

**AGENDA & PROPOSED ORDERS**  
**GORHAM TOWN COUNCIL**  
REGULAR MEETING  
July 6, 2010 – 7:00 p.m.  
Gorham Municipal Center – Council Chamber

**PLEASE NOTE: The proposed orders on this agenda are suggested orders only and may change without notice prior to the meeting.**

Pledge of Allegiance to the Flag

Roll Call of the Town Council

Acceptance of the minutes of the June 1, 2010 Regular Town Council Meeting and the June 22, 2010 Special Town Council Meeting

Open Public Communications

Councilor Communications

Chairman's Report

Town Manager's Report

Election Report

School Committee Report

**Old Business**

**Item #7831** Action to consider amending Schedule C of the Streets and Sidewalks Ordinance to restrict 3, 4 and 5 axle trucks on McLellan Road.  
(Councilor Minor Spon.)

**Proposed Order #7831** **WHEREAS**, the Town Council of Gorham, Maine voted to receive a petition from Mary Jane Lecours to impose weight limits on McLellan Road at the March 2, 2010 Town Council meeting; and,  
**WHEREAS**, heavily loaded vehicles accelerate the deterioration of a roadway's useful life,  
**NOW, THEREFORE, BE IT ORDERED** that the Town Council of the Town of Gorham, Maine, in Town Council assembled refer a proposal to amend Schedule C of the Streets and Sidewalks Ordinance to restrict 3, 4 and 5 axle trucks on McLellan Road to the Ordinance Committee for their review and recommendation.

**Item #7855** Action to consider establishing a policy for computer use by elected officials. (Adm. Spon.)

**Proposed Order #7855** **ORDERED**, that the Town Council of the Town of Gorham, Maine, in Town Council assembled adopt the Policy for Computer Use by Elected Officials, as presented.

Proposed Policy for Computer Use by Elected Officials

**Section 1. Definitions.**

1.1 "Elected Official" means any duly elected member of the Town Council.

1.2 "Electronic Communication" means all electronic communications, data, software, files, and other information created, modified, located upon, received or transmitted by, accessed by, or stored upon, any part of the System, including, but not limited to e-mail and Internet usage.

1.3 "System" means all computers, servers, intranet, Internet, e-mail, and other electronic communication, data storage systems, or equipment leased, owned or in the possession of the Town, including, but not limited to, any computer, computer system, or any storage device or medium that the Town provides to an employee or that is physically or electronically connected to any other part of the System.

## **Section 2. Purpose.**

2.1 The intent of this policy is to provide clearly defined expectations and responsibilities relating to the use of the Internet and Electronic Communications on computers designated for Elected Officials.

2.2 The Town has computers that are available for use by Elected Officials during their term in office. Elected Officials may obtain a computer for Town business use by contacting the Town Manager's Office and signing the Computer Use Form. Nothing in this paragraph shall be construed to require an Elected Official to use a computer, as this program is entirely voluntary.

2.3 The intended use of these computers is to assist Elected Officials in the conduct of official Town business and not to conduct any personal business, except in emergency situations.

2.4 This policy may be changed and/or supplemented by the Town from time to time.

## **Section 3. Computers and Data are Town Property.**

3.1 Town computers provided to elected officials are property of the Town and must be returned to the Town upon expiration of the Elected Official's term of office.

3.2 All data and other Electronic Communications contained within this System are the property of the Town.

3.3 Any downloading of materials or loading of computer programs or software onto the computer or any part of the System without permission from the Town's technical staff is strictly prohibited.

3.4 The Town reserves the right to monitor and review all Electronic Communications at any time without prior notice to users of the System and for any purpose whatsoever. Electronic Communications are not the property of the Elected Official and there is no expectation of privacy in the contents of any Electronic Communication.

## **Section 4. Prohibited Uses.**

4.1 Elected Officials shall not use the Internet or System to conduct meetings or vote on or discuss Town business. Council members may use e-mail messages to other Elected Officials for limited administrative purposes, such as the scheduling of meetings.

4.2 Elected Officials shall not use Town-owned computers to send, receive, create or store Electronic Communications upon the System that are illegal, abusive, disruptive, or threatening to others, or that interferes with the Town's business activities.

4.3 Elected Officials are strictly prohibited from using any part of the System to harass others, or to download, obtain, display, store, receive or transmit: (a) any information that is sexually explicit, obscene, or of a sexual nature; (b) any communications that contain libelous or defamatory material; (c) any information that would not be permitted on any bulletin board located on Town property; (d) communications that encourage conduct that would constitute a criminal offense or give rise to civil liability; or (e) any ethnic, racial or religious slurs, or anything that is, or may be construed as, disparagement of others based on race, color, national origin, ancestry, gender, sexual orientation, age, disability, religious or political beliefs, or any other basis prohibited by law.

4.4 Elected officials may not use the System to solicit any person or entity for any

commercial, religious, charitable, or political causes, or for outside organizations.

**Section 5. Internet and Electronic Mail System.**

5.1 Electronic Communications are considered public records and are subject to right-to-know laws, depending on their content. Accordingly, the Town must make Electronic Communications available to the public upon request.

5.2 The Town's System is designed to facilitate Town business communication among officials.

5.3 Due to data security concerns, Elected Officials shall not use Electronic Communications to transmit sensitive materials, such as personnel decisions and other similar information which may be more appropriately communicated by written memorandum or personal conversation.

5.4 Use of the System is a privilege that may be limited or removed if an Elected Official abuses the privilege at any time or for any reason.

**New Business**

- Public Hearing #1** Public Hearing to consider approval to renew the liquor license for Gorham House of Pizza.
- Item #7864** Action to consider approval to renew the liquor license for Gorham House of Pizza. (Adm. Spon.)
- Proposed Order #7864** **ORDERED**, that the Town Council of the Town of Gorham, Maine, in Town Council assembled approve renewal of the liquor license for Gorham House of Pizza.
- Public Hearing #2** Public Hearing on a proposal to amend Article XIII of the Administrative Code to change the status of the Recreation Advisory Committee from a Standing Committee to a Committee that is appointed as needed.
- Item #7865** Action to consider amending Article XIII of the Administrative Code to change the status of the Recreation Advisory Committee from a Standing Committee to a Committee that is appointed as needed. (Adm. Spon.)
- Proposed Order #7865** **WHEREAS**, the Town's Administrative Code provides for a standing Recreation Advisory Committee; and,  
**WHEREAS**, the Recreation Advisory Committee initially was needed to supervise recreation activities when the Town recreation programs were run by part-time employees or volunteers; and,  
**WHEREAS**, the Town now has a full time professional recreation staff; and,  
**WHEREAS**, a Recreation Advisory Committee can provide valuable service for specific issues but is not needed as a standing committee,  
**NOW, THEREFORE, BE IT ORDAINED**, that the Town Council of the Town of Gorham, Maine, in Town Council assembled amend Article XIII of the Administrative Code to change the status of the Recreation Advisory Committee from a Standing Committee to a Committee that is appointed as needed; and,  
**BE IT FURTHER ORDAINED** that the current Recreation Advisory Committee members' terms will expire on April 1, 2011.

Proposed amendments to the Administrative Code, Article XIII, Recreation Department  
Note: Additions are underlined and deletions are ~~struck through~~.

Section 1301. Establishment

1301.01 There shall be a Recreation Department, the head of which shall be the Recreation Director, who shall be appointed by and shall report to the Town Manager.

~~1301.02 There shall be a Gorham Recreation Advisory Board whose objectives and membership shall be as follows: The Gorham Town Council may appoint a temporary Advisory Ad Hoc Committee to assist the Recreation Department. The Town Council shall determine the term of the Committee, its membership and purpose.~~

~~A. Objectives~~

- ~~1. To assist the Recreation Department in the development and improvement of adult education, recreation and park opportunities for the residents of Gorham;~~
- ~~2. To advise the Recreation Director on the needs and possibilities of programs and activities;~~
- ~~3. To advise and assist the Recreation Director in cooperating with various agencies and interest groups in serving the mutual goals of the organizations;~~
- ~~4. To assist and encourage the Recreation Director to collect and disseminate information concerning Adult Education and Leisure Services;~~
- ~~5. To advise and assist the Recreation Director in the evaluation of programs and activities;~~
- ~~6. To serve as a forum to discuss proposed programs, projects, or activities;~~
- ~~7. To assist the Recreation Director in establishing program priorities.~~

~~B. Membership of the Board~~

~~1. Citizen Members—The Recreation Advisory Board shall consist of eight (8) members, of which four (4) members shall be appointed by the Gorham Town Council and four (4) members shall be appointed by the Gorham School Committee. Appointment to the Advisory Board will be for a two-year term. Advisory Board members may be reappointed, but shall be limited to two consecutive terms. On the first appointments to the Board, four (4) members (two by the Council and two by the School Committee) shall be appointed for one-year terms to stagger the terms. The one-year appointments shall not be considered toward the two consecutive term limitation.~~

~~2. Ex-Officio Members—The Recreation Advisory Board shall consist of two ex-officio members, of which one shall be a member of the Gorham Town Council and one shall be a member of the Gorham School Committee.~~

~~Appointment of the Town Council and School Committee members shall be for a term of one year. Ex-officio members may be reappointed, but shall be limited to four (4) consecutive terms.~~

~~Ex-officio members are accorded all rights and courtesies as Citizen Members in terms of debate and discussion, but will not have a formal vote.~~

~~Ex-officio members may not serve as either Chair or Vice Chair.~~

~~3. Membership representative—The Advisory Board should include:~~

- ~~a. Persons who are knowledgeable in the field of Adult Education and/or Leisure Services.~~
- ~~b. Persons from educational or leisure services fields.~~
- ~~c. Persons who have received adult education or recreational services in Gorham.~~
- ~~d. Persons interested in the improvement of services.~~

~~4. Meetings—The Advisory Board will meet monthly on a date agreed on by the Board.~~

~~Special meetings may be called by the Chair or by the Recreation Director.~~

~~C. Officers~~

~~1. Officers—The officers of the Advisory Board shall be the Chair and the Vice-~~

Chair.

