



# Town of Windham

Town Offices  
8 School Road  
Windham, Maine

## Meeting Minutes - Draft

### Town Council

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Tuesday, April 9, 2019

6:15 PM

Council Chambers

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**Note the earlier start time to accommodate an executive session prior to the public hearing at 7:00 PM. WCCG TV-7 Now on Cannel 1303**

#### I. Roll Call of Members.

**Present:** 7 - David Nadeau, Tim Nangle, Bob Muir, Jarrod Maxfield, Donna Chapman, Clayton Haskell and Rebecca Cummings

#### II. Pledge of Allegiance.

Council Chair Haskell led the assembly in the Pledge of Allegiance.

#### III. Executive Session.

19-059 To enter into executive session in accordance with Title 1 M.R.S.A. §405 (6) (F) to discuss application 19-A for abatement of property taxes pursuant to Title 36 M.R.S.A. §841.

**Attachments:** 19-059 Cover Sheet  
Poverty Abatements MMA Legal Services Information

Councilor Chapman moved to enter into executive session, second by Councilor Cummings.

Vote 7-0 at 6:16 p.m.

Councilor Maxfield moved to return from executive session, second by Councilor Cummings.

Vote 7-0 at 6:35 p.m.

**In Favor:** 7 - Councilor Nadeau, Councilor Nangle, Councilor Muir, Councilor Maxfield, Councilor Chapman, Council Chair Haskell and Vice Chair Cummings

#### IV. Minutes to be Approved:

CD 19-097 To approve the Minutes of the April 2, 2019 Council Workshop meeting.

**Attachments:** Minutes-Town Council-4-2-2019  
HLW-Private Septic System Survey

A motion was made by Councilor Chapman, seconded by Vice Chair Cummings, that the Minutes be approved. The motion carried by the following vote:

**In Favor:** 7 - Councilor Nadeau, Councilor Nangle, Councilor Muir, Councilor Maxfield, Councilor Chapman, Council Chair Haskell and Vice Chair Cummings

## V. Public Participation.

*Rosie Hartzler Beech Road talked about the final report from the Watershed survey and said each Councilor should have received a copy from Kim White. This is the documentation that will have all the listings of the sites that were identified in the survey, and the reason why they did apply for the money. Rosie thanked them for the \$13,500 grant. She noted that there was a detailed map of every sector around the lake; the lake was divided into 8 sectors showing the high to low priority sites.*

*Public Participation closed.*

## VI. PUBLIC HEARINGS.

19-053

To receive public comment and act on proposed amendments to Town of Windham Land Use Ordinance, Chapter 140, Section 600 Mineral Extraction and 800 Site Plan Review Committee, related to mineral extraction operations.

**Attachments:** 19-053 Cover Sheet

TC packet PB recommend Mineral Extraction 03-27-19

*Amanda Lessard Planning Director presented the Planning Board's recommendation of these proposed changes to Section 600 Mineral Extraction and Section 800 Site Plan Review. They were proposed by the Mineral Extraction Committee in an effort to bring our ordinances more in line with the state's standards, some are more restrictive than the state's requirements. The draft does have a minor change. She followed up with the town's attorney to clarify the point that was a recommendation from the Planning Board, upon request, to know that these proposed amendments would apply to new and amended permits for mineral extraction operations in town, and would not apply to any existing pits or quarries.*

*To clarify that point, the town's attorney recommended some additional language that has been added to 606.A This revision also includes another change that was the Planning Board's recommendation to revise some language about setbacks from existing residences.*

*Public speakers:*

*Mike Manning - Bruschi Way was in favor of the amendments.*

*Jeannine Gorham - Forest Lane, Cumberland was in favor of the amendments.*

*Bill Shane-Town Manager of Cumberland & licensed professional engineer in the State of Maine.*

*Mr. Shane gave the Council a 7-page document from Sevee & Maher Engineers that included comments for the Town's consideration for some minor tweaking of the ordinance.*

*Closed Public Hearing at 7:13*

*Don Gerrish explained what their options were tonight with the ordinance.*

*Councilor comments were made by Councilor Maxfield, Councilor Chapman, Councilor Nadeau and Councilor Nangle.*

Councilor Nangle moved to amend the proposed ordinance to include the recommendations from Sevee & Maher Engineers dated September 28, 2019, second by Councilor Nadeau. (See attached)

Danny Shaw of Shaw Brothers questioned the part that mentioned under 10 acres on page 7. He said with MEDEP you could get a variance to go over that. Councilor Nangle pointed out where it said in accordance with this section and MEDEP regulations.

