



Town of Windham

Town Offices
8 School Road
Windham, Maine

Meeting Minutes - Final Town Council

Tuesday, November 18, 2014

7:00 PM

Council Chambers

I. Roll Call of Members.

II. Pledge of Allegiance.

Chairman Gleason led the assembly in the Pledge of Allegiance.

III. Minutes to be Approved:

[CD 14-398](#) To approve the Town Council Minutes from October 28, 2014.

Attachments: [Minutes 10-28-14.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- Vice Chair Chapman, Councilor Gleason, Councilor Moore, Councilor Muir, Councilor Noel and Councilor Welch.

Absent: 1- Councilor Nadeau.

IV. Public Participation.

No public participation.

V. Councilors' Comments.

Councilor Muir: He congratulated Councilor Gleason and Councilor Nadeau on their re-elections. Councilor Chapman concurred.

VI. Council Correspondence.

Councilor Chapman: She asked if anyone had seen the letter in regard to emergency response in the MMA news letter? She would like to look into it a bit more and bring something forward so we would know what would happen in a disaster.

[CD 14-389](#) ecomaine 2014 Member Rebates

Attachments: [ecomaine rebate](#)

[CD 14-394](#) Cumberland County Commissioners' Meeting Minutes

Attachments: [10-20 Commission Minutes](#)

[CD 14-400](#) MMA 2014 Municipal Priorities Paper

Attachments: [2014 Municipal Priorities Paper](#)

[CD 14-362](#) Code Enforcement Department Monthly Report - September 2014

Attachments: [Code Enforcement Report September 2014](#)

[CD 14-393](#) Investment Reports

Attachments: [Investments as of October 31, 2014](#)

[Investment Trends as of October 31, 2014](#)

[CD 14-396](#) Monthly Financial Reports - October 2014

Attachments: [Appropriation & Revenue Control reports](#)

VII. Town Manager's Report.

[CD 14-402](#) Town Manager's Report

Attachments: [Town Manager's Report 20141114](#)

Tony Plante: Tony reminded people of the Community Vision Forum this coming Saturday, November 22 from 9:00 to 12:00 at the Town Office Gym, this is part of the Comprehensive Master Plan update process. At the forum last Thursday night at Manchester School we had about 60 people attend, there were some familiar faces, and some new faces. They are still taking responses from the community survey, they have about 900 so far. Post cards have gone out to remind folks to go on-line and participate.

Along with congratulating Councilors Gleason and Nadeau on their re-election, he congratulated our repeat Maine State Champion Girls Class A Soccer Team. He said it was an incredible couple of seasons. He said he was looking forward to this Saturday's Class A State Football Championship, and he said he wished it were not at 11:00 but he wished them well against Thornton Academy.

They are continuing to work on the selection of successor to Fire Chief Charlie Hammond who will be retiring at the end of this year. There have been a series of small group meetings yesterday, and from all indications, so far, the meetings were very positive, very constructive and they will see where the process goes next. They will wait and see on the outcome of those meetings, and he is trying to get a feedback of a very broad cross section of perspectives from the community as they go through the process. They will do something similar with the Police Chief's position.

They are continuing to do work on the Facilities Plan. He has asked David Mains at SMRT to put together some other estimates. He said they did get an estimate on the option the Council came up with in the discussion of September 30th, which they referred to as Public Safety Option E. He said he included that in his written report, now he will be taking the projects from the Oak Point Property Condition Assessment and the SMRT Report and meshing those together into a multi-year financing plan that the Council will be able to look at. The other two things that came up as part of their discussion was

looking at the reconfiguration in the Library to create one circulation desk, which would have the effect of freeing up some space within the existing library building, as well as realizing some potential staff efficiencies. He said he did get an estimate back from SMRT for doing that work, and in the proposal they put together, it is a three part proposal to do the design development, which is to look at the building and come up with alternatives for actually reconfiguring the space. He said he has an estimate from them just to do the design development work for \$5,500. To have them do the development of construction documents and then construction administration in going forward, with actual physical alterations to the building, would be an additional cost, but to take this next step to have a design we can live with is \$5,500. This was not planned for in the budget so Tony can put a formal request and authorization in before the Council at the next meeting, or if there is a willingness, he can engage SMRT in that portion of the services and get that started and pay for it out of contingency.

