



Town of Windham

Town Offices
8 School Road
Windham, Maine

Meeting Minutes - Draft

Town Council

Tuesday, October 24, 2023

6:00 PM

Council Chambers

I. Roll Call of Members.

Present: 6 - David Nadeau, Mark Morrison, William Reiner, John Henry, Jarrod Maxfield and Nicholas Kalogerakis

Absent: 1 - Brett Jones

II. Pledge of Allegiance.

Council Chair Morrison led the Pledge of Allegiance.

III. Minutes to be Approved:

[CD 23-139](#) To approve the Minutes from the October 10, 2023, Council meeting.

Attachments: [Minutes-Council-10-10-2023.pdf](#)

A motion was made by Councilor Nadeau, seconded by Councilor Kalogerakis, that the Minutes be approved. The motion carried by the following vote:

In Favor: 6 - Councilor Nadeau, Council Chair Morrison, Councilor Reiner, Councilor Henry, Councilor Maxfield and Councilor Kalogerakis

Absent: 1 - Councilor Jones

IV. Adjustments to the Agenda.

V. Public Participation.

No public comment.

VI. Councilors' Comments.

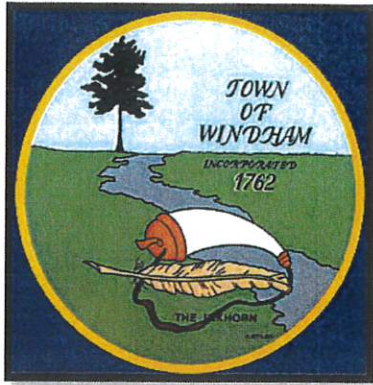
[CD 23-140](#) Thank You and Happy Retirement to Doug Fortier.

Attachments: [Memo from the Manager.pdf](#)

Councilor Morrison read a letter into the record. (see attached)

Councilor Morrison then present Doug with a plaque as a token of the Town's appreciation.

VII. PUBLIC HEARINGS.



Town of Windham
Office of the Town Manager
8 School Road
Windham, ME 04062

Barry A. Tibbetts, Town Manager
batibbetts@windhammaine.us

207.892.1907 voice
207.892.1910 fax

MEMORANDUM

To: Town Council
From: Barry Tibbetts
Date: October 17, 2023
Re: Director of Public Works

Douglas Fortier, our Director of Public Works, is retiring in early November after 31+ years with the Town. Looking back over his career, I found that he was initially hired in 1992 as a member of the grounds crew but was almost immediately moved into a truck driver position. Three and a half years later, in late 1999, he was promoted to Equipment Operator where he gained valuable supervisory experience. By late 2001 he was promoted to the role of Deputy Director and then appointed as Director of Public Works in May of 2004.

Thirty-one (31) years is quite an accomplishment, but what he has done to help the Town is even more remarkable. Over the years, he has,

- overseen millions of dollars in paving of town roads;
- secured seven (7) MPI grants from Maine DOT providing a 50/50 match for road and intersection improvements totaling almost three (3) million dollars;
- overseen the construction of the 9.3-million-dollar Shared Maintenance Facility which was completed in the fall of 2019 under budget.
- worked with Gorrill Palmer on the design and bidding and construction for all phases of the Brand Road reconstruction and the Hillcrest Drainage project renewing twenty-eight (28) infiltration bed-style catch basins;
- worked with Gorrill Palmer on the design to reconstruct the Rte. 302 shoulders to create the center turn lane north of the Anglers Road intersection for 7200 feet and assisted in securing a contractor for the \$1.5 million dollar project;
- secured an additional \$50,000 from the DOT to help with the expense on the Rte. 302 turn lane;
- worked with Gorrill Palmer on the design for reconstruction and pedestrian enhancements for Depot St; and
- worked with the town engineer in securing a Maine DOT MPI grant of up to \$625,000 for the Route 302 North smart signal and intersection improvements.

These accomplishments only touch the surface. Doug has taken an active role in union negotiations, interviewed and hired candidates for positions throughout Public Works, provided learning opportunities and encouragement to employees, and let's not forget Merry Christmas Trees – his business located here in Windham.

Speaking for the entire town, I would like to thank Doug publicly for his years of dedication and wish him a very merry retirement!!