~~2. Election of Officers — Election of officers shall take place at the regular scheduled meeting in May, with the new Chair taking office in June.~~

~~3. Terms of Office — The officers shall be elected by a majority vote of the Advisory Board present for a term of one year. The aforementioned officers may serve not more than two consecutive terms. Officers may be re-elected for additional terms after a lapse of one year.~~

~~4. Duties of Officers — The Chair shall preside at all meetings of the Advisory Board. When unable to attend the Chair will notify the Vice Chair. The Vice Chair will be responsible for the minutes of the Advisory Board meetings.~~

~~5. Parliamentary authority — All matters of procedure not covered by these articles and by laws shall be governed by Roberts Rules of Order, Revised.~~

~~D. Amendments~~

~~This constitution may be amended by a majority vote of the Gorham Town Council.~~

**Item #7866**

Action to consider amending the Land Use and Development Code, Chapter I by adding a definition of Fraternity House and by eliminating Fraternity Houses as a permitted use or use by special exception. (Adm. Spon.)

**Proposed Order #7866**

**ORDERED** that the Town Council of the Town of Gorham, Maine, in Town Council assembled refer a proposal to amend the Land Use and Development Code, Chapter I, Sections: V, VI, VII, VIII, IX, X, and XIII by adding a definition of Fraternity House and by eliminating Fraternity Houses as a permitted use or a use by special exception to the Planning Board for public hearing and their recommendation.

Proposed amendments to Chapter I, Zoning Regulations, of the Gorham Land Use and Development Code. Note: Additions are underlined and deletions are ~~struck through~~.

CHAPTER 1: ZONING REGULATIONS  
SECTION V – DEFINITIONS

Forested wetland A freshwater wetland dominated by woody vegetation that is six (6) meters tall or taller.

Fraternity House Any building or structure, and the use thereof, traditionally affiliated with a college or university, regardless of whether any such affiliation is currently recognized formally or not, providing common living, dining, kitchen, study and/or sleeping areas for college or university students as members of the fraternity, and their guests. The term shall be deemed to include similarly defined sorority houses, but shall not be deemed to include fraternal organizations, such as the Masons or the Elks.

SECTION VI – URBAN RESIDENTIAL DISTRICT

B. PERMITTED USES

9) Rooming house, apartment building or multifamily housing, except fraternity housing.

12) School, hospital, church, or any other institution of educational, religious, philanthropic, ~~fraternal~~, or social nature which is not used for residential purposes, which has less than two thousand (2,000) square feet of floor area and generates less than two hundred (200) vehicle trips during any twenty-four hour period, except fraternity houses.

C. SPECIAL EXCEPTIONS

3) School, hospital, church or any other institution of education, religious, philanthropic, ~~fraternal~~ or social nature which is not used for residential purposes and has two thousand (2,000) or more square feet of floor area or generates two hundred (200) or more vehicle trips during any twenty-four hour period.

SECTION VII – SUBURBAN RESIDENTIAL DISTRICT

**B. PERMITTED USES**

10) School, hospital, church, or any other nonresidential institution of educational, religious, philanthropic, ~~fraternal~~, or social nature which has less than two thousand (2,000) square feet of floor area and generates less than two hundred (200) vehicle trips during any twenty-four hour period, except fraternity housing.

**C. SPECIAL EXCEPTIONS**

5) School, hospital, church or any other nonresidential institution of education, religious, philanthropic, ~~fraternal~~ or social nature and has two thousand (2,000) or more square feet of floor area or generate two hundred (200) or more vehicle trips during any twenty-four hour period.

**SECTION VIII – RURAL DISTRICT**

**B. PERMITTED USES**

10) Apartment buildings or multifamily housing, except fraternity housing.

12) School, hospital, church, or any other institution of educational, religious, philanthropic, ~~fraternal~~, or social nature which is not used for residential purposes, which has less than two thousand (2,000) square feet of floor area and generates less than two hundred (200) vehicle trips during any twenty-four hour period.

**C. SPECIAL EXCEPTIONS**

4) School, hospital, church or any other institution of education, religious, philanthropic, ~~fraternal~~ or social nature which has two thousand (2,000) or more square feet of floor area or generates two hundred (200) or more vehicle trips during any twenty-four hour period.

**SECTION IX – VILLAGE CENTERS DISTRICT**

**SUBSECTION 1. LITTLE FALLS VILLAGE CENTER DISTRICT**

**B. PERMITTED USES**

4) Residential uses including one-family dwellings, two-family dwellings, apartment buildings and multi-family housing but excluding mobile homes and trailers, except fraternity housing.

11) School, hospital, church, or any other institution of educational, religious, philanthropic, ~~fraternal~~, or social nature which is not used for residential purposes, which has less than two thousand (2,000) square feet of floor area and which generates less than two hundred (200) vehicle trips during any twenty-four hour period.

**C. SPECIAL EXCEPTIONS**

2) School, hospital, church or any other institution of education, religious, philanthropic, ~~fraternal~~ or social nature which is not used for residential occupancy and has two thousand (2,000) or more square feet of floor area or generates two hundred (200) or more vehicle trips during any twenty-four hour period.

**SUBSECTION 2. GORHAM VILLAGE CENTER DISTRICT**

**B. PERMITTED USES**

4) Residential uses including one-family dwellings, two-family dwellings, apartment buildings and multi-family housing but excluding mobile homes, ~~and~~ trailers, and fraternity housing.

11) School, hospital, church, or any other institution of educational, religious, philanthropic, ~~fraternal~~, or social nature which is not used for residential purposes, which has less than two thousand (2,000) square feet of floor area and which generates less than two hundred (200) vehicle trips during any twenty-four hour period.

**C. SPECIAL EXCEPTIONS**

2) School, hospital, church or any other institution of education, religious, philanthropic, ~~fraternal~~ or social nature which is not used for residential occupancy and has two thousand (2,000) or more square feet of floor area or generates two hundred (200) or more vehicle trips during any twenty-four hour period.

**SECTION X – URBAN COMMERCIAL DISTRICT**

**B. PERMITTED USES**

5) Rooming house, excluding fraternity housing.

8) School, hospital, church, or any other institution of educational, religious, philanthropic, fraternal, or social nature which is not used for residential occupancy which has less than two thousand (2,000) square feet of floor area and which generates less than two hundred (200) vehicle trips during any twenty-four hour period.

C. SPECIAL EXCEPTIONS

2) School, hospital, church or any other institution of education, religious, philanthropic, fraternal or social nature which is not used for residential occupancy which has two thousand (2,000) or more square feet of floor area or which generates two hundred (200) or more vehicle trips during any twenty-four hour period.

SECTION XIII – COMMERCIAL/OFFICE DISTRICT

B. PERMITTED USES

8) Rooming house, excluding fraternity housing.

11) School, hospital, church, or any other institution of educational, religious, philanthropic, fraternal, or social nature which is not used for residential purposes, which has less than two thousand (2,000) square feet of floor area and generates less than two hundred (200) vehicles trips during any twenty-four hour period.

C. SPECIAL EXCEPTIONS

2) School, hospital, church or any other institution of educational, religious, philanthropic, fraternal or social nature which is not used for residential occupancy which has two thousand (2,000) or more square feet of floor area or which generates two hundred (200) or more vehicle trips during any twenty-four hour period.

**Item #7867** Action to consider whether existing fraternity houses should submit to additional regulations. (Adm. Spon.)

**Proposed Order #7867** **ORDERED** that the Town Council of the Town of Gorham, Maine, in Town Council assembled refer a proposal to regulate existing fraternity houses to the Ordinance Committee for their review and recommendation.

**Item #7868** Action to consider authorizing the Town to proceed with the purchase of a Heavy Rescue Vehicle to replace the 25 year old Squad 1. (Adm. Spon.)

**Proposed Order #7868** **ORDERED** that the Town Council of the Town of Gorham, Maine, in Town Council assembled authorize the Town Manager and Fire Chief to solicit bids for a new vehicle to replace the 25 year old Squad 1.

**Item #7869** Action to consider a request to expand the Shotgun Only Hunting Zone in Gorham further east. (Adm. Spon.)

**Proposed Order #7869** **ORDERED** that the Town Council of the Town of Gorham, Maine, in Town Council assembled refer a request to extend the Shotgun Only Hunting Zone in Gorham further east, to the Ordinance Committee for their review and recommendation.

**Item #7870** Action to consider an ordinance to regulate windmills. (Adm. Spon.)

**Proposed Order #7870** **ORDERED**, that the Town Council of the Town of Gorham, Maine, in Town Council assembled refer an ordinance to regulate windmills to the Planning Board for public hearing and their recommendation.

**Town of Gorham Proposed Ordinance for Small Wind Energy Systems**

**Section 1. Authority.**

1.1 This Ordinance is adopted pursuant to Title 30-A, M.R.S.A., Section 3001.

**Section 2. Purpose.**

2.1 The purpose of this Ordinance is to provide for the construction and operation of Small Wind Energy Systems, subject to reasonable conditions that will protect the public health, safety and welfare.

**Section 3. Conflict with Other Ordinances or Laws.**

3.1 If there is a conflict between the provisions of this ordinance and another ordinance or law, the more stringent provisions shall apply.

**Section 4. Severability.**

4.1 The invalidity of any part of this Ordinance shall not invalidate any other part of this Ordinance.

**Section 5. Definitions.**

**5.1 Meteorological Tower (MET Tower).** Meteorological Tower (MET Tower) means a tower used for the collection and measurement of wind data that supports various types of equipment, including, but not limited to, anemometers, data recorder, ~~and~~ solar power panels, **and temporary electrical power and battery storage power.** MET Towers are erected on a temporary basis primarily to collect data relevant to the siting of a Small Wind Energy System.