Councilor Noel asked why would they limit this only to one bidder? Tony said the reason he went to SMRT is they did the Facilities Master Planning work, and he went to them being the most immediately most familiar with the building and trying to move things along. He said he can look for other people if they wish. Councilors Chapman and Gleason said time was of the essence to get that done, and she said she would like to approve the \$5,500. Councilor Noel said he thinks its a fair market process, we are a municipal government and should give open opportunities to everyone who is interested. All Councilors agreed.

Tony was contacted by the owner of the former Maine Cedar Log Homes building in So. Windham. There is a 12,000 sq. ft. metal building attached to a log home on the same site. This could be a possible replacement for the So. Windham Fire Station. He went to SMRT to put together a proposal for what amounts to a due diligence review for the program, and ask what would they charge us to have you take a look at the building and figure out what it would take to turn that into a usable fire station? He will also ask a couple of others for pricing.

VIII. Committee Reports.

A. Council Subcommittees.

1. Appointments Committee.

Councilor Chapman: Stated they had no interviews.

2. Finance Committee.

Councilor Gleason: Stated there are no meetings scheduled; he will talk to Councilor Nadeau when he returns.

B. Other Committees.

1. Land Use Ordinance Committee.

No report.

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

No report.

3. Windham Economic Development Corporation

Councilor Noel: They will meet tomorrow morning at 7:30 at the Library.

4. Wastewater Management Planning Advisory Committee

Tony Plante: Stated they are working on getting back together and starting up the work under the new Charge that the Council gave them.

IX. PUBLIC HEARINGS.

[CD 14-386](#) Public hearing on amendments to Land Use Ordinance, Chapter 140, regarding rockeries and code enforcement interpretations.

Attachments: [Chapter 140 Amendments Relative to Rockeries and Code Interpretation \(14-324\)](#)
[Chapter 140 Amendments Relative to Rockeries and Code Interpretation \(14-324\) with Modification](#)

Tony Plante: Tony explained the amendments that were sent by the Council to the Planning Board, and on which, the Planning Board held its own public hearings and made recommendations. There were three pieces to the amendments sent by the Council. The first was the addition of definition of a Rockery to the Land Use Ordinance that is in Section 300. Second was a modification to the definition of structure, also in Section 300, and the addition of paragraph C in Section 1001 relating to Code Enforcement interpretations and appeals. That is what went to the Planning Board, that is what the Planning Board made a recommendation on to approve.

Ken Cole: The reason for the three proposed amendments that went to the Planning Board was basically to try to deal with MUBEC, the Maine Uniform building Code. The intent of doing that was first to define what a Rockery was, because the dispute had been "what is it" in terms of what is regulated or not regulated, what requires a building permit, what might require some type of engineering or architectural certification otherwise. So that first was the definitional issue, the second one was simply, well one way to get around once you define what a Rockery was. One way to get the issue of the additional back-up for the permitting was to try and back it out of the definition of a structure. The third was simply to make it clear that there was actually an appeal to the Zoning Board of Appeals from the determinations of the Code Enforcement Officer under MUBEC. MUBEC, by its terms, says that the Code Enforcement Officer can interpret it, and it went to the Planning Board on that basis. The one issue, legally, that we've had, and from day one, is that MUBEC, by its own terms, also says we can't redefine what a structure is, that it defines what a structure is. So the Code Enforcement Officer had a very good suggestion, which came up to the Planning Board; which was to add the definition to the Rockery, but in stead of modifying the definition of the structure in the Land Use Code, to go to the town's own Building Construction Code and simply put into that the definition of a Rockery under the list of items that don't require a building permit. If it doesn't require a building permit by its own terms, we don't have to get into the issue of the types of additional engineering or architectural work involved, because we'd be defining the Rockery under the town's building code, it is not a Land Use Ordinance, so it