23-193

To receive public comment on proposed amendments to the Land Use Ordinance, Chapter 120 of the Code of the Town of Windham, regarding various amendments to improve the interpretation and administration of Article 2 Nonconforming Provisions, Article 5 Performance Standards, Article 8 Site Plan Review, and Article 9 Subdivision Review.

Summary of the Proposed Chapter 120 Land Use Ordinance Changes

- Article 3 - Definitions. §120-203 Nonconforming uses. Clarifies expansion of non-residential uses.
- Article 3 - Definitions. §120-204 Nonconforming lots of record. Allows any use in the zoning district on a lot of record.
- Article 5 - Performance Standards. §120-544. Pump station. Adds exemption from certain controlled access street and driveway entrance standards.
- Article 8 - Site Plan Review. §120-803. Review and approval authority. Clarifies municipal ordinance or permit violations that would limit the Planning Board or Staff Review Committee from granting any additional site plan approvals.
- Article 8 - Site Plan Review. §120-807. Review procedures for major developments.
 - In lieu of obtaining any required federal, state, or local permit in order to be scheduled for a Planning Board review, the applicant may provide a status update on pending permits and the Board may include receipt of the permit as a condition of approval.
 - Additional information requested by the Board must be provided at least 7 days before a meeting or the application will not be heard by the Board.
- Article 8 - Site Plan Review. §120-808 Waivers. Changes authority to waive submission requirements from Staff Review Committee or Planning Board to Planning Director or designee.
- Article 8 - Site Plan Review. §120-815. Post-approval activities.
 - Specifies that guarantee shall take into account the inflation rate for construction costs.
 - Adds option for 1-year extension of the construction completion deadline with updated amounts of the guarantee.
 - Revisions to specifications for forms of guarantee (security bond, letter of credit or escrow account).
- Article 9 - Subdivision Review. §120-907. Review procedures for major subdivisions. Additional information requested by the Board must be provided at least 7 days before a meeting or the application will not be heard by the Board.
- Article 9 - Subdivision Review. §120-908. Waivers. Changes authority to waive submission requirements from Staff Review Committee or Planning Board to Planning Director or designee.

- Article 9 - Subdivision Review. §120-914. Post-approval activities.
 - Adds option for 1-year extension of the construction completion deadline with updated amounts of the guarantee.
 - Adds an option in lieu of furnishing a performance guarantee for a condition of approval prohibiting building permit issuance until the completion of all required improvements. Does not apply to subdivisions that propose a public street.
 - Revision to specifications for forms of guarantee (security bond, letter of credit or escrow account).
 - Clarifies release of guarantee to be replaced with a maintenance guarantee for 1-year from the date of final paving for any streets offered to the Town Council for acceptance.
- Article 9 - Subdivision Review. §120-915. Violations and penalties.
 - Prohibits occupancy of single- or two-family dwellings until the street upon which the unit is accessed is completed to at least base gravel.
 - Clarifies municipal ordinance or permit violations that would limit the Planning Board from granting any additional subdivision approvals.

Attachments: [23-193 CoverSheet.pdf](#)

[TC MEMO PB recommend MiscLUO 101723.pdf](#)

[WINDHAM LAND USE ORDINANCE AMENDMENTS \(revised 10-2023\).pdf](#)

Councilor Morrison read the Order and said they need to amend the order by adding three words "and act on" because they were omitted.

Councilor Henry moved to amend and add words "and act on", seconded by Councilor Nadeau.

In Favor of amendment: 6-0

Absent: 1 (Jones)

There was no public comment.

Amanda Lessard Planning Director said it deletes a word that made only nonconforming uses that were existing prior to 1976, instead of whenever the Ordinance is amended, which is how it should be.

She gave an overview of what the Planning Boards comments were. The Planning Board had a public hearing on September 11. One member of the public commented on the amendment in favor of the changes to the development of the nonconforming lots of record, and allowing site plan applications to have a DEP permit, as a condition of approval, and spoke in opposition to the increase of the performance guarantee contingency, for concerns that it was a large amount of capital to put up, especially for projects that may have strictly private development without any public infrastructure investment. He suggested alternatives to preventing performance guarantee reductions or requesting required items be reduced, that are required to be in the guarantee.