Vote on amendment 7-0 Passed.

Councilor Nangle moved to amend Order 19-053 regarding proposed amendments to the Town of Windham's Land Use Ordinance, Chapter 140, Section 600 Mineral Extraction and 800 Site Plan Review, related to mineral extraction operations as amended as an Emergency.

The Town Council declares the existence of an emergency because the Code of Ordinances is insufficient to prevent serious environmental and public harm that could be caused by new mineral extraction and blasting activities within the Town, thereby necessitating an ordinance to become effective upon adoption while a Moratorium Ordinance on Mineral Extraction remains in effect. The Town Council enacted the Moratorium on April 24, 2018 and extended it for an additional 180 days on October 16, 2018 to provide an opportunity for the Town to review and amend its Ordinances to mitigate the potential impact and harm of mineral extraction and blasting activities.

In accordance with Article II, Section 11(D) of the Town Charter, these Land Use Ordinance amendments shall be enacted as an emergency ordinance. It shall stand repealed as of the sixty-first (61st) day following enactment, unless the Town Council shall have acted to reenact it. Second by Councilor Muir

Vote 7-0 as as Emergency Amendment

**A motion was made by Councilor Nangle, seconded by Councilor Nadeau, that the Order be approved as amended. The motion carried by the following vote:**

**In Favor:** 7 - Councilor Nadeau, Councilor Nangle, Councilor Muir, Councilor Maxfield, Councilor Chapman, Council Chair Haskell and Vice Chair Cummings

## VII. CONSENT AGENDA.

19-065 To find that the requirements of 28-A M.R.S.A. § 653 have been met and to approve an application submitted by Rustler's Windham, Inc. d/b/a Rustler's Steakhouse for a renewal Liquor License.

Attachments: 19-065 Cover Sheet  
Rustler's Steakhouse renewal Liquor License

19-066 To approve an application submitted by Rustler's Windham, Inc., d/b/a Rustler's Steakhouse located at 754 Roosevelt Trail for a renewal Special Amusement permit.

Attachments: 19-066 Cover Sheet  
Rustler's Steakhouse-renewal Special Amuse

MEMO TO: Lisa Jacob

FROM: Steve Patch

SEP

DATE: September 28, 2018

SUBJECT: **TOWN OF WINDHAM LAND USE ORDINANCE REVIEW  
SECTION 600 MINERAL EXTRACTION**

As requested, I have reviewed the Town of Windham Land Use Ordinance Section 600 Mineral Extraction. The Ordinance is quite comprehensive and for the most part consistent with the Maine Department of Environmental Protection (MEDEP) Article 8-A Performance Standards for Quarries, Subsection 490Z. Based upon my review, I offer the following comments (*italic font*) for the Town's consideration.

Section 604(d). The location of all proposed hazardous materials storage areas. Hazardous materials (*including equipment fuel, petroleum products, oil, hydraulic fluids, etc.*) shall be located in an impervious containment area *designed to contain spills and provide for secondary containment.*

Section 606(A). Mineral extraction operations within the Town of Windham must comply with the applicable performance standards below unless a variance is first obtained from the Maine Department of Environmental Protection as set forth in Maine's Statute Title 38 Section 490 *and approved by the Town Planning Board.*

Section 606(A)(2)(f) *The applicant shall conduct and report all baseline and routine compliance monitoring (i.e., water levels and water quality monitoring) required by MEDEP Title 38 Section 490 to the Planning Board for review and approval prior to beginning mineral extraction activities and on an annual basis after mineral extraction activities have begun. Water level and water quality monitoring should be conducted by a third-party working under the guidance of a Certified Geologist or Professional Engineer.*

Section 606(A)(13) Blasting. The operator must ensure that blasting is conducted in accordance with Maine statutes set forth in Title 25 Chapter 318 *and Title 38 Subsection 490-Z Performance Standards for Quarries.*

