



Town of Windham

Town Offices
8 School Road
Windham, Maine

Cover Sheet

File Number: 24-044

Agenda Date: 3/26/2024

Version: 1

Status: Passed

In Control: Town Council

File Type: Order

Agenda Number:

I. Council Action Requested.

To receive public comment and act on proposed amendments to Town of Windham Code, Chapter 185 Shoreland Zoning Ordinance and the Official Land Use Map related to permit application requirements for photographic evidence and Resource Protection (RP) District freshwater wetlands which are inland waterfowl and wading bird habitat.

II. Basis for Council Action.

Council approval of this item is required because;

- a. the Town may enact reasonable by-laws, regulations, and ordinances for municipal purposes pursuant to Article I, Section 2 of the Charter, and
- b. the Council has the authority to act as the legislative body of the Town pursuant to Article II, Section 3(I) of the Charter.

III. Issue Summary.

Please refer to the attached materials.

EFFECTIVE APRIL 25, 2024

**AMENDMENTS TO THE SHORELAND ZONING ORDINANCE
RE: PHOTOGRAPHIC RECORD IN THE SHORELAND ZONE**

SECTION 185-16C: ADMINISTRATION

C. Permit application.

(1) Requirements.

(a) Every applicant for a permit shall submit a written application, including a scaled site plan, on a form provided by the municipality, to the appropriate official as indicated in § 185-14. The Code Enforcement Officer or the Planning Board may require the submission of any information necessary to determine conformance with the provisions of this chapter.

(b) The Code Enforcement Officer shall approve or deny those applications on which he is empowered to act as shown in § 185-14. Approval shall be granted only if the proposed use is in conformance with the provisions of this chapter.

(2) Owner's signature. All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property or by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct.

(3) Sewage disposal. If the property is not served by a public sewer, a valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the local Plumbing Inspector, shall be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface sewage disposal system.

(4) Contractor certification. When an excavation contractor will perform an activity that requires or results in more than one cubic yard of soil disturbance, the person responsible for management of erosion and sedimentation control practices at the site must be certified in erosion control practices by the Maine Department of Environmental Protection. This person must be present at the site each day earthmoving activity occurs for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed. This is required until erosion and sedimentation control measures have been installed which will either stay in place permanently or stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion. The name and certification number of the person who will oversee the activity causing or resulting in soil disturbance shall be included on the permit application. This requirement does not apply to a person or firm engaged in agriculture or timber

harvesting if best management practices for erosion and sedimentation control are used, and municipal, state and federal employees engaged in projects associated with that employment.

(5) Photographic record. All applications shall include preconstruction photographs clearly showing shoreline vegetation on the property and the site(s) of any proposed development. If the Code Enforcement Officer or the Planning Board, as appropriate, approves an application, they shall include a condition of approval requiring that, no later than 20 days after completion of the development, the applicant provide postconstruction photographs of the same shoreline vegetation and developed site(s).



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MEMO

DATE: March 20, 2024

TO: Windham Town Council

THROUGH: Barry Tibbetts, Town Manager

FROM: Amanda Lessard, Planning Director

Cc: Windham Planning Board

RE: Planning Board Recommendation - #24-11 Chapter 185 Shoreland Zoning Ordinance and Map Amendment

Overview

At the Planning Board meeting on [March 11, 2024](#), a public hearing was held on the attached proposed amendment to the Official Land Use Map Resource Protection (RP) District freshwater wetlands which are inland waterfowl and wading bird habitat and Chapter 185 Shoreland Zoning Ordinance related to permit application requirements for photographic evidence. The amendments had previously been unanimously supported by the Natural Resources Advisory Committee (NRAC) and by a vote of 2-1 by the Town Council Ordinance Committee.

The Shoreland Zoning Ordinance [Section 185-13A](#) defines the Resource Protection District, in part, as including “Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value waterfowl and wading bird habitat (IWWH), including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Maine Department of Environmental Protection as of May 1, 2006.” Since the Town last updated the shoreland zoning map on October 12, 2021 (see current [Land Use Map](#)), the state IWWH data layer has been updated based on Maine IF&W staff site visits that removed the moderate or high value classification of several wetlands in Windham.

