



# Town of Windham

Town Offices  
8 School Road  
Windham, Maine

## Meeting Minutes - Final Town Council

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Tuesday, August 12, 2014

7:00 PM

Council Chambers

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### I. Roll Call of Members.

**Present:** 7 - Donna Chapman, Thomas Gleason, Roy Moore, Bob Muir, David Nadeau, Matthew Noel and Dennis Welch

### II. Pledge of Allegiance.

Chairman Gleason led the assembly in the Pledge of Allegiance.

### III. Minutes to be Approved:

The minutes were not attached, and therefore, could not be approved. They will be approved at the next meeting of August 26, 2014.

[CD 14-260](#) To approve the minutes of the Council meeting of July 22, 2014.

**Attachments:** [Council Meeting Minutes 7-22-14](#)

### IV. Public Participation.

No Public Participation.

### V. Councilors' Comments.

Councilor Noel: He said he made the request that rockeries be put on the agenda over four weeks ago as an explicit rockery discussion. Rockeries do not show up on tonight's agenda; it was omitted two weeks ago, and then supposedly added to be on tonight's agenda. Councilor Gleason said it is a topic on this evening's agenda. Councilor Noel said that it was misleading, deceiving and lacks transparency because it does not say rockeries.

Please see attached sheets of Councilor Noel's other comments.

### VI. Council Correspondence.

Councilor Muir: He said Doug had a comment about the street sweeping, and how quickly they finished this due to the new machine, he said PWD has done a great job and the new machine obviously was the right choice.

Councilor Noel: He appreciated the report, but he does not necessarily believe in the statistics he provided as the cost of the sweeper is not included in those summaries. We are paying every month for the cost of that sweeper, it is significant to this year as compared to last year; we paid significantly more than what was represented in his

report. It was not free, we are paying for it and needs to be recognized as a cost of doing our business.

In regard to the first Code Enforcement report from May 2004 as he mentioned in a previous submission; there is no clarity of determination of quality or timeliness of the services provided. It is the same report showing activity level, but nothing as it relates to quality and responsiveness. The second one, which is June, he looked for some understanding of in the last two years; what improvement processes have been implemented and how has their impact been measured? It looks like we are doing the same thing over and over and expecting a different result.

He asked Tony, in regard to MMA on General Assistance, if we were using the new form that is required, Tony said we were. As we are six weeks into the new fiscal year, he has seen nothing about the Town of Gorham and whether they have contracted with the Town of Windham to continue our service at the higher rate. Tony said we have continued the contract and it is at a higher rate. He asked if the process was the same or different, and Tony replied "we are the same, and we have not been confronted with any situations that would run a risk of putting us outside the guidance we've gotten from DHHS." There was one applicant last week from the Town of Gorham but he did not have the outcome.

In regard to the financial reports, the revenue collected for property taxes appears to him that it seems impossible to determine from the report how much revenue we received on property taxes, as compared to what was budgeted. He wanted to know how we can make it more transparent?

[CD 14-249](#) Code Enforcement Monthly Report for May 2014

**Attachments:** [Code Enforcement Report May 2014](#)

[CD 14-251](#) Code Enforcement Monthly Report June 2014

**Attachments:** [Code Enforcement Report June 2014](#)  
[Permitting trends 2005-2013](#)

[CD 14-252](#) Tax Collection Monthly June Report 2014

**Attachments:** [tax collection -june monthly report](#)

[CD 14-254](#) Street Sweeper Statistics 2013/2014

**Attachments:** [Sweeper comparison 2014](#)

[CD 14-255](#) MMA email and linked documents regarding General Assistance - July 16, 2014

**Attachments:** [MMA Review of legal issues regarding General Assistance email 20140716](#)  
[MMA et als v. Maine DHHS Rule 80C petition](#)  
[MMA Bernstein Shur Memorandum regarding GA Program Guidance 20140714](#)