didn't need Planning Board input and it didn't fly in the face of MUBEC; it's a little cute, but it works. It is not a direct attempt to redefine structure, but rather it just says that this particular structure, whatever it may be, doesn't require a building permit in the Town of Windham. So that suggestion came from the Code Officer post the Planning Board meeting. Again, the third part is we believe that the appeals section needs to stay in there, because if you fall back on the definition of Rockery, as exempt under the town's own code, at the end of that it simply says appeals, it references Section 1100 of the LUO, so it cross references and in order to tie it together the Section 1001 Duty of the Code Enforcement Officer, Sub C that they suggest, they still think it needs to be adopted to tie both the LUO amendments directly into the Building Construction provisions, so you hopefully and seamlessly address the issue of what a Rockery is, that it doesn't require a building permit, and that if somebody thinks it is something else and does want something else, that pursuant to the appeal provision, you can go onto the Zoning Board of Appeals.

Councilor Gleason: Ken, do you think this is going to work? Ken I can't say whether it is a cureall, I can say the state created this mess, but think, at least on a local basis, this will address the problem that everybody has seen of basically defining it appropriately, making it clear that no building permits are required, and if there continues to be a dispute about it you can go to the Zoning Board on that basis.

Timothy Tandberg: A little quick history lesson, we'll go real fast on this. It has been a year, a week ago that we went through the process. We talked to the Code Enforcement, Town Manager, talked to a bunch of Council members and got all the way to August, had a good meeting, a very good meeting, it was excellent how it was done; had a chance to have people like Jason Elder speak, Danny Shaw, Dustin Roma, everybody followed it up, Ken did a great job and we moved forward. Tonight I am just asking for a solution to the end of this. Thank you.

Councilor Noel: Stated that when it comes before them as an Order that they have it crystal clear on what he's done and what they have in front of them to make sure, if we agree, we agree on the right thing.

Ryan MacDonald: Is there a height limit on what is being considered a rockery in this proposed provision? The answer was no.

[CD 14-387](#)

Public hearing on amendments to Building Construction Ordinance, Chapter 66, replacing the current ordinance to reflect the adoption of the Maine Uniform Building and Energy Code and to exempt rockeries from permitting requirements.

Attachments: [Chapter 66 \(Current\)](#)
[Chapter 66 Proposed Amendment \(Replacement\)](#)
[Chapter 66 Fee Schedule \(Current & Proposed\)](#)

No public comment.

[CD 14-392](#)

Public hearing to receive comment on proposed amendments to the Town's Land Use Ordinance, Chapter 140 reducing minimum lot sizes in the Retirement Community and Care Facility Overlay District from 5 acres to 200,000 square feet.

Attachments: [PB toTC_RCCF_11-03-14_combined](#)

No public comment.

[CD 14-399](#) To receive comment on a new liquor license permit application submitted by Jacqueline Steele d/b/a Sebago Billiards.

Attachments: [Liquor License -Sebago Billiards.pdf](#)

Gary Crosby: I am the owner of the property that Jacqueline Steele is leasing the space from me. Will you be speaking about this right after comment or do you go back to it later? Councilor Gleason said it is up for a vote later. I will stay and be available for questions if you have any. A quick history about the property. There have been some issues at the property previously; her husband who ran the business had a lot of issues. He is now no longer involved with the property at all. I evicted, what used to be Sneaky Pete's Billiards. He's gone, and what I am trying to do is help her rebuild the business and get it going again, so as a property owner I do encourage you to approve it. I have a good tight lease, and if there is any issues, they can be addressed and cured very quickly. It looks like there is another application on the agenda but it looks like it has been suspended from New England 9 Ball LLC d/b/a as Sneaky Pete's, that is no longer operational on the property and will not be in the future ever. There is currently a no trespass order on him, so just in case somebody comes and says he has applied for this on this location, that is not the case. If there are any questions, I will hangout until you vote, but as the owner of the property I feel completely comfortable. I have a lot invested in the property, and I want to make sure it is operating well and properly. I just want to make sure you knew I was in favor of it, and encourage the Council to approve it if you can.