**5.2 Nacelle.** The frame and housing at the top of the Tower that encloses the gearbox and generator.

**5.3 Owner.** The individual or entity that intends to own and operate the small wind energy system in accordance with this ordinance.

**5.4 Rated Nameplate Capacity.** The maximum rated output of electric power production equipment. The manufacturer typically specifies this output with a "nameplate" on the equipment.

**5.5 Rotor Diameter.**

Horizontal Axis Small Wind Energy Systems: The cross sectional dimension of the circle swept by the rotating blades.

Vertical Axis Small Wind Energy Systems: The cross sectional dimension of the circle swept by the furthest outreaching part of the blade.

**5.6 Small Wind Energy System (SWES).** A wind energy facility having a maximum generating capacity of 100 kW, a maximum of one (1) wind turbine and a maximum turbine height of 100 feet.

**5.7 Wind Turbine.** A system for the conversion of wind energy into electricity, which is comprised of a tower, generator, nacelle, rotor, and transformer.

**5.8 Turbine Height.** The distance measured from the surface of the Tower foundation to the highest point of any turbine rotor blade measured at the highest area of the blade.

**5.9 Tower.** The monopole (freestanding or guyed) structure that supports a wind generator.

**Section 6. Permitted Uses.**

6.1 Small Wind Energy Systems are considered Accessory Uses and Structures and are permitted uses **on any lot that is a minimum of two (2) acres in size and** in all zones in the Town of Gorham requiring a building permit. **The 2 acre requirement may be satisfied through a combination of lot size and a permanent easement from an abutting land owner.**

6.2 This Section is not intended to apply to roof-mounted, building integrated, building-mounted or architectural wind systems; this Section only covers stand-alone tower mounted systems. Roof-mounted, building integrated, building-mounted or architectural wind systems shall be permitted subject to all applicable Federal, State, and Local laws and regulations, and shall be permitted to have a maximum height of (fifteen) 15 feet above the maximum allowed building height in the zones, as defined in the Town of Gorham's Land Use and Development Code.

**Section 7. Non-Conformance Exception.**

7.1 Small Wind Energy Systems that are constructed and installed in accordance with the provisions of this Section shall not be deemed to constitute an expansion of a



nonconforming use or structure.

### **Section 8. Performance Standards.**

New Small Wind Energy Systems shall be a permitted use in all zoning districts subject to the following requirements:

**8.1** Number Per Lot. ~~On lots of less than one (1) acre in size, a maximum of one (1) SWES is permitted per lot.~~ On lots of ~~one (1)~~ **two (2)** acres or larger, ~~two (2)~~ **one (1)** SWES are permitted **for every 2 acres of land. This requirement may be satisfied by a combination of lot size and easement from an abutting property owner.**

**8.2** Height. The maximum turbine height shall be one hundred (100) feet.

The applicant shall provide evidence that the proposed height does not exceed the height recommended by the manufacturer or distributor of the Small Wind Energy System.

#### **8.3** Setbacks.

a. Wind towers for Small Wind Energy Systems shall be set back a distance equal to ~~1.4~~ **1.5** times its total height, measured at the center of the base of the tower, from the following:

All property lines, unless appropriate easements are secured from adjacent property owners.

All inhabited or inhabitable residential structures, other than those owned or inhabited by the owner.

All overhead public utility and telephone lines, unless written permission is granted by the affected utility or telephone company.

Public and private road right-of-ways, unless written permission is granted by the owner(s) with jurisdiction over said right-of-way(s).

Other right-of ways, including railroads, utility corridors, etc.

Other Small Wind Energy Systems, telecommunications towers, and water towers.

b. In no case shall Small Wind Energy Systems be permitted within the front, side, or rear setback of any property.

Guy cables for Small Wind Energy Systems shall be setback at least 10 feet to any property line, unless appropriate easements are secured from adjacent property owners.

#### **8.4** Access and Safety.

a. The minimum distance between the ground and any part of the rotor blade shall be 15 feet.

b. The tower's climbing apparatus shall be no lower than 15 feet from the ground.

c. All access doors to SWES towers and electrical equipment shall be clearly labeled as such and shall be locked except during maintenance.

**8.5** Lighting. Small Wind Energy Systems shall not be artificially lighted, except to the extent required by the Federal Aviation Administration or other applicable authority.

**8.6** Electrical. Electrical controls and control wiring shall be wireless or underground except where necessary to connect the Small Wind Energy System to the transmission or distribution network, adjacent to that network, and shall comply with the latest adopted versions of the NFPA 70 (NEC).

#### **8.7** Design and Aesthetics.

a. Small Wind Energy System towers shall be monopole (freestanding, or guyed). Lattice towers are prohibited.

b. Wind turbines and towers shall have a color or finish that is non-reflective and non-obtrusive (galvanized steel, brushed aluminum, or white) as was originally applied by the manufacturer, unless otherwise required by the Federal Aviation Administration or another governmental agency.

c. At Small Wind Energy System sites, the design of buildings and related structures shall use materials, colors, screening and landscaping that will blend the Small Wind Energy System to the natural setting and existing environment and structures **that are consistent with Section 8.10.**

Small Wind Energy Systems shall not be used for displaying any advertising or signs, except for the reasonable identification of the manufacturer of the Small Wind Energy

System that may be placed on the nacelle (cover of the electrical generator) of the Small Wind Energy System or an unobtrusive nameplate.

**8.8 Noise.** The operation of all Small Energy Wind Systems shall comply with the Town of Gorham's Noise Ordinance of the Land Use and Development Code **and include compliance with tonal sounds as described below.**

**a. TONAL SOUND: a tonal sound exists if, at the property boundary of the proposed SWES – including easements as applicable – the one-third octave band sound pressure level in the band containing the tonal sound exceeds the arithmetic average of the sound pressure levels of the two continuous one-third octave bands by 5 dB for center frequencies at or between 500 Hz and 10,000 Hz, by 8dB for center frequencies at or between 160 and 400 Hz, and by 15dB for center frequencies at or between 25 Hz and 125 Hz.**

**b. If one or more of the sounds of routine operation of the development are found to be tonal sounds, 5dBA shall be added to the measured hourly  $L_{Aeq}$ .**

**c. The resultant adjusted A-weighted hourly equivalent sound levels shall not exceed the sound level limit (dBA) permitted in the district established by Table 1 in the Town of Gorham's Noise Ordinance of the Land Use and Development Code.**

**d. The applicant is responsible for providing sufficient evidence that the proposed Small Wind Energy System will comply with the noise standards of this Ordinance.**

**8.9** A manual and automatic braking, governing or feathering system shall be required to prevent uncontrolled rotation.

**8.10 Code Compliance.** A Small Wind Energy System shall comply with all applicable Federal, State, and Local Building and Electrical Codes.

**8.11 Utility Notification and Connection.** Small Wind Energy Systems that connect to the electric utility shall comply with Title 35-A and 65-407 Public Utility Commission's Rule 313, "Consumer Net Energy Billing."

#### **Section 9. Met Towers.**

**9.1** Met towers shall be permitted under the same standards, permit requirements, restoration requirements, and permit procedures as a Small Wind Energy System.

**9.2** Met towers are permitted as a temporary use to remain installed for no more than 3 years.

#### **Section 10. Removal of Unsafe/Abandoned Small Wind Energy Systems.**

**10.1 Unsafe.** Small Wind Energy System found to be unsafe by the Code Enforcement Office shall be repaired by the owner to meet current Federal, State, and Local Safety Standards or shall be removed within six (6) months.

**10.2 Abandonment.** A Small Wind Energy System that is not used for a consecutive twelve (12) month period shall be deemed abandoned. The Code Enforcement Office shall notify the owner by registered mail and shall provide 30 days for a response. In such a response the landowner shall set forth reasons for the operational difficulty and provide a reasonable timetable for corrective action.

**10.3** After receiving the response, if the Code Enforcement Office still determines the Small Wind Energy System is abandoned, the owner of a Small Wind Energy System shall remove the wind turbine from the tower at the Owner's sole expense within 120 days from receipt of the original notice from the Code Enforcement Office.

#### **Section 11. Permit Requirements.**

**11.1 Building Permit.** A Building Permit shall be required for the installation of a Small Wind Energy System.

**11.2 Documents Required.** The building permit application shall be accompanied by the following supporting material:

a. Copies of any recorded easements necessary to meet the setbacks requirements as contained in Section 8.3;

b. **Wind system sound level specifications and manufacturer's guarantee level including apparent sound power provided by an independent certification organization as having been tested in accordance with IEC 61400-3d edition,**

**2010, to include analysis of short duration repetitive and tonal sounds.**

- c. Wind system specifications, including manufacturer and model, rotor diameter, tower height, tower type (freestanding or guyed);
- d. Evidence that the proposed height does not exceed the height recommended by the manufacturer or distributor of the Small Wind Energy System;
- e. Tower foundation blueprints or drawings completed or reviewed and stamped by a Maine Licensed Professional Engineer, with seal;
- f. Tower blueprints or drawings completed or reviewed and stamped by a Maine Licensed Professional Engineer, with seal; and
- g. Other supporting documentation as deemed necessary by the Code Enforcement Office.

**11.3 Fees.** The fee required for a Building Permit from the Code Enforcement Office must accompany the application for a Building Permit for a Small Wind Energy System.

**11.4 Expiration.** A permit issued pursuant to this Section shall expire if the Small Wind Energy System is not installed and functioning within twelve (12) months from the date the permit is issued.