[CD 14-256](#) Memo from Doug Fortier, Public Works Director regarding street

sweeper - July 21, 2014

**Attachments:** [Doug Fortier Memo regarding Street Sweeper 20140721](#)

[CD 14-259](#) Year-end liability account balances and fund purposes

**Attachments:** [Memo to council re liability accounts](#)  
[Liabilities as of June 30, 2014](#)

[CD 14-262](#) GPCOG Annual Report 2013-2014

**Attachments:** [GPCOG Annual Report 13-14](#)

[CD 14-263](#) Planning Board Agenda - July 28, 2014

**Attachments:** [Planning Board agenda - July 28, 2014](#)

[CD 14-264](#) Sebago Lake Watershed News - Summer 2014

**Attachments:** [Sebago Lake Watershed News - Summer 2014](#)

[CD 14-265](#) Maine Development Foundation newsletter

**Attachments:** [Maine Development Foundation newsletter](#)

[CD 14-266](#) Financial reports for 2013-14 updated

**Attachments:** [Appropriation control](#)  
[Revenue control](#)

[CD 14-267](#) Southern Maine Agency on Aging Letter

**Attachments:** [Southern Maine Agency on Aging Thank you note](#)

[CD 14-268](#) Planning Board Agenda for August 11, 2014

**Attachments:** [Planning Board Agenda August 11, 2014](#)

## VII. Town Manager's Report.

[CD 14-269](#) Town Manager's Report

**Attachments:** [Town Manager's Report 20140808](#)  
[MyGov Implementation Schedule](#)

Tony Plante: Reported that on August 19th at 6:00 p.m. there is a scheduled walk through the Lowell Preserve. It is a follow-up to the discussion on whether to continue with the forestry management plan that was approved by the Council.

On August 26th there is a meeting at Dundee Park; it is the annual meeting with the

Dundee Park Advisory Committee and Park staff to review operations and a cookout.

For the Council meeting of September 9th Tony will be away at another meeting and Assistant Town Manager Phyllis Moss will be at this meeting.

The Tough Mudder Maine is the weekend of August 23rd and 24th. Our Emergency services have been coordinating with the City of Westbrook. There will be a parking site in Windham, but there is concern that site may be too muddy.

River Road work on upper River Road continues. They are getting regular updates from MDOT. There are some issues they've run into but nothing major. There is a question about what the impact would be, if any, of a potential Fair Point strike with regard to the relocation of utility poles.

We have new software systems in the process of being setup and training for Code Enforcement and Public Works this week. They worked with the vendor and got on their training schedule for this week. He said he understands some of the frustration associated with that. The town has been through many software installations, and we have handled them more or less the same way. Two full days have been completed. The existing software in Code does not provide us with the kind of tracking that we want to have; that is one of the things they are expecting to get from the new software. The old one does not give the ability to show that things have improved, gotten worse or stayed the same over the years; lack of data is what it is and we can't go back and recreate it. We can try to build that body of data going forward. Likewise, they will be doing things with Public Works in terms of asset management, work orders and being able to cost things out.

Over the last week they have completed meetings and interviews with different individuals and groups for the needs assessments and candidate profiles for Fire/Rescue Chief and Police Chief. He has draft candidate profiles and interview questions from Rick Dacri and he will be going over those with him and starting the process of searching for a new Fire/Rescue Chief within the next couple of weeks

Councilor Noel: He asked Tony about the project plan provided in his report for the implementation of the software. It indicated that this had been identified and known since mid-June, yet it wasn't until August 5th that it was communicated to the residents and businesses, and August 7th before communicated to the Council. He asked why it took so long? Tony said he did not have an answer for why. Councilor Noel asked if there was anything being done to improve the communication link? Tony said he believed that in the last couple of months he knew he had reported to the Council that they were going to be implementing it, and if not mistaken, he said they would be doing it in August but now sure if he gave specific dates. Councilor Noel brought up the checklist and noted that many of the items appeared to be incomplete, as they were not checked off, yet the training is on schedule; is the checklist accurate or inaccurate? Tony said he did not have an updated list, but he would get an updated check-list from Tom.

Councilor Nadeau: He said that all through the finance committee meetings they were told how it was going to be integrated, and part of the integration was the software had to be loaded. It was explained to them quite awhile ago, and he noted it could not be done in off-hours.

## **VIII. Committee Reports.**

### **A. Council Subcommittees.**

1. Appointments Committee.

Councilor Chapman: Reported they had interviews that evening for the Dundee Park Advisory Committee and the Public Easement Committee. The two candidates will be appointed at the next meeting.

2. Finance Committee.

Councilor Gleason: Reported that they have not met yet, but they will be having a meeting soon.

**B. Other Committees.**

1. Land Use Ordinance Committee.

Councilor Nadeau: Reported that they are working on cluster sub-division. Right now staff is working on a couple of different things, and the committee will be back at the end of the month.

2. Public Easement Advisory Committee/Roads Policy Task Force.

Councilor Nadeau: Reported that all the roads were inspected on the 28th, the first third of the roads. Several roads will be requiring work, as nothing has been done in the last three years, they still have the same issues. Letters will be going out to them, and letters will be going out to all the roads that were inspected with where they stand.