The Shoreland Zoning Ordinance [Section 185-16C](#) is proposed to be amended to comply with a 2019 state law change, [38 M.R.S. § 439-A\(10\)](#), that expects municipal ordinances to require an applicant for a permit for development within the shoreland zone to provide photographic evidence pre- and post-construction.

Summary of the Proposed Amendments

Land Use Map Amendment

- North Area
 - Remove from Shoreland Zone
 - Adjacent to Sandbar Road (RP & LR)
 - Rezoned to Farm (F) (13 parcels)
 - Add to RP
 - Adjacent to Richards Road (7 parcels)
 - Expand RP from 100 feet to 250 feet
 - Tarkill Pond (34 parcels) § 120-410.1. Commercial District I North (C-1N)

- South Area
 - Reduce RP to 75 feet – Zoning to return to pre-2021 Amendment
 - Between Land of Nod/Pope/Route 302 (13 parcels)

Chapter 185 Shoreland Zoning Ordinance

- § 185-16C Administration
 - Applicant for a permit for development shall provide photographic of shoreline vegetation & the site of proposed development:
 - Preconstruction with application
 - No later than 20 days after completion of the development

Planning Board Review and Recommendation

No members of the public spoke for or against the proposed amendment during the Planning Board’s public hearing held on March 11, 2024.

The Board discussed why the RP District was being retained on the South Area map given that it was no longer rated by IF&W as a moderate or high value inland waterfowl and wading bird habitat. Staff noted that this wetland area has been zoned as RP since the Town first adopted a shoreland zoning map/ordinance in 1974, where it was noted as a low value wetland. Following discussion of the proposed changes, the Board made the following motion:

To recommend approval of the proposed amendment to the Code of the Town of Windham Chapter 185 Shoreland Zoning Ordinance and Official Land Use Map related to permit application requirements for photographic evidence and Resource Protection (RP) District freshwater wetlands which are inland waterfowl and wading bird habitat.

Motion: Everett Krikken
2nd: Kathleen Brown

Vote:7-0

Town of Windham, Maine Land Use Map

Raymond

Gray

Zoning Revised:

- July 1, 1974
- July 8, 1978
- July 25, 1978
- October 25, 1983
- November 24, 1987
- October 11, 1988
- February 14, 1989
- January 9, 1990
- March 13, 1990
- October 26, 1993
- August 22, 1995
- September 26, 1995
- December 12, 1995
- May 27, 1997
- July 22, 1997
- February 23, 1999
- June 22, 1999
- July 11, 2000
- August 13, 2002
- January 14, 2003
- March 25, 2003
- November 23, 2004
- April 26, 2005
- May 5, 2005
- November 22, 2005
- September 22, 2009
- February 23, 2010
- August 24, 2010
- September 14, 2010
- September 28, 2010
- February 22, 2011
- July 12, 2011
- April 24, 2012
- October 23, 2012
- May 13, 2014
- July 28, 2015
- February 11, 2020
- October 12, 2021
- July 12, 2022
- January 10, 2023
- February 28, 2023
- May 23, 2023
- July 11, 2023
- August 15, 2023
- March 26, 2024

1400' From Rt. 302 to back line.

1000' From Rt. 302 to the back line.

Standish

Cumberland

Falmouth

Gorham

Westbrook

Overlay Zones

- A - Aquifer Protection District
- B - Aquifer Protection District
- BPO - Roosevelt Trail Business + Professional Office
- MHP - Mobile Home Park
- RCCF - Retirement Community + Care Facility

Shoreland Zoning Districts

- General Development District
- Limited Residential District
- Resource Protection District
- Stream Protection District

Contract Zones

- 322 Roosevelt Trail
- Mallison Falls
- Village at Little Falls
- Windham Center

Zoning Districts

- C-1 = Commercial 1
- C-1N = Commercial 1 North
- C-2 = Commercial 2
- C-3 = Commercial 3
- C-4 = Commercial 4
- VC = Village Commercial
- WC = Windham Center
- ED = Enterprise Development
- F = Farm
- FR = Farm Residential
- I = Industrial
- VR = Village Residential
- RL = Residential Limited
- RM = Residential Medium
- Wetland Boundary

This is the Official Land Use Map referred to in Section 185-9 of the Shoreland Zoning Ordinance and Section 120-402 of the Land Use Ordinance of the Town of Windham, Maine. True Copy.

