

REPORT OF THE REGULAR MEETING OF THE GORHAM TOWN COUNCIL February 2, 2010 - 7:00 p.m.

Chairman Phinney opened the meeting at 7:02 pm.

Roll Call: Present: Chairman Phinney, Councilors; Caldwell, Csoros, Mattingly, & Miner, Town Manager, David Cole and Town Clerk, Christina Silberman Absent: Councilors; Robinson & Loveitt

Moved by Councilor Csoros, seconded by Councilor Mattingly and **VOTED** to accept the minutes of the January 5, 2010 Regular Town Council Meeting and the January 12, 2010 Special Town Council Meeting. **4 yeas, 1 abstention (Csoros).**

Open Public Communications

State Representative Jane Knapp reported to the Town Council on the following;

- Legislative Sentiment was expressed today to Chief Lefebvre to congratulate him for being named Cumberland County Fire Chief of the year.
- The Natural Resources Committee held a public hearing on Friday on proposed legislation regarding culverts and fish ways. These changes could mean a big price tag for Public Works Departments. Maine Municipal Association spoke against the proposal and people should call their Legislators to express their opinions.
- The Appropriations Committee continues to work on the State budget and there should be a report in March.

The Town Manager asked if Rep. Knapp has any idea on how the budget cuts will come out. Rep. Knapp said there will be more debate on the cuts and she can not guess the outcome. Councilor Mattingly urged Rep. Knapp to be involved in the hearing on the H1N1 legislation that doesn't really pertain to limiting the spread of H1N1 but would directly impact businesses (mandating that employers provide paid sick leave). This is not the time to leverage that kind of impact on small businesses. Chairman Phinney thanked Rep. Knapp for her report.

Harold McFarland, 75 Libby Ave., expressed frustration with a letter he received regarding a water bill and a late fee. He called the town to say he wouldn't pay the bill and was told a lien would be put on his property. He asked to have the late fee waived and it was not. At a recent Council meeting a church person came and said they would not pay an \$800 bill for the clock and the Council agreed to pay it. Although he sides with the church he does not understand this.

Councilor Communications

Councilor Caldwell reported that the School Planning & Building Committee met on January 26th. There will be another meeting tomorrow night to pick colors. The Finance Committee met on January 21st and discussed the budget to date. Thanks to the Town Manager and Department Heads, the budget is not looking bad. The Finance Committee talked at length about tax lien foreclosures and an item is on tonight's agenda.

Councilor Mattingly reported that the Capital Improvements Committee met and discussed an item that is on tonight's agenda.

Councilor Csoros asked the Finance Committee to consider putting out a request for proposals for banking services because the current contract is up. Councilor Csoros also asked that the Finance Committee speak with the Finance Director about establishing a road repair sinking fund so there would be a more stable, long term look at road repair.

Chairman's Report

Chairman Phinney indicated that the Town Manager will be reporting on his item.

Town Manager's Report

Town Manager, David Cole, announced that David Twomey has been hired as the new Code Enforcement Officer and he will start on February 16th. Mr. Twomey currently works for the City of Saco and previously worked here in Gorham.

School Committee Report

School Committee Chairman, Dennis Libby, reported on the following:

- State General Purpose Aid cuts are still not finalized and estimations are for a 1.3 - 1.5 million dollar cut.
- An energy consumption report will be forthcoming.
- Facilities Director, Norm Justice, has completed a building assessment. After completion of the new elementary school, Gorham will have an investment of approximately 75 million dollars in school facilities.
- Update on the new elementary school project, the committee's next meeting is February 3rd at 6 pm.
- A request for proposal has been issued to clear a piece of undeveloped land intended for a multi purpose field at Gorham Middle School before the window to allow this closes with the Department of Environmental Protection (DEP). There should be little or no cost for this due to the value of salvage wood.
- The next School Committee meeting will be February 10th at 7 pm.

Old Business

Item #7789 Moved by Councilor Mattingly, seconded by Councilor Caldwell and **VOTED** to waive the reading of the proposed order. **5 years.** The proposed order was moved by Councilor Miner and seconded by Councilor Csoros. Moved by Councilor Caldwell, seconded by Councilor Mattingly and **VOTED** to amend the proposed order to reflect the changes made in the distributed copy. **5 years.** The order as amended was then voted.

