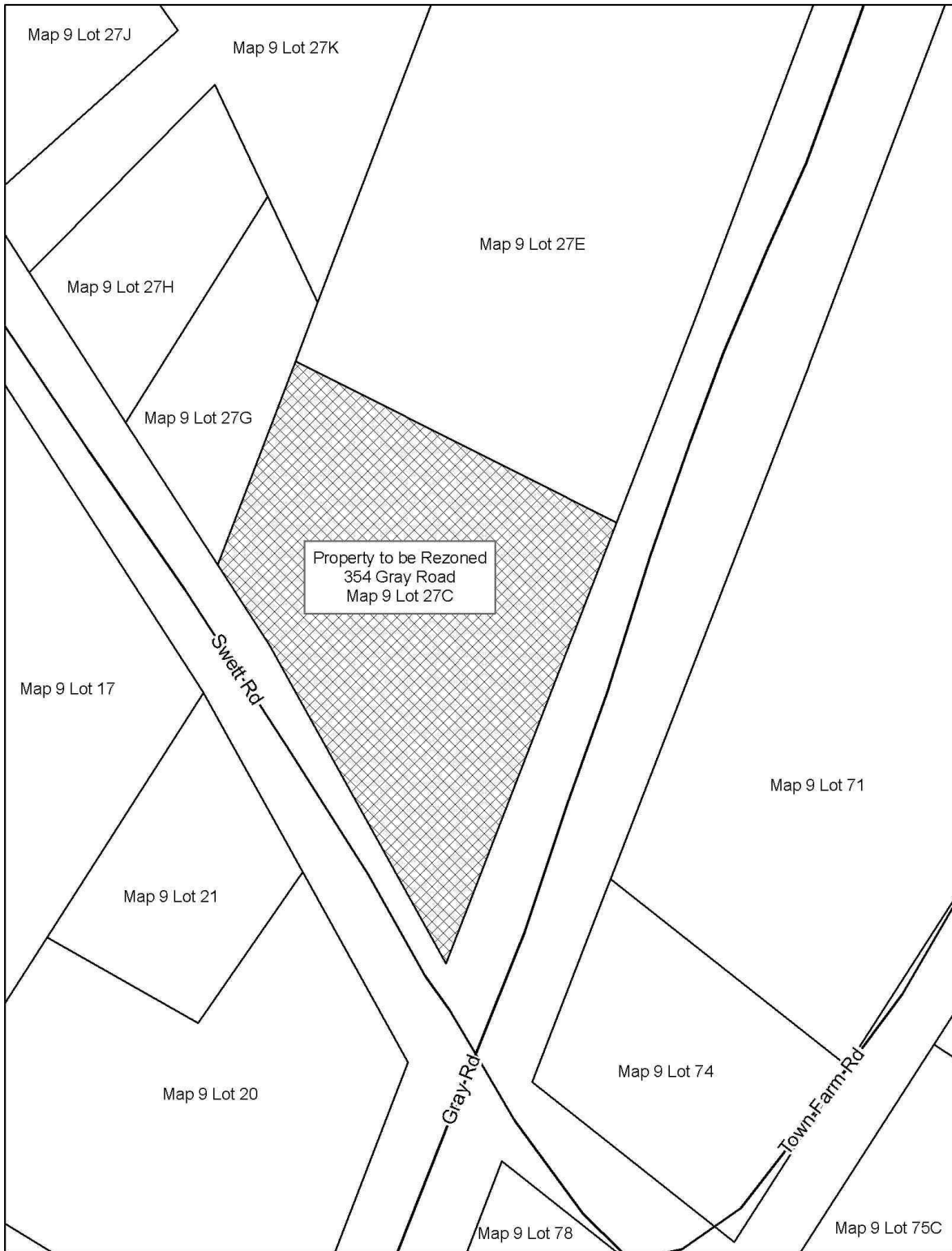
**HERITAGE METALCRAFT, INC.**

*T.H. Ar*  
Witness

*MARK NELSON*  
MARK NELSON  
Print Name

Its Owner

EXHIBIT A



**EXHIBIT B****Windham Center Contract Zone****1. Intent**

The Windham Center Contract Zone intends to enable the redevelopment and reuse of a long-standing commercial use in the Windham Center area. The reuse of this property will benefit the Town through the redevelopment of an abandoned and dilapidated building. The contract zone is located within the 2003 Comprehensive Plan's, "Windham Center Growth Area," and is appropriately located on U.S. Route 202.

**2. Permitted Uses**

The following uses, as they are defined in Section 300, shall be permitted in the Windham Center Contract Zone as a matter of right. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- Agriculture
- Building, Accessory
- Campground, Commercial
- Campground, Personal
- Cemetery
- Child Care, Family Home
- Distribution Center
- Dwelling, Single-Family Detached
- Forestry
- Golf Course
- Home Occupation 1
- Home Occupation 2
- Industry, Light
- Kennel, Minor
- Mineral Extraction
- Place of Worship
- Public Building
- Retail Sales
- Sawmill, Temporary
- Shipping Container
- Use, Accessory
- Warehousing, Private
- Warehousing, Public
- Wireless Telecommunications Tower and Facility

**3. Conditional Uses**

The following uses, as defined in Section 300, shall be allowed as a Conditional Use in accordance with Section 513. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- Agriculture, Piggery
- Agriculture, Poultry Facility
- Assisted Living Facility
- Bed and Breakfast Inn
- Boarding Home for Sheltered Care
- Kennel, Major
- Medical Office
- Nursing Home
- Public Utility Facility
- Recreation Facility, Indoor
- Recreation Facility, Outdoor

- Retail Sales, Convenience
- Retail Sales, Nursery
- Riding Stable
- Sawmill, Permanent

**4. Prohibited Uses**

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

**5. Dimensional Standards**

The following dimensional standards shall apply in the Windham Center Contract Zone:

- (a) Minimum Lot Size: 50,000 s.f.
- (b) Net Residential Density: 40,000 sf.
- (c) Minimum Frontage: 150 ft.
- (d) Minimum Front Setback: 30 ft.
  - (1) The minimum front Setback of a lot may be reduced to the average setback distance of the existing buildings located on the lots to either side of said lot.
- (e) Minimum Side Setback: 10 ft.
- (f) Minimum Rear Setback: 10 ft.
- (g) Maximum Building Height: 35 ft.
  - (1) Agriculture, Public Buildings, Church Steeples No Limit
- (h) Maximum Building Coverage: 15%

**6. District Standards**

In addition to Section 500, Performance Standards, these standards shall apply to the following uses in the Windham Center Contract Zone:

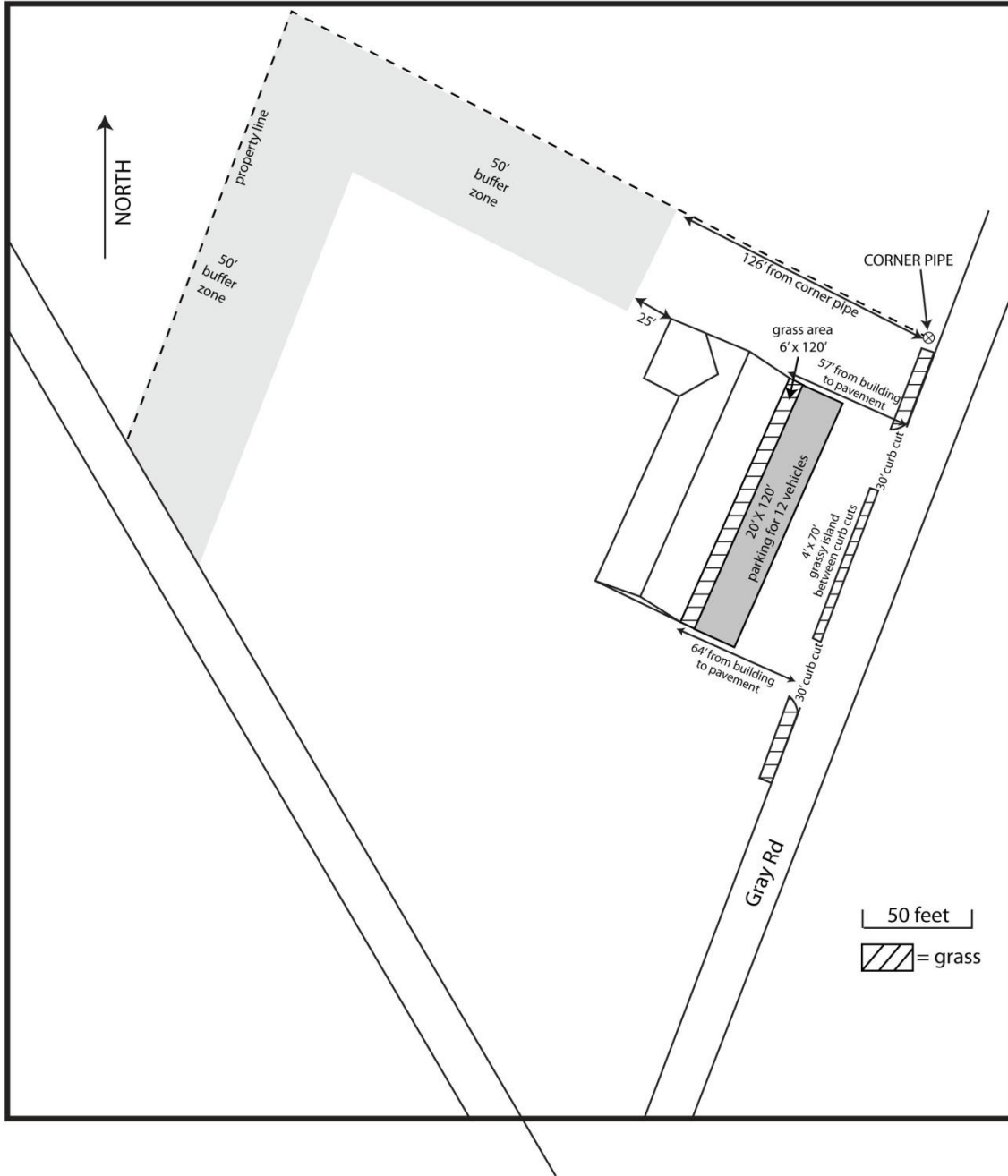
- (a) Agriculture, Poultry Facility
  - (1) A facility may raise twenty-five (25) or fewer birds at any one time.
- (b) Agriculture, Piggery. Piggeries shall conform with the standards for “Agriculture, Piggery” in Section 502 of the Performance Standards.
- (c) Curb Cuts.

- (1) Lots in the contract zone shall be limited to two (2) thirty (30) foot curb cuts on the same street.
  - (2) Curb cuts on the same street serving the same lot shall be separated a minimum distance of sixty (60) feet. An earthen berm with a minimum height of six (6) inches and a maximum height of four (4) feet, covered with loam and seed, shall be installed between, and at the sides of, curb cuts located on the same street.
  - (3) The curb cut turning radius shall be designed by a licensed professional to accommodate ingress and egress by tractor-trailer vehicles. The distance between the curb cut radii may be greater than thirty (30) feet, based on the recommendation of a licensed professional.
  - (4) The curb cut standards of Section 515, with the exception of Subsection 515(B), shall apply to the Windham Center Contract Zone.
- (d) Medical Office. See “Medical Office” in Section 500 Performance Standards for size limitations.
- (e) Buffer Requirements for Specific Non-residential Uses. A landscaped buffer strip with a minimum depth of fifty (50) feet shall be maintained on the north and northwest property lines of the contract zone as depicted in Exhibit C.
- As depicted on Exhibit C, the landscaped buffer along the north property line shall commence at a point twenty-five (25) feet from the northwest corner of the building, or one hundred and twenty-six (126) feet from the property’s northeast corner pipe.
- (f) Parking and Loading. Lots in the contract zone shall meet the standards of Section 812(C) of the Land Use Ordinance, with the following exceptions:
- (1) Distribution Centers shall be required to provide a minimum of two (2) off-street parking spaces per 1,000 s.f. of gross floor area.
  - (2) The loading requirements of Section 812(C)3 shall not be required.
- (g) Retail Sales, Outdoors. Outdoor sales, as defined, shall not be permitted in the Windham Center Contract Zone.
- (h) Signs. For the purposes of sign regulation, the contract zone shall be considered a residential district. Therefore, in addition to all applicable standards contained in Section 700, the sign standards for residential districts contained in Section 709 shall apply to all uses in the contract zone.

EXHIBIT C

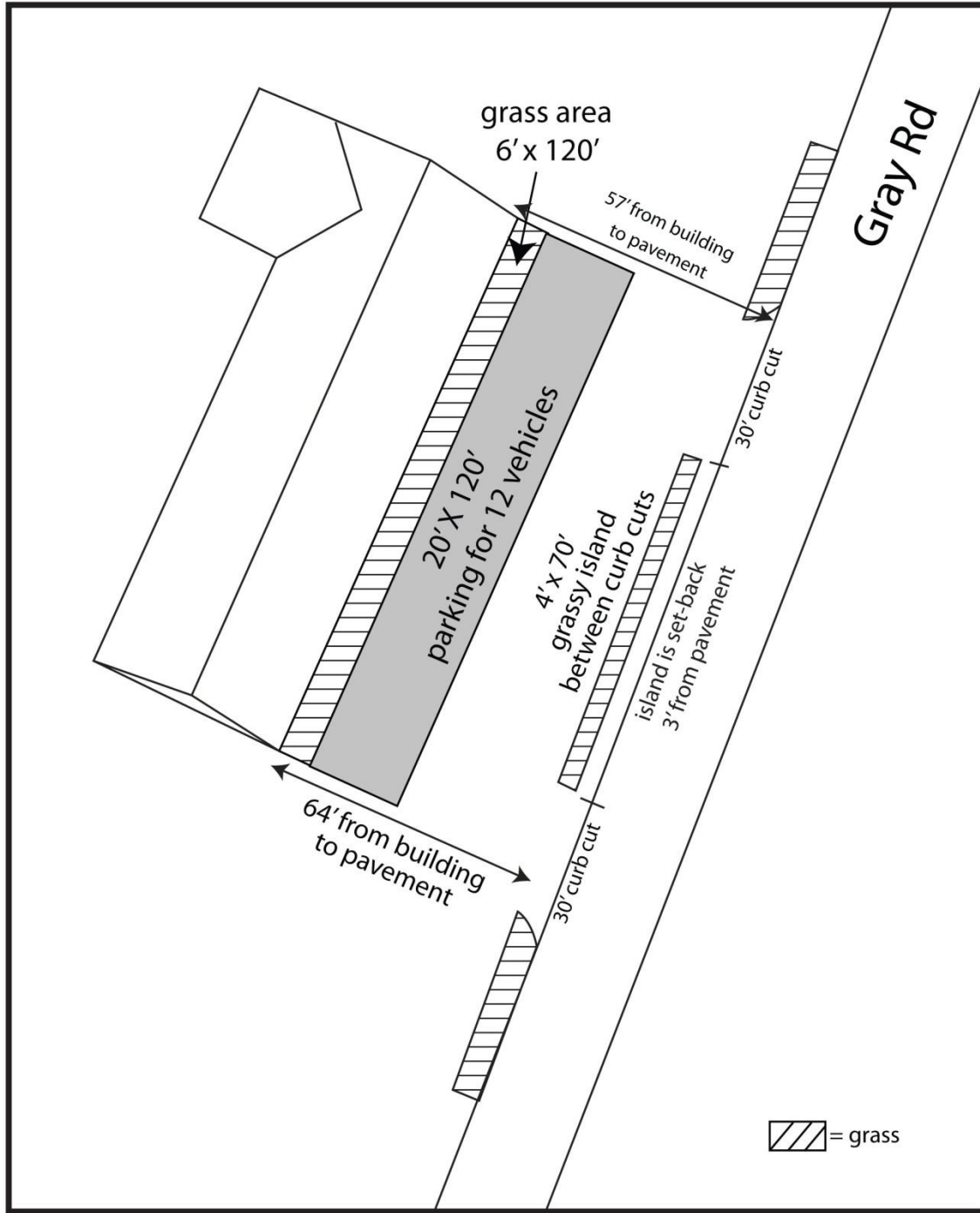
354 Gray Road  
Map 9, Lot 27C

PROPOSED CURB CUTS & PARKING



354 Gray Road  
Map 9, Lot 27C

PROPOSED CURB CUTS & PARKING



CLOSE-UP VIEW

**C. AMENDMENT TO CONTRACT ZONING AGREEMENT  
BETWEEN RKR, LLC AND THE TOWN OF WINDHAM**

This Amendment to Contract Zoning Agreement, made this 24<sup>th</sup> day of September, 2013, by and between the **TOWN OF WINDHAM**, a municipal corporation, located in the County of Cumberland and State of Maine (hereinafter the “Town”) and **RKR, LLC**, a Maine limited liability company with a mailing address of 84 Prospect Street, Biddeford, Maine 04005, (hereinafter “RKR”).

WHEREAS, the Town entered into a Contract Zoning Agreement with Three Stones, LLC dated October 25, 2010 and recorded in the Cumberland County Registry of Deeds in Book 28243, Page 67 (hereinafter the “Contract Zoning Agreement”) that established zoning regulations for a parcel of real estate located at 354 Gray Road, Windham, Maine, (hereinafter “the Property”), also referred to as the Windham Center Contract Zone; and

WHEREAS, the Property consists of Lot 27C on the Town’s Tax Map 9; and

WHEREAS, the Contract Zoning Agreement established use, dimensional and performance standards for the Property, including access regulations; and

WHEREAS, RKR has acquired the Property and seeks to amend the access regulations established by the Contract Zoning Agreement in order to facilitate development and use of the Property; and

WHEREAS, the Town has the authority to enter into a contract rezoning for property and to amend the contract rezoning, pursuant to 30-A M.R.S.A. § 4352(8) and Section 108 of the Windham Land Use Ordinance; and

WHEREAS, after notice and hearing and due deliberation upon this rezoning proposal, the Windham Planning Board recommended this Amendment to the Contract Zoning Agreement



on August 26, 2013 and the Windham Town Council voted to adopt the amendment on September 24, 2013; and

WHEREAS, this Amendment will change only access standards for the Property and will not allow additional uses on the Property; and

WHEREAS, both the Planning Board and the Town Council determined that the original Contract Zoning Agreement was pursuant to and consistent with the Town's Comprehensive Plan and the Town Council has authorized the execution of this Amendment to Contract Zoning Agreement;

NOW, THEREFORE, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. **Amendment to Contract Zoning Agreement, Exhibit B.** The Contract Zoning Agreement is amended to Exhibit B as shown on Exhibit B to this Amendment.
2. **Amendment to be recorded.** RKR shall be responsible for recording a copy of this Agreement, including its Exhibit, in the Cumberland County of Registry of Deeds and for providing proof of the recording to the Code Enforcement Officer and Town Planner.
3. **Remaining provisions remain in full force and effect.** Except as expressly amended herein, the provisions of the Contract Zoning Agreement shall remain in full force and effect.

**TOWN OF WINDHAM**



Anthony T. Plante  
Its Town Manager  
(duly authorized by vote of the  
Windham Town Council on  
September 24, 2013)

**RKR, LLC**

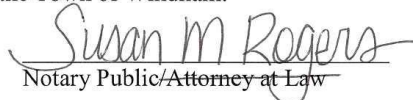


Edward Maurais  
Its Member

STATE OF MAINE  
CUMBERLAND, ss

10/24, 2013

Personally appeared the above-named Anthony T. Plante, in his capacity as Town Manager for the Town of Windham, and made oath that the foregoing instrument is his free act and deed in his said capacity and the free act and deed of the Town of Windham.



Notary Public/Attorney at Law

SUSAN M. ROGERS  
Notary Public, Maine  
My Commission Expires 4/1/2017

Print Name

Yock STATE OF MAINE  
CUMBERLAND, ss

October 24, 2013

Personally appeared the above-named Edward Maurais in his capacity as Member of RKR, LLC, and made oath that the foregoing instrument is his free act and deed in his said capacity and the free act and deed of RKR, LLC.

*Barbara L. DeRosie*

Notary Public/Attorney at Law

BARBARA L. DeROSIE

NOTARY PUBLIC, STATE OF MAINE

~~MY COMMISSION EXPIRES OCT. 5, 2018~~

Print Name

BARBARA L. DeROSIE  
NOTARY PUBLIC, STATE OF MAINE  
MY COMMISSION EXPIRES OCT. 5, 2018

**EXHIBIT B****Windham Center Contract Zone****1. Intent**

The Windham Center Contract Zone intends to enable the redevelopment and reuse of a long-standing commercial use in the Windham Center area. The reuse of this property will benefit the Town through the redevelopment of an abandoned and dilapidated building. The contract zone is located within the 2003 Comprehensive Plan's, "Windham Center Growth Area," and is appropriately located on U.S. Route 202.

**2. Permitted Uses**

The following uses, as they are defined in Section 300, shall be permitted in the Windham Center Contract Zone as a matter of right. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- Agriculture
- Building, Accessory
- Campground, Commercial
- Campground, Personal
- Cemetery
- Child Care, Family Home
- Distribution Center
- Dwelling, Single-Family Detached
- Forestry
- Golf Course
- Home Occupation 1
- Home Occupation 2
- Industry, Light
- Kennel, Minor
- Mineral Extraction
- Place of Worship
- Public Building
- Retail Sales
- Sawmill, Temporary
- Shipping Container
- Use, Accessory
- Warehousing, Private
- Warehousing, Public
- Wireless Telecommunications Tower and Facility

**3. Conditional Uses**

The following uses, as defined in Section 300, shall be allowed as a Conditional Use in accordance with Section 513. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- Agriculture, Piggery
- Agriculture, Poultry Facility
- Assisted Living Facility
- Bed and Breakfast Inn
- Boarding Home for Sheltered Care
- Kennel, Major
- Medical Office
- Nursing Home

- Public Utility Facility
- Recreation Facility, Indoor
- Recreation Facility, Outdoor
- Retail Sales, Convenience
- Retail Sales, Nursery
- Riding Stable
- Sawmill, Permanent

#### 4. Prohibited Uses

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

#### 5. Dimensional Standards

The following dimensional standards shall apply in the Windham Center Contract Zone:

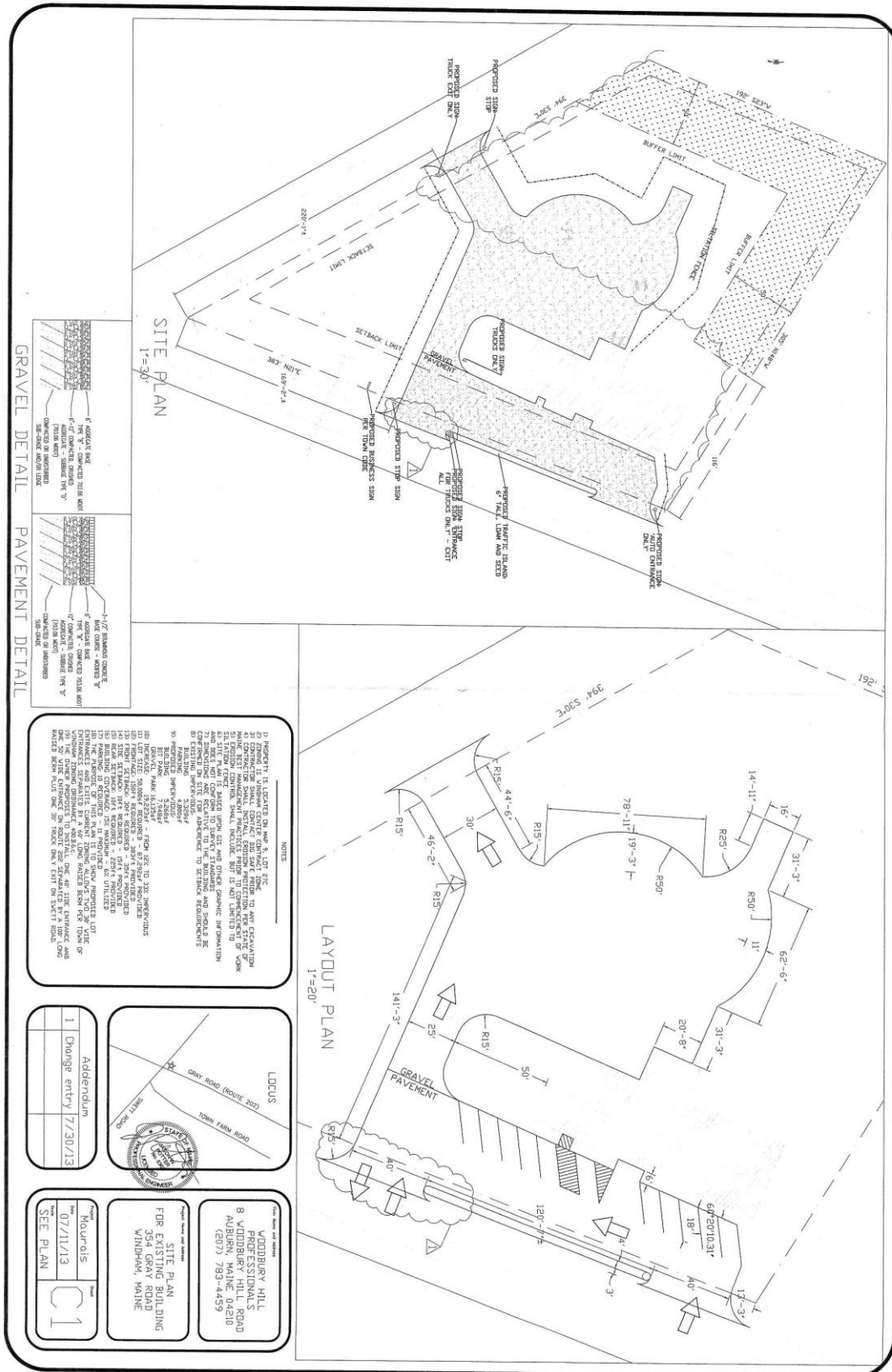
- |   |             |
|---|-------------|
| (a) Minimum Lot Size:   | 50,000 s.f. |
| (b) Net Residential Density:  | 40,000 sf.  |
| (c) Minimum Frontage:   | 150 ft.     |
| (d) Minimum Front Setback:  | 30 ft.      |
| (1) The minimum front Setback of a lot may be reduced to the average setback distance of the existing buildings located on the lots to either side of said lot. |             |
| (e) Minimum Side Setback:   | 10 ft.      |
| (f) Minimum Rear Setback:   | 10 ft.      |
| (g) Maximum Building Height:  | 35 ft.      |
| (1) Agriculture, Public Buildings, Church Steeples  | No Limit    |
| (h) Maximum Building Coverage:  | 15%         |

#### 6. District Standards

In addition to Section 500, Performance Standards, these standards shall apply to the following uses in the Windham Center Contract Zone:

- (a) Agriculture, Poultry Facility
  - (1) A facility may raise twenty-five (25) or fewer birds at any one time.
- (b) Agriculture, Piggery. Piggeries shall conform with the standards for “Agriculture, Piggery” in Section 502 of the Performance Standards.

- (c) Curb Cuts.
- (1) Lots in the contract zone shall be limited to two (2) thirty (30) foot curb cuts on Gray Road and one (1) thirty (30) foot curb cut on Swett Road.
  - (2) Curb cuts on the same street serving the same lot shall be separated a minimum distance of sixty (60) feet. An earthen berm with a minimum height of six (6) inches and a maximum height of four (4) feet, covered with loam and seed, shall be installed between, and at the sides of, curb cuts located on the same street.
  - (3) The curb cut turning radii on Gray Road shall be designed by a licensed professional to accommodate ingress and egress by tractor-trailer vehicles. The distance between the curb cut radii on Gray Road may be greater than thirty (30) feet, based on the recommendation of a licensed professional.
  - (4) The curb cut standards of Section 515, with the exception of Subsection 515(B), shall apply to the Windham Center Contract Zone.
- (d) Medical Office. See “Medical Office” in Section 500 Performance Standards for size limitations.
- (e) Buffer Requirements for Specific Non-residential Uses. A landscaped buffer strip with a minimum depth of fifty (50) feet shall be maintained on the north and northwest property lines of the contract zone as depicted in Exhibit C.
- As depicted on Exhibit C, the landscaped buffer along the north property line shall commence at a point twenty-five (25) feet from the northwest corner of the building, or one hundred and twenty-six (126) feet from the property’s northeast corner pipe.
- (f) Parking and Loading. Lots in the contract zone shall meet the standards of Section 812(C) of the Land Use Ordinance, with the following exceptions:
- (1) Distribution Centers shall be required to provide a minimum of two (2) off-street parking spaces per 1,000 square feet of gross floor area.
  - (2) The loading requirements of Section 812(C)3 shall not be required.
- (g) Retail Sales, Outdoors. Outdoor sales, as defined, shall not be permitted in the Windham Center Contract Zone.
- (h) Signs. For the purposes of sign regulation, the contract zone shall be considered a residential district. Therefore, in addition to all applicable standards contained in Section 700, the sign standards for residential districts contained in Section 709 shall apply to all uses in the contract zone.



Section 400 Amendments

Order 10-153; Date 08-24-2010	Addition of Windham Center Contract Zone
Order 10-162; Date 09-14-2010	Addition of Village Commercial District
Order 10-164; Date 09-14-2010	Change to Outdoor Sales
Order 10-230; Date 12-14-2010	Addition of Restaurants in C1 District.
Order 11-206; Date 12-13-2011	Addition of Medical Marijuana Dispensaries
Order 12-014; Date 03-14-2012	Changes to Backlot Standards
Order 12-042; Date 04-24-2012	Addition of Design Standards
Order 12-148; Date 10-23-2012	Addition of Retirement Community and Care Facility Overlay District
Order 12-149; Date 10-23-2012	Addition of Accessory Apartments
Order 13-071; Date 05-14-2013	Addition of Personal Service Businesses in C3 District
Order 13-072; Date 05-14-2013	Addition of Sidewalk Impact Fee
Order 13-144; Date 09-24-2013	Change to Windham Center Contract Zone
Order 14-164; Date 07-08-2014	Changes to Automobile Repair Services, addition of Automobile Storage Lot
Order 14-387; Date 10-14-2014	Addition of Automobile Auction Facility
Order 14-468; Date 11-18-2014	Change to minimum lot size in RCCF Overlay Zone
Order 14-491; Date 12-16-2014	Change to Cluster Subdivision standards in Farm, Farm-Residential, Light Density Residential, and Medium Residential Districts.



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503	Agriculture, Piggery	5-5
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510	Boarding Home for Sheltered Care	5-8
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Performance Standards – The following standards are applicable in all zoning districts within the Ordinance.

### **501 Accessory Apartment**

The following standards shall apply to accessory apartments created after November 23, 2012:

- A. Shall be attached to a principal dwelling unit.
- B. The owner(s) of the principal dwelling must reside in the principal structure or the accessory apartment.
- C. The accessory apartment shall have a maximum cumulative floor area of six hundred (600) square feet.
- D. The accessory apartment shall have its own entrance.
- E. The maximum number of occupants of the accessory apartment is three (3).
- F. All necessary building or occupancy permits shall be obtained from the Code Enforcement Officer. Compliance with all building codes applicable to the construction of an accessory apartment is required.
  - 1) The permit shall be issued to the property owner and not run with the land. The transfer or sale of the property to a new owner shall require the issuance of a new permit for the current property owner. If the Accessory Apartment does not meet the performance standards of this ordinance at the time of transfer, the new owner shall have thirty (30) days to bring the Accessory Apartment into compliance. If the Accessory Apartment is not brought into compliance with the standards of this ordinance, the Code Enforcement Officer shall cause the use of the accessory apartment to be discontinued. The Accessory Apartment owner may at any time rectify the deficiencies identified by the Code Enforcement Office and re-apply for use of said apartment. All permits shall be recorded at the Cumberland County Registry of Deeds.
- G. Only one (1) accessory apartment shall be permitted per lot.
- H. Accessory apartments shall not count towards the zoning district's maximum residential density standard.
- I. A property on which an accessory apartment is located shall require the installation and use of a septic system that is approved to accommodate the waste water volume from two (2) dwelling units. All applications for an accessory apartment shall include an HHE-200 form that documents the capacity of the existing or proposed system. Following review and approval by the Code Enforcement Officer, the HHE-200 form shall be recorded at the Cumberland County Registry of Deeds.

- J. The accessory apartment shall meet the parking requirements in Section 537 Parking and Loading and Section 812(C) Parking and Loading Requirements.

## 502 Agriculture

### A. Minimum Setbacks

1. Farm Buildings, other than Dwellings - Fifty (50) feet from the property line or one hundred (100) feet from an existing dwelling on neighboring land, whichever is farthest.
2. Feed lots, Fenced Runs, Pens and Similar Animal Raising and Care Facilities - one hundred (100) feet of a neighboring property line, excluding pastures.
3. Roadside Stands for the Sale of Agricultural Products. Twenty (20) feet from the nearest edge of roadway surfaces.

### B. Agriculture Sales - Sales of retail items customarily associated with the primary agricultural business on the property, but not grown, produced, assembled or manufactured on site, may be permitted provided that the lesser of the following two options is met:

1. No more than twenty (20) percent of the agricultural business' gross square footage shall be utilized for the sales and storage of said retail items.
2. No more than 2,000 square feet of the agricultural business' gross square footage may be used for the sales and storage of said retail items.
3. The gross square footage of the agricultural business shall be the calculated using the sum of both the interior and exterior areas used as part of the agricultural business, including any accessory uses to the agricultural business.

### C. Roadside Stands - Shall conform to the following standards:

1. Stands shall be allowed in all districts in which Agriculture is a permitted use or conditional use.
2. Stands shall be used exclusively for the sale of agricultural products.
2. Signs shall conform to provisions set forth in Section 700 Signs.
3. Stands shall be operated on land owned or leased by the person, company or partnership that cultivated and/or produced the agricultural products sold from the stand. The stand does not have to be on the same property on which the agricultural product was cultivated and/or produced.
4. The setback requirement of Subsection 502.A.3., above, shall apply.

### D. Keeping of Domesticated Pets.

1. Dogs and Cats – No limitations
2. Horses, Ponies and Other Large Pets - The raising of more than two (2) of each species of such animals six (6) months of age or older requires conformance with this Section 502 and the standards of the applicable land use district.
3. Chickens. The keeping of chickens is governed by the standards of Section 504 Agriculture, Poultry Facility and Chapter 82 Domesticated Chickens.

- E. Spreading or Disposal of Manure. All spreading or disposal of manure shall be accomplished in conformance with the, "Manual of Best Management Practices for Maine Agriculture," published by the Maine Department of Agriculture in January, 2007, and as this may be amended or superseded.

### **503 Agriculture, Piggery**

- A. Number of Animals. These standards apply to the keeping of two (2) or more pigs that are six (6) months old or older. These standards do not apply to the raising and selling of any number of pigs that are under six (6) months of age.
- B. Setbacks: The following distances are from the identified use to the nearest property not owned or controlled by the operator/owner of the piggery:
  - 1. Structures: 50 ft.
  - 2. Feed lots, pens and extensively used areas: 100 ft.
- C. Erosion and Sediment Control. The property owner shall demonstrate to the Code Enforcement Officer that erosion and sediment runoff will not enter an abutting property.
- D. Spreading or Disposal of Manure. All spreading or disposal of manure shall be accomplished in conformance with the, "Manual of Best Management Practices for Maine Agriculture," published by the Maine Department of Agriculture in January, 2007, and as this may be amended or superseded.

### **504 Agriculture, Poultry Facility**

- A. Number of Animals. These standards apply to the keeping of thirteen (13) or more poultry that are six (6) months old or older in zoning districts in which Agriculture, Poultry Facility is either a permitted use or a conditional use. These standards do not apply to the raising and selling of any number of poultry that are under six (6) months of age. The keeping of twelve (12) or fewer chicken in the residential zoning districts (Farm, Farm Residential, Residential Light, and Residential Medium) is governed by the standards of Chapter 82 Domesticated Chickens.
- B. Setbacks: The following distances are from the identified use to the nearest property not owned or controlled by the operator/owner of the poultry facility:
  - 1. Structure, including Barns or Coops: 50 ft.
  - 2. Feed lots, pens and extensively used areas: 100 ft.
- C. Erosion and Sediment Control. The property owner shall demonstrate to the Code Enforcement Officer that erosion and sediment runoff will not enter an abutting property.

- D. Spreading or Disposal of Manure. All spreading or disposal of manure shall be accomplished in conformance with the, “Manual of Best Management Practices for Maine Agriculture,” published by the Maine Department of Agriculture in January, 2007, and as this may be amended or superseded.

**505 Adult Business Establishment**

- A. Such establishment shall be at least two thousand (2,000) feet from the nearest property line of any school, place of worship, library, playground, child care family home, child care facility or any residential zoning district. Said distance shall be measured in a straight line without regard to intervening structures or objects.
- B. No sexually explicit materials, entertainment, or activity shall be visible from the exterior of the premises.

**506 Automobile Auction Facility**

- A. Automobiles shall be kept on the lot for no more than 180 cumulative days.
  - 1. After 180 days, the operator must prove application to the State of Maine for an abandoned vehicle title or show a legal reason the automobile cannot be sold, such as active litigation.
- B. All stored automobiles shall be kept in a designated parking area. The designated parking area shall be no closer than three hundred (300) feet to a residential structure that conforms to this ordinance and is not owned or controlled by the operator of the Automobile Auction Facility.
- C. The designated parking area shall be screened from public ways and abutting properties. Such screening shall consist of opaque fencing which must be a minimum of six (6) feet in height.
- D. The Automobile Auction Facility shall ensure that leaking fluids from damaged or wrecked vehicles are collected or contained, per applicable Maine Department of Environmental Protection standards.
  - a. Burned vehicles shall be stored under cover to protect them from the elements.
  - b. No stacking of vehicles will be allowed.
- E. No dismantling of automobiles or storage of more than 50 gallons of fluid will be allowed on site.
- F. Automobile Auction Facilities shall require an annual inspection by the Code Enforcement Officer.
  - a. The following checklist will be used as a guide for annual inspections:

	Compliant	Not Compliant
Proof of application to state for automobiles stored for more than 180 days?		
All stored vehicles stored in designated parking area?		

Fencing installed around the designated parking area?		
All burned vehicles stored under cover?		
No evidence of dismantling of automobiles or storage of more than 50 gallons fluids on site?		
Date of Inspection:		
Code Officer signature:		

### 507 Automobile Repair Services

- A. The following standards shall apply to all Auto Repair Services:
1. The sale of gasoline or other petroleum products shall not be allowed as an accessory use (*see standards for Automobile Gas Station*).
  2. Upon completion of all repair work, as requested by the customer, no more than two (2) registered automobiles shall be left on site in excess of forty-five (45) cumulative days each in a calendar year. ( *See definition for "Automobile Graveyard" in Section 300.*) The storage of automobiles in excess of this standard shall not be allowed as an accessory use for Automobile Repair Services established after August 7, 2014 (*see standards for Automobile Storage Lot*).
  3. Automobiles may not be displayed for sale, or sold, on the premises, unless Automobile Sales, Outdoors is a permitted use or a conditional use in the applicable zoning district.

### 508 Automobile Storage Lot

- A. The following standards shall apply to Automobile Storage Lots created after August 7, 2014:
1. Automobiles shall be kept on the lot for no more than 45 cumulative days in a calendar year.
  2. All stored automobiles shall be kept in a designated parking area. The designated parking area shall be no closer than 300 feet to a residential structure that conforms to this ordinance and is not owned or controlled by the operator of the Automobile Storage Lot.
  3. The designated parking area shall be screened from public ways or structures on abutting properties. Such screening shall consist of opaque fencing, which must be a minimum of six (6) feet in height.
  4. The Automobile Storage Lot shall ensure that leaking fluids from damaged or wrecked vehicles are collected or contained, per applicable Maine Department of Environmental Protection standards.
  5. Automobile Storage Lots shall require an annual inspection by the Code Enforcement Officer.

**509 Bed and Breakfast Inn**

- A. The following standards shall apply to all Bed and Breakfast Inns:
  - 1. A maximum of three (3) guest bedrooms shall be allowed in the inn.
  - 2. Total sleeping accommodations shall be for eight (8) or fewer guests.
  - 3. Breakfast shall be the only meal served and shall be limited to overnight guests.
  - 4. Rental for more than 30 cumulative days in a calendar year to the same guest, or guests, is prohibited.
  - 5. The Bed and Breakfast Inn must be the primary residence of the property's owner or operator.
  - 6. A structure shall not be used or occupied as a Bed and Breakfast Inn until:
    - (a) The State Fire Marshal certifies the structure to be in compliance with applicable sections of the NFPA 101 Life Safety Code,
    - (b) All necessary State approvals have been received, and
    - (c) A certificate of occupancy has been issued by the Code Enforcement Officer.

**510 Boarding Home for Sheltered Care**

- A. The facility shall be licensed as a boarding care or congregate care facility according to regulations issued by the Maine Department of Health and Human Services.

**511 Buffer Strip, Landscaped**

- A. The buffer strip shall be adjacent to, and parallel with, the front property line of a lot or parcel;
- B. The buffer strip shall run the entire length of the front property line.
- C. The buffer strip may be interrupted/crossed by driveways, access roads or pedestrian ways, but shall otherwise be maintained in a landscaped state.
  - 1. Driveways and access roads shall cross the buffer strip at an angle that is as close to perpendicular as possible.
  - 2. Public sidewalks may traverse the buffer strip parallel to the lots front lot line.
- D. The buffer strip shall not be used:
  - 1. For parking areas,
  - 2. Drive-through lanes for any use,
  - 3. The storage of material, equipment or waste, or
  - 4. The display of any equipment, material or products.
- E. The buffer strip shall be:
  - 1. Covered with trees or shrubs for at least ten (10) percent of its area
    - (a) The extent of the tree or shrub canopy at full maturity may be used in the calculation of the ten (10) percent coverage requirement.



2. The remaining area shall be covered with any combination of bark mulch, grass or other natural green plant material.
3. The following stormwater infrastructure shall be allowed within the landscaped buffer strip:
  - (a) Low Impact Development (LID) systems as identified in the September 21, 2007 report, "LID Guidance Manual for Maine Communities," as amended.
- F. Ground cover consisting of crushed rock, concrete, asphalt, green paint, or similar materials are not acceptable for the development of a landscaped buffer strip.
  1. These materials shall be permitted if they are integral to the operation of a LID system, as described in Section 511.E.3.(a), as described above.

### **512 Campground, Personal**

- A. Personal Campgrounds may be used for no more than one-hundred and twenty (120) days within a calendar year.

### **513 Central Sewage System**

- A. The following standards, in addition to those required by the State of Maine, shall apply to centralized sewer systems:
  1. A centralized system may include a private sewer collection system flowing into a larger septic tank, or it may include building drains flowing into individual smaller septic tanks.
  2. The wastewater, after receiving primary treatment in the septic tank or tanks, may be pumped or gravity fed to a single subsurface disposal field or several fields on a common land area.
  3. A maintenance agreement between the property owner's served by the central sewage system must be established and submitted to the Town of Windham prior to installation of the central sewage system.

### **514 Child Care, Facility**

- A. Child care facilities must have a license from the Department of Health and Human Services to operate the facility.
- B. All outdoor play areas shall meet applicable State of Maine requirements with regards to boundaries or fencing.

*Note:* Child care applicants should refer to the State plumbing standards in 30-A M.R.S.A. § 4211.

**515 Child Care, Family Home**

- A. Family Home Child Cares must have a certificate from the Department of Health and Human Services.
- B. All outdoor play areas shall meet applicable State of Maine requirements with regards to boundaries or fencing.
- C. The child care operation shall use a maximum of twenty percent (20%) of the total floor area of the dwelling unit in which it is located. The basement floor areas shall be excluded in the calculation of the twenty percent (20%).

*Note:* Child care applicants should refer to the State plumbing standards in 30-A M.R.S.A. § 4211.

**516 Conditional Use**

- A. The Reviewing Authority shall permit as a conditional use any matter so referred to it by other provisions of this Ordinance, provided that the standards of this Section are met.
  1. Conditional use permits run with the land and thus pass from one owner of the property to the next unless the approval is limited to the petitioner by the Review Authority.
- B. Reviewing Authority
  1. Board of Appeals. The Board of Appeals shall serve as the Review Authority for all conditional use applications, except where the application is reviewed by the Planning Board.
  2. Planning Board. The Planning Board shall serve as the Review Authority for all conditional use applications that are submitted in combination with the following:
    - (a) A Minor Site Plan Review application under Section 800 Site Plan Review,
    - (b) A Major Site Plan Review application under Section 800 Site Plan Review, or
    - (c) A Minor or Major Subdivision Review application under Section 900 Subdivision Review.
- C. Submission Timelines
  1. Applications to the Board of Appeals shall be filed at least twenty-one (21) days prior to the meeting at which the applicant wishes to be heard.
  2. Submissions to the Planning Board shall meet the submission deadlines for subdivision or site plan review applications, as appropriate (*See Sec. 800 and 900*).
- D. Submission Requirements. The petitioner shall submit the following information to the proper Review Authority.
  1. A cover letter describing the requested conditional use and location of the property.

2. Written statements describing how the conditional use will meet the review criteria of this Section.
3. Diagrams and/or photographs demonstrating that the conditional use will meet the review criteria of this Section. If the information is contained in either a Site Plan or Subdivision Application, it must be referenced in Subsection 516.D.1., above.
4. Proof of right, title or interest in the property on which the conditional use will be located.
5. An “Ability to Serve” letter from the Portland Water District if public water or sewer is to be supplied to the conditional use.
6. Documentation of the applicant’s technical capacity to implement the proposed use.

E. Application Fees

1. A non-refundable application fee as established by the Town Council.
2. A Peer review escrow deposit as established by the Town Council,
  - (a) Unexpended peer review escrow funds shall be returned to the applicant.

F. Consulting and Review Fees

1. The Review Authority may retain the services of an independent consulting firm for the review and/or post-approval inspection of any conditional use application.
2. The following procedures shall govern the use of an independent consulting firm
  - (a) Board of Appeals. The provisions of Section 1103.C. (*Board of Appeals Consulting and Review Fees*),
  - (b) Planning Board and Staff Review Committee: The provisions of Section 810.C. (*Site Plan Review Consulting and Review Fees*).

G. Public Hearing

1. The Review Authority shall hold a public hearing on any conditional use application.
2. Notification Requirements:
  - (a) The notice shall contain the time, date, and place of the hearing.
    - (1) Published in a newspaper of general circulation at least seven (7) days prior to the hearing.
    - (2) Mailed to abutting property owners at least seven (7) days prior to the hearing.
      - (i) Notices shall be deemed given when said notices are mailed. The failure of any petitioner or property owner to receive said notice shall not necessitate another hearing.

H. Review Criteria. The Reviewing Authority shall have the power and duty to approve, approve with conditions, or deny conditional use applications based on the following standards:

1. **Property Value.** The proposed use will not depreciate the economic value of surrounding properties.
2. **Wildlife Habitat.** The proposed use will not damage significant wildlife habitat or spawning grounds identified by the Maine Department of Inland Fisheries and Wildlife or by the Town of Windham's Comprehensive Plan.
3. **Botanical Species.** The proposed use will not damage rare or endangered botanical species as identified by the Maine Department of Conservation or by the Town of Windham's Comprehensive Plan.
4. **Potable Water**
  - (a) The proposed use has access to potable water,
  - (b) The proposed use will not burden either a groundwater aquifer or public water system.
5. **Sewage Disposal.** The proposed use has adequate capacity to dispose of sewage waste. A change from one use to another use must show that either:
  - (a) The existing sewage system has adequate capacity for the proposed use, or
  - (b) The existing system will be improved, or a new system will be installed to provide adequate waste disposal capacity.
6. **Traffic.** The proposed use has adequate sight distance as established by current Maine DOT Highway Entrance and Driveway Rules.
7. **Public Safety.** The proposed use will not overburden police, fire and rescue services, as determined by response time, accessibility to the site of the proposed use, and numbers and types of emergency personnel and equipment presently serving the community.
8. **Vibration.** The proposed use will not produce inherently and recurrently generated vibrations that exceed a peak particle velocity greater than 2.0 at the closest "protected structure," as defined by the Maine Department of Environmental Protection.
9. **Noise.** The proposed use shall meet the noise standards in Section 812.S. of the Site Plan Review Ordinance.
10. **Off-Street Parking and Loading.** The proposed use meets the parking and loading standards of Section 812.C. Site Plan Review.
11. **Odors.** The proposed use will not emit noxious or odorous matter in such quantities as to be offensive at the lot boundaries.
12. **Air Pollution.** No emission of dust or other form of air pollution is permitted which can cause any damage to health, to animals or vegetation, or other forms of property,

- or which can cause any excessive soiling at any point, and in no event any emission, from any activity permitted composed of any solid or liquid particles in concentration exceeding three-tenths (0.3) grain per cubic foot of the conveying gas or air at any point.
13. **Water Pollution.** No discharge at any point into any private sewage disposal system or stream or into the ground of any materials in such nature or temperature as to contaminate any water supply or otherwise cause the emission of dangerous or objectionable elements is permitted.
  14. **Erosion and Sediment Control.** The proposed use will not cause water pollution, sedimentation, erosion, nor contaminate any water supply, nor reduce the capacity of the land to hold water, so that a dangerous or unhealthy condition may result.
  15. **Hazardous Material.** No use shall for any period of time discharge across the boundaries of the lot wherein it is located toxic and noxious matter in concentrations so that a dangerous or unhealthy condition may result.
  16. **Zoning District and Performance Standards.** The proposed use meets the applicable zoning district standards in Section 400 and the applicable performance standards of Section 500.
  17. **Solid Waste Management.** The proposed use shall provide for adequate disposal of solid wastes. All solid waste must be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes.
- I. **Conditions of Approval.** In granting a conditional use, the Reviewing Authority shall have the authority to impose such conditions as it deems necessary in furtherance of the intent and purpose of this Ordinance, to assure that there will be no adverse effects on adjacent properties, and to assure that the proposed use or modification will be compatible with other uses in the neighborhood or district. Such conditions of approval may be imposed based upon, but shall not be limited to, the following factors:
1. The location of drives, parking areas, lighting, signs, dumpsters, snow storage areas and outdoor storage areas,
  2. Access to the site for vehicular and pedestrian traffic, and emergency access,
  3. Sight distance at access points,
  4. Fences, screening and buffering,
  5. Landscaping and stormwater drainage,
  6. Hours of Operation
  7. Any other factors relating to the impact of the proposed use on neighboring properties.
- J. **Inspections.** The Reviewing Authority may require the provision of third party inspections during installation of the proposed use.

1. The applicant shall be responsible for all third party inspections,
2. An escrow account for the provision of third party inspections shall be established prior to the issuance of a building permit, or installation of the proposed use.
  - (a) All unexpended funds from the escrow account shall be returned to the applicant.

### **517 Controlled Access Street**

- A. For the purposes of this Ordinance, only the following streets shall be classified as controlled access streets: Manchester Drive.
- B. All curb cuts on a controlled access street must be spaced at least three-hundred (300) linear feet from the nearest curb cut on said controlled access street.

*(See Sec. 300 Definition of "Street Classification")*

### **518 Curb Cuts and Driveway Openings**

- A. These standards provide for the review of any entrance onto a public way for compliance with sound construction and design practices to ensure that traffic safety, drainage and public improvements are not adversely affected. In many cases, this section works in conjunction with the street design standards in Section 900 Subdivision Review.
- B. Zoning District Standards
  1. F, FR, RL, RM Districts
    - (a) A parcel shall be limited to two (2) curb cuts on the same street.
      - (1) The Planning Board may waive this standard in the C1 District to allow a maximum of two (2) curb cuts on a non-Arterial street if the request is part of a Site Plan or Subdivision Application. The applicable waiver criteria of Section 800 Site Plan or Section 900 Subdivision shall apply.
    - (b) Each curb cut shall be limited to thirty (30) feet in width.
      - (1) The Planning Board may waive this standard if the request is part of a Site Plan or Subdivision Application. The applicable waiver criteria of Section 800 Site Plan or Section 900 Subdivision shall apply.
  2. C1, C2, C3, I Districts
    - (a) A parcel shall be limited to one (1) curb cut on the same street.
      - (1) The Planning Board may waive this standard in the C-1 District to allow a maximum of two (2) curb cuts on a non-Arterial street if the request is part of a

Site Plan or Subdivision Application. The applicable waiver criteria of Section 800 Site Plan or Section 900 Subdivision shall apply.

(b) Each curb cut shall be limited to forty (40) feet in width.

(1) The Planning Board may waive this standard if the request is part of a Site Plan or Subdivision Application. The applicable waiver criteria of Section 800 Site Plan or Section 900 Subdivision shall apply.

(c) Parking areas with more than two (2) parking spaces shall be so arranged that vehicles can maneuver within such areas and exit onto the street in a forward motion.

C. Permit Required

1. No driveway, entrance or approach or other improvement within the limits of a public right-of-way may be constructed, altered or relocated except in accordance with an Entrance Permit issued by the Town upon application.
2. The Town Council may establish the fee for an Entrance Permit.
3. Entrance Permits shall be reviewed and approved by the Director of Public Works, or his designee.
4. The Entrance Permit shall be valid for a period of twelve (12) months from the date of original issue.
5. No entrance, approach or other improvement constructed on a public right-of-way shall be relocated or its dimensions altered without an Entrance Permit from the Town.
6. The property owner is responsible for future maintenance of the entrance within the limits of the public right of way and shall maintain the entrance in accordance with the approved permit.
7. All work to a curb cut in accordance with the approved permit must be completed prior to the issuance of an occupancy permit for any structure accessed by said curb cut, except for the following:
  - (a) During periods of the year in which asphalt may not be obtained from a manufacturer, the Director of Public Works or Code Enforcement Officer may grant a conditional certificate of occupancy with a condition that all required work on the curb cut must be completed within two (2) months of the opening of the local asphalt plants.