Section 606(A)(13)(c). Assessment of features..., such as well yield and water quality. *The list of test parameters will be consistent with typical water quality tests and include:*

- *Metals (Cu, Fe, Mn, As, U, Na, Pb)*
- *Chloride*
- *Color*
- *Fluoride*
- *Hardness*
- *Nitrate/Nitrite*
- *pH*
- *Dissolved Solids*
- *Turbidity*
- *Radon*
- *Total Coliform/E. coli*
- *Bacteria*

Section 607 Rehabilitation Requirements (A). The site shall be rehabilitated in accordance with this section *and MEDEP regulations (i.e., keep active operating area under 10 acres by progressive reclamation of the pit).*

Section 607(A)(1) Where an embankment remains after completion of operations it shall be graded at a slope not steeper than 1 foot vertical to 2.5 feet horizontal.

Section 607(A)(2) Seeding, planting, and loaming as approved in the rehabilitation plan shall be accomplished so that exposed areas are stabilized and erosion is minimized. *Seeding shall achieve a minimum of 90 percent establishment of vegetation.*

Section 608 Permit and Inspections (A). The code enforcement officer shall conduct an annual compliance inspection of all excavations *and review and approve all blasting documentation required by the MEDEP Title 38 Subsection 490 on an annual basis including, but not limited to, water quality monitoring and groundwater measurements, individual blast summary reports, annual instrument calibration, and third-party seismograph results. The applicant shall annually perform third-party calibration of all instruments used to document compliance with MEDEP Title 38 Section 490 (i.e., air blast levels and peak particle velocities). The applicant shall also hire a third party to record seismograph readings during one blast event on an annual basis, to collaborate the seismograph results of the applicant.*

Section 609 Performance Guarantee Requirements (A). The performance guarantee shall also include the cost to replace any private drinking water supply well within 300 feet of the property boundary of the mineral extraction operation *or any supply well within an area in which the elevation of the water table will be impacted by the development (i.e., where safe yield and water quality may be impacted).*

A motion was made by Councilor Muir, seconded by Vice Chair Cummings, that the Order be approved. The motion carried by the following vote:

**In Favor:** 6 - Councilor Nadeau, Councilor Nangle, Councilor Muir, Councilor Maxfield, Council Chair Haskell and Vice Chair Cummings

**Absent:** 1 - Councilor Chapman

## VIII. UNFINISHED BUSINESS & GENERAL ORDERS.

19-060 To find that the applicant met/did not meet the requirements for abatement of taxes pursuant to Title 36 M.R.S.A. §841 and to approve/deny application 19-A.

**Attachments:** 19-060 Cover Sheet  
Poverty Abatements MMA Legal Services Information

A motion was made by Councilor Nadeau to deny Order 19-060, second by Councilor Muir. The motion carried by the following vote:

**In Favor:** 7 - Councilor Nadeau, Councilor Nangle, Councilor Muir, Councilor Maxfield, Councilor Chapman, Council Chair Haskell and Vice Chair Cummings

19-061 To approve changes to the Administrative Code Article VI, Section 18, Retirement Plan, so that upon hire the Town will match up to 6% of employee contributions to the deferred compensation plan as allowed under those plans.

**Attachments:** 19-061 Cover Sheet  
Memo HR Director - Deferred Comp

A motion was made by Councilor Nadeau, seconded by Councilor Muir, that the Order be approved. The motion carried by the following vote:

**In Favor:** 7 - Councilor Nadeau, Councilor Nangle, Councilor Muir, Councilor Maxfield, Councilor Chapman, Council Chair Haskell and Vice Chair Cummings

19-062 To approve changes to the Administrative Code Article VII, Section 8, Power Failure/Inclement Weather, which would pay employees for the time they would have otherwise worked and not require their use of sick/vacation time.

**Attachments:** 19-062 Cover Sheet  
Memo - Inclement Weather Closings

A motion was made by Councilor Nadeau, seconded by Vice Chair Cummings, that the Order be approved. The motion carried by the following vote:

**In Favor:** 7 - Councilor Nadeau, Councilor Nangle, Councilor Muir, Councilor Maxfield, Councilor Chapman, Council Chair Haskell and Vice Chair Cummings

19-055 To authorize the purchase of a brush fire truck from Greenwood Emergency Vehicles in the amount of \$119,626.00 as described in a memorandum from Fire-Rescue Chief Brent Libby dated March 14, 2019.