Whereas, the Town recently approved a significant update to the sign ordinance, and

Whereas, after initial applications, it has been concluded that some adjustments need to be made to address issues and clarify the ordinance,

Now Therefore, be it **ORDAINED** that the Town Council of the Town of Gorham, Maine, in Town Council assembled amend the Land Use and Development Code, Chapter I, Section V; Chapter II, Section III, Paragraph C, D, E and G; and, add a new paragraph M, regulating signs to reflect the changes made in the distributed copy. **5 yeas.**

(NOTE: additions are underlined and deletions are ~~struck through~~.)

Amend **CHAPTER II, SECTION III, SIGNS, D. PROHIBITED SIGNS, DISPLAYS, AND RELATED MATERIALS** by adding a new item o) Off-Premises Signs to read:

- o) Off-Premises Signs: All signs must be located on the same lot as the use or occupant that is the subject of the sign or where the goods or services are available except as specifically provided for in this section. Off-premises signs are allowed only for Exempt Signs in accordance with subsection C, Official Business Directional Signs in accordance with subsection H. and Business Park Identification Signs in accordance with subsection I.

Amend CHAPTER I, SECTION V – DEFINITIONS by adding a definition of an “Information/Direction Sign” in proper alphabetical order to read:

Sign, Information/Direction

An on-site freestanding or building sign that provides information or direction to users of a property about the location of entrances and exits, parking, traffic flow, hours of operation or other noncommercial messages.

Amend CHAPTER II, SECTION III, SIGNS, E. PERFORMANCE STANDARDS by adding a new item 12) Information/Direction Signs to read:

- 12) Information/Direction Signs: An information/direction sign shall only provide information or directions that relate to the use of the property and may not include any advertising such as prices or product information, but may include the name and/or logo of the occupant or the project. The area of the name and/or logo may not exceed forty percent (40%) of the area of the sign. The sign may not be illuminated. The sign must be located in relationship to the information provided.

Amend CHAPTER II, SECTION III, SIGNS, G. PERMITTED NON-RESIDENTIAL SIGNS, Subsection 1) Village Environment, a) Single Occupant Property by adding anew item (4) Allowed Information/Direction Signs to read:

(4) Allowed Information/Direction Signs

- (a) Any number of information/direction signs each having not more than four (4) SF of sign area.

Amend CHAPTER II, SECTION III, SIGNS, G. PERMITTED NON-RESIDENTIAL SIGNS, Subsection 1) Village Environment, b) Multi-Occupant Property by adding a new item (4) Allowed Information/Direction Signs to read:

(4) Allowed Information/Direction Signs

- (a) Any number of information/direction signs each having not more than four (4) SF of sign area.

Amend CHAPTER II, SECTION III, SIGNS, G PERMITTED NON-RESIDENTIAL SIGNS, Subsection 2) Roadside Environment a) Single-Occupant Property by adding a new item(4) Allowed Information/Direction Signs to read:

(4) Allowed Information/Direction Signs

- (a) Any number of information/direction signs each having not more than six (6) SF of sign area.

Amend CHAPTER II, SECTION III, SIGNS, G. PERMITTED NON-RESIDENTIAL SIGNS, Subsection 2, Roadside Environment b) Multi-Occupant Property by adding a new item (4) Allowed Information/Direction Signs to read:

(4) Allowed Information/Direction Signs

- (a) Any number of information/direction signs each having not more than six (6) SF of sign area.

Amend CHAPTER II, SECTION III, SIGNS, G. PERMITTED NON-RESIDENTIAL SIGNS, Subsection 3) Industrial/Business Park Environment, a) Single-Occupant Property by adding a new item (3) Allowed Information/Direction Signs to read:

(3) Allowed Information/Direction Signs

- (a) Any number of information/direction signs each having not more than eight (8) SF of sign area.

Amend CHAPTER II, SECTION III, SIGNS, G. PERMITTED NON-RESIDENTIAL SIGNS, Subsection 3) Industrial/Business Park Environment, b) Multi-Occupant Property within an Industrial/Business Park by adding a new item (3) Allowed Information/Direction Signs to read:

(3) Allowed Information/Direction Signs

- (a) Any number of information/direction signs each having not more than eight (8) SF of sign area.