The Planning Board discussed their thoughts on the package.

Questions on how nonconforming lots would be able to developed in any zone, for any permitted use, so long as the standards are met.

How there is a prohibition on the board voting on projects when an applicant is in violation with an understanding that in certain circumstances the Board's approval is required when that is the remedy to the violation.

How the staff approval of a submission waiver would still allow the Board to request any additional information to verify that a project was in compliance with all of the approval criteria.

They supported the additional seven (7) day review submission before an application is scheduled.

They also had concerns about the increase in the amount of performance guarantee that could be detrimental to some projects going forward.

The Board's motion was to recommend approval of the proposed miscellaneous amendments with comment that the Council reconsider the 120% performance guarantee or consider a different mechanism for reductions, and to also look at the required improvements for site plan review performance guarantee.

Following the Planning Board meeting the staff, internally, had a discussion that they supported the Planning Board's recommendation to reconsider that 120% performance guarantee, as the other proposed amendments in the package will provide a sufficient opportunity to review the amount of the guarantee so that it remains adequate to cover the construction costs. Considering inflation they will have opportunities to reevaluate the amount upon renewals, and they have control on how they reduce and release the performance guarantee.

She said in the Council's packet for consideration, they have removed that increase and it is highlighted as remaining at 110%.

Council Chair Morrison read each bullet point one by one and took a straw poll vote on each and everyone was all in favor of every bullet point change.

A motion was made by Councilor Maxfield, seconded by Councilor Reiner, that the Order be approved. The motion carried by the following vote:

In Favor: 6 - Councilor Nadeau, Council Chair Morrison, Councilor Reiner, Councilor Henry, Councilor Maxfield and Councilor Kalogerakis

Absent: 1 - Councilor Jones

VIII. CONSENT AGENDA.

IX. UNFINISHED BUSINESS & GENERAL ORDERS.

[23-195](#)

To appoint Katherine Turpen to the Human Services Advisory Committee for a three-year term to expire May 15, 2026.

Attachments: [23-195 CoverSheet.pdf](#)

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

In Favor: 6 - Councilor Nadeau, Council Chair Morrison, Councilor Reiner, Councilor Henry, Councilor Maxfield and Councilor Kalogerakis

Absent: 1 - Councilor Jones

[23-196](#) To confirm the appointment Jon Earle to the position of Public Works Director.

Attachments: [23-196 CoverSheet.pdf](#)
[HR Director Memo - Public Works Director Search.pdf](#)

Assistant Town Manager Bob Burns introduced John Earle to the Town Council and Town of Windham. He said John is a professional engineer, and has been employed with the Portland Water District, as well as the Maine Water Company and he looks familiar because he used to work for us as the Town Engineer. We are very excited to have him back on board.

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

In Favor: 6 - Councilor Nadeau, Council Chair Morrison, Councilor Reiner, Councilor Henry, Councilor Maxfield and Councilor Kalogerakis

Absent: 1 - Councilor Jones

[23-197](#) To approve amendments to the Master Fee Schedule updating the police department photocopying fees to \$.50 per page to remain consistent with other departments.

Attachments: [23-197 CoverSheet.pdf](#)
[Fee Schedule Proposed Amendment 10.24.2023.pdf](#)

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

In Favor: 6 - Councilor Nadeau, Council Chair Morrison, Councilor Reiner, Councilor Henry, Councilor Maxfield and Councilor Kalogerakis

Absent: 1 - Councilor Jones

[23-199](#) To authorize the transfer of \$29,685 from the general contingency account 19910-43100 to the capital account 19100-47430.

Attachments: [23-199 CoverSheet.pdf](#)
[Chief Libby Memo Re Ambulance Remount Cost Variance.pdf](#)

Assistant Manager Bob Burns said that it is a slight overage from what was budgeted to the realistic costs that the Fire Chief has found for us.

Chief Brent Libby said this is their second ambulance remount. When they purchased the trucks in 2017 it was with the intent to be able to take the box off the back, refurbish it, put it on a new chassis. They have one truck out in Frenchville now, and this truck is due to go when that one comes back.

The cost is a bit over what they had budgeted but that is a factor of inflation for them,

and they were able to get a 2023 chassis they had on the lot. That is where their overages is.

