

# Town of Windham

Planning Department  
8 School Road  
Windham, ME 04062

Voice 207.894.5960 ext. 2

Fax 207.892.1916

**Mineral Extraction Committee  
Conference Room 1, Town Office  
6:00 – 8:00 PM, Thursday June 28, 2018**

## AGENDA

1. Introductions
2. [Review Committee Charge](#)
3. Elect a Chair & Vice Chair
4. Meeting procedures, schedule, and ground rules
5. Review of Applicable Regulations & Supporting Documents
  - a. [List of Active Mineral Extraction Operations \(2015\)](#)
  - b. [Town of Windham Zoning Map](#)
  - c. [Town of Windham Land Use Ordinance](#)
    - i. [Section 600 Mineral Extraction](#)
    - ii. [Section 800 Site Plan Review](#)
  - d. [Town of Windham Comprehensive Plan \(Adopted June 13, 2017\)](#)
  - e. [Maine Department of Environmental Protection](#)
    - i. Excavations for Borrow, Clay, Topsoil or Silt: [MRS Title 38 Article 7, Sections 490-A to 490-N](#)
    - ii. Quarries: [MRS Title 38 Article 8-A, Sections 490-W to 490-FF](#)
    - iii. DEP Rules: [Chapter 378](#), Variance Criteria for the Excavation of Rock, Borrow, Topsoil, Clay or Silt and Performance Standards for the Storage of Petroleum Product
  - f. Maine Geological Survey
    - i. Significant Sand and Gravel Aquifer Maps: [North Windham](#), [Cumberland Center](#)
    - ii. [Bedrock](#) & Surficial Geology Maps: [North Windham](#), [Cumberland Center](#), [Gorham](#)
  - g. Cumberland County Soil & Water Conservation District
    - i. [Watershed Inventory](#)
    - ii. [Watershed Map](#)

**Town of Windham, Maine  
History of Mineral Extraction Regulation**

**June 28, 2018**

**1971-03-20 Gravel Pit Ordinance Adopted**

- The Municipal Officers may approve the removal and processing of stone, sand and gravel from banks or quarries and the processing of said materials after public hearing thereon and a finding that such removal and processing will be performed subject to the conditions and safeguards as set forth.

**1974-06-27 Shoreland Zoning Ordinance Adopted**

- Mineral Extraction permitted in all shoreland zoning districts subject to Planning Board approval.

**1976-07-08 Land Use Ordinance Adopted**

- Mineral Extraction permitted in F-Farm, FR-Farm Residential, C-Commercial and I-Industrial Districts, permitted by the Board of Appeals in the RL-Light Density Residential and RM-Medium Density Residential Districts, subject to performance standards in the Gravel Pit Ordinance.
- Planning Board Site Plan Review required for 25,000 sq. ft. of gross development area.

**1986-05-13 (Order 86-112) Land Use Ordinance Amendment**

- Additional Site Plan Review performance standards

**1986-05-13 (Order 86-115) Gravel Pit Ordinance Amendment**

- Revision to require permit for loam stripping in excess of ¼ acre.

**1987-11-24 Land Use Ordinance Amendment**

- Creation of C2-Commercial II, C3-Commercial III, and BP-Business Park Districts. Mineral Extraction not permitted in C2, C3, and BP.

**1990-01-09 Land Use Ordinance Amendment**

- Creation of Aquifer Protection Overlay District Zone A and B. Mineral Extraction not permitted in APA. Maximum 50% impervious surface in APB.

**1991-01-08 (Order 91-1) Codification of Ordinances**

- Chapter 116 Gravel Pits and Quarries
- Chapter 140 Land Use
- Chapter 199 Shoreland Zoning

**1995-08-22 Land Use Ordinance/Gravel Pit Ordinance Amendment**

- Repealed Chapter 116 Gravel Pits and Quarries and Amended Chapter 140 Land Use to add Mineral Extraction as a performance standard in Section 140-33.

- Specified activities exempt from ordinance, established permit application requirements, plan review criteria, excavation standards, rehabilitation requirements and a process for permit renewals and performance guarantees.

**1997-07-22 (Order 97-56) Land Use Ordinance Amendment**

- Repealed BP-Business Park District. BP rezoned to F.

