



# Town of Windham

Town Offices  
8 School Road  
Windham, Maine

## Meeting Minutes - Final

### Planning Board

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Monday, January 28, 2019

7:00 PM

Council Chambers

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#### 1 Call To Order

#### 2 Roll Call and Declaration of Quorum

*The meeting was called to order by Chair, David Douglass. Other members present were: Keith Elder, Bill Walker, Griffin Bourassa, Drew Mayo, Kaitlyn Tuttle and Michael Devoid.*

*Planner, Amanda Lessard was also present.*

#### 3 [PB 19-006](#) Approval of Minutes: January 14, 2019

**Attachments:** [Minutes 1-14-19 - draft.pdf](#)

*Bill Walker made a motion to accept the minutes of the January 14, 2019 meeting.*

*Seconded by Griffin Bourassa.*

*Vote: Six in favor. Michael Devoid abstained.*

### **Public Hearings**

#### 4 Amendment to Town of Windham Land Use Ordinance, Chapter 140, Sections 600 Mineral Extraction and 800 Site Plan Review. Proposed changes related to mineral extraction operations.

*Amanda Lessard explained:*

- The proposed amendments were recommendations from the Mineral Extraction Committee which had met last summer and fall. The Committee had also held a forum to obtain public comment; and met with officials from DEP.*
- The proposed amendments would bring the town's ordinances closer to the State standard. In the areas of setbacks, roads, blasting, hours of operation, and dust control they were more restrictive.*
- Additional standards in the site plan ordinance were included for operation of private ways, stormwater management inspections, and denial of a permit if there were existing violations.*
- There were no proposed changes to where mineral extraction was allowed because the Committee hadn't reached a consensus. The Committee had asked either the Long Range Planning Committee or the Town Council for further consideration of the location of uses. There had been consensus that it may not be appropriate on private roads where there was dense residential development.*

*Public Comment:*

Margaret Pinchbeck, Nash Road – They had purchased their house and a quarry came in after them. In the January 7, 2019 memo to the Planning Board it stated the Mineral Extraction Committee had discussed concerns regarding mineral extraction impacts on water quality and considered prohibitions. The majority were not in favor of that approach. She would like to know more about that.

Ms. Pinchbeck had attended the public forum. She thought an area where the ordinance should be stricter than the State was the vibration standard. There had been cracking in her walls and she couldn't find out what the vibration standard was. Who did you call? Who would monitor it to be sure it was being done right? Code Enforcement said to call DEP. When you called DEP they said you could file a complaint.

DEP approval - DEP was overworked and didn't have time for it. The Nash Road quarry had gotten its approval without DEP setting a foot on it.

The fencing standard had been amended. It had required snow fencing to keep animals and kids from falling in. That had been changed and it was bothersome that things were in and then removed.

At one time the ordinance required both Planning Board and Town Council review. That requirement had been amended to remove Town Council review.

Mineral extraction operations - Why was the drilled well separation different from the dug well separation?

Excavation not within five feet of the ground water table unless there was a variance from DEP - She would like to see no blasting below the water table because you did not know what effect it could have.

Erosion and sedimentation control - The pit near her was supposed to be internally drained. They got an amendment to be externally drained and it was near Colley Wright Brook.

Blasting - Instead of allowing blasting hours from 11:00 to 4:00, changing them to 10:00 to 2:00 would avoid school bus traffic. She was happy to see a pre-blast survey was required. You could no longer hear the blast horn before a blast at Nash Road. You needed some warning because it shook the house. Could they include wording so the warning could be heard for a certain distance from the quarry?

Rehabilitation requirements- If the fencing requirement was taken away it would be better to have a shallower 1:2 slope.

Ms. Pinchbeck would like the Code Enforcement office to inspect twice yearly.

Amanda Lessard explained:

- At the public forum she had understood from DEP that depth and sedimentation were different for drilled vs. dug wells.
- Blasting times had been established to allow for set-up. They would need to hear from industry experts regarding a change to those.
- The Town of Cumberland had obtained third party review of the draft recommendations. The suggestion for a 1.5:2.5 rehabilitation slope had come from them. It was worth more deliberation.

*Michael Manning, Bruschi Road – The Planning Board, Long Range Planning committee, and Town Council had a recurring theme of responsibility to the town, citizens and resources. Too often people shirked their responsibility, asked for waivers, or did what they shouldn't.*

*Mineral extraction originally was to help farmers, there was talk about moving dirt, not drilling a hole 200 to 300 feet into the ground. The farm zones, C1, C2, C3, all had people living in them. There were a lot of areas where you shouldn't dig a pit and if you were creating a pit were you doing it responsibly?*

*The provision that no new mineral extraction could be permitted to access a private road or way which provided access to 100 dwelling units - People would find a way around that, maybe a different access but it would still be in the vicinity of those homes. That wasn't being responsible for themselves, or the long term health and well being of the area.*

*A pit would continue to leach into the environment and not be developed into anything. That is what they were talking about allowing. Sometimes being responsible meant saying no.*

*Windham's growing community needed solutions, not more issues. Large scale mineral extraction in the area would bring nothing but issues and little value to the town.*

*Bill Shane, Cumberland Town Manager – The town had Sevee & Mahar review the proposed amendments and had received suggestions to tweak the ordinance.*

*Testing prior to blasting – Cumberland always did well yield and quality testing. When blasting you needed to know turbidity, coliform, and radon. Those were not typically included in a basic well test.*

*It is important to show that private wells haven't been impaired and equally important for a large scale quarry operation to do all the houses around. That would provide baseline tests. It is important to identify assessment features. Cumberland was interested because there were over 300 homes fed by the aquifer whose recharge area was Forrest Lake. Over five billion gallons flowed through it and it fed Cumberland, Windham, and Gray.*

