

Town of Windham

Planning Department
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Windham, ME 04062

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December 12, 2019

Les Wilson & Sons, Inc.
C/o Chris Wilson
P.O. Box 1028
Westbrook, ME 04098

I am writing to confirm the Planning Board's approval of the 19-20 Major Site Plan application for a new 4.8 acre mineral extraction operation off of Maysens Way. The property is at Tax Map: 7 Lot: 36. Zone: Farm (F).

For your records, the Planning Board voted 4 to 0 to approve the site plan application at the meeting on October 9, 2019. The motion was made by Andrew Mayo and seconded by Kaitlyn Tuttle. Enclosed, please find the findings of fact and conclusions and conditions of approval.

Be advised that in accordance with Section 815.B of the Land Use Ordinance an appeal of any action taken 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.

In accordance with Section 814 of the Land Use Ordinance, 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 and completed within two (2) years of the date upon which the performance guarantee is accepted.

Sincerely,



Jennifer Curtis
Planner

Enclosure: Finding of Fact and Conclusions

Cc: Dustin Roma, DM Roma Consulting Engineers
Planning File

FINDINGS OF FACT

Utilization of the Site

- The project is located on a 17-acre property.
- The site is currently undeveloped and covered with a mixture of deciduous and evergreen trees and natural forest vegetation. An area was recently harvested for timber. The applicant should identify on the plan the area that has been cleared of natural vegetation.
- The applicant should indicate the intended length of time the pit is planned to be in operation, and how many truckloads of material will be removed over that time period.
- The applicant should include an estimate the number of truckloads of material to be removed.
- The application states that the pit is anticipated to be in operation for 5 years. The applicant indicated during the Sketch Plan presentation that the truck traffic would be would occur during the hours of 7AM and 6PM. Stumps may be stockpiled and ground on site to be transported off the property as erosion control mix. The aggregate material will be transported to the owner's Westbrook facility where it will be stockpiled for use by the owner's company.

Vehicular and Pedestrian Traffic

- The subject parcel is a non-conforming lot that does not have frontage on an existing road. The road that will provide frontage, Maysens Way, is currently under construction as part of the Highland Woods Subdivision. Maysens Way will be built to the minor local street standard and intended to be offered to the Town for public acceptance.
- A natural buffer strip at least 50 feet wide must be maintained between the working edge of an excavation and any private road or right-of-way. The width of the buffer may be reduced if the applicant receives written permission from the person having a right-of-way over the private road. The buffer strip was not shown on the October 7, 2019 Final Plan submission. A buffer strip is shown on the Final Plan dated October 30, 2019.
- The access driveway should be shown on the plan. Access driveways shall be paved a minimum of 100 feet from the intersection with the public or private street. The paved access drive was not shown on the October 7, 2019 Final Plan submission. 100 feet of paved driveway is shown on the Final Plan dated October 30, 2019 at the entrance/exit.
- Sight distances for the entrance must be shown on the final plan.
- The final plan submission should include information on days and hours of operation and the anticipated peak hour and daily traffic to be generated. The October 7, 2019 Final Plan submission indicated that work hours would be between 7AM and 6PM. Anticipated peak hour and daily traffic estimates were not provided. The November 4, 2019 submission states that hours of operation will be 7AM to 5PM.

- A traffic impact study is required for projects will generate fifty (50) or more trips during the a.m. or p.m. peak hour.
- The applicant indicated that the access road would be gated. A gate is shown on the October 7, 2019 Final Plan submission.
- In an email dated October 16, 2019 Mark Arienti, P.E., Town Engineer, commented that a detail for the gate at the gravel pit entrance should be provided.
- In response to comments dated October 23, 2019, Dustin Roma, P.E., on behalf of the applicant, responded that a detail for the gate was added to the plan, and the gate will consist of two concrete blocks and a chain, with PVC pipe and reflective cover installed over the gate for safety.
- The applicant stated that vehicles will not be accessing the site every day. There may be several weeks between a series of haul trips.
- In an email dated October 16, 2019 Mark Arienti, P.E., Town Engineer, commented: An additional 1" of base course hot mix asphalt is recommended to be added to Maysens Way to compensate for the large number of heavily-loaded dump trucks hauling gravel from the pit over this road. This would result in 3.5" of base course HMA, which would help lessen the damage to the road during the 5 years that the gravel pit will be operated.
- In response to comments dated October 23, 2019, Dustin Roma, P.E., on behalf of the applicant, responded that Maysens Way was designed to meet the Town's standards for a public street, and would adequately handle the heavy vehicle traffic related to the pit. In conversation with Planning Staff, the applicant indicated they were willing to include an additional line item in the performance guarantee to cover any needed repairs to Maysens Way, due to the operation of the pit.