- (1) Failure to complete all work to a curb cut in accordance with the approved permit shall constitute a violation of this Ordinance. (*See Sec. 1000 Administration*)

#### D. Approval Criteria

1. General. Entrances shall be designed and constructed to provide safe access to the public right-of-way. Applicants are encouraged to comply with the "Access Management Handbook for Local Officials" as developed by the Maine Department of Transportation, 1994, as amended.
2. Applicant. The applicant for a permit shall be the owner of the property being served, or his designee. Any driveway or approach constructed by the owner shall be for the bonafide purpose of securing access to the owner's property and not for the purpose of parking or servicing vehicles in, or on, the public right-of-way.
3. Sight Distance Criteria. All entrances shall be so located such that vehicles approaching or using the entrance will be able to obtain adequate sight distance in both directions along the public way or to maneuver safely and without interference with traffic.
  - (a) Measurements to determine sight distance shall be made in the proposed entrance at a point ten feet (10') from the edge of the traveled way with the height of eye three and one-half feet (3.5') above the pavement. The sight distance shall be computed from this point measuring along the roadway to a point where an approaching height of object four and one-quarter feet (4.25') is first seen.
  - (b) Driveway placement shall be such that an exiting vehicle has an unobstructed sight distance according to the minimum sight distance standards in Sec. 911.M.4. and Table 1 of Sec. 900 Subdivision Review. (*See Sec. 900 Subdivision Review*)

#### E. Geometry

1. The entrance shall have a maximum slope of 3% for a minimum of one car length from the edge of pavement of the public street.
2. For uncurbed public rights-of-way, the entrance shall in general slope away from the public street surface at a rate of not less than one-quarter inch per foot, nor more than one-inch per foot for a distance of not less than the prevailing width of the existing shoulder, but in no case less than four feet (4') from the edge of pavement.
3. The entrance should intersect the traveled public street in accordance with the applicable standards in Table 3 of Section 900 Subdivision Review. For driveways, the minimum angle of street intersection standards for a "Local Street" shall apply. (*See Table 3 in Appendix B Street Standards*)
4. No part of the entrance shall extend beyond the property lot frontage for the lot being served.



5. The entrance shall be set back at least 50 feet from a public intersection.

F. Drainage

1. Existing roadside drainage in gutter or ditch lines shall not be altered or impeded by the applicant. The applicant must provide at his/her expense suitable and approved drainage structures at all entrances.
2. The applicant, at his/her expense, may be required to make improvements to existing drainage structures to mitigate any impacts of the proposed curb cut.
3. Surface drainage shall be provided so that all surface water on the areas adjacent to the road shall be carried away from the roadway.
4. Where a drainage culvert is required to maintain roadside drainage the Town must approve the pipe diameter/length and type of pipe material prior to installation. In any case, the pipe size shall be at least 12 inches in diameter.

G. Construction

1. The owner shall be responsible for all construction and restoration of disturbed areas for the entrance within the limits of the public right-of-way.
2. The entire portion of any entrance within the limits of the public right-of-way shall be constructed with a well-graded gravel base course that meets the aggregate sub-base standards for the street on which the entrance is located. (*See Table 4 in Appendix B Street Standards*)
3. The entrance shall have a paved apron that extends at least four feet (4') back from the edge of pavement of the public street. At a minimum, the paved apron shall consist of a one-and-a-half inch (1.5") base course that complies with the HMA 19.0 mm standard.

H. Curb and Sidewalk

1. When sidewalk or curb exists at the proposed entrance the applicant shall remove and replace such materials at the applicant's expense. Any granite curb to be removed by the applicant will remain the property of the Town.
2. Where curb exists, curb tip-downs shall be provided at each side of the new entrance.
3. Where sidewalk is removed to accommodate a new entrance a new walk surface of equal type construction is to be provided. In general Sidewalks shall meet the following standards:

- (a) The maximum sidewalk longitudinal transition slope is not to exceed 1 vertical to 12 horizontal.
  - (b) The maximum sidewalk cross-slope is not to exceed 2%.
  - (c) No abrupt changes in grade are permitted and the maximum curb reveal crossing a walkway is 0.5 inch or less.
4. The sidewalk area at all entrances shall meet the standards of the Americans with Disabilities Act.

### **519 Developable Land**

- A. Land proposed for development shall meet the following standards:
  1. A parcel of land that meets the standards of the zoning district in which it is located, or
  2. A parcel of land that meets one of the following conditions:
    - (a) An approved backlot (See Section 529 “Lot, Backlot)
  3. If located in an approved subdivision, a parcel of land that meets the standards for “Net Residential Area or Acreage” in section 500 Performance Standards.

### **520 Drive-through Facility**

- A. A drive-through facility shall only be allowed as part of a principle use that is allowed as either a permitted use or conditional use in the applicable zoning district. (*See Sec. 400 Zoning Districts*)

### **521 Driveway**

- A. A driveway created after October 22, 2009 shall not be used to provide the minimum frontage required by the zoning district in which a lot is located, except for driveways constructed to provide lot frontage prior to October 22, 2009 that meet the following standards:
  1. The driveway must be located within a defined right-of-way or easement.
  2. The driveway shall not be used to obtain the required minimum frontage for more than four (4) lots.
    - (a) A driveway may only be used to provide the required lot frontage for five (5) or more lots, if the entire length of the driveway is improved to applicable private way or public street standards.
  3. Where a lot is created on an existing driveway after October 22, 2009 the minimum frontage required by the zoning district in which the proposed lot is located must be provided on the driveway.

**522 Dwelling, Mixed Use**

- A. The following standards shall apply to mixed use dwellings:
  - 1. These uses shall not be permitted in the basement or first story of a building.
  - 2. The entire building in which the uses are located shall be equipped with a sprinkler system approved by the Windham Fire Department or State Fire Marshall's Office.

**523 Home Occupation 1**

- A. Permit Required. A permit must be obtained from the Department of Code Enforcement prior to the installation of a Home Occupation 1.
  - 1. The granting of a home occupation shall apply to the applicant only while the applicant resides at the property.
- B. Permitted Uses. The following uses, as defined in Section 300, shall be allowed as a Home Occupation 1:
  - 1. Artist Studio
  - 2. Small Engine Repair.
  - 3. Business and Professional Office
  - 4. Service Business, Personal (*See Subsec. 523.C.1. below*)
- C. Standards. In making its findings, the Department of Code Enforcement shall use the standards for a Home Occupation 2 in Section 522.F. and the following:
  - 1. Service Business Personal. When authorized as a Home Occupation 1, this use shall not include laundry or dry cleaning services. (*Laundry and dry cleaning services may apply under Sec. 524 Home Occupation 2*)
- D. Conditions. The Department of Code Enforcement may place conditions on the home occupation to minimize impacts on area properties. The conditions must be related to the Code Enforcement Officer's findings on the standards listed in Subsection 524.F.

**524 Home Occupation 2**

- A. Approval Required. The Board of Appeals must approve all applications for a Home Occupation 2.
  - 1. The granting of a home occupation shall apply to the applicant only while the applicant resides at the property and shall not be transferable to a subsequent resident of the property.
- B. Public Notification. Notice shall be sent to all owners of abutting property at least seven (7) days prior to the Board's initial consideration of an application.
- C. Public Hearing. The Board of Appeals shall hold a public hearing on any application. Notice of the public hearing shall be:
  - 1. Mailed to the owners of all abutting property at least seven (7) days prior to the hearing,

2. Advertised in a newspaper of general circulation at least seven (7) days prior to the hearing.
- D. Permitted Uses. Home Occupation 2 uses shall be as follows:
1. Uses that meet the standards of Subsection 524.F,
  2. Uses that are not prohibited by Subsection 524.E.
- E. Prohibited Uses. The following uses are specifically prohibited as a Home Occupation 2:
1. Auto Repair Services
  2. Welding
  3. Slaughterhouse
  4. Smoke House.
- F. Standards
1. The home occupation shall be carried on wholly within the dwelling or accessory structure.
  2. The home occupation shall be carried on primarily by a member or members of the family residing in the dwelling unit.
    - (a) Not more than two (2) persons who are not family members residing in the dwelling unit shall be employed.
  3. There shall be no exterior display, no exterior sign, other than those permitted in Section 705.D Signs, no exterior storage of materials and no other exterior indication of the home occupation or variation from the residential character of the principal building.
  4. Objectionable conditions such as noise, vibration, smoke, dust, electrical disturbance, odors, heat, glare or activity at unreasonable hours, shall not be permitted.
  5. In addition to the off-street parking provided to meet the normal requirements of the dwelling, adequate off-street parking shall be provided for the following:
    - (a) Vehicles of each employee, and
    - (b) Vehicles of the maximum number of users which the home occupation may attract during peak operating hours.
  6. The home occupation shall not utilize more than twenty percent (20%) of the total floor area of the dwelling unit. The basement floor area and accessory structure floor area shall be excluded in the calculation of the twenty percent (20%).
  7. Evidence shall be provided that the property's subsurface disposal system can accommodate the wastewater generated by the home occupation.
  8. The home occupation shall not generate traffic of a substantially greater volume than would normally be expected in the neighborhood.

9. If renting or leasing, the tenant must demonstrate the property owner's approval.
- G. Conditions. The Board of Appeals may place conditions on the home occupation to minimize impacts on area properties. The conditions must be related to the Board of Appeal's findings on the standards listed in Subsection 524.F.

**525 Hotel**

- A. Rental for more than 30 cumulative days in a calendar year to the same guest, or guests, is prohibited.

**526 Industry, Light**

- A. All manufacturing processes must be wholly contained within a building,
- B. The manufacturing, stockpiling or distribution of hazardous materials shall not be permitted; however
  1. The storage and use of hazardous materials as part of a production process shall be permitted.

**527 Kennel, Major**

- A. The kennel, including all uses accessory to the kennel, must be set back a minimum of two hundred (200) feet from an abutting residential structure, or
- B. A minimum of one hundred (100) feet from the lot line where there is no abutting residential structure.

**528 Kennel, Minor**

- A. The kennel, including all uses accessory to the kennel, must be set back a minimum of two hundred (200) feet from an abutting residential structure, or
- B. A minimum of one hundred (100) feet from the lot line where there is no abutting residential structure.

**529 Lot, Backlot**

- A. Zoning Districts. Backlots shall be permitted in the following zoning districts:
  - Farm
  - Farm-Residential

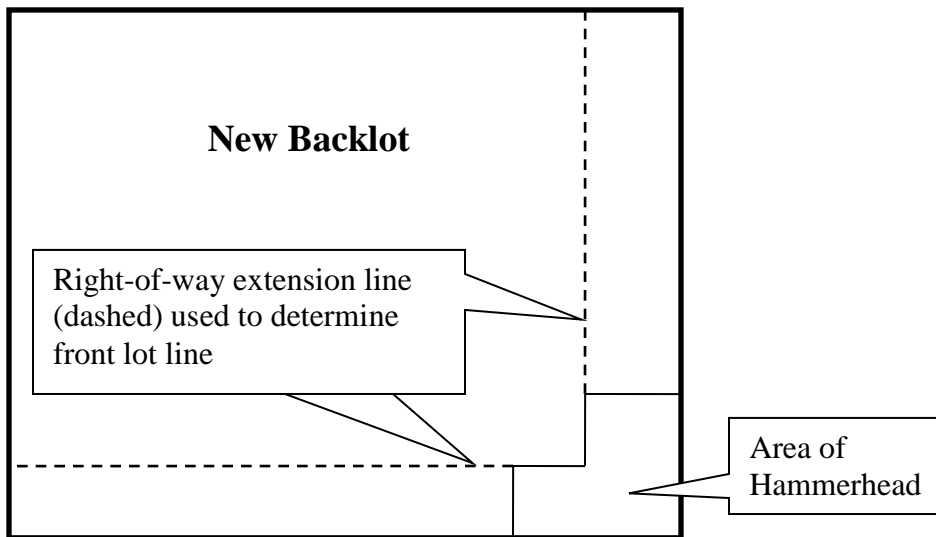
- Light-Density Residential
  - Medium-Density Residential
- B. Standards. The following standards shall apply to the creation of backlots, or the extension of existing backlot right-of-ways, in accordance with the applicable effective dates:
1. General Standards. The following general standards apply to backlots that are created after March 14, 2012 that are accessed via rights-of-way that are created after March 14, 2012:
    - (a) Rights-of-Way.
      - (1) Backlots must be accessed by a right-of-way having a minimum width of fifty (50) feet. The required minimum width must be continued for the entire length of the right-of-way.
      - (2) Extension of a right-of-way to serve additional backlots shall meet the applicable street construction standards of Section 550.
        - a) If the addition of lots on a right-of-way falls within a different street standard, the entire right-of-way shall be improved in accordance with the street standards in Section 550.
      - (3) A hammerhead turnaround shall be provided in accordance with Section 550(B)(8)(f)(2).
    - (4) Right-of-Way Extensions:
      - a) The first hammerhead created after March 12, 2012 may be retained as part of the right-of-way and may continue to be used to meet the minimum frontage requirement of the zoning district. Hammerheads created prior to that date will not be required to be removed, even if this results in more than one hammerhead on a right-of-way.
      - b) All subsequent hammerheads created after March 12, 2012 shall be removed if a road is extended beyond the location of said existing hammerhead turnaround(s). After the hammerhead turnaround is removed, all lots must continue to comply with the minimum frontage requirement of the zoning district.
  - (b) Frontage. The backlot shall meet the minimum frontage requirement of the applicable zoning district along the right-of-way.
    - 1) All sides of a hammerhead turnaround right-of-way may be used in the calculation of frontage. If the hammerhead turnaround is removed to accommodate future right-of-way extensions, the original lot must still meet the minimum lot frontage requirement.
  - (c) Minimum Setback Requirements
    - (1) The required minimum front setback standard for structures constructed on a backlot shall be measured from the closest edge of the right-of-way.

- (2) Minimum setbacks from a new right-of-way do not apply to structures on abutting properties that do not obtain their frontage from said right-of-way.
- (3) Front Lot Line. For purposes of determining the front lot line, and the front setback, the right-of-way shall be deemed to run from one side of the lot to the other side of the lot if it ends prior to that point. *(See Diagram A)*
- (4) Corner Lots. If a corner lot is created by the installation of a right-of-way, the minimum setbacks shall be met in accordance with the corner lot standards in Section 500. The installation of a hammerhead turnaround does not constitute the creation of a corner lot. Backlots that obtain their frontage from a hammerhead turnaround shall choose which side of the hammerhead turnaround will constitute the front lot line. The designated front lot line shall be stated on the building permit and shall not be changed after said designation. *Note: If a choice of front lot lines is available, care should be taken to plan for the setback requirements necessary for future right-of-way extensions.*

If the minimum setbacks for corner lots cannot be met, the applicant may apply for a dimensional variance in accordance with Section 1100 of this Ordinance.

- (5) No dwelling unit shall be erected on a backlot that is closer than two hundred (200) feet from an existing public street or private way.

**Diagram A**  
**Front Lot Line**



2. Standards for backlots, rights-of-way, and the extension of rights-of-way in existence prior to March 14, 2012.
  - (a) Rights-of-way

- (1) A right-of-way serving one (1) or more backlots that is less than fifty (50) feet in width may continue to provide access to that existing lot or any lot divided from that lot which does not involve the extension of the right-of-way.
  - (2) Extension of an existing right-of-way used to access a backlot(s) shall meet the following standards:
    - a) The width of the right-of-way extension shall be at least 50 feet in width.
    - b) A hammerhead turnaround shall be provided in accordance with Section 550(B)(8)(f)(2).
      - (i) The first hammerhead created after March 12, 2012 may be retained as part of the right-of-way and may continue to be used to meet the minimum frontage requirement of the zoning district. Hammerheads created prior to that date will not be required to be removed, even if this results in more than one hammerhead on a right-of-way.
      - (ii) All subsequent hammerheads created after March 12, 2012 shall be removed if a road is extended beyond the location of said existing hammerhead turnaround(s). After the hammerhead turnaround is removed, all lots must continue to comply with the minimum frontage requirement of the zoning district.
    - c) The aggregate sub-base and base courses of the road extension shall meet the standards of Table 4 of Appendix B.
    - d) The minimum travel way width of the road extension shall be 18 feet.
    - e) Existing hammerhead turnaround(s) must be removed if a road is extended beyond the location of said existing hammerhead turnaround(s). After the hammerhead turnaround is removed, all lots must continue to meet the minimum frontage requirement of the zoning district.
- (b) Frontage
- (1) Division on Existing Right-of-way. New backlots, created on an existing right-of-way that serves an existing backlot, shall meet the minimum frontage requirement of the applicable zoning district.
  - (2) Extension of Existing Right-of-way. Backlots created on the extension of an existing right-of-way shall meet the minimum frontage requirement of the applicable zoning district.
  - (3) All sides of a hammerhead turnaround right-of-way may be used in the calculation of frontage.
- (c) Minimum Setback Requirement.
- (1) The required minimum front setback for existing or new structures located on an existing backlot or existing right-of-way shall be measured from the property line rather than from the closest edge of the right-of-way after a right-of-way is placed on the property.
  - (2) Existing or new structures located on the extension of an existing right-of-way shall meet the required minimum front setback from the closest edge of the right-of-way after a right-of-way is placed on the property. If the minimum



setback requirements cannot be met, the applicant may apply for a dimensional variance in accordance with Section 1100 of this Ordinance.

- (3) **Corner Lots.** If a corner lot is created by the extension of a right-of-way, the minimum setbacks shall be met in accordance with the corner lot standards in Section 500. The installation of a hammerhead turnaround does not constitute the creation of a corner lot. Backlots that obtain their frontage from a hammerhead turnaround shall choose which side of the hammerhead turnaround will constitute the front lot line. The designated front lot line shall be stated on the building permit and shall not be changed after said designation. *Note: If a choice of front lot lines is available, care should be taken to plan for the setback requirements necessary for future right-of-way extensions.*

If the minimum setbacks for corner lots cannot be met, the applicant may apply for a dimensional variance in accordance with Section 1100 of this Ordinance.

- (4) **Minimum setbacks from the extension of an existing right-of-way** do not apply to structures on abutting properties that do not obtain their frontage from said right-of-way.
- (5) **No dwelling unit shall be erected on a backlot that is closer than two hundred (200) feet from an existing public street or private way.**

### **530 Lot, Corner**

- A. **Front Setbacks.** The required front setback shall be required on both sides of the lot that front on a public or private right-of-way.
- B. The remaining two sides of the lot shall meet the side yard requirements of the applicable zoning district.
- C. **Rear Setbacks.** A rear setback is not required for corner lots.

### **531 Manufactured Housing**

- A. **Manufactured housing, as defined, shall be allowed in any district in which single-family detached dwellings are permitted.**
- B. **Manufactured housing shall meet all applicable standards of 30-A, M.R.S.A. § 4358.**

### **532 Medical Marijuana**

Notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, these performance standards, when enacted, shall govern any proposed medical marijuana dispensary for which an application has not been submitted and acted on by the Review Authority identified in Section 516 prior to January 11, 2010.

The following standards apply to all medical marijuana dispensaries:

- A. Location criteria. No medical marijuana dispensary shall be sited within 500 feet of the lot lines of any of the following:
- A public or private school;
  - Any juvenile or adult halfway house, correctional facility, or substance abuse rehabilitation or treatment center;
  - A State of Maine licensed child care facility; or
  - A State of Maine licensed family home child care

The distance cited in this subsection shall be measured between the lot line of the proposed site for the medical marijuana dispensary and the lot line of the site of the use listed in subsections (1) or (2) above at their closest points.

- B. Hours of operation. Medical marijuana dispensaries may be open for business only between the hours of 8:00 a.m. and 5:00 p.m., locally prevailing time.
- C. Signage and advertising. All signage and advertising for a medical marijuana dispensary shall comply with all applicable provisions of Section 700 of the Land Use Ordinance. In addition, no signage or advertising shall use the word “marijuana” or “cannabis,” or any other word, phrase or symbol commonly understood to refer to marijuana unless such word, phrase or symbol is immediately preceded by the word “medical” in type and font that is at least as readily discernible as all other words, phrases or symbols on the sign. Such signage and advertising must clearly indicate that the products and services are offered only for medical marijuana patients and primary caregivers.
- D. Security requirements. Security measures at a medical marijuana dispensary and any associated cultivation facility shall include, at a minimum, the following:
1. security surveillance cameras installed, recording and operating 24 hours a day, 7 days a week to monitor all entrances, along with the interior and exterior of the premises, to discourage and facilitate the reporting of criminal acts and nuisance activities occurring at the premises;
    - (a) All security recordings shall be preserved for at least thirty (30) days by the medical marijuana dispensary. The medical marijuana dispensary shall provide the Police Chief or his designee with the name and functioning telephone number of a 24-hour on-call staff person to whom the Town may provide notice of any operating problems associated with the medical marijuana dispensary.
  2. door and window intrusion robbery and burglary alarm systems with audible and Police Department notification components that are professionally monitored and maintained in good working condition;
  3. exterior lighting that illuminates the exterior walls of the licensed premises and complies with applicable provisions of Section 812(R) of the Land Use Ordinance.

- The Code Enforcement Officer shall approve a photometric plan submitted by the applicant. The plan shall be signed by a Maine licensed professional. The photometric plan shall demonstrate how the lighting will illuminate the exterior walls of the licensed premise while complying with the applicable requirements of Section 812(R). The applicant shall be required to install all exterior lighting in accordance with the approved photometric plan; and
4. deadbolt locks on all exterior doors and locks or bars on any other access points (e.g., windows).
- E. Cultivation. If there is both the cultivation and dispensation of marijuana occurring on the same site, the cultivation area shall not be greater than 25% of the total floor area of the portion of the building used for dispensation of marijuana.
- F. On-site consumption of medical marijuana. The consumption, ingestion or inhalation of medical marijuana on or within the premises of a medical marijuana dispensary or cultivation facility is prohibited; provided, however, that a medical marijuana dispensary employee who is a registered patient, as that term is defined in 22 M.R.S.A. § 2422(12), as may be amended, may consume medical marijuana within the enclosed building area of the premises if such consumption occurs via oral consumption (i.e., eating only). For purposes of this subsection, the term “premises” includes the actual building, as well as any accessory structures, parking lot or parking areas, or other surroundings within 200 feet of the medical marijuana dispensary’s entrance.
- G. Visibility of activities; control of emissions; disposal plan.
1. All activities of medical marijuana dispensaries and cultivation facilities, including, without limitation, cultivating, growing, processing, displaying, selling and storage, shall be conducted indoors.
  2. No marijuana or paraphernalia shall be displayed or kept in a dispensary or cultivation facility so as to be visible from outside the premises.
  3. Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting a dispensary or cultivation facility must be provided at all times. Sufficient measures shall be provided for the proper disposal of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations.
  4. All medical marijuana dispensaries shall have in place an operational plan for proper disposal of marijuana and related byproducts. The plan shall be placed on file with the Code Enforcement Officer and the Chief of Police. Disposal records created and maintained in accordance with State of Maine statutes shall be submitted each month to the Code Enforcement Officer and Chief of Police. The disposal records for each month shall be submitted no later than the fifteenth (15) day of the following month.

- H. Sale of edible products. No food products shall be sold, prepared, produced or assembled by a medical marijuana dispensary except in compliance with all operating and other requirements of state and local law and regulation, including, without limitation, food establishment licensing requirements. Any goods containing marijuana for human consumption shall be stored in a secure area.
- I. Other laws remain applicable. A medical marijuana dispensary shall meet all operating and other requirements of state and local law and regulation. To the extent the State of Maine has adopted or adopts in the future any stricter law or regulation governing medical marijuana dispensaries, the stricter law or regulation shall control.
- J. Maximum number. The maximum number of medical marijuana dispensaries in the Town shall be capped at one (1).
- K. Application Submission Requirements. The applicant shall provide the Code Enforcement Officer with documentation of any required state or federal approvals for the medical marijuana dispensary operation.

### **533 Medical Office**

- A. Residential Districts – F, FR, RL, RM.
  - 1. A medical office located on a lot in a residential district shall have a combined footprint of 2,000 gross square feet or less. (*See definition of “Building Footprint”*)
  - 2. A medical office located in a residential district shall be limited to the first story of the building. The additional height of the building’s roof shall meet the height standard of the applicable zoning district.

### **534 Mobile Home Park**

- A. Mobile home parks shall be located according to the Mobile Home Park Overlay District.

### **535 Motel**

- A. Rental for more than 30 cumulative days in a calendar year to the same guest, or guests, is prohibited.

### **536 Net Residential Area or Acreage**

- A. Non Subdivision. The net residential area or acreage of a lot shall be calculated by dividing the area of the parcel by the net residential density standard of the appropriate zoning district.

- B. Subdivisions. The net residential area or acreage of a lot proposed for subdivision, as defined, shall be calculated by, 1) subtracting the items listed below from the gross acreage of a lot, and 2) dividing the resulting net residential area of the parcel by the net residential density standard of the appropriate zoning district (*see Sec. 400 Zoning Districts*). The following shall be subtracted from the gross acreage of the lot:
1. Acreage which is used for public or private rights-of-way.
  2. Portions of the parcel containing slopes over twenty-five percent (25%).
  3. Portions of the parcel shown to be within the one-hundred (100) year flood plain and floodway as designated by the Federal Emergency Management Agency (FEMA) on the Flood Insurance Rate Maps for the Town of Windham, Maine.
  4. Portions of the parcel located in the Resource Protection District.
  5. Portions of the parcel which are unsuitable for development in their natural state due to drainage or subsoil conditions, including but not limited to:
    - (a) A water table at or near the surface for all or part of the year.
    - (b) Soils identified as, "Very Poorly Drained," by the U.S. Department of Agriculture's (USDA), "Soil Survey for Cumberland County, Maine," however,
      - (1) A property owner may conduct a soil survey of appropriate class for the development to refute the classification of the, "Soil Survey for Cumberland County, Maine,"
        - (i) The Code Enforcement Officer shall make a final determination based upon the results of the soil survey, and any other applicable information supplied by the property owner.
  6. Portions of the parcel covered by surface waterbodies.
  7. Boundaries of areas on the parcel containing significant wildlife habitat, as determined by the applicant in consultation with the Maine Department of Inland Fisheries and Wildlife.
  8. Boundaries of areas on the parcel containing endangered botanical resources, as determined by the applicant in consultation with the Maine Department of Conservation.

### **537 Parking and Loading**

- A. The standards for parking and loading in Section 800 Site Plan Review shall apply to the uses in all zoning districts.
1. Waivers of the off-street parking and loading standards may only be granted by the Planning Board as part of a site plan or subdivision application. (*See Sec. 800 Site Plan Review or Sec. 900 Subdivision Review*)

**538 Public Utility Facility**

- A. Height limitations in the applicable zoning districts shall not apply to public water storage and distribution facilities.

**539 Pump Station**

- A. Pump stations shall be allowed in all zoning districts.
- B. Pump stations shall not require a building permit.
- C. Pump stations shall not be required to meet the dimensional standards in the applicable zoning district.

**540 Restaurants**

- A. Restaurants. Restaurants established after [effective date] shall meet the following standards:
- (1) Trash/Dumpster. All trash containers or dumpsters located outside of a building shall be stored so as to be screened from view.
  - (2) Grease Removal. All new or expanded restaurants shall install a grease trap as required by the Maine State Plumbing Code.
  - (3) Buffer. A buffer strip, as defined, shall be provided between the restaurant and any abutting Dwelling, Existing Single-Family Detached; Dwelling, Existing Two-Family; Dwelling, Existing Multifamily, existing Housing for Older Persons, or any residential zoning district.
  - (4) Noise. The restaurant shall comply with the noise standards contained in Section 812(S) of this Ordinance.
  - (5) Smoke. Indoor or outdoor cooking that produces smoke from grills, smokers or open fires shall be located at least 100 feet from any abutting Dwelling, Existing Single-Family Detached; Dwelling, Existing Two-Family; Dwelling, Existing Multifamily, existing Housing for Older Persons or any residential zoning district.
  - (6) Outside Seating. Outdoor seating located within 100 feet of any Dwelling, Existing Single-Family Detached; Dwelling, Existing Two-Family; Dwelling, Existing Multifamily, existing Housing for Older Persons, or any residential zoning district shall be limited to the following hours:
    - Sunday to Thursday – Daytime hours, as defined.
    - Friday and Saturday – 7:00 a.m. to 9:00 p.m.
  - (7) Septic. All new or enlarged restaurants shall provide evidence that the septic system is in compliance with the Maine State Plumbing Code.

**541 Retail Sales, Automobile Sales**

- A. Parking Area Layout and Minimum Space Requirements. See Section 812.C. for parking requirements applicable to the storage of vehicles for display, repair or sale.

**542 Retail Sales, Convenience**

- A. Gross square footage for retail and storage purposes may not exceed one thousand five hundred (1,500) square feet.
- B. Outdoor storage shall not be permitted.
- C. The sale of gasoline shall not be permitted.

**543 Retail Sales, Outdoor**

- A. Outdoor sales may be approved by the Code Enforcement Officer in accordance with the following standards:
  - 1. Outdoor sales shall be allowed as an accessory use to the principle retail use on the property,
  - 2. If outdoor sales are conducted in a parking lot, the minimum off-street parking space requirements of the Land Use Ordinance shall be maintained,
  - 3. A permit shall be obtained from the Code Enforcement Officer,
  - 4. The outdoor sales permit shall be limited to the petitioner and shall therefore not run with the land.
  - 5. An application fee, in an amount established by the Town Council, shall be submitted to the Code Enforcement Officer at the time of application.
  - 6. A plan shall be submitted to the Code Enforcement Officer delineating the area on which the outdoor sales will be conducted (at a minimum the plan shall also show the tax map boundaries of the property, the approximate location of all buildings, and the location of parking areas).
  - 7. Outdoor sales shall not be conducted in a vehicular travel way.
  - 8. Outdoor sales conducted on any public or private walkways or sidewalks shall meet the standards the Americans with Disabilities Act (ADA).
  - 9. Outdoor sales shall not be located in any side setback or Landscaped Buffer Strip required by the Land Use Ordinance or as a condition of a property's site plan approval.
  - 10. These standards shall not apply to roadside standards governed by the standards for Agriculture in Section 502.
  - 11. These standards shall not apply to a temporary outside sales events. Temporary outside sales events shall meet the following standards:
    - (1) The outside sales event shall not last for more than three (3) consecutive days.

- (2) A permit shall be obtained from the Code Enforcement Officer for each outdoor sales event.
- (3) An application fee, in an amount established by the Town Council, shall be submitted to the Code Enforcement Officer at the time of application.
- (4) The Code Enforcement Officer must find that the following conditions have been met:
  - (i) Safe vehicular access and onsite circulation is provided to reduce vehicular cueing on public ways.
  - (ii) The applicant demonstrates that adequate parking is provided to accommodate all vehicles either on-site, or in an off-site location that meets the requirements of Section 812(C)(2)(b).

#### **544 Retirement Community**

- A. The retirement community shall meet the standards established in 42 U.S.C.A. § 4607 for housing for older persons:
  1. The property owner shall notify the Department of Code Enforcement when compliance reports have been submitted to the U.S. Department of Housing and Urban Development (HUD),
    - (a) The Department of Code Enforcement may request that copies of any report be sent to the Town of Windham.
- B. Retirement Community projects shall conform with the Street and Road Design Standards in Section 900 Subdivision Review.

#### **545 Rooming House**

- A. General Standards
  1. Creation of Use. A Rooming House shall only be allowed through the conversion of an existing Dwelling, Nursing Home or Boarding Home for Sheltered Care facility.
  2. Number of Dwelling Units. A Rooming House shall contain between ten (10) to fifteen (15) rooms.
- B. Common Area/Facility Requirements
  1. Kitchen. A full kitchen shall be provided for use by all tenants.
  2. Toilets. At least one (1) property working toilet shall be supplied for each six (6) persons or fraction thereof, residing within the Rooming House.
  3. Bathing. At least one (1) properly working bathtub or shower, shall be supplied for each eight (8) persons or fraction thereof, residing within the Rooming House.
  4. All common facilities shall be located within the Rooming House so as to be reasonably accessible from a common hall or passageway to all persons sharing such facilities. Every kitchen, lavatory basin, bathtub, or shower shall be supplied with hot water at all times.
- C. Driveway Requirements
  1. Minimum width of pavement or gravel: 22 ft



2. Maximum grade: 3% within 50 ft. of private way or street.
  3. Minimum angle of intersection: 60°
  4. Sight Distance: Maine Dept. of Transportation Standard.
- D. Fire/Emergency Safety and Protection
1. The Rooming House shall be sprinkled throughout.
  2. Smoke detectors shall be required in all bedrooms and common areas.
  3. All fire safety and protection systems shall meet or exceed local and state fire safety regulations.
  4. All sleeping rooms shall provide adequate ventilation and means of egress.
  5. The parking lot shall be arranged so as not to restrict fire and/or emergency vehicles access.
- E. Landlord Tenant Legal Requirements
1. Rooms shall be for hire by the week.
  2. Lease/Rental agreements and rental policy rules and regulations shall be required.
- F. Maintenance Requirements
1. The facility shall provide on premise management.
  2. The operator shall be responsible for the sanitary maintenance of all walls, floors and ceilings and for maintenance of a sanitary condition in every other part of the rooming house and the premises on which it is located.
- G. Plan Requirements
1. The operator or applicant shall submit a set of detailed plans drawn to scale by a professional Engineer or Architect, of the interior of the building showing how they meet the requirements for the Rooming House.
- H. Sleeping Unit Requirements
1. Minimum Floor Area
    - (a) Single Occupancy Unit: 90 s.f.
    - (b) Double Occupancy Unit: 160 s.f.

#### **546 Sawmill, Permanent**

- A. Permit Required. The sawmill shall require a use permit from the Department of Code Enforcement.
- B. Hours of Operation. The sawmill shall only operate during daytime hours, as defined in Section 300.
- C. Setback. The sawmill shall be setback at least 100 feet from the following uses:
1. Dwelling, not owned or occupied by the sawmill operator,
  2. School,
  3. Place of Worship.

- D. Buffers. The sawmill shall establish and maintain a buffer strip, as defined, along all property lines that abut a use listed in subsection 546.C above.
1. Mature trees in the buffer strip shall be preserved to the maximum extent practical.
- E. Stacking of Wood. Wood shall not be stacked to a height that is greater than the buffer provided along abutting property lines.
- F. Maximum Noise Limit at all property lines
1. Daytime Hours: 60 dBA
  2. Nighttime Hours: 50 dBA
  3. Temporary Chainsaw Use: No Limit
- G. Erosion Control. The sawmill shall provide an erosion control plan to the Department of Code Enforcement prior to receiving a use permit.
1. The erosion control plan shall include a written description of the management practices, and
  2. A plot plan identifying the placement of any silt fence, check dams, or erosion control barriers.
  3. Erosion control mix mulch barriers may be utilized.
    - (a) The erosion control mix mulch shall meet the Maine Department of Environmental Protection's most current specifications for installation and maintenance.

#### **547 Sawmill, Temporary**

- A. Hours of Operation. The sawmill shall only operate during daytime hours, as defined in Section 300.
- B. Maximum Noise Limit at all property lines.
1. Daytime Hours: 60 dBA
  2. Nighttime Hours: 50 dBA
  3. Temporary Chainsaw Use: No Limit
- C. Erosion Control. The temporary sawmill shall not cause the erosion and waterborne transportation of soil onto any abutting property.

#### **548 Shipping Container**

- A. General Standards: The following standards shall apply to all shipping containers in the Town of Windham:
1. Housing of Land Uses. Shipping containers shall not be used to conduct land use activities that are carried on in a principal building or an accessory building,
  2. Stacking. Shipping containers shall not be stacked one on top of the other,

3. Floor Area. The floor area of a shipping container shall be measured by calculating the footprint of the container from its exterior walls,
4. Location. Shipping containers shall not be located in any of the following areas:
  - (a) Parking spaces required by this Ordinance,
  - (b) Required front, side, or rear yard areas (*See Sec. 400 Zoning Districts*),
  - (c) A location that reduces vehicular sight distance below minimum Maine Department of Transportation standards,
  - (d) A location that would cause a hazard to the traveling public,
  - (e) A location that impacts stormwater runoff.

#### B. Residential District Standards

1. No more than one (1) shipping container shall be allowed on any lot.
2. Permit Required: A permit shall be required for the installation of a Shipping Container in all residential zoning districts,
3. Time Limit: A Shipping Container shall not be located on site for more than six (6) months, with the exception that
  - (a) One (1) extension of not more than three (3) months may be granted at the discretion of the Code Enforcement Officer.
4. Permitted Shipping Containers: A Shipping Container shall only be permitted for the temporary storage of residential items under the following circumstances:
  - (a) While a resident is in the process of moving into or out of a home,
  - (b) While a home is being remodeled, or
  - (c) After a home or building has experienced a fire, flood, or other damaging event.
5. Permitted Items: Items such as, but not limited to, the following shall be permitted in a Shipping Container:
  - (a) Household furniture,
  - (b) Appliances,
  - (c) Bathroom fixtures,
  - (d) Clothing, and
  - (e) Building materials.

#### C. Non-Residential District Standards

1. The following standards shall apply to Shipping Containers that are currently located, or proposed, in a non-residential district:
  - (a) The total floor area of all shipping containers on site shall not exceed seven hundred (700) square feet.
    - (1) Additional shipping containers that exceed the seven hundred (700) square feet limitation shall not be allowed by variance.

- (b) If the property on which the shipping container is located received a Site Plan approval on, or after March 13, 1991, the Planning Board shall be responsible for review and approval under the following standards:
  - (1) Conditional Use,
  - (2) Site Plan Review
- (c) The Shipping Container must come into compliance with this ordinance by March 21, 2001 unless good cause can be shown by the petitioner.
  - (1) After March 21, 2001, any existing shipping containers shall be removed from the site, unless,
    - (i) There is a pending conditional use application before the Zoning Board of Appeals.
    - (ii) There is a pending conditional use and site plan application before the Planning Board.
- (d) Shipping containers that are part of an existing commercial or industrial use, and are being actively used for the temporary storage and eventual shipping of goods, products, or materials that are manufactured or assembled as part of the commercial or industrial use, shall be allowed provided that:
  - (1) The location of the shipping containers is duly noted on the site plan if the project was reviewed by the Planning Board and/or the Board of Appeals, or the building permit plot plan if no Planning Board or Board of Appeals review was required.
  - (2) The same shipping container(s) shall not be located on site for more than thirty (30) consecutive days at a time.

D. Construction Project Standards:

- 1. Shipping containers may be placed on property where a construction project is occurring.
  - (a) The Shipping Container shall only be utilized for the storage of construction materials, equipment, tools, etc...
- 2. A permit shall not be required from the Code Enforcement Officer, Planning Board, and/or Board of Appeals.
- 3. The Shipping Container(s) shall be removed within thirty (30) days after the completion of the construction project.

**549 Solid Waste Dumpsters**

- A. All permanent solid waste dumpsters shall be installed on an appropriate concrete pad and shall be screened on all sides by fencing or vegetation. Vegetation must screen the dumpster within one growing season from the time it is planted.

**550 Streets**

- A. **Public Streets.** All public streets, as defined in Section 300 - and private roads submitted as part of a subdivision application - constructed on or after October 22, 2009 shall meet the street design standards in Section 900 Subdivision Review.
1. Waivers of the street design standards may only be granted by the Planning Board as part of a site plan or subdivision application.
- B. **Private Roads Not Part of a Subdivision Application.**
1. **Applicability.** These standards apply to private roads used to obtain the required lot width in the applicable zoning district. (*See "Developable Land" in Sec. 500 Performance Standards*)
  2. **Submission Requirements.** An application form and accurately scaled plan shall be prepared by a Maine Licensed Professional authorized by the State of Maine to design streets or roads. At a minimum, the plan shall include the location and width of the right-of-way, a plan view and profile view of the roadway, the location and size of culverts and proposed drainage features.
  3. **Review Authority.** For all private roads, the application form and plan shall be submitted to, and approved by, the Director of Code Enforcement. For private roads that provide frontage to four (4) or more lots, the plan must be reviewed by the Town's consulting engineer.
  4. **Site Walk.** The Director of Code Enforcement may require a site walk with the applicant, or his or her authorized representative.
  5. **Recording.** Upon approval, a mylar copy of the private road plan shall be filed with the Town.
  6. **Construction Observation.** The Code Enforcement Officer may require that observations by the Town's consulting engineer be conducted during construction. The property owner shall be responsible for the costs of all observations.
  7. **Final Approval.** Prior to the issuance of any Certificates of Occupancy for the lots fronting on said private road, the applicant shall provide the following:
    - (a) **Private Roads with three (3) or fewer lots.** A statement, from the Maine Licensed Professional that prepared the plans, that the road was constructed in general conformance with the approved plans. The Director of Code Enforcement may observe the road to confirm that the road was constructed in general conformance with the approved plans.

- (b) Private Roads with four (4) or more lots. A statement from a Licensed Maine Professional Civil Engineer that the road was constructed in general conformance with the approved plans. If the Town's consulting engineer reviewed the design and observed the construction, the Town's consulting engineer may provide the required statement.

## 8. Standards

- (a) Design Standards. Private roads shall be designed to conform to the appropriate standards presented in Subsection 911.M.5.(b)(8) Street Construction Practices; and the standards for "Major or Minor Private Roads" in Table 3, Table 4, and the applicable cross sections in Appendix B Street Standards.
- (b) Street Lights. Street lights may be required at intersections with existing public streets. The use of additional street lights shall be discouraged to avoid excessive light pollution.
- (c) Drainage. The private road shall have adequate provisions for drainage and stormwater runoff.
- (d) Paved Apron. In addition to the standards in Section 518 Curb Cuts and Driveway Openings, a paved apron shall be constructed when a gravel private road connects to a paved public street or paved private road in accordance with the standards in Table 3 and Table 4 (*See Appendix C, Street Standards*).
- (e) Gravel Surface Limit. Notwithstanding other provisions of the Land Use Ordinance to the contrary, no gravel surfaced private road shall provide access to or serve in any way to provide compliance with the requirements of the Ordinance for more than the greater of ten (10) lots or ten (10) dwelling units; provided; however, nothing in this paragraph shall serve to limit the use of such private road for occasional use by and for agricultural purposes. Private roads providing access to eleven (11) or more lots shall meet the standards for a "Major Private Road" contained in Table 3 and Table 4 of Appendix B Street Standards.
- (f) Dead End Streets. The following standards shall apply to dead end private roads. (*See Sec. 300 for definition of "Dead End Street"*)
  - (1) Maximum Length. Dead end private roads shall meet the following standards:
    - (i) Private Roads Served by Public Water. There is no maximum length limit for private roads served by the Portland Water District that have fire hydrants and hammerhead turnarounds installed every 1,000 linear feet. However, the street connectivity standards of Subsection (g) below shall apply.

- (ii) Private Roads Not Served by Public Water. Dead end private roads not supplied with fire hydrants served by the Portland Water District shall have a maximum length of 1,000 linear feet unless all dwellings beyond 1,000 linear feet from the closest public street or private way, as defined, have a National Fire Protection Association (NFPA) 13D monitored sprinkler system installed and approved by the Windham Fire Chief and hammerhead turnarounds installed every 1,000 linear feet. The street connectivity standards of Subsection (g) below, shall apply.
1. Existing Rights-of-Way. The maximum length of 1,000 linear feet shall commence at the terminus of any dead end rights-of-way existing on, or before, October 22, 2009.
  2. Any existing right-of-way which does not contain an improved private way existing on, or before, October 22, 2009 shall construct any future improvements in accordance with the standards for private roads contained in this Section 548 to the greatest extent practical.
- (2) Hammerhead Requirement: At a minimum, a hammerhead turnaround is required at the terminus of all dead end private roads.
- (i) All hammerhead turn around shall meet the following standards:
- a) The right-of-way or easement area of the turnaround side branch shall be at least 50 feet by 50 feet.
  - b) The gravel or paved surface shall extend at least 50 feet from the centerline of the adjacent roadway.
  - c) The width of the gravel or paved surface shall be equal to the street width.
  - d) The hammerhead shall have a minimum 25 foot turning radius.
  - e) Larger dimensions may be required by the Director of Code Enforcement to accommodate larger design vehicles anticipated to use the turnaround.
- (g) Connection Requirements. The following standards determine the number of connections a private road must have with an existing public street. The cumulative number of lots or dwelling units created through the addition of lots or dwelling units to an existing subdivision shall be included in the minimum number of required street connections.

Number of Lots or Dwelling Units	Minimum Connections
Lots: 30 or less	1
Lots: 31 or more	2
Units: 30 or less	1
Units: 31 or more	2

- (1) **Street Connection Separation Requirements.** Private roads with two (2) or more connections to an existing public street shall be separated according to the standards in Table 2 of Section 900 Subdivision Review.
- (h) **Maintenance Agreement.** The applicant shall provide evidence that the private road shall be maintained either by the applicant or by the lot owners or a homeowners association. Proof may consist of a declaration of covenants that will be recorded and become part of each deed and specify how the costs of maintenance will be apportioned among the lot owners, or appropriate homeowners association documents. In the event that a homeowners association is formed, each lot deed shall refer to the association and shall require the lot owner to be a member of the association. No private road will be maintained by the Town until the Town has accepted the road. No private road shall be offered to the Town for acceptance until it meets the design requirements for a public street contained in this Ordinance.

### C. Sidewalks

1. Where required by this Ordinance, or by the Planning Board as a condition of subdivision or site plan approval, sidewalks shall be constructed in accordance with the standards in Tables 3 and 4 or Appendix B of this Ordinance.
2. **Accessibility.** Sidewalk construction shall meet all applicable American with Disabilities Act (ADA) Standards.

#### Section 500 Amendments

Order 10-075; Date 04-27-10	Changes to Central Sewer System; Child Care Facility; Net Residential Density; and Dead End Streets
Order 10-164; Date 09-14-10	Changes to Outdoor Sales
Order 10-230; Date 12-14-10	Addition of Restaurants in C1 zone
Order 11-206; Date 12-13-11	Addition of siting and regulation for Medical Marijuana Dispensaries
Order 12-014; Date 03-14-12	Changes to Backlot standards
Order 12-099; Date 08-14-12	Addition of Domesticated Chickens
Order 12-148; Date 10-23-12	Addition of Retirement Community and Care Facility Overlay District
Order 12-149; Date 10-23-12	Addition of Accessory Apartments
Order 13-001; Date 01-22-13	Change to waiver of Curb Cuts
Order 13-002; Date 01-22-13	Change to list of Controlled Access Streets.
Order 13-072; Date 05-14-13	Addition of Sidewalk Impact Fee
Order 14-164; Date 07-08-14	Changes to Automobile Repair Services, addition of Automobile Storage Lot
Order 14-223; Date 07-08-14	Change of Conditional Use Submission deadlines
Order 14-387; Date 10-14-14	Addition of Automobile Auction Facility



## SECTION 600 - MINERAL EXTRACTION

### Sections

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### **601 Purpose**

- A. The purpose of this section is to regulate sand and gravel and other quarrying operations, including the removal, processing and storage of topsoil or loam, rock, sand, gravel and other earth materials (hereinafter "mineral extraction"). The Planning Board shall follow the site plan review requirements in Section 800 when more than 25,000 square feet of gross area is to be developed, as defined in Section 300. (See definition of "Development")
  
- B. The removal of stone, sand and gravel from banks or quarries and the processing of said materials shall not be permitted without the approval of the Planning Board. The removal of loam, topsoil or sod is permitted in any of the Town's zoning districts. Such material may be hauled away to other locations, either inside or outside the Town of Windham. The Planning Board may approve the removal and processing of such materials after public hearing thereon, and a finding that such removal and processing will be performed subject to the conditions and safeguards set forth in this section.
  
- C. These regulations are intended to protect the quality and quantity of the ground and surface waters, to control erosion, to provide for the reclamation and rehabilitation of mineral extraction sites so that future uses shall be compatible with the surrounding neighborhood, and to minimize any adverse impact of such pit operations on adjacent and nearby properties.

### **602 Application**

- A. Existing pits, expansions over five (5) acres, loam stripping exceeding one quarter (1/4) of an acre, and new operations which are started or approved after the effective date of this amendment shall be governed by this section. This section applies to all private, public and municipal mineral extraction operations within the Town of Windham.

- B. Whereas the Town of Windham recognizes that exceptions to this section may become necessary in a time of great need, such as a natural disaster necessitating ready and immediate access to sand, gravel and other earth materials, provision is herein made for the temporary suspension of the application process included herein if approval for said suspension is granted by a majority of the Town Council.
- C. The applicant shall pay a processing fee and establish a peer review escrow account as set by the Town Council in the Windham Fee Schedule (*See Appendix A Fee Schedule*)

### **603 Exemptions**

- A. The following activities are exempt from the provisions of this section of the Ordinance:
  - 1. Excavation whose sole purpose is to determine the nature or extent of mineral resources. It is accomplished by hand sampling, test boring, or other methods which create minimal disturbance. Test holes shall be filled in immediately after use.
  - 2. The removal of less than two hundred (200) cubic yards of material (except topsoil) in any one (1) year, provided such removal does not disturb more than one (1) acre of land.
  - 3. The removal of any amount of sand, gravel, or loam from a site is an exempt activity if it is undertaken as part of an approved on-site construction project, is part of normal farm operations, or the sand, gravel, or loam is being moved to a contiguous site having the same ownership or is being used by the owner for their own use.
  - 4. Excavation or grading which is undertaken as part of and subordinate to an approved construction project such as a subdivision, permitted structure or road.
  - 5. Existing pits may only expand in conformance with this section. The owner(s) must file a plot plan within ninety (90) days of the effective date of this section, showing the active part of the pit, as distinguished from those slopes and setbacks existing at the time of adoption of this section, which shall be exempt.

### **604 Permit Application Requirements**

- A. All applicants shall submit an application to the Planning Department. The Planning Department shall verify that the application is complete prior to placing the applicant on an agenda to appear before the Planning Board. Approval from the Planning Board is required prior to the applicant initiating any phase for which the applicant seeks approval. This information is in addition to information provided as part of the site plan review criteria required under section 800 et seq. The following information shall be submitted to the Planning Board when applying for a permit. All plans shall be drawn to a scale not greater than one inch equals one hundred feet (1"=100').

- B. The location of existing wells, streams, springs, intermittent streams and wet areas. The depth of groundwater at the site of the proposed excavation as determined by test borings shall substantiate that groundwater will not be disturbed.
- C. Contours of the land within and extending beyond the boundaries of the parcel for two hundred (200) feet at five (5) foot intervals, or at intervals acceptable for a MeDEP permit application, or at intervals required by the Planning Board for mineral extraction operations of under five (5) acres.
- D. The location of all proposed hazardous materials storage areas. Hazardous materials shall be located in an impervious containment area.
- E. Plans for controlling access to the site. At a minimum, a solid gate with a lock shall be located at any entrances or exits.
- F. Provisions for shielding the excavation from surrounding properties with adequate screening or buffering for a visual and acoustical buffer between the project and adjacent properties if a natural buffer does not exist. Signs and lighting shall be designed to prevent public nuisance conditions or undesirable aesthetic effects on the neighborhood.
- G. A final rehabilitation plan including seeding, planting, drainage, erosion control, final grading, shaping, and surface stabilization plans showing contours at five (5) foot intervals. Plans shall be approved by the Cumberland County Soil Conservation Service, a Registered Forester, a Certified Soils Scientist or a Registered Maine Civil Professional Engineer. The proposed use of the property at completion of the project shall be described. A time schedule for rehabilitation shall be included. Any project which is proposed to operate for more than five (5) years shall be designed to operate in phases, if possible.
- H. Applicable state and/or federal permits shall be required prior to final approval from the Planning Board. For applications requiring site plan review, the Planning Board shall have the authority to review the applicant's technical capacity to comply with state and federal permitting requirements, including those for temporary or permanent drainage and sedimentation control, storage and containment of any materials, noise, vibration levels, and dust levels and measures for minimization.
- I. Hours of operation. These shall be compatible with the surrounding neighborhood and shall minimize any adverse impact of the pit operations on adjacent and nearby properties.

#### **605 Plan Review**

- A. The Planning Board may impose such conditions as are necessary to safeguard the health, safety and welfare of the community. Where considered necessary by the

Planning Board, the plan required to accompany the application shall be prepared by a Registered Maine Civil Professional Engineer and/or Maine Certified Geologist at the applicant's expense. The plan review shall take into consideration at least the following:

1. Fencing, landscaped buffer strips, and other public safety and nuisance considerations for compliance with Sections 604(F) and 606(B).
2. Signs and lighting for compliance with Section 604(F).
3. Adequate parking spaces, loading and unloading areas for compliance with Section 812(C).
4. Safe entrances and exits for compliance with Sections 604(E) and 812(B).
5. Total estimated life of the pit for compliance with Section 608.
6. Days and hours of normal operation for compliance with Section 604(I).
7. Methods of operation, removal or processing for compliance with Sections 604(H) and 606(A).
8. Area and depth of excavation for compliance with Sections 604(B), 604(H) and 606(A).
9. Provision for temporary or permanent drainage and sedimentation control for compliance with Sections 604(H) and 606(A).
10. Disposition of stumps, brush and boulders with Section 812(O).
11. Type and location of temporary and permanent structures for compliance with applicable zoning requirements.
12. Storage and containment of any materials (e.g., petroleum products, salt, hazardous materials, rubbish, treated timber) on the property for compliance with Sections 604(D), 812(L) and (O).
13. Complete rehabilitation proposals for compliance with Section 607.
14. Noise levels for compliance with Section 812(S).
15. Vibration levels in compliance with Sections 604(H) and 606(A).
16. Dust levels and measures for minimization in compliance with Sections 604(H) and 606(A).

**606 Excavation Regulations**

- A. A Mineral Extraction operation within the Town of Windham that is regulated by the Maine Department of Environmental Protection (MeDEP) shall conform to MeDEP regulations.
- B. Mineral Extraction operations regulated by the Town of Windham shall follow the excavation regulations listed below:
  - 1. A buffer strip of 25 feet in which natural vegetation is retained shall be required at the boundaries of the existing parcel, except for existing exempted slopes and setbacks.
  - 2. Excavation, except for drainage ways, shall be at least two hundred (200) feet from any residence.
  - 3. Earth-moving or excavation shall be at least one hundred fifty (150) feet from any public or private roads, unless written permission is obtained from the owner(s) of abutting land, as defined in Section 300, and approved by the Planning Board.
  - 4. If written permission of the abutter is obtained, excavation less than twenty-five (25) feet from lot lines may be allowed. In the case of two (2) abutting, working mineral extraction operations, the buffer strip may be eliminated upon the recording of a covenant deed by both property owners.
  - 5. Excavation may not occur within two (2) feet of the seasonal high water table. If standing water already exists in an excavated area, no further excavation that would result in an increased area of standing water shall be allowed. However, excavation may extend to or below the water table, and an area of standing water may be increased through excavation, if the proposed excavation is approved by the Maine Department of Environmental Protection. The Planning Board may request additional information to ensure compliance with this provision.
  - 6. Sufficient topsoil shall be retained to comply with the approved rehabilitation plan.