*It was important to know the variance for excavation into the groundwater was almost a checkmark on a DEP application. Any new pits were only allowed in Cumberland as a contract zone.*

*Paula Curcio, Gray resident, Trustee of the Forest Lake Association, and co-chair of the Forest Lake Association Civic Affairs Committee - She had provided the Board with information in a Power-point presentation. She expressed concern for the quality of life of Windham residents and those in surrounding communities that were affected by Windham's regulations, noise pollution from blasting and trucking; dust; safety of children walking to and from bus stops; health of people and links to the dangers of silica dust; and the uncontrolled propelling of rock. Who would be accountable for damage and remediation of damage to lakes?*

*Windham shared lake frontages with the towns of; Standish, Gray, Raymond, Falmouth, Cumberland, Sebago, Frye Island, and Westbrook. Mineral extraction projects in Windham could affect the good life, safety, and property values of residents on those other towns also. Abutting towns should be consulted before approving mineral extraction projects.*

*Janine Gorham, Cumberland – She said it was hard to understand why a developer would clear cut 100 acres of trees along the road, leaving slash, without consideration or regard for the neighboring community. Forest Lake was under constant threat by run-off and non-source point pollution and was on DEP's list of waterbodies at risk of development.*

*Jennifer Culpovich, Lakeside Drive – She had attended several mineral extraction meetings and had asked, on behalf of many residents, that they have a closer look at zoning and aquifer protection overlay. That was denied. They were requesting no mineral extraction in certain areas. The Committee members said they couldn't focus on specific areas. It was important to look at the Comp Plan and change the zoning ordinances in that area. The Long Range Planning committee should look at the area. They needed to listen to the people of Windham.*

*Drew Mayo, Mineral Extraction Committee Chair and Planning Board member explained the Committee was not formed to look at one area or one specific project. They were charged to review all of Windham. That should be kept in mind when reviewing the changes.*

*Kevin Clark, James Way – What changes were proposed by the Mineral Extraction Committee? There were no changes to where mineral extraction was proposed to occur which was one of the things to be focused on.*

*Amanda Lessard explained the Mineral Extraction Committee was charged with reviewing the zoning map and making recommendations. There was discussion from some committee members to prohibit it in certain areas but the Committee's majority vote was to make no change.*

*Mr. Clark thought that was people's frustration. 23 people had spoken against it after the Mineral Extraction Committee's public hearing. Not one person spoke for it. Not one change was made based on those 23 people's public input.*

*The town's Comp Plan mentioned conservation, protection and or acquisition of forest lands, open spaces, wildlife habitats, water and natural resources over 200 times. Not once did it mention mineral extractions. There was enough proof that it was kind of devastating to the community that mineral extractions were in, silicas dust and carcinogens along roads that people walked on.*

*Mr. Clark felt that they had failed to address, through the Mineral Extraction Committee and up until that day, things like the impacts of mineral extraction on natural resources, past violations of contractors and to focus on a radius of dwelling units around mineral extraction.*

*Had the Planning Board reached out to any of the neighboring towns or previous town managers to get their feedback?*

*Amanda Lessard explained that notices of project applications were sent to abutting town offices when a project application was received. She had spoken with the Cumberland Town Manager and the Falmouth Planning Department.*

*Mr. Clark stated other issues were not being addressed. There was no protection of aquifers, no proposed changes to discuss that.*

*Drew Mayo explained that the Committee's charge was to review and make*

recommendation on zoning, or restriction through regulation. They couldn't align on zoning which was discussed at length and went with regulations and a recommendation to Town Council that they needed to review zoning further with the Long Range Planning Committee.

Regan Thibodeau, Mineral Extraction Committee member – The Committee had recommended many things. They did propose zoning and look at the entire map. It was very confusing for residents that lived in Windham and wanted to protect all water resources, not specific to a project. They were told you couldn't have an aquifer overlay it would close all the pits.

She felt the make up of the Committee made it hard to put forth any changes without becoming combative. There were two residents trying to protect watersheds in all of Windham.

Holly Tubbs, Windham resident and master plumber – She said the only way for residents to protect themselves was to have their water tested before a project started. If you didn't you would have no recourse and couldn't prove that your well had been damaged. E-coli was a big contaminate; it meant you were drinking sewerage. She had done work around the lakes in town, Highland Lake and Forest Lake, and had seen septic systems that were running raw sewerage into the lakes.

Scott Campbell, President of the Lakeside Drive Road Association – Their private road followed at least half of the southwest side of Forest Lake. There were many challenges. A quarry off a private road was a huge thing. There would be legal and financial responsibilities. Would they have a role as Council and the Planning Board proceeded?

Tina LaBlanc, Lakeside Drive – She had attended a few Mineral Extraction Committee meetings and felt frustration with the meeting process; the topics discussed or not; how things were shot down and others were voted on when it was not really a majority vote of the people. There were already 16 mineral extraction operations in town; why were more needed?

Shirley Storey-King, Vice Chair of the Cumberland Town Council and Chair of their Ordinance Committee – They had some projects or roads that involved blasting and had learned after the first one. It may not be the town's responsibility but it is its duty to cover themselves from resident's kickback if there was damage from a project. The pre-blast survey should be comprehensive and include walls and foundations, not just wells.

She noticed there were not specific hours of operation. Cumberland citizens lived in the radius. Blasting operations on weekends would negatively affect them. She requested email notification of blasting within 24 hours.

Stephanie Copp, Cumberland – She requested that residences within a particular radius be included.