**Section 12 Administrative Review Site Plan Required.**

**12.1** The building permit application shall be accompanied by a site plan that includes the following:

- a. Property lines and physical dimensions of the property **directly abutting properties in all directions and properties for which easements have been granted, if any;**
- b. Location, dimensions, and types of existing structures on the property;
- c. The right-of-way of any public road that is contiguous with the property;
- d. Any overhead utility lines on the property;
- e. Location of the proposed wind system tower.

**12.2 Location Plan Required.** The building permit application shall be accompanied by a location plan depicting the following:

- a. Location of the proposed wind system tower;
- b. The location of all inhabited or inhabitable residential structures within 250 feet of the proposed location of the wind system tower;
- c. All overhead public utility and telephone lines within 250 feet of the proposed location of the wind system tower;
- d. All public and private road right-of-ways within 250 feet of the proposed location of the wind system tower;
- e. Other right-of ways, including railroads, utility corridors, etc. within 250 feet of the proposed location of the wind system tower;
- f. Other Small Wind Energy Systems, telecommunications towers, Met towers, and water towers within 250 feet of the proposed location of the wind system tower; and
- g. Distances between the proposed tower and all of the above.

**Item #7871**

Action to consider amending the Land Use and Development Code Chapters I, III and IV to have certain applications and approvals expire after a period of inactivity. (Adm. Spon.)

**Proposed  
Order #7871**

**ORDERED**, that the Town Council of the Town of Gorham, Maine, in Town Council assembled refer a proposal to amend the Land Use and Development Code Chapters I, III and IV to have certain applications and approvals expire after a period of inactivity to the Planning Board for public hearing and their recommendation.

Proposed amendments to the Land Use and Development Code Chapter I, Zoning Regulations, Section IV – Board of Appeals, Section E. Special Exception Standards; Chapter III Subdivision, Section III – Preliminary Plan, C. Preliminary Plan Review; and Chapter IV, Site Plan Review, Section VII – Procedures for Administrative Review of Developments and Section VIII – Procedures for Major Developments of the Gorham

Land Use and Development Code be amended as follows(Note: Additions are underlined and deletions ~~struck-out~~):

**CHAPTER I ZONING REGULATIONS, SECTION IV - BOARD OF APPEALS**  
**E. SPECIAL EXCEPTION STANDARDS**

The Planning Board shall have the power and duty to approve, deny, or approve with conditions special exceptions only as expressly provided in the applicable zoning districts. The applicant shall have the burden of proving that his/her application is in compliance with the following standards. After the submission of a complete application, the Planning Board shall approve a special exception application or approve it with conditions only if it makes a positive finding based on the information presented that the proposed use, with any conditions attached, meets the following standards:

1. The proposed use will not create or aggravate hazards to vehicular or pedestrian traffic on the roads and sidewalks, both off-site and on-site, serving the proposed use as determined by the size and condition of such roads and sidewalks, lighting, drainage, and the visibility afforded to pedestrians and the operators of motor vehicles on such roads;
2. The proposed use will not cause water pollution, sedimentation, erosion, contaminate any water supply nor reduce the capacity of the land to hold water so that a dangerous or unhealthy condition results;
3. The proposed use will not create unhealthful conditions because of smoke, dust, or other airborne contaminants;
4. The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or unreasonably restrict access of light and air to neighboring properties;
5. The proposed waste disposal systems are adequate for all solid and liquid wastes generated by the use;
6. The proposed use will not result in damage to spawning grounds, fish, aquatic life, bird, or other wildlife habitat, and, if located in a shoreland zone, will conserve (a) shoreland vegetation; (b) visual points of access to waters as viewed from public facilities; and (c) actual points of access to waters; and (d) natural beauty.

A special exception permit granted by the Planning Board shall expire if the use does not commence within one year of the date of the Planning Board approval. The Planning Board may extend the one-year approval for one additional year upon request filed by the applicant prior to the expiration of the initial one-year period if the applicant can demonstrate that the use cannot be commenced within the required period of time because other required permits have not been issued or because the special exception approval has been appealed. This provision shall not apply to mineral extraction uses, which shall be subject to the provisions of Chapter II, Section I(C)(3)(b).

**CHAPTER III SUBDIVISION, SECTION III - PRELIMINARY PLAN**  
**C. PRELIMINARY PLAN REVIEW**

1) The Planning Board shall review the Preliminary Plan of the proposed development as submitted. It shall verify the provision of all information as required under the preceding subsection B, and shall accept or deny any waivers requested as listed by the developer at its discretion. It may require the developer to undertake further studies as it deems necessary to ascertain that the public convenience, safety, health and welfare are protected, that the Town will not in the future incur extraordinary expense as a result of the development, either on or off the site, and that the environment will not be harmed unduly. The applicant shall submit such additional required information within twelve (12) months after the Planning Board requests such information. Failure to submit such information within twelve (12) months of the date upon which the request was made shall cause the application to expire and be deemed null and void.

If an applicant fails to appear at two or more scheduled meetings without having been excused by the Planning Board, the application shall be deemed abandoned, shall expire and shall become null and void.

#### **CHAPTER IV SITE PLAN REVIEW, SECTION VII - PROCEDURES FOR ADMINISTRATIVE REVIEW OF DEVELOPMENTS**

C. Submission Requirements - The application for site plan review of a minor development shall contain at least the following exhibits and information:

1) Seven (7) copies of written materials plus seven (7) sets of site plans, maps, or drawings containing the information listed below. The written materials shall be contained in a single report. The site plan, maps, or drawings shall be at a scale sufficient to allow review of the items listed under approval criteria, but in no case shall be more than fifty (50) feet to the inch for that portion of the tract of land being proposed for development.

d. Supplemental Information

If the Planning Director determines that the project has the potential for having significant adverse impact on traffic flow or safety or on the environment, he may require the applicant to submit a traffic impact assessment and/or an environmental impact assessment.

The Planning Director may require the applicant to provide a boundary survey of the parcel if the property lines are not clearly and easily determined on the ground.

The applicant shall delineate on the plan or supply such other information, studies or reports from qualified professionals that may be requested by the Planning Director under this section when determined by the Planning Director to be reasonably necessary to make any of the determinations required by this chapter, or to impose or carry out conditions of approval. The applicant shall submit such additional required information within one hundred twenty (120) days after the Planning Director requests such information. Failure to submit such information within one hundred twenty (120) days of the date upon which the request was made shall cause the application to expire and be deemed null and void.

#### **SECTION VIII - PROCEDURES FOR MAJOR DEVELOPMENTS**

D. Review Procedures - Within twenty (20) days of the application being determined to be complete, the Planning Department, Code Enforcement Office, Engineering Department, Police Department, and Fire Department shall review the application and shall provide the Planning Director with a written review of the application. These reviews shall evaluate the application's conformance with the approval criteria and standards and identify any areas in which the department has questions about conformance with local ordinances.

3) Supplemental submission - Based upon the results of the staff workshop, the applicant may choose to revise the application and/or submit additional materials. These materials should address or rebut the issues raised in the staff review. Fifteen (15) copies of all new or revised materials shall be submitted. Revised materials shall be clearly labeled as revised and shall include the date of the revisions. Within fifteen (15) days of receiving a supplemental submission, the Planning Director shall

Distribute copies of the supplemental materials to the department heads for review.

-Prepare a revised staff report summarizing the current status of the application and the application's conformance with the approval criteria.

-Provide the applicant and Chairman of the Planning Board with the revised staff report.

Schedule a site walk for the Planning Board.

3a) Request for additional information by Planning Board and expiration of application

- The Planning Board may request additional information, studies or reports from qualified professionals when the Planning Board determines that such information is reasonably necessary to make any of the determinations required by this Chapter or to impose or carry out conditions of approval. The applicant shall submit such additional required information within twelve (12) months after the Planning Board requests such information. Failure to submit such information within twelve (12) months of the date upon which the request was made shall cause the application to expire and be deemed null and void. If an applicant fails to appear at two or more scheduled meetings without having been excused by the Planning Board, the application shall be deemed abandoned, shall expire and shall become null and void.

**Item #7872** Action to consider amending the Shoreland Zoning Ordinance. (Adm. Spon.)

**Proposed Order #7872** **ORDERED** that the Town Council of the Town of Gorham, Maine, in Town Council assembled refer a proposal to amend the Shoreland Zoning Ordinance to the Planning Board for public hearing and their recommendation.

Proposed amendments to the Shoreland Zoning Ordinance (Note: Additions are underlined and deletions struck out.)

#### **CHAPTER I, SECTION IV - DEFINITIONS**

Dwelling A building designed or used as the living quarters for one or more families. The term shall not be deemed to include a hotel, motel, rooming house, mobile home, manufactured housing unit or trailer, but shall include a modular housing unit consisting of two or more units of which neither unit is a complete dwelling unit and which is constructed in accordance with the BOCA Building Code.

Dwelling Unit A room or group of rooms forming a habitable unit for one family with facilities used or intended to be used for living, sleeping, cooking and eating. The term shall not be deemed to include trailers.

Dwelling Unit In shoreland areas, this term shall mean a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping, and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rental.

Recreational vehicles are not dwelling units.

Essential Services The construction, alteration or maintenance of gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

(Applies to Shoreland Area Protection, Chapter II, E.)

Family One or more persons occupying a premises and living as a single housekeeping unit as distinguished from a group occupying a rooming house or motel.

Flood Insurance Rate Map The official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the Town of Gorham, Maine.

Floor Area The sum of the horizontal areas of a floor(s) of a structure enclosed by the exterior walls.

Floor Area Ratio A measure of the intensity of the use of a piece of property determined by dividing the sum of the gross floor area of all floors of all principal buildings or structures by the total area of the parcel.

Forest Management Activities Timber cruising and other forest resources evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads. (Applies to Shoreland Area Protection, Chapter II, E.)

Forested wetland A freshwater wetland dominated by woody vegetation that is six (6) meters tall or taller.