Designed by
Linda S. Morrell
Town Clerk, CCM

Shoreland Zoning Establishment of Districts

A. Resource Protection District

The Resource Protection District includes area in which development could adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district shall include the following areas when they occur within the limits of the Shoreland Zone. Areas which are currently developed, and areas which have already been designated Non-Residential need not be included within the Resource Protection District.

1. Areas within 250ft horizontal distance of the upland edge of freshwater wetlands and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value by the Maine Department of Inland Fisheries and Wildlife as of 1/1/1973.
2. Areas of two or more contiguous acres with sustained slopes of twenty percent (20%) or greater.
3. Land areas along rivers subject to severe bank erosion, undercutting or river bed movement.

B. Limited Residential District

The Limited Residential District includes those areas suitable for residential and recreational development. It includes areas other than those in the Resource Protection District, or Stream Protection District and areas which are used less intensively than those in the General Development District.

C. General Development District

The General Development District includes the following types of areas:

1. Areas of two or more contiguous acres devoted to commercial, industrial, or intensive recreational activities, or a mix of such activities including but not limited to the following:
 - Areas devoted to manufacturing, fabrication, or other industrial activities;
 - Areas devoted to wholesaling, warehousing, retail trade and service activities or other commercial activities and
 - Areas devoted to intensive recreational development and activities such as, but not limited to amusement parks, racetracks and fairgrounds.
2. Areas otherwise discernible as having patterns of intensive commercial industrial or recreational uses. Portions of the General Development District may also include residential development. However, no area shall be designated as a General Development District based solely on residential use.

In areas adjacent to great ponds classified GPA and adjacent to rivers flowing to great ponds classified GPA, the designation of an area as a General Development District shall be based upon uses existing at the time of adoption of this ordinance. There shall be no newly established General Development Districts or expansions in an area of existing General Development Districts adjacent to great ponds classified GPA, and adjacent to rivers which flow to great ponds classified GPA.

D. Stream Protection District

Includes all land areas within one hundred (100) feet horizontal distance of the normal high-water line of a stream, exclusive of those areas within two hundred and fifty (250) feet horizontal distance of the normal high-water line of a great pond, river, or within two hundred-fifty (250) feet, horizontal distance of the upland edge of a freshwater wetland. Where a stream and its associated shoreland area is located within two hundred and fifty (250) feet, horizontal distance of the above water bodies or wetland, that land area shall be regulated under the terms of the Shoreland District associated with that water body or establishment of districts.

Note: The depiction of the shoreland districts on the shoreland zoning map for the town of Windham are merely illustrative of their general location. The boundaries of these districts shall be determined by measurement of the distance indicated in the ordinance from the normal high-water mark of the water body or upland edge of wetland vegetation, regardless of the location of the boundary shown on the map.

Basis-Shoreland Zoning Designations

Resource Protection

- 1 MDP&W Moderate of High-Value Rated Waterfowl & Wading Bird Habitat
- 2 FEMA Flood Plain
- 3 Steep Slopes
- 4 Wetland Vegetation & Hydric Soils
- 5 Severe River Bank Erosion
- 6 Low-Value Rated Wetland

General Development

- 2 Existing Dam
- 3 Industrial Development
- 4 Industrial, Commercial & Concentrated Residential Use

Sources:
Greater Portland Council of Governments, Maine Office of GIS, Windham Planning Office, Code Enforcement and Assessor's Database & Maine Department of Inland Fisheries & Wildlife
Prepared By: Elisa A. Marr, Assessor
Revised By: Amanda Lessard, Planning Director
Map Update By: Steve Harmon, IS Dept.
Revised: 3/26/2024 | Updated: 3/19/2024