Dustin Roma, Windham resident and civil engineer – His concern was the town was looking at mineral extraction as a one use category, regardless of size and duration. There had been much comment regarding large projects with trucks going for potentially decades, completely changing neighborhoods.

The town currently classified small earthmoving practices as mineral extraction. Ordinance language permitted small and incidental to approved site and subdivision

plans. He wanted to be sure it was within the discretion of the Board to review those types of projects to use on-site resources. Those were a big difference from other types of extraction.

Larry Grondin, RJGF Grondin & Sons – They were a long-standing business operation in Windham. He commended the Mineral Extraction Committee's goal to mirror the State regulations. The program was successful. He had two specific notes: Blasting events were weather dependent. 11 to 4 was already a smaller window. He recommended not to be more restrictive. He had found notification of abutters prior to blasting was very effective; same day notice was the most effective. Some people didn't want to be called.

Regan Thibodeau expressed concern for children who may be injured while walking in proximity to a blast zone from 2:30 to 4:30. Mineral extraction was too big; there were so many things. Maybe they needed to talk about small projects and big projects. Keep bigger projects on hold until it could be resolved. Why not say no mineral extraction in any watershed?

Denise Tanguay, Windham – How many times did they have to go to meetings? They didn't want any more mineral extraction. A lot of people were expressing it. Had they been heard?

There was no more public comment. The public hearing was closed.

Bill Walker made a motion to take the agenda items out of order.

Seconded by Griffin Bourassa.

Vote: All in favor.

5 Amendment to Town of Windham Land Use Ordinance, Chapter 140, Sections 800 and 900. Proposed changes require independent review of site plan and subdivision applications for development in watersheds of lakes most at risk from new development.

Amanda Lessard explained:

- Staff had worked with the Highland Lake Leadership Team's Ordinance Committee and had presented the proposed amendments to Town Council.
- The amendments would require independent review, by a qualified consultant, of site and subdivision plans for applications in lake watersheds most at risk from new development. The consultant would review specific performance standards related to storm water, erosion control, hydrogeologic analysis, and sit evaluations.
- The recommendation was based on concern regarding phosphorous standards. It would provide a second review to verify the project was in compliance with those standards.
- Town Council had asked the Board to additionally consider adding environmental review to the amendment and if the independent review should be town-wide and not only in lake watersheds most at risk.

Public Comment

John McKinnon, Haven Road and a member of the Highland Lake Leadership Team. He stated the Leadership Team was a well-rounded, reasonable group that had reached consensus on the third party review recommendation. He wanted to address some misperceptions. This would not be a redesign of a project but more of a straight-face test of the development plan, looking for and following up red flags.

*They had developed a check list that a reviewer could use. Among the items on that list were: all impervious surfaces were accurately represented in the pre and post development stormwater calculations; calculations were accurate for conditions observed on the ground; sheet flow through buffers was consistent with post-construction land use, topography, and ground cover; all developed areas were included in the phosphorous export calculations.*

*This was something they already did. They weren't really expecting much more than what they were proposing. The town's third party review, Gorrill-Palmer, had read and responded to the list. The responses were basically consistent with what they were anticipating a third-party reviewer to do. There were a few areas where they differed on what they proposed and what Gorrill-Palmer said was necessary. He thought the workable solution was to determine the scope of third-party reviews.*

*Mr. McKinnon envisioned a third-party reviewer to do initial plan review; flag questionable assertions in the plan; look at field conditions to see whether those assertions are correct and possibly turn up other things during the site visit. A lot of it had started with an application where mistakes were made.*

*There was a misperception that nothing was being done about existing development. He had just finished a draft watershed survey report that broke down 129 sites which had been identified by volunteers and professionals around the lake, in existing development that needed attention.*

*Dustin Roma, a civil engineer with DM Roma Consulting Engineers – He had no objection to the scope and content of any of the reviews. He had an issue in reading the language which seemed to have the Board delegate its authority to third-party groups. In each section it talked about that they shall determine adherence to the ordinances. To him that said they were making a ruling as to whether a project met an ordinance and the Planning Board was the only entity that could do that.*

*It had to be clear that the independent third-party reviews were advisory and that the information came to the Board as an advisory memorandum. The Board could take the information and determine if projects met the ordinance. It could get messy when you were asking a third-party consultant to decide if a project met and town ordinance. The responsibility had to go back to the Board and that part should be removed from each of those sections. Make sure it was clear that those reviews are advisory only.*

*There was no more public comment. The public hearing was closed.*

## **Continuing Business**

- 6      [PB 19-007](#)      Amendment to Town of Windham Land Use Ordinance, Chapter 140, Sections 600 Mineral Extraction and 800 Site Plan Review. Proposed changes related to mineral extraction operations.

**Attachments:**    [PB packet\\_Mineral Extraction\\_01-23-19.pdf](#)  
[Town of Cumberland - Mineral Extraction Ordinance.pdf](#)  
[Brianna Schoen\\_FLA\\_Mineral Extractions\\_20190128.pdf](#)

*The Board commented:*

- *There was a fine balance with water and gravel pits. Both had their purpose, both were needed. Many pits in town abutted water. Some had issues, some didn't.*