Amend CHAPTER II, SECTION III, SIGNS, G. PERMITTED NON-RESIDENTIAL SIGNS, Subsection 4) Residential Environment, b) Single Occupant Non-Residential Property by adding a new item (3) Allowed Information/Direction Signs to read:

- (3) Allowed Information/Direction Signs
 - (a) Any number of information/direction signs each having not more than two (2) SF of sign area.

Amend CHAPTER II, SECTION III, SIGNS, G. PERMITTED NON-RESIDENTIAL SIGNS, Subsection 4) Residential Environment, b) Multi-Occupant Non-Residential or Mixed-Use Property by adding a new item (3) Allowed Information/Direction Signs to read:

- (3) Allowed Information/Direction Signs
 - (a) Any number of information/direction signs each having not more than two (2) SF of sign area.

Amend CHAPTER II, SECTION III, SIGNS, C. EXEMPT SIGNS to read:

The provisions of this section shall not apply to the following types of non-illuminated signs: public safety and information; political, traffic control and directional that contain no advertising; no trespassing; real estate development or site signs during the period of construction; real estate sale and rental signs except as limited in this section; building markers; signs required by law or court order; gasoline price signs attached to or part of a pump for the dispensing of gasoline or other fuels having less than one square foot of sign area; signs displaying only the address of the property; and temporary signs in conjunction with a yard sale or community or other special event with a limited duration.

Amend CHAPTER II, SECTION III, SIGNS, by revising subsection L and adding a new subsection M. ALLOWANCE OF ADDITIONAL FREE STANDING SIGNS FOR CORNER LOTS to read:

L. ALLOWANCE TO ADDITIONAL WALL SIGNS OR WALL SIGN AREA

~~The Planning Board may permit more than two wall business signs per façade or an increase the total allowed wall sign area for properties that front on two or more streets or access roads upon the written request of the property owner if the Planning Board finds that the additional signs or sign area:~~

More than two wall business signs per façade or an increase to the total allowed wall sign area for properties that front on two or more streets or access roads may be permitted if the applicant has demonstrated to the satisfaction of both the Code Enforcement Officer and the Town Planner that additional signs and/or sign area:

- 1) Are needed to provide appropriate visibility for the business,
- 2) Will be within the maximum area of wall business signs allowed for the property including the allowed additional area, and
- 3) ~~Will not detract from the value of nearby properties,~~
- 4) ~~Will result in an appropriate scale for the location of the project, and~~
- 3) 5) If the project is located in the Village Centers or Urban Commercial Districts, the signs are compatible with the village character Chapter I, Section IX, Subsection 2.E.10 and Chapter I, Section X, Subsection 2.E.10.

In the event the Code Enforcement Officer and the Town Planner do not agree that the applicant meets or exceeds the requirements of this subsection, the application will be forwarded to the Planning Board for consideration.

M. ALLOWANCE TO ADDITIONAL FREESTANDING SIGNS FOR CORNER LOTS

~~The Planning Board may permit an additional freestanding sign for a property that fronts on two or more streets but that has vehicular access only from one street upon the written request of the property owner if the Planning Board finds that~~

Additional freestanding signs for properties that front on two or more streets but that have vehicular access from only one street may be permitted if the applicant has demonstrated to the satisfaction of both the Code Enforcement Officer and the Town Planner that:

- 1) ~~The building faces or is primarily oriented to a street from which the parcel does not have vehicular access,~~
- 2) ~~The additional sign is needed to provide appropriate visibility for occupant(s) of the property or to safely direct vehicles to the access into the property,~~
- 3) ~~The additional sign will be located so that there is only one sign of any type on each frontage,~~
- 4) ~~The sign will be of an appropriate scale for the location of the project, and~~

- 4) If the project is located in the Village Centers or Urban Commercial Districts, the sign is compatible with the village character Chapter I, Section IX, Subsection 2.E.10 and Chapter I, Section X, Subsection 2.E.10.

The applicant shall be responsible for demonstrating to the Planning Board' satisfaction that all of these conditions are met.

In the event the Code Enforcement Officer and the Town Planner do not agree that the applicant meets or exceeds the requirements of this subsection, the application will be forwarded to the Planning Board for consideration.