Chief Rick Lewsen: I recommend that the Windham Town Council allow Jacqueline Steele d/b/a Sebago Billiards to purchase a liquor license.

X. CONSENT AGENDA.

XI. UNFINISHED BUSINESS & GENERAL ORDERS.

[14-410](#) To find that the requirements of 28-A MRSA §653 have been met and to approve an application submitted by New England 9 Ball LLC d/b/a Sneaky Pete Billiards for a renewal liquor license.

Attachments: [14-410 Cover Sheet](#)
[28-A MRSA 653](#)
[Sneaky Pete's Liquor renewal.pdf](#)

A motion was made that the Order be postponed indefinitely. The motion carried by the following vote:

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

Absent: 1- Councilor Nadeau

[14-444](#) To accept nominations for and elect a Chairman of the Town Council.

Attachments: [14-444 CoverSheet](#)

Councilor Muir: Nominated Councilor Nadeau, seconded by Councilor Welch.

In Favor: 5- Councilor Chapman, Councilor Gleason, Councilor Moore, Councilor Muir, Councilor Welch.

Absent: 1- Councilor Nadeau

Abstain: 1- Councilor Noel

[14-445](#) To accept nominations for and elect a Vice Chairman of the Town Council.

Attachments: [14-445 CoverSheet](#)

Councilor Gleason nominated Donna Chapman, seconded by Councilor Muir.

In Favor: 5- Councilor Chapman, Councilor Gleason, Councilor Moore, Councilor Muir, Councilor Welch.

Absent: 1- Chairman Nadeau

Abstain: 1- Councilor Noel

[14-446](#) To accept nominations for and elect a Parliamentarian of the Town Council.

Attachments: [14-446 CoverSheet](#)

Councilor Welch nominated Councilor Muir, seconded by Councilor Gleason.

In Favor: 5- Vice Chair Chapman, Councilor Gleason, Councilor Moore, Councilor Muir, Councilor Welch.

Absent: 1- Chairman Nadeau

Abstain: 1- Councilor Noel

[14-447](#) To accept nominations for and appoint a Finance Committee.

Attachments: [14-447 CoverSheet](#)

Councilor Welch: Asked how do they want to set it up this year, as a whole or a 3 member panel? Councilor Gleason said it worked well last year.

Councilor Gleason made a motion to have the Council as a whole be the Finance Committee, seconded by Councilor Muir.

Councilor Noel: He said participating in it as little as he did last year, unfortunately, he did not see a full Council there; he thought it was difficult for the full Council to arrange their schedules for the number of meetings that were held, so he would not advocate for that again. He would advocate for a smaller, more focused group or a Council of three for the Finance Committee.

Vote 3 - 3 (Chapman, Moore, Noel) for Council as a whole - Failed

Councilor Noel: Moved to make the Finance Committee a 3-member panel consisting of Roy Moore, Dennis Welch and David Nadeau, seconded by Councilor Welch.

In Favor: 6- Vice Chair Chapman, Councilor Gleason, Councilor Moore, Councilor Muir, Councilor Noel and Councilor Welch.

Absent: 1- Chairman Nadeau.

[14-448](#) To accept nominations for and appoint an Appointments Committee.

Attachments: [14-448 CoverSheet](#)

Councilor Muir: Moved to nominate Councilor Welch, Councilor Chapman and Councilor Muir to the Appointment's Committee, seconded by Councilor Gleason.