**Attachments:** 19-055 Cover SheetMemo Chief Libby2019 Brush Truck Bid Opening Sheet

*Brent Libby Fire Chief said this brush truck will replace a 17 year old pickup truck housed in the East Windham fire station. It will give them them capability to use it on camp roads and off road responses. It is a 2019 2-ton Ford F-550 with a 300 gallon tank, skid unit, and storage for brush fire tools, hoses and appliances.*

**A motion was made by Vice Chair Cummings, seconded by Councilor Muir, that the Order be approved. The motion carried by the following vote:**

**In Favor:** 7 - Councilor Nadeau, Councilor Nangle, Councilor Muir, Councilor Maxfield, Councilor Chapman, Council Chair Haskell and Vice Chair Cummings

- 19-056** To authorize the purchase of a new phone system from Consolidated Communications in the amount of \$44,160 and a call recording server from Exacom in the amount of \$17,290.80 as described in a memorandum from Information Services Manager Brett Burwell dated March 27, 2019.

**Attachments:** 19-056 Cover SheetMemo B Burwell - Phone System Bid Award

*Brett Burwell said this is a replacement and an expansion of our existing capabilities. It will replace hardware that is about 10 years old. It came down to two bids but they felt Consolidated had a better package overall, and the cheapest upfront cost.*

**A motion was made by Councilor Muir, seconded by Councilor Chapman, that the Order be approved. The motion carried by the following vote:**

**In Favor:** 7 - Councilor Nadeau, Councilor Nangle, Councilor Muir, Councilor Maxfield, Councilor Chapman, Council Chair Haskell and Vice Chair Cummings

- 19-064** To appoint Deputy Chief John Kooistra as Health Officer for the Town of Windham for a three-year term.

**Attachments:** 19-064 Cover SheetTitle 22, §451 Appointment of Local Health Officer

*Brent Libby explained that this position is state mandated, and this title had been assigned to the Town Manager. In our transition it was decided to put it into the Fire/Resuce Department. It mostly provides a contact for the CDC.*

**A motion was made by Councilor Muir, seconded by Councilor Nangle, that the Order be approved. The motion carried by the following vote:**

**In Favor:** 7 - Councilor Nadeau, Councilor Nangle, Councilor Muir, Councilor Maxfield, Councilor Chapman, Council Chair Haskell and Vice Chair Cummings

- 19-058** To enter into executive session in accordance with Title 1 MRSA §405 (6) (D): "discussion of labor contracts and proposals and meetings between the body or agency and its negotiators".

**Attachments:** 19-058 Cover Sheet

**\*Note**

Councilor Nangle moved to take Order 19-058 out of order and take it up at the end of the meeting, second by Councilor Maxfield.

Councilor Muir moved to enter into executive session, second by Councilor Nangle.

Vote 7-0 at 8:27 p.m.

Councilor Cummings moved to return from executive session, second by Councilor Muir.

Vote 7-0 at 8:55 p.m.

In Favor: 7 - Councilor Nadeau, Councilor Nangle, Councilor Muir, Councilor Maxfield, Councilor Chapman, Council Chair Haskell and Vice Chair Cummings

**IX. Discussion Items.****X. Council Correspondence.**

*No Council Correspondence.*

CD 19-094 MDOT Public Meeting 4/17/2019 Town Hall - RE Traffic Signal at 202 & Falmouth Rd

Attachments: MDOT Notice of Public Meeting

CD 19-090 Social Services Monthly Report - February 2019

Attachments: Social Services Monthly Report - February 2019.docx

CD 19-093 Town Clerk's Report for March 2019.