- They wanted to conserve the environment but also land owner rights.
- More dialogue was needed.
- The Committee had met every week for four months. They had reviewed many topics. The Committee had been split on some things. Zoning and the aquifer overlay was discussed in depth. It was very hard to separate one area because of one property project from the rest of the town. The bigger challenge was trying to put something together that was best for the entire town without being able to justify something specific for one area.
- There was so much information. Projects should be broken down by small projects, vs. bigger, longer term ones.
- Water quality had been brought up a lot. Blasting in rock opened fissures and should be prohibited within five feet of the water table.
- How would you determine where to draw a line for an aquifer overlay?
- The density and number of homes on a road seemed arbitrary. Using the number of homes in an area seemed to make more sense.
- Was it possible to have a meeting with the Planning Board and the Mineral Extraction Committee so they could answer board questions?
- Town Council should be part of the discussion also. This was difficult to navigate.
- Whatever decisions were made, it would be a long-term thing. It had to be a good fit town-wide. The approach must be correct and implemented accordingly.
- Citizens were entitled to quality of living, safety, and being happy where they were. But, mineral extraction was an important part of construction and development so it should be facilitated appropriately.
- It was important to clarify what was included in the size of a pit. Did it include everything that was not disturbed area? Was it active excavation or impervious area? Did it include parking, and stockpiles? Without clarification an unintended consequence may be that homeowners could be prohibited from doing extensive work to their yard.
- What was the acceptable road standard for improvement to the nearest public street?

Bill Walker made a motion to able to the February 11, 2019 meeting as continuing business.

Seconded by Keith Elder.

Board discussion:

- In addition to the Mineral Extraction Committee it was important to have a hydrogeologist present for questing.
- Consensus of the Board was they had already accepted public comment so there would be none at the meeting on the 11th.
- Focus of the discussion would be technical comments and recommendations to Town Council.

Vote: Six in favor. Drew Mayo opposed.

Griffin Bourassa made a motion for a ten minute recess.

Seconded by Keith Elder.

Vote: All in favor

Meeting went into Recess

Meeting Reconvened



- 7 [PB 19-008](#) Amendment to Town of Windham Land Use Ordinance, Chapter 140, Sections 800 and 900. Proposed changes require independent review of site plan and subdivision applications for development in watersheds of lakes most at risk from new development.

Attachments: [PB packet Independent Review 01-23-19.pdf](#)

[HLLT Recommendations.pdf](#)

[Dennis Brown Comments on Planning Board Discussion on Independent Review.pdf](#)

*There were other parts of the recommendation: shoreland photography, manure management, and follow up BMP inspections.*

*Mr. McKinnon explained some of those recommendations from the Highland Lake Leadership Team were ordinance related and some were not.*

*Photographing lake shorelines for baseline development - They envisioned this as a tool for the Code Enforcement Office. It was a technology that was being used elsewhere in Maine.*

*Establishment of manure policies - The State had a nutrient management plan for facilities with 50 or more animals. There was not much for less than that. They thought it was appropriate to have an ordinance in place for smaller horse/cattle farms. Even at low levels those contributed a lot of phosphorous to the lake.*

*BMP inspections for subdivisions and 319 Grants – These would determine whether maintenance was recommended. DEP currently admitted it was not able to follow up with the five year recertifications for subdivision stormwater management facilities. The Highland Lake Leadership Team envisioned having the town pick up some of the load; otherwise it wouldn't happen.*

*319 Grant inspections – There would inspections of the BMPs for federally funded grant projects that were put in place as a result of watershed management plans. No one was responsible now for checking the BMPs for construction with federal grant money.*

*Amanda Lessard explained:*

- *Town Council had asked staff to work on language for recommendations that were ordinance related.*
- *The shoreland photography may come forward in the budget and Council goal setting for next year.*

*Board Comment:*

- *The advisory memorandum was a legitimate point. You had to be careful delegating. It was up to the Board to determine ordinance compliance.*
- *It was a struggle putting that requirement on every contractor and developer but it was a tool that could be utilized.*
- *If someone wasn't doing a good job with design or oversight, putting a third-party on it was just another layer. It was better to get rid of the layer that was bad. If someone was doing a bad job don't let them present or oversee.*
- *The idea of someone inspecting BMPs six months or a year after a job to see if they were in place was good.*
- *If there were two conflicting reviews did it fall back on the Board to decide?*
- *Design professionals were licensed and you had to trust them.*

- *DEP was fully funded. It was not the developer's responsibility to enact a private DEP because of development.*
- *There was no provision to have every property owner on endangered lakes have their property reengineered. There was a lot of junk going into the lakes and no provision to have that quantified.*
- *Suggest it as a timed policy change and look at it again in four years to see if it was worthwhile and how many times something got caught. Then revoke it or continue it.*

*Bill Walker made a motion to recommend, with comment, the proposed amendment of sections 800 and 900 of the Land Use related to independent review of site plan and subdivision applications in watersheds of lakes most at risk for new development for a time period of four years and it would be reviewed to see if that policy was still necessary and that in the process information or data will be collected to identify whether or not there was value to the review process.*

*Seconded by Michael Devold.*

*The Board commented:*

- *What was the mechanism to review?*
- *What data would be mined?*
- *How would it be reviewed?*
- *How would it be vacated in four years if it was not effective?*
- *Who would make that decision?*
- *Would the added expense discourage development over the next for years? Should they consider a shorter time frame?*
- *The cost was not known.*

*Vote: Four in favor. David Douglass, Drew Mayo, and Keith Elder opposed.*

*The Board commented on the Council's request to include environmental review and making the review town wide for site and subdivision plans in all watersheds, not just those at risk.*

- *Site visits, flagging wetlands etc., and having an engineer present was being done so it wasn't necessarily needed now. How would environmental review be different?*
- *If the additional review found things, then maybe they could decide to do it town-side.*

*Mr. McKinnon responded the environmental review would depend on the capability of the in-house third-party reviewer.*

*Amanda Lessard said that wasn't specified in the way it was written.*

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**8**      [PB 19-009](#)

18-12 Highland Woods. Major subdivision preliminary plan review. MTR Development, LLC to request review of a 12 lot residential cluster subdivision. The property in question is located at Highland Cliff Road and identified on Tax Map: 7, Lot: 36, Zone: Farm (F) and Stream Protection (SP).