**607 Rehabilitation Requirements**

- A. Any operation shall be deemed closed ninety (90) days after its permit expires or the operations cease for two (2) years. The site shall be rehabilitated in accordance with this section. The rehabilitation plan shall be completed within two (2) years of closing. Rehabilitation of continuing operations shall be conducted in phases. Upon completion or abandonment of an existing mineral extraction operation in existence on the effective date of this chapter, except for existing exempted slopes and setbacks, the area shall meet the following requirements:

1. Specific plans shall be established to avoid hazards from excessive slopes. Where an embankment remains after the completion of operations, it shall be graded at a slope not steeper than one foot vertical to two feet horizontal.
2. Seeding, planting and loaming, as approved in the rehabilitation plan, shall be accomplished so that exposed areas are stabilized and erosion is minimized. Retained topsoil shall be used as loam. These areas shall be guaranteed for eighteen (18) months during which time the performance guarantee, where required, shall remain in full force and effect.
3. The Board may require that trees be planted for a visual and acoustical buffer between the project and adjacent properties if a natural buffer does not exist.
4. Tree stumps and grubblings from the site may be used to stabilize the banks. The areas of pits with solid or broken ledge rock shall be trimmed of loose rock and the bottom of the pit graded to be compatible with the surroundings.
5. The pit shall be contoured so that sediment is not directed into streams or drainageways.
6. Grading and restoration shall be completed in such a manner that it will ensure natural drainage, prevent standing water and minimize erosion and sedimentation.
7. Existing pits may expand over five (5) acres without Planning Board approval if the area being worked remains no larger than five (5) acres and all the prior existing area has been rehabilitated in conformance with this section and has been inspected and verified by the Planning Department prior to any expansion.

#### **608 Permit Dates**

- A. After initial permit approval by the Planning Board, the applicant shall submit a report to the Planning Department every fifth year, two (2) months prior to the expiration of the permit. The applicant shall demonstrate that the operation is in conformance with the standards found in this section. Aerial photography may be required to demonstrate conformance with these standards. If the expansion is proposed beyond the original plan, the applicant must obtain a new permit from the Planning Board.
- B. Change of operator or owner requires application for a new permit from the Planning Department. The new owner or operator shall be required to demonstrate financial and technical capabilities required to operate a mineral extraction operation equal to those required of the original owner.

**609 Performance Guarantee Requirements**

- A. A surety bond issued by a commercial surety company authorized to do business within the State of Maine, or an interest bearing trust account made payable to the Town of Windham, or a letter of credit, cash, or a certified check payable to the Town of Windham, shall be posted by the owner(s) or operator(s) in an amount recommended by the Town Manager or his/her authorized agent, with the advice of the Soil Conservation Service and/or a Registered Maine Civil Engineer, as sufficient to guarantee conformity with the provisions of the permit approval for the rehabilitation of existing mineral extraction operations, new mineral extraction operations, and/or loam stripping operations.
- B. The amount of performance guarantee shall be sufficient to fund the costs of that rehabilitation which remains to be completed. The performance guarantee must remain in force until the Planning Department or designee certifies that the site has been rehabilitated according to the approved plan.

**610 Loam Stripping Conditions**

- A. The removal of loam, topsoil, or sod from the ground surface may be permitted in any zone and such material may be hauled away to other locations, either in or outside the Town of Windham. If the gross area of such removal exceeds one fourth (1/4) acre, the stripping may be done only after public hearing and approval by the Planning Board, subject to appropriate conditions and safeguards, such as, but not limited to the following:
  - B. Operations shall not adversely affect the health and general welfare of the Town.
  - C. The Planning Board shall require the filing of a development plan and the posting of a performance guarantee in an amount set by the Town but not less than five hundred dollars (\$500) per acre.

Section 600 Amendments

Order 10-023; Date 02-09-2010    Change to review procedure.  
Order 10-061; Date 04-13-2010    Clarifications

## SECTION 700 – SIGNS

### Sections

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### **701 Purpose**

- A. The purpose of regulating signs is to promote and protect the public health, welfare and safety by regulating existing and proposed outdoor advertising, outdoor advertising signs, and all other outdoor signs of a business or commercial nature; to protect property values, enhance and protect the physical appearance of the community, preserve the scenic and natural beauty and provide a more enjoyable and pleasing community; to reduce sign or advertising distractions and obstructions that may be caused by signs overhanging or projecting over public rights-of-way, provide more open space and curb the deterioration of natural beauty and community environment.

### **702 General**

- A. Every sign shall be maintained in a safe, presentable and good structural condition by the timely replacement of defective parts, periodic cleaning and painting when necessary. The Code Enforcement Officer shall cause to be removed any sign that endangers public safety, including signs which are: materially, electrically, or structurally defective; abandoned by reason of vacancy and is unoccupied for a period of three (3) months or more except signs applicable to businesses temporarily suspended for less than six (6) months due to a change of ownership; or signs for which no permit has been issued. The Code Enforcement Officer shall send by certified mail a notice to the owner of record of the property and/or business of the violation and require correction or removal within fourteen (14) days of the notice mailing. Any sign determined to be in violation and not corrected within the prescribed time period may be removed by the Town at the owner's expense.



- B. General safety standards for signs. No sign, whether new or existing, shall hereafter be permitted which either causes a traffic, health, welfare or safety hazard or results in a nuisance, due to illumination, placement, display, or manner of construction.
- C. Double-faced signs. A sign with a double signboard or display area shall be constructed to be one (1) sign for the purpose of this chapter.
- D. A banner shall be considered a sign, as defined in Section 300.

### **703 Permits, Fees and Enforcement**

- A. Sign permits and fees.
  - 1. Except as otherwise herein provided no person shall erect or move any outdoor advertising signs without first applying for and obtaining a sign permit from the Code Enforcement Officer. Applications shall be on forms prescribed and provided by the Code Enforcement Officer setting forth such information as may be required for a complete understanding of the proposed work. No sign permit shall be issued until the prescribed application fee has been paid. The fees for said permit shall be set by Council order.
  - 2. Removal of signs.
    - (a) Illegal signs erected in public rights-of-way shall be removed by the Code Enforcement Officer.
  - 3. Enforcement and penalties.
    - (a) The enforcement and penalty provisions of the Land Use Control Ordinance shall apply to the provisions governing signs.

### **704 Existing Signs**

- A. Existing signs.
  - 1. No outdoor advertising signs shall be permitted in any district except as provided herein. Applicable standards for permitted signs shall apply to all existing signs in any district where such signs are no longer permissible but continue to exist as non-conforming hereunder. Any use permitted in the commercial zone and existing as a legal non-conforming use in any other zone shall be deemed to be located in the commercial district for the purposes of this section, except that the maximum square footage of all signs for said use shall not exceed seventy-five (75) square feet.
- B. Nonconforming signs.

1. Nonconforming signs existing as legally nonconforming uses at the time of the passage of this amendment may continue and may not be changed, altered, except as indicated below, or relocated on the same premises, except to conforming signs. If a premises changes ownership the nonconforming signs located on the premises must be brought into compliance with this chapter. The existence of such nonconforming signs shall prohibit the erection of any permanent sign which is permitted by this chapter until all nonconforming signs are removed or brought into conformance with this chapter. All free-standing signs greater than one hundred fifty (150) square feet of display area must be removed or brought into compliance with this chapter within ninety (90) days of the adoption of this amendment. Signs legally erected after April 1, 1982 shall be considered conforming.

## **705 Signs Permitted in all Districts**

### **A. Real estate signs.**

1. One (1) temporary real estate sign not over six (6) square feet each in area, attached to a building or free-standing, may be erected in the F, FR, RL, RM zones without a permit advertising the sale, lease or rental of the premises upon which the sign is located except that, a lot or building with frontage on two (2) public ways may have one six (6) square foot sign on each public way, and shall be removed by the owner or agent of the owner within ten (10) days of said sale, lease or rental.
2. One (1) temporary real estate sign not over sixteen (16) square feet each in area, attached to a building or free-standing, may be erected in the C1, C2, C3, I, ED and VC zones, and on the premises of a conforming commercial use excluding Home Occupations, in any zone without a permit advertising the sale, lease or rental of the premises upon which the sign is located except that, a lot or building with frontage on two (2) public ways may have one sixteen (16) square foot sign on each public way, and shall be removed by the owner or agent of the owner within ten (10) days of said sale, lease or rental. In addition, conforming existing affixed wall and free-standing signs affixed to the premises may advertise the sale, lease, or rental of the premises upon which the sign is located, such advertising shall be removed by the owner or agent of the owner within ten (10) days of said sale, lease or rental.

### **B. Construction.**

1. One (1) temporary development or construction sign, not over thirty-two (32) square feet in area attached to a building or free-standing may be erected provided such sign shall be limited to a general identification of the project and those responsible therefore and shall be removed within ten (10) days after completion of the project, except that any sign for an Enterprise Development (ED) District may not exceed sixty (60) square feet in total area.

### **C. Home sales.**

1. Signs advertising home, garage, barn, basement, or moving sales temporarily held at any premises shall be permitted on premises in any zone without permit for no more than fourteen (14) days prior to said sale and shall be promptly removed thereafter.
- D. Identification signs.
1. Signs announcing the name, address and profession of a permitted home occupation or a lawfully existing nonconforming home occupation are allowed on premises without permit providing sign does not exceed six (6) square feet in display area.
- E. Bulletin board.
1. A freestanding bulletin board or similar sign used for occasional commercial purposes, not exceeding thirty-two (32) square feet in display area in connection with any church, museum, library, school or similar public structure is allowed without a permit.
- F. Directional signs
1. Directional signs, solely indicating ingress and egress, placed at driveway locations, containing no advertising material, and having a display area not exceeding three (3) square feet nor extending higher than seven (7) feet above ground level are permitted in any zone without permit. Directional signs which incorporate either a logo or an identifying symbol are permitted in any zone as long as they meet the requirements of this section.
- G. Farm products
1. Two (2) signs advertising the sale of farm or forestry products produced on the premises shall be permitted in any zone and shall not exceed a total of thirty-two (32) square feet without permit.
- H. Building directory
1. Signs which merely identify the occupants of any building or premises and which are intended to be read on such premises are permitted in any district and shall be in addition to any other signs permitted by this chapter. The maximum letter height shall be not more than two (2) inches.
- I. Gasoline price signs

1. Signs announcing motor fuel prices shall be permitted, ancillary to a properly established retail sales outlet, with numerals no greater than two (2) feet in height and no more than one (1) two-sided sign per road fronted.
- J. Public building signs
1. A freestanding sign, not exceeding thirty-two (32) square feet is permitted for any school, municipal building, church or similar public structure.
- K. Residential subdivision signs
1. A freestanding sign not exceeding thirty-two (32) square feet which identifies the name of the subdivision may be erected at each entrance into such subdivision. Such signs shall be placed either within the fifty-foot right-of-way of the subdivision entrance road or within fifty (50) feet of this right-of-way. No such signs shall obstruct vehicular sight distances.

## **706 Signs Permitted in Commercial Districts**

- A. On-premise signs
1. Outdoor advertising signs shall be permitted on each premise in the commercial district and shall conform to the following standards.
  2. One (1) wall sign may be affixed to the exterior of a building for the principal use that will occupy the building where the maximum gross display area shall not exceed ten percent (10%) of the wall area to which it is attached or one hundred (100) square feet, whichever is greater.
  3. In those instances where two (2) principal uses will occupy the building, the gross display area shall be the area of both signs added together. Where additional tenants will occupy the building, in addition to the principal use or uses, one (1) wall sign may be affixed to the exterior of the building for each additional tenant, and the maximum gross display area of the wall sign shall not exceed one hundred (100) square feet.
  4. In addition to the allowed wall mounted signage, one (1) free-standing sign may be affixed to the premise. Any free-standing sign will be limited to a maximum area of one hundred (100) square feet, unless the additional criteria of this section 706 are met. A premise with frontage on two (2) public ways will be permitted a free-standing sign on each way. A premise with frontage in excess of four hundred (400) feet on a public way may have two (2) free-standing signs.
  5. A maximum of two banners shall be allowed with a maximum of sixty-four (64) square feet total area, with an annual permit, from the effective date of this amendment. Such banners shall be firmly affixed to the building. Where a building

- houses one business, a maximum of two banners may be placed on the entire building. Where a building houses more than one business, banners shall be limited to thirty-two (32) square feet per business. All banners require a sign permit.
6. Free-standing signs shall be permanently affixed to said premises. For each premise containing more than one (1) commercial tenant, one (1) freestanding sign of not more than one hundred (100) square feet identifying the tenants of said premises will be allowed. In addition, one (1) wall sign shall be allowed for the principal use where the maximum gross display area shall not exceed ten percent (10%) of the wall area to which it is attached or one hundred (100) square feet, whichever is greater, and in those instances where additional tenants will occupy the building, in addition to the principal use or uses, one (1) wall sign may be affixed to the exterior of the building for each additional tenant and the maximum gross display area of the wall sign shall not exceed one hundred (100) square feet. However, if a wall sign is not utilized, a roof sign of not more than one hundred (100) square feet shall be permitted for each tenancy thereof. For any premises containing more than ten (10) tenants, ten (10) square feet of additional sign area is allowed for each tenant up to a maximum of one hundred fifty (150) square feet on any on-premises free-standing sign. If a premises contains more than ten (10) tenants, then the increase in sign area of ten percent (10%) for design excellence does not apply. For purposes of this section, "on premises" shall be construed to include the right-of-way giving access to parcels not located on a public right-of way. Multiple advertising displays may be grouped together to be counted as one (1) sign assembly. Premises under the same ownership having more than one (1) structure are permitted a separate wall or roof sign of not more than one hundred (100) square feet for each tenancy thereof. To encourage design excellence, the maximum sign area for certain businesses, industrial, marquee, and directory signs may be increased by ten (10) percent if one or more of the following conditions are met.
7. Ground Signs
- (a) When the sign is constructed of solid wood.
  - (b) When a directory sign utilizes uniform coloring and lettering for all establishments listed.
  - (c) When the sign is installed in a landscaped planter that is four (4) times the area of the sign.
  - (d) When the sign is not designed with or uses illumination.
8. Wall Signs
- (a) When the sign is not designed with or uses illumination.
  - (b) When the sign is constructed of solid wood.

9. Freestanding signs near residential districts.

- (a) Such signs may be located on any part of the premises, unless otherwise prohibited except that insofar as possible no sign shall be constructed or oriented in such a manner as to face an adjoining lot in a farm or residential district and no sign shall be constructed in the rear yard or side yard of any premises where the rear property line or side property line abuts a lot in a farm or residential district.

B. Content of sign in commercial district

1. Signs in business or commercial districts may only identify the occupant of the premises, advertise the services of products available within said premises and may in addition advertise events and public services. Clocks and thermometers may be incorporated into a sign. The letters of displays or signs may be changed from time to time by the occupant without a permit as long as there is otherwise no violation of this chapter.

C. Menu Signs

1. Menu signs are permitted on premises when serving drive-thru windows and are intended to be read from inside a motor vehicle while in line for drive-thru service and shall be limited to thirty (30) square feet in area.

D. Specification of signs in commercial districts

1. Unless otherwise provided, freestanding signs shall conform to the following:
- (a) Maximum gross display area shall not exceed one hundred (100) square feet measured from the top of the topmost display elements to the bottom of the lowest display elements, including any blank space between the elements. Supports under the lowest display elements shall not be included in the maximum square footage calculation.
- (b) Maximum elevation above finished grade: twenty (20) feet.
- (c) Maximum width: sixteen (16) feet.
- (d) Minimum lot line setback: fifty (50) feet from Residential, Farm, Farm Residential, Residential Medium, and Residential Light Districts.
- (e) Maximum height above eave or flat roof line for a roof sign: four (4) feet, but the top of such shall not be higher than twenty (20) feet from the ground.
2. Except as otherwise provided, wall signs shall also conform to the following:

- (a) Maximum gross display area shall not exceed ten percent (10%) of the wall area to which it is attached or one hundred (100) square feet, whichever is greater. Where two (2) signs are utilized, the gross display area shall be the area of both signs added together.
  - (b) No wall sign shall extend beyond the wall to which it is attached or party wall separating occupancies.
- E. Theater marquees.
  - 1. One (1) theater marquee no larger than sixty (60) square feet shall be allowed on the premises or entrance to the premises of a theater or group of theaters sharing a premises.
- F. Commercial subdivision signs.
  - 1. A free-standing sign not exceeding thirty-two (32) square feet which identifies the name of the subdivision may be erected at the main entrance into the subdivision; and if the subdivision fronts on a second major street, another such sign may be used as a directory to businesses within the subdivision. Such signs shall be placed within fifty (50) feet of the right-of-way of the subdivision entrance road. No such sign shall obstruct vehicular sight distances.
- G. Bay signs.
  - 1. Signs located over garage doors not over six (6) square feet in area which identify the service available therein are permitted.
- H. Enterprise Development (ED) District signs.
  - 1. A free-standing sign not exceeding thirty-two (32) square feet which identifies the name of the subdivision or development may be erected at the entrance to an Enterprise Development (ED) District, which road or roads front on a major street, and if a directory to businesses is used, the total square footage of the signage may not exceed sixty (60) square feet.
- I. Customer Directional Signs.
  - 1. In those instances where one or two principal uses will occupy a building, and the principal use has accessory uses associated with said principal use, customer direction signs may be allowed for each accessory use provided that only one customer direction sign shall be allowed for each accessory use within the building, and the maximum display area of the wall sign shall not exceed sixty-four (64) square feet. Customer direction signs shall be firmly affixed to the building's façade and located directly above the entrance that will provide customer access to that portion of the building where the accessory use is to be located.

**707 Signs Permitted in Industrial Districts**

- A. Signs in an industrial district shall conform to the specifications of signs in the commercial district.

**708 Signs Permitted in Business Park Districts**

- A. On-premises signs.
  - 1. Outdoor advertising signs shall be permitted in the Business Park District. One (1) sign affixed to the exterior of a building for each business within the park shall be permitted. Such sign shall not exceed fifty (50) square feet in size. One (1) double sided freestanding sign for each business within the park shall also be permitted. Such sign shall not exceed twenty-four (24) square feet in size on each side. Sign illumination shall be permitted.
- B. Park identification signs.
  - 1. A single double sided identification type sign may be placed at each entrance to the business park. Such signs may not exceed sixty (60) square feet in size on each side and may not exceed eight (8) feet in height. They may be placed within the buffer strip not more than fifty (50) feet from the edge of the right-of-way. Placement of such signs must not interfere with sight distance for vehicles entering and exiting the park. Sign illumination shall be permitted.

**709 Signs Permitted in All Residential Districts**

- A. On premises signs for commercial/recreational uses. Outdoor advertising signs shall be permitted on each premises of a permitted commercial or recreational use in the Farm District and all Residential Districts. Up to two (2) signs may be affixed to the exterior of a building and one (1) free-standing sign may be affixed to the premises, totaling no more than three (3) signs with a maximum aggregate square footage of thirty-two (32) square feet. Free-standing signs shall not exceed twenty-four (24) square feet or six (6) feet in height or five (5) feet in width. For the purpose of this section, a home occupation shall not be considered a commercial or recreational use.
- B. Businesses, excluding home occupations, shall be allowed a maximum of one banner totaling not more than 32 (thirty-two) square feet, with an annual permit from the effective date of this amendment. Such banners shall be firmly attached to the building. All banners require a sign permit.

**710 Off-Premises Signs Permitted in All Districts.**

- A. Business directional signs.



1. No off-premises signs shall be permitted in any district except two (2) off-premises official business directional signs pursuant to 23 M.R.S.A. §1901 through §1925 and as amended and enforced by the Maine Department of Transportation or unless otherwise provided for in this chapter. Temporary directional signs for new businesses shall also be permitted in accordance with regulations adopted pursuant to 23 M.R.S.A. § 1901 through §1925. The applicant for an official business directional sign shall provide certification from the Code Enforcement Officer that the proposed sign is in conformity with all applicable municipal sign ordinances.
- B. Categorical signs.
1. Categorical signs as defined by 23 M.R.S.A. §1913-A as amended, and as enforced by the Maine Department of Transportation shall be permitted in any zone without permit unless otherwise provided for in this chapter. Signs bearing political messages relating to an election, primary or referendum, provided that these signs may not be placed prior to six (6) weeks before the election, primary or referendum to which they relate and must be removed by the candidate or political committee not later than one week thereafter. Categorical signs shall not exceed thirty-two (32) square feet in area.
- C. Special intra-community service signs.
1. Special intra-community service signs as permitted by policy of the Maine Department of Transportation shall be permitted in any zone without permit.
- D. Religious and civic organizations.
1. In addition to religious and civic organization signs defined as categorical signs pursuant to 23 M.R.S.A. §1913-A, the Town Council may authorize the erection of up to a maximum of four (4) signs, not to exceed thirty-two (32) square feet each, for groups of religious or civic organizations in the community. Each such religious or civic organization identified shall be credited with five (5) square feet in area toward the total sign size allowed.

## **711 Temporary Signs**

- A. Defined
1. A temporary sign is one which is designed for and intended to be moved from place to place and is not permanently affixed to land, buildings or any other structures. Temporary signs shall be in addition to any sign permitted by this chapter.
- B. Temporary signs permitted.
1. One temporary advertising sign up to thirty-two (32) square feet shall be permitted in any district in connection with a legally permissible business conducted on the

premises for up to ninety (90) days in any calendar year. Any business that allows a temporary sign to remain in place more than the ninety (90) days allowed by this section will not be issued a permit the following year.

- C. Conversion of temporary signs.
  - 1. Temporary signs may be converted to permanent use by being permanently affixed to the premises. The resulting sign must comply with all other sections of this ordinance and all applicable building codes.

## **712 Signs Prohibited in All Districts**

- A. Over rights-of-way. No sign shall project over a public right-of-way.
- B. Moving parts. No sign shall have visible moving parts, blinking, moving or glaring illumination.
- C. Banners, pennants, ribbons, streamers, spinners or other similar devices that contain advertisements, except as provided for in Section 702 of this section.
- D. String of lights. A string of lights shall not be used for the purpose of advertising or attracting attention as an integral part of a permitted sign.
- E. Billboards. Billboards are prohibited in all zones.
- F. Banners. No banners, streamers, pennants, ribbons, spinners or similar devices shall be constructed or erected within or over a public way without approval from the Code Enforcement Officer.
- G. Flood plains. No freestanding sign shall be erected in a flood plain.
- H. Location, relation to public way. No on-premises signs shall be permitted within the full width of the right-of-way of any public way.
- I. Terminated business. On premises signs shall not be permitted for any business which has not been conducted on the premises for a period of one (1) year or longer.
- J. Signs located on registered and inspected motor vehicles, or trailers, which are determined by the Code Enforcement Officer to be circumventing the intent of this ordinance are prohibited. Circumvention shall include, but not be limited to, signs which are continuously in the same location or signs which are placed on the above to circumvent this ordinance.
- K. Inflatable signs. All exterior inflatable advertising signs.

Section 700 Amendments

Order 13-143; Date 09-24-13

Change to Commercial Real Estate Signs

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**801 Purpose**

The site plan review provisions set forth in this Section are intended to protect the public health and safety, promote the general welfare of the community, and conserve the environment by assuring that nonresidential and multifamily construction is designed and developed in a manner which assures that adequate provisions are made for traffic safety and access; emergency access; water supply; sewage disposal; management of stormwater, erosion, and sedimentation; protection of the groundwater; protection of the environment, wildlife habitat, fisheries, and unique natural areas; protection of historic and archaeological resources; minimizing the adverse impacts on adjacent properties; and fitting the project harmoniously into the fabric of the community.

**802 Applicability**

- A. A person who has right, title, or interest in a parcel of land shall obtain site plan approval prior to commencing any of the following activities on the parcel, obtaining a building or plumbing permit for the activities, or undertaking any alteration or improvement of the site including grubbing or grading:
  - 1. The construction or placement of any new building or structure for a nonresidential use, including accessory buildings and structures, if such buildings or structures have a total area for all floors of all structures of two thousand (2,000) square feet or more measured cumulatively over a five (5) year period.
  - 2. The expansion of an existing nonresidential building or structure, including accessory buildings, if the enlargement increases the total area for all floors within a five (5) year period by more than twenty (20) percent of the existing total floor area or two thousand (2,000) square feet, whichever is greater.
  - 3. The conversion of an existing building in which two thousand (2,000) or more square feet of total floor area are converted from residential to nonresidential use.
  - 4. The establishment of a new nonresidential use even if no buildings or structures are proposed, that involves the Development of more than twenty-five thousand (25,000) square feet of land. This includes uses such as gravel pits, cemeteries, golf courses, and other nonstructural nonresidential uses.
  - 5. The conversion of an existing nonresidential use, in whole or in part, to another nonresidential use if the new use changes the basic nature of the existing use such that it increases the intensity of on- or off-site impacts of the use subject to the standards and criteria of site plan review described in Section 812 of this Section.

6. The construction of a residential building containing three (3) or more dwelling units.
  7. The modification or expansion of an existing residential structure that increases the number of dwelling units in the structure by three (3) or more in any five (5) year period.
  8. The conversion of an existing nonresidential building or structure, in whole or in part, into three (3) or more dwelling units within a five (5) year period.
  9. The cumulative Development of an area equal to, or greater than, one (1) acre within any three (3) year period. The applicability of this section does not include the construction of streets that are reviewed as part of a subdivision application under the standards of Section 900 of this Ordinance. *For Developments of less than one (1) acre, the standards of Chapter 142 Surface Water Protection Ordinance may apply.*
- B. The following activities shall not require site plan approval. Certain of these activities will, however, require the owner to obtain a building permit, plumbing permit or other state or local approvals:
1. The construction, alteration, or enlargement of a single family or two-family dwelling, including accessory buildings and structures.
  2. The placement, alteration, or enlargement of a single manufactured housing or mobile home dwelling, including accessory buildings and structures on individually owned lots.
  3. Agricultural activities, including agricultural buildings and structures.
  4. Timber harvesting and forest management activities.
  5. The establishment and modification of home occupations.
  6. Activities involving nonresidential buildings or activities that are specifically excluded from review by the provisions of this section.

### **803 Review and Approval Authority**

- A. Application Classification. The review and approval authority for site plans shall depend on the classification of the project:
1. Major Developments. The Planning Board is authorized to review and act on all site plans for major developments. In considering site plans under this section, the Planning Board may act to approve, disapprove, or approve the project with such conditions as are authorized by this section.
  2. Minor Developments. The Staff Review Committee is authorized to review all site plans for minor developments and may approve, disapprove, or approve the project with such conditions as are authorized by this Section. In addition, the Committee may reclassify a minor development as a major development, due to the scope or anticipated impacts of a project, and forward it to the Planning Board with its

- recommendations for Planning Board action. (*See Sec. 805 Classification of Projects*)
- B. Staff Review Committee Established. There is hereby created a Staff Review Committee. The Staff Review Committee shall consist of the Director of Planning (Planner), Director of Code Enforcement, Fire Chief, Director of Public Works, or their designees, and a designee of the Town Manager.
- C. Operation of the Staff Review Committee. The Planner shall serve as Chair of the Staff Review Committee and shall be responsible for calling meetings of the Committee, presiding at its meetings, and maintaining the records of the Committee. In the absence of the Planner or his/her designee, the Director of Code Enforcement shall serve as chair pro tem.
1. Attendance. If any member of the Staff Review Committee is unable to attend any meeting of the Committee, he/she shall designate another member of that department to serve in his/her place. Such designation shall be in writing and shall apply only to that meeting. This designee shall have the same power and authority as the member.
  2. Meeting Dates. The Staff Review Committee shall meet once each month as needed. The Committee may schedule additional meetings, as needed.
  3. Advertisement. Meetings of the Committee shall be advertised in the same manner as those of other Town committees and shall be open to the public.
  4. Vacancy. If a vacancy exists in any of the positions serving on the Committee, the Town Manager shall name an interim committee member with appropriate expertise in the respective department, until such vacancy is filled.
  5. Quorum. A quorum is necessary to conduct any official meeting of the Committee, and a quorum shall consist of at least three (3) members.
  6. Voting. A majority vote of the quorum is required to constitute an action (passage or denial) on any motion before the Committee. Should a Committee member need to be recused due to a conflict once a quorum is established and a meeting is in session, the meeting may proceed and the Committee may take action on any motion before the Committee with less than three (3) voting members present. In this event, the applicant shall have the right to have a vote postponed to the next Committee meeting.
  7. Minutes. The Staff Review Committee shall keep a record of its proceedings.
- D. Attendance of Applicant. The Planning Board or Staff Review Committee shall not review any site plan application unless the applicant, or his duly authorized representative, attends the meetings for which the application has been placed on the agenda. Should the applicant or applicant's representative fail to attend, the Planning Board or Staff Review Committee shall reschedule the review of the application to its next available meeting.

**804 Joint Application and Hearing**

- A. If an application requires any combination of site plan review, subdivision review, or conditional use approval, the procedures for all applicable application reviews shall be met in order to initiate the fair hearing process. The procedures for the applicable reviews may occur simultaneously.

**805 Classification of Projects**

- A. The Planner shall classify each project as a major or minor development. Minor developments are smaller scale projects for which a minor review process is adequate to protect the Town's interest. Major developments are larger, more complex projects for which a more detailed review process and additional information are necessary. The following thresholds shall be used by the Planner in classifying each project. However, the Planner may, due to the scope or anticipated impacts of a project, classify any project as a major development.
1. Minor developments shall include those projects involving:
    - (a) The cumulative construction or addition of fewer than five thousand (5,000) square feet of gross nonresidential floor area.
    - (b) Any individual or cumulative construction or addition of five thousand (5,000) square feet or more of gross nonresidential floor area within an approved subdivision.
    - (c) The establishment of a new nonresidential use even if no buildings or structures are proposed, that involves the Development of more than twenty-five thousand (25,000) square feet but less than one (1) acre of land.
  2. Major developments shall include projects involving:
    - (a) The individual or cumulative construction or addition of five thousand (5,000) or more square feet of gross nonresidential floor area on a lot that is not part of an approved subdivision,
    - (b) Projects involving the creation of five (5) or more dwelling units in a five (5) year period,
    - (c) The individual or cumulative Development of one (1) acre or more land, unless the Development is part of a site plan application in an approved subdivision (see Section 805 A.1.b. above.)
    - (d) Projects that also require subdivision (*see Sec. 900*) or conditional use approval (*See. Sec. 500*), or
    - (e) Other projects requiring review which are not classified as a minor development.
  3. An applicant may request that the Planner classify an application prior to its submission. In this case, the applicant shall make a written request for a classification. This request shall include the following information:



- (a) The names and addresses of the record owner and the applicant and the applicant's legal interest in the property.
  - (b) The location of the project, including the tax map and lot number.
  - (c) A brief description of the proposed activities in such detail as to allow a classification to be made.
4. When the Planner classifies a project based upon a request for classification rather than an application, the subsequent application shall be consistent with the activities described in the request for classification.
- (a) The Planner shall review such application to determine if the classification is still correct and may reclassify the application if the scope of activities has been changed.
- B. Within ten (10) working days of the receipt of a site plan application or a request for a classification, the Planner shall notify the applicant, and the Chair of the Planning Board of the classification of the project in writing.

## **806 Review Procedures for Minor Developments**

- A. Preapplication Conference. Applicants for site plan review of a minor development are encouraged to schedule a preapplication conference with the Planner. The purpose of this meeting is to familiarize the applicant with the review procedures and submission requirements, and approval criteria, and to familiarize the Planner with the nature of the project.
1. Such review shall not cause the plan to be a pending application or proceeding under 1 M.R.S.A. §302. No decisions relative to the plan may be made at this meeting.
  2. To request a preapplication conference the applicant shall submit, at a minimum, a brief narrative describing the project, the location of the project on a US Geologic Survey (USGS) topographic map, and a copy of the Tax Map showing the development parcel.
- B. Application Procedure
1. All Minor Site Plan submission requirements shall be submitted to the Planning Department at least twenty-one (21) days prior to the meeting at which the applicant wishes to be heard by the Staff Review Committee.
  2. Within thirty (30) working days of receipt of an application for a Minor Site Plan, the Planner shall review the material to determine whether or not the submission is complete.

- (a) If submission requirement waivers are requested, the Planner shall review the requests and make a recommendation to the Staff Review Committee.
  - (b) The Planner shall notify the applicant and the Chair of the Planning Board in writing of the finding of completeness. If the Planner determines that the application is incomplete, the notice shall specify the additional material required to make the submission complete, and shall advise the applicant that the application will not be considered by the Staff Review Committee until the application is complete.
  - (c) If the application is determined to be complete, the Planner shall:
    - (1) Notify members of the Staff Review Committee that the application is complete.
    - (2) Notify the Chair of the Planning Board that the application is complete,
    - (3) Place the item on the agenda for review by the Staff Review Committee.
    - (4) Notify the owners of property within five hundred (500) feet of the property under review at least seven (7) days prior to the first meeting at which the project is to be reviewed. Notices shall be sent, at a minimum, via first-class mail,
      - (i) The notice shall:
        - a) Contain a brief description of the proposed activity and the name of the applicant.
        - b) Advise the party that a copy of the application is available for inspection and that written comments on the application will be received and considered by the Staff Review Committee, and
        - c) Provide the date, time, and place of the Committee meeting at which the application will be considered.
      - (ii) Failure of any abutter to receive such notice shall not be grounds for delay of any consideration of the application nor denial of the project.
    - (6) A determination of completeness under this subsection does not preclude the Staff Review Committee from requiring the submission of additional materials that it finds are necessary for review of the project.
- C. Site Walk Determination. The Planner may schedule a site walk to familiarize the Staff Review Committee with the project site.
- 1. The site walk shall be scheduled by the Planner and shall be attended by the applicant and/or the applicant's representative and members of the Staff Review Committee.
  - 2. All property owners within five hundred (500) feet of the property under review shall be notified, in writing, of the time and date of the site walk.

3. The applicant shall stake the centerline of the access drive, the corners of any proposed structures, and provide a sketch plan (on an 11"x17" sheet) of the project for each member of the Staff Review Committee at the site walk.

D. Staff Review Committee Meeting

1. The applicant and/or his/her representatives shall be allowed to make a presentation on the application, address any comments made by the staff or public, and present any proposed revisions to address these issues.
2. The Staff Review Committee shall determine whether to hold a public hearing on the application.
  - (a) If a hearing is not scheduled, the Committee may choose to accept comment on the application during any scheduled meeting.
3. If the Committee decides to hold a public hearing, it shall:
  - (a) Notice of the time, place and date of such hearing shall be sent not less than seven (7) days before the hearing to the applicant and to owners of all properties within five hundred (500) feet of the property(s) involved. Owners of properties within five hundred (500) feet of the property under review shall be those listed in the most recent tax records of the Town of Windham. Failure to receive notice shall not invalidate the public hearing.
  - (b) Notice shall also be published in a newspaper of general circulation in the Town of Windham at least two (2) times, and the first date of publication shall be at least seven (7) days prior to the public hearing.
4. The Staff Review Committee shall make findings of fact on the application, and approve, approve with conditions, or deny the application. The Committee shall specify in writing its findings of facts and reasons for any conditions or denial.
  - (a) The applicant, Chair of the Planning Board, and any abutters who commented on the application or attended the Committee meeting shall be notified in writing of the Committee's action. An approval letter from the Planning Department shall constitute adequate notification.

E. Appeal to the Planning Board

1. Any party aggrieved by the decisions of the Staff Review Committee may seek an appellate review by the Planning Board.

- (a) The appellant shall have ten (10) days in which to file such an appeal with the Chair of the Planning Board. The appeal shall be submitted in writing to the Planning Department and shall specify why the appellant believes the action of the Staff Review Committee was in error.
2. If an appeal is filed, the application shall be placed on the agenda in accordance with the most current Rules of the Planning Board.
  - (a) The appeal shall be placed on the agenda in the order it was received in relation to other applications filed with the Board.
  - (b) The appellant, applicant, and any interested parties who provided written comments or attended a Committee meeting shall be notified in writing of the Board meeting.
  - (c) The Planner shall provide members of the Board with copies of the application, supporting material, any staff review comments, abutters' comments, and minutes of the Staff Review Committee meeting at which the application was considered.
3. The Board shall review the existing record of materials on an appellate basis and shall determine if the application conforms to the approval criteria and standards.
  - (a) If the Board finds that the application conforms to the standards, it shall approve the application, otherwise it shall deny the same.
  - (b) The Planner shall give notice of the Planning Board's action to the appellant, applicant, and any interested parties who participated in the review.

### **807 Review Procedures for Major Developments**

- A. Pre-application Conference. Applicants for site plan review of a major development are required to schedule a pre-application conference. The purpose of this meeting is to familiarize the applicant with the review procedures and submission requirements, and approval criteria, and to familiarize the Town with the nature of the project.
  1. Such review shall not cause the plan to be a pending application or proceeding under 1 M.R.S.A. §302. No decisions relative to the plan may be made at this meeting.
- B. Information Required. To request a preapplication conference the applicant shall submit, at a minimum, a brief narrative describing the project, the location of the project on a US Geologic Survey (USGS) topographic map, and a copy of the Tax Map showing the development parcel. The applicant should be prepared to discuss the following:
  1. The proposed site, including its location, size, and general characteristics,
  2. The nature of the proposed use and potential development,
  3. Any issues or questions about existing municipal regulations and their applicability to the project, and

4. Any requests for waivers from the submission requirements in Section 811. (*See also Sec. 808 Waivers*)
- C. Sketch Plan. Applicants for projects classified as major developments shall submit a Sketch Plan for Planning Board review.
1. The sketch plan shall be completed prior to the preparation and submission of a Final Site Plan application and supporting documentation.
  2. The Planning Board shall review the Sketch Plan with the applicant and shall authorize the submission of the Final Plan application when the Sketch Plan review is complete.
- D. Sketch Plan Review Procedures
1. All Sketch Plan submission requirements shall be submitted to the Planning Department at least twenty-one (21) days prior to the meeting at which the application wishes to be heard by the Board.
  2. Site Walk. The Planning Board may visit the site to observe existing conditions, generally confirm the information submitted and assess the development proposal. (*See "Rules of the Windham Planning Board"*)
    - (a) The Board may schedule the site walk either before or after the first meeting at which the application is considered.
    - (b) The applicant shall prepare the property for the site walk by staking the centerline of any proposed street or access points and the corners of all proposed buildings. The applicant shall also provide each Board member with a copy of the plan on an 11"x17" sheet at the site walk.
    - (c) The Board may decide not to hold, or postpone, a site walk when the site is snow covered.
      - (1) Notice of the site walk shall be published in a newspaper of general circulation, mailed to the applicant and property owners within five hundred (500) feet of the property under review. Notices shall be published and/or sent at least seven (7) days prior to the site walk.
- E. Review of the Sketch Plan. The review of the Sketch Plan shall be informational and shall not result in any formal approval or disapproval of the project by the Planning Board.
1. The applicant and property abutters shall be notified of the time, date, and place of the Board meeting at which the sketch plan will be reviewed.
    - (a) The notice shall be published in a newspaper of general circulation, mailed to the applicant and property owners within five hundred (500) feet of the property under

review. Notices shall be published and/or sent at least seven (7) days prior to the meeting.

2. 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.
3. The Board may consider any input from Town staff or Town consultants.
4. The Board may choose to accept public comment on any sketch plan. The Board's option to accept public comment shall be noted on the meeting agenda.
5. The outcome of the review process shall be the identification by the Board of the issues and constraints that shall be addressed in the Final Site Plan review application.
6. The Board shall act on any requests for waivers from the Final Site Plan submission requirements.

F. Final Site Plan Review Procedures

1. Prior to submittal of the Final Plan application, the following approvals shall be obtained in writing, where applicable. If the Board is unsure whether a permit or license from a federal, state or local agency is necessary, the applicant may be required to obtain a written opinion from the appropriate agency as to the applicability of their regulations.
  - (a) Maine Department of Environmental Protection, under the Site Location of Development Act.
  - (b) Maine Department of Environmental Protection, under the Natural Resources Protection Act or Stormwater Law, or if an MEPDES wastewater discharge license is needed.
  - (c) Maine Department of Transportation, for a Traffic Movement Permit, and/or Highway Entrance/Driveway Access Management Permit outside of the Urban Compact,
  - (d) Town of Windham Public Works Department for a curb cut permit inside the Urban Compact (*See "Curb Cuts and Driveway Openings" in Sec. 500 Performance Standards*).
  - (e) The Portland Water District if existing or proposed public water or sewer service is to be used.

- (f) Maine Department of Health and Human Services if a central water supply system is to be used.
  - (g) A Maine Licensed Professional Civil Engineer if individual wells serving each building site are to be used. The Board may also require the applicant to submit the results of water quality tests as performed for, or by, the State of Maine Department of Health and Welfare.
  - (h) Maine Department of Health and Human Services if an engineered sewage collection and treatment system is to be utilized.
  - (i) The Plumbing Inspector if individual septic tanks are to be installed by the builder.
  - (j) U.S. Army Corps of Engineers, if a permit under Section 404 of the Clean Water Act is required.
  - (k) Written approval of any proposed street names from the Town of Windham E911 Addressing Officer.
2. If the plan identifies any areas listed on or eligible to be listed on the National Register of Historic Places, the applicant shall submit a copy of the plan and a copy of any proposed mitigation measures to the Maine Historic Preservation commission prior to submitting the final plan application.
3. All Final Plan submission requirements shall be submitted to the Planning Department at least twenty-one (21) days prior to the meeting at which the application wishes to be heard by the Board.
- (a) Upon receipt of a formal site plan review application, the Planner shall give a dated receipt to the applicant.
4. Within thirty (30) days of the receipt of a formal development review application, the Planner shall review the material and determine whether or not the submission is complete.
- (a) The Planner shall notify the applicant in writing of this finding. If the Planner determines that the application is incomplete, the notice shall specify the additional materials required to make the application complete and shall advise the applicant that the application will not be considered by the Board until the additional information is submitted to the Board.
5. When the Planner determines that the application is complete, the Planner shall:
- (a) Notify the Planning Board,
  - (b) Provided Town staff and Town consultants with the Final Plan application material.

- (c) Place the item on the Planning Board's agenda.
  - (d) A determination of completeness under this subsection does not preclude the Planning Board from requiring the submission of additional materials that it finds are necessary for review of the project.
- 6. Town staff, including Town consultants, may review the application and make recommendations to the Board.
  - 7. The Planner shall give written notice of the date, time, and place of the meeting at which the application will be considered, to the applicant.
  - 8. The Planning Board shall determine whether to hold a public hearing on the Final Plan.
- G. Final Site Plan, Public Hearing Procedures
- 1. The purpose of the public hearing is to allow the applicant and affected property owners to provide information as part of the record that the Board will use in considering its action on the application. Testimony presented at the hearing should be related to factual information about the application and related submissions and the project's compliance with the review standards and other regulations and requirements of this ordinance or other municipal ordinances.
  - 2. Notice of the public hearing shall be published in a newspaper of general circulation, mailed to the applicant and property owners within five hundred (500) feet of the property under review. Notices shall be published and/or sent at least seven (7) days prior to the public hearing.
  - 3. The public hearing shall follow the procedures established in the Town of Windham's Planning Board Rules, as amended.
- H. Final Site Plan, Vote on Application
- 1. The Board shall make findings of fact on the application, and approve, approve with conditions, or deny the application. The Board shall specify in writing its findings of facts and reasons for any conditions or denial.
  - 2. The Board shall notify the applicant and abutters who requested to be notified of the action of the Board including the findings of fact and any conditions of approval. This requirement can be met through the distribution of minutes of the meeting containing the findings of fact and conclusions of the Board.



**808 Waivers**

- A. Waiver of Submission Requirements. The Development Review Committee, for minor developments, or the Planning Board, for major developments, may waive any of the submission requirements of Section 811 based upon a written request by the applicant. Such request shall be submitted at the time of the preapplication conference for minor developments or as part of the sketch plan application for major developments. A waiver of any submission requirement may be granted only if the Planning Board or Development Review Committee finds that the information is not required to determine compliance with the standards and criteria of the Land Use Ordinance.
- B. Waiver of Site Plan Performance Standards. The Planning Board may waive the requirements of Section 812 if it finds that extraordinary and unnecessary hardships, not self-imposed, may result from strict compliance with the site plan review standards. In all cases, waivers shall not be deemed a right of the applicant, but rather shall be granted at the discretion of the Planning Board.
1. Procedure. The applicant shall submit a list of the requested waiver(s) in writing. For each waiver requested, the applicant shall submit answers to each of the criteria in Subsection 808.B.2 below.
    - (a) The Planning Board may request additional information to make a determination on a waiver request.
  2. Criteria. In granting a waiver, the Planning Board shall use the following criteria:
    - (a) The waiver will improve the ability of the project to take the site's pre-development natural features into consideration. Natural features include, but are not limited to, topography, location of water bodies, surface drainage, location of unique or valuable natural resources, relation to abutting properties or land uses.
    - (b) The waiver does not result in:
      - (1) Undue water or air pollution,
      - (2) Undue light pollution or glare,
      - (3) An inadequate water supply,
      - (4) Unreasonable soil erosion,
      - (5) Unreasonable traffic congestion or safety risk,
      - (6) Decreased pedestrian safety or access,
      - (7) Inadequate supply of parking spaces,
      - (8) Inadequate sewage disposal capacity,
      - (9) Inadequate solid waste disposal capacity,
      - (10) An adverse impact on scenic or natural beauty, aesthetics, historic sites, or rare or irreplaceable natural areas,

- (11) Flooding or adverse drainage impacts on abutting properties.
3. Recording of Waivers of Site Plan Performance Standards. When the Board grants a waiver to any of the improvements required by these regulations, the Final Plan shall indicate the waivers granted. Waivers shall be listed in a separate location from either the plan's general notes or any conditions of approval. Waivers of the required application submissions do not need to be listed.

### **809 Final Approval and Filing**

- A. Upon completion of the requirements of this article and an approval vote by the majority of the Planning Board members, or Staff Review Committee members, the application shall be deemed to have final approval.
- B. The applicant shall send an electronic version of the approved plans to the Planner for review.
1. Within seven (7) working days, the Planner shall review and confirm that the plan includes the conditions of approval, amendments, notes and other information as required by the Planning Board's, or Staff Review Committee's, final approval.
- C. Once confirmed by the Planner, the applicant shall provide the following items:
1. One complete set of mylars with a signature block on the overall site plan sheet.
2. One mylar or paper copy of the plan sheet containing the signature block for the applicant's records, if desired by the applicant.
3. A complete electronic copy of the site plan in a format acceptable to the Town.
4. Revised GIS data with any changes made during the review process, if necessary.
- D. The site plan shall be signed by a majority of the members of the Planning Board or Staff Review Committee and shall be filed by the applicant with the Planner.
1. Any plan not so filed with the Town within thirty (30) days of the date upon which such plan is approved and signed by the Board as herein provided shall become null and void.
2. The Planning Board, by vote, may extend the filing period for good cause.

### **810 Fees**

- A. Sketch Plan Fee. Prior to submitting a Sketch Plan for a major development, the applicant shall pay the processing fee as set by the Town Council in the Windham Fee Schedule (*See Appendix A Fee Schedule*).
- B. Application Fee. An application for site plan review shall be accompanied by an application fee. This fee is intended to cover the cost of administrative processing of the

application, including notification, advertising, mailings, and similar costs. The fee shall not be refundable. This application fee shall be paid to the municipality, and evidence of payment of the fee shall be included with the application.

C. Consulting, Review and Construction Observation Fees

1. Notwithstanding any other provision(s) of the Town's Land Use Ordinance, Sections 100 through 1200 (the "Code"), to the contrary, and in addition to such fees as are otherwise specified by the Code, the Town shall assess fees to cover 100 percent of its costs related to independent geotechnical, hydrologic, engineering, planning, legal, and similar professional consulting services incurred in the review and post-approval inspections of site plan applications. Such fees shall be subject to the following limitations:
  - (a) Such fees shall only be as expressly provided by this Subsection 810.C;
  - (b) Such consultation shall be limited to reasonable and necessary review, as allowed by the pertinent ordinance, which exceeds the expertise of Town staff or their ability to review the application materials within the time limits otherwise required by law or Ordinance.
  - (c) Such fees shall be assessed only to recover costs directly associated with review and post-approval inspection of the application submitted by the applicant to whom they are assessed;
  - (d) Such fees shall be reasonable in amount, based upon the consulting time involved and the complexity of the review;
  - (e) The results of the consultation for which such fees are assessed shall be available for public review, but such results shall be deemed to have been made solely for the benefit of the Town of Windham and shall remain its property; and
  - (f) Such fees shall be assessed for the privilege of review and shall be payable without regard to consultation results or the outcome of the application.

D. An escrow account shall be established with the Town by the applicant to guarantee payment in advance of actual fees assessed pursuant to Subsection 810.C. The original deposit shall be an amount specific to the application, as accorded in the Town's fee schedule. If the balance in the escrow account shall be drawn down by 75 percent, the Town shall notify the applicant and require that an additional amount be deposited to cover the cost of remaining work before any such remaining work is undertaken. The Town shall continue to notify the applicant and require that any such additional amount(s) be deposited whenever the balance of the account is drawn down by 75 percent of the original deposit. Any excess amount deposited with the Town in advance shall be promptly refunded to the applicant after final action on the application.

E. Any dispute regarding the application of Subsection 810.C or the amount required to be paid, either in advance or upon completion, may be appealed in writing within 10 days to the Town Manager. The Town Manager, after due notice and investigation and for

good cause shown, may affirm, modify, or reverse the disputed decision or reduce the amount assessed.

- F. In an effort to minimize the use of outside or independent consulting, the provisions of Subsection 810.C shall be subject to the following additional limitations:
1. The Planner, based on his/her work load and in his/her sole discretion, may immediately refer to outside or independent consulting any major site plan. The Town shall charge for this review based on the billing rates of the retained consultant. The first four (4) hours of the review shall be paid for with the project's application fee. Review work beyond the initial four (4) hours shall be paid for with the escrow established in Subsection 810.D above.
- G. Construction Observation Fee. At least five (5) days prior to the commencement of construction, the applicant shall pay to the Town a construction observation fee. The fee shall be calculated and administered as follows:
1. The applicant's engineer/representative shall prepare a line-item cost estimate of all site improvements.
  2. The Town's consulting engineer shall review the cost estimate. This review shall be withdrawn from the escrow balance established in Subsection 810.D. above.
  3. The applicant shall post with the Town an amount equal to 3% of the cost estimate for site improvements.
    - (a) If, and when, a construction observation will result in the Town exceeding the 3% of site improvements amount, the Town's consulting engineer will submit a written notice stating the reasons why the estimate is to be exceeded, and by how much.
    - (b) If the balance in the construction observation fee account shall be drawn down by 75 percent, the Town shall notify the applicant and require that an additional amount be deposited to cover the cost of remaining work before any such remaining work is undertaken.
      - (1) The Town shall continue to notify the applicant and require that any such additional amount(s) be deposited whenever the balance of the account is drawn down by 75 percent of the original deposit.
    - (c) Any and all unused observation fee funds shall be returned to the applicant.
- H. Subsection 810.C. shall be administered by the Planning Director or other Town employee responsible for administering the ordinance under which review is sought.
1. No building permit, commencement of any construction or site preparation, or certificate of occupancy may be issued or released until all fees assessed hereunder have been paid in full.
- I. Establishment of Fees. The Municipal Officers may, from time to time and after consultation with the Board, establish the appropriate fees following posting of the proposed schedule of fees and public hearing.



**811 Submission Requirements****A. Sketch Plan Submission Requirements**

The Sketch Plan is intended to provide both the applicant and the Planning Board/Staff Review Committee with a better understanding of the site and the opportunities and constraints imposed on its use by both the natural and built environment. It is anticipated that this analysis will result in a development plan that reflects the conditions of the site; those areas most suitable for the proposed use will be utilized, while those that are not suitable or present significant constraints will be avoided to the maximum extent possible. Therefore, the submission requirements provide that the applicant submit basic information about the site and an analysis of that information.

1. The Sketch Plan submission shall contain, at a minimum, fifteen (15) copies of the following information unless a waiver of a submission requirement is granted (*See Sec. 808 Waivers*):
  - (a) A complete Sketch Plan application form.
  - (b) A narrative describing the existing conditions of the site, the proposed use and the constraints or opportunities created by the site. This submission should outline any traffic studies, utility studies, market studies or other applicable work that will be conducted as part of the Final Plan application.
  - (c) The names, addresses, and phone numbers of the record owner and the applicant.
  - (d) The names and addresses of all consultants working on the project.
  - (e) Evidence of right, title, or interest in the property.
  - (f) Evidence of payment of the application and escrow fees.
  - (g) Any anticipated requests for waivers from the submission requirements for the Final Site Plan review application (*See Section 808 Waivers*).
  - (h) An accurate scale plan of the parcel, at a scale of not more than one hundred (100) feet to the inch showing at a minimum the following information:
    - (1) The name of the development, north arrow, date and scale.
    - (2) The boundaries of the parcel.
    - (3) The relationship of the site to the surrounding area.
    - (4) The topography of the site at an appropriate contour interval depending on the nature of the use and character of the site (in many instances, submittal of the applicable U.S.G.S. 10' contour map will be adequate);
    - (5) The approximate size and location of major natural features of the site, including wetlands, streams, ponds, floodplains, groundwater aquifers, significant wildlife habitats and fisheries or other important natural features (if none, so state).
    - (6) Existing buildings, structures, or other improvements on the site (if none, so state).
    - (7) Existing restrictions or easements on the site (if none, so state).

- (8) The approximate location and size of existing utilities or improvements servicing the site. (if none, so state)
- (9) A class D medium intensity soil survey. (information from the most current soil survey for Cumberland County, Maine is acceptable)
- (10) The location and size of proposed buildings, structures, access drives, parking areas, and other development features. (if applicable)
- (11) The sketch plan is not required to be surveyed. *Recommendation: If the site is to be surveyed, please refer to the GIS requirements for Final Plan review. It may be in the applicant's best interest to obtain the required GIS data while the surveyor is on site.*

#### B. Final Site Plan Review Application Submission Requirements

Applications for Final Site Plan review shall be submitted on application forms provided by the Town. The complete application form, evidence of payment of the required fees, and the required plans and related information shall be submitted to the Planning Department. Applications for major developments will not be received until the review of the Sketch Plan is completed. The submission shall contain at least the following exhibits and information, unless specifically waived in writing:

1. Minor and Major Final Site Plans. All Final Site Plan applications shall contain fifteen copies of the following information:
  - (a) A fully executed and signed copy of the Final Site Plan application form.
  - (b) Evidence of payment of the application and escrow fees.
  - (c) *Written Information*: Written materials shall be contained in a bound report.
    - (1) A narrative describing the proposed use or activity.
    - (2) Record owner's name, address, and phone number and applicant's name, address and phone number, if different.
    - (3) Names and addresses of all abutting property owners.
    - (4) A copy of the deed to the property, an option to purchase the property or other documentation to demonstrate right, title or interest in the property on the part of the applicant.
    - (5) Copies of existing or proposed covenants or deed restrictions.
    - (6) Copies of existing or proposed easements on the property.
    - (7) The name, registration number and seal of the licensed professional who prepared the plan, if applicable.
    - (8) Evidence of the applicant's technical capability to carry out the project as proposed.
    - (9) An assessment of the adequacy of any existing sewer and water mains, culverts and drains, on-site sewage disposal systems, wells, underground tanks or installations, and power and telephone lines and poles on the property.