Sewage Disposal and Groundwater Impacts

- The development is not proposing a private subsurface wastewater disposal (septic) system.
- The sketch plan submission states that preliminary test pits have been conducted on the property will be supplemented with additional test pits to determine depth to groundwater.
- The application states that seasonal high groundwater in the area of the proposed excavation has been estimated at 223' based on nearby wetland elevations. Higher groundwater levels were encountered along the eastern property boundary.
- Excavation may not occur within five (5) feet of the seasonal high groundwater table. A benchmark sufficient to verify the location of the seasonal high water table and at least one monitoring well must be established and maintained by the operator to demonstrate separation above groundwater in accordance with 606.A.2.e.
- The applicant is proposing to install monitoring wells on the eastern property boundary, where groundwater was encountered at higher elevations, to ensure that the base of excavation is maintained 5' above the water table. In an email dated October 16, 2019 Mark Arienti, P.E., Town Engineer, commented; "Although the exact location of these wells is not known at this time, the approximate location should be noted on the plan"
- Locations of surrounding drinking water supplies should be shown on the plan. A 200-foot separation from any excavation and a dug well, a 100 foot separation from a private well, or more for public drinking water sources.

- The applicant stated that they located drinking water wells in the area and verified that none were located within the required setbacks. None are shown on the plan as they are not within the area.
- The final plan should include information related to refueling operations on site any proposed spill prevention, control and countermeasures plan which must comply with 606.A.2.d. Information related to refueling operations on site were not included the October 7, 2019 Final Plan submission.
- According to the State of Maine Department of Environmental Protection (DEP), Article 7, Section 490-C, a DEP permit is not required for excavations less than 5 acres in size.

Stormwater Management

- Per Section 812.E, a stormwater plan needs to be submitted that meets the standards DEP Chapter 500 Stormwater Management.
- The Town received a copy of Maine DEP Stormwater Permit by Rule #68972 accepted November 7, 2019.
- The Final Plan submitted on October 7, 2019 includes stormwater management plan for the site to be internally drained, including a stormwater collection swale with an underdrain pipe, and a riser at the culvert inlet to ensure internal drainage.
- In an email dated October 16, 2019 Mark Arienti, P.E., Town Engineer, commented: The plan shows a stormwater collection swale with an underdrain. Is there an outlet for the underdrain?
- In response to comments dated October 23, 2019, Dustin Roma, P.E., on behalf of the applicant, responded that the underdrain has been removed so that the pit remains internally drained.
- In an email dated October 16, 2019 Mark Arienti, P.E., Town Engineer, commented: A detail should be provided for the culvert invert near the gravel pit entrance.
- In response to comments dated October 23, 2019, Dustin Roma, P.E., on behalf of the applicant, responded that the culvert has been removed so that the pit remains internally drained.
- Any person owning, operating, leasing or having control over stormwater management facilities required by a stormwater management plan approved as part of a mineral extraction operation is required to annually inspect the stormwater management facilities and provide a certification to the Town of Windham. See Condition of Approval #2.
- The proposed development is located within Colley Wright Brook Watershed, which is not a watershed of a lake most at risk from new development as designated in Chapter 502: Direct Watersheds Of Lakes Most At Risk From New Development, And Urban Impaired Streams of the Maine Department of Environmental Protection, and therefore does not require independent review per 807.F.6.
- The Final Plan should indicate setbacks to freshwater wetlands in accordance with 606.3
- The applicant states that there are no wetlands that classify as protected natural resources under 606.3, and therefore a setback is not required. Staff concur.

Erosion Control

- A soil erosion and sediment control plan must be submitted with the final plan set. This may take the form of a printed best management practices plan rather than on-the-ground designation of erosion control measures.
- Soil erosion measures are included on the Final Plan submission dated October 7, 2019 including a sediment filter fence between the excavation area and downslope wetlands, and a detail of erosion control mix berm.
- A final rehabilitation plan including seeding, planting, drainage, erosion control, final grading, shaping, and surface stabilization plans showing contours at five (5) foot intervals must be submitted with the final plan set. Where an embankment remains after the completion of operations, it shall not be graded at a slope not steeper than 1 foot vertical to 2.5 feet horizontal.
- A reclamation plan submitted with the Final Plan submission on October 7, 2019 indicates that all slopes will be permanently stabilized with loam and seed following completion of mineral extraction operation. The steepest portion of the proposed rehabilitation grading is shown on the plan as 2' vertical to 5 feet horizontal. The grade must be consistent across the slope to meet the requirement of no steeper than 1 foot vertical to 2.5 foot horizontal.