He said when they get to the point on having to buy an entirely new ambulance their plan is to do this at least once to see how it goes, and maybe twice, and it is about half the costs. A new ambulance is up around \$400,000, and that is just the truck, no equipment.

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

In Favor: 6 - Councilor Nadeau, Council Chair Morrison, Councilor Reiner, Councilor Henry, Councilor Maxfield and Councilor Kalogerakis

Absent: 1 - Councilor Jones

23-198

To authorize the Town Treasurer to negotiate the terms of an equipment purchase and the financing of said purchase through an Equipment Lease Purchase Agreement for an estimated amount not to exceed \$580,685, plus interest and inflation, as well as the maturity date and other terms and conditions of the equipment purchase and financing of said purchase with the vendor and financial institution the Treasurer deems appropriate; and to award the Equipment Lease Purchase Agreement to such financial institution as the Treasurer deems to be in the best interests of the Town for the following budgeted items: 1) Fire Dept. Car 4 - 2023 Ford Interceptor and related equipment, 2) Fire Dept. Ambulance #2 - 2023 Ford E-450 Braun Chief XL Chassis, 3) Fire Dept Ambulance #2 - 2023 Ford E-450 Chief XL Remount, 4) Fire Dept. Unit 9 - Utility Pickup Truck and related equipment, 5) Public Works International Single Axle Dump Truck with cab, chassis, and related plowing and sanding gear.

Attachments: [23-198 CoverSheet.pdf](#)
[FY24 Leases.pdf](#)

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

In Favor: 6 - Councilor Nadeau, Council Chair Morrison, Councilor Reiner, Councilor Henry, Councilor Maxfield and Councilor Kalogerakis

Absent: 1 - Councilor Jones

23-212

To approve a new Victualer's License application submitted by Dawn Miller d/b/a Crepe Elizabeth.

Attachments: [23-212 CoverSheet.pdf](#)
[Crepe Elizabeth-new Victualer's.pdf](#)

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

Councilor Reiner left the meeting at 6:31 p.m..

In Favor: 6 - Councilor Nadeau, Council Chair Morrison, Councilor Reiner, Councilor Henry, Councilor Maxfield and Councilor Kalogerakis

Absent: 1 - Councilor Jones

X. Council Correspondence.

CD 23-132 FOAA Status Report.

Attachments: [FOAA S Napolitano FOAAs and Date Response 10.10.2023.pdf](#)
[FOAA R Cummings ballot box Response 10.10.2023.pdf](#)
[FOAA Grenier Councilor Nadeau Communications Response 10.12.2023.pdf](#)
[FOAA Email Search Response K Day 10.12.23.pdf](#)
[FOAA Response SmartProcure Vendor Info 7.19.23 to 10.19.23.pdf](#)
[FOAA Response S Napolitano AG Email Response 10.19.2023.pdf](#)

CD 23-135 General Correspondence Items.

Attachments: [American Red Cross - Letter of Thanks.pdf](#)
[EPA Selects Clean Up Plan for Keddy Mill Superfund Site Press Release.pdf](#)
[Invitation to GPCOG Reception Wed Nov 15.pdf](#)
[Land For Maine's Future Program Finalist - Halledge Farm North Project.pdf](#)
[Loveitt Bridge Preliminary Public Meeting Notice.pdf](#)
[MMA Risk Reduction Grant Award.pdf](#)
[Question RE School Budget and Tax Percentage.pdf](#)
[Z Eklund Meeting Request Concern Response.pdf](#)
[Reply to Clark - Nadeau Ethics Complaint.pdf](#)

XI. Town Manager's Report.

Assistant Manager Burns expressed his appreciation for 31 years of service by Doug Fortier to the Town of Windham. He has worked with Doug in the past, prior to coming to the Town of Windham, and the last two years here in Windham. He said he really enjoyed his expertise and working on projects together. He wished Doug the best of luck in his retirement.

XII. Committee Reports.

A. Council Subcommittees.

1. Appointments Committee.

Councilor Kalogerakis said they met this evening and they are moving the following candidates forward:

Gale Savard to the Planning Board as the Alternate for a 3-year term.

Mike Duffy reappointed to the Substance Prevention Grant Committee for a 3-year term.

Elizabeth Schidzig reappointed to the WEDC for a 3-year term.