Amend CHAPTER II, SECTION III, SIGNS, Subsection C. EXEMPT SIGNS to read:

C. EXEMPT SIGNS

The provisions of this section shall not apply to the following types of non-illuminated signs: public safety and information; political, traffic control and directional that contain no advertising; no trespassing; real estate development or site signs during the period of construction; project identification signs with the name of a municipal or community building or facility or residential subdivision or development that is located at the entrance to the site; real estate sale and rental signs except as limited in this section; building markers; signs required by law or court order; gasoline price signs attached to or part of a pump for the dispensing of gasoline or other fuels having less than one square foot of sign area; signs displaying only the address of the property; and temporary signs in conjunction with a yard sale or community or other special event with a limited duration.

Item #7791 was properly moved and seconded at the January 5, 2010 Town Council meeting. The Town Manager reported that 9 responses have been received from property owners asking that the zoning of their parcels not be changed.

Mike Cooper - representing abutter Gary Keniston, Beth Anne Reny - 4 Bee Happy Way, Donna Hedland - 352 New Portland Rd, Eileen Mayo – abutter, Michael Seed - 346 New Portland Rd., and Jennifer Staudenmaier - 45 Bartlett Rd., spoke against the proposed rezoning. Roger St. Pierre, owner of abutting property, indicated that he would be in favor of some kind of rezoning but not necessarily industrial. Chairman Phinney closed the public discussion. The proposed order was then voted. **ORDERED**, that the Town Council of the Town of Gorham, Maine, in Town Council assembled, pursuant to a request from Paul Gore, refer his request to rezone two (2) parcels of land on Bartlett Road (Tax Map 12, lots 7 & 10) that abut the Industrial Zone from Rural/Manufactured Housing Zone to the Industrial Zone, to the Planning Board for Public Hearing and their recommendation. **1 yea (Phinney), 4 nays – motion fails.**

Moved by Councilor Caldwell, seconded by Councilor Mattingly and **VOTED** to take Items #7806 & #7807 out of order and hear them now. **5 yeas**

Item #7806 was taken out of order and heard now. Moved by Councilor Csoros, seconded by Councilor Miner and **ORDERED**, that the Town Council of the Town of Gorham, Maine, in Town Council assembled authorize the School District to use the Little Falls School for the 2011/2012 school year; and,

BE IT FURTHER ORDERED that the Town Council would consider allowing the School Department to use the Little Falls School beyond the 2011/2012 school year as long as the building is available and the Town hasn't developed a conflicting plan. **5 yeas.**

Item #7807 was taken out of order and heard now. Moved by Councilor Caldwell, seconded by Councilor Mattingly and **ORDERED** that the Town Council of the Town of Gorham, Maine, in Town Council assembled, pursuant to Title 20-A, MRSA, Section 1486, schedule a referendum election for June 8, 2010 to determine if the Town wants to continue the School Budget validation process, to be voted on at the same election as the Town votes to validate the school budget; and,

BE IT FURTHER ORDERED that the question to appear on the referendum ballot shall be as follows;

Do you wish to continue to have the voters in Gorham vote each year on the School Department's annual budget?

[Explanatory Note: Pursuant to a 2007 change in State law, the voters of each municipality must decide every three (3) years whether they wish to continue to vote on the School Department's annual budget, even after the School Committee and the Town Council have already done so.

If you vote yes, the voters in Gorham will continue to have to vote on the School Department's annual budget for the next three years; if you vote no, then the voters in Gorham will not have to do so for the next three (3) years and the School Department's annual budget will be decided by Town Council vote.] **5 yeas.**

New Business

Public Hearing #1 Chairman Phinney opened the public hearing to consider approval to renew a liquor license for Lucky Thai Restaurant. There were no comments from the public. Chairman Phinney closed the public hearing.

Item #7802 Moved by Councilor Csoros, seconded by Councilor Miner and **ORDERED** that the Town Council of the Town of Gorham, Maine, in Town Council assembled approve the renewal of a liquor license for Lucky Thai Restaurant. **5 yeas.**

Public Hearing #2 Chairman Phinney opened the public hearing on a proposal to amend Chapters I and II of the Land Use and Development Code to update the town's Shoreland Zoning regulations. David Kent, 20 Grant Rd., spoke against the proposed amendments and asked that it be amended to increase the reference to the requirements for a 40,000 square foot lot. Chairman Phinney closed the public hearing.