- (10) Estimated demand for water supply and sewage disposal.
- (11) Provisions for handling all solid wastes, including hazardous and special wastes.
- (12) Detail sheets of proposed light fixtures.
- (13) Listing of proposed trees or shrubs to be used for landscaping.
- (14) An estimate of the weekday AM and PM and Saturday peak hour and daily traffic to be generated by the project.
- (15) A description of important or unique natural areas and site features, including but not limited to, floodplains, deer wintering areas, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, sand and gravel aquifers, and historic and/or archaeological resources.
- (16) Stormwater calculations, erosion and sedimentation control measures, and water quality and/or phosphorous export management provisions, if the project requires a stormwater permit from the Maine Department of Environmental Protection or if the Planning Board or Staff Review Committee determines that such information is necessary based upon the scale of the project or the existing conditions in the vicinity of the project.
- (17) A written statement from any utility district providing service to the project as to the adequacy of the water supply in terms of quantity and pressure for both domestic and fire flows, and the capacity of the sewer system to accommodate additional wastewater if public water or sewerage will be utilized.
- (18) Financial Capacity
  - (i) Estimated costs. Specify the estimated total cost of the development and itemize the estimated major expenses. The itemization of major costs may include, but not be limited to, the cost of the following activities: land purchase, roads, sewers, structures, water supply, erosion control, pollution abatement and landscaping.
  - (ii) Financing. Provide one of the following unless otherwise approved by the Town.
    - a) Letter of commitment to fund. A letter of commitment, acceptable to the department, from a financial institution, governmental agency, or other funding agency indicating a commitment to provide a specified amount of funds, and specifying how those funds will be used.
    - b) Self-financing
      - 1) Annual report. The most recent corporate annual report indicating availability of liquid assets to finance the development, together with explanatory material interpreting the report; or



- 2) Bank statement. Copies of bank statements or other evidence indicating availability of funds if the applicant will personally finance the development.
  - c) Other. If funding is required, but a final commitment of all necessary money cannot be made until all approvals are received and other reasonable conditions are met, provide the following.
    - 1) Cash equity commitment. Cash equity commitment to the development sufficient to demonstrate the applicant's ability to go forward. The Town will consider 20 percent equity of the total cost of a development as the normal equity commitment but reserves the right to lower or raise this amount if special circumstances of an individual development warrant it.
    - 2) Financial plan. Financial plan for the remaining financing.
    - 3) Letter. Letter acceptable to the Town from an appropriate financial institution indicating an intention to provide financing subject to reasonable conditions of acceptance.
  - (iii) Certificate of Good Standing. If new applicant is a registered corporation, provide either a *Certificate of Good Standing* (available from the Secretary of State) or a statement signed by a corporate officer affirming that the corporation is in good standing.
- (19) Technical Capacity. Describe the technical ability of the applicant and consultant(s) to undertake the development. Include the following information:
- (i) Prior experience. A statement of the applicant's prior experience and appropriate training relating to the nature of the development. Specify prior experience relating to developments that have received permits from the Town.
  - (ii) Personnel. Resumes or similar documents detailing the experience and qualifications of full-time, permanent or temporary staff contracted with or employed by the applicant who will design the development.
- (d) *Plan Information*. The maps or drawings shall be at a scale sufficient to allow review of the items listed under the approval criteria, but in no case shall be more than one hundred (100) feet to the inch for that portion of the tract of land being proposed for development.

## (1) Existing Conditions

- (i) Location Map. The location map shall be drawn at a size and scale adequate to allow the Board to locate the subdivision within the municipality.
- (ii) Vicinity Plan. A plan drawn at a scale of not over four hundred (400) feet to the inch to show the area within two hundred and fifty (250) feet of the property line of the proposed subdivision. The vicinity plan shall show the following:
  - a) The approximate location of all property lines and acreage of parcels.
  - b) Locations, widths and names of existing, filed or proposed streets, easements, or building footprints
  - c) The location and designations of any public spaces.
  - d) An outline of the proposed subdivision, together with its street system and an indication of the future probable street system of the remaining portion of the tract, if the proposed subdivision plan encompasses only part of the applicant's entire property holding.
- (iii) A North arrow identifying all of the following: Grid North; Magnetic North with the declination between the Grid and Magnetic; and whether Magnetic or Grid bearings were used in the plan design.
- (iv) The location of all required building setbacks, yards, and buffers.
- (v) Boundaries of all contiguous property under the total or partial control of the owner or applicant regardless of whether all or part is being developed at this time.
- (vi) The tax map and lot number of the parcel or parcels on which the project is to be located.
- (vii) Zoning classification(s), including overlay and/or subdistricts, of the property and the location of zoning district boundaries if the property is located in two (2) or more zoning districts or subdistricts or abuts a different district.
- (viii) The bearings and length of all property lines of the property to be developed and the stamp of the surveyor that performed the survey. For curve lines at least three elements shall be provided. These include the arc length, the radius and one of the following: the central angle, the tangent length with bearings, or the chord distance with bearings.
- (ix) Existing topography of the site at two (2) foot contour intervals.
- (x) Location and size of any existing sewer and water mains, culverts and drains, on-site sewage disposal systems, wells, underground tanks or installations, and power and telephone lines and poles on the property to be developed and on abutting streets or land that may serve the development. Appropriate elevations shall be provided as necessary to determine the direction of flow.

- (xi) Location, names, and present widths of existing public and/or private streets and rights-of-way within or adjacent to the proposed development.
  - (xii) The location, dimensions and ground floor elevation of all existing buildings on the site.
  - (xiii) The location and dimensions of existing driveways, parking and loading areas, walkways, and sidewalks on or immediately adjacent to the site.
  - (xiv) Location of intersecting roads or driveways within two hundred (200) feet of the site.
  - (xv) The location of the following:
    - a) Open drainage courses,
    - b) Wetlands,
    - c) Stonewalls,
    - d) Graveyards,
    - e) Fences,
    - f) Stands of trees or treeline, and
    - g) Other important or unique natural areas and site features, including but not limited to, floodplains, deer wintering areas, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, sand and gravel aquifers, and historic and/or archaeological resources.
  - (xvi) The direction of existing surface water drainage across the site.
  - (xvii) The location, front view, dimensions, and lighting of existing signs.
  - (xviii) Location and dimensions of any existing easements that encumber or benefit the property.
  - (xix) The location of the nearest fire hydrant, dry hydrant or other water supply for fire protection.
- (2) Proposed Development Activity
- (i) The location and dimensions of all provisions for water supply and wastewater disposal, and evidence of their adequacy for the proposed use, including soils test pit data if on-site sewage disposal is proposed.
  - (ii) A grading plan showing the proposed topography of the site at two (2) foot contour intervals.
  - (iii) The direction of proposed surface water drainage across the site, and from the site, with an assessment of impacts on downstream properties.
  - (iv) The location and proposed screening of any on-site collection or storage facilities.
  - (v) The location, dimensions, and materials to be used in the construction of proposed driveways, parking and loading areas, and walkways and any changes in traffic flow onto or off-site.
  - (vi) Proposed landscaping and buffering.

- (vii) The location, dimensions, and ground floor elevation of all proposed buildings or building expansion proposed on the site.
  - (viii) Location, front view, materials, and dimensions of proposed signs together with the method for securing the sign.
  - (ix) Location and type of exterior lighting. The Planning Board or Development Review Committee may require a photometric plan to demonstrate the coverage area of all lighting.
  - (x) The location of all utilities, including fire protection systems.
  - (xi) Approval Block: Space shall be provided on the plan drawing for the signatures of the Planning Board or Development Review Committee and date, together with the following words, "Approved: Town of Windham Planning Board, or Town of Windham Development Review Committee [choose appropriate review authority]."
2. Major Final Site Plans - Additional Information. In addition to the information required for all Minor and Major Site Plan applications, an application for a Major Final Site Plan shall contain the following information:
- (a) A narrative and/or plan describing how the proposed development plan relates to the sketch plan.
  - (b) A stormwater drainage and erosion control program showing:
    - (1) The existing and proposed method of handling stormwater runoff.
    - (2) The direction of flow of the runoff, through the use of arrows and a description of the type of flow (e.g. sheet flow, concentrated flow, etc.).
    - (3) The location, elevation, and size of all catch basins, dry wells, drainage ditches, swales, retention basins, and storm sewers.
    - (4) At a minimum, engineering calculations used to determine drainage requirements based upon the twenty-five (25) year twenty-four (24) hour storm frequency.
    - (5) Methods of minimizing erosion and controlling sedimentation during and after construction.
  - (c) A groundwater impact analysis prepared by a groundwater hydrologist for projects involving on-site water supply or sewage disposal facilities with a capacity of two thousand (2,000) gallons or more per day.
  - (d) The name, registration number, and seal of the Maine Licensed Professional Architect, Engineer, Surveyor, Landscape Architect and/or similar professional who prepared the plan.
  - (e) A utility plan showing, in addition to provisions for water supply and wastewater disposal, the location and nature of electrical, telephone, cable TV, and any other utility services to be installed on the site.
  - (f) A planting schedule keyed to the site plan indicating the general varieties and sizes of trees, shrubs, and other vegetation to be planted on the site, as well as information pertaining to provisions that will be made to retain and protect existing trees, shrubs, and other vegetation.

- (g) Digital transfer of any site plan data on the Town's Horizontal Datum: Maine State Plane Coordinate System: Maine West Zone FIPS Zone 1802, North American Datum 1983; Units: US Survey Feet.
- (1) The preferable vertical datum is North American Vertical Datum 1988 (NAVD88). However, if only National Geodetic Vertical Datum 1929 (NGVD29) is possible, this is permissible. The choice of vertical datum shall be indicated on the digital submission. The Ellipsoid is GRS 80 (Geodetic Reference System 1980).
- (2) Data shall have survey grade positional accuracy. Data could be developed using either Real Time Kinematic (RTK) GPS, survey-grade Static GPS data collection or traditional methods of occupying known, high-precision surveyed monuments. The datum, survey methods, and type of survey equipment used shall be identified.
- (h) A traffic impact study, prepared by a Maine Licensed Professional Engineer, demonstrating the impact of the proposed project on the capacity, level of service and safety of adjacent streets, if the project or expansion will generate fifty (50) or more trips during the a.m. or p.m. peak hour based upon the latest edition of the trip generation manual of the Institution of Traffic Engineers, or if required by the Planning Board.

## **812 Performance Standards and Approval Criteria**

The following criteria shall be used by the Planning Board or Site Plan Review Committee in reviewing applications for site plan review and shall serve as minimum requirements for approval of the application. The application shall be approved unless the Planning Board or Site Plan Review Committee determines that the applicant has failed to meet one or more of these standards. In all instances, the burden of proof shall be on the applicant who shall produce evidence sufficient to warrant a finding that all applicable criteria have been met.

### **A. Utilization of the Site**

The plan for the development shall reflect the natural capabilities of the site to support development. Buildings, lots, and support facilities shall be clustered in those portions of the site that have the most suitable conditions for development. Environmentally sensitive areas, including but not limited to, wetlands, steep slopes, floodplains, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, and sand and gravel aquifers shall be maintained and preserved to the maximum extent. Natural drainage areas shall also be preserved to the maximum extent. The development shall include

appropriate measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

## B. Vehicular Traffic

1. Adequacy of Road System. Vehicular access to the site shall be on roads which have adequate capacity to accommodate the additional traffic generated by the development. Intersections on arterial streets within a half (0.5) mile of any entrance road which are functioning at a Level of Service of D or better prior to the development shall function at a minimum at Level of Service D after development. If any such intersection is functioning at a Level of Service E or lower prior to the development, the project shall not reduce the current level of service. This requirement may be waived by the Planning Board if the project is located within a growth area designated in the Town's adopted Comprehensive Plan and the Board determines that the project will not have an unnecessary adverse impact on traffic flow or safety.
  - (a) A development not meeting this requirement may be approved if the applicant demonstrates that:
    - (1) A public agency has committed funds to construct the improvements necessary to bring the level of access to this standard, or
    - (2) The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will assure the completion of the improvements with a financial guarantee acceptable to the municipality.
2. Access to the Site. Vehicular access to and from the development shall be safe and convenient.
  - (a) Any driveway or proposed street shall be designed so as to provide the minimum sight distance according to the Maine Department of Transportation standards. (*See standards for Curb Cuts in Section 500 Performance Standards*)
  - (b) Points of access and egress shall be located to avoid hazardous conflicts with existing turning movements and traffic flows.
  - (c) The grade of any proposed drive shall be not more than  $\pm 3\%$  for a minimum of fifty (50) feet, from the intersection.
  - (d) The intersection of any access/egress drive or proposed street shall function: (a) at a Level of Service of D following development if the project will generate one thousand (1,000) or more vehicle trips per twenty-four (24) hour period.

- (e) Where a lot has frontage on two (2) or more streets, the primary access to and egress from the lot shall be provided from the street where there is less potential for traffic congestion and for traffic and pedestrians hazards. Access from other streets may be allowed if it is safe and does not promote shortcutting through the site.
  - (f) Where it is necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, the applicant shall be responsible for providing turning lanes, traffic directional islands, and traffic controls within public streets.
  - (g) Accessways shall be designed and have sufficient capacity to avoid queuing of entering vehicles on any public street.
  - (h) The following criteria shall be used to limit the number of driveways serving a proposed project:
    - (1) No use which generates less than one hundred (100) vehicle trips per day shall have more than one (1) two-way driveway onto a single roadway. Such driveway shall be no greater than forty (40) feet wide.
    - (2) No use which generates one hundred (100) or more vehicle trips per day shall have more than two (2) points of entry from and two (2) points of egress to a single roadway. The combined width of all accessways shall not exceed sixty (60) feet.
    - (3) The Planning Board or Development Review Committee may limit a development to one (1) point of ingress/egress onto Routes 302, 35 and 115.
3. Accessway Location and Spacing. Accessways shall meet the following standards:
- (a) Private entrances/exits shall be located at least fifty (50) feet from the closest unsignalized intersection and one hundred fifty (150) feet from the closest signalized intersection, as measured from the point of tangency for the corner to the point of tangency for the accessway. This requirement may be reduced if the shape of the site does not allow conformance with this standard.
  - (b) Private accessways in or out of a development shall be separated by a minimum of seventy-five (75) feet where possible.
  - (c) Accessways shall be aligned with accessways on the opposite side of a public street to the greatest extent possible.

4. Internal Vehicular Circulation. The layout of the site shall provide for the safe movement of passenger, service, and emergency vehicles through the site.
- (a) Nonresidential projects that will be served by delivery vehicles shall provide a clear route for such vehicles with appropriate geometric design to allow turning and backing for a minimum of SU-30 vehicles.
    - (1) If the project is to be served by “tractor-trailer” delivery vehicles, a clear route for such vehicles with appropriate geometric design shall allow for turning and backing for a minimum of WB-50 vehicles.
  - (b) Clear routes of access shall be provided and maintained for emergency vehicles to and around buildings and shall be posted with appropriate signage (fire lane - no parking).
  - (c) The layout and design of parking areas shall provide for safe and convenient circulation of vehicles throughout the lot.
  - (d) All roadways shall be designed as follows:
    - (1) To harmonize with the topographic and natural features of the site insofar as practical by minimizing filling, grading, excavation, or other similar activities which result in unstable soil conditions and soil erosion,
    - (2) By fitting the development to the natural contour of the land and avoiding substantial areas of excessive grade and tree removal, and by retaining existing vegetation during construction,
    - (3) The road network shall provide for vehicular, pedestrian, and cyclist safety, all season emergency access, snow storage, and delivery and collection services.
  - (e) Nonresidential projects that include drive-through services shall be designed and have sufficient stacking capacity to avoid the queuing of vehicles on any public street.

### C. **Parking and Loading Requirements**

1. Off-street Parking Layout
- (a) Parking areas with more than two (2) parking spaces shall be arranged so that it is not necessary for vehicles to back into the street.
  - (b) All parking spaces, access drives, and impervious surfaces shall be located at least five (5) feet from any side or rear lot line, except where a parking lot is shared between two adjoining properties, or where standards for buffer strips require a greater distance. No parking spaces shall be located within five (5) feet of the front



property line. Parking lots on adjoining lots may be connected by accessways not exceeding twenty-four (24) feet in width.

- (c) Parking stalls and aisle layout shall conform to the standards in Table 1 of this Subsection.

**Table 1 – Parking Stall and Aisle Layout**

Parking Angle (in Degrees)	Stall Width	Skew Width	Stall Depth	Aisle Width
90	9'-0"	0'-0"	18'-0"	24'-0" two way
60	8'-6"	10'-6"	18'-0"	16'-0" one way only
45	8'-6"	12'-9"	17'-6"	12'-0" one way only
30	8'-6"	17'-0"	17'-0"	12'-0" one way only

- (d) In parking lots utilizing a parking angle of 90 degrees, thirty-percent (30%) of the spaces shall be created with a stall width of 10'-0" and a stall depth of 20'-0". Remaining spaces shall be created with a stall width of at least 9'-0" and a stall depth of at least 18'-0".
- (e) In lots utilizing diagonal parking, the direction of proper traffic flow shall be indicated by signs, pavement markings or other permanent indications and maintained as necessary.
- (f) Parking areas for nonresidential uses shall be designed to permit each motor vehicle to proceed to and from the parking space provided for it without requiring the moving of any other motor vehicles. Double stack parking may be permitted for resident parking in conjunction with residential uses if both spaces in the stack are assigned to the occupants of the same dwelling unit.
- (g) Provisions shall be made to restrict the "overhang" of parked vehicles when it might restrict traffic flow on adjacent through roads, restrict pedestrian or bicycle movement on adjacent walkways, or damage landscape materials.
- (h) Parallel parking spaces may be used along internal driveways or access ways. Stall width and depth shall be at least 9' x 20'.
- (i) Automobile Storage. The parking space dimension requirements in Subsections 812.C.1.(c) to (g) above, do not apply to vehicles stored for display, sale or repair. However, the operator of the use shall demonstrate that there is enough land area to accommodate all vehicles within any setbacks or required buffer areas of Subsection 812.C.1.(b) and/or the applicable zoning district. (*See Sec. 400 Zoning Districts*)

## 2. Minimum Off-Street Parking Space Requirements

- (a) The minimum off-street parking space standards of this section, including the minimum off-street parking space requirements listed in Table 2, below, shall be provided unless a waiver is granted (*See Sec. 808 Waivers*):
- (1) Except as provided in Section 812.C.2.(c) below, off-street parking spaces shall be provided on the same lot occupied by the use.
  - (2) The closest boundary of the parking area shall be within 300 ft. of the principle use for which the spaces are required.
  - (3) All areas pertinent to the use, except those listed in subsection 812.C.2.(a)(4), shall be included in the calculation of gross floor area. (e.g. enclosed or fenced garden centers or storage areas shall be factored into the gross floor area of a use.)
  - (4) Floor area of rooms occupied by mechanical, electrical, communications, and security equipment shall be deducted from the floor area for the purpose of calculating parking requirements.
  - (5) Storage of Automobiles. The minimum off-street parking space requirements of this Subsection 812.C.2. do not apply to the storage of automobiles for repair or sale where the operator of the use has control over the movement of all stored vehicles on the property.
    - (i) The applicant shall demonstrate that adequate area is provided for the storage of all automobiles on the property within any applicable yard setbacks.
    - (ii) The aisle width requirements in Subsection 812.C.1.(c) shall apply to the storage of automobiles.
    - (iii) The applicable parking requirements in Table 2 – Minimum Off-Street Parking Space Requirements, below, apply to all other cars on the property (e.g. customers and employees).
  - (6) Motel/Hotel Requirements. Five percent (5%) of the motel or hotel's off-street parking spaces shall be dedicated to vehicles with trailers or buses. Parking spaces for vehicles with trailers or buses shall have a minimum dimension of ten (10) feet wide by forty (40) feet deep. Each parking space dedicated to vehicles with trailers or buses shall account for two (2) of the minimum off-street parking spaces required by this ordinance.

**Table 2 – Minimum Off-Street Parking Space Requirements**

Use	Parking Spaces Required
<b>Residential</b>	
Dwelling: Single Family, Duplex	2 per dwelling unit
Multifamily:	
Studio	1.25 per dwelling unit
One Bedroom	1.5 per dwelling unit
Two or More Bedrooms	2 per dwelling unit
Accessory/In-Law Dwelling Unit	1 per dwelling unit
Hotel/Motel	1.25 per guest room, plus 10 per k.s.f. restaurant/lounge, plus 30 per k.s.f. meeting/banquet room.
Retirement Community	1.5 per 2 bedroom dwelling unit plus 0.5 per each additional bedroom, plus 1 per employee at the largest shift
Assisted Living Facility	0.5 per dwelling unit, plus 1 per employee at the largest shift
Boarding Home for Sheltered Care	0.5 per room, plus 1 per employee at the largest shift
Rooming House:	
Single-Occupancy Unit:	1 per dwelling unit
Double-Occupancy Unit:	2 per dwelling unit
Employees	1 per employee
Visitors	As needed
Child Care, Facility	.35 per person of licensed capacity plus staff
Child Care, Family Home	.35 per person of licensed capacity
Hospital/Medical Center	0.4 per employee, plus 1 per 3 beds, plus 1 per 5 average daily outpatient visits, plus 1 per 4 medical staff, plus 1 per student/faculty/staff
Nursing Home	0.5 per room, plus 1 per employee at the largest shift
<b>Retail/Service</b>	
Retail Sales (not in shopping center)	3.5 per k.s.f. of gross floor area
Supermarket (Freestanding)	3.5 per k.s.f. of GFA
Discount Superstore/Clubs	3.5 per k.s.f. of GFA
Home Improvement Superstore	2.5 per k.s.f. of GFA
Other Heavy/Hard Goods (Furniture, Appliances, Buildings Materials, etc...)	3.0 per k.s.f. of GFA
Shopping Centers	<400,000 s.f. Center: 4.0 per k.s.f. of GFA, or >400,000 s.f. Center: 4.5 per k.s.f. of GFA, Parking demand for restaurants and theaters located within the center will be added to the shopping center minimum parking requirements.
Service Business, Personal	
Beauty Shops/Barber Shops	2 per treatment station, but Not less than 4.3 per k.s.f. of customer service area.

Coin-Operated Laundry/Dry Cleaning Services	3.5 per k.s.f. of GFA
Other	3.5 per k.s.f. of GFA
Fitness Center/Health Club	1 per 3 persons of permitted capacity
Funeral Home	1 per 3 persons of permitted capacity
<b>Retail/Service (Continued)</b>	
Retail Sales, Automobile Sales	2.7 per k.s.f. of interior sales area GFA, plus 1.5 per k.s.f. of interior area
Automobile Repair Services, Major or Minor	2 per service bay
<b>Food and Beverage</b>	
Restaurant w/ Drive Through Facility	15.0 per k.s.f. of GFA
Restaurant	16.0 per k.s.f. of GFA
<b>Office and Business Services</b>	
Business and Professional Office	3.35 per k.s.f. of GFA
Service Business, Commercial	4 per k.s.f. of GFA
Medical Arts Building	5.5 per k.s.f. of GFA
Bank	5.5 per k.s.f. of GFA
Industry, Heavy	2 per k.s.f. of GFA
Industry, Light	1.5 per k.s.f.
Warehouse, Private	0.7 per k.s.f. of GFA
Warehouse, Public	0.25 per k.s.f.
Other Retail, Commercial or Business	4 per k.s.f. of GFA
<b>Education</b>	
Elementary and Middle Schools	2 per classroom
High Schools	3 per classroom or administrative room, plus 1 per 4 students
College and University	Per parking study specific to institution
<b>Cultural/Recreational/Entertainment</b>	
Convention Center	0.25 per person of permitted capacity
Library	4.5 per k.s.f. of GFA
Place of Worship	0.6 per seat
Theater	1 for every 4 seats
Recreation Facility, Indoor or Outdoor	1 per 3 persons of permitted capacity

*Note:* k.s.f. = 1,000 square feet

- (b) Shared Parking. Where multiple use occurs on a single site, the required number of off-street parking spaces shall be provided for each use. The Planning Board or Development Review Committee may reduce the required number of parking spaces where the applicant can show, through a parking study performed by a Maine Licensed Professional Engineer, that the peak period parking demand of the uses is non-conflicting.

- (c) **Off-Site Parking.** Parking spaces may be located off-site if the spaces will adequately serve the principal use for which the spaces are required. In making this determination the Planning Board, Development Review Committee, or Code Enforcement Officer, as applicable, shall consider the following factors:
  - (1) Proximity of the off-street parking,
  - (2) Ease of pedestrian access to the off-site parking,
  - (3) Provision of sidewalks or paths between the off-site parking and the principle use,
  - (4) The applicant has sufficient legal interest in the land on which the off-site parking is provided to establish control as long as the use exists.
  - (5) Adequate lighting shall be installed to provide for safe pedestrian movement.
  
- 3. **Loading.** The minimum off-street loading standards of Table 3 in this subsection shall be met:

**Table 3 - Loading Bay Requirements for New Structures**

Type of Use	Gross Floor Area of Structure (in thousands of s.f.)				
	1-7	8-24	25-100	101-250	Each 250 add.
Retail or Industrial	1	2	3	4	1
Business and Professional Offices, Hotels	1	1	1	3	1
Distribution Facilities, Warehousing 15 bays per 100,000 s.f. of gross floor area					

- (a) **Size of Loading Areas.** Each loading bay shall be between 12 and 14 feet wide depending on conditions of ingress and egress.
  - (1) Access to the bay shall include a minimum maneuvering area of 125 feet in length, or more where required.
  - (2) The bay area shall be long enough to accommodate standing trucks so as to remove them from the flow of traffic.
  - (3) Areas shall be provided for trucks to park when waiting for loading activities.
  - (4) All loading bays and waiting areas shall be screened.

**D. Pedestrian Traffic**

The site plan shall provide for a system of pedestrian ways within the development appropriate to the type and scale of development. This system shall connect the major building entrances/exits with parking areas and with existing sidewalks, if they exist or are planned in the vicinity of the project. The pedestrian network may be located either in the street right-of-way or outside of the right-of-way in open space or recreation areas. The system shall be designed to link the project with residential, recreational, and commercial facilities, schools, bus stops, and existing sidewalks in the neighborhood or, when appropriate, to connect with amenities such as parks or open space on or adjacent to the site.

**E. Stormwater Management**

1. Adequate provisions shall be made for the collection and disposal of all stormwater that runs off proposed streets, parking areas, roofs, and other surfaces, through a stormwater management plan, which shall not have adverse impacts on abutting or downstream properties.
  - (a) Stormwater management systems for minor and major site plans shall detain, retain, or result in the infiltration of stormwater from the 24-hour storms of the 2-year, 10-year, and 25-year frequencies such that the peak flows of stormwater from the project site do not exceed the peak flows of stormwater prior to undertaking the project. The Planning Board may waive the flooding standard in accordance with the following criteria:
    - (1) **Insignificant Increases in Peak Flow Rates from a Project Site.** When requesting a waiver for a project resulting in an insignificant increase in peak flow rates from a project site, the applicant shall demonstrate that insignificant increases in peak flow rates cannot be avoided by reasonable changes in project layout, density, and stormwater management design. The applicant shall also demonstrate that the proposed increases will not unreasonably increase the extent, frequency, or duration of flooding at downstream flow controls and conveyance structures. In making its determination to allow insignificant increases in peak flow rates, the Planning Board shall consider cumulative impacts.
    - (b) The applicant shall demonstrate that on- and off-site downstream channel or system capacity is sufficient to carry the flow of a minimum 25-year storm without adverse effects, including but not limited to, flooding and erosion of drainage channels and shoreland areas, or that he/she will be responsible for whatever improvements are needed to provide the required increase in capacity and/or mitigation. The Development Review Committee or Planning Board may require capacity for a storm of greater than 25 years due to soil, topographic, or other factors that affect stormwater drainage.

- (c) All natural drainage ways shall be preserved at their natural gradients and shall not be filled or converted to a closed system unless approved as part of the site plan review.
- (d) The design of the stormwater drainage system shall provide for the disposal of stormwater without damage to streets, adjacent properties, downstream properties, soils, and vegetation.
- (e) The design of the storm drainage systems shall be fully cognizant of upstream runoff which shall pass over or through the site to be developed and provide for this movement.
- (f) Major site plans, regardless of size, shall submit a stormwater management plan that complies with Section 4B(2) and Section 4B(3) of the General Standards of the DEP Chapter 500 Stormwater Management, as amended.

**F. Erosion Control**

- 1. All building, site, and roadway designs and layouts shall harmonize with existing topography and conserve desirable natural surroundings to the fullest extent possible, such that filling, excavation and earth moving activity shall be kept to a minimum. Parking lots on sloped sites should be terraced to avoid undue cut and fill, and/or the need for retaining walls. Natural vegetation shall be preserved and protected wherever possible.
- 2. Soil erosion and sedimentation of watercourses and water bodies shall be minimized by an active program meeting the requirements of the “Maine Erosion and Sediment Control BMPS” (Maine Department of Environmental Protection), dated March 2003, or other construction management practices system approved by the Planning Board or Development Review Committee, as appropriate.
  - (a) Applicants are encouraged to utilize contractors who are certified in erosion control through the Maine Department of Environmental Protection’s Voluntary Contractor Certification Program.
- 3. The plan shall meet the standards of the Town of Windham’s Surface Water Protection Ordinance; where applicable. (*See Chapter 142 Surface Water Protection Ordinance*)

**G. Water Supply Provisions**

1. The development shall be provided with a system of water supply that provides each use with an adequate supply of water.
2. If the project is to be served by a public water supply, the applicant shall secure and submit a written statement from the Portland Water District that the proposed water supply system conforms with its design and construction standards, will not result in an undue burden on the source or distribution system, and will be installed in a manner adequate to provide needed domestic and fire protection flows.

#### **H. Sewage Disposal Provisions**

1. The development shall be provided with a method of disposing of sewage which is in compliance with the State Plumbing Code.
  - (a) All sanitary sewage from new or expanded uses shall be discharged into a public sewage collection and treatment system when such facilities are currently available or can reasonably be made available at the lot line and have adequate capacity to handle the projected waste generation.
  - (b) If the public collection system is not at the lot line, but can be extended in the public right-of-way, the collection system shall be extended by the owner and the new or expanded use connected to the public system. Such extension shall be required if the public system is within one hundred (100) feet of a new use with a design sewage flow of less than five hundred (500) gallons per day or within three hundred (300) feet of a new use with a design sewage flow of five hundred (500) or more gallons per day and the system has adequate capacity to accommodate the additional flow. The Planning Board may waive this requirement if the use is already served by a properly functioning subsurface disposal system that is properly sized for the projected flows, provided that connection to the public system shall occur if and when the subsurface system needs to be replaced.
  - (c) If the public system cannot serve or be extended to serve a new or expanded use, the sewage shall be disposed of by an on-site sewage disposal system meeting the requirements of the Subsurface Wastewater Disposal Rules.
  - (d) When two (2) or more lots or buildings in different ownership share the use of a common subsurface disposal system, the system shall be owned and maintained in common by an owners' association. Covenants in the deeds for each lot shall require mandatory membership in the association and provide for adequate funding of the association to assure proper maintenance of the system.
  - (e) Industrial or commercial wastewater may be discharged to public sewers in such quantities and/or of such quality as to be compatible with sewage treatment



operations. Such wastes may require pretreatment at the industrial or commercial site in order to render them amenable to public treatment processes. Pretreatment includes, but is not limited to, screening, grinding, sedimentation, pH adjustment, surface skimming, chemical oxidation and reduction and dilution. The pretreatment standards shall be determined by the Portland Water District.

**I. Utilities**

The development shall be provided with electrical, telephone, and telecommunication service adequate to meet the anticipated use of the project. New utility facilities shall be screened from view to the extent feasible. Utility lines shall be placed underground.

**J. Groundwater Protection**

The proposed site development and use shall not adversely impact either the quality or quantity of groundwater available to abutting properties or to public water supply systems. Applicants whose projects involve on-site water supply or sewage disposal systems with a capacity of two thousand (2,000) gallons per day or greater shall demonstrate that the groundwater at the property line will comply, following development, with the standards for safe drinking water as established by the State of Maine.

**K. Water Quality Protection**

All aspects of the project shall be designed so that:

1. No person shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity, or temperature that may run off, seep, percolate, or wash into surface or groundwaters so as to contaminate, pollute, or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste, or unsightliness or be harmful to human, animal, plant, or aquatic life.
2. All storage facilities for fuel, chemicals, chemical or industrial wastes, and biodegradable raw materials, shall meet the standards of the Maine Department of Environmental Protection and the State Fire Marshall's Office.
3. If the project is located within the direct watershed of a 'body of water most at risk from development', as identified by the Maine Department of Environmental Protection (DEP), the following standards shall apply.

- (a) If the project does not require review under Chapter 500 of the Maine DEP Stormwater Law, the Planning Board may require a Phosphorus Control Plan. The plan shall be submitted to the Town for review by an appropriate third-party reviewer at the applicant's expense.

**L. Hazardous, Special, and Radioactive Materials**

1. The handling, storage, and use of all materials identified by the standards of a federal or state agency as hazardous, special or radioactive shall be done in accordance with the standards of these agencies.
2. No flammable or explosive liquids, solids or gases shall be stored in bulk above ground unless they are located at least seventy-five (75) feet from any lot line, or forty (40) feet in the case of underground storage. All materials shall be stored in a manner and location which is in compliance with appropriate rules and regulations of the Maine Department of Public Safety and other appropriate federal, state, and local regulations.

**M. Shoreland Relationship**

1. The development shall not adversely affect the water quality or shoreline of any adjacent water body.
2. The plan shall meet the requirements of the Town of Windham's shoreland zoning ordinance; where applicable. (*See Chapter 199 Shoreland Zoning*)

**N. Technical and Financial Capacity**

1. Financial Capacity. The applicant shall have adequate financial resources to construct the proposed improvements and meet the criteria of the standards of these regulations. In making its determination the Planning Board or Development Review Committee shall consider all relevant evidence to the effect that the developer has the financial capacity to construct, operate, and maintain all aspects of the development.
2. Technical Capacity. The applicant shall retain qualified contractors and consultants to supervise, construct and inspect the required improvements in the proposed site plan.
  - (a) In determining the applicant's technical ability the Planning Board or Development Review Committee shall consider the applicant's previous experience, the experience and training of the applicant's consultants and contractors, and the existence of violations of previous approvals granted to the applicant.

**O. Solid Waste Management**

The proposed development shall provide for adequate disposal of solid wastes. All solid waste shall be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes.

**P. Historic and Archaeological Resources**

If any portion of the site has been identified as containing historic or archaeological resources, the development shall include appropriate measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

**Q. Floodplain Management**

If any portion of the site is located within a special flood hazard area as identified by the Federal Emergency Management Agency, all use and development of that portion of the site shall be consistent with the Town's Floodplain management provisions.

**R. Exterior Lighting**

The proposed development shall have adequate exterior lighting to provide for its safe use during operating hours.

1. Lighting may be used which serves security, safety and operational needs but which does not directly or indirectly produce deleterious effects on abutting properties or which would impair the vision of a vehicle operator on adjacent roadways.
  - (a) Lighting fixtures shall be shielded or hooded so that the lighting elements are not exposed to normal view by motorists, pedestrians, or from adjacent dwellings and so that they do not unnecessarily light the night sky.
  - (b) Direct or indirect illumination shall not exceed 0.5 footcandles at the lot line or upon abutting residential properties.
2. Wiring to light poles and other exterior light fixtures shall be underground.

**S. Noise**

1. The maximum permissible sound pressure level of any continuous, regular or frequent or intermittent source of sound produced by any activity on the site shall be limited by the time period and by the abutting land use as listed below. Sound levels shall be measured at least four (4) feet above ground at the closest occupied structure

not owned or under the control of the owner or operator of the proposed development or use.

Sound Pressure Level Limits Using the Sound Equivalent Level of One Minute (leq 1)  
(Measured in dB(a) Scale)

Abutting Use	7:00 a.m. to 10:00 p.m.	10:01 p.m. to 6:59 a.m.
Residential	55	45
Residential located in a commercial or industrial district	65	55
Public, semipublic and institutional	60	55
Vacant or rural	60	55
Commercial	65	55
Industrial	70	60

2. Noise shall be measured by a meter set on the A-weighted response scale, fast response. The meter shall meet the American National Standards Institute (ANSI S1 4- 1961) 'American Standards Specification for General Purpose Sound Level Meters.'
3. No person shall engage in construction activities, on a site abutting any residential use between the hours of 10 p.m. and 6 a.m.
4. These standards shall not apply to the temporary use of such machinery as chainsaws, lawn mowers and snowmobiles.

**T. Storage of Materials**

1. Exposed nonresidential storage areas, exposed machinery, and areas used for the storage or collection of discarded automobiles, auto parts, metals or other articles of salvage or refuse shall have sufficient setbacks and screening (such as a stockade fence or a dense evergreen hedge) to provide a visual buffer sufficient to minimize their impact on abutting residential uses and users of public streets.
2. All dumpsters or similar large collection receptacles for trash or other wastes shall be located on level surfaces which are paved or graveled. The dumpster or receptacle shall be screened by fencing or landscaping.
3. Where a potential safety hazard to children is likely to arise, physical screening sufficient to deter small children from entering the premises shall be provided and maintained in good condition.

**813 Commercial District Design Standards**

The following Design Standards are hereby established for development within Windham’s Commercial 1, Commercial 2, Commercial 3, and Village Commercial districts. Where there is a conflict between a provision of the Design Standards and any other provision of this Ordinance, the more restrictive provision shall apply. In addition to meeting all Design Standards required in the applicable zoning district, development must comply with a minimum of eight (8) other Design Standards. 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. For this type of renovation, the renovation will be subject to the required Design Standards in Section A below, but will not be subject to other required Design Standards.

**Design Standards Framework**

		C-1	C-2	C-3	VC
<b>A.</b>	<b>Architecture/Building</b>				
	1 Building Style	R <sup>1</sup>	R	R	R
	2 Materials	R	R	R	R
	3 Color	R	R	R	R
	4 Roofline	R	R	R	R
	5 Façade	R	R	R	R
	6 Building style coordination (multi-building)	R	R	R	R
	7 Entrance	R	R	R	R
	8 Architectural Details	R	R	R	R
	9 LEED certification				
<b>B.</b>	<b>Site/Parking</b>				
	1 Parking location				
	2 Internal traffic flow				
	3 Interconnected Parking Lots				
	4 Orientation of Building				
	5 Screening - parking		R		
	6 Screening - utilities & service areas/structures	R	R		R
	7 Parking Lot Landscaping				
	8 Low-Impact Design Stormwater				
	9 Shared Stormwater Treatment				
<b>C.</b>	<b>Landscaping/Lighting</b>				
	1 Lighting/Photometric plan	R			R
	2 Lighting coordinated with architecture	R			R

	3	Lighting coordinated with landscaping	R			R
	4	Existing trees preserved			R	
	5	Snow storage areas designated	R	R	R	R
	6	Planting variety				
	7	Planting suitability				
	8	Mass plantings				
	9	Illumination levels				
D.	Bike/Ped					
	1	Internal walkways	R			
	2	Links to community	R	R		R
	3	Outdoor activity area				
	4	Sidewalks	R			
	5	Crosswalks	R			
	6	Bike parking/racks	R	R		R

1. Any item listed with an R in the Table is a required Design Standard in that zoning district.

The following Standards are taken from the booklet Town of Windham Design Guidelines, adopted by the Town Council on July 26, 2005, a copy of which is on file in the Windham Planning Office.

#### A. Architecture/Building

1. Building Style. Required in C-1, C-2, C-3, and VC zoning districts.
  - a. National franchise prototypes are permitted provided they meet the Design Standards for architectural principles, scale, color, rooflines, and materials. Buildings that are stylized to the point where the structure is a form of advertising are not acceptable.
2. Materials. Required in C-1, C-2, C-3, and VC zoning districts.
  - a. Traditional, high-quality building materials common to northern New England (e.g., brick, clapboard, shingles or other similar products) shall be used as the primary siding material. Contemporary materials that have the same visual characteristics as traditional materials (e.g., cement plank clapboards or vinyl siding) are acceptable if attention is paid to detailing (e.g., corners, trim at openings, changes in material). Painted MDO plywood is acceptable when used in combination with traditional materials.
  - b. Awnings and canopies shall be made of canvas or similar material.
3. Color. Required in C-1, C-2, C-3, and VC zoning districts.

- a. Facade colors shall be low reflectance. The use of high intensity, high reflectance, chrome, metallic, or fluorescent colors are prohibited on the primary building face.
4. Roofline. Required in C-1, C-2, C-3, and VC zoning districts.
    - a. Where pitched roofs are used, the minimal pitch shall be at least 5/12. Buildings with projecting rooflines shall be designed to create strong patterns of shade and shadow.
    - b. Non-traditional roof forms shall not be used as the primary roofline. Examples of non-traditional roof forms include, but are not limited to, false mansard, a-frames, and others.
    - c. Flat roofs are allowed provided that the design creates no horizontal line greater than 50 feet.
    - d. Where parapets are used to break up a flat roofline, the height of the parapet shall be at least five percent of the total length of the wall.
    - e. Composite asphalt shingles and standing-seam non-glare metal are acceptable for visible roofing. High gloss roofing materials shall not be used.
    - f. Mechanical and other equipment mounted on rooftops must be screened from public view or grouped at the rear of the structure where visibility is limited. Rooftop screening shall be designed as an integral part of the architecture to complement the building's mass and appearance.
  5. Façade. Required in C-1, C-2, C-3, and VC zoning districts.
    - a. Facades that face public streets shall have transparent openings, such as display windows or entry areas, a minimum of 40% of the horizontal length on the ground floor in total. Uses not subject to this standard are:
      - Agriculture
      - Convention Center
      - Industry, Light
      - Industry, Heavy
      - Warehousing, Private
      - Warehousing, Public
    - b. Retail and food service facades that are visible or potentially visible from adjacent properties shall be designed to match or complement the architectural

treatment of the front facade. Blank or unadorned walls facing public roads or abutting properties are prohibited except when such wall faces a service area.

c. The site plan and architectural elevations shall show the locations reserved for vending machines. Machines will be located within the footprint of the primary structure of the site. (Drive-up ATMS are not considered vending machines.)

d. When in public view, windows, doors, ventilation fixtures, and other openings in frame construction shall be trimmed to create a frame around the opening. Materials used for trim shall match those used on the facade of the building.

e. 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.

6. Building Style Coordination (Multi-building Developments). Required in C-1, C-2, C-3, and VC zoning districts.

a. As part of the Site Plan application, the applicant shall provide a phasing plan that will illustrate the sequence that development will occur, and what steps will be taken to ensure compatibility between current and future activities.

b. Non-habitable freestanding structures, such as freestanding ATMs, garages, storage units, recycling sheds, cart corrals, and utility buildings shall be treated as architectural elements and meet the same design guidelines as larger buildings.

7. Entrance. Required in C-1, C-2, C-3, and VC zoning districts.

a. New or renovated buildings over 20,000 square feet shall have clearly defined and highly visible customer entrances, incorporating at least three of the following elements:

- i. significant variations in roof lines
- ii. distinctive lighting and landscaping,
- iii. canopies or porticos
- iv. overhangs, recesses, or projections
- v. pedestrian arcades
- vi. raised corniced parapets over the door
- vii. peaked roof forms in scale with building



- viii. outdoor patios
  - ix. display windows
  - x. architectural details such as tile work and moldings which are integrated into the building structure and design.
- c. Linear commercial buildings shall have clearly defined and highly visible customer entrances that are designed as integral architectural elements.
8. Architectural Details. Required in C-1, C-2, C-3, and VC zoning districts.
- a. Architectural detailing and trim shall be proportional to the scale and design of the entire building.
9. LEED certification. Optional in C-1, C-2, C-3, and VC zoning districts. The project shall obtain any level of Leadership in Energy and Environmental Design (LEED) Certification from the United States Green Building Council (USGBC), for any of the USGBC rating systems.

#### B. Site/Parking

1. Parking Location. Optional in C-1, C-2, C-3, and VC zoning districts.
- a. Wherever possible, parking lots shall be located at the rear or sides of commercial buildings. Where land use conflicts occur, (e.g., unavoidable siting of a parking lot next to a home) the lot shall be screened with evergreen trees, earth berms, solid walls, or shrubs.
2. Internal Traffic Flow. Optional in C-1, C-2, C-3, and VC zoning districts.
- a. To ensure the safety of motorists, delivery trucks, and pedestrians, the site plan shall clearly delineate internal traffic patterns. Parking space, directional arrows, crosswalks, and other markings on the ground shall be delineated with pavement paint or other suitable material to ensure safe circulation.
  - b. Circulation patterns for parking lots with more than 40 spaces shall be designed by a traffic engineer to meet the Zoning and Site Plan Review Ordinances. The Planning Board may require a traffic engineer for smaller lots where there are particular public safety issues.
3. Interconnected Parking Lots. Optional in C-1, C-2, C-3, and VC zoning districts.
- a. If feasible, connections between abutting properties shall be provided to facilitate deliveries and minimize turning movements onto the highway.

As required by the Planning Board during site plan review, internal connections shall be designed by a traffic engineer to provide safe, direct access between adjacent lots. Cross easements shall be provided as required. Traffic calming measures – such as speed tables, well-marked crosswalks, raised crosswalks, vertical curbing, curvilinear road alignment, neckdowns, curbed islands, and signage – are encouraged to reduce speeding on internal vehicular connections.

4. Orientation of Building. Optional in C-1, C-2, C-3, and VC zoning districts.
  - a. Buildings along the roadways shall be located as close to the front property lines as established under the Land Use Ordinances to establish a visual edge to the street and give scale and interest to the pedestrian environment. In cases where new structures are being proposed, parking shall be located at the rear or side of the building.
  - b. Service stations, convenience stores, and similar uses shall be sited to face the street. On corner lots, said uses may face both streets.
5. Screening, Parking. Required in C-2. Optional in C-1, C-3, and VC zoning districts.
  - a. Plant materials and other landscape elements shall be used to create suitable buffers between residential and commercial properties. The design of buffers shall consider the appearance from both commercial and residential viewpoints. Evergreen plantings are particularly effective for year-round buffering.
6. Screening, Utilities and Service Areas/Structures. Required in C-1, C-2, and VC zoning districts. Optional in C-3.
  - a. Service areas, loading docks, delivery areas, trash receptacles, and mechanical equipment shall be screened to minimize visibility from sensitive viewpoints such as public and private roadways, main entrances, abutting neighborhoods, public open spaces, and pathways. Service areas shall be screened with architectural elements such as walls or fences. Screening may be further enhanced with evergreen trees, shrubs, and earth berms. Gates on utility enclosures shall be designed to prevent sagging.
7. Parking Lot Landscaping. Optional in C-1, C-2, C-3, and VC zoning districts.
  - a. A minimum of 10% of the parking lot shall be landscaped for sites with 40 parking stalls or less. Parking areas with greater than 40 parking stalls shall landscape a minimum of 15% of the total area. Planting islands shall be a

minimum of 9' in width. All parking lot landscaping shall be able to tolerate parking lot growing conditions.

b. Trees in parking lots may be planted in informal groups, straight rows, or irregular groupings as space permits, or they may be concentrated in certain areas. Trees should be planted a minimum of five feet from the end of parking lot islands.

c. Where trees abut pedestrian walkways or places where people will be walking in parking lots, their lower branches shall be pruned to at least eight feet above the paved surface to avoid becoming an obstacle. Shrubs used in parking lot islands shall not exceed three feet in height to avoid blocking visibility.

d. Landscaped areas used for separation between banks of parking stalls shall contain 50% vegetative cover.

e. Landscape materials surrounding parking lots and in islands shall be able to tolerate large quantities of snow stored during winter months. Delicate plant material shall not be used in areas where they are likely to be buried under snow.

8. Low-Impact Design Stormwater. Optional in C-1, C-2, C-3, and VC zoning districts.

a. The project shall incorporate Low Impact Development (LID) systems as identified in the September 21, 2007 report, "LID Guidance Manual for Maine Communities," as amended.

9. Shared Stormwater Treatment. Optional in C-1, C-2, C-3, and VC zoning districts.

a. Wherever appropriate, treatment basins shall be designed to be shared by abutting properties to minimize the amount of land area dedicated to stormwater management.

### C. Landscaping/Lighting

1. Lighting/Photometric Plan. Required in C-1 and VC zoning districts. Optional in C-2 and C-3 zoning districts.

a. A Lighting Plan shall be presented to the Planning Board during Site Plan review or the CEO during the building permitting process. It shall contain:

- i. The lighting fixtures proposed to illuminate all buildings, roadways, service areas, landscaping, parking areas, and pedestrian areas.
- ii. Specifications and illustrations of all proposed lighting fixtures including pole heights, height of luminaire, photometric data, Color



- a. The use of a variety of plant materials that exhibit seasonal color and interesting texture is encouraged to create a distinctive, yet low maintenance environment. Plantings plans should strike a balance between monoculture (the use of a single species) and too much variety.
7. Planting Suitability. Optional in C-1, C-2, C-3, and VC zoning districts.
    - a. The use of plant materials and landscape elements that require a low degree of maintenance is strongly encouraged. All plantings shall be resistant to insect infestation, drought, disease, roadside salt, and auto emissions, and hardy to Maine winters.
  8. Mass Plantings. Optional in C-1, C-2, C-3, and VC zoning districts.
    - a. Shrubs and perennials should generally be planted in large masses or drifts,<sup>9</sup> rather than as individual specimens, to provide a pleasing effect for both motorists and pedestrians.
  9. Illumination Levels. Optional in C-1, C-2, C-3, and VC zoning districts.
    - a. Light fixtures used in driveways and parking lots shall be in scale with buildings on site. Maximum pole height along driveways shall not exceed 25 feet.
    - b. Fixture heights shall vary with the size and position of the lot. Small Parking Areas (less than 150 cars) shall have a maximum pole height of 20 feet. In Large Parking Areas (greater than 150 cars) 30' poles may be allowable to reduce the number of poles. Poles within 200' of residential property lines shall not exceed 20' in height.
    - c. Pole heights for pedestrian lighting shall be appropriate for the project and the setting. Bollard fixtures, 3-4 feet in height, and ornamental fixtures, up to 12 feet in height, are encouraged as pedestrian area lighting. When decorative or special lighting is used, pole height shall be a maximum of 16 feet above the ground.

#### D. Bicycle/Pedestrian

1. Internal Walkways. Required in C-1, optional in C-2, C-3, and VC zoning districts.

- a. Continuous internal walkways shall be provided from the public sidewalk to the principal customer entrance of all principal buildings on the site. Walkways shall also connect other buildings on multi-building developments, transit stops, and other focal points of pedestrian activity.
2. Links to Community. Required in C-1, C-2, and VC zoning districts, optional in C-3.
    - a. Site plans shall preserve or create linkages with surrounding buildings, neighborhoods, and other parts of the community. The design of these links shall consider views, noise, traffic, security, lighting, the privacy of abutting commercial or residential neighbors, and other factors relating to the safety and welfare of the user.
    - b. Internal pedestrian connections between abutting properties shall be provided to encourage walking and discourage additional auto trips onto major roadways. Connections shall avoid crossing parking lots, major interior roadways, service areas, drive-throughs, and other potential points of conflicts.  
Where such crossings are unavoidable, they shall be well-marked and as direct as possible.
3. Outdoor Activity Area. Optional in C-1, C-2, C-3, and VC zoning districts.
    - a. Commercial buildings with footprints in excess of 15,000 SF shall provide inviting open spaces where people can sit, relax, and socialize. Open spaces shall be designed as outdoor rooms, with consideration to ground surfaces, landscaping, lighting, site furnishings, and other physical elements. The outdoor activity area(s) shall cumulatively total 10% of the building size, but will not be required to exceed 1,000 square feet.
4. Sidewalks. Required in C-1, optional in C-2, C-3, and VC zoning districts.
    - a. Sidewalks and planted esplanades shall be provided by the developer within or near the right-of-way, or the North Windham Sidewalk Impact Fee paid in accordance with Section 1200 of this Ordinance. In cases where new development calls for the construction of a new street, both sides of the street shall be developed where practical to encourage safe pedestrian and bicycle movement. Facilities shall be coordinated with abutting land uses to create interconnections throughout the commercial district and linkages to surrounding residential neighborhoods where appropriate.

5. Crosswalks. Required in C-1, optional in C-2, C-3, and VC zoning districts.
  - a. Where sidewalks intersect with commercial driveways or roads, crosswalks shall be installed to emphasize the conflict point and improve its visibility. Materials for crosswalks shall be highly durable and slip resistant. Raised crosswalks may be used as a traffic calming device to make crosswalks more visible. They shall be designed by a traffic engineer as part of the site circulation plan. Signs may be warranted at the discretion of the Town in certain situations as recommended by the Institute for Traffic Engineers (ITE). Materials selected for crosswalks shall allow safe bicycle movement across the surface.
6. Bicycle Parking/Racks
  - a. The applicant shall provide facilities for the parking of 2 bicycles, or 1 space per 10,000 square feet of building area, whichever is greater.

#### **814 Post Approval Activities**

- A. Limitation of Approval. Construction of the improvements covered by any site plan approval shall be substantially commenced within two (2) years of the date upon which the approval was granted. If construction has not been substantially commenced, as determined by the Code Enforcement Officer, within the specified period, the approval shall be null and void. The time period does not run during any appeal of the project approval.
  1. The applicant may request an extension of the approval deadline prior to the expiration of the period. Such request shall be in writing and shall be made to the Planning Board or Development Review Committee.
  2. The Planning Board or Development Review Committee may grant up to two (2), one-year extensions to the periods if the approved plan conforms to the ordinances in effect at the time the extension is granted and any and all federal and state approvals and permits are current.
- B. Incorporation of Approved Plan. One copy of the approved and signed site plan shall be included with the application for the building permit for the project and all construction activities shall conform to the approved plan, including any conditions of approval and minor changes approved by the Planner, Code Enforcement Officer or Town's Consulting Engineer to address field conditions.
- C. Improvement Guarantees

1. Application
  - (a) Improvement Guarantee. The Town shall require the posting of an improvement guarantee for an amount adequate to cover the total construction costs of all required off-site improvements, and the following on-site improvements, taking into account the time-span of the construction schedule and the inflation rate for construction costs:
    - (1) Site preparation, including but not limited to clearing, grading, excavation, and blasting
    - (2) All stormwater management infrastructure, and erosion control and drainage improvements
    - (3) Any public or private streets and associated sidewalks, and any sidewalks providing access to the site from public or private streets
    - (4) Site lighting, landscaping, and other public amenities
  - (b) Construction of improvements covered by any site plan approval shall be completed within two (2) years of the date upon which the performance guarantee is accepted by the Town Manager. If construction has not been completed within the specified period, the Town shall, at the Town Manager's discretion, use the performance guarantee to either reclaim and stabilize the site or to complete the improvements as shown on the approved plan.
  - (c) Construction Upon substantial completion of all required improvements, the developer shall notify the Town Manager, Public Works Department, Code Enforcement Department and Planning Department of the completion or substantial completion of improvements, and shall send a copy of such notice to the appropriate municipal officials. The respective municipal officials shall cause an inspection of all improvements and shall file a report indicating either approval, partial approval, or rejection of such improvements with a statement of reasons for any rejection.
    - (1) If the improvements are approved, the guarantee shall be released by the Town Manager. Where partial approval is granted, the developer shall be released from liability only for that portion of the improvements approved.
2. Form of Guarantee. Performance guarantees may be provided by a variety of means including, but not limited to, the following which shall be approved as to form and enforceability by the Town Manager.
  1. Security Bond. The applicant may obtain a security bond from a surety bonding company authorized to do business in the state.