Raeann Haggard appointed to the following 4 committees:

Human Services Advisory Committee for a 3-year term

Natural Resources Advisory Committee for a 3-year term

Parks & Rec for a 3-year term

Library Board of Trustees for a 3-year term.

He said this is a record for someone to be on that many committees at once, and she is going to school full-time for physics and chemistry. Very impressive.

2. Finance Committee.

No report.

3. Ordinance Committee.

No report.

B. Other Committees.

1. Long Range Planning Committee.

No report.

2. Parks & Recreation Advisory Committee

Councilor Henry said they met last Monday, and there is a vacancy on the Parks & Rec Committee, three vacancies on the Summerfest Committee, and if you are interested, please see Linda Brooks.

Trunk or Treat is October 28 from 5:30 to 8:00 p.m.

Windham is officially recognized by AARP as an Age Friendly Community. The action plan was adopted and they are moving forward. There is a pilot program being launched in January that is a volunteer transportation program.

There are many other program updates available on the website.

3. Windham Economic Development Corporation.

Tom Bartell WEDC said they held their annual meeting last Wednesday, and they did a number of business items, but the highlight of the annual meeting was an update on the Economic Development Strategic Plan that is under development, and Michael from Crane from Crane Associates attended and provided an update and provided some preliminary information.

4. Highland Lake Leadership Team.

Councilor Maxfield said they have a meeting on November 2.

5. Natural Resources Advisory Committee.

Amanda Lessard Planning Director spoke on behalf of Councilor Jones said the committee gave a debrief on the tabling event at the Windham Farmer's Market to talk about water quality and pet waste. They handed out pet waste bags. They want to continue to do this next summer residents and non-residents who are visiting are made aware on how they can help us improve our water quality.

In terms of education and outreach, the committee is working on drafting newspaper articles for the Windham Eagle on topics of interest. They had a conversation around our shoreland zoning mapping and some changes that have been made to the inland, bird and waterfowl habitat map, wetlands from Inland Fisheries and Wildlife since we last adopted our shoreland zoning map and the committee asked for more information and they are coordinating from a biologist at IFW to get some more information before they make a recommendation to the Council to have the best available data in our shoreland zoning map.

They are looking ahead to scheduling a joint meeting with the Parks & Rec Advisory Committee where they are both jointly tasked with Open Space Plan Management to give them some updates, jointly, on conservation efforts with the East Windham Project, and have a discussion around decision making in the charge around open space impact fees.

In the Council packet there were some Land For Maine's Future funding that was granted to the Maine Farm Land Trust for preservation of a farm in Windham to be preserved in perpetuity. She said we currently have two forever farms and this would be the third, and that keeps those working lands and prevents it from being developed.

6. Public Easement Advisory Committee.

No report.

XIII. Discussion Items.

***Notes are not taken for Discussion Items.**

- | | |
|----------------------------------|--|
| <u>CD 23-136</u> | Progress at the East Windham Conservation Project and the Sewer Project at the Manchester School Site (Videos) - Communications Director, Roger Cropley. |
| <u>CD 23-137</u> | WEDC Workshop Success Update - Windham Economic Development Director, Tom Bartell. |
| <u>CD 23-138</u> | Ethics Policy and/or Review Process - Other Communities Survey Results. |

Attachments: [Community Research.pdf](#)
[Auburn, ME CH2 Code of Ordinances.pdf](#)
[Bangor Code of Ethics \(2\).pdf](#)
[Biddeford Code of Ethics.pdf](#)
[Bridgton Code-of-Ethics.pdf](#)
[Brunswick Conflict of Interest Policy \(Approved 030722\).pdf](#)
[Brunswick Council Rules of Order and Procedure.pdf](#)
[Cape Elizabeth Town Council Code of Ethics.pdf](#)
[Falmouth council rules see Policy 7.pdf](#)
[Kennebunk Code of Ethics for Select Board.pdf](#)
[Old Orchard Beach code of ethics 2022 signed.pdf](#)
[Raymond Code of Ethics Appointed and Elected.pdf](#)
[Saco Code of Ethics and Conduct FINAL.pdf](#)
[Sandford Rules of Procedure 2021 - Amended 8-3-21.pdf](#)
[Sanford Council Code of Conduct.pdf](#)
[Sebago Maine Code of Conduct.pdf](#)
[Standish Code of Ethics.pdf](#)
[Waterville Code of Ethics.pdf](#)
[Westbrook ME Ethics Ordinance CH28.pdf](#)
[Yarmouth ME Council Rules with Conduct Section.pdf](#)
[York Code of Ethics 2021-06-14.pdf](#)

CD 23-141 Zoning Change Request for the Rear Portion of 919 Roosevelt Trail from Farm (F) District to Commercial 4 (C-4) District.

