



Town of Windham

Town Offices
8 School Road
Windham, Maine

Meeting Minutes - Draft

Town Council

Tuesday, December 8, 2015

7:00 PM

Council Chambers

I. Roll Call of Members.

Present: 7 - Donna Chapman, Roy Moore, Bob Muir, David Nadeau, Thomas Gleason, Tim Nangle and Dennis Welch

II. Pledge of Allegiance.

Chairman Chapman led the assembly in the Pledge of Allegiance.

III. Minutes to be Approved:

CD 15-360 To approve the minutes of the November 10, 2015 Council meeting.

Attachments: Minutes - Town Council - 11-10-15.pdf

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

In Favor: 6 - Council Chair Chapman, Councilor Moore, Councilor Muir, Councilor Nadeau and Councilor Gleason, and Councilor Welch.

Absent: 1 - Councilor Nangle

CD 15-364 To approve the minutes of the November 19, 2015 Council special meeting.

Attachments: Special Meeting Minutes-11-19-15.pdf

A motion was made by Councilor Muir, seconded by Councilor Gleason that the Minutes be approved. The motion carried by the following vote.

In Favor: 6 - Council Chair Chapman, Councilor Moore, Councilor Muir, Councilor Nadeau, Councilor Gleason and Councilor Welch.

Absent: 1 - Councilor Nangle

IV. Public Participation.

Jerry Cabana - Lazy Acres Lane - He said recently there has been some property that came before the Planning Board for a sub-division on Lazy Acres Lane, which includes six lots on 25 acres of land. One lot has been cut off, and the right-of-way is 1,200 feet long going in from the River Road until it hits Mr. Vance's property. Mr. Cabana owns the property from the River Road, which is 1,200 feet in until his property. It is a one-way driveway, and he and his sister live up there and they maintain it themselves.

Mr. Cabana said if that sub-division gets approved, they will be increasing traffic by 30

cars a day. He said two vehicles cannot pass each other. When two cars meet, one car has to back up to a driveway to let the other car pass. One of the lots was sold to Peter Gilman, and he has already started construction. The Manager came to look at the road today, there has already been damage to the road from the new construction.

Mark Flowers - Lazy Acres Lane - He thanked the Council for taking the time to go and visit the site. He said the road has already been impacted from local deliveries, and the culvert up the street has been crushed and water is backing up onto the road. This is a shared driveway and a considerable amount of money from Jerry has gone into the road. They can't have 6 new homes with 80,000 pound concrete trucks driving up there; the road will not sustain that amount of activity. He said he spoke to Peter Gilman today, and he said he would be responsible for the damages to the road, and to the adjacent lot that his vehicles damaged.

Susan Fitzgerald - Lazy Acres Lane - She was the first one to live on that road 30 years ago, and the road was built as a right-of-way, there was no property guidelines. A good chunk of the road is encroaching on her private property, and that will be an issue moving forward, if the development goes in. There will be a safety issue as well; fire trucks will not be able to go up there without going on her property. She does not want construction vehicles driving on her property either.

Jerry Cabana gave the Clerk a copy of a map.

Councilor Gleason: He was over there today, and he said the road is maybe 12 feet wide. State laws say right-of-ways are now to be 50 feet wide. He said there will be a serious safety issue on that road, it will be a mud pit. He said something needs to be done because that road will be destroyed very quickly.

Councilor Muir: He wants to check into it, and that they need to look at the ordinances to see if they need to be changed.

Councilor Nadeau: Councilor Nadeau said he understood that he is willing to fix the road after the existing road, but not willing to do anything on the existing road, and that is what creates the problem.

Councilor Welch: Asked if we could do a moratorium, like the one that they did for the Forest Lake area roads, so they can stop it until the Council can look at changing our policy.