2. Letter of Credit. The applicant may provide an irrevocable letter of credit from a bank or other reputable lending institution. The letter of credit shall be provided in accordance with the Town of Windham's most current template.
3. Escrow Account. The applicant may deposit cash or other instruments readily convertible into cash at face value, either with the municipality, or in escrow with a bank. Any such account shall require Town approval for withdrawal and shall stipulate that the Town can withdraw the money upon forty-eight (48) hour advance notice to the applicant to complete the guaranteed improvements.

D. Post Approval Construction Observations (*See Sec. 810 Fees*)

1. At least fifteen (15) days prior to commencing construction of required improvements, the developer shall notify in writing the Planner of the time when he proposes to commence construction of such improvements so that the Planner can cause observations to be made of all specifications and requirements of the approved plans shall be met.
2. At least five (5) days prior to commencing construction of required improvements, the developer shall pay the construction observation fees as required in Subsection 810.C. No building permits shall be issued on the project and no work, including site preparation, shall commence until the fee has been paid.
3. If the observer finds that any of the required improvements have not been constructed in conformance with the plans and specifications approved by the Planning Board or Development Review Committee, he shall so report to the Town Manager, Road Commissioner, Code Enforcement Officer and Planner. The Planner shall notify the developer of the reviewer's findings and seek confirmation of the developer's intent and timeline to remediate the deficiencies.
  - (a) If the developer is not capable, or refuses, to correct the identified deficiencies, the Town Planner or Town Manager shall notify the bonding company or bank and take all necessary steps to preserve the municipality's rights under the bond, letter of credit or escrow account.
  - (b) No site plan amendments or new site plans submitted by said developer shall be approved by the Planning Board or Development Review Committee as long as the developer is in default on a previously approved plan.
4. Prior to the Town issuing any Certificates of Occupancy, the observer shall find that all required boundary markers have been installed by a Maine Licensed Professional

- Land Surveyor according to the plans approved by the Planning Board or Development Review Committee.
- E. **Submission of As-Built Plans.** Any project involving the construction of more than twenty thousand (20,000) square feet of gross floor area or fifty thousand (50,000) square feet of impervious surface shall provide the Planning Department with a set of construction plans showing the building(s) and site improvements as actually constructed on the site. These "as-built" plans shall be submitted in both paper and electronic copies (including any revisions to the GIS information required in Section 811 Submission Requirements) prior to the issuance of a Certificate of Occupancy for the project or occupancy of the building.
  - F. **Minor Changes to Approved Plans.** Minor changes in approved plans necessary to address field conditions may be approved by the Planner provided that any such change does not affect compliance with the standards or alter the essential nature of the proposal. Any such change shall be approved in writing by the Planner. Copies of the approval letter shall be placed in the project file.
  - G. **Amendments to Approved Plans.** Approvals of site plans are dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant, and conditions, if any, imposed by the Planning Board or Development Review Committee. Any variation from the plans, proposals, supporting documents, and representations, except minor changes that do not affect approval standards, is subject to review and approval by the Planning Board or Development Review Committee, as appropriate.
  - H. **Change in Ownership.** Where there is a change in ownership of a project after approval has been granted, but prior to the release of the performance guarantee, the Town Manager may request new financial capability information, as well as other factors that the Town Manager deems necessary because of changing conditions.

## **815 Appeals**

- A. **Appeals of Development Review Committee Actions.** Appeal of any actions taken by the Development Review Committee with respect to this Section 800 Site Plan Review shall be to the Planning Board in accordance with Subsection 806.E. Appeal to the Planning Board.
- B. **Appeal of Planning Board Actions.** Appeal of any actions taken by the Planning Board with respect to this section shall be to the Superior Court in accordance with the Maine Rules of Civil Procedure, Rule 80B.

Section 800 Amendments

Order 10-061; Date 04-17-2010	Clarification of Vibration Levels
Order 10-075; Date 04-27-2010	Change to Parking and Loading Requirements
Order 10-231; Date 12-14-2010	Change to Site Plan Review to allow Clearing and Grading
Order 11-037; Date 03-08-2011	Change to Dimensional Standard for Parking Space
Order 12-016; Date 02-14-2012	Change to Public Notice Requirements
Order 12-052; Date 04-24-2012	Addition of Design Standards
Order 12-148; Date 10-23-2012	Addition of Retirement Community and Care Facility Overlay District
Order 13-009; Date 01-22-2013	Change to time limits for beginning and completing a project
Order 13-010; Date 01-22-2013	Change to Bonding Requirements for Site Work
Order 13-072; Date 05-14-2013	Addition of Sidewalk Impact Fee
Order 14-223; Date 07-08-2014	Change in Submission Deadlines
Order 14-313; Date 08-26-2014	Change to classification of Minor Site Plans

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## 901 Purpose

The purpose of these standards shall be to assure the comfort, convenience, safety, health and welfare of the people; to protect the environment and to promote the development of an economically sound and stable community. To this end, in approving subdivisions within the Town of Windham, Maine, the Planning Board shall evaluate the proposed subdivision, using the following criteria. The subdivision provisions set forth in these regulations are intended to protect the public health and safety, promote the general welfare of the community, and conserve the environment by assuring that nonresidential and multifamily construction is designed and developed in a manner that assures that adequate provisions are made for traffic safety and access; emergency access; water supply; sewage disposal; management of storm water, erosion, and sedimentation; protection of groundwater; protection of the environment, wildlife habitat, fisheries, and unique natural areas; protection of historic and archaeological resources; minimizing the adverse impacts on adjacent properties; and fitting the project harmoniously into the fabric of the community.

## 902 Statutory Review Criteria

When reviewing any application for a subdivision, as defined by Section 300, the Review Authority shall find that the following criteria as found in Title 30-A M.R.S.A. §4404 have been met, as well as all applicable provisions of the Land Use Ordinance and other sections of this Section 900 have been met, before granting approval (*See Subsec. 911 Performance and Design Standards*). The proposed project:

- A. Pollution. Will not result in undue water or air pollution. In making this determination, it shall at least consider:
  - 1. The elevation of the land above sea level and its relation to the flood plains;
  - 2. The nature of soils and subsoils and their ability to adequately support waste disposal;
  - 3. The slope of the land and its effect on effluents;
  - 4. The availability of streams for disposal of effluents; and
  - 5. The applicable State and local health and water resources rules and regulations;
- B. Sufficient Water. Has sufficient water available for the reasonably foreseeable needs of the subdivision;
- C. Municipal Water Supply. Will not cause an unreasonable burden on an existing water supply, if one is to be used;
- D. Erosion. Will not cause unreasonable soil erosion or reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results;
- E. Traffic. 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 and, if the proposed subdivision requires driveways or entrances onto a state or state aid highway, located outside the urban compact area of an urban compact municipality as

defined by Title 23, Section 754, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to 23 M.R.S.A. § 704 and any rules adopted under that section;

- F. Sewage Disposal. Will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized;
- G. Municipal Solid Waste Disposal. Will not cause an unreasonable burden on the municipality's ability to dispose of solid waste if municipal services are to be utilized;
- H. Aesthetic, Cultural and Natural Values. 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;
- I. Conformity with Local Ordinances and Plans. Is in conformance with duly adopted subdivision regulations, comprehensive plan, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these regulations, ordinances and plans.
- J. Financial and Technical Capacity. The developer has adequate financial and technical capacity to meet the standards of this section.
- K. Surface Waters; Outstanding River Segments. Whenever 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 38 M.R.S.A. § 435 through §490, will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water.
  - 1. When lots in a subdivision have frontage on an outstanding river segment, the proposed subdivision plan must require principal structures to have a combined lot shore frontage and setback from the normal high-water mark of 500 feet.
    - (a) To avoid circumventing the intent of this provision, whenever a proposed subdivision adjoins a shoreland strip narrower than 250 feet which is not lotted, the proposed subdivision shall be reviewed as if lot lines extended to the shore.
    - (b) The frontage and set-back provisions of this paragraph do not apply either within areas zoned as general development or its equivalent under shoreland zoning, 38 M.R.S.A., chapter 3, subchapter I, article 2-B, or within areas designated by ordinance as densely developed. The determination of which areas are densely developed must be based on a finding that existing development met the definitional requirements of section 4401, subsection 1, on September 23, 1983;

- L. Ground Water. Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water
- M. Flood Areas. Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the applicant shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision or project plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation;
- N. Freshwater Wetlands. All freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands;
- O. River, Stream or Brook. Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S.A. § 480-B, subsection 9;
- P. Storm Water. The proposed subdivision will provide for adequate storm water management;
- Q. Spaghetti-Lots Prohibited. If any lots in the proposed subdivision have shore frontage on a river, stream, brook, or great pond as these features are defined in 38 M.R.S.A. § 480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than 5 to 1;
- R. Lake Phosphorous Concentration. 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;
- S. Impact on Adjoining Municipality. For any proposed subdivision that crosses municipal boundaries, the proposed subdivision 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.
- T. Lands Subject to Liquidation Harvesting. Timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to 12 M.R.S.A § 8869, subsection 14. If a violation of rules adopted by the Maine Forest Service to substantially eliminate liquidation harvesting has occurred, the Planning Board must determine prior to granting approval for the subdivision that 5 years have elapsed from the date the landowner under whose ownership the harvest occurred acquired the parcel. The Planning Board may request technical assistance from the Department of Conservation, Bureau of Forestry to determine whether a rule violation has occurred, or

the Board may accept a determination certified by a forester licensed pursuant to 32 M.R.S.A. § chapter 76. If the Bureau agrees to provide assistance, it shall make a finding and determination as to whether a rule violation has occurred. If the Bureau notifies the Planning Board that it will not provide assistance, the Board may require a subdivision applicant to provide a determination certified by a licensed forester. For the purposes of this subsection, "liquidation harvesting" has the same meaning as in 12 M.R.S.A. § 8868, subsection 6 and "parcel" means a contiguous area within one municipality, township or plantation owned by one person or a group of persons in common or joint ownership.

### 903 Authority and Administration

#### A. Authority; Title

1. These standards have been prepared in accordance with the provisions of 30-A M.R.S.A. § 4401 et seq., and all amendments thereto.

#### B. Subdivisions recorded prior to enactment. The provisions of these standards, not specifically required by 30-A M.R.S.A. § 4401 et seq., shall not apply to any subdivision which has been approved by the Board and recorded in the Registry of Deeds of Cumberland County prior to the Town's enactment of subdivision regulations that became effective on February 7, 1972.

#### C. Administration. The Planning Board of the Town of Windham, hereinafter called the "Board", shall administer these standards. The Board shall contain seven (7) members. In addition, said Board shall have one (1) alternate member who shall have all the rights of a full member except said alternate may vote only in the absence of a full member. A quorum of four (4) members shall be necessary to conduct a meeting. A majority vote of the quorum is required for the passage or denial of any motion before the Board.

1. The term of members shall be three (3) years.
2. A municipal officer or their spouse shall not be a member of the Board.
3. When there is a vacancy, the municipal officers shall appoint a person to serve the remainder of the unexpired term.
4. The Board shall elect a Chair and Vice Chair from their own membership.
5. Any questions of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members except the member who has declared the conflict or who is challenged.
6. A member of the Board may be dismissed for cause by the municipal officers before the expiration of their term.



7. A Secretary to the Board shall be appointed by the appropriate town officials.
8. The Board shall not review any subdivision application unless the applicant, or the applicant's duly authorized representative, attends the meetings for which the application has been placed on the agenda. Should the applicant or applicant's representative fail to attend, the Board shall reschedule the review of the application to its next available meeting.

(For additional information, see "Rules of the Planning Board" on file in Town Hall)

#### 904 Joint Application and Hearing

- A. If an application requires any combination of site plan review, subdivision review, or conditional use approval, the procedures for all applicable application reviews must be met in order to initiate the fair hearing process. The procedures for the applicable reviews may occur simultaneously.

#### 905 Classification of Subdivision

- A. Classification. The Planner shall classify each project as a major or minor subdivision.
  1. Minor subdivisions shall involve projects with four (4) or fewer lots.
  2. Major subdivisions shall involve projects with five (5) or more lots.
  3. An applicant may request that the Planner classify an application prior to its submission. In this case, the applicant must make a written request for a classification. This request must include the following information:
    - (a) The names and addresses of the record owner and the applicant and the applicant's legal interest in the property.
    - (b) The location of the project, including the tax map and lot number.
    - (c) A brief description of the proposed activities in such detail as to allow a classification to be made.
- B. Notification. Within ten (10) working days of the receipt of a subdivision application, the Planner shall notify the applicant of the classification of the project in writing.
  1. When the Planner has classified a project based upon a request for classification rather than an application, the subsequent application must be consistent with the activities described in the request for classification.

- (a) The Planner shall review such application to determine if the classification is still correct and may reclassify the application if the scope of activities has been changed.

#### 906 Review Procedures for Minor Subdivisions

- A. Preapplication Conference. Applicants for a Minor Subdivision are encouraged to schedule a preapplication conference with the Town development review staff. The purpose of this meeting is to familiarize the applicant with the review procedures and submission requirements, and approval criteria, and to familiarize Town staff with the nature of the project.
  1. Such review shall not cause the plan to be a pending application or proceeding under 1 M.R.S.A. § 302. No decisions relative to the plan may be made at this meeting.
  2. Information Required. To request a preapplication conference the applicant shall submit, at a minimum, a brief narrative describing the project, the location of the project on a US Geologic Survey (USGS) topographic map, and a copy of the Tax Map showing the development parcel. The applicant should be prepared to discuss the following:
    - (a) The proposed site, including its location, size, and general characteristics,
    - (b) The layout of the proposed subdivision and potential constraints,
    - (c) Any issues or questions about existing municipal regulations and their applicability to the project, and
    - (d) Any requests for waivers from the submission requirements in Section 910. (*See Sec. 908 Waivers*)
- B. Sketch Plan
  1. The sketch plan must be completed prior to the preparation and submission of a Final Minor Subdivision Plan application and supporting documentation.
  2. The Board shall review the Sketch Plan with the applicant and shall authorize the submission of the Final Plan application when the Sketch Plan review is complete.
- C. Sketch Plan Review Procedures
  1. All Sketch Plan submission requirements shall be submitted to the Planning Department at least twenty-one (21) days prior to the meeting at which the application wishes to be heard by the Planning Board.

2. Within thirty (30) days of the receipt of a Sketch Plan submission for a minor subdivision, the Planner shall review the material to determine whether or not the submission is complete.
3. Site Walk. The Planning Board shall visit the site to observe existing conditions, generally confirm the information submitted and assess the development proposal. The site walk shall be scheduled by the Planner prior to the first regular meeting at which the application is reviewed by the Board.
  - (a) Procedures for the on-site inspection shall follow the requirements of the Town of Windham Planning Board Rules, as amended.
  - (b) The Board may decide not to hold, or postpone, a site walk when the site is snow covered.
    - (1) Notice of the site walk shall be published in a newspaper of general circulation, mailed to the applicant and property owners within five hundred (500) feet of the property under review. Notices must be published and/or sent at least seven (7) days prior to the on-site inspection.
  - (c) The applicant shall stake the centerline of any proposed streets, the front corners of any proposed lots, and provide a sketch plan (on an 11"x17" sheet) of the project for each member of the Planning Board and Staff.
- D. Review of the Sketch Plan. The review of the Sketch Plan shall be informational and shall not result in any formal approval or disapproval of the project by the Planning Board.
  1. The applicant and property owners within five hundred (500) feet of the property under review shall be notified of the time, date, and place of the Board meeting at which the sketch plan will be reviewed.
    - (a) The meeting agenda may serve as notification.
    - (b) The notification shall inform the applicant and public that the Planning Board may accept public comment during the Sketch Plan review.
  2. The Board may choose to accept public comment on the application.
  3. The outcome of the review process shall be the identification by the Board of the issues and constraints that must be addressed in the Final Minor Subdivision Plan review application.
  4. The Board shall act on any requests for waivers from the Final Minor Subdivision Plan submission requirements.

E. Final Minor Subdivision Plan Review Procedures

1. All Final Minor Subdivision Plan submission requirements shall be submitted to the Planning Department at least twenty-one (21) days prior to the meeting at which the application wishes to be heard by the Board.
  - (a) Upon receipt of a formal subdivision review application, the Planner shall give a dated receipt to the applicant and shall notify by first-class mail all property owners within five hundred (500) feet of the parcel on which the proposed development is located. The notice shall specify the location of the proposed development and provide a general description of the project.
2. Within thirty (30) days of the receipt of a formal subdivision review application, the Planner shall review the material and determine whether or not the submission is complete.
  - (a) The Planner shall notify the applicant in writing of this finding. If the Planner determines that the application is incomplete, the notice shall specify the additional materials required to make the application complete and shall advise the applicant that the application will not be considered by the Board until the additional information is submitted to the Board. These steps, except the notification requirements, shall be repeated until the application is found to be complete.
3. When the Planner determines that the application is complete, the Planner shall:
  - (a) Notify the Planning Board that the application is complete,
  - (b) Notify the applicant in writing of this recommendation,
  - (c) Provided members of the Town's development review staff with the final plan application material.
  - (d) A determination of completeness under this subsection does not preclude the Planning Board from requiring the submission of additional materials that it finds are necessary for review of the project.
4. Prior to consideration of the application by the Planning Board, the Town's development review staff may review the application and make recommendations to the Board.
5. The Planner shall give written notice of the date, time, and place of the meeting at which the application will be considered, to the applicant and all property owners within five hundred (500) feet of the property under review.

- (a) The notice shall be mailed to the applicant and property owners within five hundred (500) feet of the property under review. Notices must be sent at least seven (7) days prior to the meeting.
  6. At the first meeting at which the final plan application is considered the Planning Board shall determine whether to hold a public hearing on the application.
- F. Public Hearing on Minor Subdivision Applications
1. If the Planning Board decides to hold a public hearing on an application for subdivision approval, it shall hold the hearing within thirty (30) days after determining it has received a complete application, or within any other time limit that is mutually agreed upon by the Board and applicant.
  2. The purpose of the public hearing is to allow the applicant and affected property owners to provide information as part of the record that the Board will use in considering its action on the application. Testimony presented at the hearing should be related to factual information about the application and related submissions and the project's compliance with the review standards and other regulations and requirements of these regulations or other municipal ordinances.
  3. The public hearing shall follow the procedures established in the Town of Windham's Planning Board Rules, as amended.
- G. Final Action on the Application
1. Within thirty (30) days from the public hearing or within sixty (60) days of determining a complete application has been received, if no hearing is held, or within another time limit as may be otherwise mutually agreed to by the Board and the applicant, the Board shall make findings of fact on the application, and approve, approve with conditions, or deny the final plan application. The Board shall specify in writing its findings of fact and reasons for any conditions or denial.
  2. The Board shall notify the applicant and abutters who requested to be notified of the action of the Board including the findings of fact and any conditions of approval. This requirement can be met through the distribution of minutes of the meeting, or an approval letter, containing the findings of fact and decision of the Board.
  3. All time limits provided for in this section may be extended by mutual agreement of the applicant and Board.

## 907 Review Procedures for Major Subdivisions

A. Sketch Plan

## 1. Preapplication Conference

- (a) Applicants for a Major Subdivision are required to schedule a preapplication conference with the Town development review staff. The purpose of this meeting is to familiarize the applicant with the review procedures and submission requirements, and approval criteria, and to familiarize Town staff with the nature of the project. Such review shall not cause the plan to be a pending application or proceeding under 1 M.R.S.A. §302. No decisions relative to the plan may be made at this meeting.
- (b) Information Required. To request a preapplication conference the applicant shall submit, at a minimum, a brief narrative describing the project, the location of the project on a US Geologic Survey (USGS) topographic map, and a copy of the Tax Map showing the development parcel. The applicant should be prepared to discuss the following:
  - (1) The proposed site, including its location, size, and general characteristics,
  - (2) The layout of the proposed subdivision and potential constraints,
  - (3) Any issues or questions about existing municipal regulations and their applicability to the project, and
  - (4) Any requests for waivers from the submission requirements in Section 910. (*See Sec. 908 Waivers*)

## 2. Plan Submission

## (a) General Requirements

- (1) The Sketch Plan must be completed prior to the preparation and submission of a Preliminary Subdivision application and supporting documentation.
- (2) The Board shall review the Sketch Plan with the applicant and shall authorize the submission of the Preliminary Plan application when the Sketch Plan review is complete.

## (b) Review Procedures

- (1) **Submission Deadline.** All Sketch Plan submission requirements shall be submitted to the Planning Department at twenty-one (21) days prior to the meeting at which the application wishes to be heard by the Board.
  - (2) **Site Walk.** The Planning Board shall visit the site to observe existing conditions, generally confirm the information submitted and assess the development proposal. The site walk shall be scheduled by the Planner prior to the first regular meeting at which the application is reviewed by the Board.
    - (i) Procedures for the on-site inspection shall follow the requirements of the Town of Windham Planning Board Rules, as amended.
    - (ii) The Board may decide not to hold, or postpone, an on-site inspection when the site is snow covered.
    - (iii) Notice of the on-site inspection shall be published in a newspaper of general circulation, mailed to the applicant and property owners within five hundred (500) feet of the property under review. Notices must be published and/or sent at least seven (7) days prior to the on-site inspection.
  - (3) The applicant shall stake the centerline of any proposed streets, the front corners of any proposed lots, and provide a sketch plan (on an 11"x17" sheet) of the project for each member of the Planning Board and Staff present at the site visit.
3. **Review of the Sketch Plan.** The review of the Sketch Plan shall be informational and shall not result in any formal approval or disapproval of the project by the Planning Board.
- (a) The applicant and property owners within within five hundred (500) feet of the property under review shall be notified of the time, date, and place of the Board meeting at which the Sketch Plan will be reviewed.
    - (1) The meeting agenda may serve as notification.
    - (2) The notification shall inform the applicant and public that the Planning Board may accept public comment during the Sketch Plan review.
  - (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.
  - (c) The Board may consider any input received from members of the Staff Review Committee.
  - (d) The Board may choose to accept public comment on the application.

- (e) The outcome of the review process shall be the identification by the Board of the issues and constraints that must be addressed in the Preliminary Subdivision Plan application.
- (f) The Board shall act on any requests for waivers from the Preliminary Subdivision Plan submission requirements.

B. Preliminary Plan

1. Plan Consistency. The Preliminary Plan shall approximate the layout shown on the Sketch Plan, plus any recommendations made by the Board.
2. Submission Deadline. The applicant shall submit a Preliminary Plan within six (6) months after the Board has authorized submission of said plan.
  - (a) The Board may, upon failure to meet the six month deadline, require the application to return to the Sketch Plan review phase.
    - (1) Each time that an application is returned to the Sketch Plan review phase, the applicant shall pay the required application fees.
3. Submission of Revisions. Once a formal preliminary subdivision submission is made to the Board, the applicant shall have six (6) months to return to the Board with a revised Preliminary Plan. This six-month period shall recommence at each substantive review of the Preliminary Plan by the Planning Board.
  - (a) If a revised preliminary plan is not submitted to the Planning Board within six (6) months of the last preliminary submission, the Board may require the application to return to the Sketch Plan review phase. Previously paid subdivision fees will not be refunded should a Preliminary Plan application fail to meet the above specified deadline
  - (b) Where the Planning Board finds that extraordinary circumstances make it impossible for the applicant to comply with this section, it may grant an extension which shall not exceed an additional three (3) months. Such extension must be requested by the applicant before the initial six-month period has expired.
4. Review Procedures
  - (a) All Preliminary Plan submission requirements shall be submitted to the Planning Department at least twenty-one (21) days prior to the meeting at which the application wishes to be heard by the Board.



- (1) Upon receipt of a Preliminary Plan, the Planner shall give a dated receipt to the applicant.
- (b) Within thirty (30) days of the receipt of a Preliminary Plan submission for a Major Subdivision, the Planner shall review the material to determine whether or not the submission is complete.
  - (1) The Planner shall notify the applicant in writing of this finding. If the Planner determines that the application is incomplete, the notice shall specify the additional material required to make the submission complete, and shall advise the applicant that the application will not be considered by the Board until the additional information is submitted.
- (c) When the submission is determined to be complete, the Planner shall:
  - (1) Notify the Planning Board that the application is complete,
  - (2) Place the item on the agenda for review by the Board, and
  - (3) Provide members of the Town's development review staff with the Preliminary Plan application material.
- (d) At the first meeting at which the application is considered the Planning Board shall determine whether to hold a public hearing on the Preliminary Plan application.
- (e) If the Board decides to hold a public hearing, it shall hold the hearing within thirty (30) days of determining that it has received a complete application.
  - (1) Notice of the time, place and date of such hearing shall be sent not less than seven (7) days before the hearing to the applicant and to owners of all properties within five hundred (500) feet of the properties involved. Owners of abutting properties shall be those listed in the most recent tax records of the Town of Windham. Failure to receive notice shall not invalidate the public hearing held.
  - (2) Notice shall also be published in a newspaper of general circulation in the Town of Windham at least two (2) times, and the first date of publication shall be at least seven (7) days prior to the public hearing.
- (f) Within thirty (30) days from the public hearing or within sixty (60) days of determining a complete application has been received, if no hearing is held, or within another time limit as may be otherwise mutually agreed to by the Board and the applicant, the Board shall make findings of fact on the application, and approve, approve with conditions, or deny the preliminary plan application. The Board shall specify in writing its findings of facts and reasons for any conditions or denial.
- (g) When granting preliminary approval to a Preliminary Plan, the Board shall state the conditions of such approval, if any, with respect to:

- (1) The specific changes which it will require in the Final Plan.
  - (2) The character and extent of the required improvements for which waivers may have been requested and which the Board finds may be waived without jeopardy to the public health, safety and general welfare; and
  - (3) The construction items for which cost estimates and performance guarantees will be required as prerequisite to the approval of the Final Plan.
- (h) Approval of a Preliminary Plan shall not constitute approval of the Final Plan or intent to approve the Final Plan, but rather it shall be deemed an expression of approval of the design submitted on the Preliminary Plan as a guide to the preparation of the Final Plan. The Final Plan shall be submitted for approval of the Board upon fulfillment of the requirements of these regulations and the conditions of the preliminary approval, if any. Prior to approval of the Final Plan, the Board may require additional information be submitted and changes in the plan be made as a result of further study of the proposed subdivision or as a result of new information received.

C. Final Plan

1. Plan Consistency. The Final Plan shall approximate the layout shown on the Preliminary Plan, plus any recommendations made by the Board.
2. Submission Deadline. The applicant shall, within six (6) months after approval of the Preliminary Plan, submit a Final Plan application with the Board
  - (a) If the Final Plan is not submitted to the Board within six (6) months after the approval of the Preliminary Plan, the Board may require that the plan return to the Preliminary Plan review phase.
    - (1) Each time that an application is returned to a Preliminary Plan review phase, the applicant shall pay the required application fees.
    - (2) If an applicant cannot submit the Final Plan within six (6) months, due to delays caused by other regulatory bodies, or other reasons, the applicant may request an extension. Such a request for an extension to the filing deadline shall be filed, in writing, with the Board prior to the expiration of the filing period. In considering the request for an extension the Board shall make findings that the applicant has 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 have not been amended.

3. Submission of Revisions. Once a formal Final Plan submission is made to the Board the applicant shall have six (6) months to return to the Board with a revised plan. This six-month period shall recommence at each substantive review of the final plan by the Planning Board.
  - (a) If a revised Final Plan is not submitted to the Planning Board within six (6) months of the last final submission the Board may require the application to return to the Preliminary Plan review phase. Previously paid subdivision fees will not be refunded should a Final Plan application fail to meet the above specified deadline.
  - (b) If an applicant cannot comply with this section, the Planning Board may grant an extension in accordance with Subsection 907.C.2.(a)(2), above. Such extension must be filed with the Planning Board before the six-month period has expired.
4. Review Procedures
  - (a) All required Final Plans submission requirements shall be submitted to the Planner at least twenty-one (21) days prior to the Board meeting at which the subdivider wishes to be heard.
    - (1) Within three days of the receipt of the Final Plan application, the Planner shall issue a dated receipt to the applicant.
  - (b) Within thirty (30) days of the receipt of a Final Plan submission for a Major Subdivision, the Planner shall review the material to determine whether or not the submission is complete.
    - (1) The Planner shall notify the applicant in writing of this finding. If the Planner determines that the application is incomplete, the notice shall specify the additional material required to make the submission complete, and shall advise the applicant that the application will not be considered by the Board until the additional information is submitted.
  - (c) When the submission is determined to be complete, the Planner shall:
    - (1) Notify the Planning Board that the application is complete,
    - (2) Place the item on the agenda for review by the Board, and
    - (3) Provided members of the Town's development review staff with the Final Plan application material.
    - (4) A determination of completeness under this subsection does not preclude the Planning Board from requiring the submission of additional material that it finds are necessary for review of the project.

- (d) At the first meeting at which the application is considered the Planning Board shall determine whether to hold a public hearing on the Final Plan application.
- (e) If the Board decides to hold a public hearing, it shall hold the hearing within thirty (30) days of determining it has received a complete application, and shall publish a notice of the date, time and place of the hearing in a newspaper of local circulation at least two (2) times, the date of the first publication to be at least seven (7) days prior to the hearing. In addition, the notice of the hearing shall be posted in Town Hall at least seven (7) days prior to the hearing. A copy of the notice shall be sent by First Class mail to within five hundred (500) feet of the property under review and to the applicant, at least seven (7) days prior to the hearing.
- (f) Prior to submittal of the Final Plan application, the following approvals shall be obtained in writing, where applicable. If the Board is unsure whether a permit or license from a federal, state or local agency is necessary, the applicant may be required to obtain a written opinion from the appropriate agency as to the applicability of their regulations.
  - (1) Maine Department of Environmental Protection, under the Site Location of Development Act.
  - (2) Maine Department of Environmental Protection, under the Natural Resources Protection Act or Stormwater Law, or if an MEPDES wastewater discharge license is needed.
  - (3) Maine Department of Transportation, for a Traffic Movement Permit, and/or Highway Entrance/Driveway Access Management Permit outside of the Urban Compact,
  - (4) Town of Windham Public Works Department for a curb cut permit inside the Urban Compact. (*See Curb Cut Standards in Sec. 500 Performance Standards*)
  - (5) The Portland Water District if existing or proposed public water or sewer service is to be used.
  - (6) Maine Department of Health and Human Services if a central water supply system is to be used.
  - (7) A professional licensed in the State of Maine that a sufficient and healthful supply of water are available if individual wells serving each building site are to be used.
  - (8) Maine Department of Health and Human Services if a central sewage collection and treatment system is to be utilized.

- (9) U.S. Army Corps of Engineers, if a permit under Section 404 of the Clean Water Act is required.
- (10) Written approval of any proposed street names from the Town of Windham E911 Addressing Officer.
- (g) If the preliminary plan identified any areas listed on or eligible to be listed on the National Register of Historic Places, in accordance with Subsection 910.C.1.(b)(23), the applicant shall submit a copy of the plan and a copy of any proposed mitigation measures to the Maine Historic Preservation commission prior to submitting the final plan application.
- (h) Within thirty (30) days from the public hearing or within sixty (60) days of determining a complete application has been received, if no hearing is held, or within another time limit as may be otherwise mutually agreed to by the Board and the applicant, the Board shall make findings of fact on the application, and approve, approve with conditions, or deny the Final Plan application. The Board shall specify in writing its findings of facts and reasons for any conditions or denial.

#### 908 Waivers

- A. Limitation of Waivers. The granting of a submission requirement waiver or site waiver may not conflict with, nor negate, any State Statutory requirements for the subdivision of land.
- B. Waiver of Submission Requirements. The Planning Board may waive the submission requirements identified in Subsection 910 (Submission Requirements) as being eligible for a waiver.
  - 1. A waiver from the submission requirements shall not require the applicant or Board to follow the procedures and standards in Subsection C., below.
  - 2. In accordance with Section 910 (Submission Requirements) the applicant shall submit a list of submission requirements for which a waiver is sought. The list shall include the reasons for which the waiver is sought. The Board is not required to use any criteria in making its determination on the granting of a waiver of the submission requirements.
- C. Waiver of Subdivision Performance Standards. The Planning Board may waive the requirements of Section 911 Performance and Design Standards, unless prohibited by Maine statutes, where it finds that there are special circumstances of a particular parcel proposed to be subdivided, or that the application is simple and minor in nature. The applicant must demonstrate 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.

1. Procedure. The applicant shall submit a list of the requested waiver(s) in writing. For each waiver requested, the applicant shall submit answers to each of the criteria in Subsection 2. Criteria, below.
  - (a) The process for requesting waivers shall be in accordance with the provisions for review procedures in Section 906 and 907 and the provisions for submission requirements in Section 910.
  - (b) The Planning Board may request additional information to make a determination on a waiver request.
2. Criteria. In granting site waivers, the Planning Board shall utilize the following criteria:
  - (a) The waiver will improve the ability of the project to take the property's pre-development natural features into consideration. Natural features include, but are not limited to, topography, location of water bodies, location of unique or valuable natural resources, relation to abutting properties or land uses.
  - (b) The waiver will not result in the following:
    - (1) Undue water or air pollution,
    - (2) Undue light pollution or glare,
    - (3) An inadequate water supply,
    - (4) Unreasonable soil erosion,
    - (5) Unreasonable traffic congestion or safety risk,
    - (6) Decreased pedestrian safety or access,
    - (7) Inadequate supply of parking spaces,
    - (8) Inadequate sewage disposal capacity,
    - (9) Inadequate solid waste disposal capacity,
    - (10) an adverse impact on scenic or natural beauty, aesthetics, historic sites, or rare or irreplaceable natural areas,
    - (11) Flooding or adverse drainage impacts on abutting properties.
    - (12) The Town's ability to provide the subdivision with public safety services.
  - (c) Recording of Waivers of Subdivision Performance Standards. When the Board grants a site waiver to any of the improvements required by these regulations, the Final Plan, to be recorded at the Registry of Deeds, shall indicate the waivers granted. Waivers must be listed in a separate location from either the plan's general notes or any conditions of approval. Waivers of the required application submissions do not need to be listed.

## 909 Fees

- A. Sketch Plan Fee. Prior to submitting a Sketch Plan, the applicant must pay the application fee as set by the Town Council in the Windham Fee Schedule (*See Appendix A Fee Schedule*).
- B. Application Fee. An application for subdivision review must be accompanied by the applicable fee in the Windham Fee Schedule. (*See Appendix A Fee Schedule*) This fee is intended to cover the cost of administrative processing of the application, including notification, advertising, mailings, and similar costs. The fee shall not be refundable. This application fee must be paid to the municipality, and evidence of payment of the fee must be included with the application.
- C. Consulting, Review and Construction Observation Fees
  1. Applicability. Notwithstanding any other provision(s) of the Town's Land Use Ordinance, Sections 100 through 1200 (the "Code"), to the contrary, and in addition to such fees as are otherwise specified by the Code, the Town shall assess fees to cover 100 percent of its costs related to independent geotechnical, hydrologic, engineering, planning, legal, and similar professional consulting services incurred in the review and post-approval inspections of site plan applications. Such fees shall be subject to the following limitations:
    - (a) Such fees shall only be as expressly provided by this Subsection 909.C.;
    - (b) Such consultation shall be limited to reasonable and necessary review, as allowed by the pertinent ordinance, which exceeds the expertise of Town staff or their ability to review the application materials within the time limits otherwise required by law or Ordinance.
    - (c) Such fees shall be assessed only to recover costs directly associated with review and post-approval inspection of the application submitted by the applicant to whom they are assessed;
    - (d) Such fees shall be reasonable in amount, based upon the consulting time involved and the complexity of the review;
    - (e) The results of the consultation for which such fees are assessed shall be available for public review, but such results shall be deemed to have been made solely for the benefit of the Town of Windham and shall remain its property; and
    - (f) Such fees shall be assessed for the privilege of review and shall be payable without regard to consultation results or the outcome of the application.
  2. Escrow Account Establishment and Administration. An escrow account shall be established with the Town by the applicant to guarantee payment in advance of actual

- fees assessed pursuant to this Subsection 909.C. The original deposit shall be an amount specific to the application, as accorded elsewhere in this Code. If the balance in the escrow account shall be drawn down by 75 percent, the Town shall notify the applicant and require that an additional amount be deposited to cover the cost of remaining work before any such remaining work is undertaken. The Town shall continue to notify the applicant and require that any such additional amount(s) be deposited whenever the balance of the account is drawn down by 75 percent of the original deposit. Any excess amount deposited with the Town in advance shall be promptly refunded to the applicant after final action on the application.
3. Appeal. Any dispute regarding the application of this Subsection 909.C. or the amount required to be paid, either in advance or upon completion, may be appealed in writing within 10 days to the Town Manager. The Town Manager, after due notice and investigation and for good cause shown, may affirm, modify, or reverse the disputed decision or reduce the amount assessed.
  4. Limitations. In an effort to minimize the use of outside or independent consulting, the provisions of this Subsection 909.C. shall be subject to the following additional limitations:
    - (a) The Planner, based on his/her work load and in his/her sole discretion, may immediately refer to outside or independent consulting any Major Subdivision plan. The Town shall charge for this review based on the billing rates of the retained consultant. The first four (4) hours of the review shall be paid for with the project's application fee. Review work beyond the initial four (4) hours shall be paid for with the escrow established in Subsection 909.C.2., above.
  5. Construction Observation Fee. At least five (5) days prior to the commencement of construction, the applicant shall pay to the Town a construction observation fee. The fee shall be calculated and administered as follows:
    - (a) The applicant's engineer/representative shall prepare a line-item cost estimate of all site improvements.
    - (b) The Town's consulting engineer shall review the cost estimate. This review shall be withdrawn from the escrow balance established in Subsection 909.C.2., above.
    - (c) The applicant shall post with the Town an amount equal to 3% of the cost estimate for site improvements.
      - (1) If, and when, a construction observation will result in the Town exceeding the 3% of site improvements amount, the Town's consulting engineer will submit a written notice stating the reasons why the estimate is to be exceeded, and by how much.



- (d) If the balance in the observation fee account shall be drawn down by 75 percent, the Town shall notify the applicant and require that an additional amount be deposited to cover the cost of remaining work before any such remaining work is undertaken.
  - (1) The Town shall continue to notify the applicant and require that any such additional amount(s) be deposited whenever the balance of the account is drawn down by 75 percent of the original deposit.
- (e) Any and all unused inspection fee funds shall be returned to the applicant.
- 6. This Subsection 909.C. shall be administered by the Planning Director or other Town employee responsible for administering the ordinance under which review is sought.
  - (a) No building permit, commencement of any construction or site preparation, or certificate of occupancy may be issued or released until all fees assessed hereunder have been paid in full.
- D. Establishment of Fees. The Municipal Officers may, from time to time, establish the appropriate fees following posting of the proposed schedule of fees and public hearing.

## 910 Submission Requirements

### A. Minor and Major Subdivisions

#### 1. *Sketch Plan*

A Sketch Plan shall be required for both Minor and Major Subdivision applications. The Sketch Plan shall show, in simple form, the proposed layout of the subdivision. The Sketch Plan shall show site conditions and identify important or unique natural areas and site features. The intent of the Sketch Plan is to provide the applicant and the Planning Board with a flexible and low-cost means to understanding the site, and to create a development plan that reflects the site's opportunities and constraints.

The Sketch Plan shall contain, at a minimum, fifteen (15) copies of the following information:

- (a) A complete Sketch Plan application form,
- (b) A narrative describing the existing conditions of the site, the number and size of lots, and the constraints and opportunities of the site. The narrative should outline any traffic studies, utility studies, market studies or other applicable work that will be conducted as part of the Preliminary Plan (Major Subdivision) or Final Plan (Minor Subdivision) application.
- (c) Name, addresses, and phone numbers of the record owner and the applicant.

- (d) Names and addresses of all consultants working on the project.
- (e) Evidence of right, title, or interest in the property.
- (f) Evidence of payment of the Sketch Plan application fee and escrow deposit.
- (g) Any anticipated requests for waivers from the submission requirements for the Preliminary Plan (Major Subdivision) or Final Plan (Minor Subdivision) application (*See Sec. 908 Waivers*).
- (h) A copy of a portion of the U.S.G.S. topographic map of the area showing the boundaries of the proposed subdivision.
- (i) A copy of that portion of the Cumberland County Medium Intensity Soil Survey covering the proposed subdivision. The boundary of the proposed subdivision site must be shown.
- (j) A plan of the parcel, with an accurate scale, showing at a minimum the information listed, below.
  - (1) Name of the subdivision, north arrow, date and scale.
  - (2) Boundary and lot lines of the subdivision.
  - (3) Approximate location, width and purpose of easements or restrictions (if applicable).
  - (4) Streets on and adjacent to the tract.
  - (5) Approximate location and size of existing utilities on and adjacent to the tract (if none, so state).
  - (6) Existing buildings, structures, or other improvements on the site (if none, so state).
  - (7) The major natural features of the site, approximated by the applicant, including wetlands, streams, ponds, floodplains, groundwater aquifers, treelines, significant wildlife habitat and fisheries or other important natural features (if none, so state).

*Note:* Major Subdivision Applications. If the applicant decides to survey the property as part of the Sketch Plan submission, please refer to the GIS requirements for a Major Subdivision Final Plan review. It may be in the applicant's best interest to obtain the required GIS data while the surveyor is on site.

**B. Minor Subdivision****1. *Final Plan***

The Final Plan shall include fifteen (15) copies of the information listed, below. The Board may waive the submission information that is listed in Subsection 910.B.1.(c).

**(a) Mandatory Written Information**

- (1) A fully executed application form signed by a person with right, title, or interest in the property proposed for subdivision.
- (2) Evidence of payment of the application and escrow fees (*See Appendix A Fee Schedule*).
- (3) The name, registration number and seal of the Maine Licensed Professional Land Surveyor who conducted the survey,
- (4) Name, registration number and seal of the licensed professional who prepared the plan (if applicable).
- (5) Description of how solid waste generated from the proposed subdivision is to be collected and disposed of.
- (6) A statement from the Maine Department of Inland Fisheries and Wildlife that no significant wildlife habitat exists on the site.
- (7) Copies of existing or proposed deed restrictions or covenants.
- (8) Copies of existing or proposed easements on the property.
- (9) An acceptable title opinion proving right of access to the proposed subdivision or site for any property proposed for development on or off of a private way or private road.
- (10) Financial Capacity
  - (i) Estimated costs. Specify the estimated total cost of the development and itemize the estimated major expenses. The itemization of major costs may include, but not be limited to, the cost of the following activities: land purchase, roads, sewers, structures, water supply, erosion control, pollution abatement and landscaping.
  - (ii) Financing. Provide one of the following unless otherwise approved by the Town.

- a) Letter of commitment to fund. A letter of commitment, acceptable to the department, from a financial institution, governmental agency, or other funding agency indicating a commitment to provide a specified amount of funds, and specifying how those funds will be used.
  - b) Self-financing
    - 1) Annual report. The most recent corporate annual report indicating availability of liquid assets to finance the development, together with explanatory material interpreting the report; or
    - 2) Bank statement. Copies of bank statements or other evidence indicating availability of funds if the applicant will personally finance the development.
  - c) Other. If funding is required, but a final commitment of all necessary money cannot be made until all approvals are received and other reasonable conditions are met, provide the following.
    - 1) Cash equity commitment. Cash equity commitment to the development sufficient to demonstrate the applicant's ability to go forward. The Town will consider 20 percent equity of the total cost of a development as the normal equity commitment but reserves the right to lower or raise this amount if special circumstances of an individual development warrant it.
    - 2) Financial plan. Financial plan for the remaining financing.
    - 3) Letter. Letter acceptable to the Town from an appropriate financial institution indicating an intention to provide financing subject to reasonable conditions of acceptance.
  - (iii) Certificate of Good Standing. If the applicant is a registered corporation, provide either a *Certificate of Good Standing* (available from the Secretary of State) or a statement signed by a corporate officer affirming that the corporation is in good standing.
- (11) Technical Capacity. Describe the technical ability of the applicant and consultant(s) to undertake the development. Include the following information:
- (i) Prior experience. A statement of the applicant's prior experience and appropriate training relating to the nature of the development. Specify prior experience relating to developments that have received permits from the Town.

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- (ii) Personnel. Resumes or similar documents detailing the experience and qualifications of full-time, permanent or temporary staff contracted with or employed by the applicant who will design the development.
- (12) The name and contact information for the road association who's private way or road is used to access the subdivision (if applicable).
- (b) Mandatory Plan Information. The maps or drawings must be at a scale sufficient to allow review of the items listed under the approval criteria, but in no case shall be more than one hundred (100) feet to the inch.
- (1) Name of the Subdivision, date and scale.
  - (2) Stamp of the Maine Licensed Professional Land Surveyor that conducted the survey. At least one copy shall include an original stamped seal that is embossed and signed.
  - (3) Stamp, with date and signature, of the Maine Licensed Professional Engineer that prepared the plans.
  - (4) A north arrow identifying all of the following: Grid North, Magnetic North with the declination between Grid and Magnetic; and whether Magnetic or Grid bearings were used in the plan design.
  - (5) Location Map. The location map shall be drawn at a size and scale adequate to allow the Board to locate the subdivision within the municipality.
  - (6) Vicinity Plan. A plan drawn at a scale of not over four hundred (400) feet to the inch to show the area within two hundred and fifty (250) feet of the property line of the proposed subdivision. The vicinity plan shall show the following:
    - (i) The approximate location of all property lines and acreage of parcels.
    - (ii) Locations, widths and names of existing, filed or proposed streets, easements, or building footprints.
    - (iii) The location and designations of any public spaces.
    - (iv) An outline of the proposed subdivision, together with its street system and an indication of the future probable street system of the remaining portion of the tract, if the proposed subdivision plan encompasses only part of the applicant's entire property holding.
  - (7) A standard boundary survey of the parcel, giving complete descriptive data by bearings and distances, made and certified by a Maine Licensed Professional

Land Surveyor. The corners of the parcel shall be located on the ground and marked by monuments. The entire parcel or tract shall be shown, including all contiguous land in common ownership within the last five years, as required by 30-A M.R.S.A. § 4401. The survey shall include the bearings and lengths of every street line, lot line, and boundary line. For curve lines at least three elements shall be provided. These include the arc length, the radius and one of the following: the central angle, the tangent length with bearings, or the chord distance with bearings.

- (8) Existing and proposed street names, pedestrian ways, lot easements, and areas to be reserved for or dedicated to public use.
  - (9) All lots within the subdivision, including numbers to identify each lot and the map and lot number assigned by the Town of Windham Assessing Department.
  - (10) Location of all monuments as required by this Section.
  - (11) The location of any important or unique natural and site features including, but not limited to, wetlands, waterbodies, streams, scenic areas, sand and gravel aquifers, significant wildlife habitats, significant fisheries, treelines, historic and/or archaeological resources.
  - (12) Location of all yard setback lines.
  - (13) A medium intensity soils map that encompasses the area to be subdivided. The Planning Board may require submission of an appropriate Class high intensity soils map in instances where poor soils are evident.
  - (14) If subsurface wastewater disposal systems (septic) are proposed, the location and results of test pits performed by a Maine Licensed Site Evaluator or Certified Soil Scientist. At least one test pit shall be shown per lot.
  - (15) Written offers of cession to the Town of Windham of all public open space shown on the plan.
  - (16) All conditions of approval and/or waivers required or granted by the Planning Board shall appear on the Final Plan. Waivers of the submission requirements do not have to be included on the plans.
  - (17) If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation, as depicted on the Town's Flood Insurance Rate Map, shall be delineated on the plan.
- (c) Submission Information for which a Waiver may be Granted. The following items shall be submitted as part of the Final Plan application, unless the applicant submits,

and is granted by the Planning Board, a written waiver request as part of the Sketch Plan application review (*See Sec. 908 Waivers*)

- (1) Contour lines at intervals of 5 feet, or at lesser intervals as the Planning Board may require.
- (2) Description of how stumps and demolition debris will be disposed of.
- (3) A surface drainage plan or stormwater management plan with profiles and cross-sections showing the design of all facilities and conveyances necessary to meet the stormwater management standards set forth in Section 900 (Subdivision Review). The plan shall be drawn by a Maine Licensed Professional Civil Engineer, and shall include a written statement indicating that the proposed subdivision will not create erosion, drainage or runoff problems either in the subdivision or on adjacent properties. Changes in runoff shall be calculated by using the TR-55 or TR-20 method or subsequent revisions.
- (4) A soil erosion and sediment control plan prepared by a Maine Licensed Professional Engineer or a Certified Professional in Erosion and Sediment Control (CPESC).
- (5) If subsurface wastewater disposal systems (septic) are proposed, a hydrogeologic assessment prepared by a Maine Licensed Site Evaluator or Certified Geologist regarding the ability of the site to meet the performance standards and approval criteria for subsurface wastewater disposal.
- (6) The location of driveways, if requested by the Planning Board.

### C. Major Subdivision

#### 1. ***Preliminary Plan***

The Preliminary Plan shall include fifteen (15) copies of the information listed, below. The Board may waive the submission information that is listed in Subsection 910.C.1.(c) all dimensions shown in feet or decimals of a foot, drawn to a scale of not more than one hundred (100) feet to the inch showing or accompanied by the following information:

- (a) **Mandatory Written Information**
  - (1) A fully executed and signed application form.
  - (2) Evidence of payment of the application and escrow fees (*See Appendix A Fee Schedule*).
  - (3) Proposed name of the subdivision and the name of the municipality in which it is located.

- (4) Verification of right, title or interest in the property, or any abutting property, by deed, purchase and sales agreement, option to purchase, or some other proof of interest.
- (5) A copy of the most recently recorded deed for the parcel. A copy of all existing deed restrictions, easements, rights-of-way, or other encumbrances currently affecting the property.
- (6) A copy of any existing or proposed covenants or deed restrictions intended to cover all or part of the lots or dwellings in the subdivision.
- (7) A copy of any proposed easements on the property.
- (8) The name, registration number and seal of the Maine Licensed Professional Land Surveyor who conducted the survey,
- (9) Name, registration number and seal of any other licensed professional in the State of Maine who prepared the plan (if applicable).
- (10) An indication of the type of sewage disposal to be used in the subdivision.
  - (i) When sewage disposal is to be accomplished by connection to the public sewer, a letter from the Portland Water District stating the district has the capacity to collect and treat the waste water shall be provided.
  - (ii) When sewage disposal is to be accomplished by subsurface waste water disposal systems, test pit analyses, prepared by a Maine Licensed Site Evaluator or Certified Soil Scientist shall be provided. A map showing the location of all test pits dug on the site shall be submitted.
- (11) An indication of the type of water supply system(s) to be used in the subdivision.
- (12) When water is to be supplied by public water supply, a written statement from the Portland Water District shall be submitted indicating there is adequate supply and pressure for the subdivision.
- (13) The names and addresses of the record owner, applicant, and adjoining property owners.
- (14) An acceptable title opinion proving right of access to the proposed subdivision or site for any property proposed for development on or off of a private way or private road.



(15) The name and contact information for the road association who's private way or road is used to access the subdivision (if applicable).

(16) Financial Capacity

- (i) Estimated costs. Specify the estimated total cost of the development and itemize the estimated major expenses. The itemization of major costs may include, but not be limited to, the cost of the following activities: land purchase, roads, sewers, structures, water supply, erosion control, pollution abatement and landscaping.
- (ii) Financing. Provide one of the following unless otherwise approved by the Town.
  - a) Letter of commitment to fund. A letter of commitment, acceptable to the department, from a financial institution, governmental agency, or other funding agency indicating a commitment to provide a specified amount of funds, and specifying how those funds will be used.
  - b) Self-financing
    - 1) Annual report. The most recent corporate annual report indicating availability of liquid assets to finance the development, together with explanatory material interpreting the report; or
    - 2) Bank statement. Copies of bank statements or other evidence indicating availability of funds if the applicant will personally finance the development.
  - c) Other. If funding is required, but a final commitment of all necessary money cannot be made until all approvals are received and other reasonable conditions are met, provide the following.
    - 1) Cash equity commitment. Cash equity commitment to the development sufficient to demonstrate the applicant's ability to go forward. The Town will consider 20 percent equity of the total cost of a development as the normal equity commitment but reserves the right to lower or raise this amount if special circumstances of an individual development warrant it.
    - 2) Financial plan. Financial plan for the remaining financing.
    - 3) Letter. Letter acceptable to the Town from an appropriate financial institution indicating an intention to provide financing subject to reasonable conditions of acceptance.
- (iii) Certificate of Good Standing. If the applicant is a registered corporation, provide either a *Certificate of Good Standing* (available from the Secretary of State) or a statement signed by a corporate officer affirming that the corporation is in good standing.