Item #7803 Moved by Councilor Mattingly, seconded by Councilor Caldwell and **VOTED** to waive the reading of the proposed order. **5 yeas.** The proposed order was moved by Councilor Miner and seconded by Councilor Caldwell. Chairman Phinney called for a five minute recess. Chairman Phinney resumed the meeting. The proposed order was then voted.

WHEREAS, the Town has Shoreland Zoning regulations that are found in Chapters I and II of the Land Use and Development Code; and,

WHEREAS, the State recently passed a new law that required the Town to make changes in it's Shoreland Zoning regulations,

NOW, THEREFORE, BE IT ORDAINED that the Town Council of the Town of Gorham, Maine, in Town Council assembled amend Chapters I and II of the Land Use and Development Code to update the Town's Shoreland Zoning regulations as presented. **4 yeas, 1 nay (Csoros).**

(NOTE: ADDITIONS ARE UNDERLINED AND DELETIONS ARE ~~STRUCK THROUGH~~)

CHAPTER I ZONING REGULATIONS, SECTION V – DEFINITIONS

Functionally Those uses that require, for their primary purpose, location on
Water-Dependent submerged lands or that require direct access to, or location in, coastal

<u>Uses</u>	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, <u>excluding recreational boat storage buildings</u> , 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, <u>Section I.E.</u>)
<u>Ground cover</u>	<u>Small plants, fallen leaves, needles and twigs and the partially decayed organic matter of the forest floor.</u> (Applies to Shoreland Area Protection, Chapter II, <u>Section I.E.</u>)
<u>Native</u>	<u>Indigenous to the local forests.</u> (Applies to Shoreland Area Protection, Chapter II, <u>Section I.E.</u>)
<u>Normal High-</u> of the soils due to prolonged action of the water or changes in vegetation, and	That line which is apparent from visible markings, changes in the character <u>Water Line</u> which distinguishes between predominantly aquatic and predominantly terrestrial land. In the case of wetlands adjacent to rivers and great ponds, the normal high-water line is the upland edge of the wetland, and not the edge of the open water. <u>Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond.</u> (Applies to Shoreland Area Protection, Chapter II, <u>Section I.E.</u>)
<u>Recent Flood Plain Soils</u>	The following soil series as described and identified by the <u>National Cooperative Soil Survey</u> : Alluvial, Cornish, Charles, Fryeburg, Hadley, Limerick, Lovewell, Medomak, Ondawa, Podunk, Rumney, Saco, Suncook, Sunday, Winooski. (Applies to Shoreland Area Protection, Chapter II, <u>Section I.E.</u>)
<u>Setback, Normal High Water Line</u>	The nearest horizontal distance from the normal high-water line <u>of a water body or tributary stream, or upland edge of a wetland,</u> to the nearest part of a structure, road, parking space or other regulated object or area. (Applies to Shoreland Area Protection, Chapter II, <u>Section I.E.</u>)
<u>Shore Frontage</u>	The length of a lot bordering on a water body <u>or wetland</u> measured in a straight line between the intersections of the lot lines with the shoreline <u>at normal high-water elevation.</u> (Applies to Shoreland Area Protection, Chapter II, <u>Section I.E.</u>)
<u>Stream</u>	A free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15-minutes series topographic map, to the point where the body of water becomes a river <u>or flows to another water body or wetland within the shoreland area.</u> (Applies to Shoreland Area Protection, Chapter II, <u>Section I.E.</u>)
<u>Timber Harvesting</u>	The cutting and removal of <u>timber for the primary purpose of selling or processing forest products, trees from their growing site, and the attendant operation of cutting and skidding machinery but not the construction or creation of roads. Timber harvesting does not include of land for approved construction.</u> <u>The cutting or removal of trees in the shoreland zone on a lot that has less than two (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Chapter II, Section 9(L).</u> (Applies to Shoreland Area Protection, Chapter II, <u>Section I.E.</u>)
<u>Tributary Stream</u>	A channel between defined banks created by the action of surface water, whether intermittent or perennial, and which is characterized by the lack of <u>upland terrestrial</u> vegetation or <u>by the presence of aquatic vegetation and by the presence</u> of a bed devoid of topsoil containing waterborne deposits of exposed soil, parent material or bedrock; and which <u>flows is connected hydrologically with other water bodies to a water body or wetland as defined. This definition does not include the term "stream" as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland</u> "Tributary stream" does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity.