Tony Plante: He said the Council does need to take up the issue of development on private roads. Currently there is a moratorium on James Way, Atlantic Drive, Bruschi Road, Lakeside Drive and properties accessed off those roads for a few more months. They have been doing some work looking at other communities standards and our own maps to make sure they understand the scope of the issue, not just around Forest Lake. They have seen so far, with regard to private ways being built, our standards are reasonably comparable to what other communities have. The issue is not really the private ways going forward, the issue is private ways that were in existence as of October 22, 2009, when the private road development standards went into place. Lazy Acres Lane is a perfect example of it, and there are a number of them all over town. He feels they are on firm ground in putting a moratorium in place, due to one of the reasons being a public safety concern. Tony said his question to the Town's Attorney Natalie Burns would be how feasible would a moratorium similar to what the town did around Forest Lake be, and would the discussion tonight constitute substantive discussion to be able to make any moratorium the Council might enact retroactive to today?

Natalie Burns - Jensen Baird Gardner & Henry: Natalie's response was "yes." The Council may want to consider expanding the moratorium so that is town wide. She suspects there are more areas around town that may have these issues, and if the area does not have these issues, the moratorium will not apply to it. As far as what should be sufficient for purposes of determining it to retro active date, a substantive discussion of something at a public meeting is generally sufficient for that purpose. There has been substantive discussion tonight, and she thinks going forward if someone comes in with an application or if they are in a process, the Planning staff should be advised to let them know that the Council is thinking about this, and it may apply to their application if they have not received final approvals; then the Council can take the action that it deems appropriate.

Tony Plante - Tony asked if the application has already been filed, and the preliminary application is before the Planning Board this coming Monday, would the moratorium apply to that application?

Natalie Burns - The moratorium could be made to apply to anything that had not received final approvals, and because in the sub-division in the Town of Windham, it goes through sketch, preliminary and final approval, and you could make it apply to final approval. It is technically possible to say "if you have not got all your building permits", but with a sub-division she thinks they would advise as long as you get the moratorium in place or advise them that there could be a moratorium in place before they get final approval, then you can make it apply to that pending sub-division approval. It is legal to make a moratorium applicable to pending projects, which this is at this point in time.

Councilor Nangle: He said one of his biggest concerns is that we are allowing developments to be built either at the beginning or the end of a road that doesn't meet the new development standards. In the case of Lazy Acres, if he is going to build the road out back to town standards but not at the front, that does not meet the straight face test, and it does not meet the intent of the regulation. He didn't think that was the intent when the road standards were put in. He feels a moratorium is a great idea; we do need to slow down and take a look at what our options are and act on it.

Councilor Muir: A town-wide moratorium would only be affecting roads, such as this, but if there was someone else building somewhere and the road met private standards, they would be okay to build, correct?

Natalie Burns: She said it depends on how the Council words the actual moratorium. If you worded it the same way that was done for the Lakeside area, yes, it would apply to things that don't meet the current standards, but they could not be extended during the period of the moratorium and after that they would be subject to whatever new provisions of the ordinance are enacted.

Councilor Chapman: She asked how can we say if you are going to develop a maximum of two or more down in a further piece of land, that you do have to upgrade the entrance way when it is in the situation like this. She's concerned that a town-wide moratorium might be preventing people from developing their private land, and Ken always said it was a Superior Court issue.

Natalie Burns: She said that you can tell them that six more lots can't be built, but perhaps you can build one more lot or dwelling unit if somebody owns a big parcel of land and they are not splitting it off. If you allow some return on the land, then that should take away the regulatory taking, and that the town has allowed some development. Ms.

Burns said the town needs to look at two things - whether any development has occurred recently and who has done the development. If you have two people owning land back there and one has built but the other has not, you might need to take that into account, but that does not mean you end up with six to eight house lots, you end up with one to two, which would be more palatable for all.

Councilor Muir: He wanted to know from a legal standpoint, is there any advantage in not doing it town-wide, but rather doing it individually as they come along? Attorney Burns said that we tried to do the area that had the biggest concern and now another area popped up. She said the concern she sees going forward is that there will be other areas popping up. It may be that Planning can help identify, because in some areas of town, this is not a big concern, and probably more of an issue in parts of town around lakes. The other place where it might come up is where there is old subdivided land, platted land and people are building individual lots along what used to be old paper streets.