(17) Technical Capacity. Describe the technical ability of the applicant and consultant(s) to undertake the development. Include the following information:

- (i) Prior experience. A statement of the applicant's prior experience and appropriate training relating to the nature of the development. Specify prior

- experience relating to developments that have received permits from the Town.
- (ii) Personnel. Resumes or similar documents detailing the experience and qualifications of full-time, permanent or temporary staff contracted with or employed by the applicant who will design the development.
- (b) Mandatory Plan Information. The maps or drawings must be at a scale sufficient to allow review of the items listed under the approval criteria, but in no case shall be more than one hundred (100) feet to the inch.
- (1) Name of the Subdivision, date and scale.
  - (2) Stamp, with date and signature, of the Maine Licensed Professional Land Surveyor that conducted the survey.
  - (3) Stamp, with date and signature, of any other professional licensed in the State of Maine that prepared the plans.
  - (4) A north arrow identifying all of the following: Grid North, Magnetic North with the declination between Grid and Magnetic; and whether Magnetic or Grid bearings were used in the plan design.
  - (5) Location Map. The location map shall be drawn at a size and scale adequate to allow the Board to locate the subdivision within the municipality.
  - (6) Vicinity Plan. A plan drawn at a scale of not over four hundred (400) feet to the inch to show the area within two hundred and fifty (250) feet of the property boundary of the proposed subdivision. The vicinity plan shall show the following:
    - (i) The approximate location of all property lines and acreage of parcels.
    - (ii) Locations, widths and names of existing, filed or proposed streets, easements, or building footprints.
    - (iii) The location and designations of any public spaces.
    - (iv) An outline of the proposed subdivision, together with its street system and an indication of the future probable street system of the remaining portion of the tract, if the proposed subdivision plan encompasses only part of the applicant's entire property holding.
  - (7) A standard boundary survey of the parcel, giving complete descriptive data by bearings and distances, made and certified by a Maine Licensed Professional Land Surveyor. The corners of the parcel shall be located on the ground and marked by monuments. The entire parcel or tract shall be shown, including all contiguous land in common ownership within the last five years, as required by 30-A M.R.S.A. § 4401. The survey shall include the bearings and lengths of

every street line, lot line, and boundary line. For curve lines at least three elements shall be provided. These include the arc length, the radius and one of the following: the central angle, the tangent length with bearings, or the chord distance with bearings.

- (8) The proposed lot lines with approximate dimensions and the area of each lot.
- (9) Contour lines at 2 foot intervals, or at intervals required by the Board, showing elevations in relation to the required datum.
- (10) Typical cross sections of the proposed grading for roadways, sidewalks, etc., including width, type of pavement, elevations and grades.
- (11) Wetland areas shall be delineated on the survey.
- (12) The number of acres within the proposed subdivision, location of property lines, existing buildings, vegetative cover type, specimen trees, if present, and other essential existing physical features.
- (13) The location of all rivers, streams and brooks within or adjacent to the proposed subdivision. If any portion of the proposed subdivision is located in the direct watershed of a great pond, the application shall indicate which great pond.
- (14) The zoning district in which the proposed subdivision is located and the location of any zoning boundaries affecting the subdivision.
- (15) The location, size of existing and proposed sewers, water mains, culverts, bridges and drainage ways on or adjacent to the property to be subdivided. The Board may required this information to be depicted via a cross-section, or plan and profile view.
- (16) The location, names, and present widths of existing streets, highways, easements, building lines, parks and other open spaces on or adjacent to the subdivision.
- (17) The width and location of any streets, public improvements or open space shown upon the official map and the comprehensive plan, if any, within the subdivision.
- (18) All parcels of land proposed to be dedicated to public use and the conditions of such dedication.
- (19) The location of any open space to be preserved or common areas to be created, and a general description of proposed ownership, improvement and management.

- (20) The approximate location of the tree line after development has been completed.
  - (21) If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation, as depicted on the Town's Flood Insurance Rate Map, shall be delineated on the plan.
  - (22) Areas within or adjacent to the proposed subdivision which have been identified by the Maine Department of Inland Fisheries and Wildlife "Beginning with Habitat Project" or within the Comprehensive Plan. (*Copies of the Beginning with Habitat Project maps and the Comprehensive Plan are available in Town Hall*)
  - (23) All areas within or adjacent to the proposed subdivision which are either listed on or eligible to be listed on the National Register of Historic Places, or have been identified in the comprehensive plan or by the Maine Historic Preservation Commission as sensitive or likely to contain such sites.
  - (24) An erosion and sedimentation control plan prepared in accordance with MDEP Stormwater Law Chapter 500 Basic Standards, and the MDEP Maine Erosion and Sediment Control Best Management Practices, published March 2003.
  - (25) A stormwater management plan, prepared by a Maine Licensed Professional Engineer in accordance with the most recent edition of *Stormwater Management for Maine: BMPS Technical Design Manual*, published by the MDEP 2006.
- (c) Submission Information for which a Waiver May be Granted. The following items shall be submitted as part of the Preliminary Plan application, unless the applicant submits, and is granted by the Planning Board, a written waiver request as part of the Sketch Plan application review (*See Sec. 908 Waivers*). The Board may require additional information to be submitted, as necessary, in order to determine whether the criteria of 30-A M.R.S.A. §4404 are met.
- (1) A high-intensity soil survey by a Certified Soil Scientist.
  - (2) A landscape plan including a list of proposed plant species and their size at the time of installation and maturity.
  - (3) Hydrogeologic assessment:
    - (i) A hydrogeologic assessment prepared by a Certified Geologist or Maine Licensed Professional Engineer, experienced in hydrogeology, when the subdivision is not served by public sewer and:
      - a) Any part of the subdivision is located over a sand and gravel aquifer, as shown on a map entitled "Hydrogeologic Data for Significant Sand and Gravel Aquifers," by the Maine Geological Survey, 1998, File No. 98-138, 144 and 147; or

- b) The subdivision has an average density of more than one dwelling unit per 100,000 square feet.
- (ii) The Board may also require a hydrogeologic assessment in cases where site considerations or development design indicate greater potential of adverse impacts on groundwater quality. The hydrogeologic assessment shall be conducted in accordance with the provisions of Subsection 911.H. Impact on Ground Water Quality or Quantity, below.
- (iii) If a hydrogeologic assessment is submitted, the assessment shall contain at least the following information:
  - a) A map showing the basic soils types.
  - b) The depth to the water table at representative points throughout the subdivision.
  - c) Drainage conditions throughout the subdivision.
  - d) Data on the existing ground water quality, either from test wells in the subdivision or from existing wells on neighboring properties.
  - e) An analysis and evaluation of the effect of the subdivision on ground water resources. In the case of residential developments, the evaluation shall, at a minimum, include a projection of post development nitrate-nitrogen concentrations at any wells within the subdivision, or at the subdivision boundaries; or at a distance of 1,000 feet from potential contamination sources, whichever is a shortest distance.
  - f) A map showing the location of any subsurface waste water disposal systems and drinking water wells within the subdivision and within 200 feet of the subdivision boundaries.
- (4) An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours. Trip generation rates used shall be taken from the most recent available edition of the Trip Generation Manual, published by the Institute of Transportation Engineers. Trip generation rates from other sources may be used if the applicant demonstrates that these sources better reflect local conditions.
- (5) Traffic Impact Analysis. For subdivisions involving 28 or more parking spaces or projected to generate more than 140 vehicle trips per day, a traffic impact analysis, prepared by a Maine Licensed Professional Engineer with experience in traffic engineering, shall be submitted. The analysis shall indicate the expected average daily vehicular trips, peak-hour volumes, access conditions at the site, distribution of traffic, types of vehicles expected, effect upon the level of service of the street giving access to the site and neighboring streets which may be affected, and recommended improvements to maintain the desired level of service on the affected streets.
- (6) If any portion of the proposed subdivision is in the direct watershed of a great pond, and meets the criteria of Subsection 911.J Stormwater Management, the following shall be submitted or indicated on the plan:

- (i) A phosphorus impact analysis and control plan conducted using the procedures set forth in MDEP Manual; “Stormwater Management for Maine Phosphorus Control in Lake Watersheds,” published by the MDEP, January 2008, and subsequent revisions. The analysis and control plan shall include all worksheets, engineering calculations, and construction specifications and diagrams for control measures, as required by the Phosphorus Design Manual.
- (ii) A long-term maintenance plan for all phosphorus control measures.
- (iii) Contour lines at an interval consistent with Subsection 910.C.1.(b)(9), above. Offsite areas draining onto the development site may use the best available data from aerial topographic mapping or USGS topographic maps.
- (iv) Areas with sustained slopes greater than 25% covering more than one acre shall be delineated.

## 2. *Final Plan*

The Final Plan shall include fifteen (15) copies of the information listed, below.

### (a) Mandatory Written Information

- (1) A fully executed and signed Final Plan application form.
- (2) Evidence that the escrow account balance is greater than 25% of the initial Preliminary Plan deposit.
- (3) If public open space is to be provided, written offers of cession to the Town of Windham shall be provided.
- (4) Copies of agreements or other documents showing the manner in which spaces, title to which is reserved by the subdivider, are to be submitted.
- (5) Copies of any approvals from outside agencies per the requirements of Subsection 907.C.4.(f) Review Procedures for Major Subdivisions.
- (6) Assessor's proposed Map and Lot numbers.
- (7) Digital transfer of any subdivision plan data on the Town's Horizontal Datum: Maine State Plane Coordinate System: Maine West Zone FIPS Zone 1802, North American Datum 1983; Units: US Survey Feet.
  - (i) The preferable vertical datum is North American Vertical Datum 1988 (NAVD88). However, if only National Geodetic Vertical Datum 1929 (NGVD29) is possible, this is permissible. The choice of vertical datum must be indicated on the digital submission. The Ellipsoid is GRS 80 (Geodetic Reference System 1980).

- (ii) Data shall have survey grade positional accuracy. Data could be developed using either Real Time Kinematic (RTK) GPS, survey-grade Static GPS data collection or traditional methods of occupying known, high-precision surveyed monuments. The datum, survey methods, and type of survey equipment used shall be identified.

(b) Mandatory Plan Information

- (1) All of the information presented on the Preliminary Plan, and any amendments thereto suggested or required by the Board.
- (2) Map and lot numbers for all lots as assigned by the Town of Windham Assessing Department.
- (3) The seal of the Maine Licensed Professional who prepared the plan.
- (4) By proper designation, all public open space for which offers of cession are made by the subdivider and those spaces to which title is reserved by him.
- (5) The location of all permanent monuments.

911 Performance and Design Standards

The performance and design standards in this section are intended to clarify and expand upon the statutory review criteria found in Section 902. In reviewing a proposed subdivision, the Board shall review the application for conformance with the following performance and design standards. In all instances, the burden of proof shall be upon the applicant to present adequate information to indicate all performance and design standards and statutory criteria for approval have been or will be met.

A. Basic Subdivision Layout

1. ***Lots***

- (a) Calculation of Density: See “Net Residential Density or Acreage” in Section 500 Performance Standards.
- (b) Wherever possible, side lot lines shall be perpendicular to the street.
- (c) The subdivision of tracts into parcels with more than twice the required minimum lot size shall be laid out in such a manner as either to provide for or preclude future division. Deed restrictions or notes on the plan shall either prohibit future divisions of the lots or specify that any future division shall constitute a revision to the plan and shall require approval from the Board, subject to the criteria of the subdivision

statute, the standards of these regulations and conditions placed on the original approval.

- (d) If a lot on one side of a public street fails to meet the minimum requirements for lot size, it may not be combined with a lot on the other side of the public street to meet the minimum lot size.
- (e) Lot Numbering. Even numbers shall be assigned to lots on one side of the street, and odd numbers on the opposite side. Where the proposed subdivision contains the extension of an existing street or street approved by the Board, but not yet constructed, the lot numbers shall correspond with the existing lot numbers. The lot numbering shall be reviewed by the E-911 Addressing Officer and the comments shall be considered by the Board.

## 2. *Utilities*

The size, type and location of public utilities, such as sewers, water lines, storm drains, street lights, electric lines, telephones lines, fire hydrants, etc., shall be approved by the Board and installed in accordance with the requirements of the Board and these Standards.

- (a) Utilities shall be installed underground.
- (b) All public utilities and facilities, such as sewer, gas, electrical and water systems shall be located and constructed to minimize or eliminate flood damage.

## 3. *Monuments*

- (a) Street Line Monuments. Monuments shall be set at all street intersections and points of curvature, but no further than 750 feet apart along street lines without curves or intersections.
  - (1) Street line monuments shall be granite and have minimum dimensions of four (4) inches square at the top and four (4) feet in length. The monuments shall be set in the ground with the top of the monuments no more than six (6) inches above the final grade level. A drill hole at least 0.5 inch deep shall locate the point or points described above and include the registration number of the Maine Licensed Professional Land Surveyor that set the monuments. Monuments shall be capable of being detected by commonly used magnetic or electronic equipment, as required by the Maine Board of Registration of Land Surveyors.
- (b) Other Monuments. All other subdivision boundary corners and angle points, as well as all lot boundary corners and angle points shall be marked by suitable



permanent monumentation solidly embedded in the ground and capable of being detected by commonly used magnetic or electronic equipment, as required by the Maine Board of Registration of Land Surveyors. The monument shall clearly show the registration number or temporary certificate number of the Maine Licensed Professional Land Surveyor responsible for the survey. Where the placement of a required monument at its proper location is impractical, it shall be permissible to set a reference monument close to that point.

B. Sufficient Water

1. *Water Supply*

- (a) A subdivision shall connect to the public water system if the closest water main is within a distance equal to 100 feet multiplied by number of lots in the subdivision. A proposed subdivision shall not generate a demand on the source, treatment facilities or distribution system of the Portland Water District beyond the capacity of those system components, considering improvements that are planned to be in place prior to occupancy of the subdivision. The applicant shall be responsible for paying the costs of system improvements to the Portland Water District's system as necessary in order to facilitate connection.
- (b) When a subdivision is to be served by a public water system, the complete supply system within the subdivision including fire hydrants, shall be installed at the expense of the applicant. The size and location of mains, gate valves, hydrants, and service connections shall be reviewed and approved in writing by the Portland Water District and the Windham Fire Chief.
- (c) When a proposed subdivision is not within a distance required for connection to the public water system, water supply shall be from individual wells or a private community water system. The following standards shall apply to individual wells or private community water systems.
  - (1) Individual wells shall be sited and constructed to prevent infiltration of surface water, and contamination from subsurface waste water disposal systems and other sources of potential contamination.
    - (i) Due to the increased chance of contamination from surface water, dug wells shall be prohibited on lots of smaller than one acre. On lots of one acre or smaller, the applicant shall prohibit dug wells by deed restrictions and a note on the plan.
    - (ii) On lots greater than one acre, dug wells may only be installed where it is not possible to utilize another well system.
    - (iii) Wells shall not be constructed within 100 feet of the traveled way of any street if located downhill from the street, or within 50 feet of the traveled

way of any street if located uphill of the street. This restriction shall be included as a deed restriction to the effected lots.

- (2) Lot design shall permit placement of wells, subsurface waste water disposal areas, and reserve sites for subsurface waste water disposal areas in compliance with the Maine Subsurface Wastewater Disposal Rules and the Well Drillers and Pump Installers Rules.
- (3) If a central water supply system is provided by the applicant, the location and protection of the source, the design, construction and operation of the system shall conform to the standards of the Maine Rules Relating to Drinking Water (10-144A C.M.R. 231).
- (4) In residential subdivisions where the Fire Department identifies the need for additional water storage capacity for fire fighting purposes, the applicant shall provide adequate water storage facilities.
  - (i) Facilities may be ponds with dry hydrants, underground storage reservoirs or other methods acceptable to the Fire Chief.
  - (ii) A minimum storage capacity shall meet the requirements of the National Fire Protection Association Life Safety Code (NFPA 101). The Board may require additional storage capacity upon a recommendation from the Fire Chief.
  - (iii) Where surface ponds are proposed for water storage, the capacity of the pond shall be calculated based on the lowest water level less an equivalent of three feet of ice. An easement shall be granted to the municipality granting access to and maintenance of dry hydrants or reservoirs where necessary.
  - (iv) Hydrants or other provisions for drafting water shall be provided to the specifications of the fire department. Minimum pipe size connecting dry hydrants to ponds or storage vaults shall be six inches. A suitable accessway to the hydrant or other water source shall be constructed.
  - (v) The Board may waive the requirement for water storage only upon submittal of evidence that the soil types in the subdivision will not permit their construction or installation and/or that the Fire Chief has indicated in writing that alternate methods of fire protection are available and incorporated into the subdivision plan.

C. Erosion and Sedimentation and Impact on Water Bodies

1. Where a subdivision is traversed by a watercourse, drainageway, or where the Board feels that surface water drainage to be created by the subdivision should be controlled for the protection of the subdivision and owners of property abutting it, there shall be provided an easement or drainage right-of-way and culverts, catch basins or other means of channeling surface water within such subdivision and over the property of

owners abutting upon it, of such nature, width and location as the Board deems adequate.

- (a) The applicant shall transfer the easement to a home owners association.
  - (b) Maintenance of the easement will be the responsibility of the home owners association.
  - (c) The easement shall specify that in the event that the applicant or home owners association neglects its maintenance responsibilities, the Town reserves the right to maintain the features of the easement, and charge the home owners association for all expenses.
2. The developer shall provide a statement from a Maine Licensed Professional Civil Engineer that the plan shall prevent soil erosion and sedimentation from entering waterbodies, wetlands and adjacent properties.
  3. Topsoil shall be considered part of the subdivision. Except for surplus topsoil for roads, parking areas and building excavations, it is not to be removed from the site.
  4. Except for normal thinning and landscaping, existing vegetation shall be left intact to prevent soil erosion. The Board may require a developer to take measures to correct and prevent soil erosion in the proposed subdivision.
  5. The procedures outlined in the erosion and sedimentation control plan shall be implemented during the site preparation, construction, and clean-up stages. (*See Chapter 142 Surface Water Protection Ordinance*)

D. Sewage Disposal

1. **Public Sewer System.** Where an existing or proposed public sanitary gravity sewer main is located within one thousand five hundred (1,500) feet of a proposed subdivision at its nearest point, the applicant shall provide, at his expense, a connection to, or extension of, the public gravity sewer main.
  - (a) The Portland Water District shall certify that providing service to the proposed subdivision is within the capacity of the system's existing collection and treatment system or improvements planned to be complete prior to the construction of the subdivision.
  - (b) The Portland Water District shall review and approve, in writing, the construction drawings for the public sewerage system. This includes, but is not limited to, the size and location of laterals, collectors, manholes, and pump stations.
2. **Private Systems.** When a proposed subdivision is not within a distance required for public sewage disposal service, sewage disposal shall be private subsurface waste

water disposal systems. The subdivision may be served by a private central sewage system in accordance with the provisions for, "Central Sewage Systems" in Section 500 Performance Standards. (*See Sec. 500 Performance Standards*)

- (a) The applicant shall submit evidence of site suitability for subsurface sewage disposal prepared by a Maine Licensed Site Evaluator in full compliance with the requirements of the State of Maine Subsurface Wastewater Disposal Rules.
  - (1) The site evaluator shall certify in writing that all test pits which meet the requirements for a new system represent an area large enough to provide a disposal area on soils which meet the Disposal Rules.

E. Impact on Natural Beauty, Aesthetics, Historic Sites, Wildlife Habitat, Rare Natural Areas or Public Access to the Shoreline

1. ***Preservation of Natural Beauty and Aesthetics***

- (a) The plan shall, by notes on the final plan and/or deed restrictions, not allow the clearing of trees 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. Mandatory buffers for stormwater or other reasons depicted on the plan shall not be cleared of vegetation unless the Planning Board grants an amendment to the subdivision or for maintenance that does not alter the purpose for which the buffer was required.
- (b) The plan shall include the planting of street trees. Street trees shall be of a variety capable of withstanding winter street maintenance and planted no more than fifty feet apart.

2. ***Reservation or Dedication and Maintenance of Open Space and Common Land, Facilities and Services***

- (a) All open space common land, facilities and property shall be owned by:
  - (1) The owners of the lots or dwelling units by means of a lot owners' association;
  - (2) An association which has as its principal purpose the conservation or preservation of land in essentially its natural condition; or
- (b) Further subdivision of the common land or open space and its use for other than non-commercial recreation, agriculture, or conservation purposes, except for easements for underground utilities, shall be prohibited. Structures and buildings accessory to non-commercial recreational or conservation uses may be erected on the common land.
- (c) The common land or open space shall be shown on the Final Plan with appropriate notations on the plan to indicate:

- (1) It shall not be used for future building lots; and
  - (2) Which portions of the open space, if any, may be dedicated for acceptance by the municipality.
- (d) The Final Plan application shall include the following:
- (1) Covenants for mandatory membership in the lot owners' association setting forth the owners' rights, interests, and privileges in the association and the common property and facilities, to be included in the deed for each lot or dwelling.
  - (2) Draft articles of incorporation of the proposed lot owners' association as a not-for-profit corporation; and
  - (3) Draft by-laws of the proposed lot owners' association specifying the responsibilities and authority of the association, the operating procedures of the association and providing for proper capitalization of the association to cover the costs of major repairs, maintenance and replacement of common facilities.
- (e) In combination, the documents referenced in Subsection 911.E.2.(d), above shall provide for the following:
- (1) The homeowners' association shall have the responsibility of maintaining the common property or facilities.
  - (2) The system by which the association shall levy annual charges against all owners of lots or dwelling units to defray the expenses connected with the maintenance, repair and replacement of common property and facilities and tax assessments.
  - (3) The association shall have the power to place a lien on the property of members who fail to pay dues or assessments.
  - (4) The developer or subdivider shall maintain control of the common property, and be responsible for its maintenance until rights have been transferred to the association per the by-laws or covenants.

F. Conformance with Land Use Ordinances

All lots shall meet the dimensional requirements of the zoning district in which they are located. The proposed subdivision shall meet all applicable performance standards or design criteria of the Land Use Ordinance.

*Note:* See “Lot, Backlot” in Section 500 Performance Standards for additional standards regarding backlots in subdivisions.

G. Financial and Technical Capacity

1. ***Financial Capacity.*** The applicant shall have adequate financial resources to construct the proposed improvements and meet the criteria of the standards of these regulations. In making its determination the Planning Board shall consider all relevant evidence to the effect that the developer has the financial capacity to construct, operate, and maintain all aspects of the development. The Board shall also consider the proposed time frame for construction and the effects of inflation.
2. ***Technical Ability***
  - (a) The applicant shall retain qualified contractors and consultants to supervise, construct and inspect the required improvements in the proposed subdivision.
  - (b) In determining the applicant's technical ability the Board shall consider the applicant's previous experience, the experience and training of the applicant's consultants and contractors, and the existence of violations of previous approvals granted to the applicant.

H. Impact on Ground Water Quality or Quantity

1. ***Ground Water Quality***
  - (a) Projections of ground water quality shall be based on the assumption of drought conditions (assuming 60% of annual average precipitation). (*See Sec. 910.C.1.(c)(3) for hydrogeologic assessment submission requirements*)
  - (b) No subdivision shall increase any contaminant concentration in the ground water at any subdivision water supply well or any project boundary to more than the Primary Drinking Water Standards. No subdivision shall increase any contaminant concentration in the ground water at said locations to more than the Secondary Drinking Water Standards. A hydrogeological evaluation demonstrating that the groundwater concentrations of nitrate as nitrogen meet the Maximum Contaminant Level standard of 10 mg/L of the EPA’s *National Primary Drinking Water Regulations* at the project boundaries. Where past land activities, such as agriculture, indicate the potential for high background levels of nitrate nitrogen or other groundwater contaminants, the Planning Board may require testing to determine background levels and may place limitations on total groundwater discharges to ensure safe drinking water supplies for existing and/or proposed households.

- (c) If ground water is to be used for potable purposes and contains contaminants in excess of the primary standards, and the subdivision is to be served by on-site ground water supplies, the applicant shall demonstrate how water quality will be improved or treated.
- (d) If ground water contains contaminants in excess of the secondary standards, the subdivision shall not cause the concentration of the parameters in question to exceed 150% of the ambient concentration.
- (e) Subsurface waste water disposal systems and drinking water wells shall be constructed as shown on the map submitted with the assessment. If construction standards for drinking water wells or other measures to reduce ground water contamination and protect drinking water supplies are recommended in the assessment, such as required well exclusion zones, those standards shall be included as a note on the Final Plan, and as restrictions in the deeds to the affected lots.
- (f) Whenever the Board determines that there is a potential that some lots in the proposed subdivision may have difficulty obtaining a well with adequate quantity and quality for potable water, the developer shall be required to drill wells and verify the water supply before the lot is sold.

## 2. *Ground Water Quantity*

- (a) Any water table drawdowns beyond the subdivision boundaries, due to groundwater withdrawals by the proposed subdivision, shall not adversely impact groundwater supply availability to existing wells nor cause structural damage (e.g., settlement).
- (b) A proposed subdivision shall not result in a lowering of the water table at the subdivision boundary by increasing runoff with a corresponding decrease in infiltration of precipitation. This standard shall be met by one of the following measures:
  - (1) Limiting the impervious surfaces within the project site to no more than 10 (10%) percent of the land surface.
  - (2) Providing analysis by a hydrogeologist or qualified engineer that soil and substrate conditions are such that a groundwater drawdown due to increased runoff will not significantly reduce infiltration or cause long term settlements in clay that could result in structural damage. Upon recommendation of peer review consultants engaged by the Town, the Board may require test borings to verify assumptions made by the hydrologist or engineer.
  - (3) Installation of groundwater infiltration measures to ensure that water table recharge is not depleted by more than ten (10%) percent.

### I. Floodplain Management

When any part of a subdivision is located in a special flood hazard area as identified by the Federal Emergency Management Agency:

1. All public utilities and facilities, such as sewer, gas, electrical and water systems shall be located and constructed to minimize or eliminate flood damages.
2. Adequate drainage shall be provided so as to reduce exposure to flood hazards.
3. The plan shall include the finished floor elevation of all proposed structures within the flood hazard area.
4. The plan shall meet the requirements of the Town's floodplain management ordinance.

### J. Stormwater Management

1. Stormwater management for subdivisions shall incorporate appropriate treatment measures for water quantity and quality to meet the requirements specified below for development of the lots as well as the infrastructure to support the project. Each application shall include maximum developed, disturbed and impervious areas for each lot based upon the definitions contained in Section 3 DEP Chapter 500 Stormwater Management.
2. For subdivisions that require a DEP review under the Site Location of Development Act (SLDA), a stormwater management plan shall be submitted which complies with the SLDA permit and the requirements of DEP Chapter 500 Stormwater Management.
3. For subdivisions that do not require a SLDA permit, but require a DEP permit under the Stormwater Law, a stormwater management plan shall be submitted which complies with the requirements of DEP Chapter 500 Stormwater Management.
4. For subdivisions outside of the watershed of a Great Pond, that neither require a SLDA permit, nor a DEP stormwater permit, a stormwater management plan shall be submitted that complies with Section 4A Basic Standards and 4B General Standards of the DEP Chapter 500 Stormwater Management.
5. For subdivisions within the watershed of a Great Pond that require neither a DEP SLDA permit nor a DEP Stormwater Permit, a stormwater management plan shall be submitted that complies with Section 4A Basic Standards of DEP Chapter 500 Stormwater Management. In addition, the stormwater management plan shall comply with Section 4C Phosphorous Standards of DEP Chapter 500 Stormwater Management. If the Great Pond is not severely blooming as listed in DEP Chapter 502, the applicant shall submit a stormwater management plan that complies with



either Section 4B General Standards or Section 4C Phosphorous Standards of DEP Chapter 500 Stormwater Management.

6. For all subdivisions, regardless of size, a stormwater management plan shall be submitted that complies with Section 4E Flooding Standard of the DEP Chapter 500 Stormwater Management, as amended. For a project that does not require a DEP SLDA Permit, the Planning Board, upon a request by the Applicant, may waive the Flooding Standard in the event that greater than 75% of the impervious and developed areas (as defined in Section 3 of DEP Chapter 500) for both the lots and infrastructure are treated through the use of buffers in accordance with DEP Chapter 500 Stormwater Management.

*(See also Chapter 142 Surface Water Protection Ordinance)*

#### K. Cluster Developments

##### 1. *Purpose*

Development under this provision is intended to promote imaginative, well-designed subdivisions which preserve open space and agricultural uses, provide public access to land for passive and active recreation, protect natural features, environmentally sensitive areas and wildlife cover, respect the physical qualities of the land, and, in some instances, reduce the overall development costs of a subdivision. The standards for cluster development allow for the creation of lots that are smaller than those that would otherwise be required by the applicable zoning district regulations and in some cases can be combined with density bonuses to allow additional lots, in return for setting aside the balance of the property as permanent common open space. In addition to all applicable standards of this Ordinance, the Planning Board may approve a single-family cluster subdivision provided the following conditions are met:

##### 2. *Procedure*

- (a) **Application Requirements.** All submissions for single-family subdivisions that meet the space and bulk requirements listed in the appropriate zoning district may be designed as a cluster subdivision.
- (b) Property located within more than one residential zoning district. The overall density of the subdivision shall not exceed the combination of the density requirements of the districts in which the subdivision is located, before density bonuses are applied.

##### 3. *Basic Standards for Cluster Subdivisions*

- (a) Cluster developments shall meet all applicable requirements of the Land Use Ordinance.

- (b) Each building envelope shall be an element of an overall subdivision plan for site development. Only developments having a total site plan for structures will be considered. The application shall illustrate the placement of building envelopes and the treatment of spaces, paths, roads, service and parking and in so doing shall take into consideration all requirements of this section and of other relevant sections of these regulations.
  - (1) For cluster subdivisions that are not served by a public water supply, the applicant must demonstrate on the plan that it is possible to locate a subsurface wastewater disposal field and a well on each lot. When determined that it is necessary for specific lots, by the Planning Board, as a Condition of Approval, the location of these elements shall be elements of the subdivision plan, and any future changes to the location of these elements will require an amended subdivision plan review.
- (c) The Planning Board shall allow lots within cluster developments to be reduced from standard subdivision standards as specified in the applicable zoning district. In return for the reduction in the requirements for lot area, frontage, and structure setbacks, the applicant shall provide common open space.
- (d) In order to determine the maximum number of dwelling units permitted on a tract of land, the net residential acreage of the parcel shall be divided by the net residential density standard of the applicable zoning district. Density bonuses are applicable, per the appropriate zoning district standards (see Section 400.)
- (e) Up to 30% of individual lots or dwelling units may have direct vehicular access onto a public road existing at the time of development.
- (f) Streets constructed within a cluster subdivision must meet a public street standard.
- (g) Diversity and originality in lot layout and individual building site design shall be encouraged to achieve the best possible relationship between the proposed development and the land under consideration.

#### 4. *Recreation and Open Space Requirements*

- (a) The open space provided by the cluster subdivision shall be identified on the recorded subdivision plan as “Common Open Space - Reserved for Recreation and/or Conservation Purposes”.
- (b) The total area of reserved open space within the development shall equal or exceed 50% of the gross land area of the property to be subdivided.
  - (1) Common open space shall not include road rights of way, streets, drives, or parking.

- (2) At least fifty percent (50%) of the land suitable for development (see Section 534 – Net Residential Area or Acreage) shall be included in the common open space.
- (c) The common open space shall owned and managed according to the standards of 911.E.2.
- (d) Depending on the size and location of the subdivision, the Planning Board may require the developer to designate a portion of the total common open space area for recreation. The reserved open space shall be suitable for both passive and active recreation, including, but not limited to, bicycle and pedestrian trails, picnic areas, soft ball fields, tennis and basketball courts, tot lots and play grounds, and hard surface court games
  - (1) It is desirable that areas reserved for recreation be at least one (1) acre in size and easily accessible from all lots within the subdivision.
- (e) One principal access point having a minimum width of twenty (20) feet shall be provided for access to the required common open space from the road network within the cluster subdivision. Additional, secondary points of access having a minimum width of ten (10) feet may be provided from individual lots when these lots abut or are located within a portion of the common open space area.
  - (1) The size and location of the principal and secondary access points shall be reviewed and approved by the Planning Board as part of the Board’s review of the cluster subdivision.
  - (2) In order to be eligible for any density bonus described in the applicable zoning district standards, the following conditions must be met:
    - a. The open space must be open for general public use, not just homeowners within the subdivision, and
      - i. The open space must either be accessed from an existing public street or
      - ii. Access is from an abutting property that is public, permanent open space or recreation land, or
      - iii. Access must be formalized in easement language if access is to be provided over the new subdivision street or streets until such time as the subdivision street or streets are adopted by the Town.
        - 1. Access easements for the open space must be recorded at the registry prior to the issuance of building permits.
- (f) The required common open space shall not be used for commercial recreation or for private clubs whose membership is different from the homeowners association.
- (g) Common open space areas shall be contiguous. The proposed location of common open space areas should also be considered in relation to other open space areas on

abutting properties, and logical connections to and from open space areas on abutting properties should be given consideration by the Planning Board.

- (h) When reviewing the location and type of common open space designated in the subdivision, the Planning Board shall consider the following criteria:
  - (1) Individual lots, building envelopes, streets and parking areas shall be designed and situated to minimize alteration of any natural features to be preserved.
  - (2) The usability of the cluster's common open space intended for recreation or public use shall be determined by the size, shape, topographic and location requirements of the particular purpose proposed for the site.
  - (3) Irreplaceable natural features located on the property proposed for subdivision shall be included in the common open space. This includes, but is not limited to: stream beds and other water courses, significant stands of trees, (including the size of the trees), and rock outcroppings.
  - (4) The suitability of all land areas designated as common open space intended for scenic value and purposes shall be determined by its visibility from a significant number of units or buildings within the subdivision, or length of streets.
- (i) The land areas designated as common open space on the subdivision plan shall meet the following criteria:
  - (1) Common open space areas that can be combined with existing Town owned property dedicated for recreational use, dedicated open space on abutting property, land trust properties and public or private conservation easements, or with future land dedication potential shall be given priority.

#### L. Compliance with Timber Harvesting Rules

The Board shall ascertain that any timber harvested on the parcel being subdivided, has been harvested in compliance with rules adopted pursuant to 12 M.R.S.A § 8869, subsection 14. If a violation of rules adopted by the Maine Forest Service to substantially eliminate liquidation harvesting has occurred, the Planning Board must determine prior to granting approval for the subdivision that 5 years have elapsed from the date the landowner under whose ownership the harvest occurred acquired the parcel.

For the purposes of this subsection, "liquidation harvesting" has the same meaning as in 12 M.R.S.A § 8868, subsection 6 and "parcel" means a contiguous area within one municipality, township or plantation owned by one person or a group of persons in common or joint ownership.

1. The Planning Board may request technical assistance from the Department of Conservation, Bureau of Forestry to determine whether a rule violation has occurred,

or the Board may accept a determination certified by a forester licensed pursuant to Title 32, chapter 76.

- (a) If the Bureau agrees to provide assistance, it shall make a finding and determination as to whether a rule violation has occurred.
- (b) If the Bureau notifies the Planning Board that it will not provide assistance, the Board may require a subdivision applicant to provide a determination certified by a licensed forester.

M. Traffic Conditions and Streets

1. **General Standards.** The proposed subdivision shall meet the following general transportation performance standards:
  - (a) The subdivision transportation system shall provide safeguards against hazards to vehicles, bicyclists and pedestrians in interior subdivision streets and access connections to external streets;
  - (b) The subdivision transportation system shall have design standards that avoid traffic congestion on any street;
  - (c) The subdivision transportation system shall provide safe and convenient circulation for vehicles, bicyclists and pedestrians on interior subdivision streets and access connections to external streets;
  - (d) The subdivision transportation system shall have design standards that are compatible with the estimated Average Annual Daily Traffic of the street, the land uses accommodated by the street, and the lot density of the street; and
  - (e) The subdivision transportation system shall have a positive relationship to the natural setting of the proposed subdivision site.
2. **General Access Standards.** All subdivision accesses connecting with external streets shall meet the following standards (*See "Curb Cuts, Driveway Openings" in Sec. 500 Performance Standards.*)
  - (a) Accesses connecting to any state or state-aid highway shall meet the minimum access permitting requirements of the Maine Department of Transportation "Highway Driveway and Entrance Rules".
  - (b) Accesses that are expected to carry more than 100 passenger vehicle equivalent trips in the peak hour shall meet the minimum access permitting requirements of the Maine Department of Transportation "Rules and Regulations Pertaining to Traffic Movement Permits".

- (c) Existing and proposed streets and intersections that can be expected to carry traffic generated by the subdivision shall have the capacity or be suitably improved to accommodate that traffic and avoid unreasonable congestion.
    - (1) **Signalized Intersection.** The level of service (LOS) at a proposed signalized intersection shall be “D” or better. At an existing signalized intersection, the LOS shall not be reduced below “D” by the development. If an existing signalized intersection is operating below a LOS “D” pre-development, then the development shall not increase the delay at the intersection.
    - (2) **Unsignalized Intersection.** At an unsignalized intersection, if the LOS is forecasted to be less than a “D” post-development, then the installation of a traffic signal and/or additional turning lanes shall be investigated. If these improvements are found not to be warranted, then a LOS less than “D” may be acceptable.
  - (d) Accesses to non-residential subdivisions or to multifamily developments shall be designed to avoid queuing of entering vehicles on any street. Left lane storage capacity on the existing external street shall be provided to meet anticipated demand. A study or analysis to determine the need for a left-turn storage lane shall be done.
3. ***General Internal Subdivision Street Standards.*** All internal subdivision streets shall meet the following minimum standards.
- (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.
    - (1) The Planning Board may require the construction of the dedicated right-of-way connection to the abutting property.
    - (2) All dead-end streets or street connection rights-of-way shall be provided with a hammerhead turn around unless specifically exempted by the Planning Board. The hammerhead shall meet the standards in Subsection 911.M.5.(b)(5) Dead End Streets.
    - (3) The land area outside of the public street’s fifty foot right-of-way that is necessary for the hammerhead may be in the form of an easement given by the property owner(s) to the Town of Windham and may provide that the easement shall be extinguished upon removal of the hammerhead in the event that the street is extended and the Town Council approves the removal of the hammerhead and extinguishing of the easement. The area of any hammerhead

easement shall not be used for purposes of satisfying the frontage requirement of the applicable zoning district.

- (4) The Planning Board may require a developer to connect to an existing street connection right-of-way on an abutting property. The developer that connects to the street connection right-of-way shall be responsible for any required repair or expansion of the existing public street.
  - (5) Collector and Local Public streets shall connect with surrounding streets to permit convenient movement of traffic or facilitate emergency access and evacuation.
  - (b) Where necessary to safeguard against hazards to vehicle drivers, bicyclists and pedestrians and/or to avoid traffic congestion, provision shall be made for turning lanes, traffic directional islands, frontage roads, sidewalks, bicycle lanes or paths, transportation demand management techniques, and traffic controls within existing public streets.
  - (c) **Street Names and Signs.** Streets shall be named, signed and addressed in accordance with the Code of the Town of Windham Chapter 221, "Street Naming and Addressing." In addition, streets which join and are in alignment with streets of abutting or neighboring properties shall bear the same name. The developer shall either install street name, traffic safety and control signs meeting municipal specifications or reimburse the municipality for the costs of their installation.
  - (d) **Street Lights.** Street lights may be required at intersections with existing public streets. The use of additional street lights shall be discouraged to avoid excessive light pollution.
  - (e) During street construction, the entire right of way shall not be cleared unless clearing is necessary for utilities, drainage or other infrastructure necessities beyond the clear zone. If on-site disposal of the stumps and debris is proposed, the site shall be indicated on the plan, and be suitably covered with fill and topsoil, limed, fertilized, and seeded.
4. ***Specific Access Standards***
- (a) **Access Control**
    - (1) To the maximum extent practical, all subdivision accesses shall be constructed perpendicular to the external street providing access to the subdivision. The minimum intersection angle shall meet the requirements of Table 3 in Appendix B (*See Appendix B Street Design and Construction Standards*).
    - (2) Where a subdivision abuts or contains an existing or proposed arterial street, no lot may have vehicular access directly to the arterial street.

- (3) Where a lot has frontage on two or more streets, the access to the lot shall be provided to the lot across the frontage and to the street where there is lesser potential for traffic congestion and for hazards to traffic and pedestrians. This restriction shall appear as a deed restriction to the affected lots. In cases where creating an access to a lesser traveled way is problematical, the Board may allow an access on the higher volume street if the access does not significantly detract from public safety.
- (4) The subdivision access including all radii must be paved from the edge of pavement of the existing external street to a distance in accordance with the criteria in Subsection 911.M.5.(a)(5)(viii), unless the external street is not paved (*See Table 3 in Appendix B Street Design and Construction Standards*).
- (5) Minimum Sight Distance Standards. Minimum sight distance requirements for all subdivision accesses connecting to external streets shall be contingent on the posted speed of the external street connecting to the subdivision access.
- (i) For accesses that are expected to carry primarily passenger vehicles, the standards in the second column in Table 1 shall apply.
- (ii) For accesses that are estimated to carry more than 30% of their traffic in vehicles larger than standard passenger vehicles, the standards in the third column of Table 1 shall apply.
- (iii) On roads that are designated by the Maine Department of Transportation as Mobility or Retrograde Arterials, the third column in Table 1 shall apply (*See Appendix C for the list of State highways*).

**Table 1 Minimum Sight Distance Standards for Subdivision Accesses**

Posted Speed	Sight Distance		
	Standard Vehicle	Larger Vehicle	Mobility
20	100	230	n/a
25	250	300	n/a
30	300	375	n/a
35	350	455	n/a
40	400	540	580
45	450	635	710
50	500	740	840
55	550	855	990
60	600	965	1150

Posted Speed figures are in Miles Per Hour (MPH)

Sight Distance figures are in feet (ft.)



- (6) Access design shall be based on the traffic volume estimates anticipated to be carried by the internal subdivision street. Traffic volume estimates shall be defined by the latest edition of the *Trip Generation Manual* published by the Institute of Transportation Engineers. The following traffic volume standards shall apply to the design of subdivision accesses connecting to external streets:
  - (i) Low Volume Access: An access with 50 or less passenger car equivalent trips per day.
  - (ii) Medium Volume Access: Any access with more than 50 passenger car equivalent trips per day but less than 100 passenger car equivalent trips during the peak hour.
  - (iii) High Volume Access: Any access with 100 or more passenger car equivalent trips during the peak hour.
  
- (7) Basic Access Design Standards for Low and Medium Volume Accesses. The following minimum access design standards shall apply to all low and medium volume street and private road accesses connecting to external streets:

Table 2 Access Design Standards for Low and Medium Volume Accesses

Basic Standards	Low Volume (Less than 50 TPD)	Medium Volume (50-100 PHT)
Min. Corner Clearance To:*		
Unsignalized Intersection	75	100
Signalized Intersection	125	125
Min. Access Spacing: **		
MPH of External Road		
40 or less	200	200
45	265	265
50	350	350
55 or more	525	525

"TPD" = Trips per Day. Each trip into or out of the subdivision constitutes a single trip.

"PHT" = Peak Hour Trips. Peak hour is established through the production of a traffic study or analysis.

\* Minimum corner clearance shall be the distance measured from the edge of an internal subdivision access excluding radii to the edge of an external street excluding radii.

\*\* Minimum access spacing shall be the distance measured from the edge of an internal subdivision access excluding radii to the edge of a neighboring access excluding radii. This distance standard shall not cause access to be denied to a parcel of land existing as of [Date of Ordinance Adoption], and not in common ownership with the lot to which access is sought via the proposed street.

- (8) Additional Access Requirements for Medium Volume Accesses. In addition to the basic access standards outlined in Table 2, medium volume accesses on state

or state-aid highways designated by the Maine Department of Transportation as Major Collectors or Arterials shall also comply with the following standards (*See Appendix C for the list of State highways*):

- (i) The Planning Board may require the minimum curb radius on the edge of the access to exceed the minimum curb radius standard in Table 3 if a larger design radius is needed to accommodate a larger design vehicle (*See Table 3 in Appendix B*).
  - (ii) A throat shall be constructed around the access in order to store vehicles waiting to exit the access. The throat shall be of sufficient length to prevent incoming vehicles from queuing back into the highway. Access from the throat to parking or other areas shall be prohibited.
  - (iii) A separator strip or strip of land that separates the roadway from the throat or parking area shall be constructed. The access separator strips shall be installed between the parking area and the roadway and along the throat. The Board shall determine if the separator strip shall include curbing, walkways, ditching, and/or vegetation. The separator strip shall extend away from the traveled way of the external road at a minimum of the greater of 9 feet or the required landscaped buffer distance of the applicable zoning district.
- (9) All high volume accesses shall meet the requirements of the Maine Department of Transportation's "Rules and Regulations Pertaining to Traffic Movement Permits." A copy of the Maine Department of Transportation's required traffic study shall be submitted to the Board. The design standards shall be compatible with the performance standards cited in Subsection 911.M.2. of the Subdivision Regulations.

## 5. *Specific Street Design and Construction Standards*

### (a) General Requirements.

- (1) The Board shall not approve any subdivision plan unless the proposed streets are designed in accordance with the specifications contained in these regulations, including Table 3 and Table 4 in Appendix B. Approval of the final plan by the Board shall not be deemed to constitute or be evidence of acceptance by the municipality of any street, right-of-way or easement (*See Subsec. 911.M.6. for street acceptance procedures*).
- (2) Applicants shall submit to the Board, as part of the Preliminary Plan, detailed construction drawings showing a plan view, profile, and typical cross-section of the proposed streets. The plan view shall be at a scale of one inch equals no more than fifty feet. The vertical scale of the profile shall be one inch equals no more than five feet. The plans shall include the following information:

- (i) Date, scale, and north point (as required in Section 910 Submission Requirements).
  - (ii) Intersections of the proposed street with existing streets.
  - (iii) Roadway and right-of-way limits including edge of pavement or aggregate base, edge of shoulder, clear zone, sidewalks, and curbs.
  - (iv) Kind, size, location, material, profile and cross-section of all existing and proposed drainage structures and their location with respect to the existing natural waterways and proposed drainage ways.
  - (v) Complete curve data shall be indicated for all horizontal and vertical curves.
  - (vi) Turning radii at all intersections.
  - (vii) Centerline gradients.
  - (viii) Size, type, vertical clearance and locations of all existing and proposed overhead and underground utilities, to include but not be limited to water, sewer, electricity, telephone, lighting, and cable television.
  - (ix) Locations and results of any test borings performed as part of the design process.
- (3) Upon receipt of plans for a proposed public street as part of a Final Plan application the Board shall forward one copy to the Town Council for informational purposes.
- (i) Plans for streets which are not proposed to be accepted by the Town shall be sent to the Director of Public Works and the Town's consulting engineer for review and comment.
- (4) Where the applicant proposes improvements within existing public streets, the proposed design and construction details shall be approved in writing by the Director of Public Works or the Maine Department of Transportation, as appropriate.
- (5) Private Roads.

The following standards, in addition to those in Table 3 and 4, apply to private roads used for the purpose of providing frontage for, and access to, individual lots of land (*See Tables 3 & 4 in Appendix B*). **Note:** *For additional standards for private roads that are not part of a subdivision application, see "Streets" in Section 500 Performance Standards*).

- (i) All private roads shall be designated as such and will be required to have adequate signage indicating the road is a private road and not publicly maintained.
- (ii) Each lot having access from an approved private road may be improved with no more than two (2) dwelling units.

- (iii) Except for sidewalk, bicycle provisions and minimum grade requirements stipulated in this Section, all private roads shall adhere to the road design standards of this Section.
- (iv) All properties served by the private road shall provide adequate access for emergency vehicles and shall conform to the approved local street numbering system.
- (v) Where the subdivision streets are to remain private roads, the following words shall appear on the recorded plan: “All roads in this subdivision shall remain private roads to be maintained by the developer, lot owners or road association, and shall not be offered for acceptance, or maintained, by the Town of Windham until they meet all municipal street design and construction standards.”
- (vi) The applicant shall provide evidence that the private road shall be maintained either by the applicant or by the lot owners or a homeowners association. Proof may consist of a declaration of covenants that will be recorded and become part of each deed and specify how the costs of maintenance will be apportioned among the lot owners, or appropriate homeowners association documents. In the event that a homeowners association is formed, each lot deed shall refer to the association and shall require the lot owner to be a member of the association. No private road will be maintained by the Town unless the Town has accepted the road. No private road shall be offered to the Town for acceptance until it meets the design requirements of this Ordinance.
- (vii) A paved apron shall be constructed when a gravel private road connects to a paved public street or paved private road in accordance with the standards in Table 3 and Table 4 (*See Appendix B Street Design and Construction Standards*).
- (viii) Private roads shall be designed to conform with the appropriate standards presented in Tables 1, 2, 3, 4, and the applicable cross sections in Appendix B.
- (ix) Notwithstanding other provisions of the Land Use Ordinance to the contrary, no gravel surfaced private road shall provide access to or serve in any way to provide compliance with the requirements of the Ordinance for more than the greater of ten (10) lots or ten (10) dwelling units. A private road providing access to, or serving in any way to provide compliance with the requirements of the Ordinance for more than ten (10) lots or ten (10) dwelling units shall meet all design and construction standards for a “Major Private Road,” as defined. Nothing in this paragraph shall serve to limit the use of a private road for occasional use by and for agricultural purposes.

- (6) Access Drive Standards for Condominium and Multifamily Subdivisions. Subdivisions in which the property will be held in common ownership shall be served by an access drive. Access drives shall remain private and shall not be maintained or repaired by the Town. Access drives shall meet the following standards:
- (i) Design Standards. Access drives shall be designed to conform to the standards for “Major Private Roads” in these regulations, including the standards contained in Table 3, Table 4, and the applicable cross sections in Appendix B Street Standards.
  - (ii) Right-of-Ways. The minimum right-of-way width for a “Major Private Road” in Table 3 of Appendix B is not applicable to an access drive.
  - (iii) Setbacks. The setback requirements of the applicable zoning district shall be applied to the parcel as a whole and shall be measured from the property boundaries to the closest improvement subject to setback requirements. There shall be no minimum setback required between an access drive and a structure.
- (b) Street Design Standards
- (1) These design guidelines shall control the roadway, shoulders, clear zones, curbs, sidewalks, drainage systems, culverts, and other appurtenances associated with the street, and shall be met by all streets within a subdivision, unless the applicant can provide clear and convincing evidence that an alternate design will meet good engineering practice and will meet the performance standards of Section 911.
  - (2) Reserve strips controlling access to streets shall be prohibited except where their control is definitely placed with the municipality.
  - (3) Curbs
    - (i) Curbs shall be installed for stormwater management purposes, to protect the pavement edge from unraveling along parking lanes, in developments where heavy use may erode the planted area at the edge of the pavement, in areas where the street passes through a cut of land, or on public streets where the average lot frontage is 100 feet or less. The Board may require curbs based on the unique conditions of the site.
      - a) Curbs for stormwater management shall be contingent on the stormwater design standards specified in Subsection 911.J.
      - b) Catchbasins or other methods of directing stormwater acceptable to the Board shall be required on the sides of streets on which a curb is

installed. The maximum distance between catchbasins or drainage control shall be 300 feet. The Planning Board may require additional catchbasins or drainage control measures at specific locations due to site conditions such as, but not limited to, slopes and soil conditions.

- (i) Minimum Shoulders for Curbed Streets. Standards shall be in accordance with Table 3 in Appendix B.
  - (ii) Construction Standards: Curbs shall be constructed of either vertical granite, sloped granite, sloped cape cod bituminous, or Type 2 bituminous where a sidewalk is adjacent to a street.
    - a) Curb radii at all intersections on a public street shall be constructed of granite.
    - b) Granite curb radii shall be installed in such a manner as to match the height of any existing curbing on a public street.
    - c) Granite curb radii shall be tipped down to match the grade of any existing external public street that is not curbed at the time of construction.
    - d) Granite curbing shall be installed in accordance with Maine DOT Section 609 Specifications.
- (4) Shoulders: See Subsection (6) Shoulders and Sidewalks, below.
- (5) Dead End Streets
- (i) Maximum Length. Dead end Streets, as defined, shall meet the following standards:
    - a) Streets and Roads Served by Public Water. 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. However, the street connectivity standards of Subsection (7) "Street Connection Requirements," below, shall apply.
    - b) Streets and Roads Not Served by Public Water. Dead end streets not supplied with fire hydrants served by the Portland Water District shall have a maximum length of 1,000 linear feet unless all dwellings beyond 1,000 linear feet from the closest public street or private way, as defined, have a National Fire Protection Association (NFPA) 13D monitored sprinkler system installed and approved by the Windham Fire Chief and hammerhead turnarounds installed every 1,000 linear feet. The street

- connectivity standards of Subsection (7) “Street Connection Requirements,” below, shall apply.
- 1) Existing Rights-of-Way. The maximum length of 1,000 linear feet shall commence at the terminus of any dead end rights-of-way existing on, or before, October 22, 2009.
  - 2) A private road constructed within an existing right-of-way - which does not contain an existing private way constructed on, or before, October 22, 2009 - shall meet the design and construction standards for private roads contained in this Section 900 to the greatest extent practical. (*See definition of, “Street Classification: ‘Private Way’ and ‘Private Road’”*)
- c) Industrial/Commercial Streets. There is no maximum length limit for a dead end industrial or commercial street, as defined in Section 300.
- (ii) Cul-de-sac Requirement. Except for the standards in Subsection 911.M.5.(b)(iv), below, dead-end streets shall be constructed to provide a cul-de-sac turn-around. The following standards shall be used in the design of cul-de-sacs:
- a) Width. A single travel lane and width equal to the minimum width required for the internal subdivision street.
  - b) Radius. For all residential cul-de-sacs the minimum radius shall be 42 feet. For commercial/industrial cul-de-sacs the minimum radius shall be 55 feet.
  - c) Drainage. The center of the cul-de-sac must reserve area for snow storage and provide adequate drainage that does not result in ice formation on the travel way.
  - d) Center Area. The center of the cul-de-sac may include natural ground cover and vegetation.
  - e) Pedestrian and Utility Easement: The Board may require the reservation of a minimum twenty (20) foot easement in line with the street to provide continuation of pedestrian traffic to the next street, or a thirty (30) foot wide utility easement to provide continuation of utilities.
- (iii) Street Connectivity: 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.
- (iv) Hammerhead Requirement: A hammerhead turnaround is permissible on all 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. (*See Subsec. 911.M.3 for additional street connectivity standards*)

- (v) A hammerhead turn around shall meet the following standards:
  - a) The right-of-way or easement area of the turnaround side branch shall be at least 50 feet by 50 feet.
  - b) The paved surface shall extend at least 50 feet from the centerline of the adjacent roadway.
  - c) The width of the paved surface shall be equal to the street width.
  - d) The hammerhead shall have a minimum 25 foot turning radius.
  - e) Larger dimensions may be required to accommodate larger design vehicles anticipated to use the turnaround.
  
- (6) Sidewalks or Shoulders. The applicant shall provide either a sidewalk or a paved shoulder as follows:
  - (i) Commercial/Industrial Streets.
    - a) Sidewalks shall be required on all new commercial and industrial streets.
    - b) Connections to Existing Sidewalks. The Planning Board may require the construction of sidewalks on existing roads on which the property being subdivided fronts if a connection to an existing sidewalk can be made.
  
  - (ii) Major Local Streets and Minor Local Streets. To provide for safe pedestrian or bicycle travel, the applicant shall provide either a shoulder or a sidewalk in accordance with the following standards:
    - a) Sidewalk Required. Major and Minor Local Streets in subdivisions located 1,000 linear feet or less from an existing convenience store or public building shall be required to construct a sidewalk in all zoning districts except the Farm District. The Board may also require a sidewalk in locations where the vehicular trips generated by the subdivision will create unsafe pedestrian conditions.
  