<u>Upland Edge</u>	The boundary between upland and wetland. <u>The upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six (6) meters tall or taller.</u> (Applies to Shoreland Area Protection, Chapter II, <u>Section I.E.</u>)
<u>Water Crossing</u>	Any project extending from one bank to the opposite bank of a river or stream, <u>tributary stream, or wetland,</u> whether under, through, or over the water- course <u>or wetland.</u> Such projects include but may not be limited to roads, fords, bridges, culverts, and water lines, and cables as well as maintenance work on these crossings. (Applies to Shoreland Area Protection, Chapter II, <u>Section I.E.</u>)

CHAPTER II GENERAL STANDARDS OF PERFORMANCE

SECTION I - ENVIRONMENTAL

E. 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) ~~Construction or enlargement of a foundation beneath the existing building shall not be considered an expansion of the building provided that~~ Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming 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- that 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 ~~the normal high water line of~~ a water body, tributary stream, or ~~upland edge of a~~ 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 ~~a~~ 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 ore 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.

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) ~~as of January 1, 1988~~ 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 surfically connected to a water body during the period of normal spring-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 ~~and driveway~~ 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 ~~and driveway~~ 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.

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 ~~first-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 ~~Beyond~~ 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.

~~(67)~~ 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.

~~(78)~~ 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 Planning Board may reduce the road and/or driveway setback requirement ~~to~~ 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 ~~P~~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 ~~paragraph~~ 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 ~~its~~ 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, ~~in which case~~ 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 ~~short~~ 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.

~~Road~~ 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 ~~road~~ grade is ten percent (10%) or less.

(c) On ~~road~~ sections having slopes greater than ten percent (10%) ditch relief culverts shall be placed ~~across the road~~ 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.

~~(2) The minimum setback for new subsurface sewage disposal systems shall be no less than one hundred (100) horizontal feet from the normal high water line of a perennial water body. The minimum setback distances from water bodies for new subsurface sewage disposal systems shall not be reduced by variance.~~

~~(3) Replacement systems shall meet the standards for replacement systems as contained in the Rules and shall include systems designed for future use where required by Year Round Occupancy Permit regulations governing seasonal conversions.~~

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 ~~or disposal~~ of manure shall be accomplished in conformance with the ~~Maine Guidelines for Manure and Sludge Disposal on Land published by the University of Maine Soil and Water Conservation Commission in July, 1972~~ 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. ~~Within five (5) years of the effective date of this subsection a~~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. ~~Existing facilities which do not meet the setback requirement may remain, but must meet the no discharge provision within the above five (5) year period.~~

(3) Agricultural activities involving tilling of soil greater than forty thousand (40,000) square feet in surface area, ~~or the spreading, disposal or storage of manure~~ within the Shoreland Overlay District shall require a Soil and Water 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 provided~~ing~~ that such tilling is conducted in accordance with a Soil and Water Conservation Plan.

(5) ~~After the effective date of this subsection, n~~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 Soil and Water 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 Soil and Water 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 Soil and Water 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 ~~for~~ ~~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 ~~Development~~ 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 ~~clearing-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 ~~ten-six~~ ~~(496)~~ 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. ~~Adjacent to a great pond, or stream or river flowing to a great pond, the width of the foot path shall be limited to six (6) feet.~~

(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 ~~and other vegetation~~" adjacent to a great pond or river, shall be defined as maintaining a rating score of ~~12~~ 24 or more in ~~any~~ each twenty-five (25) foot ~~by 50 foot rectangular-square (625-1250~~ square feet) area as determined by the following rating system:

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

Adjacent to other water bodies, tributary streams, and wetlands, a "well-distributed stand of trees ~~and other vegetation~~" is defined as maintaining a minimal rating score of ~~eight sixteen (816)~~ per 25-foot by 50-foot rectangular square 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 other 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, ~~adjacent to great ponds, and streams and rivers which flow to great ponds,~~ 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 ~~C~~cleared areas ~~however, shall be~~ 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 ~~development 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 developed 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 ~~u~~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 VIII of this Code.