3. Windham Economic Development Corporation

Councilor Noel: Reported that their next meeting is on August 20th, with a presentation on August 26th for the Council.

4. Wastewater Management Planning Advisory Committee

Councilor Nadeau: Reported that they met last week, and they talked with Bob Gerber. They will be getting back to the Council with some recommendations.

**IX. PUBLIC HEARINGS.**

**X. CONSENT AGENDA.**

[14-294](#)

To find that the requirements of 28-A MRSA §653 have been met and to approve an application submitted by Xiuying Chen d/b/a New Green Leaf Buffet, Inc. for a renewal liquor license.

**Attachments:** [CoverSheet 14-294](#)

[The New Green Leaf Buffet liquor license application](#)

[14-295](#)

To find that the requirements of 28-A MRSA §653 have been met and to approve an application submitted by Apple New England, LLC d/b/a Applebee's Neighborhood Grill & Bar for a renewal liquor license.

**Attachments:** [CoverSheet 14-295](#)  
[Applebee's Neighborhood Grill & Bar liquor license application](#)

**A motion was made by Councilor Chapman, seconded by Councilor Welch that the Consent Agenda be approved. the motion carried by the following vote.**

**In Favor:** 7 - Councilor Chapman, Council Chair Gleason, Councilor Moore, Councilor Muir, Councilor Nadeau, Councilor Noel and Vice Chair Welch

## **XI. UNFINISHED BUSINESS & GENERAL ORDERS.**

[14-265](#) To refer proposed amendments to the Land Use Ordinance, Chapter 140, regarding standards for an Automobile Auction Facility use to the Planning Board for review and recommendation.

**Attachments:** [CoverSheet 14-265](#)  
[Staff to TC Auto Auction 08-08-14](#)

Councilor Noel: He said this business was a larger scope/scale for an auction house, and this one did not have a detailed discussion as a stand alone ordinance. He wanted to know what the process was on new ordinances such as this one? Does the Council want to review it in a workshop first, before they recommend it go to the Planning Board, or does the Council just want to send it to the Planning Board?

Councilor Nadeau: Said they have done this the same way in the past because he always had questions. He asked what they do with a burned out vehicle, he had asked them to be covered and he did not see it in there? He said they don't discuss an ordinance before they put it on the agenda to send it to the Planning Board and then discuss it when it comes back.

Councilor Chapman: She said she is concerned that there was a company possibly looking to come to town, and maybe by the time this gets finished they will have moved on to some other town and the sale will be lost. She doesn't think the town should get involved in what a company's day to day operations is; it is really none of our business. Councilor Nadeau agreed, and he said there are loads of regulations that deal with fluids leaking from the vehicle; they do not deal with a burnt out vehicle and what would be leaking from that. He said if they are sending it to the Planning Board then they should send it with a little guidance.

Councilor Noel: He would like to get into the details, to some degree, and review it, and then have the Planning Board review what the Council's suggestion are in writing, and then have the Planning Board make a recommendation back to the Council. He did not want to see the same thing happen to them as happened to Mr. Vance; it was a waste of everyone's time.

Councilor Muir: He said on page 2 of 12, under definitions - automobile auction facility: It says this use does not include automobile graveyards, automobile recycling business. Is this a recycling business where they are going to sell the vehicles too? Is that considered recycling or selling them for scrap, would that be recycling? Ben said this particular use is not a recycling business as defined by the state.

Councilor Nadeau: He referred to page 7 of 12, In lieu of evergreen trees, he said we are making them put up the opaque 6-foot fence, why don't we just leave out "in lieu of evergreen trees?" Also, in regard to burned vehicles, he does not think they are

appropriately taken care of. Also, 506 A. he finds it as an enormous task - "Automobiles should be kept in the lot no more than 180 cumulative days, after 180 cumulative days the operator must provide application to the State of Maine for abandoned vehicle title or show a legal reason the automobile cannot be sold, such as, active litigation." Councilor Nadeau said he does not see how our staff will be able to take care of this.

Councilor Noel: He said to Councilor Nadeau's point, he thinks it is expectations that there is a time limit explicitly in this, but that does not mean that they have to be on-site every day, or every other, etc., it is surprise visits and quality assurance. If there are violations when making those quality checks; there may be a penalty phase. Councilor Nadeau said "we are putting a stipulation on it, but we are not telling them how we want that stipulation looked at. How are their records going to show this?" Councilor Noel said they will have to keep good records.