**Attachments:** [18-12 Highland Woods Prelim 01-23-2019.pdf](#)  
[Peer Review Highland Woods 01-22-2019.pdf](#)  
[Highland Woods Subdivision Plan Set 2019 1 7\\_opt.pdf](#)  
[Highland Woods Subdivision Preliminary Resubmission 2019 1 7.pdf](#)  
[Parenteau letter 20181127.pdf](#)  
[Parenteau letter 20190128.pdf](#)

*Dustin Roma, a civil engineer with DM Roma Consulting Engineers was present representing the applicant. He explained:*

- *They had originally proposed a 22 lot project with a road to an abutting property. Then the Town Council had initiated a moratorium discussion for cluster subdivisions. They were no longer sure they could make that connection.*
- *In order to move forward with the project they had scaled it back to a phased development, having 12 lots in phase one with a 1, 500 foot road.*
- *The lot layout would be the same as previously proposed.*
- *Open space would be connected.*
- *They were proceeding with the DEP stormwater permit.*
- *Waivers had been approved at a prior meeting.*
  - o *The waiver for 50% of net residential area in open space was no longer needed.*
  - o *A waiver for the requirement of a cul-de-sac was required. They still intended to continue the road for the second phase, and hopefully would be able to connect to the abutting property.*

*The Board commented:*

- *The town's engineer and the Public Works Director were both ok with the waiver request for the cul-de-sac requirement.*
- *Reduction of the number of lots would not affect information that had been submitted.*
- *Additional ground topography had been requested in the stormwater BMPs.*

*Keith Elder made a motion to accept the waiver request of the public dead-end street standard.*

*Seconded by Griffin Bourassa.*

*Vote: Five in favor. Griffin Bourassa and Michael Devold opposed.*

*Mr. Roma said they could provide a buffer for the abutter to lots 5 and 6.*

*Public Comment:*

*Vivian Parenteau, Highland Cliff Road – She was the abutter requesting a buffer. She said Note 11 on the plan addressed cutting of trees in back. Why couldn't that be on the plan for them between lots 6 and 7? The area being referenced wouldn't give them a buffer.*

*Mr. Roma said they would inventory what was there and soften the look with landscaping.*

*The Board requested notes on the plan detailing that and that it be a deeded no-cut buffer.*

*Griffin Bourassa made a motion that the Preliminary Subdivision application for 18-13 Highland Woods Subdivision on Tax Map: 7, Lot: 36 was to be approved with conditions*

*with the following findings of fact and conclusions.*

#### **FINDINGS OF FACT**

##### **A. POLLUTION**

- *A portion of the subdivision is within the mapped 100 year floodplain of a tributary to Colley Wright Brook that is located just beyond the northern corner of the property. The 100-yr floodplain is shown on the rear of Lots 14 and 15 8 and Open Space 2.*
- *This subdivision is not located over a significant sand and gravel aquifer.*
- *A hydrogeologic assessment must be submitted as part of the Preliminary Plan as the subdivision is not served by public sewer and the subdivision has an average density of more than one dwelling unit per 100,000 square feet.*
- *A hydrogeologic assessment prepared by Stephen B. Marcotte, P.G. of Summit Geoengineering Services dated July 23, 2018 concludes that the proposed subsurface wastewater disposal systems will not result in an increase of nitrate-nitrogen above 10 mg/L in groundwater at the property boundary.*
- *A hydrogeologic assessment prepared by Stephen B. Marcotte, P.G. of Summit Geoengineering Services dated October 26, 2018 concludes that the proposed subsurface wastewater disposal systems will not result in an increase of nitrate-nitrogen above 10 mg/L in groundwater at the property boundary.*
- *In an email dated November 20, 2018, Town Engineer Jon Earle P.E., asked for clarification as lots 9-22 appear to have the test pit located outside of the footprint where the disposal field is being proposed and subsequent plume.*

##### **B. WATER**

- *All lots will be served by individual wells.*
- *The closest fire hydrants are located on Pope Road at Albion Road and at Roosevelt Trail at Pope Road, over a mile from the subdivision. At the Development Team meeting on May 1, 2018, Fire Chief Brent Libby recommended that the new houses in this subdivision include sprinkler systems that meet NFPA standards.*
- *A note should be added to the plan that all new homes shall be equipped with sprinkler systems that meet NFPA and the Town of Windham standards.*
- *Note 13 on the subdivision plan dated January 7, 2019 states that all dwellings within the subdivision shall include sprinkler systems meeting NFPA standards.*
- *In accordance with cluster subdivision standards in Section 911.K3.b 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 review.*
- *A plan of wastewater disposal systems is shown on Sheet WW-1 dated July 23, 2018.*
- *A plan of wastewater disposal systems is shown on Sheet WW-1 dated October 26, 2018. Well exclusion areas should be noted the final subdivision plan.*

##### **C. SOIL EROSION**

- *An erosion and sedimentation plan, prepared by DM Roma Consulting Engineers, dated June 4, 2018, has been submitted as part of the Preliminary Plan. Notes and details are shown on Drawing D-1.*
- *Phase 1 of his project will require a Stormwater Permit Maine Department of Environmental Protection (DEP). Phase 2 of this project will require a Site Location of Development permit from Maine Department of Environmental Protection (DEP). The*