All fees shall be non-refundable except unexpended escrow deposits, which shall be refunded in accordance with Chapter II, Section VIII, 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 Control within the Department of Land Quality Control 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 #7804 Moved by Councilor Csoros, seconded by Councilor Miner and **ORDERED**, that the Town Council of the Town of Gorham, Maine, in Town Council assembled authorize the Town Manager and Finance Director to solicit sealed bids for any property acquired by tax lien foreclosure with an outstanding balance of taxes, interest, and costs that exceeds \$20,000, provided that the prior owner of record is provided with a final 30 day opportunity to make a full payment of the entire amount owed. **5 years.**

Item #7805 Moved by Councilor Csoros, seconded by Councilor Mattingly and **ORDERED**, that the Town Council of the Town of Gorham, Maine, in Town Council assembled refer the draft updated Zoning Map, dated January 25, 2010, to the Planning Board for Public Hearing and their recommendation. **5 years.**

Item #7806 was taken out of order and heard after old business, see above.

Item #7807 was taken out of order and heard prior to new business, see above.

Item #7808 Moved by Councilor Caldwell seconded, by Councilor Mattingly and **VOTED** to waive the reading of the proposed order. **5 years.** The proposed order to authorize a referendum for a bond to make repairs to local roads was moved by Councilor Caldwell and seconded by Councilor Csoros. Moved by Councilor Caldwell, seconded by Councilor Mattingly and **VOTED** to postpone action on this item until such time as the Town Manager feels it is ready to return. **5 years.**

Item #7809 The proposed order was moved by Councilor Miner and seconded by Councilor Mattingly. Moved by Councilor Caldwell, seconded by Councilor Csoros and **VOTED** to amend the proposed order to send the updated Mission Statement for Baxter Memorial Library to the Ordinance Committee to review and report back to the Council. **5 years.** The amended order was then voted. **ORDERED** that the Town Council of the Town of Gorham, Maine, in Town Council assembled send the updated Mission Statement for Baxter Memorial Library, as recommended by the Baxter Memorial Library Board of Trustees, to the Ordinance Committee to review and report back to the Town Council. **5 years.**

Item #7810 Moved by Councilor Csoros, seconded by Councilor Miner and **ORDERED** that the Town Council of the Town of Gorham, Maine, in Town Council assembled accept an easement for a sidewalk from Gorham Savings Bank. **5 years.**

Item #7811 Moved by Councilor Caldwell, seconded by Councilor Mattingly and **ORDERED** that the Town Council of the Town of Gorham, Maine, in Town Council assembled accept an easement for a drainage system from Dawn Wentworth, LLC. **5 years.**

Item #7812 The proposed order was moved by Councilor Caldwell and seconded by Councilor Mattingly. Moved by Councilor Caldwell, seconded by Councilor Mattingly and **VOTED** to amend the proposed order to ask the fire department to present the Town Council with information to review the condition of the town's heavy rescue truck at its March regular meeting. **5 years.** **ORDERED** that the Town Council of the Town of Gorham, Maine, in Town Council assembled ask the fire department to present the Town Council with information to review the condition of the town's heavy rescue truck at its March regular meeting. **5 years.**

Item #7813 The proposed order was moved by Councilor Csoros and seconded by Councilor Caldwell. Moved by Councilor Caldwell, seconded by Councilor Mattingly and **VOTED** to amend the proposed order to state "Ordered that the Town Council of the Town of Gorham, Maine, in Town Council assembled authorize the Portland Water District to proceed with phase 1 of a project to design a sewer line and a pump station, if necessary, for South Gorham at an estimated cost of \$27,500 and Be It Further Ordered that the Town Council appropriate \$27,500 from the Sewer Fund Balance for phase 1 of this project". **5 years.** The amended order was then voted. **ORDERED** that the Town Council of the Town of Gorham, Maine, in Town Council assembled authorize the Portland Water District to proceed with phase 1 of a project to design a sewer line and a pump station, if necessary, for South Gorham at an estimated cost of \$27,500; and,

BE IT FURTHER ORDERED that the Town Council appropriate \$27,500 from the Sewer Fund Balance for phase 1 of this project. **5 years.**

Item #7814 to go into executive session to discuss possible litigation was withdrawn.

Moved by Councilor Miner, seconded by Councilor Caldwell and **VOTED** to adjourn the meeting at 9:23 pm. **5 yeas**.

A TRUE RECORD OF MEETING

Attest: _____
Christina Silberman, Town Clerk