Utilities

- No permanent utilities will be supplied to the site.
- The nearest fire hydrant is located over 1 mile away from the project site at the corner of Albion Road and Pope Road.

Financial & Technical Capacity

- Evidence of technical capacity must be provided as part of the Final Plan submission.
- As part of the next submission, the applicant must show an estimate the total project costs, and submit evidence of financial capacity to complete the project as proposed.
- Evidence of technical and financial capacity were not included in the Final Plan submission dated October 7, 2019.
- The Response to comments dated October 23, 2019 states for technical capacity that Les Wilson & Sons, Inc. is an earthwork contractor based in Westbrook that has been in business for 60 years.
- The Response to comments dated October 23, 2019 states for financial capacity that there are no significant costs associated with the project because the applicant already owns the necessary equipment to operate the project.

Landscape Plan

- The tree cover on the perimeter of the property should be shown on the final plan and a note added to the plan restricting removal in the tree line area. If insufficient vegetation exists within the required natural buffers from the property boundary then a plan for reestablishing vegetation must be submitted with the final plan.

- The Final Plan Application submitted on October 7, 2019 does not include a note restricting removal of perimeter vegetation.
- An updated plan submitted on November 21, 2019 includes a reference in the buffer to a note on the plan stating that a 50 ft natural buffer strip shall be maintained between any excavation and property boundary, with a reference to section 606.4. See proposed Condition of Approval #4.

Conformity with Local Plans and Ordinances

1. Land Use

- The project meets the minimum lot size and setback requirements of the F zoning district.
- The proposed mineral extraction use is permitted in the Farm District if it meets the standards Section 600 Mineral Extraction.

2. Comprehensive Plan

- This project meets the goals and objectives of the 2017 Comprehensive Plan. The project is located in the rural area of the Future Land Use Plan.

3. Others:

- Mineral Extraction, Section 600. The Planning Board shall take into consideration the following:
 1. Fencing, landscaped buffer strips, and other public safety and nuisance considerations
 2. Signs and lighting
 3. Adequate parking spaces, loading and unloading areas
 4. Safe entrances and exits
 5. Total estimated life of the pit
 6. Days and hours of normal operation
 7. Methods of operation, removal or processing
 8. Area and depth of excavation
 9. Provision for temporary or permanent drainage and sedimentation control
 10. Disposition of stumps, brush and boulders
 11. Type and location of temporary and permanent structures
 12. Storage and containment of any materials (e.g., petroleum products, salt, hazardous materials, rubbish, treated timber)
 13. Complete rehabilitation proposals for compliance with Section 607.
 14. Noise levels
 15. Vibration levels
 16. Dust levels and measures for minimization

The project must meet the performance standards in Section 606.A

1. Solid Waste. Wood waste must be disposed of in accordance with state law.

2. Groundwater Protection. See Site Plan Review.
3. Protected natural resources. The property does not include any protected natural resources identified in this subsection.
4. Natural buffer strips. Existing vegetation may not be removed. See Site Plan Review
5. Public or private roads. Fifty (50) foot natural buffer strip required from right-of-way. See Site Plan Review – not addressed on October 7, 2019 submission. Partially addressed in November 4 plan submission.
6. Property boundary. Fifty (50) foot natural buffer strip from any property boundary. If written permission of the abutter is obtained, excavation less than ten (10) feet from lot lines may be allowed. See Site Plan Review – not addressed on October 7, 2019 submission. 50’ buffer shown on November 4, 2019 plan submission.
7. Excavation at least two hundred (200) feet from any existing residence.
8. Erosion and sedimentation control. See Site Plan Review
9. Water quality protection and stormwater management. See Site Plan Review.
10. Traffic. See Site Plan Review.
11. Noise. See Site Plan Review.
 - i. The maximum sound pressure level measured at least four (4) feet above ground at the closest occupied structure shall not exceed sixty (60) dBA during the day and fifty (55) dBA at night.
12. Dust. Dust generated must be controlled by BMPs. The access driveway shall be paved a minimum of 100 feet. Loaded vehicles shall be suitably covered to prevent dust from spilling or blowing from the load. In an email dated October 16, 2019 Mark Arienti, P.E., Town Engineer, commented: the application should indicate how dust from the truck traffic into and out of the gravel pit will be controlled.
 - In response to comments dated October 23, 2019, Dustin Roma, P.E., on behalf of the applicant, responded that forested buffer areas around the perimeter of the property would minimize dust, and that the pit floor and haul road would be treated with water as necessary to control dust.
 - The Plan dated 10-30-19 shows a 100’ paved apron at the entrance/exit of the haul road.
13. Blasting. Not applicable.