Councilor Nadeau said his suggestion would be that any burned vehicle would have to be covered.

Councilor Noel: He referred to page 5-6, 506 F - He said he thought the state had something as it relates to a junkyard for criteria to be inspected, and if this is not a junkyard, what is being inspected and will the owner of this place know what those inspection criteria are, and will they be included in the ordinance or what? Ben said that 506 F said "they shall require an annual inspection by the C.E.O. who would be looking at enforcing the town's standards." There would likely be a state inspection as well, and they would be enforcing the state's standards at that point. This would be looking at the designated parking area to make sure the setbacks are met, the screening is appropriate, leaking fluids are contained, etc. Councilor Noel said then a it would be the things that are specifically outlined on a worksheet that is created, but it would not expand beyond what is explicitly included in this ordinance. Ben said he would let the Code Officers address this, but the town does not enforce state standards. Councilor Noel said, in regard to the fence, it mentioned that the fencing would be around the full property, and he asked Ben if that was the correct interpretation? Ben said, yes, screened from public ways or structures from abutting properties.

Councilor Moore: So if you have a piece of property that has nothing on it, but if that abutter puts up a building on it down the road, then it will be a requirement for the business to put a fence up. He said if you are going to have an annual inspection, then all things that will be looked at should be on a checklist so Code does not have to worry about what they are inspecting.

Councilor Noel: Moves to amend Order 14-265, to add a checklist written up by Planning Director Ben Smith, which is to be part of the process, and to add to section 506 - if there is no house there, but at a later date a house is put up; it is the owner's responsibility to put the fence back up, at the property line at that time, and to have all burnt vehicles protected from the elements, seconded by DC.

Dustin Roma: He said he thinks there are adequate provisions in there to move the use from Conditional into Allowed; if there is something you want to discuss. There are lots of Performance Standards in there, and everything they would be looking at under a Conditional Use criteria would be satisfied under the Performance Standards you have already outlined in the ordinance.

In regard to the daily limit for 180 days; we are saying it is not going to be a junkyard, you can't part out the vehicles, so there is nothing else you can do except to sell them. He also thinks you can have no time restriction on them and the business would still function as intended. He said they have heard from the potential developer of the site and they could work within 365 days but 180 days, as discussed today, might be an

accounting nightmare for enforcement and something the town would have to deal with. He thinks they are trying to solve a problem that you will not have on that site.

Ben Smith: In response to Dustin's comments he said it is very likely that an auction facility will be larger than a one acre of disturbance area, and therefore, would be a major site plan that would have Planning Board review as part of the approval process. The Planning Board does have the ability to grant conditional uses as part of a site plan review; if this were a permitted use the review would be very similar; it does provide some redundancy to have this be a conditional use that is going to be reviewed by the Planning Board for stormwater and traffic anyway.

Vote 7-0 on amendment

Councilor Chapman stated she would like to see this brought back to them within 60 days.

**A motion was made by Councilor Chapman, seconded by Councilor Muir that the Order be approved as amended. The motion carried by the following vote.**

**In Favor:** 7 - Councilor Chapman, Council Chair Gleason, Councilor Moore, Councilor Muir, Councilor Nadeau, Councilor Noel and Vice Chair Welch

[14-292](#)

To approve a new Victualer's permit application submitted by Danielle DeSimon d/b/a Danielle's Sebago Diner.

**Attachments:** [CoverSheet 14-292](#)  
[Danielle's Sebago Diner permit application](#)

**A motion was made by Councilor Muir, seconded by Councilor Welch that the Order be approved. The motion carried by the following vote.**

**In Favor:** 7 - Councilor Chapman, Council Chair Gleason, Councilor Moore, Councilor Muir, Councilor Nadeau, Councilor Noel and Vice Chair Welch

[14-268](#)

To set the tax rate for 2014-2015 at \$14.70 per thousand dollars of assessed value.

**Attachments:** [CoverSheet 14-268](#)  
[Tax Rate Breakdown 2003-2015](#)  
[2014 Municipal Tax Rate Calculation Form](#)

David Sawyer: Gave a small presentation, and explained the attached sheet.

Councilor Muir: Moved to amend to reduce the tax rate to \$14.67 per thousand dollars of assessed value, which reduces the overlay to \$54,735.41, seconded by Councilor Chapman.

Councilor Noel: Thought they should go to the minimum of \$14.64 or \$14.65 for the rounding calculations; which still provides abatement monies because we still have contingency monies. After some discussion, it appeared there would not be enough support.