Councilor Nadeau: He said if they took the approach of developing in the existing lots we wouldn't be hindering anybody's development rights, would we? For example - if there is already a lot or two existing, and he bought a lot and he is now trying to subdivide it. If we say "you can develop the existing lot, we are not stepping on somebody's feet development wise. Attorney Burns said under our ordinance the other issue they have to look at is that the town still allows up to two units off the driveway, so the town should look at that issue as well, because what has happened in the past and people have utilized the driveway thing, and people have been able to put in more lots and units than you would think they would be allowed to have. You should look at that and limit it in the way you feel is appropriate to limit it.

Chairman Chapman: Commented that they use the state subdivision laws, and it seems we can't do anything about that, correct? Attorney Burns said subdivision law, which you do apply, and you do have local standards. The state has basic standards that all municipalities apply, but the town is allowed to develop standards as to how the development occurs, and so the town has several performance type standards the town has adopted, including the town's new road construction standard. That is where there is an opportunity for you to impose stricter regulations on things that are growing off of these existing private roads that are substandard.

Councilor Nangle: Asked if the state standard was considered a minimum, could we then set additional, stricter standards? Attorney Burns said you can impose stricter standards. Under Maine law land use regulations, including the subdivision law, are actually a restriction on home rule authority, which means you can't, unlike in many other areas where you can pretty much do anything that is constitutional, under land use law you have to do it in compliance with the state statutes. That does not preclude you from adopting a road development standard of the type we have been talking about.

Tony Plante: Tony said he has been working with Planning and GIS to develop a map of lots on existing private ways that are either undeveloped or under developed; they are large enough to allow for other potential development. If you drive around town, it is not just where the lakes and ponds are that you see the white street signs with green lettering, they are everywhere. We have to look and see where the under developed places are on existing private ways because that is where the bulk of the issues are. Dealing with a subdivision is one thing, but if we just relied on the Planning Board to make the finding that the development didn't meet the town standards for public safety or adequacy of the road, that would not prevent this property owner or any other property owner from exercising their rights under state law to gradually divide the property, and then you end up with the same problem. Attorney Burns said it has to be made a zoning standard in addition to a subdivision standard.

V. Councilors' Comments.**VI. Council Correspondence.**

Councilor Nadeau - He thanked Parks and Rec for the new logo, he thought it was really cool. He mentioned the problems with Tower 3, and he asked where we stood with it?

Tony said they have had a lot of problems, and when there is a problem they send it back to have it repaired. The truck is bought and paid for, and Gorham owns half of the fire truck and pays for half of the repairs.

CD 15-362 Tri-County Mental Health Services Correspondence

Attachments: TriCounty Mental Health Services letter
TriCounty Mental Health Services Annual Report 2014-2015
Tri County MHS 102815 letter

CD 15-350 Tax Collection Monthly Report - October 2015

Attachments: Monthly Report - October 2015

CD 15-351 Town Clerk's monthly report for November 2015

Attachments: Town Clerk's monthly report for November.pdf

CD 15-352 Planning Department Monthly Report - October 2015

Attachments: Planning Department Report - October

CD 15-354 Fire-Rescue Monthly Report - October 2015

Attachments: October 2015 Monthly Report

CD 15-355 Windham Public Library Monthly Report - October 2015

Attachments: October 2015

CD 15-356 Police Department Monthly Report - October 2015

Attachments: October Report

CD 15-357 Parks and Recreation Monthly Report - October 2015

Attachments: Monthly Report October 2015
Department Logo

CD 15-358 Financial Reports

Attachments: Revenue Control Report
Appropriation Control Report

CD 15-359 Social Services Monthly Report - October 2015

Attachments: Social Services Monthly Report - October 2015

CD 15-361 Code Enforcement Monthly Report - October 2015

Attachments: Code Enforcement Report October 2015
Activity report by Project Type October 2015
Activity Report - By Violation Type October 2015
Impact Fees Collected October 2015
Inspection Summary by Project Type October 2015
Commercial Forum survey
feedback in email

CD 15-367 Public Works Department Monthly Report - October 2015

Attachments: Public Works Monthly Report - October 2015

VII. Town Manager's Report.

CD 15-376 Town Manager's Report.