Impacts to Adjacent/Neighboring Properties

- The development proposal does not include the construction of buildings, wall, fencing or landscaping that would interfere with or discourage the appropriate development in the use of adjacent land or unreasonably affect its value.
- The working area pit of the must be screened by the vegetated buffer.
- See “Conformity with Local Plans and Ordinances”
- There is no proposed blasting to occur on the property. In response to comments dated October 23, 2019, Dustin Roma, P.E., on behalf of the applicant, responded that excavation work is not expected to generate high levels of noise or vibrations beyond the property limits and that forested buffer areas around the perimeter of the property would minimize noise offsite.

- The November 4, 2019 submission includes the following text, for a sign to be installed at the project entrance: “THIS SAND AND GRAVEL PIT IS APPROVED BY THE TOWN OF WINDHAM, IN ACCORDANCE WITH THE LAND USE ORDINANCE, WITH LIMITATIONS AND CONDITIONS CONTAINED IN A SITE PLAN APPROVAL GRANTED BY THE WINDHAM PLANNING BOARD. HOURS OF OPERATION ARE 7 AM TO 5 PM. CONTACT THE TOWN OF WINDHAM PLANNING DEPARTMENT FOR ADDITIONAL INFORMATION.”

CONCLUSIONS

1. The plan for development **reflects** the natural capacities of the site to support development.
2. ~~Buildings, lots, and support facilities **will/will not** be clustered in those portions of the site that have the most suitable conditions for development.~~
3. Environmentally sensitive areas, including but not limited to, wetlands; steep slopes; flood plains; significant wildlife habitats, fisheries, and scenic areas; habitat for rare and endangered plants and animals; unique natural communities and natural areas; and, sand and gravel aquifers **will** be maintained and protected to the maximum extent.
4. The proposed site plan **has** sufficient water available for the reasonably foreseeable needs of the site plan.
5. The proposed site plan **will not** cause unreasonable soil erosion or a reduction in the land’s capacity to hold water so that a dangerous or unhealthy condition results.
6. The proposed use and layout **will not** be of such a nature that it will make vehicular or pedestrian traffic no more hazardous than is normal for the area involved.
7. The proposed site plan **will** provide for adequate sewage waste disposal.
8. The proposed site plan **conforms** to a duly adopted site plan regulation or ordinance, comprehensive plan, development plan, or land use plan.
9. The developer **has** adequate financial capacity to meet the standards of this section.
10. The proposed site plan **will not** alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
11. The proposed site plan **will** provide for adequate storm water management.
12. The proposed location and height of buildings or structure walls and fences, parking, loading and landscaping shall be such that it **will not** interfere or discourage the appropriate development in the use of land adjacent to the proposed site or unreasonable affect its value.
13. On-site landscaping **does** provide adequate protection to neighboring properties from detrimental features of the development that could be avoided by adequate landscaping.

CONDITIONS OF APPROVAL

1. Approval is dependent upon, and limited to, the proposals and plans contained in the application dated August 19, 2019, as amended October 30, 2019, and supporting documents and oral representations submitted and affirmed by the applicant, and conditions, if any, imposed by the Planning Board, and any variation from such plans, proposals and supporting documents and representations are subject to review and approval by the

Planning Board or the Town Planner in accordance with Section 814.G. of the Land Use Ordinance.

2. Any person owning, operating, leasing or having control over stormwater management facilities required by a stormwater management plan approved as part of a mineral extraction operation is required to annually inspect the stormwater management facilities and provide a certification to the Town of Windham.
3. A performance guarantee for the project shall include an amount for road repairs to Maysen's Way and to the portion of Highland Cliff Road within 100' of Maysen's Way, that may be required due to traffic associated with the gravel pit.