Foundation The supporting structure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, frostwalls, or other base consisting of concrete, block, brick or similar material.

Freshwater wetland Freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are:

1. of ten or more contiguous areas; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook such that in a natural state, the combined surface area is in excess of 10 acres; and
2. inundated or saturated by surface or ground water at a frequency and a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition. (Applies to Shoreland Area Protection, Chapter II, 1.E.)

Front Building Line Line parallel to the front lot line transecting that point in the building face which is closest to the front lot line. This face includes porches, whether enclosed or unenclosed but does not include steps.

Functionally Water Dependent Uses Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal and inland waters and which cannot be located away from these waters. The uses include, but are not limited to, commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings, fish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aides, basins and channels, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water and which cannot reasonably be located or operated at an inland site, and uses which primary provide general public access to waters. (Applies to Shoreland Area Protection, Chapter II, Section I.E.)

Funeral Home A building used for the preparation of the deceased for the burial and display of the deceased and rituals connected therewith before burial or cremation. A funeral home, as defined for purposes of this code, includes a funeral chapel.

Golf Course A tract of land laid out for at least nine holes for playing the game of golf and improved with tees, greens, fairways, and hazards that may include a clubhouse and shelter. See Country Club.

Great pond Any inland body of water which in a natural state has a surface area in excess of ten acres, and any inland body of water artificially formed or increased which has a surface area in excess of thirty (30) acres except for the purposes of this Ordinance, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner. (Applies to Shoreland Area Protection, Chapter II, 1.E.)

Ground cover Small plants, fall leaves, needles and twigs and the partially decayed organic matter of the forest floor. (Applies to Shoreland Area Protection, Chapter II, Section I.E.)

Groundwater All the water found beneath the surface of the ground that is present in soil pore space or in bedrock cracks or fractures. In this Code, the term refers to the subsurface water present in aquifers, wells, recharge areas, and discharge areas.

Height of Building The vertical measurement from grade to the highest point of the roof beams in flat roofs; to the highest point on the deck of mansard roofs; to a level

midway between the level of the eaves and highest point of pitched roofs or hip roofs; or to a level two-thirds of the distance from the level of the eaves to the highest point of gambrel roofs. For this purpose, the level of the eaves shall be taken to mean the highest level where the plane of the roof intersects the plane of the outside wall on a side containing the eaves.

Height of Structure In shoreland areas, the vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances that have no floor area.

## **CHAPTER 1 – ZONING REGULATIONS – SECTION IV – BOARD OF APPEALS –**

### **D. APPEAL PROCEDURE**

#### **D. APPEAL PROCEDURE**

- 1) In all cases, a person aggrieved by a decision of the Code Enforcement Officer shall commence his appeal within thirty (30) days after issuance of a written decision by the Code Enforcement Officer. The appeal shall be filed with the Town Clerk on forms to be approved by the Board of Appeals, and the aggrieved person shall specifically set forth on said form the grounds for said appeal. A fee in such amount(s) and for such purpose(s) as the Town Council may from time to time establish by Council order shall be paid by the appellant to the Town of Gorham the time of filing his appeal, which shall not be refundable. Each appeal shall be filed on a separate form. A separate fee shall be assessed for each appeal except that a single fee shall be assessed for multiple appeals filed by the same appellant, concerning the same property, and scheduled to be heard by the Board of Appeals at the same proceeding.
- 2) Before taking action on any appeal, the Board of Appeals shall hold a public hearing. The Town Clerk shall cause notice of the appeal to be published in a newspaper of general circulation in the Town at least seven days prior to the date of hearing. The notice shall be in a form which the Town Clerk deems to be an adequate summary of the appeal.
- 3) Following the filing of an appeal, the Town Clerk shall notify forthwith the Board of Appeals, the Code Enforcement Officer and the Planning Board, and the appeal shall be in order for hearing at the next meeting of the Board of Appeals following by at least 7 days the mailing of notices but within sixty (60) days of the formal appeal except that those appeals requiring Planning Board recommendation to the Board of Appeals shall be heard by the Board of Appeals within sixty (60) days following Planning Board recommendation.
- 4) In appeals for enlargement or physical replacement of non-conforming uses, and for special permits for earth material removal, the Town Clerk shall notify by mail the owners of all property within 500 feet of the property involved of the nature of the appeal and of the time and place of the public hearing thereon.
- 5) In the case of administrative and variance appeals, the Town Clerk shall notify by mail only the owners of property abutting the property for which an appeal is taken of the nature of the appeal and of the time and place of the public hearing thereon.
- 6) For the purposes of this section, the owners of property shall be considered to be the parties listed by the Assessor of Taxes for the Town of Gorham as those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the Board of Appeals.
- 7) Written notice of the decision of the Board of Appeals shall be sent to the appellant, the Code Enforcement Officer, the Chairman of the Planning Board and the Chairman of the Town Council within thirty (30) days of the date of the hearing of the appeal of application.
- 8) At any hearing, a party may appeal by agent or attorney. Hearing shall not be continued to other times except for good cause.
- 9) The Code Enforcement Officer or his representative as designated by the Town Manager shall attend all hearings and may present to the Board of Appeals all plans,



photographs, or other material he deems appropriate for an understanding of the appeal.

10) A right of appeal under the provisions of this chapter secured by vote of the Board of Appeals shall expire if the work or change involved is not commenced within six months of the date of which the appeal is granted, and if the work or change is not substantially completed within one year of the date on which such appeal is granted, unless as otherwise provided for in the appeal.

11) If the Board of Appeals shall deny an appeal, a second appeal of a similar nature shall not be brought before the Board within one year from the date of the denial by the Board of the first appeal, unless in the opinion of a majority of the Board, substantial new evidence shall be brought forward, or unless the Board finds, in its sole and exclusive judgment, that an error or mistake of law or misunderstanding of facts shall have been made.

12) The applicant shall record any restrictions or conditions of approval imposed by the Board of Appeals before any Building Permit or Certificate of Occupancy shall be issued, pursuant to Chapter I, Section III (D) (2) and (G) of this Code.

13) A copy of each variance granted by the Board of Appeals shall be submitted to the Department of Environmental Protection within fourteen (14) days of the decision granting the variance.

14) In the case of variance applications within a shoreland area, a copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

## **CHAPTER II – GENERAL STANDARDS OF PERFORMANCE – SECTION I – ENVIRONMENTAL – E. SHORELAND AREA PROTECTION**

### **SHORELAND AREA PROTECTION**

1) Purposes - The purpose of this subsection, by proper land use management practices, is to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion and sedimentation; to protect archaeological and historic resources; to protect freshwater wetlands; to control building sites, placement of buildings, structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas in accordance with the provisions of Title 38 Section 435-449 of the Maine Revised Statutes Annotated (M.R.S.A.) as amended from time to time.

2) Applicability - This subsection applies to the "Shoreland area", which term is defined as all land areas within 250 feet, horizontal distance, of the normal high-water line of any great pond or river; within 250 feet, horizontal distance, of the upland edge of a freshwater wetland; and within 75 feet, horizontal distance, of the normal high-water line of a stream. This subsection also applies to any building or structure built on, over or abutting a dock, wharf or pier, or other building extending beyond the normal high-water line of a water body or within a wetland.

#### 3) Districts and Zoning Map

a) Official Shoreland Zoning Map - The areas to which this subsection is applicable are hereby divided into the following overlay district and sub districts, which, district and sub districts collectively are referred to herein as the Shoreland Overlay District, as shown on the Official Shoreland Zoning Map which is made a part of this Ordinance:

- A. Shoreland Overlay District
- B. Resource Protection Sub district

C. Stream Protection Sub district

4) Interpretation of District Boundaries - The boundaries of the Shoreland Overlay District exist as set forth in Section 3) of this subsection. The depiction of the Shoreland Overlay District and associated sub districts delineated on the Official Shoreland Zoning Map, is illustrative of the general location of the District and sub district. The Boundaries of these District and sub districts shall be determined by measurement of the distance indicated on the maps from the normal high-water line of the water body or the upland edge of wetland vegetation, regardless of the location of the boundary shown on the map.

Where uncertainty exists as to the exact location of the District or sub district boundaries, the Code Enforcement Officer shall be the final authority.

5) Land Use Requirements - Except as hereinafter specified, no building/structure or land located within the Shoreland Overlay District shall hereafter be used or occupied, and no building/structure or part thereof shall hereafter be erected, constructed, expanded, moved, or altered and no new lot shall be created except in conformity with all of the regulations herein specified and the regulations of the Land Use and Development Code, unless a variance is granted.

6) Non-conformance Within the Shoreland Overlay District

a) Purpose - It is the purpose of this subsection to encourage land use conformities, except that non-conforming conditions that existed before the effective date of this subsection or amendments thereto shall be allowed to continue, subject to the requirements set forth in this subsection and in Chapter I, Section II of the Gorham Land Use and Development Code. Except as otherwise provided in this subsection, a non-conforming condition shall not be permitted to become more non-conforming.

b) Non-conforming Buildings and Uses:

(1) Enlargement: A non-conforming building may be enlarged after obtaining a permit from the Board of Appeals, if such enlargement does not increase the non-conformity of the building/structure.

(a) If any portion of a building is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the building shall not be expanded in floor area or volume after January 1, 1989, by thirty percent (30%) or more, during the lifetime of the building. An expansion which increases either the volume or floor area of the building or any portion thereof that is less than the said required water setback by thirty percent (30%) or more is a substantial expansion which is prohibited unless a variance is obtained. If a replacement structure complies with the requirements of subsection 6)c)(3) of this Section and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30% in floor area or volume since that date.

