



# Town of Windham

Town Offices  
8 School Road  
Windham, Maine

## Meeting Minutes - Draft

### Town Council

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Tuesday, May 22, 2018

7:00 PM

Council Chambers

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#### I. Roll Call of Members.

**Present:** 6 - Dennis Welch, Bob Muir, Jarrod Maxfield, Donna Chapman, Clayton Haskell and Rebecca Cummings

**Absent:** 1 - Tim Nangle

#### II. Pledge of Allegiance.

Council Chair Chapman led the assembly in the Pledge of Allegiance.

#### III. Minutes to be Approved:

CD 18-182 To approve the minutes of the May 8, 2018 special Council meeting.

Attachments: Minutes-Special Town Council-5-8-18

CD 18-183 To approve the minutes of the May 8, 2018 Council meeting.

Attachments: Minutes-Town Council-5-8-18

A motion was made by Councilor Maxfield, seconded by Councilor Welch, that the Minutes of the May 8, 2018 Special and Regular meetings be approved. The motion carried by the following vote:

**In Favor:** 5 - Councilor Welch, Vice Chair Muir, Councilor Maxfield, Councilor Haskell and Councilor Cummings

**Absent:** 1 - Councilor Nangle

**Abstain:** 1 - Council Chair Chapman

#### IV. Public Participation.

*No public participation.*

#### V. Councilors' Comments.

*Councilor Haskell moved to table what is on the agenda, excluding the budget, until a later date, seconded by Councilor Welch.*

*Vote to postpone all items except the budget.*

*In Favor: 1- Councilor Haskell*

*Opposed: 5- Councilor Chapman, Councilor Cummings, Councilor Maxfield, Councilor Muir and Councilor Welch.*

*Absent: 1- Councilor Nangle*

*Councilor Muir moved to take the Municipal Budget out of order, seconded by Councilor Welch.*

*In Favor: 6- Councilor Chapman, Councilor Cummings, Councilor Haskell, Councilor Maxfield, Councilor Muir, and Councilor Welch.*

*Absent: 1- Councilor Nangle*

## **VI. Council Correspondence.**

*No Council Correspondence.*

CD 18-167 Assessing & GIS Department Report for April 2018

Attachments: Assessing & GIS Department April 2018

CD 18-168 Windham Public Library Monthly Report - April 2018

Attachments: Windham Public Library Monthly Report - April 2018

CD 18-171 Town Clerk's Report - April 2018.

Attachments: Town Clerk's Report-April 2018

CD 18-173 Fire-Rescue Department Monthly Report - April 2018

Attachments: Fire-Rescue Monthly Report April 2018

CD 18-174 Parks and Recreation Monthly Report - April 2018

Attachments: Monthlyreportsapril2018

CD 18-175 Windham Police Department Monthly Report - April 2018

Attachments: April 2018

CD 18-180 GPCOG Memo on Windham Membership Benefits 20180501.

Attachments: 18-05-01 Memo on Windham membership benefits FINAL

## **VII. Town Manager's Report.**

CD 18-176 Town Manager's Report.

Attachments: Town Manager's Report 20180516

Projects & Issues List 20180516

Projects & Issues Sheets 20180516

*Tony Plante reported on the following:*

*A reminder that there is a special meeting on Tuesday, May 29 at 6:00 p.m. with the Planning Board and the Zoning Board. This is a joint training session with Stephen Langsdorf and Kristin Collins of Preti Flaherty.*

*There is a special meeting on Wednesday, May 30 at 6:00 p.m. for an executive session with the Town Attorney.*

*There are a couple of searches going on for the Planning Director and Animal Control Officer. There is a successful candidate for a Code Enforcement Officer, but he was not sure if the offer had been accepted.*

*In regard to the Shared Maintenance Facility, they finally got DEP approval in-hand today. There is a special Planning Board meeting next Wednesday, which they will be able to act on the site plan application. He has been working with the design team and with Great Falls and the town attorney to complete work on the contracts.*

*As he reported last week on the LED street lights, Real Term Energy will begin inventory next week or early June so they should have information back from them by late June.*

*They will be mapping out the next steps following up from the Council meeting of May 15 with Wastewater.*

*They will be discussing Broadband and the Police Department's proposed unmanned aerial systems program for June 5.*

*The 21st Century Downtown zoning and public hearing and vote will be on June 12.*

*Discussion on the Community Center and solid waste alternatives on June 19th.*

*On Memorial Day the town will have a parade along Route 202 from School Road to the High School beginning at 9:00 a.m. Memorial Day ceremonies will be at 10:00 a.m. at the canopy entrance at the high school.*