Vote 4 - 3 on amendment (Moore, Noel, Welch) Passed.

**The Motion as amended carried by the following vote.**



**In Favor:** 4 - Councilor Chapman, Council Chair Gleason, Councilor Muir and Councilor Nadeau

**Opposed:** 3 - Councilor Moore, Councilor Noel and Vice Chair Welch

[14-269](#) To set the dates on which 2014-2015 taxes will be due as October 1, 2014 and April 1, 2015.

**Attachments:** [CoverSheet 14-269](#)

**A motion was made by Councilor Welch, seconded by Councilor Nadeau that the Order be approved. The motion carried by the following vote.**

**In Favor:** 7 - Councilor Chapman, Council Chair Gleason, Councilor Moore, Councilor Muir, Councilor Nadeau, Councilor Noel and Vice Chair Welch

[14-270](#) To set the rate of interest that will be charged on overdue taxes for 2014-2015 at seven percent (7.00%).

**Attachments:** [CoverSheet 14-270](#)

**A motion was made by Councilor Muir, seconded by Councilor Welch that the Order be approved. The motion carried by the following vote.**

**In Favor:** 7 - Councilor Chapman, Council Chair Gleason, Councilor Moore, Councilor Muir, Councilor Nadeau, Councilor Noel and Vice Chair Welch

[14-271](#) To authorize and direct the Tax Collector/Treasurer, pursuant to Title 36 M.R.S.A. §906, to apply any tax payment received as payment against outstanding or delinquent taxes due in chronological order, beginning with the oldest unpaid obligation, including personal property, provided, however, that no such payment may be applied to any tax obligation for which an abatement application or appeal is pending, unless approved in writing by the taxpayer.

**Attachments:** [CoverSheet 14-271](#)

**A motion was made by Councilor Muir, seconded by Councilor Welch that the Order be approved. The motion carried by the following vote.**

**In Favor:** 7 - Councilor Chapman, Council Chair Gleason, Councilor Moore, Councilor Muir, Councilor Nadeau, Councilor Noel and Vice Chair Welch

[14-272](#) To authorize and direct the Tax Collector/Treasurer, pursuant to Title 36 M.R.S.A. §506, to accept prepaid property taxes at any time and to establish an interest rate of 0% on such payments.

**Attachments:** [CoverSheet 14-272](#)

**A motion was made by Councilor Welch, seconded by Councilor Muir that the Order be approved. The motion carried by the following vote.**

**In Favor:** 7 - Councilor Chapman, Council Chair Gleason, Councilor Moore, Councilor Muir, Councilor Nadeau, Councilor Noel and Vice Chair Welch

[14-273](#) To enter into executive session under 1 M.R.S.A. §405(6)(A), which

provides for the "Discussion or consideration of the employment, appointment, assignment, duties, promotion, demotion, compensation, evaluation, disciplining, resignation or dismissal of an individual or group of public officials, appointees or employees of the body or agency," for the purpose of reviewing the assessor's performance evaluation.

**Attachments:** [CoverSheet 14-273](#)

A motion was made by Councilor Chapman and seconded by Councilor Muir to go into executive session.

Vote 7-0

**A motion was made by Councilor Muir, seconded by Councilor Welch to come out of executive session at 10:45 p.m. No votes were taken in executive session. The motion carried by the following vote:**

**In Favor:** 7 - Councilor Chapman, Council Chair Gleason, Councilor Moore, Councilor Muir, Councilor Nadeau, Councilor Noel and Vice Chair Welch

## XII. Discussion Items.

[CD 14-257](#) Amendments to Chapter 140, Land Use, regarding interpretations, and the possibility of adding guidelines or standards for application under the Maine Uniform Building and Energy Code.

**Attachments:** [AMENDMENT TO LAND USE ORDINANCE-CEO INTERPRETATIONS](#)

Meeting went into Recess

Meeting Reconvened

## XIII. Agendas & Scheduling.

[CD 14-270](#) Agenda Items Report

**Attachments:** [Agenda Items Report 20140808](#)

Council discussed agendas and scheduling for upcoming meetings.

## XIV. ADJOURN.

**A motion was made by Councilor Noel, seconded by Councilor Chapman to adjourn. Motion carried by the following vote at 10:51 p.m.**

**In Favor:** 7 - Councilor Chapman, Council Chair Gleason, Councilor Moore, Councilor Muir, Councilor Nadeau, Councilor Noel and Vice Chair Welch

Respectfully submitted,

Linda S. Morrell  
Town Clerk, CCM