(b) Whenever a new, enlarged, or replacement foundation is constructed under a nonconforming structure, the building and new foundation are must be placed such that the setback requirement is met to the greatest practical extent as determined by the Board of Appeals, basing its decision on the criteria specified in subparagraph 6) b) (2), Relocation, below;. The construction, enlargement or replacement of a foundation shall not be considered to be an expansion of the structure if the completed foundation does not extend beyond the exterior dimensions of the building, except for an expansion in compliance with subsection 6)b)(1)(a); and that the foundation does not cause the building to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure from original ground level to the bottom of the first floor sill.

(c) No building which is less than the required setback from the normal high-water line of a water body, tributary stream, or upland edge of a wetland shall be expanded toward the water body, tributary stream, or wetland.

(2) Relocation: A non-conforming building may be relocated within the boundaries of

the parcel on which the building is located provided that the site of relocation conforms to the water setback requirements to the greatest practical extent as determined by the Board of Appeals, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules, (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a building be relocated in a manner that causes the building to be more non-conforming. In determining whether the building relocation meets the setback to the greatest practical extent, the Board of Appeals shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other buildings on the property and on adjacent properties and the type and amount of vegetation to be removed to accomplish the relocation, the location of the septic system and other on-site soils suitable for septic system and other on-site soils suitable for septic systems. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Board of Appeals shall require replanting of native vegetation to compensate for the destroyed vegetation. Replanting shall be required as follows:

(a) Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five (5) trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed. Other woody and herbaceous vegetation and ground cover that are removed or destroyed in order to relocate a structure must be reestablished. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

(b) Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation that may consist of grasses, shrubs, trees or a combination thereof.

3) Reconstruction or Replacement: Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland may be reconstructed or replaced provided that a permit is obtained within one year of the date of damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water setback requirement to the greatest practical extent as determined by the Board of Appeals in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its nonconformity. If the reconstructed or replacement structure is located in less than the required setback, it shall not be any larger than the original structure, except as allowed pursuant to subsection 6)b)(1)(a), as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with subsection 6)c)(2). In determining whether the building reconstruction or replacement meets the water setback to the greatest practical extent the Board of Appeals shall consider in addition to the criteria in subparagraph 6) b) (2) above, the physical condition and type of foundation present, if any.

(4) Expansions: Expansions of non-conforming uses are prohibited except that non-conforming residential uses may, after obtaining a permit from the Board of Appeals, be expanded within existing residential structures or within expansions of such structures as permitted in subparagraph 6) b) (1) above.

c) Non-conforming Lots within a Shoreland Area

(1) Non-conforming Lots: A non-conforming lot of record as of the effective date of

this Ordinance or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot area, lot width and shore frontage can be met. Variances relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals.

(2) Contiguous Built Lots: If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S.A. sections 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

If two or more principal uses or structures existed on a single lot of record on the effective date of this Ordinance, each may be sold on a separate lot provided that the above-referenced law and rules are complied with. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.

(3) Contiguous Lots – Vacant or Partially Built: If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements.

This provision shall not apply to 2 or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons on the effective date of this Ordinance and recorded in the Registry of Deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules; and

(a) Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or

(b) Any lots that do not meet the frontage and lot size requirements of Section 12(E)(3)(a) are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

7) Establishment of District and Sub districts

a) Shoreland Overlay District - This District consists of the shore land area and any and all buildings and structures built on, over or abutting a pier, dock, wharf and any and all buildings and structures extending beyond the normal high-water line of a water body or within a wetland. The Shoreland Overlay District includes the Resource Protection Sub district and the Stream Protection Sub district.

b) Resource Protection Sub District - This sub district shall include the following areas when they occur within the limits of the Shoreland Overlay District, exclusive of the Stream Protection Sub district, except that areas which are currently developed need not be included within the Resource Protection Sub district.

(1) Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Department of Environmental Protection as of May 1, 2006. For the purposes of this paragraph, "wetlands associated with great ponds and rivers" shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond or river and have a surface elevation at or below the water level of the great pond or river during the period of normal high water. Wetlands associated with great ponds or rivers are considered to be part of that great pond or river.

(2) Flood plains along rivers and flood plains along artificially formed great ponds along rivers, defined by the 100 year flood plain as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.

(3) Areas of two or more contiguous acres with sustained slopes of 20% or greater.

(4) Areas of two (2) or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater or coastal wetland as defined, and which are not surficially connected to a water body during the period of normal high water.

(5) Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement.

c) Stream Protection Sub District - This sub district includes all land areas within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream exclusive of those areas within two-hundred and fifty (250) feet, horizontal distance, of the normal high-water line of a great pond or river and within two-hundred fifty (250) feet, horizontal distance, of the upland edge of a freshwater wetland. Where a stream and its associated shoreland area is located within two-hundred and fifty (250) feet, horizontal distance, of the above water bodies or wetlands, that land area should be regulated under the terms of the shoreland sub district associated with that water body or wetland.

8) Land Uses in the Shoreland Overlay District - All permitted uses and special exception uses within the zoning district underlying the Shoreland Overlay District may be commenced, maintained, enlarged or expanded as provided in the Land Use and Development Code subject to the provisions of this Subsection, except that within the Resource Protection and Stream Protection Sub districts only those uses listed in subparagraphs 8 a) and 8 b) below are permitted.

a) Only the following uses are permitted in the Resource Protection Sub district, subject to all applicable performance standards, and all other uses allowed in the underlying district(s) as permitted uses and special exception uses are prohibited:

(1) Non-intensive recreational uses not requiring structures such as hunting, fishing and hiking;

(2) Motorized and non-motorized vehicular traffic on existing roads, trails and rails;

(3) Hiking trails, inactive trails, bridle paths, pedestrian trails and walkways;

(4) Forest management activities, except for timber harvesting and land management roads;

(5) Timber harvesting;

(6) Fire prevention activities;

(7) Wildlife management activities;

(8) Soil and water conservation activities;

(9) Surveying and resource analysis;

(10) Emergency operations;

(11) Agriculture;

(12) Gravel pits;

(13) Non-residential facilities for educational, scientific or nature interpretation purposes;

(14) Aquaculture;

(15) Buildings and structures accessory to existing residential buildings and to uses permitted herein;

(16) Permanent and temporary piers, docks, wharves, bridges and other structures and uses extending over or below the normal high-water line or within a wetland;

(17) Public and private recreational areas involving minimal structural development;

(18) Parking facilities where the resource protection designation is due to floodplain criteria;

(19) Road construction;

(20) Public utility structures;

- (21) Clearing or removal of vegetation for activities other than timber harvesting;
- (22) Filling and earth-moving activities; and
- (23) Signs.

b) Only the following uses are permitted in the Stream Protection Sub district, and all other uses allowed in the underlying district(s) as permitted uses and special exception uses are prohibited:

- (1) Non-intensive recreational uses not requiring structures such as hunting, fishing and hiking;
- (2) Motorized and non-motorized vehicular traffic on existing roads, trails and rails;
- (3) Hiking trails, inactive trails, bridle paths, pedestrian trails and walkways;
- (4) Forest management activities, except for timber harvesting and land management roads;
- (5) Timber harvesting;
- (6) Fire prevention activities;
- (7) Wildlife management activities;
- (8) Soil and water conservation activities;
- (9) Surveying and resource analysis;
- (10) Emergency operations;
- (11) Agriculture;
- (12) Non-residential facilities for educational, scientific or nature interpretation purposes;
- (13) Aquaculture;
- (14) Buildings accessory to existing residential buildings and to uses permitted herein;
- (15) Permanent and temporary piers, docks, wharves, bridges and other structures and uses extending over or below the normal high-water line or within a wetland;
- (16) Conversion of seasonal residences to year-round residences where allowed by State statute and the Maine State Plumbing Code;
- (17) Private sewage disposal systems for allowed uses;
- (18) Public and private recreational areas involving minimal structural development;
- (19) Road construction;
- (20) Public utility structures;
- (21) Clearing of vegetation;
- (22) Filling and earth-moving activities; and
- (23) Signs

9) Land Use Performance Standards - All land use activities within the Shoreland Overlay District shall conform to the following performance standards, if applicable. When there is any conflict between these performance standards and the other standards of this Land Use and Development Code, the more restrictive standards shall control.

a) Minimum Lot Standards

- (1) No dwelling unit(s) or other building shall be erected except on a lot which meets the minimum lot size and other dimensional requirements of the underlying district established under Chapter I, provided, however, that if the underlying district does not specify a minimum lot area, the minimum lot area for residential uses and public and private recreational facilities shall be 40,000 square feet and that if the underlying district does not specify a maximum building height, the maximum building height shall be thirty-five (35) feet, as measured from the mean grade prior to construction at the downhill side of the structure and the highest point of the structure, excluding chimneys, antennas, and similar appurtenances that have no floor area. Minimum shore frontage for residential uses and public and private recreational facilities shall be 200 feet and for all other non-residential uses shall be 300 feet.
- (2) Land below the normal high-water line of a water body or upland edge of a wetland shall not be included toward calculating minimum lot area.
- (3) The minimum width of any portion of any lot within one hundred (100) feet, horizontal distance, of the normal high-water line of a water body or upland edge of a

wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.

(4) In shoreland areas, if more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.

b) Principal and Accessory Building/Structures

(1) All new principal and accessory buildings and structures shall be set back at least one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond or a river flowing to a great pond and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland. In the Resource Protection District the setback requirement shall be two hundred fifty (250) feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district, which shall be subject to the setback requirements set forth above. The water body or wetland setback provision shall neither apply to buildings and structures which require direct access to the water as an operational necessity, such as piers and docks, nor to other functionally water-dependent uses.

(2) The lowest floor elevation of openings of all buildings and structures including basements shall be elevated at least three (3) feet above the elevation of the 100 year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood plain soils.

(3) The total footprint area of all buildings/structures, parking lots and other non-vegetated surfaces, within the shore land zone shall not exceed twenty percent (20%) of the lot or a portion thereof located within the shoreland zone, including land area previously developed.