*permits must be submitted with the applicable Final Plan submission.*

- *A stormwater management plan that meets the water quality and quantity standards as well as the flooding standard of Section 3 DEP Chapter 500 Stormwater Management must be submitted as part of the Preliminary Plan.*
- *Wetlands were delineated by Sweet Associates on September 8, 2017. Freshwater wetlands are shown on the plan. This project requires a Maine Department of Environmental Protection (DEP) Natural Resources Protection Act (NRPA) Tier-1 permit for wetland alterations. The permit must be submitted with the Final Plan. Note 1 on Sheet PP-1 state that there will be approximately 14,365 S.F. of total wetland impact associated with the proposed development. This note should also be on Sheets SB-1 and ASB-1.*
- *A stormwater management plan has been submitted as part of the June 4, 2018 Preliminary Plan submission. The project proposes to treat the 3.09 acres of new impervious area with five (5) underdrained filter basins.*
- *The stormwater treatment table is shown on Sheet SWP-2 of the preliminary subdivision plan set. A note should be added to the recording plan that describes the assumed impervious and developed area for each lot.*
- *Note 10 on the subdivision plan sheets SB-1 and SB-2 states that all buildings will require the installation of a roof drip edge filter for stormwater treatment.*
- *The plan also includes an inspection, maintenance and housekeeping plan. The owner is responsible for the maintenance of all stormwater management structures and related site components until such time that a homeowner's association is created.*
- *In an email dated June 14, 2018, Town Engineer Jon Earle P.E., notes that a waiver from the flooding standard for minor increase in peak flows should be requested for Study Point #1 (10 and 25 year storm) and Study Point #3 (10 year storm). Chapter 500 water quality standard have been met. He also noted that the minimum culvert size allowed in a public way is 15 inches and requested additional ground topography for the footprints for each of the 5 filter basins rather than relying on the LIDAR aerial survey.*
- *In an email dated July 31, 2018, Town Engineer Jon Earle P.E., stated that stormwater comments from June 14th have not been addressed.*
- *The November 5, 2018 preliminary plan submission includes a wetland delineation by Mainely Soils LLC dated October 2, 2018. The preliminary plan note 5 that there will be approximately 14,365 square feet of wetland impact associated with the proposed development.*
- *The November 5, 2018 preliminary plan submission includes a high-intensity soil survey prepared by Longview Partners, LLC dated October 2018.*
- *Revised stormwater treatment calculations have been submitted as part of the November 5, 2018 Preliminary Plan submission.*
- *In an email dated November 20, 2018, Town Engineer Jon Earle P.E., requested a table with the individual lot assumptions for impervious and developed areas in addition to the watershed subcatchment assumptions for impervious/developed areas.*
- *A revised stormwater management plan has been submitted as part of the January 7, 2019 Preliminary Plan submission. The project proposes to treat the total developed area of 7.4 acres (1.04 acres of new impervious area) with three (3) underdrained filter basins and roofline drip edges around each building.*
- *A lot area summary table is shown on the January 7, 2019 subdivision plan that shows the individual lot assumption for impervious and developed areas and Note 10 requires the installation of roof drip edge filters.*
- *In an email dated January 22, 2018 Town Engineer Jon Earle P.E., noted that the project meets Chapter 500 basic, general and flooding standards. He also request that additional ground topography for the footprints for each of the filter basins be submitted with the final plan rather than relying solely on LIDAR aerial survey.*

#### **D. TRAFFIC**

- The subdivision lots will have frontage on a new 2,200 1,500 foot long subdivision street which intersects with Highland Cliff Road, a paved public road.
- The new road will be built to a Minor Local Street standard, as is required in cluster subdivisions.
- Street design standards for dead end streets in Section 911.K.4.g requires a hammerhead turnarounds every 1,000 feet. The sketch plan shows a hammerhead at approximately 750 feet.
- Sight distance at Maysens Way for both directions along Highland Cliff Road should be shown on the Preliminary Plan. The preliminary plan submission dated June 4, 2018 states that the site distance exceeds 500 feet looking left and exceeds 700 feet looking right.
- Section 911.M.3.d states that streetlights may be required at intersections with existing public streets. A streetlight on Highland Cliff Road at the intersection of Maysens Way would comply with the Town of Windham Streetlight Policy, adopted June 25, 2013.
- Based on the distance to uses that would generate pedestrian trips, sidewalks are not required. When sidewalks are not required for local streets, Section 911.M.5.b.6.ii requires that the applicant construct a sidewalk or a street with a widened shoulder. One (1) additional foot of paved shoulder, on each side of the street, shall be added to the required minimum shoulder width.
- A traffic impact analysis must be submitted with the Preliminary Plan submission as the subdivision is projected to generate more than 140 vehicle trips per day.
- The preliminary plan submission dated June 4, 2014 states that the proposed 22 residential lots are expected to generate 22 peak hour trip ends.
- There is a large property which abuts the proposed subdivision (Map 7 Lot 29). Section 911.M.3.a (page 9-51) and Section 911.M.5.b.5.iii (page 9-60) allows the Board to require the dedication of a right-of-way to provide continuation of the road where future development is possible.
- A road plan and profile, prepared by DM Roma Consulting Engineers, dated June 4, 2018, shown on Sheet 4, 5 and 6, was submitted as part of the Preliminary Plan. The roadway cross section is shown on Sheet 10.
- The Preliminary Plan dated June 4, 2018 shows on Sheet ASB-1 a private right-of-way to the abutting property Lot 32A, near the property line of Lot 29. This future right-of-way should also be shown on Sheet SB-1 and offered to the Town when the road right-of-way is offered for public acceptance.
- In an email dated June 14, 2018, Town Engineer Jon Earle P.E., asked if the road would be offered for public acceptance prior to the start of Phase 2. Binder pavement must over winter prior to surface paving. The site distance is noted in the narrative but should also be shown on the plan. A stop sign and detail should be added to the plans.
- A traffic assessment prepared by William J. Bray, P.E. of Traffic Solutions dated July 22, 2018 concludes that the 22 lot residential subdivision can be expected to generate 209 daily trips; seventeen (17) trips in the morning peak hour and 22 trips during the afternoon peak commuter hours. Maine DOT's most recent three year accident safety audit shows a total of 4 vehicle crashes have been reported for the full length of Highland Cliff Road, and that vehicle sightlines measured in both direction from the proposed subdivision entrance onto Highland Cliff Road exceeds the sight distance standard.
- The road profile shown on Sheet D-1 dated July 23, 2018 reflects the waiver approved by the Planning Board on June 25, 2018 to require an additional foot of paved shoulder, and a reduced width gravel shoulder.
- In an email dated July 31, 2018, Town Engineer Jon Earle P.E. requested sight distance shown on the subdivision plan and a stop sign and construction detail.
- The Preliminary Plan dated November 5, 2018 shows a proposed land swap with the