Attachments: Town Manager's Report 20151204-signed
Excise Tax Analysis 20151130

Tony Plante: He noted that there will be a Special Council meeting on Tuesday, December 15 at 7:00. This will be a discussion on the Mallison Falls Mill Redevelopment Proposal. The purpose of the meeting is to recap the history of the project, the issues that were raised, and to work on identifying a path forward on the outstanding issues and what alternatives might be.

With regard to wastewater they have received a draft scope and proposed fee from Wright-Pierce. They are looking for a discussion item on January 12. The idea is to move the process forward, and looking at what types of advanced subsurface treatment cluster systems, small scale treatment systems, and they would be looking at them for various areas in North Windham.

In regard to the 21st Century Downtown they have started the preliminary engineering project. TY Lin and MRLD are beginning stake holder and property owner meetings. There is a Council discussion item planned for December 22 about those three supplemental improvements - signal modernization, stormwater modifications and moving the above ground utilities underground.

He included an excise tax update along with his report for the Council. Through November he said we are about \$172,000 ahead of budget compared to last year. If receipts meeting projections for the rest of the year, we will exceed the budget by nearly

\$450,000, but we still have seven months to go.

He included in the agendas and scheduling section a list of other projects, issues and details. These are projects and issues and projects being worked on, and this will keep track of the things that they are working on so things do not get lost.

He expressed his appreciation to everybody who helped organize and decorate for the community tree lighting at the Public Safety Building on November 29. According to the crowd experts there was about 300-400 people there. The energy was amazing, and he thanked Nancy Cash Cobb and the chorus for entertaining everyone, as well as Doug Elder and his band. Also, the Parks & Rec Advisory Committee for providing refreshments, Cross Church for providing hot cocoa as well as the sound system and many other people who helped.

The town offices and the library will be closing at 1:00 p.m. on December 24, at 3:00 p.m. on December 31. We will be closed Christmas Day and New Year's Day. He noted that this has no impact on trash and recyclable's this year.

VIII. Committee Reports.

A. Council Subcommittees.

1. Appointments Committee.

Councilor Muir: The Appointments Committee has not met. They will review the committee list to see who is up for reappointment.

2. Finance Committee.

Councilor Nadeau: They will be meeting very soon to start work on refining the way they do the budget.

B. Other Committees.

1. Land Use Ordinance Committee.

Councilor Nangle: They have not met.

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

Councilor Gleason: There is no new business, and everything is working out very well on the roads they had problems with. There should be no problems this winter.

3. Windham Economic Development Corporation

Councilor Gleason: Invited Tom Bartell to give a report. Tom said a couple months ago WEDC met with Council to talk about providing the Council with some ordinance language changes that had been creeping up on a number of different items. He has given them to the Manager, and they would like to meet with the Council to discuss the changes. The things they mentioned that night and have worked on are the commercial subdivision signs in the sign ordinance. He went to another community who had an extensive ordinance, and they will use that for help. The other is in the commercial district relating to private warehousing, as well as construction services and that use in

those areas.

Tom spoke the lights that went up around town and how nice they look. He saw the Buildings & Grounds guys putting up the last of the lighted vine balls up to Gorham Savings Bank, and they are doing a great job in making sure they stay lit. Tom said he appreciated Chairman Chapman's efforts in getting this on the table and getting it started a couple of years ago. He said this Friday night the Chamber had their tree lighting up in front of the Busy Bee. They are also working on events leading up to the winter ice fishing derby. He said Linda Brooks, Director of Parks & Rec has been tremendous in these things.

4. Wastewater Management Planning Advisory Committee.

This was covered during the Town Manager's report.