(4) Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a Shoreland Zoning approval from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided; that the structure is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, Title 38, Section 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.

c) Piers, Docks, Wharves, Bridges and Other Structures and Bases Extending Over or Below the Normal High-Water Line of a Water Body or Within a Wetland

(1) Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.

(2) The location shall not reasonably interfere with existing developed or natural beach areas.

(3) The facility shall be located so as to minimize adverse effects on fisheries.

(4) The facility shall be no larger in dimension than necessary to carry on the activity. A temporary pier, dock or wharf shall not be wider than six (6) feet for non-commercial uses.

(5) No new building or structure shall be built on, over or abutting a pier, wharf, dock or other building extending beyond the normal high-water line of a water body or within a wetland unless the building or structure requires direct access to the water body or wetland as an operational necessity.

(6) New permanent piers and docks shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible and the Department of Environmental Protection has issued a permit pursuant to the Natural Resources Protection Act.

(7) No existing building or structure built on, over or abutting a pier, wharf, dock or other building extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units.

(8) Structures built on, over or abutting a pier, wharf, dock or other building extending beyond the normal high-water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.

d) Roads and Driveways - The following standards shall apply to the construction of roads and/or driveways and drainage systems, culverts and other related features.

(1) Roads and driveways shall be set back at least one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond or a river flowing to a great pond and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the road and/or driveway setback requirement shall be no less than fifty (50) feet upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland.

On slopes of greater than twenty percent (20%) the road and/or driveway setback shall be increased by ten (10) feet, horizontal distance, for each five percent (5%) increase in slope above twenty percent (20%).

This subsection shall neither apply to approaches to water crossings nor to roads or driveways that provide access to permitted structures, and facilities located nearer to the shoreline or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of subsection b)1) except for that portion of the road or driveway necessary for direct access to the structure.

(2) Existing public roads may be expanded within the legal road right-of-way regardless of their setback from a water body, tributary stream or wetland.

(3) New roads and driveways are prohibited in a Resource Protection Sub district except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway may also be or as approved by the Planning Board in a Resource Protection Sub district upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted in a Resource Protection District the road and/or driveway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.

(4) Road and driveway embankments shall be no steeper than a slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Subparagraph m).

(5) Road and driveway grades shall be no greater than ten percent (10%) except for segments of less than two hundred (200) feet.

(6) Where underground storm water drainage is not required, in order to prevent road and driveway surface drainage from directly entering water bodies, roads and driveways shall be designed, constructed and maintained to empty onto an unscarified buffer strip at least fifty (50) feet plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream, or upland edge of a wetland. Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.

(7) Where underground storm water drainage is not required, ditch relief (crossing drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow in the road or ditches gains sufficient volume or head to erode the road, driveway, or ditch. To accomplish this, the following shall apply:

(a) Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road or driveway at intervals no greater than indicated in the following table:



Road Grade (percent) Spacing (feet)

0-2	250	
3-5	200-135	
6-10		100-80
11-15		80-60
16-20		60-45
21+		40

(b) Drainage dips may be used in place of ditch relief culverts only where the grade is ten percent (10%) or less.

(c) On sections having slopes greater than ten percent (10%) ditch relief culverts shall be placed at approximately a thirty (30) degree angle down slope from a line perpendicular to the centerline of the road or driveway.

(d) Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials.

(8) Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.

e) Signs

(1) The provisions of Chapter II, Section III shall govern the use of signs in the Shoreland Overlay District.

f) Storm Water Runoff

(1) All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas shall be retained in order to reduce runoff and encourage infiltration of storm waters.

(2) Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

g) Septic Waste Disposal

(1) All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules) and the following requirements: a. clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not be located within 75 feet, horizontal distance of the normal high-water line of a water body or the upland edge of a wetland and b. no holding tank shall be allowed for a first-time residential use in the shoreland zone.

h) Essential Services

(1) Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.

(2) The installation of essential services, other than road-side distribution lines, is not permitted in a Resource Protection or Stream Protection District, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where permitted, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.

(3) Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

i) Gravel Pits

(1) No part of any gravel pit operation, including but not limited to drainage and runoff control features, shall be permitted within one hundred (100) feet, horizontal distance, of a great pond or a river flowing to a great pond, or within seventy-five (75) feet of the normal high water line of any other water body, tributary stream or upland edge of a wetland.

j) Agriculture

(1) All spreading of manure shall be accomplished in conformance with the *Manure*

*Utilization Guidelines* published by the Maine Department of Agriculture on November 1, 2002, and the Nutrient Management Law (7 M.R.S.A. Sections 4201-4209).

(2) Manure shall not be stored or stockpiled within one hundred (100) feet, horizontal distance, of a great pond or a river flowing to a great pond, or within seventy-five (75) feet horizontal distance, of other water bodies, tributary streams, or wetlands. All manure storage areas within the shoreland zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.

(3) Agricultural activities involving tilling of soil greater than forty thousand (40,000) square feet in surface area within the Shoreland Overlay District shall require a Conservation Plan to be filed with the Planning Board. Nonconformance with the provisions of said plan shall be considered to be a violation of this subparagraph.

(4) There shall be no new agricultural activities, including tilling of soil greater than forty thousand (40,000) square feet in area where some or all of such tilling is of soil within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond, within seventy-five (75) feet, horizontal distance, from other water bodies; nor within twenty-five (25) feet, horizontal distance, of tributary streams, and wetlands. Operations in existence on the effective date of this subsection and not in conformance with this provision may be maintained providing that such tilling is conducted in accordance with a Conservation Plan.

(5) Newly established livestock grazing areas shall not be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond, within seventy-five (75) feet, horizontal distance of other water bodies, nor within twenty-five (25) feet, horizontal distance, of tributary streams, and wetlands. Livestock grazing associated with on-going farm activities, and which are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan.

(a) Subparagraph (j) (5) above notwithstanding, the establishment of new livestock grazing areas may be allowed within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond or a river flowing to great pond, within seventy-five (75) feet, horizontal distance, of other water bodies or within twenty-five (25) feet, horizontal distance, of tributary streams and wetlands as an exception where the Planning Board finds: (1) that the applicant has made a clear showing, including the submission of a Conservation Plan, that such establishment of a new livestock grazing area will not have an undue adverse impact upon the shoreland area, and (2) that such an exception meets the shoreland zoning approval standards set out in paragraph 10 of this subsection, and where such livestock grazing is conducted in accordance with that Conservation Plan.

k) Timber Harvesting

(1) Within the strip of land extending 75 feet inland from the normal high-water line in a shoreland area zoned Resource Protection abutting a great pond there shall be no timber harvesting, except to remove safety hazards.

(2) Except in areas as described in subparagraph k) (1) above, timber harvesting shall conform with the following provisions:

(a) Selective cutting of no more than forty percent (40%) of the total volume of trees four (4) inches dbh or more in diameter measured at 4 1/2 feet above ground level on any lot in any ten (10) year period is permitted. In addition:

i. Within one hundred (100) feet, horizontal distance of the normal high-water line of a great pond or a river flowing to a great pond and within seventy-five (75) feet, horizontal distance, of the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, there shall be no clear cut openings and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.

ii. At distances greater than one hundred (100) feet, horizontal distance, of a great pond or a river flowing to a great pond and greater than seventy-five (75) feet, horizontal distance, of the normal high-water line of other water bodies or the upland edge of a wetland, harvesting operations shall not create

single clear cut openings greater than ten thousand (10,000) square feet in the forest canopy. Where such openings exceed five thousand (5,000) square feet they shall be at least one hundred (100) feet, horizontal distance, apart. Such clear cut openings shall be included in the calculation of total volume removal. For the purposes of these standards volume may be considered to be equivalent to basal area.

(b) Subparagraph k) (2) (a) above notwithstanding, timber harvesting operations exceeding the forty percent (40%) limitation upon selective cutting may be allowed as an exception where the Planning Board finds: (1) that the applicant has made a clear showing, including the submission of a forest management plan signed by a Maine licensed professional forester, that such an exception is necessary for good forest management, and (2) that such an exception meets the shoreland zoning approval standards set out in paragraph 10 of this subsection.

(c) No accumulation of slash shall be left within fifty (50) feet, horizontal distance, of the normal high-water line of a water body. In all other areas slash shall either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than four (4) feet above the ground. Any debris that falls below the normal high water line of a water body or tributary stream shall be removed.

(d) Timber harvesting equipment shall not use stream channels as travel routes except when:

- i. Surface waters are frozen; and
- ii. The activity will not result in any ground disturbances.

(e) All crossing of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.

(f) Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.

(g) Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least seventy-five (75) feet in width for slopes up to ten percent (10%) shall be retained between the exposed mineral soil and the normal high-water line of a water body or upland edge of a wetland. For each ten percent (10%) increase in slope, the unscarified strip shall be increased by twenty (20) feet, horizontal distance. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided, however, that no portion of such exposed mineral soil on a bank face shall be closer than twenty-five (25) feet, horizontal distance, from the normal high-water line of a water body or upland edge of a wetland.

#### l) Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting

(1) Within a Resource Protection Sub district abutting a great pond, there shall be no cutting of vegetation within the strip of land extending seventy-five (75) feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards. Elsewhere, in any Resource Protection Sub district, the cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that district.

(2) Except in areas as described in subparagraph l) (1), above, and except to allow for the development of permitted uses, within a strip of land extending one hundred (100) feet, horizontal distance, inland from the normal high-water line of a great pond or a river flowing to a great pond and seventy-five (75) feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, a buffer strip or vegetation shall be preserved as follows:

(a) There shall be no cleared opening greater than two hundred fifty (250) square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a footpath not to exceed six (6) feet in width as measured between tree trunks and/or

shrub stems is permitted provided that a cleared line of sight to the water through the buffer strip is not created.