Attachments: [23-33 ZONE CHANGE SURVEY F to C-4 919RooseveltTrail 1002 23.pdf](#)
[23-33 ZONE CHANGE APPLICATION F to C-4 919RooseveltTrail 100223.pdf](#)
[23-33 PB MEMO TheRomanCatholicChurch RezoneFrom F to C-4 101723.pdf](#)

Council Chair Morrison was asked by Councilor Reiner, who had to leave earlier in the evening to read his letter. (see attached)

XIV. Agendas & Scheduling.

XV. ADJOURN.

A motion was made by Councilor Maxfield, seconded by Councilor Henry, that they be adjourned. The motion carried by the following vote:

In Favor: 5 - Councilor Nadeau, Council Chair Morrison, Councilor Henry, Councilor Maxfield and Councilor Kalogerakis

Absent: 2 - Councilor Jones and Councilor Reiner

Linda Morrell

From: William Reiner
Sent: Tuesday, October 24, 2023 1:15 PM
To: Robert J. Burns; TownCouncil; Barry A. Tibbetts
Cc: Linda Morrell
Subject: Rezoning Roman Catholic Church

Mark, can you read this into the record for me tonight in my absence after Amandas presentation. I know this is currently a discussion item, but these are my current thoughts

Good Evening,

Sorry I was unable to attend the meeting up till this juncture, but in knowing it was a possibility, I attend last evenings Planning Board meeting to hear public comment and gather as much insight into this Discussion Item prior to us meeting on Nov 14.

My comments below do not speak against the need for increased housing or that of Senior and Affordable housing in general.

With the information I have up to the end of the Planning Board meeting I am currently NOT in favor of rezoning this parcel from Farm to C-4. I am generally never in favor of rezoning requests unless a plan, or understanding of a plan, is present in front of me. I also feel that rezoning is a tool of use when no other areas are available.

I understand there is a recommendation from Planning Board to 'Not Recommend with comments' and those comments to be a possible change of zone to RM. This recommendation I have not yet settled on as I am looking forward to reviewing tonight's meeting and seeing additional comments.

Planning Board had approximately 30 letter and 20 speakers that were also not in favor.

Understanding that while "Farm (F)" does not fit into the Comprehensive Plan as a Growth Area zone, it may be better to look again at what actual topographical areas in the North Windham Zone have had a new influx of building. These areas may have already experience an acceptable amount of 'local' growth to the point that a specific area has sustained enough development and potentially be excluded from continued development.

Would recommend a look;

- 1- Revisions of the land use map or growth zone boundaries in the area of Angler Rd.
- 2- Revisions to the boundaries of the N.Windham Growth zone map to see if adjustments are warranted.

While this discussion is not on a specific project, a housing project has been proposed that may not fit into the current nature of the area. With the access roads moving forward, there is potentially better suited areas for High Density housing. All residential uses are not equal.

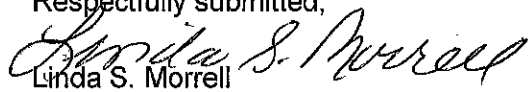
If the growth zone map was removed from the area in question, the potential utilization of expanded dimensional allowances and multipliers would be removed and I believe more reasonable development could be accepted. This is my current understanding but look forward to continued discussion.

Again, I am not against housing development, or Affordable and Senior housing. But with the access roads going forward, there is a greater potential for this type of housing and density required, to be placed where it will not affect established residential neighborhoods.

Bill Reiner

William Reiner
Windham Town Council - West District
21 Ursula Ave
Windham ME, 04062
201-294-7390
williamreiner@windhammaine.us

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Linda S. Morrell".

Linda S. Morrell

Town Clerk, CCM