In Favor: 5- Vice Chair Chapman, Councilor Gleason, Councilor Moore, Councilor Muir and Councilor Welch.

Absent: 1- Chairman Nadeau

Abstain: 1- Councilor Noel

[14-449](#) To accept nominations for and appoint two representatives to the Windham Economic Development Corporation board of directors.

Attachments: [14-449 CoverSheet](#)

Councilor Gleason: Nominated Councilor Noel and Councilor Moore.

Councilor Noel said he appreciated the nomination but due to his work he could not commit to the nomination.

Vice Chair Chapman nominated Councilor Gleason and Councilor Moore, seconded by Councilor Welch.

In Favor: 6- Vice Chair Chapman, Councilor Gleason, Councilor Moore, Councilor Muir, Councilor Noel, and Councilor Welch.

Absent: 1- Chairman Nadeau

[14-450](#) To accept nominations for and appoint a representative to the Greater Portland Council of Governments executive committee.

Attachments: [14-450 CoverSheet](#)

Councilor Gleason: Nominated David Nadeau and Manger Tony Plante, seconded by Councilor Muir.

In Favor: 6- Vice Chair Chapman, Councilor Gleason, Councilor Moore, Councilor Muir, Councilor Noel, and Councilor Welch.

Absent: 1- Councilor Nadeau

[14-451](#) To appoint a Council representative to the Land Use Ordinance Committee.

Attachments: [14-451 CoverSheet](#)

Councilor Gleason: Nominated David Nadeau, seconded by Councilor Muir.

In Favor: 6- Vice Chair Chapman, Councilor Gleason, Councilor Moore, Councilor Muir, Councilor Noel and Councilor Welch.

Absent: 1- Chairman Nadeau.

[14-452](#) To appoint a Council representative to the Public Easement Advisory Committee.

Attachments: [14-452 CoverSheet](#)

Councilor Muir: Moved to nominate Thomas Gleason, seconded by Councilor Welch.

In Favor: 6- Vice Chair Chapman, Councilor Gleason, Councilor Moore, Councilor Muir, Councilor Noel, and Councilor Welch.

Absent: 1- Chairman Nadeau.

[14-474](#) 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 thereon on Smith Road, approximately (250') northwesterly of Brand Road.

Attachments: [14-474 CoverSheet](#)
[fairpoint pole-Smith Rd.pdf](#)

A motion was made by Councilor Welch, seconded by Councilor Gleason that the Order be approved.

In Favor: 6- Vice Chair Chapman, Councilor Gleason, Councilor Moore, Councilor Muir, Councilor Noel and Councilor Welch.

Absent: 1- Chairman Nadeau.

In Favor: 5 - Vice Chair Chapman, Councilor Moore, Councilor Muir, Councilor Noel and Councilor Welch

[14-478](#) To find that the requirements of 28-A MRSA §653 have been met and to approve an application for a new liquor license submitted by Jacqueline Steele d/b/a Sebago Billiards.

Attachments: [Liquor License -Sebago Billiards.pdf](#)

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

In Favor: 6- Vice Chair Chapman, Councilor Gleason, Councilor Moore, Councilor Muir, Councilor Noel, and Councilor Welch.

Absent: 1- Chairman Nadeau.

[14-463](#)

To approve amendments to the Land Use Ordinance, Chapter 140, regarding rockeries and code enforcement interpretations.

Attachments: [14-463 CoverSheet](#)

[Chapter 140 Amendments Relative to Rockeries and Code Interpretation \(14-324\) with Modification](#)

[Chapter 140 Amendments Relative to Rockeries and Code Interpretation \(14-324\)](#)

[PB to TC_Rockerries_11-03-14_combined](#)

Councilor Gleason: Moved the Order, seconded by Councilor Welch.