**1999-02-23 (Order 99-34) Land Use Ordinance Amendment**

- Creation of ED-Enterprise Development District. Mineral Extraction is permitted in ED.

**2006-11-07 Municipal Election**

- Citizen initiative to amend Windham Land Use Ordinance Section 140-33 Mineral Extraction.
- Revisions included: requirement for driveway pavement, Planning Board approval required every 5 years, limited rock crushing hours of operation, prohibiting processing of offsite materials, increased required perimeter buffers and added waterbody buffers, maintenance of vegetation on 50% of site, increase excavation setback from any structure, and added a performance guarantee for damage to pre-existing wells.
- Amendment not adopted. Fifty-nine percent (59%) of voters against the ordinance (4251-2284).

**2009-09-22 Update/Reorganization of Chapter 140 Land Use Ordinance**

- Section 600 Mineral Extraction

**2010-02-09 (Order 10-023) Section 600 Mineral Extraction Amendment**

- Change to remove the Town Council from the review process for mineral extraction applications.

**2010-04-13 (Order 10-061) Section 600 Mineral Extraction Amendment**

- Amendments were proposed by Monaghan Leahy, LLP (on behalf of Windham Properties, LLC; Busque Construction, Co.; and RJ Grondin Construction) in a letter dated November 10, 2009 to clarify the plan review criteria in Section 605 are an organizational tool for the Board to determine compliance based on the requirements that are laid out elsewhere in the ordinance.

**2010-09-14 (Order 10-162 Land Use Ordinance Amendment**

- Creation of VC-Village Commercial District. Mineral Extraction not permitted in VC.

# MONAGHAN LEAHY, LLP

ATTORNEYS AT LAW

THOMAS G. LEAHY  
KEVIN G. LIBBY  
CHRISTOPHER C. DINAN  
JOHN J. WALL, III  
KENNETH D. PIERCE  
CORNELIA S. FUCHS  
ZACHARY I. GREENFIELD  
ERICA M. JOHANSON  
PATRICK D. THORNTON

THOMAS F. MONAGHAN  
OF COUNSEL

95 EXCHANGE STREET  
P.O. BOX 7046  
PORTLAND, MAINE  
04112-7046

TEL 207-774-3906  
FAX 207-774-3833

[ejohanson@monaghanleahy.com](mailto:ejohanson@monaghanleahy.com)

November 10, 2009

Town of Windham  
Town Council  
8 School Street  
Windham, Maine 04062

Town Council Chair Carol Waig:

On behalf of Windham Properties, LLC, Busque Construction Co and R.J. Grondin Construction, I would like to propose the following changes to Windham's Mineral Extraction Ordinance (Section 600 et seq of the Land Use Ordinance) and to related provisions

The Section 605 Plan Review criteria should be reformed. Right now, the Plan Review criteria are confusing because some of them don't outline any actual requirements for applicants to meet, whereas others do. The Superior Court found that at least one of these criteria---(A)(8) ("area and depth of excavation")---is unconstitutionally vague. Other criteria such as (A)(1)-(A)(4) and the current (A)(15) and (B), that do arguably state requirements in themselves, mostly repeat requirements that are already stated elsewhere in the mineral extraction ordinance or in the site plan review requirements.

The revisions outlined below establish that Plan Review criteria under Section 605 are an organizational tool for the Planning Board and are not meant to impose further requirements on the applicant. Those criteria that used to state their own requirements have been redrafted to point to the applicable requirements, which are contained elsewhere in the land use ordinance. As redrafted, the new Section 605 reflects the fact that there are sixteen different aspects of a quarry that must be considered and summarizes them so as to make sure that the Planning Board takes up each of the relevant aspects in turn and votes on compliance based on the substantive requirements that are laid out elsewhere in the ordinance.