(b) Selective cutting of trees within the buffer strip is permitted provided that a well distributed stand of trees and other natural vegetation is maintained. For the purposes of this section a "well-distributed stand of trees" adjacent to a great pond or river, shall be defined as maintaining a rating score of 24 or more in each twenty-five (25) foot by 50 foot rectangular (1250 square feet) area as determined by the following rating system:

<u>Diameter of Tree 4 1/2 feet</u>	
<u>Above Ground Level (inches) Points</u>	
2 - 4 inches	1
4 - 8 inches	2
8 - 12 inches	4
12 in. or greater	8

Adjacent to other water bodies, tributary streams, and wetlands, a "well-distributed stand of trees" is defined as maintaining a minimal rating score of sixteen (16) per 25-foot by 50-foot rectangular area.

The following shall govern in applying this point system:

- i. The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer.
- ii. Each successive plot must be adjacent to, but not overlap a previous plot.
- iii. Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this section.
- iv. Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this section.
- v. Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

For the purposes of this section "other natural vegetation" is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one-half (4 1/2) feet above ground level for each 25-foot by 50-foot rectangle area. If five (5) saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 5 saplings have been recruited into the plot. Notwithstanding the above provisions, no more than forty percent (40%) of the total volume of trees four (4) inches or more in diameter, measured at 4 1/2 feet above ground level may be removed in any ten (10) year period.

(c) in order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered or removed, except to provide for a footpath or other permitted uses as described in subparagraphs (2) and (2) (a) above. The pruning of tree branches is allowed on the bottom 1/3 of the tree.

(d) In order to maintain a buffer strip of vegetation when the removal of storm-damaged, diseased, unsafe or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

The provisions contained in paragraph (2) above shall not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.

(3) The clearing of trees in conjunction with the development of permitted uses is governed by the timber harvesting provisions of subparagraph k).

In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate twenty-five percent (25%) of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, including land previously cleared.

(4) Cleared openings legally in existence on the effective date of this Subsection may be maintained, but shall not be enlarged, except as permitted by this Subsection.

(5) Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of this section.

m) Erosion and Sedimentation Control

(1) All activities which involve filling, grading, excavation or other similar activities shall comply with the erosion performance standards contained in Chapter I, Section I B.

n) Soils

(1) Soil suitability shall be governed by the provisions contained in Chapter II, Section I, A.

o) Water Quality

(1) No activity shall deposit on or into the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or substances will impair designated uses or the water classification of the water body, tributary stream or wetland.

p) Archeological Sites

(1) Any proposed land use activity involving structural development or soil disturbance or on adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the permitting authority shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (20) days prior to action being taken by the permitting authority. The permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

10) Administration

a) Shoreland Zoning Approval Required - After the effective date of this Subsection no person shall: engage in any activity or land use regulated by this Land Use and Development Code and located in the Shoreland Overlay District without first obtaining shoreland zoning approval from the Planning Board for any permanent pier, dock, wharf or other structure or use extending over or below the normal high-water line or within a wetland for any activity or land use requiring Planned Unit Development review under Chapter I, Subdivision Review under Chapter III, or Site Plan review under Chapter IV, or for any exception to the livestock grazing provisions of Subparagraph j) 5) or to the timber harvesting provisions of subparagraph k) (2), or from the Code Enforcement Officer for any other activity or land use. Where any approval is required for work in the Shoreland Overlay District, a copy of the approval shall be maintained on the site while the work authorized by the permit is being performed.

b) Approval Standards

(1) The Planning Board shall not approve a proposed permanent pier, dock, wharf or other structure or use extending over or below the normal high-water line or within a wetland or an application for planned unit development, subdivision or site plan proposed to be located in whole or in part within the Shoreland Overlay District or for any exception to the livestock grazing provisions of subparagraph j) 5) or to the timber harvesting provisions of subparagraph k) (2), nor shall the Code Enforcement Officer issue a building permit or other land use permit under this Chapter for any proposed land use that is not subject to the above Planning Board approvals and that is proposed to be located in whole or in part within the Shoreland Overlay District unless the Planning Board or the Code Enforcement Officer also makes a positive finding, with or without conditions and based on the information presented, that the proposed use:

(a) Will maintain safe and healthful conditions;

(b) Will not result in water pollution, erosion, or sedimentation to surface waters;

(c) Will adequately provide for the disposal of all water;

(d) Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;

(e) Will conserve shore cover and visual, as well as actual, points of access to inland

and coastal waters;

(f) Will protect archaeological and historic resources as designated in the Comprehensive Plan;

(g) Will mitigate flood hazards to development; and

(h) Is in conformance with this Subsection.

(2) If Shoreland Zoning approval is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing. No approval shall be granted involving a building if the building would be located in an unapproved subdivision or would violate any other local subsection regulation or any State law which the municipality is responsible for enforcing.

(3) The applicant shall have the burden of proving that the proposed land use or activity in the Shoreland Overlay District is in conformity with the purposes and provisions of this Subsection.

c) Expiration of Approval

(1) The Shoreland Zoning approval shall remain valid only for the duration of the underlying building permit, planned unit development approval, subdivision approval, or site plan approval or other land use approval or permit with which it is issued.

d) Permit Fees

To help recover costs incurred by the Town in the review, administration, site inspection, and public notice associated with the shoreland zoning permit application, the following fees and deposit in such amount(s) and for such purpose(s) as the Town Council may from time to time establish by Council order shall be paid by the applicant to the Town of Gorham at the time of filing the permit application:

(1) Publishing and public notice fee;

(2) Review fee; and

(3) Independent consulting and peer review escrow account to be established with the Town in accordance with Chapter II, Section IX of this Code. All fees shall be non-refundable except unexpended escrow deposits, which shall be refunded in accordance with Chapter II, Section IX, Subsection B of this Code. If a shoreland zoning permit application is also subject to subdivision review, site plan or municipal review under any other ordinance, the applicant shall pay only the later review fee amount exclusive of escrow deposit.

11) Enforcement

a) Nuisances - Any violation of this Article shall be deemed to be a nuisance.

b) Code Enforcement Officer

(1) It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Article. If the Code Enforcement Officer shall find that any provision of this Article is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.

(2) The Code Enforcement Officer shall conduct on-site inspections to insure compliance with all applicable laws and conditions attached to shoreland zoning approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Article.

(3) The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, shoreland zoning permits granted or denied, variances granted or denied, revocation actions, revocation of shoreland zoning approvals, appeals, court actions, violations investigated, violations found, and fees collected. On an annual basis, a summary of this record shall be submitted to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.

c) Fines - Any person, including but not limited to a landowner, a landowner's agent or

a contractor, who orders or conducts any activity in violation of this Article shall be penalized in accordance with 30-A M.R.S.A., Section 4452 as amended from time to time, and each day that a violation of this Article continues shall be deemed a separate violation of this Article.

d) Installation of Public Utility Service - No public utility, water district, sanitary district or any utility company of any kind may install services to any new structure located in the shoreland area unless written authorization attesting to the validity and currency of all local permits and approval required under this or any previous Article, has been issued by the appropriate municipal officials. Following installation of service, the company or district shall forward the written authorization to the municipal officials, indicating that installation has been completed.

**Item #7873** Action to consider an offer from the Portland Water District to sell property to the Town. (Adm. Spon.)

**Proposed Order #7873** **ORDERED**, that the Town Council of the Town of Gorham, Maine, in Town Council assembled authorize the Town Manager to notify the Portland Water District that the Town does not want to acquire the property off Town Path Road that was formally used as a sewer treatment facility.

**Item #7874** Action to consider extending a lease with the Gorham Cooperative Preschool. (Adm. Spon.)

**Proposed Order #7874** **ORDERED**, that the Town Council of the Town of Gorham, Maine, in Town Council assembled authorize a three year extension of a lease with the Gorham Cooperative Preschool for use of a building at the intersection of Ball Park Road and Access Road.

**Item #7875** Action to consider voting for a representative to the Maine Municipal Association Legislative Policy Committee. (Adm. Spon.)

**Proposed Order #7875** **ORDERED** that the Town Council of the Town of Gorham, Maine, in Town Council assembled vote for \_\_\_\_\_ to serve as a representative to the Maine Municipal Association Legislative Policy Committee.

**Item #7876** Action to consider an update to the mutual aid agreement for police activities. (Adm. Spon.)

**Proposed Order #7876** **ORDERED** that the Town Council of the Town of Gorham, Maine, in Town Council assembled approve an updated mutual aid agreement for police activities with municipalities in Cumberland County.

**Item #7877** Action regarding appointments to Town Boards and Committees. (Adm. Spon.)

**Proposed Order #7877** **ORDERED** that the Town Council of the Town of Gorham, Maine, in Town Council assembled appoint additional board and committee members as recommended by the Town Council Appointments Committee at their meeting on July 6, 2010.

**Item #7878** Action to consider accepting a resignation from the Baxter Memorial Library Board of Trustees. (Adm. Spon.)

**Proposed Order #7878** **ORDERED** that the Town Council of the Town of Gorham, Maine, in Town Council assembled accept the resignation of Deborah Loveitt from the Baxter Memorial Library Board of Trustees; and,

**BE IT FURTHER ORDERED** that the Town Council express their appreciation for her service on the Baxter Memorial Library Board of Trustees.

**Item #7879** Action to go into executive session, pursuant to Title 36 M.R.S.A., Section 841 (2) for the purpose of considering an application to abate taxes based on poverty. (Adm. Spon.)

**Proposed Order #7879** **ORDERED** that the Town Council of the Town of Gorham, Maine, in Town Council assembled go into executive session, pursuant to Title 36 M.R.S.A., Section 841 (2) for the purpose of considering an application to abate taxes based on poverty.

**ADJOURN**