Tony Plante: He said to simplify things from a parliamentary perspective, if it is the Council's intent, in the next Order to adopt or have replacement for Chapter 66; he would suggest the motion actually reflect the Council's adoption of the amendment to Chapter 140, Section 300 - establishing a definition of the term Rockery and the addition of paragraph C to section 1001 relating to Code Enforcement interpretations and appeals, but not including the Section 300 definition modification to structures. He suggested that the maker of the motion withdraw the motion, and make the motion as he just outlined, have a second and vote on that instead of what is on the agenda itself.

Councilor Gleason makes a motion to withdraw his motion, seconded by Muir.
Vote 6-0

Councilor Chapman: To approve amendments to the Land Use Ordinance, Chapter 140, regarding Rockeries and Code Enforcement interpretations. Rockery (or "rockeries"). Rough rocks stacked in an "interlocking" pattern without concrete, mortar or steel reinforcement. Neither mechanical nor physical connections are made between the individual rocks; "interlocking" is accomplished through proper rock layout, rock weight, and frictional interaction.

The Code Enforcement Officer is authorized to interpret provisions of this Ordinance and the Maine Uniform Building and Energy Code (MUBEC) as part of his or her duties. When done in the context of an application for a permit, certificate of occupancy or notice of violation, such interpretation shall be considered an order that is appealable to the Zoning Board of Appeals. The Code Enforcement Officer shall give appropriate consideration to the opinions of design professionals or engineers in making such interpretations, although such opinions will not be required as part of an application, unless otherwise established by this Code.

A motion was made by Councilor Muir to approve the Order as read, seconded by Councilor Gleason that the Order be approved. The motion carried by the following vote.

In Favor: 6- Vice Chair Chapman, Councilor Gleason, Councilor Moore, Councilor Muir, Councilor Noel, and Councilor Welch.

Absent: 1- Chairman Nadeau.

[14-464](#)

To approve amendments to Building Construction Ordinance, Chapter 66, replacing the current ordinance to reflect the adoption of the Maine Uniform Building and Energy Code and to exempt rockeries from permitting requirements.

Attachments: [14-464 CoverSheet](#)
[Proposed Chapter 66 Amendment](#)
[Current Chapter 66](#)
[Chapter 66 Fee Schedule \(Current & Proposed\)](#)

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

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

Absent: 1- Chairman Nadeau.

[14-468](#)

To approve proposed amendments to the Town's Land Use Ordinance, Chapter 140 reducing minimum lot sizes in the Retirement Community and Care Facility Overlay District from 5 acres to 200,000 square feet.

Attachments: [14-468 CoverSheet](#)
[Planning Board Recommendation](#)

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

In Favor: 6- Vice Chair Chapman, Councilor Gleason, Councilor Moore, Councilor Muir, Councilor Noel, and Councilor Welch.

Absent: 1- Chairman Nadeau.

[14-453](#)

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: [14-453 CoverSheet](#)

A motion was made by Councilor Muir, seconded by Councilor Gleason to move into executive session. The motion carried by the following vote.

In Favor: 6- Vice Chair Chapman, Councilor Gleason, Councilor Moore, Councilor Muir, Councilor Noel, and Councilor Welch.

Absent: 1- Chairman Nadeau.

A motion was made by Councilor Muir, seconded by Councilor Gleason to come out of executive session at 8:15 p.m. No votes were taken in executive session. The motion carried by an unanimous vote.

XII. Discussion Items.

[CD 14-380](#) The Council will receive training on Maine's "Freedom of Access Act" as required by state law.

Attachments: [FOAA Training Overview](#)

XIII. Agendas & Scheduling.

[CD 14-401](#) Agenda Items Report

Attachments: [Agenda Items Report - Items Scheduled 20141114](#)
[Agenda Items Report - Items Not Yet Scheduled 20141114](#)

XIV. ADJOURN.

A motion was made by Councilor Muir, seconded by Councilor Gleason to adjourn. The motion carried by a unanimous vote. The meeting adjourned at 8:30 p.m.

Respectfully submitted,

Linda S. Morrell
Town Clerk, CCM