- o Section 605(A)(1) should read: "Fencing, landscaped buffer strips, and other public safety and nuisance considerations for compliance with Sections 604(F) and 606(B) "
- o Section 605(A)(2) should read: "Signs and lighting for compliance with Section 604(F) "
- o Section 605(A)(3) should read: "Adequate parking spaces, loading and unloading areas for compliance with Section 812(C). "

November 10, 2009

Page 2

- Section 605(A)(4) should read: "Safe entrances and exits for compliance with Sections 604(E) and 812(B) "
- Section 605(A)(5) should read: "Total estimated life of the pit for compliance with Section 608."
- Section 605(A)(6) should read: "Days and hours of normal operation for compliance with Section 604(I) "
- Section 605(A)(7) should read: "Methods of operation, removal or processing for compliance with Sections 604(H) and 606(A) "
- Section 605(A)(8) should read: "Area and depth of excavation for compliance with Sections 604(B), 604(H) and 606(A) "
- Section 605(A)(9) should read: "Provision for temporary or permanent drainage and sedimentation control for compliance with Sections 604(H) and 606(A) "
- Section 605(A)(10) should read: "Disposition of stumps, brush and boulders for compliance with Section 812(O) "
- Section 605(A)(11) should read: "Type and location of temporary and permanent structures for compliance with applicable zoning requirements "
- Section 605(A)(12) should read: "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) and 812(L) and (O) "
- Section 605(A)(13) should read: "Complete rehabilitation proposals for compliance with Section 607 "
- Section 605(A)(14) grants a power to the Planning Board to require preparation of the plan by a professional engineer or geologist and should be placed within the general language under 605(A) between the first and second sentences.
- Section 605(A)(15) should be relabeled "(A)(14)" and should read: "Noise levels for compliance with Section 812(S) "

NOTE: the old subsection essentially required noise levels to conform to the levels set forth Section 812(S), with a difference of five decibels either favoring or disfavoring the quarry, depending upon the characterization of the abutting use. There doesn't appear to be any rationale for the separate noise requirement laid out in 605(A)(15). Also, the requirements laid out in 812(S) are more sensitive to the characterization of land uses, and would therefore seem to be a better standard for noise levels than the one currently laid out.

November 10, 2009

Page 3

- Section 605(B) should be relabeled "(A)(15)" and should read: "Vibration levels in compliance with Sections 604(H) and 606(A)."

NOTE: Sections 604(H) and 606(A) require applicants to demonstrate that they have obtained state and federal permits for their proposed operations. The federal Bureau of Mines has done extensive studies regarding acceptable vibration limits that prevent any property damage including cosmetic damage to any nearby structures. These limits represent a fair balance of interests between adjacent property owners and provide a clear guide to blast limits for any applicant. Also, language has been added to 604(H) which gives the Planning Board the authority to review the Applicant's technical capacity to comply with state and federal permitting requirements, including vibration requirements.

- Section 605(C) should be relabeled "(A)(16)" and should read: "Dust levels and measures for minimization in compliance with Sections 604(H) and 606(A)." See comments just above.

Also, the following changes should be made to other sections of the mineral extraction ordinance and site plan review requirements:

- A sentence should be added just prior to the last sentence in Section 604(A) as follows: "This information is in addition to information provided as part of the site plan review criteria required under section 800 et seq."
- Section 604(E) should be revised to read: "Plans for controlling access to the site. At a minimum, a solid gate with a lock shall be located at any entrances or exits."
- A sentence should be added to the end of 604(F) as follows: "Signs and lighting shall be designed to prevent public nuisance conditions or undesirable aesthetic effects on the neighborhood."
- A sentence should be added to the end of 604(H) as follows: "For applications requiring site plan review, the Planning Board will 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."
- Section 604(I) should be revised to read: "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."
- The language currently contained in Section 812(S)(4) should be stricken.

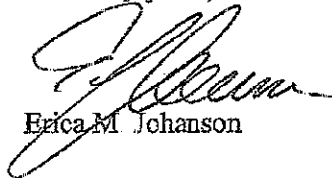
The proposed changes have grown out of Windham Properties' experience with the Ordinance over the course of three years and two separate applications. The goals of these proposed changes are (1) to cure constitutional infirmities in the current ordinance, (2) to make

November 10, 2009

Page 4

clear that the Town's protective site plan review requirements are applied to mineral extraction applications, (3) to make clear that applicants are also required to comply with extensive state and federal regulations of mineral extraction operations, (4) to provide the Planning Board with authority to review any applicant's technical capacity to comply with state and federal regulations specific to mineral extraction, and (5) to provide applicants with greater certainty regarding what they are required to provide to the Planning Board when they apply for a mineral extraction permit. Thank you for your time and attention to this submission.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Erica M. Johanson", written over the printed name.

Erica M. Johanson

c c    Peter Busque  
         Ken Grondin