    - b) Connections to Existing Sidewalks. The Planning Board may require the construction of sidewalks on existing roads on which the property being subdivided fronts if a connection to an existing sidewalk can be made.
  
    - c) Sidewalk Optional. 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.



(iii) Location. Sidewalks shall be located as follows:

- a) Major Local Streets and Minor Local Streets. The sidewalk shall be setback from the curb or shoulder a minimum of 7 feet from the curb facing or edge of shoulder if the street is not curbed. The Planning Board may reduce the 7 foot setback requirement due to a condition that is unique to the site, or due to the location of an adjacent steep slope.
- b) All other streets. The sidewalk may be located adjacent to the curb or shoulder, or if setback from the street a minimum of 7 feet from the curb facing or edge of shoulder if the street is not curbed. The Planning Board may reduce the 7 foot setback requirement due to a condition that is unique to the site, or due to the location of an adjacent steep slope.
- c) The Planning Board shall determine if sidewalks will be installed on one side or both sides of the street.

(7) Street Connection Requirements. The following standards determine the number of connections a residential subdivision street must have with an existing public street. The cumulative number of lots or dwelling units created through the addition of lots or dwelling units to an existing subdivision shall be included in the minimum number of required street connections.

Number of Lots or Dwelling Units	Minimum Connections
Lots: 30 or less	1
Lots: 31 or more	2
Units: 30 or less	1
Units: 31 or more	2

(i) Street Connection Separation Requirements. Subdivisions with two (2) or more connections to an existing public street shall be separated according to the standards in Table 2 (*See Table 2 in Subsec. 911.M.4.*).

(8) Street Construction Practices. Streets shall be designed and constructed to conform to the standards presented in Table 4, the typical cross sections diagrams in Appendix B, Maine DOT Standard Specifications, latest revision (as applicable), and the following:

- (i) Preparation.
  - a) Before any clearing has started on the right-of-way, the center line and side lines of the new road shall be staked or flagged at fifty foot intervals.
  - b) Before grading is started, the entire area within the right-of-way necessary for traveled way, shoulders, clear zones, sidewalks, drainage-

ways, and utilities shall be cleared of all stumps, roots, brush, and other objectionable material. All shallow ledge, large boulders and tree stumps shall be removed from the cleared area.

- c) All roadway excavation and embankment construction shall comply with Maine DOT Specification Section 203 – Excavation and Embankment.
- d) Except in a ledge cut, side slopes shall be no steeper than a slope of three feet horizontal to one foot vertical, and shall be graded, loamed, limed, fertilized, and seeded according to the specifications of the erosion and sedimentation control plan. Where a cut results in exposed ledge a side slope no steeper than four feet vertical to one foot horizontal is permitted.
- e) All underground utilities shall be installed prior to paving to avoid cuts in the pavement. Sewer and/or water service connections shall be installed at least two (2) feet beyond the edge of the right-of-way prior to paving. Temporary markers shall be placed to aid in the location of service stubs until connection is made to the building.

(ii) Bases and Pavement.

- a) Subbase and Base Courses. The aggregate subbase course and base course shall meet the specifications of Table 4 in Appendix B (*See Appendix B Street Design and Construction Standards*). All aggregate base and subbase construction shall comply with Maine DOT Specification Section 304 – Aggregate Base and Subbase Course.
- b) Pavements. The base layer and surface layer shall meet the specifications of Table 4 in Appendix B (*See Appendix B Street Design and Construction Standards*). All paving work shall comply with Maine DOT Specification Section 401 – Hot Mix Asphalt Pavements.
- c) Pavement Joints. Where pavement joins an existing pavement, the existing pavement shall be cut along a smooth line and form a neat, even, vertical joint. A twelve (12) inch ship lap shall be required where the surface course overlays the base course.

(iii) Subsurface Roadway Drainage

- a) Geotextile Fabric. The Planning Board or Director of Public Works, or his designee, may require the use of geotextile fabric on a case-by-case basis due to poor soil conditions or the height of the water table.

- b) Underdrain. The Planning Board or Director of Public Works, or his designee, may require the installation of underdrain and catchbasins on the curbed side of a street. The required use of underdrain shall be made on a case-by-case basis due to poor soil conditions, the height of the water table, or where the bottom of drainage ditches is above the lowest point of the roadway subbase layer.
- c) Drainage Ditches. Drainage ditches must be at least as deep as the lowest point of the road subbase.

#### 6. *Process for Town Acceptance of Streets*

A street constructed on private lands by the owner, developer, or association thereof and not dedicated for public travel prior to October 22, 2009, may be laid out and offered for acceptance as a public street by the Town Council. For the Town Council to accept a public street the procedures and conditions of this section must be met. In the event that all procedures and conditions are met, the Town Council reserves the right to reject any street offered for public acceptance.

- (a) The street proposed for acceptance shall be constructed, or improved, to the standards for the construction of a public street.
- (b) The owner(s) shall give the Town a deed to the property within the boundaries of the right-of-way at the time of its acceptance by the Town, a separate deed to areas reserved for the future development of streets, and separate easements for the provision of street stub hammerheads. (*See Subsec. 911.M.3 General Internal Subdivision Street Standards*)
- (c) A plan of said street or way shall be recorded in the Cumberland County Registry of Deeds at the time of its acceptance.
- (d) A petition for the acceptance of said street shall be submitted to the Town Council upon a form to be prescribed by the Town Attorney. Said petition shall be accompanied by a plan, profile and cross section of said street as follows:
  - (1) A plan drawn when practical to a scale of 50 feet to 1 inch, and to be on one or more sheets of paper not exceeding 24 inches by 36 inches in size. Said plan shall show the North point, the location and ownership of all adjoining lots of land, underground utilities, passageways, street lights and electric lines, boundary monuments, water ways, topography and natural drainage courses with contours at 2 foot intervals (or lesser intervals approved by the Planning Board), all angles, bearing and radii necessary for the plotting of said street and lots and their reproduction on the ground.

- (2) A profile of said street or way drawn to a horizontal scale of 50 feet to 1 inch, and a vertical scale of 5 feet to 1 inch, or other suitable engineering scale as required by the Town's consulting engineer.
  - (3) Said profile shall show the profile of the centerline of said street and the proposed grades thereof. Specific cross sections shall be submitted as required by the Town's consulting engineer. Any buildings abutting on said street shall be shown on said profile.
  - (4) A typical cross section of said street drawn to a horizontal scale of 5 feet to 1 inch and a vertical scale of 5 feet to 1 inch.
  - (5) The location and size of the proposed water and/or sewer mains in accordance with these regulations.
  - (6) The location and size of all culverts, storm drains, catch basins and manholes.
- (e) Streets Offered for Acceptance
- (1) Streets to be offered to the Town for acceptance must have a written report of investigation prepared by the Town's consulting engineer after completion of construction based on review and observation of construction by the Town's consulting engineer. The owner shall warranty all public improvements for a period of one year from the date of acceptance and post a maintenance guarantee per the subdivision regulations. At the conclusion of the one-year warranty period, the owner shall request the Town's consulting engineer to prepare a second written report of investigation prior to the release of the improvements guarantee.
  - (2) No street shall be placed on the Town Council's agenda for consideration or accepted by the Town Council until the following tasks have been completed:
  - (3) The applicant shall submit a complete set of as-built plans of the street proposed for acceptance showing all works of man,
  - (4) The Town's consulting Engineer shall have made an investigation thereof, and shall have reported to the Planning Department their recommendations in writing with respect thereto. Such investigation may include a minimum of the results of at least one core sample and may include more than one core sample for each road proposed for acceptance as a public way with the core sample and reports paid for by the applicant.
  - (5) The surface pavement shall not be placed until the base paving has gone through at-least one complete winter. The application of a tack coat and/or shim coat to the base may be required by the Town, when necessary, to insure the appropriate bonding between base and final surface coats of pavement.

- (6) Notwithstanding the provisions of any other Section thereof, the Town may at any time lay out and accept any street or way in the Town of Windham, Maine, as a public street of said Town whenever the general public interest so requires. The cost of said street or way may be borne by said Town or may be borne by another party.
- (f) Provisions for Streets that are Offered for Acceptance but Not Accepted.
- (1) Any subdivision application that includes the creation of one or more public streets must provide draft homeowners association documents to the Planning Board. The association documents shall specify the rights and responsibilities of each lot owner with respect to the maintenance, repair, and plowing of the subdivision street(s) should they not be accepted by the Town Council.
  - (2) The homeowners association documents shall be in a form acceptable to the Town Attorney.
  - (3) The homeowners association documents shall be recorded in the Cumberland County Registry of Deeds within ninety (90) days of the date that the Board votes to approve the subdivision.

## 912 Final Approval and Filing

- A. Upon findings of fact and determination that all standards in Title 30-A M.R.S.A., §4404, and Section 900 of the Land Use Ordinance have been met, and upon voting to approve the subdivision, the Board shall sign the Final Plan.
  1. The Board shall specify in writing its findings of facts and reasons for any conditions or denial.
- B. The applicant shall record and file the plan as follows:
  1. The mylar(s) of an approved subdivision shall include the signed stamp of the licensed professional who prepared the plans.
  2. Major Subdivisions must resubmitt the application's GIS data if revisions have been made during the Preliminary Plan or Final Plan review phase. The revised date must in the format required for Preliminary Plan submissions and all revisions made to the plan following the Preliminary Plan submission must be included.
    - (a) The Planning Board shall not sign any mylars until the GIS data has been resubmitted.

3. One (1) original mylar of the signed plan shall be retained by the Board as part of its permanent records.
  4. One (1) original mylar of the signed plan shall be recorded in the Registry of Deeds.
    - (a) Within seven (7) days of recording, the applicant shall provide the Town with a copy of the recorded plan. No site work shall commence, or building permits issued, prior to the Town's receipt of a copy of the recorded plan.
  5. One (1) complete full-sized paper set of the approved plans shall be filed with the Planning Department.
  6. Documentation shall be submitted to the Town confirming that all required open space related deeds, covenants, or legal agreements have been filed with the Registry of Deeds.
- C. Plan Sections. At the time the Board grants final plan approval, it may permit the plan to be divided into two (2) or more sections subject to any conditions the Board deems necessary in order to ensure the orderly development of the plan.
1. If any Town or quasi-municipal department head notified of the proposed subdivision informs the Board that their department or district does not have adequate capital facilities to service the subdivision, the Board shall require the plan to be divided into two (2) or more sections subject to any conditions the Board deems necessary in order to allow the orderly planning, financing and provision of public services to the subdivision.
    - (a) If the expansion, addition or purchase of the needed facilities is included in the Town's capital improvements program, the time period of the phasing shall be no longer than the time period contained in the capital improvements program for the expansion, addition or purchase.
- D. No changes, erasures, modifications, or revisions shall be made in any Final Plan after approval has been given by the Board and endorsed in writing on the plan, unless a revised Final Plan is first submitted and the Board approves any modifications, in accordance with Section 914 Post Approval Activities. The Board shall make findings that the revised plan meets the criteria of Title 30-A M.R.S.A., §4404, and the standards of Section 900 of this Ordinance.
- E. The approval by the Board of a subdivision plan shall not be deemed to constitute or be evidence of any acceptance by the Town of Windham of any street, easement, or other open space shown on such plan. When a park, playground, or other recreation area shall have been shown on the plan to be dedicated to the Town, approval of the plan shall not constitute an acceptance by the Town of Windham of such areas.
1. The Board shall require the plan to contain appropriate notes to this effect.

2. The Board may also require the filing of a written agreement between the applicant and the municipal officers covering future deed and title dedication, and provision for the cost of grading, development, equipment, and maintenance of any such dedicated area.
- F. Filing of As-Built Plans: All subdivisions that include streets proposed for acceptance by the Town of Windham shall submit as-built plans as required in Subsection 911.M.6.(e)(3).
1. Any field changes that affect the accuracy of the project's GIS data require the revision and resubmission of said data.
- G. No subdivision plan shall be released for recording at the Registry of Deeds until the required performance guarantee has been posted. If an approved plan is not recorded in the Registry of Deeds within three (3) years of the original approval, it shall become null and void. If a plan has received a phased approval, the first phase shall be recorded within three (3) years of the original approval and subsequent phases shall be recorded within five (5) years of the original approval. If a phased plan is not recorded within those time periods, the phases that have not been recorded shall become null and void.

### 913 Revisions to Approved Plans

- A. Authority. Any application for subdivision approval which constitutes a revision or amendment to a subdivision plan which has been previously approved shall indicate that fact on the application and shall identify the original subdivision plan being revised or amended. In reviewing such an application, the Planning Board shall make findings of fact establishing that the proposed revisions do or do not meet the criteria of 30-A M.R.S.A. § 4404.
- B. Procedure
1. An applicant for a revision to a previously approved plan shall, at least twenty-one (21) days prior to a scheduled meeting of the Board, request to be placed on the Board's agenda.
  2. If the revision involves the creation of additional lots or dwelling units, the procedures for Preliminary Plan approval shall be followed. If the revision involves only modifications of the approved plan, without the creation of additional lots or dwelling units, the procedures for final plan approval shall be followed.
  3. The applicant shall submit the following information:
    - (a) Ten (10) copies of the approved plan,

- (b) Ten (10) copies of the proposed revisions.
  - (c) 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.
  - (d) The revised plan shall indicate that it is the revision of a previously approved and recorded plan and shall show the title of the subdivision and the book and page or cabinet and sheet on which the original plan is recorded at the Registry of Deeds.
4. The Board's scope of review shall be limited to those portions of the plan which are proposed to be changed.



## 914 Post Approval Activities

A. Performance Guarantees

1. **Types of Guarantees.** The applicant shall provide one of the following performance guarantees for an amount adequate to cover 110% of the total construction costs of all required improvements, taking into account the time-span of the construction schedule and the inflation rate for construction costs.
  - (a) Either a certified check payable to the municipality or a savings account or certificate of deposit naming the municipality as owner, for the establishment of an escrow account;
  - (b) A performance bond payable to the municipality issued by a surety company, approved by the municipal officers, or town manager; or
  - (c) An irrevocable letter of credit, from a financial institution establishing funding for the construction of the subdivision, from which the Municipality may draw if construction is inadequate, approved by the Town Manager.
2. **Contents of Guarantee.** The performance guarantee shall contain the following:
  - (a) Construction schedule,
  - (b) Cost estimates for each major phase of construction taking into account inflation, provisions for inspections of each phase of construction, provisions for the release of part or all of the performance guarantee to the developer, and a date after which the applicant will be in default and the municipality shall have access to the funds to finish construction.
3. **Escrow Account.** A cash contribution to the establishment of an escrow account shall be made by either a certified check made out to the municipality, the direct deposit into a savings account, or the purchase of a certificate of deposit.
  - (a) For any account opened by the applicant, the Town of Windham shall be named as owner or co-owner, and the consent of the Town shall be required for a withdrawal.
4. **Performance Bond.** A performance bond shall detail the conditions of the bond, the method for release of the bond or portions of the bond to the applicant, and the procedures for collection by the municipality. The bond documents shall specifically reference the subdivision for which approval is sought.
5. **Letter of Credit.** An irrevocable letter of credit from a bank or other lending institution with offices in the region, shall indicate that funds have been set aside for the construction of the subdivision for the duration of the project and may not be used for any other project or loan.

- (a) The letter of credit shall use the template established by the Town of Windham, unless waived by the Planning Board in consultation with the Town Attorney.
  6. ***Phasing of Development.*** The Board may approve plans to develop a Major Subdivision in separate and distinct phases. This may be accomplished by limiting final approval to those lots abutting that section of the proposed subdivision street which is covered by a performance guarantee.
    - (a) When development is phased, road construction shall commence from an existing public way, when available.
    - (b) The Board shall grant final approval of lots in subsequent phases only upon satisfactory completion of all requirements pertaining to previous phases. Evidence of satisfactory completion shall be a report from the Code Enforcement Officer or consulting engineer retained by the Town of Windham.
  7. ***Release of Guarantee.*** Prior to the release of any part of the performance guarantee, the Town Manager shall determine to his/her satisfaction, in part upon the report of the Town's consulting engineer or other qualified individual retained by the municipality and any other agencies and departments who may be involved, that the proposed improvements meet or exceed the design and construction requirements for that portion or phase of the subdivision for which the release is requested. The Town of Windham shall retain 10% of the performance guarantee for a period of one (1) year from the date of final paving for any streets to be offered to the Town Council for acceptance.
  8. ***Default.*** If upon investigation, the Town's consulting engineer or other qualified individual retained by the Town finds that any of the required improvements have not been constructed in general conformance with the plans and specifications filed as part of the application, he or she shall so report in writing to the Code Enforcement Officer, the Town Manager, the Board, the Planner, and the applicant or builder. The Town Manager, or his designee, shall take any steps necessary to preserve the municipality's rights.
  9. ***Improvements Guaranteed.*** Performance guarantees shall be tendered for all improvements required to meet the standards of these regulations and for the construction of the streets, storm water management facilities, public or private sewage collection or disposal facilities, public water systems, and erosion and sedimentation control measures.
- B. Investigation of Required Improvements
1. ***Notice of Construction.*** At least fifteen (15) days prior to commencing construction of required improvements, the subdivider shall notify in writing the Town Planner of the time when he proposes to commence construction of such improvements so that

- the Town Manager and Town Planner can cause investigation to be made to observe construction or required improvements to confirm general conformance to the approved plans and specifications, and to confirm satisfactory completion of improvements and utilities required by the Board. Investigation shall be made of all required public improvements including, but not limited to, public streets or private roads, drainage structures and ditches, erosion control measures, utilities, landscaping and recreation facilities and of all survey monuments as required by Subsection 911.A.3. of this chapter to insure they have been placed.
2. ***Construction Observation Fee.*** At least five (5) days prior to commencing construction of required improvements, the subdivider shall pay a construction observation fee in accordance with the requirements of Section 909 Fees. No building permits shall be issued on the project and no work begun until the inspection fee has been paid.
  3. ***Improvements Not Constructed To Plan.*** If the Town's representative shall find, upon investigation of the improvements performed before the expiration date of the performance bond, that any of the required improvements have not been constructed in general conformance with plans and specifications filed by the subdivider, he shall so report to the Town Manager, Road Commissioner, Building Inspector, and Town Planner. The Town Planner shall then notify the subdivider and, if necessary, the bonding company or bank, and take all necessary steps to preserve the municipality's rights under the bond or letter of credit.
  4. ***Modifications to Required Improvements.*** If at any time before or during the construction of the required improvements it is demonstrated to the satisfaction of the Town's representative that unforeseen conditions such as encountering hidden outcrops of bedrock, natural springs, etc... make it necessary or preferable to modify the location or design of any required improvement, the Town's representative may, upon approval of the Town Planner, authorize modifications. The modifications must be within the spirit and intent of the Board's approval and do not extend to the waiver or substantial alteration of the function of any improvements required by the Board. The Town's representative shall issue and transmit a written authorization under this section to the Town Planner.
- C. **Maintenance of All Improvements.** The applicant shall be required to maintain all improvements and provide for snow removal on streets and sidewalks until either of the following has occurred:
1. The legislative body accepts said improvements, or
  2. The applicant has transferred responsibility for ongoing maintenance of the improvements to a Home Owners Association.

## 915 Building Permit Limits for Subdivisions

Removed, Order 14-312 Date 08-26-2014; Section number reserved for future amendment.

## 916 Violations and Penalties

- A. Approval Required Before Filing. No plan of a subdivision of land within the boundaries of the Town of Windham which would constitute a subdivision as defined herein shall hereafter be filed or recorded in the Cumberland County Registry of Deeds until a Final Plan thereof shall have been approved by the Board in accordance with all of the requirements, design standards and construction specifications set forth elsewhere in these standards, nor until such approval shall have been entered on such Final Plan by the Board.
- B. Approval Required Before Conveyance. No person, firm, corporation or other legal entity may convey, offer or agree to convey any land in a subdivision which does not meet the following requirements:
1. The subdivision has been approved by the Board and recorded in the Cumberland County Registry of Deeds,
  2. The street upon which the lot fronts is completed in accordance with these regulations up to and including the entire frontage of the lot.
- C. Occupancy of Multifamily Dwellings. No unit in a multifamily development shall be occupied before the street upon which the unit is accessed is completed in accordance with these regulations.
- D. No Vote if Violation Exists. No plan shall be approved by the Board as long as the applicant is in violation of the provisions of a previously approved Plan within the municipality.
- E. Commencement of Site Work. Not only is creating a subdivision without Board approval a violation of law, but so also within such a subdivision is grading or construction of roads, grading of land or lots, or construction of buildings until such time as a Final Plan of such subdivision has been duly prepared, submitted, approved and endorsed as provided in these standards, and until the original copy of the Final Plan so approved and endorsed has been duly recorded in the Cumberland County Registry of Deeds in accordance with Section 912.
- F. Utility Service Connections. No public utility, water district, sanitary district or any utility company of any kind shall serve any lot in a subdivision for which a Final Plan has not been approved by the Board.
- G. Nuisance. Violations of the above provisions of this section are a nuisance and shall be punished in accordance with the provisions of 30-A M.R.S.A. § 4452.

## 917 Appeals

- A. An appeal of any order, relief or denial made by the Board may be taken by any aggrieved party to the Superior Court within thirty (30) days pursuant to Maine Rules of Civil Procedure 80-B.

Section 900 Amendments

Order 10-075; Date 04-27-2010	Change to Net Residential Density and Dead End Streets
Order 11-070; Date 05-10-2011	Change to Watermain Extension Requirements
Order 12-016; Date 02-14-2012	Change to Public Notice Requirements
Order 12-091; Date 07-24-2012	Change to Street Standards
Order 14-033; Date 03-11-2014	Deleted Subdivision Impact Analysis and Fees
Order 14-223; Date 07-08-2014	Change in Submission Deadlines
Order 14-312; Date 08-26-2014	Removal of Building Permit Limits for Subdivisions
Order 14-491; Date 12-16-2014	Change to Cluster Developments

## SECTION 1000 - ADMINISTRATION

### Sections

1001	Duty of the Code Enforcement Officer	10-1
1002	Building Permit	10-1
1003	Certificate of Occupancy	10-2
1004	Violations and Penalties	10-2

### **1001 Duty of the Code Enforcement Officer**

- A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance.
  - 1. The Code Enforcement Officer, with the advice and consent of the Town Manager, is authorized to institute or cause to be instituted by the Town Council, in the name of the Town of Windham, any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of this Ordinance; provided, however, that this section shall not prevent any person entitled to equitable relief from enjoining any act contrary to the provisions of this chapter.
- B. The Code Enforcement Officer shall be authorized to grant the following:
  - 1. Building permits,
  - 2. Certificate of Occupancy, (*See Current Building Code*)

### **1002 Building Permit**

- A. Building Permit: The Code Enforcement Officer shall not issue a building permit for the construction, alteration, enlargement, or moving of any building, structure or part thereof, unless the plans and intended use indicate that the building, structure, or premises are to conform in all respects with the provisions of this Ordinance.
  - 1. Applications for building permits required by the Building Code shall also serve as applications for permits required by this Ordinance.
- B. Submission Requirements
  - 1. A plan of the lot containing the following information shall be submitted to the Department of Code Enforcement to obtain a building permit:
    - (a) Building permit application form,

- (b) Dimensions of the lot,
- (c) Location of all existing and proposed buildings or structures,
- (d) Location of all required yards for setback purposes,
- (e) Location and dimensions of all existing and proposed parking spaces,
- (f) Location and dimensions of all existing and proposed loading areas,
- (g) Location of all exterior storage areas,
- (h) Base flood elevation data.

### **1003 Certificate of Occupancy**

- A. Certificate of Occupancy: A certificate of occupancy shall be obtained from the Code Enforcement Officer after the building, structure, or part thereof has been completed, altered, enlarged or moved, and before the same may be occupied or used.
  - 1. Certificate Required: A certificate of occupancy shall be required for the following:
    - (a) An increase in the number of dwelling units in a building,
    - (b) Establishment of a Home Occupation,
    - (c) Change of a nonconforming use, per Section 203.C,
    - (d) Occupancy, use, or change of use of vacant land, except for raising of crops,
    - (e) Change of use of an existing building, whether or not alterations are involved, from any use in the following list to any of the uses on said list:
      - (1) Business or Professional Office,
      - (2) Distribution Center,
      - (3) Dwelling,
      - (4) Industry, Heavy,
      - (5) Industry, Light,
      - (6) Retail Sales,
      - (7) Service Business,
      - (8) Truck Terminal,
      - (9) Warehousing, Private,
      - (10) Warehousing, Public.

### **1004 Violations and Penalties**

- A. Any person, firm or corporation, being the owner or occupant of, having control of, or the use of, any building or premises, or part thereof who violates any of the provisions of this Ordinance shall be subject to the laws and liability of 30-A M.R.S.A. § 4452.

Section 1000 Amendments

Order 14-312; Date 08-26-2014    Removal of Building Permit Limits for Subdivisions



## SECTION 1100 – BOARD OF APPEALS

### Sections

1101	Establishment	11-1
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1103	Procedure	11-2
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### **1101 Establishment**

- A. The Board of Appeals of the Town of Windham is established pursuant to the authority of 30-A M.R.S.A. § 2691.

### **1102 Organization**

- A. The members of the Board shall be residents of the Town.
- B. The Board shall consist of five (5) members. In addition, said Board shall have one (1) alternate member who shall have all the rights of a full member except said alternate may vote only in the absence of a full member.
- C. The term of each member shall be three (3) years, except that initial appointment of members shall be made for one (1), two (2) and three (3) years respectively.
1. In the event that a member is replaced prior to the expiration of his/her term, the replacement member shall commence a new three (3) year term.
- D. A member of the municipal officers, or his spouse, shall not be a member of the Board.
- E. When there is a vacancy, the municipal officers shall appoint a person to serve for the unexpired term.
- F. The Board shall elect a Chair and Vice Chair from their own membership.
1. Elections shall be governed by the Board of Appeals bylaws.
- G. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting on that issue shall be decided by a majority vote of the Board members, excluding the member who is being challenged.
- H. The municipal officers may dismiss a member of the Board for cause before the member's term expires.

- I. A Secretary to the Board shall be appointed by the appropriate town officials.

### **1103 Procedure**

#### **A. Meetings**

1. **Regular Meetings:** The Board of Appeals shall meet at least once a month, unless no applications are pending.
2. **Special Meetings:** The Chairman shall also call meetings of the board when requested to do so by a majority of the members or by the municipal officers, and at other times as called by the Chairman.
3. **Quorum:** A quorum of the Board necessary to conduct an official Board meeting shall consist of at least three (3) members.
4. **Voting:** A majority vote of the quorum is required to constitute an action (passage or denial) on any motion before the Board. Should a Board of Appeals member need to be recused due to a conflict once a quorum is established and a meeting is in session, the meeting may proceed and the Board of Appeals may take action on any motion before the Board with less than three (3) voting members present. In this event, the applicant shall have the right to have a vote postponed to the next Board of Appeals meeting.
5. **Evidence:** The board may receive any oral or documentary evidence but shall not provide as a matter of policy for the exclusion of irrelevant, immaterial or unduly repetitions evidence.
  - (a) Every party has the right to present the party's case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct any cross-examination that is required for a full and true disclosure of the facts.
6. All Board of Appeals meetings are public hearings.

#### **B. Records**

1. The secretary shall maintain a permanent record of all Board meetings and all correspondence of the board.
2. The Secretary is responsible for maintaining those records which are required as part of the various proceedings which may be brought before the board. Required records shall include the following:
  - (a) Transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceeding.
  - (b) All decisions of the board.

- (1) Decisions shall include a statement of findings and conclusions, as well as the reasons or basis therefore, upon all the material issued of fact, law or discretion presented and the appropriate order, relief or denial thereof.
  3. All records to be maintained or prepared by the secretary are public records.
  4. The records shall be filed in the municipal clerk's office and may be inspected at reasonable times.
  5. Notice of any decision shall be mailed or hand delivered to the petitioner, his representative or agent within seven (7) days of the board's decision.
- C. Consulting and Review Fees
1. If the Code Enforcement Officer determines that ordinary and customary expenses associated with review of the application are higher than the application fee set by the Town Council, then the applicant shall be billed and shall pay to the Town prior to final approval said expenses, including but not limited to costs associated with notification of abutters, advertising of public meetings, and staff time dedicated to review of the development.
  2. Consulting and Review Fees
    - (a) Notwithstanding any other provision(s) of the Town's Land Use Ordinance, Sections 100 through 1200 (the "Code"), to the contrary, and in addition to such fees as are otherwise specified by the Code, the Town shall assess fees to cover 100 percent of its costs related to independent geotechnical, hydrologic, engineering, legal, and similar professional consulting services incurred in the review and post-approval inspections of site plan applications. Such fees shall be subject to the following limitations:
      - (1) Such fees shall only be as expressly provided by this Sec. 1103.C.2.;
      - (2) The Board of Appeals or Code Enforcement Officer may request the services of the consultation. Such consultation shall be limited to reasonable and necessary review, as allowed by the pertinent ordinance, which exceeds the expertise of Town staff or their ability to review the application materials within the time limits otherwise required by law or Ordinance.
      - (3) Such fees shall be assessed only to recover costs directly associated with review of the application submitted by the applicant to whom they are assessed;
      - (4) Such fees shall be reasonable in amount, based upon the consulting time involved and the complexity of the review;

- (5) The results of the consultation for which such fees are assessed shall be available for public review, but such results shall be deemed to have been made solely for the benefit of the Town of Windham and shall remain its property; and
  - (i) Such fees shall be assessed for the privilege of review and shall be payable without regard to consultation results or the outcome of the application.
- (6) An escrow account shall be established with the Town by the applicant to guarantee payment if required by the Code Enforcement Officer or Board of Appeals pursuant to this Subsection 1103.C.2. The original deposit shall be an amount specific to the application, as accorded in the Town's fee schedule. If the balance in the escrow account shall be drawn down by 75 percent, the Town shall notify the applicant and require that an additional amount be deposited to cover the cost of remaining work before any such remaining work is undertaken. The Town shall continue to notify the applicant and require that any such additional amount(s) be deposited whenever the balance of the account is drawn down by 75 percent of the original deposit. Any excess amount deposited with the Town in advance shall be promptly refunded to the applicant after final action on the application.
- (7) Any dispute regarding the application of this Subsection. 1103.C or the amount required to be paid, either in advance or upon completion, may be appealed in writing within 10 days to the Town Manager. The Town Manager, after due notice and investigation and for good cause shown, may affirm, modify, or reverse the disputed decision or reduce the amount assessed.
- (8) In an effort to minimize the use of outside or independent consulting, the provisions of this Subsection 1103.C shall be subject to the following additional limitations:
  - (i) The Code Enforcement Officer, based on his/her work load and in his/her sole discretion, may immediately refer to outside or independent consulting any major site plan. The Town shall charge for this review based on the billing rates of the retained consultant. The first four (4) hours of the review shall be paid for with the project's application fee. Review work beyond the initial four (4) hours shall be paid for with the escrow established in Subsection 1103.C above.

#### D. Public Hearings

1. The Board shall hold a public hearing for all appeals as prescribed herein.
  - (a) At least seven (7) days before the hearing, the Code Enforcement Officer or his Assistant shall notify, by mail, the owners of properties abutting the property for which the appeal or application is made.

- (1) The owners of properties shall be considered to be the parties listed by the Assessor or those against whom those taxes are assessed.
- (b) At least seven (7) days prior to the hearing notice of the hearing shall be placed at least twice in a newspaper of general circulation.
- (c) Failure to receive this notice shall not invalidate the proceedings herein prescribed.
2. The applicant or his representative must appear before the Board to present the proposal and to answer questions.
3. Interested parties, such as adjacent property owners, will also be permitted to speak for or against the appeal.
4. The Code Enforcement Officer or his assistant shall attend all hearings and shall present to the Board all plans, photographs or other factual materials which are appropriate to an understanding of the case.

#### E. Reconsideration

1. The board may reconsider a decision if the following regulations are met.
  - (a) A request to the board to reconsider a decision must be filed within 10 days of the decision that is to be reconsidered.
  - (b) A vote to reconsider and the action taken on that reconsideration must occur and be completed within 45 days of the date of the vote on the original decision.
  - (c) The board may conduct additional hearings and receive additional evidence and testimony.
  - (d) Notwithstanding this Subsection 1103.E, appeal of a reconsidered decision must be made within 15 days after the decision on reconsideration.

#### F. Reapplication

1. After a decision has been made by the Board of Appeals, a new appeal of similar import shall not be entertained by the Board until one (1) year shall have elapsed from the date of said decision, except that,
  - (a) The Board may entertain a new appeal if the Board believes that, owing to a mistake of law or misunderstanding of fact, an injustice was done or it finds that a change has taken place in some essential aspect of the case sufficient to warrant a reconsideration of the appeal.

### G. Appeals of a Board Decision

1. Any party may take an appeal, within forty-five (45) days of the date of the vote on the original decision, to Superior Court from any order, relief or denial in accordance with Maine Rules of Civil Procedure Rule 80B.

## 1104 Jurisdiction

- A. In addition to the power granted by 30-A M.R.S.A. §4353, the Board of Appeals shall have the following authority:
  1. **Administrative Appeal.** Subject to the provisions of this chapter, to hear and decide appeals from orders, decisions, determinations or interpretations made by the Code Enforcement Officer. The hearing on all administrative appeals shall be de novo.
  2. **Variance.** Subject to the provisions of this chapter, to hear and grant or deny applications for variances from the terms of the Land Use Ordinance.
  3. **Conditional Use.** To hear and grant or deny applications for conditional use permits in accordance with the provisions of Section 516 Conditional Use. (*See Sec. 500 Performance Standards*).
  4. **Nonconforming Use.** To hear and grant or deny the following applications:
    - (a) The expansion of a nonconforming non-residential use in accordance with the provisions of Subsection 203.A.1.
    - (b) The change of a nonconforming use in accordance with the provisions of Subsection 203.C.
  5. **Home Occupation.** To hear and grant or deny applications for a Home Occupation 2 use in accordance with the provisions of Section 524.

## 1105 Administrative Appeal

- A. Any person and any municipal official or board of officials aggrieved by a decision of the Code Enforcement Officer may file an application with the Board of Appeals.
- B. **Appeal Deadline.** An appeal of a decision made by the Code Enforcement Officer must be filed within thirty (30) days of the date of the decision.
- C. **Submission Requirements**
  1. A complete application form.
  2. An application fee as established in the Town of Windham Fee Schedule. (*See Appendix A Fee Schedule*)
  3. Location Plan and Site Plan, if required by the Code Enforcement Officer or Board of Appeals.

4. All required information must be submitted to the Town of Windham at least fourteen (14) days prior to the Board meeting at which the applicant wishes to be heard.

## **1106 Variance**

### **A. Standards Applicable to All Variances:**

1. Succession. Approved variances shall run with the land and thus pass from the owner of a property to the next owner of said property.
2. Submission Requirements
  - (a) A complete application form.
  - (b) An application fee as established in the Town of Windham Fee Schedule. (*See Appendix A Fee Schedule*)
  - (c) Location Plan and Site Plan, if required by the Code Enforcement Officer or Board of Appeals
  - (d) All required information must be submitted to the Town of Windham at least fourteen (14) days prior to the Board meeting at which the applicant wishes to be heard.
3. The Board of Appeals shall require that attention be given to the following wherever applicable:
  - (a) Location, character and natural features.
  - (b) Fencing and screening.
  - (c) Landscaping, topography and natural drainage.
  - (d) Vehicular access, circulation and parking.
  - (e) Pedestrian circulation.
  - (f) Signs and lighting.
4. Prohibited Variances. A use variance shall not be granted to permit a use or structure not specifically allowed as either a permitted use or conditional use in the applicable zoning district.
5. Conditions of Approval. In granting appeals under this section, the Board of Appeals may impose such conditions as it deems necessary in furtherance of the intent and purpose of this chapter.
6. Sunset Provision. The right of any variance from the terms of this chapter granted by the Board of Appeals shall expire if the work or change permitted under the variance is not:
  - (a) Begun within six (6) months of the date of the Board's vote, or
  - (b) Substantially completed within one (1) year of the date of the Board's vote.
7. Recording. If the Board grants a variance under this section, a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title and indicating the fact that a variance, including

- any conditions on the variance, has been granted and the date of the granting, shall be prepared in recordable form.
- (a) The applicant shall record this certificate in the Cumberland County Registry of Deeds within 90 days of the date of the final written approval of the variance or the variance is void.
  - (b) A receipt from the Registry of Deeds containing the recording number must be provided to the Department of Code Enforcement prior to the issuance of any building permits.
  - (c) For the purpose of this subsection, the date of the final written approval shall be the date stated on the written approval.
- B. Variance. Except as provided in Subsections 1106.C (Disability Variance) or 1106.D (Variance from Dimensional Standards), the Board may grant a variance only when strict application of the ordinance to the petitioner and the petitioner's property would cause undue hardship. The term, "Undue Hardship" as used in this subsection means:
1. That the land in question cannot yield a reasonable return unless the variance is granted;
  2. That the need for a variance is because of unique circumstances of the property (such as location of existing structures, topographical features, etc.) and not to the general conditions of the neighborhood;
  3. That the granting of a variance will not change the essential character of the locality; and
  4. That the hardship is not the result of action taken by the current owner or a prior owner.
- C. Disability Variance. The Board of Appeals may grant a variance to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling.
1. The Board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability.
  2. The Board may impose conditions on the variance, including, but not limited to:
    - (a) Limiting the variance to the duration of the disability, or
    - (b) Limiting the variance to the time that the person with the disability lives in the dwelling.



3. For the purposes of this subsection, a disability has the same meaning as a physical or mental handicap under 5 M.R.S.A. § 4553 and the term “structures necessary for access to or egress from the dwelling” is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.
- D. Variance from Dimensional Standards. The Board of Appeals may grant a variance from the dimensional standards of the Land Use Ordinance when strict application of the Ordinance to the petitioner and the petitioner’s property would cause a practical difficulty and when the following conditions exist:
1. The need for a variance is due to the unique circumstances of the property and not the general condition of the neighborhood;
  2. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;
  3. The practical difficulty is not the result of action taken by the petitioner or a prior owner;
  4. No other feasible alternative to a variance is available to the petitioner;
  5. The granting of a variance will not unreasonably adversely affect the natural environment; and
  6. The property is not located in whole or in part within shoreland areas as described in 30 M.R.S.A. § 435.
  7. The dimensional standard for which the variance is granted is limited to ordinance provisions relating to lot area, lot coverage, frontage or setback requirements.

As used in this subsection, "dimensional standards" means and is limited to ordinance provisions relating to lot area, lot coverage, frontage and setback requirements.

As used in this subsection, "practical difficulty" means that the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.

Under its home rule authority, a municipality may, in an ordinance adopted pursuant to this subsection, adopt additional limitations on the granting of a variance from the dimensional standards of a zoning ordinance. A zoning ordinance also may explicitly delegate to the municipal reviewing authority the ability to approve development proposals that do not meet the dimensional standards otherwise required, in order to promote cluster development, to accommodate lots with insufficient frontage or to provide for reduced

setbacks for lots or buildings made nonconforming by municipal zoning. As long as the development falls within the parameters of such an ordinance, the approval is not considered the granting of a variance. This delegation of authority does not authorize the reduction of dimensional standards required under the mandatory shoreland zoning laws, 38 M.R.S.A. chapter 3, subchapter 1, article 2-B.

## SECTION 1200 – IMPACT FEES

### Sections

1201	General	12-1
1202	North Windham Sidewalk Impact Fee	12-3
1203	Recreation Impact Fee	12-5
1204	North Route 302 Road Improvements Impact Fee	12-6

### **1201 General**

- A. **Purpose.** The purpose of these impact fee provisions is to ensure that new development in Windham will be accomplished in a safe and healthful manner and that such development will bear a proportional or reasonably related share of the cost of new, expanded, or modified infrastructure necessary to service the development through: 1) the payment of impact fees that shall be dedicated to paying for the needed improvements, or 2) the construction of appropriate improvements as provided for herein.
- B. **Authority.** These impact fee provisions are adopted by the Town under the authority of 30A M.R.S.A §4354 and its statutory and constitutional home rule provisions.
- C. **Payment of Impact Fees.** The impact fees provided for under this chapter shall be determined in accordance with the provisions for calculation of each impact fee as established by the Town Council and set forth below. Where there is uncertainty as to the amount of the impact fee required to be paid by any development, that amount of the fee shall be determined by the Planning Board based upon the fee calculation methodology for that fee and the recommendation of the Planner. The impact fee shall be paid to the Town of Windham in care of the Planning Department. The fee shall be paid prior to the issuance of any building, plumbing, or other permit for the development subject to the fee. The Town Council may approve the payment of impact fees over time in accordance with an approved payment schedule provided that appropriate arrangements are in place to guarantee collection of the fees.
- D. **Impact Fee Accounts.** All impact fees collected under the provisions of this chapter shall be segregated and accounted for in separate impact fee accounts designated for the particular improvements in question. The impact fee accounts are as follows:
1. North Windham Sidewalk Impact Fee
  2. Recreation Impact Fee
  3. North Route 302 Road Improvements Impact Fee
  4. [Name of Impact Fee]

- E. Use of Impact Fees. Impact fees collected under the provisions of this chapter shall be used only to pay for the capital cost of the infrastructure improvements specifically associated with each impact fee as described below. No portion of the fee shall be used for routine maintenance or operation activities.
- The following costs may be included in the capital cost of the infrastructure improvement:
1. Engineering, surveying, and environmental assessment services directly related to the design, construction, and oversight of the improvement,
  2. The actual construction of the improvement including, without limitation, property acquisition costs, demolition costs, clearing and grading of the land, and necessary capital equipment,
  3. Mitigation costs,
  4. Legal and administrative costs associated with construction of the improvement including any borrowing necessary to finance the project,
  5. Debt service costs including interest if the Town borrows for the construction of the improvement,
  6. Relocation costs, and
  7. Similar costs that are directly related to the project.
- F. Refund of Impact Fees
1. If a building permit is surrendered or lapses without commencement of construction, the developer shall be entitled to a refund, without interest, of any impact fee paid in conjunction with that project. In the case of a refund, the Town shall retain four (4) percent of the impact fee paid to offset a portion of the administrative cost of collection. A request for a refund shall be made in writing to the Town Planner and shall occur within ninety (90) days of the lapse or expiration of the permit.
  2. Any fees that are not spent or obligated by contract for the specified improvement by the end of the calendar quarter immediately following ten (10) years for the date the fee as paid shall be returned to the developer or its designee without interest.
  3. The Town shall refund impact fees, or portions of those impact fees, that exceed the Town's actual costs of providing the capital improvement or facility for which the fees were paid.
- G. Waiver of Impact Fees. The Town Council may, by formal vote following a public hearing, waive the payment of a required impact fee, in whole or in part, if it finds that:
1. The developer voluntarily agrees to construct the improvement for which the impact fee would be collected, or
  2. The developer is required, as part of a development approval by the Town or a state or federal agency, to make or to pay for infrastructure improvements that are of the same nature as the improvement to be funded by the impact fee, or
  3. The infrastructure that the impact fee relates to has been created to attract industry and the fee would be charged to an industrial use.

- H. Review and Revision. The Town Council shall periodically review each impact fee established under this chapter at least once every five years. If the Council finds that the anticipated cost of the improvement has changed or that the identification of developments subject to the fee is no longer appropriate, the Council may propose changes in the impact fee. Any changes adopted as a result of such review shall apply to all future development but shall not be applied retroactively to projects that have already paid an impact fee.

## 1202 North Windham Sidewalk Impact Fee

- A. Description of the improvements. The North Windham Sidewalk Impact Fee will be used to partially fund the construction of public sidewalks to accommodate pedestrian movement in the Commercial 1 zoning district as set forth in the Town's 21<sup>st</sup> Century Downtown Plan (see North Windham Sidewalk Impact Fee Methodology dated June 14, 2013 in Appendix E). This includes improvements in the following areas: Roosevelt Trail (Route 302), Tandberg Trail (Route 35 and 115), River Road, and Manchester Drive.
- B. Need for the improvements. The road network in the North Windham commercial district serves a large volume of vehicular traffic. The roads serve to provide mobility throughout the region, and local access to commercial establishments. In addition, the public road network provides pedestrian movement between local commercial businesses. Many sections of the public road system in North Windham either lack sidewalks entirely, or provide them only on one side of the road. Commercial growth creates more pedestrian movements that increase conflicts between bicyclists and motor vehicles on the primary road network. This results in increased safety concerns. To address this concern, the Town's 21<sup>st</sup> Century Downtown Plan recommends that the Town expand the network of sidewalks along major roads.
- C. Applicability. In accordance with Section 406(E)(6)(j), the following commercial development activities commenced on or after June 14, 2013 on properties that do not have an existing sidewalk along all or a portion of their property's frontage shall be subject to the impact fee:
- The construction or placement of new buildings with a cumulative area that is greater than, or equal to, five hundred (500) s.f.
  - The enlargement of existing buildings by five hundred (500) s.f. or more
  - As required by the Planning Board as part of a Site Plan approved in accordance with Section 800 of this Ordinance.
- D. Amount of the Fee. The base impact fee for the sidewalk improvements shall be five (5) linear feet of sidewalk per 100 square feet or fraction thereof of the gross floor area to be constructed, erected, enlarged, extended, or relocated on the site multiplied by the per linear foot of sidewalk fee as set by the Town Council in the fee schedule (*see*

*Appendix A Fee Schedule*). The formula described above shall be calculated as follows:

$$\text{Base Impact Fee} = [5 \text{ linear feet}] \times \{ [\text{Total gross square footage of building}] / [100 \text{ square feet}] \} \\ \times [\text{linear foot sidewalk fee } \$]$$

The amount of the base fee is based upon the North Windham Sidewalk Impact Fee Methodology dated May 14, 2014 (*See Appendix E*). The fee is based on the average estimated construction costs of sidewalks in North Windham based on the following conditions:

- Installation of granite curbing if no curbing exists
- Installation of closed drainage infrastructure if no curbing exists as determined by the Director of Public Works
- Replacement of existing bituminous curbing with granite curbing
- Resetting of existing granite curbing as determined by the Director of Public Works due to the condition of existing granite curbing.

The base impact fee shall be adjusted to account for changes in the cost of construction. The impact fee shall be adjusted based upon the change in the ENR Construction Cost Index between June 2013 and the month in which the impact fee is paid. The amount of the fee shall be calculated as follows:

$$\text{Impact fee to be paid} = \text{Base impact fee} \times (\text{ENRCCI for the month in which fee is paid} / \text{ENRCCI for June 2013}) \text{ where ENRCCI is the national construction cost index published by ENR (Engineering News Record).}$$

**Impact Fee Maximum.** The maximum sidewalk fee required for any property will be equal to the property's road frontage times the base impact fee at the time of application. If the calculated fee is less than the maximum, future development that meets the criteria of Section 1202.E. will be required to pay the impact fee up to the maximum amount for the property.

- E. **Expenditure of Funds.** Impact fees shall be collected and expended in two (2) subareas within the Commercial 1 zoning district. Fees shall be expended on sidewalk construction within the subarea from which they are collected. The subareas are as follows:

- Roadways within the C1 District that are south of White's Bridge Road
- Roadways within the C1 District that are north of White's Bridge Road.

- F. **Impact Fee**

1. The North Windham Sidewalk Impact Fee shall be paid for any project that meets the applicability standards in Section C, above.

2. A property shall be required to pay the fee in the event of future development on said property until the amount of fees paid is equal to the length of property frontage multiplied by the fee per linear foot of sidewalk in Section 4, above, is reached.. Properties with an existing sidewalk on a portion of their frontage shall pay a maximum fee equal to the length of lot frontage on which sidewalk does not exist at the time of development.
- G. Sunset Provision. The fee shall remain in effect until the Town has collected \$2.1 million in fees in subarea 1 and \$900,000 in subarea 2 (as adjusted for construction cost inflation) or until July 1, 2026 whichever comes first unless such time is extended by vote of the Town Council.

### 1203 Recreation Impact Fee

- A. Description of Improvements. The Recreation Impact Fee will be used to partially fund the acquisition and development of land for recreation fields and facilities throughout the Town as set forth in the Town's Parks and Recreation Facilities Capital Investment Plan, adopted by the Town Council on October 8, 2013, and attached in Appendix F.
- B. Need for Improvements. Existing municipal and school district recreational facilities, including rectangular playing fields, diamond-shaped fields, and hard-court facilities are in high demand, and conflicts regarding scheduling and access to facilities among user groups occur throughout the sports seasons. New residential growth creates additional demand for recreation facilities, which can result in a loss of access to recreational activities and facilities. The Parks and Recreation Facilities Capital Investment Plan outlines the how the Town maintain the existing levels of service for recreational facilities faced with demand driven by a growing population.
- C. Applicability. All new residential development activities commenced on or after April 10, 2014, shall be subject to the Recreational Impact Fee. This includes:
  1. Dwelling, Single Family Detached
  2. Dwelling, Two-Family
  3. Dwelling, Multifamily
  4. Accessory Apartment
  5. Manufactured Housing
- D. Amount of the Fee. The amount of the impact fee will be based on the cost land acquisition and development costs, calculated on a per capita basis, multiplied by the average household sized for the type of dwelling unit being constructed. The formula for this shall be calculated as follows:  
Recreation Impact Fee = {[ (Land Acquisition Costs)+(Facility Development Costs)]/[ (2030 Projected Population)-(2010 Baseline Population)]} x (Average Household Size for Dwelling Unit category)

The amount of the fee is based on "Recreation Impact Fee: Basis of Assessment, Windham, Maine," dated September 27, 2013.

- E. Expenditure of Funds. Fees will be collected on a Town-wide basis for the acquisition and development of recreation facilities anywhere in Town.
- F. Sunset Provision. The fee shall remain in effect until July 1, 2030, unless such time is extended by vote of the Town Council.

#### **1204 North Route 302 Road Improvements Impact Fee**

- A. Purpose. Roosevelt Trail/Route 302 is part of the National Highway System. It is the most significant highway corridor in the Town of Windham and is critical to the current and future mobility of local and regional motorists. This corridor provides important connections to Route 202 and State Routes 115, 35, and 4, as well as River Road, a major State Collector Highway. In addition, Route 302 is vital to the accommodation of future growth and development on land served by this corridor.

In order for Route 302 to continue to adequately serve local and regional transportation needs, while also providing additional capacity to support future development and accompanying traffic generation and demands, roadway infrastructure improvements are warranted. These improvements are highlighted in the Town of Windham “North Route 302 Corridor Plan, Windham, Maine” adopted by the Town Council in March 2011.

The Town has identified in the Corridor Plan roadway infrastructure improvements that will accommodate traffic growth projected for the next 10 years, and will establish the additional vehicular capacity and adequate levels of service necessary to serve, accommodate, and benefit new development. The purpose of the North Route 302 Capital Improvement District is to reimburse the portion of the Town’s cost of constructing these roadway infrastructure improvements that benefit new development by providing additional vehicular capacity.

- B. Applicability
  - 1. This impact fee shall commence upon the earliest of either January 1<sup>st</sup>, 2015, or upon the Town of Windham’s commitment of funds to complete the infrastructure projects stated in Section H, below. The impact fee shall apply to any of the activities listed in this section that are located within the fee collection areas identified in Section J. North Route 302 Road Improvements Impact Fee Collection Areas Map that generate additional traffic within the North Route 302 Capital Improvement District (*Note: For existing uses, the impact fee shall only apply to activities or uses that generate new trips above their existing levels*):
    - (a) New development,
    - (b) Change in or expansion of an existing development,
    - (c) All new development seeking subdivision or site plan approval,
    - (d) The expansion of previously approved subdivisions or site plans,
    - (e) New development enabled by land divisions exempted from subdivision review as per Title 30-A M.R.S.A. §4401 (4),



- (f) All new extractive industry operations,
  - (g) Any change in use, when such change results in a re-classification from one land use to another in accordance with the uses listed in Section 300 Definitions and/or Section 400 Zoning Districts, and
  - (h) The location, or relocation, of any land use that requires a certificate of occupancy from the Code Enforcement department.
2. The following development and construction shall be exempt from this ordinance:
- (a) Alterations or expansions of an existing building which do not result in the generation of additional vehicle trips
  - (b) Construction of accessory buildings or structures which do not generate additional vehicle trips.
  - (c) The replacement of a building or structure destroyed or damaged by fire, flood or natural disaster with a new building or structure of the same size or use which does not generate additional vehicle trips.
  - (d) The location, or relocation, of a land use which does not generate additional vehicle trips.

C. Impact Fee Procedures

- 1. Any person who seeks a permit or approval for any development, activity or use described in Section B(1), above, is hereby required to pay a road impact fee in the manner and amount set forth in this ordinance.
- 2. Preliminary determinations regarding whether a proposed development will generate traffic within the North Route 302 Capital Improvement District shall be made by the Town Planner and the Town's consulting traffic engineer. Actual traffic generation, impacts, and the corresponding fee, shall be determined in accordance with the procedures in Section D, below.