abutter to allow for the subdivision road to terminate at the property line for a connection to a future development. The plan shows a hammerhead turnaround at end of the proposed street. The Minor Local Street Standard requires a cul-de-sac. A written waiver request should be submitted.

- A road plan and profile, prepared by DM Roma Consulting Engineers, dated November 5, 2018, shown on Sheet 4, 5 and 6, was submitted as part of the Preliminary Plan. The roadway cross section is shown on Sheet 10.
- The Preliminary Plan dated January 7, 2019 shows the subdivision road to terminate with a hammerhead turnaround at end of the proposed street. The Minor Local Street Standard requires a cul-de-sac. A written waiver request should be submitted. A right-of-way to the abutting property is shown on Lot 12 and labeled for future road connection.
- In an email dated January 22, Town Engineer Jon Earle P.E. had no further comment as there is no change to the road cross section and the proposed second hammerhead design meets town standards. He recommended that the traffic impact analysis be revised for the final plan submission to show traffic generated for the reduced project size.

#### E. SEWERAGE

- The development will be served by individual private subsurface wastewater disposal systems.
- Soil test pit analysis prepared by Alexander A. Finamore, LSE dated June 8, 2018 show that each lot has adequate soils to support a private septic system. Test pit locations are shown on the plan.
- Additional soil test pit analysis prepared by Alexander A. Finamore, LSE dated October 17, 2018 show that each lot has adequate soils to support a private septic system. Test pit locations are shown on the plan.

#### F. SOLID WASTE

- Residents of the single family dwellings will participate in the Town's pay-per-bag garbage program.
- Development of these lots should not produce an undue burden on the Town's ability to collect and dispose of solid waste.

#### G. AESTHETICS

- The site is currently undeveloped. It is wooded and includes a large contiguous wetland area near the center of the parcel.
- There are no documented rare botanical features or significant wildlife habitat documented on the site.
- A landscape plan is required for the preliminary plan submission. Street trees are required at least every fifty (50) feet (§ 911.E.1.b). Street trees are not shown on the plan.
- Limits of tree clearing are shown on the plan. Note 11 on the preliminary plan states that clearing of trees is not allowed 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.

#### H. CONFORMITY WITH LOCAL PLANS AND ORDINANCES

- Comprehensive Plan:
- The plan does meet the goals of the 2017 Comprehensive Plan.

- *Land Use Ordinance:*
- *All lots fall within the minimum and maximum lot sizes of 30,000-50,000 square feet (one lot 60,000 sf max) and frontage (100 feet or 50 feet on cul-de-sac) for cluster lots in the F zoning district.*
- *Net residential density calculations are shown on the Plan.*
- *No more than 30% of the lots have direct vehicular access onto an existing public road.*
- *The total area of reserved open space equals or exceeds 50% of the gross land area of the property to be subdivided.*
- *The open space reserved does not include 50% of the land suitable for development. The applicant has submitted a waiver request from this standard. The preliminary plan shows ~48.88% of the net area provided in the common open space. The Board approved a waiver from this standard.*
- *The open space in the subdivision is required to be contiguous but is shown as three areas on the preliminary plan. The Board approved a waiver from this standard. The January 7, 2019 preliminary plan shows two (2) areas of open space.*
- *Subdivision Ordinance*
- *A landscaping plan must be submitted with the Preliminary Plan.*
- *Standard notes and the standard condition of approval must be shown on the plans.*
- *The subdivision is utilizing the 20% density bonus to gain four (4) additional lots. In order to be eligible, the open space must be open for general public use, not just homeowners within the subdivision. Access easement for the open space must be recorded in the registry prior to the issuance of building permits. See Condition of Approval #2.*
- *The Tax Map and Lot numbers provided by the Tax Assessor must be shown on the Final Plan.*
- *Subdivision plan data compatible with the Town GIS must be submitted as part of the Final Plan submission.*
- *Others:*
- *Chapter 221 Street Naming and Addressing: The Assessing Department approved the road name, Maysens Way, shown on the preliminary plan.*
- *On April 24, 2018 the Town adopted a Moratorium Ordinance on Mineral Extraction. At the Development Team meeting on May 1, 2018 the applicant indicated that existing material found on site would be used for the construction of the roadway. The applicant should specify the amount of material that is proposed to be taken off site.*
- *The preliminary plan submission dated June 4, 2018 states the area that will be occupied by the Phase 2 lots will be graded as generally shown on Sheet 7 of the plan set and the sand and gravel material that will be excavated from the Phase 2 area will be used by the landowner and is not intended for public sale. In an email dated June 14, 2018, Town Engineer Jon Earle P.E requested that the excess sand and gravel material be quantified.*
- *The July 23, 2018 submission provides an estimate of excavation quantities of a net cut of 78,865 cubic yards.*
- *The November 5, 2018 submission includes a revised road plan and profile. In an email dated November 20, 2018 Town Engineer Jon Earle, PE stated that it does appear that the work will result in the same amount of cut and fill volumes. He requested a submission in excavation quantities as part of the final plan submission.*