5. Parks & Recreation Advisory Committee.

Councilor Chapman: She read something Linda Brooks wrote - She would like to thank the Parks & Rec Advisory Committee for coordinating the entertainment and the refreshments. Nancy Cash Cobb and the third grade chorus at the Primary School, Doug Elder, members of Cross Church for their contribution for hot cocoa for all in attendance, Windham Fire/Rescue Department and Fire Police and the Building & Maintenance personnel. She would like to ask that the North Pole calling program be promoted.

IX. PUBLIC HEARINGS.

X. CONSENT AGENDA.

- 15-194 To approve an application submitted by Northern New England Telephone Operations, LLC and Central Maine Power Company to locate one (1) utility pole and cables and wires there on Mill Pond Road, approximately 100' Northwesterly of Honnen Drive.

Attachments: 15-194 Cover Sheet
Pole Location.pdf

- 15-195 To grant a blanket letter of approval to the Windham Veteran's Association for its application for licenses to conduct Games of Chance (Texas Hold-Em Poker) at the Windham Veteran's Center and Dena's Lobster House & Tavern for the period of February 22, 2016 through January 31, 2017.

Attachments: 15-195 Cover Sheet
Blanket Letter-Windham Veteran's.pdf

Councilor Nadeau: He would like to see Fair Point start putting down what the width of the road or right-of-way is. He doesn't want to put a pole in and in several years later find out it is a 50 foot road and they have to move all the poles. Also how far off the pavement the pole will be? The Clerk said she would make the request to Fair Point.

A motion was made by Councilor Nangle, seconded by Councilor Gleason that the Order be approved. The motion carried by the following vote.

In Favor: 7 - Council Chair Chapman, Councilor Moore, Councilor Muir, Councilor Nadeau, Councilor Gleason, Councilor Nangle and Councilor Welch.

XI. UNFINISHED BUSINESS & GENERAL ORDERS.

15-187 To enter into executive session to meet with the town attorney for an update on legal matters in accordance with Title 1 M.R.S.A. §405(6)(E).

Attachments: 15-187 Cover Sheet

Tony Plante: He suggested they take this up in conjunction with the Freedom of Access Act training and to do the audit presentation first.

Councilor Gleason: Moved to take Order 15-187 out of order, seconded by Councilor Muir.

Vote 7-0

A motion was made by Councilor Muir, seconded by Councilor Gleason they they go into executive session.

Vote 7-0

A motion was made by Councilor Muir, seconded by Councilor Gleason to come out of executive session at 10:34 p.m. The motion carried by the following vote.

In Favor: 7 - Council Chair Chapman, Councilor Moore, Councilor Muir, Councilor Nadeau, Councilor Gleason, Councilor Nangle and Councilor Welch.

XII. Discussion Items.

CD 15-353 The Council will hear a presentation from the town's auditors regarding their review of financial statements for the fiscal year ended June 30, 2015.

Attachments: Windham Audited Financials 20150630

Windham Presentation FY2015

Windham Presentation FY2015 Revised 20151207

Meeting went into Recess

Meeting Reconvened

CD 15-343 The Council will receive training on Maine's "Freedom of Access Act" as required by state law.

Attachments: FOAA Training Overview

CD 15-366 The Council will discuss options for filling the upcoming vacancy in the position of assessor.

CD 15-365 The Council will review a draft request for proposals for legal services, other examples, and discuss the process for receiving and reviewing

proposals.

Attachments: Legal Services RFP 20151123

Gray RFP final 10242006

LegalRFPcalais

Westbrook 2010

XIII. Agendas & Scheduling.

CD 15-377 Agenda Items Reports.

Attachments: Agenda Items Report 20151202

Projects & Issues List 20151202

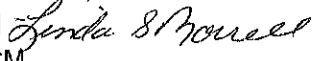
Projects & Issues Sheets 20151202

XIV. ADJOURN.

A motion was made by Councilor Muir, seconded by Councilor Gleason that they adjourn at 10:34 p.m. The motion carried by the following vote.

In Favor: 7 - Council Chair Chapman, Councilor Moore, Councilor Muir, Councilor Nadeau, Councilor Gleason, Councilor Nangle and Councilor Welch.

Respectfully submitted,

Linda S. Morrell 
Town Clerk, CCM