D. Impact Fee Calculations. An impact fee shall be applied to development projects in the Town of Windham that generate additional traffic within the North Route 302 Capital Improvement District. This impact fee is structured to be in proportion to the development project's share of infrastructure costs necessitated by the development and as enabled by Title 30-A M.R.S.A. §4354. The process for this impact calculation is as follows:

- 1. For projects that do not require subdivision approval, site plan approval, or as determined by the Town Planner as not requiring a traffic analysis:
  - (a) The Town Planner shall determine the fee in accordance with the amounts stated in Section L, Table 1. North Route 302 Road Improvement Impact Fee, Windham, Maine and Section M. Map 1. North Route 302 Road Improvement Impact Fee Collection Areas.
  - (b) The applicant may request that the fee be calculated by either the Town's consulting engineer, or by hiring a Registered Professional Engineer with significant experience in traffic engineering. The analysis shall be conducted in accordance with Section 1203(D)(2), below. All costs incurred as a result of said analysis shall be the responsibility of the applicant. A building permit or certificate of occupancy,

- whichever applies, shall not be issued by the Code Enforcement Officer prior to the payment of any costs incurred by the Town's consulting engineer.
2. For projects that require subdivision approval, site plan approval, or as determined by the Town Planner as being required to conduct a traffic analysis:
    - (a) A traffic analysis shall be conducted by a Registered Professional Engineer with significant experience in traffic engineering 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 (whether A.M. or P.M., whichever is greater).
    - (b) The impact fee calculation for individual development projects shall use generally accepted standards, such as the Maine Department of Transportation's currently adopted edition of the Institute of Transportation Engineers "Trip Generation" Handbook or traffic generation data or estimates from field measurements or data collected at similar development types, and shall be based on the peak commuter hour of traffic in the A.M. or P.M., whichever is greater.
    - (c) The costs assigned to trips shall be based upon a fee per new trip (primary trip) to be generated by a development project that passes through the North Route 302 Capital Improvement District within the peak commuter hour. All new trips that pass through the District shall be counted as new trips. Other types of traffic associated with a development project, such as the capture of trips passing a site (pass-by trips) or trips in the area that are rerouted (diverted trips) shall not be utilized in the assessment.
    - (d) The fee determination shall be based on the following formula with the fee amounts stated in the Fee schedule, as set by the Town Council (*see Appendix A Fee Schedule*):
      - 1) The Town's cost of realigning Anglers Road with Whites Bridge Road as stated in the "North 302 Corridor Plan" for roadway infrastructure improvements in the North Route 302 Capital Improvement District amounts to \$300,000, less any state and federal funding contributions. The Town cost is to be funded in whole or in part from this impact fee ordinance.
      - 2) The total additional (bi-directional) vehicular capacity to be fostered by the roadway infrastructure improvements will equal approximately 392 trip ends in the peak commuter hour of traffic.
      - 3) Each additional trip generated by the new development will benefit from the 392 trip ends of capacity and will utilize one trip end of that additional capacity.
      - 4) The Town will finance one half of the cost of the improvements through the North Route 302 Road Improvements Impact Fee and the fee per trip, therefore, shall be \$382.65. This fee per trip equals \$150,000 / 392 trip ends.
    - (e) The Planning Board or Town Planner shall establish a payment schedule which apportions the impact fee to component parts of the development based on the estimated trip generation for each component part. Depending on the nature of the development, a component part may be a lot, building, dwelling unit (as defined in the Windham Zoning Ordinance), unit of occupancy (as defined in the Windham Zoning Ordinance) or some combination thereof. The payment schedule shall specify the portion of the impact fee attributable to each component part and the

- point during the construction of the development at which the impact fee for each component part must be paid. The payment schedule shall be incorporated into the Planning Board's written approval document and endorsed on any final plan for the development
3. If, after a development has been approved, changes are proposed which would change the trip generation for the development or a component part of the development then, on the initiative of the Town or the developer, the impact fee and payment schedule may be recalculated, and such recalculated impact fee and payment schedule shall apply to all subsequent permits issued within the development.
  4. The Town Planner or Planning Board, as appropriate, may reduce the amount of the impact fee for projects that are required as part of their approval to construct all or a portion of the infrastructure improvements stated in Section 1203(H)(1), below. The amount of the fee reduction shall be the difference between the cost of the impact fee and the applicant's cost to construct the improvements.
- E. Impact Fee Payment. See Section 1201.C. for general payment information. The impact fee amount, as determined in accordance with this Ordinance, shall be paid to the Town according to the payment schedule established under Section D., except as follows:
1. For an extractive industry project, the impact fee amount shall be paid prior to the release of the attested final plan to the developer for recording at the Cumberland County Registry of Deeds.
  2. For a new residential dwelling(s) proposed on a lot(s) created by a land division(s) exempted from subdivision review as per Title 30-A M.R.S.A. §4401(4), the impact fee amount shall be paid prior to the issuance of a building permit for construction.
- F. North Route 302 Capital Improvement District. The North Route 302 Capital Improvement District is depicted on the map attached to this Ordinance as Appendix A and generally conforms with the "North 302 Corridor Plan" study area.
- G. Impact Fee -Trust Fund
1. There is hereby established a North Route 302 Capital Improvement District Fund to segregate the impact fee revenues generated by this Ordinance from the Town's general revenues.
  2. Funds withdrawn from this trust fund account shall be used in accordance with Section H. of this ordinance.
- H. Use of Impact Fee Funds
1. Funds generated by this Ordinance shall be used for the purpose of financing the capital improvements to realign Anglers Road with Whites Bridge Road as stated in the "North 302 Corridor Plan" for roadway infrastructure improvements within the North Route 302 Capital Improvement District. See Section 1201.E. for a list of items which may be included in the capital costs of the project.
  2. No funds shall be used for periodic or routine maintenance.
  3. Given that bonds or loans may be issued to finance the implementation of the capital improvements identified in the plan for roadway infrastructure improvements within

- the North Route 302 Capital Improvement District, impact fee funds may be used to pay debt service on such bonds or loans to the extent that the improvements provided are a component of the plan for roadway infrastructure improvements, as per Section H. 1. of this ordinance.
4. Funds may be used to provide refunds in accordance with Section I.
  5. Funds shall not be used to pay for any site specific road improvements, such as right-turn entry lanes, site driveway islands, etc., that are required of a development project that is proposed and constructed on any lot abutting a roadway section within the North Route 302 Capital Improvement District. Such project and site specific improvements shall be the responsibility of the developer. Nothing in this section shall limit the Town from providing economic development incentives for site specific improvements at the Town's sole discretion.
- I. Refund of Impact Fees
1. If a development permit expires such that there is no activity that will generate additional traffic covered by this ordinance, the developer may apply for a refund. The refund request must be consistent with Section 1201.F.1.
  2. Any funds not expended or obligated by contract by the end of the calendar quarter immediately following ten (10) years from the date the fee was paid shall be returned consistent with Section 1201.F.2.
- J. Roadway Infrastructure Improvements
1. As per Section H. 1. of this section, the funds generated by this impact fee will be used to accomplish improvements to realign Anglers Road with Whites Bridge Road as stated in the "North 302 Corridor Plan Windham, Maine" prepared by Gorrill-Palmer Consulting Engineers, Inc. and adopted by the Windham Town Council in March 2011.
  2. The above cited plan may be amended by the Town Council, in accordance with the Windham Town Charter, if the amendments to the plan are consistent with and further the purpose of this ordinance.
- K. Sunset Provision. The fee shall remain in effect until the Town has collected \$150,000 in fees (as adjusted for construction cost inflation) or until July 1, 2026 whichever comes first unless such dollar amount is increased or time limit is extended by vote of the Town Council.

L. Table 1. North Route 302 Road Improvement Impact Fee, Windham, Maine

Use	Trip Rate*	% primary	Cost Per Primary Trip	Fee Area 1**	Fee Area 2**	Fee Area 3**
Quality Restaurant	7.49	40	\$382.65	\$1,146.42	\$286.61	\$116.64
High Turnover Restaurant	11.15	37	\$382.65	\$1,578.62	\$394.66	\$157.86
Fast Food Restaurant	33.84	30	\$382.65	\$3,884.66	\$971.17	\$388.47
24 Hour Conv Market***	52.41	25	\$382.65	\$5,013.67	\$1,253.42	\$501.37
Quick Lube****	5.19	50	\$382.65	\$992.98	\$248.25	\$99.30
Auto Care	3.38	50	\$382.65	\$646.68	\$161.67	\$64.67
Self Serve Car Wash*****	5.54	50	\$382.65	\$1,059.94	\$264.99	\$105.99
General office	1.73	100	\$382.65	\$661.98	\$165.50	\$66.20
Medical office	3.46	100	\$382.65	\$1,323.97	\$330.99	\$132.40
Veterinary Clinic	4.72	100	\$382.65	\$1,806.11	\$451.53	\$180.61
Retail	2.71	35	\$382.65	\$362.94	\$90.74	\$36.29
Bank	25.82	27	\$382.65	\$2,667.60	\$666.90	\$266.76
Light industry	0.97	100	\$382.65	\$371.17	\$92.79	\$37.12
Dwelling Unit*****	1.01	100	\$382.65	\$386.48	\$96.62	\$38.65

\* PM peak hour Trips Per 1,000 sf for uses not exceeding 2,000 sf unless otherwise noted under use

\*\* Fee cost per 1,000sf.

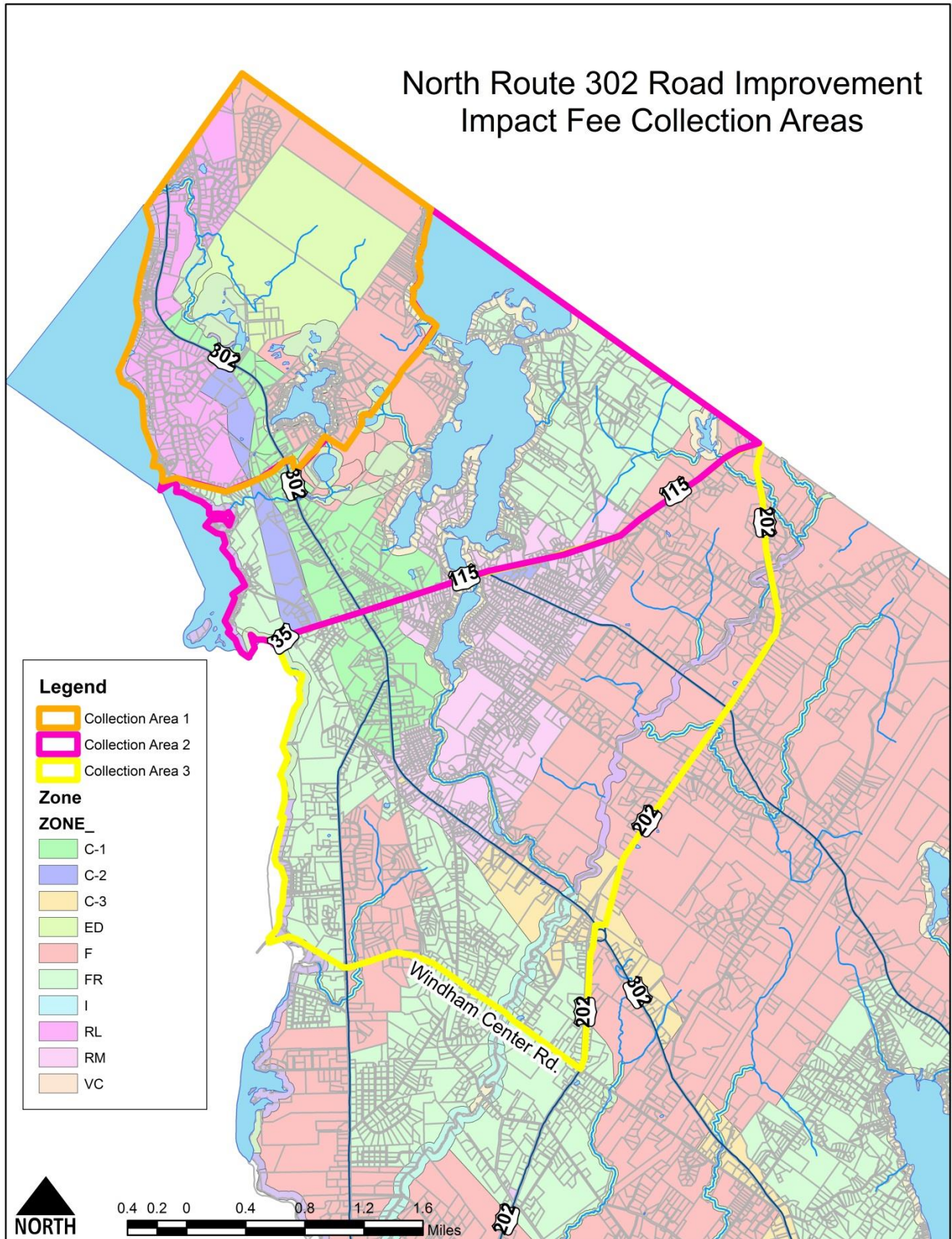
\*\*\*Convenience Market without gas pumps

\*\*\*\* Trip Rate per service positions

\*\*\*\*\* Trip Rate per wash stall

\*\*\*\*\* Trip Rate per dwelling unit

M. Map 1. North Route 302 Road Improvement Impact Fee Collection Areas



Section 1200 Amendments

Order 13-071; Date 05-14-2013	Add Section 1202, North Windham Sidewalk Impact Fee
Order 14-033; Date 03-11-2014	Add Section 1203, Recreation Impact Fee
Order 14-093; Date 04-08-2014	Add Section 1204, North Route 302 Road Improvements Impact Fee
Order 14-502; Date 12-16-2014	Corrected typos and errors of omission

<b>Subdivision Review</b>			
<b>Item</b>	<b>Fee</b>	<b>Review Escrow</b>	<b>Effective Date</b>
Development Team		\$100	10/22/09
Minor or Major Subdivision Sketch Plan	\$200	\$300	7/28/11
Minor Subdivision Final Plan	1-4 lots \$900	\$1,500	7/28/11
Major Subdivision Preliminary Plan	1-10 lots \$1,300 PLUS Each lot over 10 \$300	Up to 10 lots = \$2,500 11-15 lots = \$3,000 16-30 lots = \$4,000 30+ lots = \$5,000	7/28/11
Major Subdivision Final Plan	\$350	\$250	
Amended Suidvision Each Lot/Revision	\$350	\$250	7/28/11

<b>Site Plan Review</b>			
<b>Item</b>	<b>Fee</b>	<b>Review Escrow</b>	<b>Effective Date</b>
Development Team		\$100	10/22/09
Minor or Major Site Plan Sketch Plan	\$200	\$300	7/28/11
Minor Site Plan Final Plan	\$850	\$2,000	7/28/11
Major Site Plan Final Plan	\$1,300 PLUS \$25 each 1K s.f. over 5K s.f. GFA	2K to 5K s.f. GFA = \$2,000 5K to 15K s.f. GFA = \$3,000 15K to 35K s.f. GFA = \$4,000 over 35K s.f. GFA = \$5,000	7/28/11
Amended Site Plan Each Revision	\$350	\$250	7/28/11

<b>Zone Change &amp; Other Review Fees</b>			
<b>Item</b>	<b>Fee</b>	<b>Review Escrow</b>	<b>Effective Date</b>
Zone Change Request	\$600	n/a	7/28/11
Contract Zone Request	\$800	\$500	7/28/11
Conditional Use	\$400	\$250	7/28/11
Board of Appeals Incl. Variances and Appeals	\$400	n/a	7/28/11
Mineral Extraction New Operation	\$100 + \$100/acre	\$500	7/28/11
Expansion over 5 acres	\$100 + \$100/acre	\$500	
Renewal	\$50	n/a	
Renewal, Late Fee	\$50	n/a	



<b>Zone Change &amp; Other Review Fees (Cont.)</b>			
<b>Item</b>	<b>Fee</b>	<b>Review Escrow</b>	<b>Effective Date</b>
Shoreland Zoning			
Planning Board Review	\$100	n/a	10/24/02
	PLUS		
	\$50 for Public Hearing		
Code Enforcement Review			11/26/02
Minor	\$50	n/a	
Major	\$100	n/a	
Wireless Telecommunications Facility			7/28/11
Planning Board Review	\$400	n/a	
Co-Location Application	\$250	n/a	
Water Protection Ordinance	\$30	n/a	11/26/02
Postage. Applicants are responsible for postage costs of all notification requirements.			

<b>Impact Fees*</b>			
<b>Item</b>	<b>Fee</b>	<b>Review Escrow</b>	<b>Effective Date</b>
Sidewalk Impact Fee	5 feet of sidewalk x (GFA/100) x \$35 per foot	n/a	6/7/13
Recreation Impact Fee (per dwelling unit)			4/10/14
Single Family Detached	\$1,080	n/a	
Single Family Attached (duplex/condos)	\$800	n/a	
Manufactured Housing	\$800	n/a	
Multifamily (3+ Unit) apartment structure	\$600	n/a	
Accessory Apartment	\$400	n/a	
North Route 302 Road Improvement Impact Fee	\$382.65 per primary peak hour trip through Route 302 intersection with Anglers Rd/Whites Bridge Rd	required if not covered by site plan or subdivision review	8/26/14

**Notes:**

"K" = 1,000;

"s.f." = Square Feet;

"GFA" = Gross Floor Area (*See Section 300 Definitions*)

Postage - Notification cost requirement applies to all applications

Performance Bonds & Post Approval Inspection Fee must be established with the Town prior to the commencement of construction.

Building Permits - Contact the Code Enforcement Department or download from [www.windhammaine.us](http://www.windhammaine.us)

NPDES Post Construction Inspection Fee - See Post Construction Ordinance.

\* - See Section 1200 of the Windham Land Use Ordinance for more details and applicability. A project's impact fee shall be paid prior to the issuance of any building permits.

## **APPENDIX B**

### **STREET DESIGN AND CONSTRUCTION STANDARDS**

**Table 1 Minimum Sight Distance Standards for Subdivision Accesses**

Posted Speed	Sight Distance			Mobility
	Standard Vehicle	Larger Vehicle		
20	155	230		n/a
25	200	300		n/a
30	250	375		n/a
35	305	455		n/a
40	360	540		580
45	425	635		710
50	495	740		840
55	570	855		990
60	645	965		1150

Posted Speed figures are in Miles Per Hour (MPH)

Sight Distance figures are in feet (ft.)

**Table 2 Access Design Standards for Low and Medium Volume Accesses**

Basic Standards		Low Volume	Medium Volume
Min. Access Width:*	Majority Passenger Vehicles	12	22
	>30% Larger Vehicles	30	30
Min. Corner Clearance To:**	Unsignalized Intersection	75	100
	Signalized Intersection	125	125
Min. Access Spacing: ***	MPH of External Road		
	35 or less	n/a	n/a
	40	175	175
	45	265	265
	50	350	350
	55 or more	525	525

\* Minimum widths for low or medium volume accesses shall be either the minimum cross section width of the internal subdivision street or the minimum access width in Table 2, whichever width is greater.

\*\* Minimum corner clearance shall be the distance measured from the edge of an internal subdivision access excluding radii to the edge of an external street excluding radii.

\*\*\* Minimum access spacing shall be the distance measured from the edge of an internal subdivision access excluding radii to the edge of a neighboring access excluding radii.

**Table 3 Design and Construction Standards for Town Streets or Private Ways**

Item	Major Local Street	Minor Local Street	Ind./Comm.	Major Private Road	Minor Private Road
Average Daily Traffic (ADT)/Lots Served <sup>(1)</sup>	> 400 AADT	400 AADT	n/a	> 10 lots	10 Lots
Surface Type	Paved	Paved	Paved	Paved	Gravel
Min. Right-of-Way Width	60'	50'	50'	50'	50'
Min. Traveled Way Width <sup>(2)</sup>	22'	20'	24'	20'	18'
Primary Shoulder Type <sup>(3)</sup>	Paved	Paved	Paved	Gravel	Gravel
Min. Primary Shoulder Width without Curb	4'	2'	4'	2'	2'
Min. Primary Shoulder Width with Curb	5'	2'	4'	2'	n/a
Min. Primary Shoulder Width with Sidewalk	5'	2'	4'	2'	n/a
Secondary Shoulder Type	Gravel	Gravel	Gravel	Gravel	n/a
Min. Secondary Shoulder Width without Curb	2'	2'	2'	2'	n/a
Min. Clear Zone Width (each Side)	8'	7'	7'	n/a	n/a
Min. Esplanade Width	n/a	5'	n/a	n/a	n/a
Minimum Vertical Clearance	14'	14'	14'	14'	14'
Min. Grade	0.50%	0.50%	0.50%	0.50%	0.50%
Min. Grade with Curb	1.00%	1.00%	1.00%	1.00%	1.00%
Max. Grade	7%	8%	6%	11%	11%
Min. Centerline Radius	350'	180'	200'	100'	60'
Min. Tangent between curves of reverse alignment	200'	100	200	100'	n/a
Min. Angle of Street Intersection <sup>(4)</sup>	90	60	90	60'	60'
Max. Grade at Intersections <sup>(5)</sup>	2%	2%	2%	2%	2%
Min. Curb Radii	30'	25'	30'	25'	15'
Max. Dead End Street Length	See Section 543 Streets and Section 911.M.5(b)(5) Dead End Streets				
Min. Sidewalk Width	5'	5'	5'	n/a	n/a
Min. Paved Apron <sup>(6)</sup>					20'

**Additional Standards:**

(1) See Section 911 (M) for street connection requirements.

(2) Add 8' of width for each lane of on-street parking.

(3) See Section 911 (M)(5)(b)(6) for shoulder and sidewalk requirements.

(4) Angle must be maintained for at least 60' from the intersection.

(5) Maximum grade must be maintained for at least 60' from the intersection.

(6) A negative 2.0% grade from the existing edge of pavement must be provided to an appropriate drainage way that is no less than 5 feet from the travel surface or private way it intersects.

**Table 4 Street Construction Standards and Dimensions**

Material	Major Local Street	Minor Local Street	Ind./Comm.	Major Private Road	Minor Private Road
Surface Type	Paved	Paved	Paved	Paved	Gravel
Aggregate Sub-Base Courses					
Type D*	21"	21"	27"	21"	18"
Crushed Aggregate Base Course**	3"	3"	3"	3"	3"
Hot Bituminous Pavement					
Total Thickness Compacted	5"	4"	5"	4"	n/a
Base Course, HMA 19.0mm	3.5"	2.5"	3.5"	2.5"	n/a
Surface Course, HMA 9.5mm	n/a	1.5"	n/a	1.5"	n/a
Surface Course, HMA 12.5mm	1.5"	n/a	1.5"	n/a	n/a
Paved Apron					
Aggregate Sub-Base Courses					
Type D					18"
Type B					n/a
Crushed Aggregate Base Course**					3"
Hot Bituminous Pavement					3"
Bituminous Concrete Sidewalk:					
Crushed Aggregate Base Course	10"	10"	10"	n/a	n/a
Pavement Surface Course***	(2)-1.25"	(2)-1.25"	(2)-1.25"	n/a	n/a

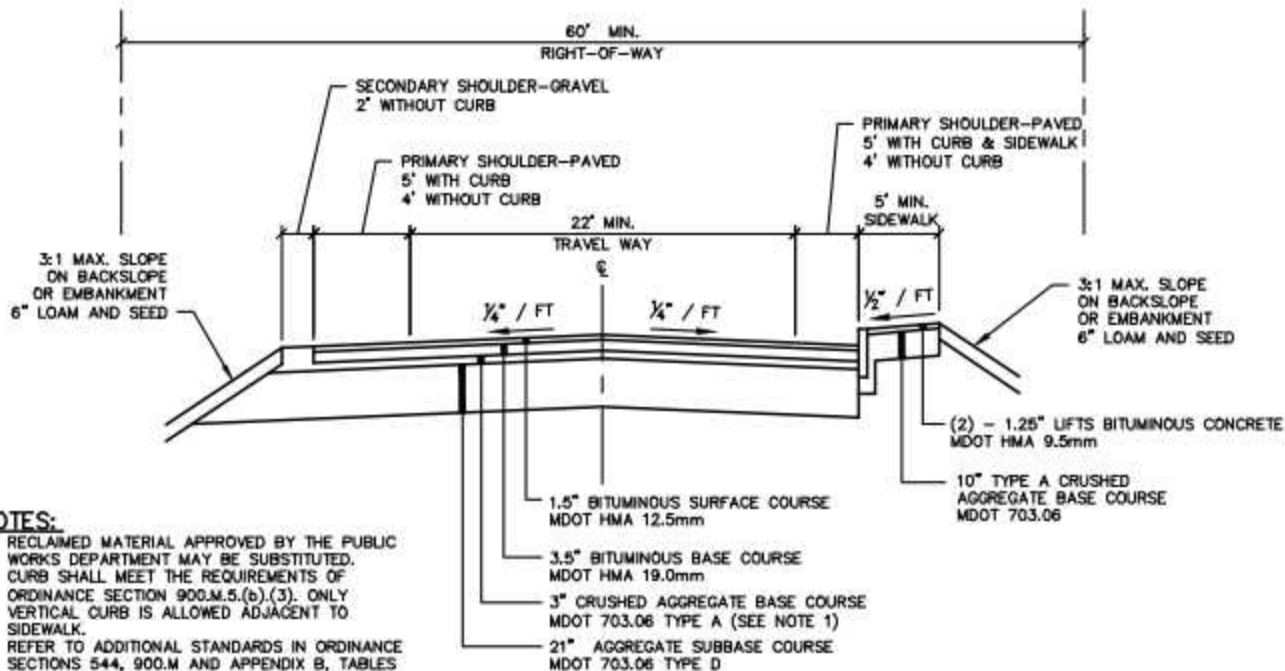
**Notes:**

(#) = Required number of courses.

\* The Planning Board or Director of Public Works, as appropriate, may reduce the required depth of ASCG Type D from 27" to 21" if the applicant provides a geotechnical evaluation performed by a professional engineer. The evaluation must include gradations, California Bearing Ratios, and a design (based on AASHTO design methods) which indicates that 21" of ASCG Type D will be adequate to handle the estimated vehicular weight loads.

\*\* Material shall be Crushed Aggregate Base Course, Type A, or Reclaimed asphalt approved by the Public Works Department.

\*\*\*Material shall be HMA 9.5mm.

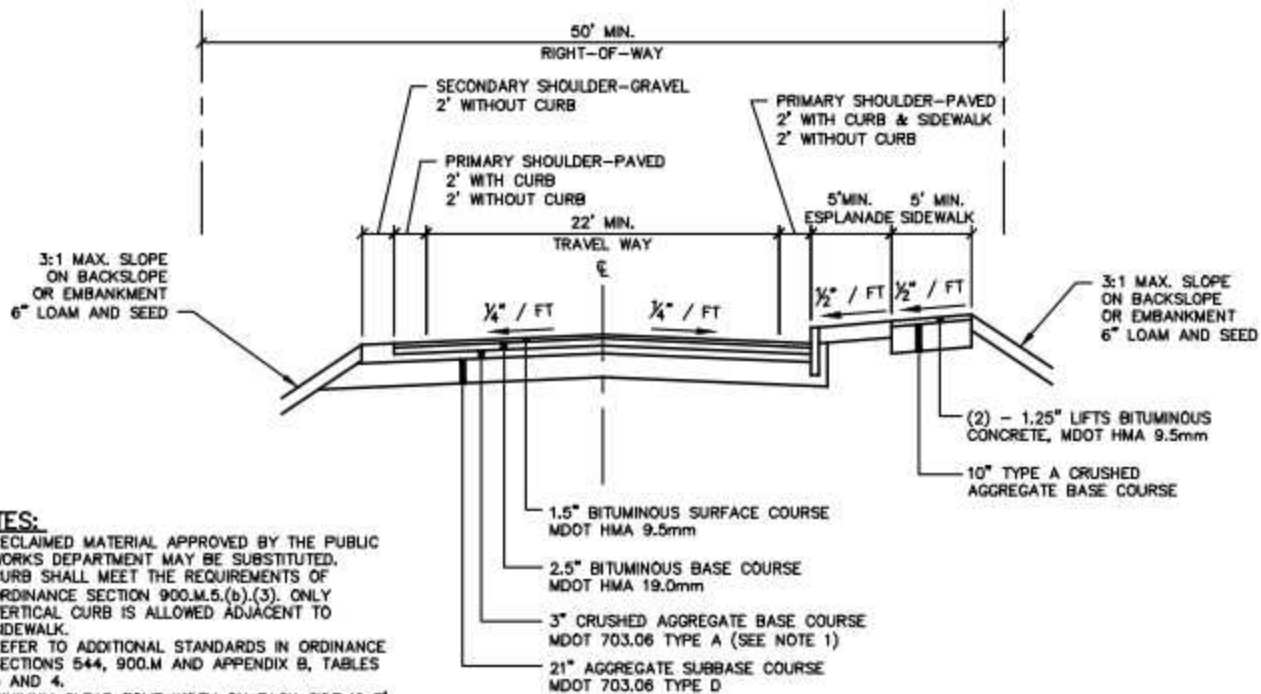


**NOTES:**

1. RECLAIMED MATERIAL APPROVED BY THE PUBLIC WORKS DEPARTMENT MAY BE SUBSTITUTED. CURB SHALL MEET THE REQUIREMENTS OF ORDINANCE SECTION 900.M.5.(b).(3). ONLY VERTICAL CURB IS ALLOWED ADJACENT TO SIDEWALK.
2. REFER TO ADDITIONAL STANDARDS IN ORDINANCE SECTIONS 544, 900.M AND APPENDIX B, TABLES 3 AND 4.
3. MINIMUM CLEAR ZONE WIDTH ON EACH SIDE IS 8', MEASURED FROM EDGE OF TRAVEL WAY.

**MAJOR LOCAL STREET**

NOT TO SCALE



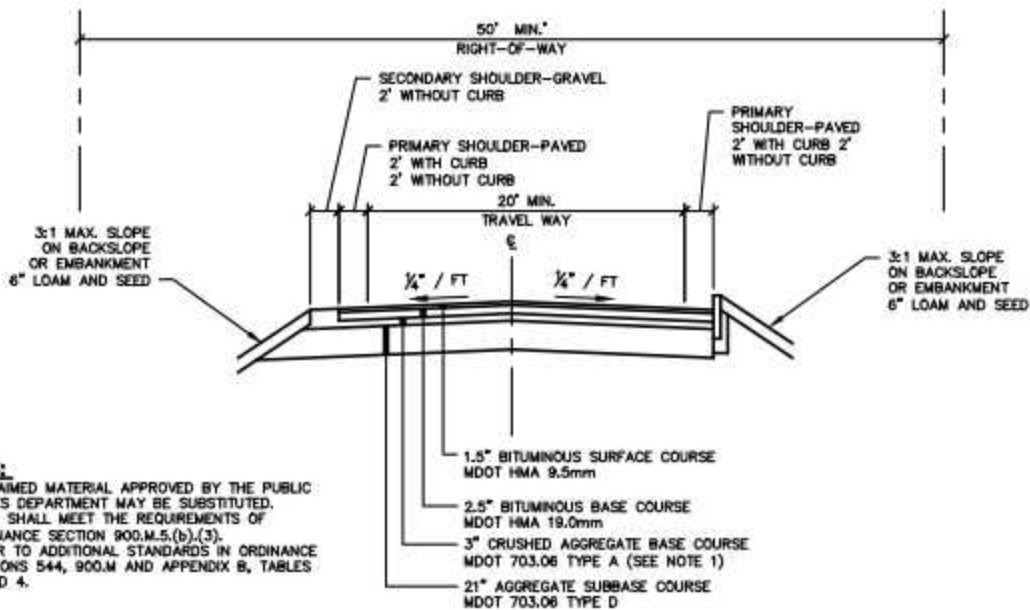
**NOTES:**

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2. REFER TO ADDITIONAL STANDARDS IN ORDINANCE SECTIONS 544, 900.M AND APPENDIX B, TABLES 3 AND 4.
3. MINIMUM CLEAR ZONE WIDTH ON EACH SIDE IS 7', MEASURED FROM EDGE OF TRAVEL WAY.

**MINOR LOCAL STREET**

NOT TO SCALE



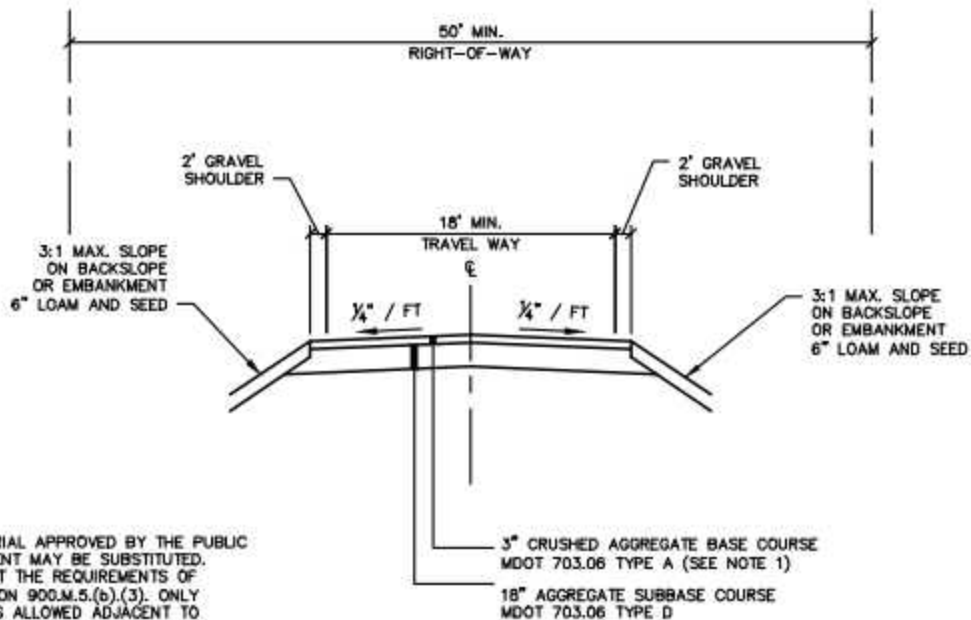


**NOTES:**

1. RECLAIMED MATERIAL APPROVED BY THE PUBLIC WORKS DEPARTMENT MAY BE SUBSTITUTED.
2. CURB SHALL MEET THE REQUIREMENTS OF ORDINANCE SECTION 900.M.5.(b).(3).
3. REFER TO ADDITIONAL STANDARDS IN ORDINANCE SECTIONS 544, 900.M AND APPENDIX B, TABLES 3 AND 4.

**MAJOR PRIVATE ROAD**

NOT TO SCALE

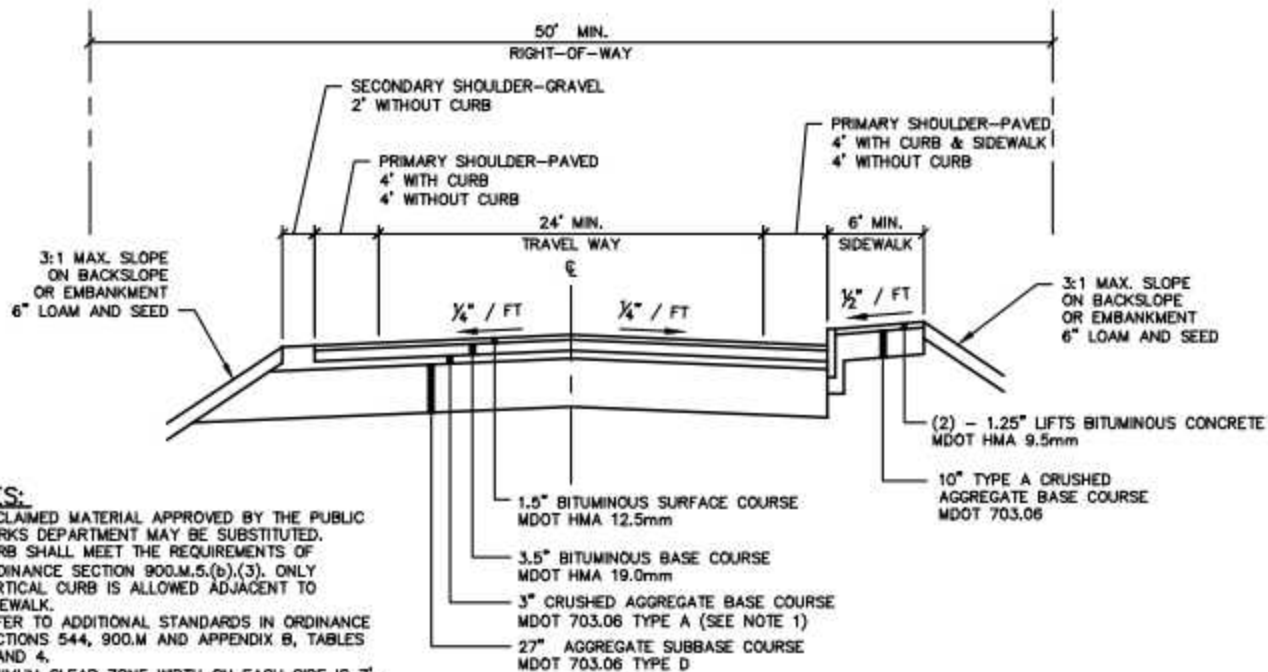


**NOTES:**

1. RECLAIMED MATERIAL APPROVED BY THE PUBLIC WORKS DEPARTMENT MAY BE SUBSTITUTED. CURB SHALL MEET THE REQUIREMENTS OF ORDINANCE SECTION 900.M.5.(b).(3). ONLY VERTICAL CURB IS ALLOWED ADJACENT TO SIDEWALK.
2. REFER TO ADDITIONAL STANDARDS IN ORDINANCE SECTIONS 544, 900.M AND APPENDIX B, TABLES 3 AND 4.

**MINOR PRIVATE ROAD**

NOT TO SCALE

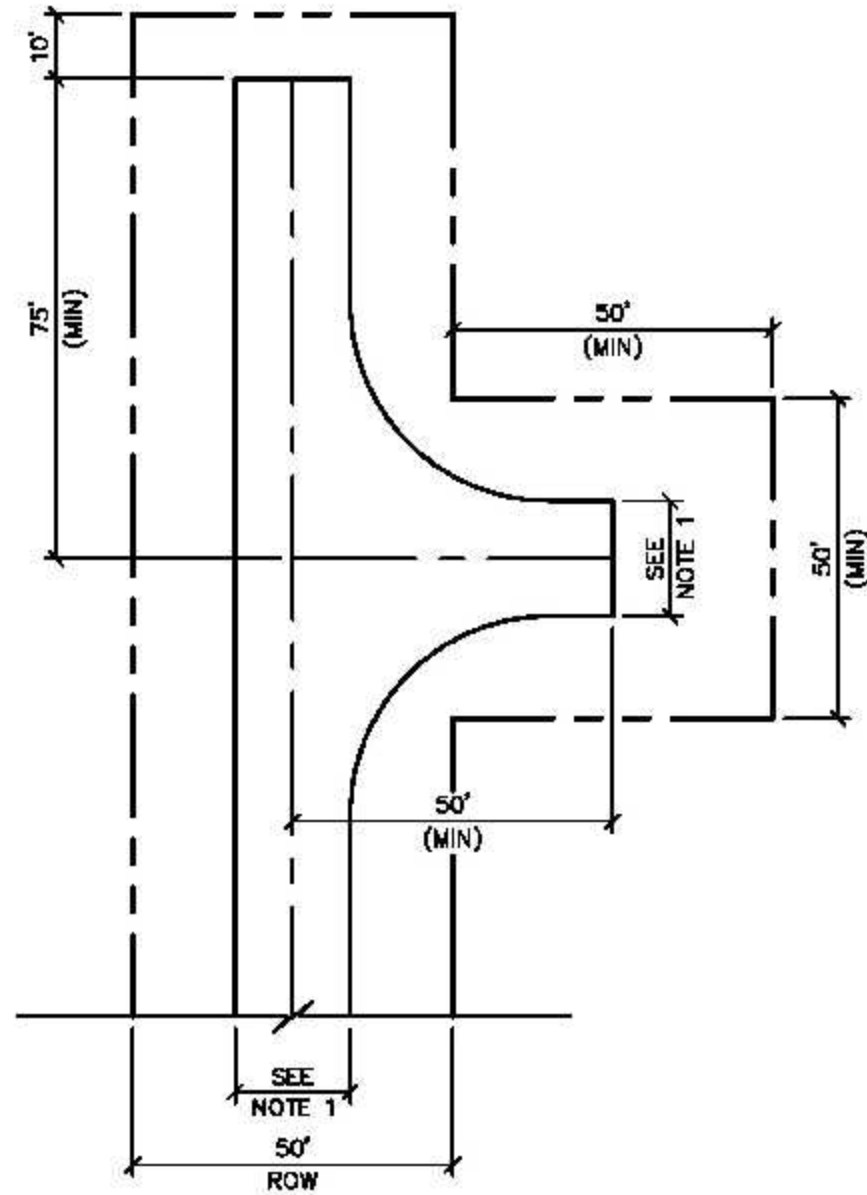


**NOTES:**

1. RECLAIMED MATERIAL APPROVED BY THE PUBLIC WORKS DEPARTMENT MAY BE SUBSTITUTED.
2. CURB SHALL MEET THE REQUIREMENTS OF ORDINANCE SECTION 900.M.5.(b).(3). ONLY VERTICAL CURB IS ALLOWED ADJACENT TO SIDEWALK.
3. REFER TO ADDITIONAL STANDARDS IN ORDINANCE SECTIONS 544, 900.M AND APPENDIX B, TABLES 3 AND 4.
4. MINIMUM CLEAR ZONE WIDTH ON EACH SIDE IS 7', MEASURED FROM EDGE OF TRAVEL WAY.

**INDUSTRIAL/COMMERCIAL STREET**

NOT TO SCALE

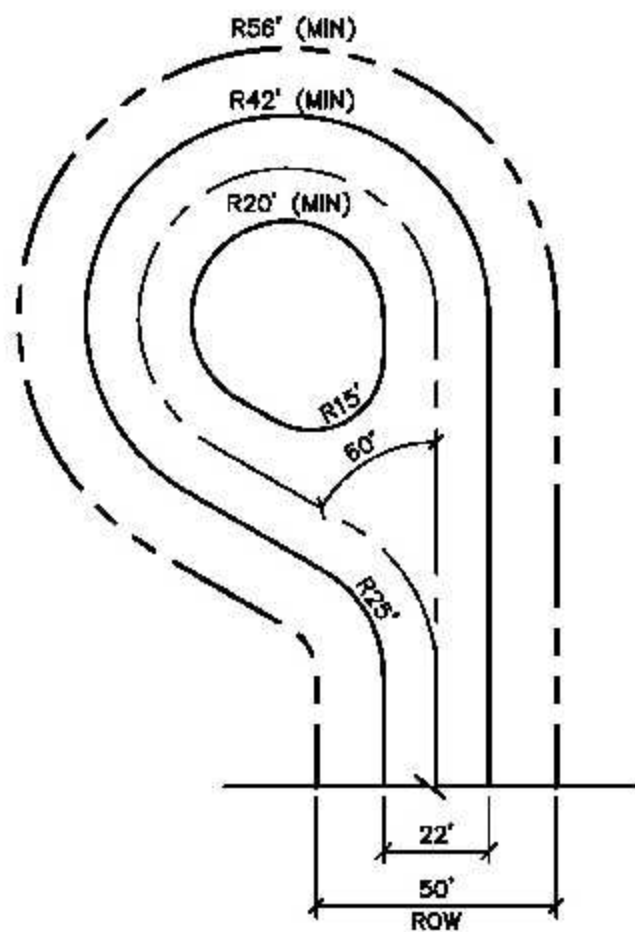


**NOTES:**

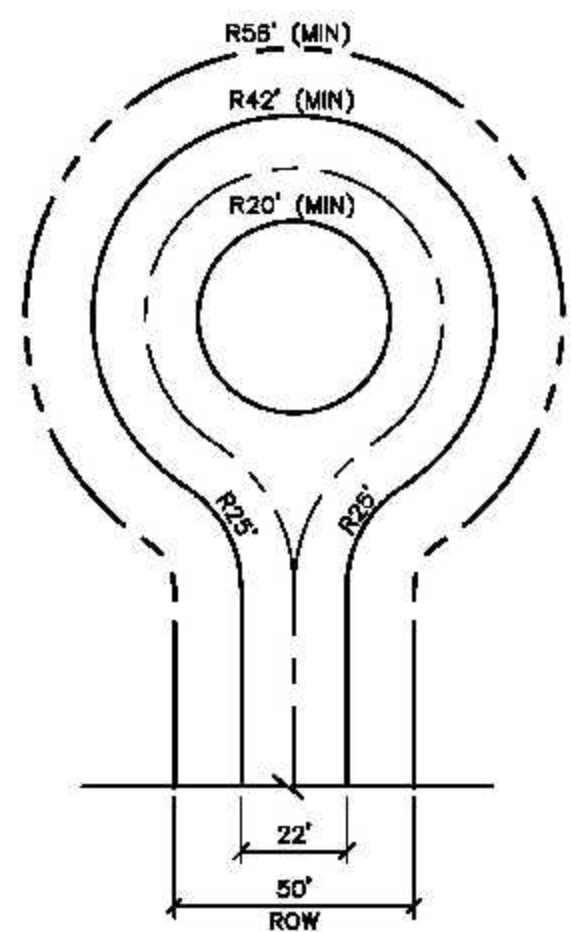
1. REFER TO ORDINANCE SECTIONS 500.B.8.(f).(2) AND 900.M.5.(b).(5).(iv) FOR HAMMERHEAD DESIGN CRITERIA.

**HAMMERHEAD**

NOT TO SCALE



**CIRCULAR OFFSET**



**CIRCULAR**

**LOCAL STREET CUL-DE-SAC**

NOT TO SCALE

**APPENDIX C**

**STATE OF MAINE ROAD CLASSIFICATIONS**

## **State of Maine Road Classifications for Windham, Maine**

As of February, 2009

(This list is subject to amendment by the Maine Department of Transportation)

### **Other Principal Arterial**

- Route 302/Roosevelt Trail

### **Minor Arterial**

- Route 202/Gray Road
- Route 115/Tandberg Trail

### **Mobility Corridors and Retrograde Arterials\***

- Route 302/Roosevelt Trail – All areas outside of the Urban Compact except for a section adjacent to the Westbrook City Boundary.
- Route 202/Gray Road – All areas outside of the Urban Compact

### **Major Collector**

- Route 35 (from Route 302 to Standish Town Line)
- River Road
- Windham Center Road (from Route 302 to Carol Drive)

### **Minor Collector**

- Falmouth Road
- Windham Center Road (from Carol Drive to River Road)

\* **Note:** State of Maine Definitions for Mobility and Retrograde Arterial Definitions.

Mobility Arterial. A Non-Compact Arterial that has a posted speed limit of 40 mph or more and is:

- (1) Part of an arterial corridor located between Urban Compact Areas or Service Centers that carries an average annual daily traffic of at least 5,000 vehicles per day for at least 50% of its length, or
- (2) Part of a Retrograde Arterial Corridor located between Mobility Arterials described in (1).

Retrograde Arterial. A Mobility Arterial where the Access-related crash-per-mile rate exceeds the 1999 statewide average for Arterials of the same posted speed limit.

*Disclaimer: This list is based upon classifications provided by the Maine Department of Transportation (MDOT). Information may be approximate. Confirmation from the Maine Department of Transportation may be required for regulatory purposes.*

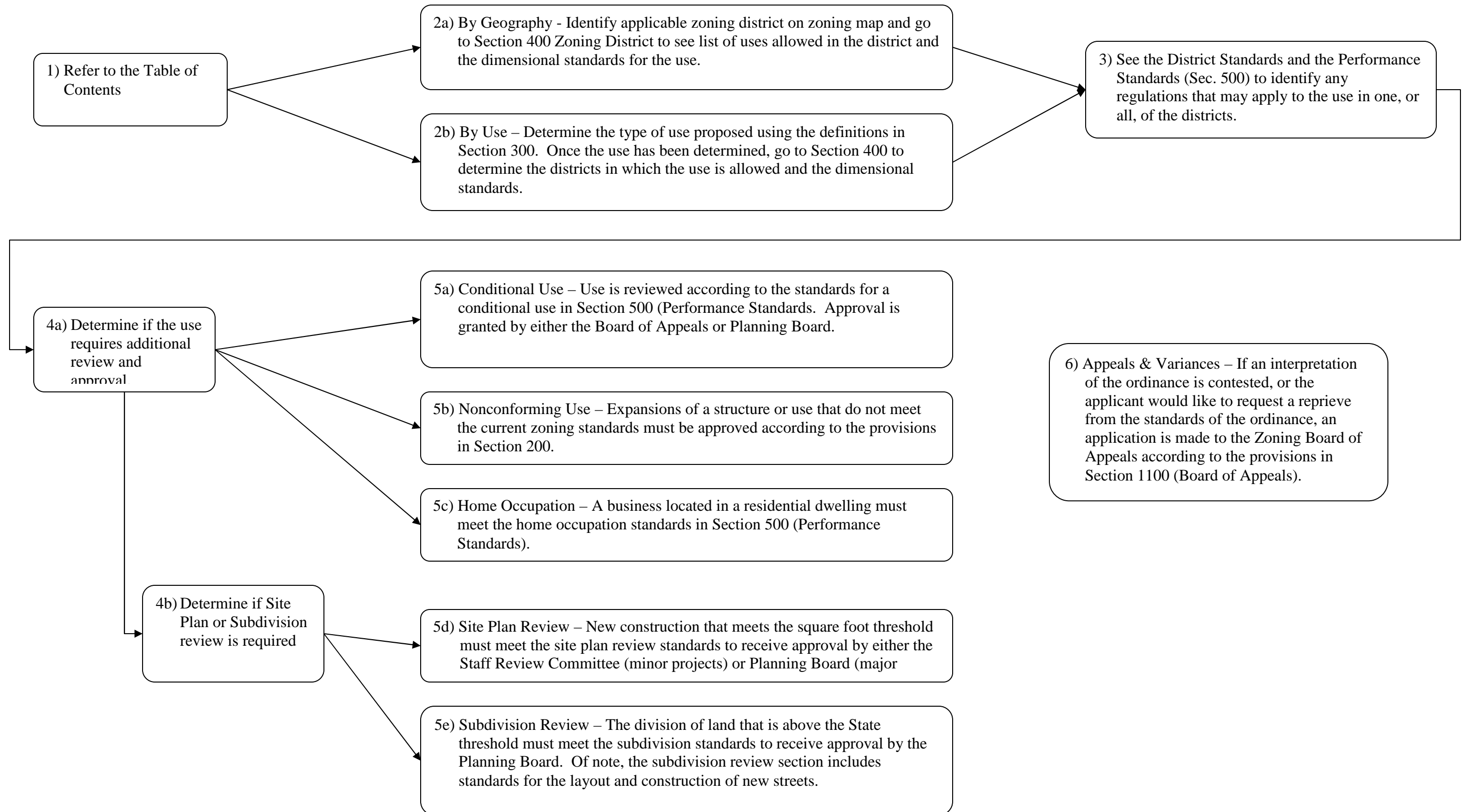
**APPENDIX D**

**LAND USE ORDINANCE FLOW CHART**



# Ordinance Update Committee

## Land Use Ordinance Flow Chart



# North Windham: Existing and Recommended Sidewalks



- 1. Existing Encl. Drainage & Reset Existing Curb
- 1A. Existing Encl. Drainage & No Curb Reset
- 2. Existing Encl. Drainage & Replace Bit Curb
- 3. No Existing Encl. Drainage nor Curbing



## Legend

- Poor Sidewalk (many defects, needs overlay)
- Fair Sidewalk (some repairable defects or impassable sections)
- Good Sidewalk (no defects need repair, no impassable sections)
- - - Existing Crosswalks
- - - Recommended Sidewalks
- - - Recommended Crosswalks

**North Windham Sidewalk Impact Fee Methodology Table, Town of Windham, 5-14-2013**

*Figures by Conditions of Existing Curbs and Drainage Infrastructure\**

Road Name	Segment Description	Cost Type	Cost/Ft.	Length	Total Cost
Roosevelt Trail	Page Rd to North of Heathwood Drive	3	\$ 200.00	1,590	318,000
Roosevelt Trail	Across from Drive In Lane to River Rd.	2	\$ 72.00	778	56,016
Roosevelt Trail	Intersection of River Rd. to Architectural Dr.	2	\$ 72.00	504	36,288
Roosevelt Trail	Fire Station to Approx. Dunkin Donuts	2	\$ 72.00	1,046	75,312
Roosevelt Trail	Boody's Corner to Landing Road	1A	\$ 28.00	2,050	57,400
Roosevelt Trail	Landing Rd. to Trails End	1A	\$ 28.00	2,080	58,240
Roosevelt Trail	Trails End to White's Bridge Rd.	1/1A	\$ 72.00	1,703	122,616
River Road	Intersection of Roosevelt Trail to SW	3	\$ 200.00	1,391	278,200
Route 115	Boody's Corner to Emerson Drive	1A	\$ 28.00	3,208	89,824
Route 35	South Side Boody's Corner to Shaw's Access	1A	\$ 28.00	500	14,000
Route 35	South Side Shaw's Access to Manchester Dr.	2	\$ 72.00	925	66,600
Route 35	North Side Boody's Corner to Shaw's Access	1A	\$ 28.00	500	14,000
Route 35	North Side Shaw's Access to Basin Road	2	\$ 72.00	1,145	82,440
Manchester Dr.	West Side	3	\$ 200.00	2,484	496,800
Manchester Dr.	East Side	3	\$ 200.00	1,754	350,800
Walmart Access Rd.	West Side	1	\$ 72.00	1,160	83,520
Walmart Access Rd.	East Side	1	\$ 72.00	500	36,000
Shaw's Access Rd.	West Side	1A	\$ 28.00	975	27,300
Shaw's Access Rd.	East Side	2	\$ 72.00	450	32,400
<b>Totals on Public Streets</b>				<b>21,658</b>	<b>\$ 2,116,536</b>

\*Cost figures based on Town Engineer's estimates

**Length of Sidewalks with % of Total**

	Total	% of Total
Type 1	0	0.00
Type 1A	10,041	0.46
Type 2	4,398	0.20
Type 3	7,219	0.33
Total	21658	1

**Average Costs of Combined Types**

Types 1A/2/3	\$	100.00
Types 1A/2	\$	50
Types 1A/3	\$	114

**APPENDIX F**

**WINDHAM PARKS AND RECREATION FACILITIES  
CAPITAL INVESTMENT PLAN**

## Appendix F

### Windham Parks and Recreation Facilities Capital Investment Plan

	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
<b>Park Improvements:</b>										
Dundee Park		\$30,000								
Skatepark			\$25,000							
Town Hall Playground					\$100,000					
Lowell Playground				\$100,000						
Lippman Park	\$150,000	\$100,000								
<b>Land Purchases:</b>										
\$10,000 per acre x 30 acres			\$300,000			\$300,000			\$300,000	
<b>Parks: New</b>										
Ballfields				\$450,000				\$450,000		
Playgrounds							\$100,000			
Basketball Courts				\$50,000				\$50,000		
Tennis Courts										\$220,000
<b>Department Vehicles:</b>										
Maintenance Pick up			\$25,000							
12 Passenger Van					\$30,000					
12 Passenger Mini Bus							\$60,000			
<b>Totals:</b>	\$150,000	\$130,000	\$350,000	\$600,000	\$350,000	\$300,000	\$160,000	\$500,000	\$300,000	\$220,000

**NOTES:**

Park Improvements

- 1.) New Playground at Dundee Park
- 2.) Repave surface at Skatepark
- 3.) Replace Playground at Town Hall
- 4.) Replace Playground at Lowell

Land Purchases

- 1.) Buy 30 Acres every 3 Years

Parks: New

- 1.) 3 New Fields every 4 years @ \$150,000 each
- 2.) 1 New Playground in 2020
- 3.) 2 Basketball Court every 4 years @ \$25,000 each
- 4.) 4 Tennis courts every 5 years @ \$55,000 each
- 5.) Phase 1&2 of Lippman Park Project

Department Vehicles:

- 1.) Replace Department 2010 Maintenance Pick up Truck
- 2.) Replace 2010 Department Van
- 3.) Replace 2009 Department Mini Bus