Attachments: monthly town clerk's report

CD 19-096 Windham Public Library Newsletter

Attachments: Check It Out April 2019

CD 19-101 Windham Historical Society Correspondence

Attachments: Notice of Intent to Move Old Grocery Store  
Susan Simonson, President WHS Email

**XI. Town Manager's Report.**

*Don Gerrish said they have received the bids on the Skate Park and they came back well over the amount of money the town had available with the grant. They met with the engineers today, and they will be coming back with a recommendation. The key component is to get the Skate Park done by October. The other components was to do work to get ready for the basket ball court, playground, an amphitheater and beach*



volleyball. The original proposal was to do the preliminary work of getting that all ready for those in the future; they can't do all of those but they are looking to see if they can work something out with Public Works so they can do some of the work, and they may come back for more money to do that.

They are looking at additional sites for the North Windham sewer project. There are five or six sites they are working on, and they will work with the engineers to do some site evaluations, and before they do anything else they will talk to DEP, and they will come back to the Council with some alternative sites.

## **XII. Committee Reports.**

### **A. Council Subcommittees.**

#### **1. Appointments Committee.**

Councilor Chapman said they had one no show, Elizabeth McDougall for the Library Board of Trustees, the rest will be moved forward. Don received a revamped Charge for this committee and it will be coming to a workshop.

Councilor Maxfield said they will put forth Frayla Tarpinian for the Assessment Review Board, 3-year term, ending February 15, 2022.

Don also said the Energy Advisory Committee hasn't met since 2016, and they will take a look and see where the Council wants to go with that committee.

#### **2. Finance Committee.**

Councilor Nangle said they have had two meeting and they got through all of the departments. There are two more meetings to finish up, General Government and CIP which will be on April 29 at 5:00 p.m. and May 2 at 5:00 pm.

### **B. Other Committees.**

#### **1. Long Range Planning Committee.**

Amanda Lessard said they met last week and they are wrapping up some revisions to the existing cluster development standards to move in the direction of conservation subdivisions. The committee will review it one last time and are hoping to recommend to the Council next week. Then they will return to looking at the district standards for the farm and farm residential districts to talk more about revising those district boundaries, and looking at uses and standards in those districts.

#### **2. Parks & Recreation Advisory Committee.**

Councilor Cummings apologized to the Committee for missing the meeting last night. She said Dundee Park is in great need for life guards at the park so please apply. They are also seeking a park maintenance person. Info is on the town's website.

There is a Senior Luncheon on April 24, and Summerfest is June 22nd. The theme this year is We're A Little Bit Rock & Roll.

#### **3. Windham Economic Development Corporation**

*Tom Bartell said the WEDC Board meeting is next Wednesday at Pat's Pizza at 5:30.*

4. Highland Lake Leadership Team

*There is a meeting coming up.*

5. Shared Maintenance Facility Joint Project Team

*Don Gerrish said they are meeting to schedule an open house and when employees can move in. They are facing a challenge to try and get everything hooked up, they took some action today. He said he was able to go through and it is beautiful. Don said they haven't spent all of the budgeted money yet. Councilor Nadeau said there was enough money to put a brand new generator in down there, and the old generator is coming to Town Hall.*

6. Private Roads ad hoc Committee

*Amanda Lessard at the March 27 meeting the members voted on sending a recommendation and more amendments back to the Council pending legal review. They are done their work for now.*

7. Natural Resources Advisory Committee

*Councilor Chapman said they will be meeting tomorrow afternoon, April 10th.*

8. Retail Adult Use & Medical Marijuana Task Force.

*Councilor Nadeau was not able to make the last three meetings.*

*Don Gerrish said Amanda and Chris are working with the committee to lay out a plan to get this moving and back to the Council.*

**XIII. Councilors' Comments.**

*Councilor Nangle thinks mineral extraction should go out to Referendum in November and let the voters decide.*

**XIV. Agendas & Scheduling.**

CD 19-098      Future Agenda Items

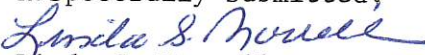
Attachments:   Future Agenda Items

**XV. ADJOURN.**

**A motion was made by Vice Chair Cummings, seconded by Councilor Muir, that they be adjourned. The motion carried by the following vote at 8:55 p.m.**

**In Favor:**    7 -    Councilor Nadeau, Councilor Nangle, Councilor Muir, Councilor Maxfield, Councilor Chapman, Council Chair Haskell and Vice Chair Cummings

Respectfully submitted,

  
Linda S. Morrell  
Town Clerk, CCM