#### *I. FINANCIAL AND TECHNICAL CAPACITY*

- *A cost estimate for the project was included in the November 5, 2018 submission.*
- *A letter from Andrew M Cook, Senior Vice President at People's United Bank, dated*



*June 7, 2018 was submitted as evidence of financial capacity.*

- The applicant has provided information on the licensed professionals working on this project as evidence of technical capacity*

**J. RIVER, STREAM OR BROOK IMPACTS**

- This project is located within the Colley Wright Brook watershed.*
- The 75 foot Stream Protection District for the tributary to Colley Wright Brook that is located just beyond the northern corner of the property is shown on the plan at the rear of Lots 14 and 15 8 and Open Space 2 on the preliminary plan.*
- The project will not adversely impact any river, stream, or brook.*

**CONCLUSIONS**

- 1. The proposed subdivision will not result in undue water or air pollution.*
- 2. The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the site plan.*
- 3. The proposed subdivision will not cause an unreasonable burden on an existing water supply.*
- 4. The proposed subdivision 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.*
- 5. The proposed subdivision 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.*
- 6. The proposed subdivision will provide for adequate sewage waste disposal.*
- 7. The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste.*
- 8. The proposed subdivision 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.*
- 9. The proposed subdivision conforms with a duly adopted site plan regulation or ordinance, comprehensive plan, development plan, or land use plan.*
- 10. The developer has adequate financial and technical capacity to meet the standards of this section.*
- 11. The proposed subdivision is not 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 Title 38, Chapter 3, subchapter I, article 2-B M.R.S.A.*
- 12. The proposed subdivision will not alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.*
- 13. The proposed subdivision is situated entirely or partially within a floodplain.*
- 14. All freshwater wetlands within the proposed subdivision have been identified on the plan.*
- 15. Any river, stream, or brook within or abutting the subdivision has been identified on any maps submitted as part of the application.*
- 16. The proposed subdivision will provide for adequate storm water management.*
- 17. If any lots in the proposed subdivision have shore frontage on a river, stream, brook, or great pond as these features are defined in Title 38, section 480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than 5 to 1.*
- N/A*
- 18. 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.*

19. For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will/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. (N/A)

20. Timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to Title 12, section 8869, subsection 14.

#### CONDITIONS OF APPROVAL

1. Approval is dependent upon, and limited to, the proposals and plans contained in the application dated April 23, 2018, as amended January 7, 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 913 of the Subdivision Ordinance.

2. An access easement for public use of the open space must be recorded in the Cumberland County Registry of Deeds prior to the issuance of building permits.

Seconded by Drew Mayo.

Vote: Five in favor. Michael Devold opposed. Bill Walker abstained.

## 9 [PB 19-010](#)

18-28 Nash Road Subdivision. Minor subdivision sketch plan review. Daigle Financial & Development LLC to request review of a 3 lot residential subdivision. The property in question is located at 3 Nash Road and identified on Tax Map: 9, Lots: 34, 34-B1, and 34-B2, Zone: Farm (F).

Attachments: [18-28 Nash Rd Sketch 01-23-19.pdf](#)  
[Peer Review Nash Rd 01-23-2018.pdf](#)  
[Cover Letter.pdf](#)  
[Subdivision Plan.pdf](#)  
[Roadway Plan & Profile.pdf](#)  
[Dennis Brown Nash Road Subdivision Concerns 2018-09-26.pdf](#)

Dustin Roma, a civil engineer with DM Roma Consulting Engineers was present representing the applicant. He explained:

- They had originally proposed a four lot cluster subdivision. Based on concerns of an abutting property owner they had redesigned it and now proposed three lots.
- The proposed road would be 360 feetlong, built to a minor local street standard.
- Stormwater buffers were relocated and provided 75% sheet flow to the back of the lots, rather than collecting in a roadside ditch.
- Because of distance and ledge it was not economically feasible to extend public water to the site.
- One lot would be reconfigured with abutting property via land swaps in order to keep the properties separate.
- They would request waivers of the road geometry; construction of a hammer-head rather than a cul-de-sac; and a hydrogeological assessment.

Amanda Lessard explained:

- There had been extensive tree clearing. How did stormwater management feel about

*a forested buffer that wasn't currently forested and didn't necessarily treat stormwater the same way.*

- Ownership of the land swaps should be clarified.*
- The town engineer had no concerns with the waiver request for the road standards.*
- A watermain was not required by the project.*

*Mr. Roma responded he could size the buffer width for non-forested conditions and then let it grow back. They would replant some indigenous plants.*

*The Board commented:*

- It would be good if the road met the standards, but it wouldn't work without the waiver.*
- Would the buffer be deeded?*
- The hammer-head request was ok.*
- The hammer-head request was not ok.*
- Sheet flow was fine.*
- The center-line was ok.*
- The curve waiver was not ok.*
- A culvert should be used to collect the 50 feet of uphill road. Sheet flow across the road would result in ice and mud.*
- Parking on the hammer-head should be discouraged.*

*Griffin Bourassa made a motion for a five minute recess.*

*Seconded by Keith Elder.*

*Vote: All in favor.*

*Meeting went into Recess*

*Meeting Reconvened*

## **Other Business**

### **10 Adjournment**

*Drew Mayo made a motion to adjourn.*

*Seconded by Griffin Bourassa.*

*Vote: All in favor.*