*The Farmer's Market that WEDC has been working hard on kicks off this Sunday, May 26 from 9:00 to 1:00 and will run through the summer. We have a few vendors already, and they are expecting to add more.*

## **VIII. Committee Reports.**

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

#### **1. Appointments Committee.**

*Councilor Maxfield said they are meeting with applicants for the roads and mineral extraction committees. They will present them in a couple of weeks.*

#### **2. Finance Committee.**

*Approving the budget tonight.*

## **B. Other Committees.**

### **1. Long Range Planning Committee.**

*Councilor Haskell said the next meeting is tomorrow morning at 7:30 in Conference Room 1.*

### **2. Parks & Recreation Advisory Committee.**

*No report.*

### **3. Public Easement Advisory Committee.**

*No report.*

### **4. Highland Lake Leadership Team.**

*Tony Plante said they had an education and outreach meeting last week, he was not able to attend.*

### **5. Shared Maintenance Facility Joint Project Team.**

*Tony covered this in his Manager's report.*

### **6. Windham Economic Development Corporation**

*No report.*

## **IX. PUBLIC HEARINGS.**

### **CD 18-156**

To receive public comment on a proposed "Moratorium Ordinance on Mineral Extraction."

**Attachments:** Mineral Extraction Moratorium Adopted 20180424

*Tony Plante stated that this was previously adopted by the Council as an emergency, and pursuant to the Charter the Council has to hold a public hearing and vote on it, again, within sixty (60) days in order for it to stay in effect. The Moratorium is already in place for the first 180 day period.*

*Jim Pross Attorney at Skelton Taintor & Abbot representing CSG Properties, LLC: As I am sure you are all aware they have applied for a permit for mineral extraction operation off of Lakeside Drive. As I am sure you are also aware their sketch plan and application was reviewed at the March 26 Planning Board meeting, and the Planning Board members voted to conduct a sitewalk of the proposed site for the development at that time, after which, this body adopted the emergency moratorium that you're considering extending this evening.*

*Doing what's right is often not easy, but doing what's right when it's not easy, really is the*

definition of leadership, and I'm imploring the town Councilors on behalf of my client and the citizens of the Town of Windham to do what's right this evening. The secondary economic benefits of the proposal our client has put forth, before the Planning Board, far out weigh the objections to the proposal by the few residents who would be the most significantly harmed or perceived harmed to the development going forward. I would ask that the Town Council consider all of the economic benefits associated with expanding your tax base with this operation, and the well paying jobs that would be associated with the operation when you consider whether or not it's appropriate to go forward with this moratorium.

Title 30-A of Maine's Revised Statutes, section 4356 provides that any moratorium on development permits must be necessary within the meaning of the statute. To establish necessity a municipality either has to show that it's required to prevent a shortage or an over burden of public facilities that would be reasonably anticipated from the development during the time period of the moratorium in effect, or that it would be necessary because the application of existing comprehensive plans, local ordinances, regulations and any applicable laws, including state laws, would be inadequate to prevent serious public harm were the development were to go forward.

The town cannot establish necessity of the moratorium. It is not asserted in the language of the moratorium giving all the reasons why it was necessary from it's own perspective. It does not establish any reason that is grounded in there being a shortage of public facilities or a burden on public facilities. What the town does point to in the moratorium, would speak to the second element of the statute for necessity, which is that the state laws in existence that govern these operations and the local land use ordinance, specifically, would be inadequate to prevent serious public harm.

It is going to be an erroneous burden for the town to establish that it's necessary, and here's why. Sections 600 through 610 of the town's Land Use Ordinance is seven pages long, and it consists of detailed criteria that a developer has to satisfy to the satisfaction of the Planning Board in order to obtain a permit for a Mineral Extraction Operation. These local regulations are more than adequate to address the concerns expressed in the moratorium, and if you go through each one of those "Where As" clauses in the moratorium, you will see that they all speak to issues such as ground and surface water impacts, noise concerns that could potentially impact residents, impact on surrounding neighborhoods, hours of operation, sedimentation control; all of those are legitimate concerns, but they are also specifically addressed in the Land Use Ordinance in section 600 through 610.

Section 605 of the Land Use Ordinance gives even greater power to the Planning Board and the municipality here in the ordinance that Windham has adopted, because it broadly authorizes the imposition of conditions necessary to safe guard the safety and welfare of the community. In short, the moratorium is not legal under the provisions of state law, and we are prepared to make the argument on behalf of our client, who has a significant property rights that is at the other end of this balancing act that governing bodies are always required to do.

You also have a Comprehensive Plan that was updated less than one year ago, and in that 174 page Comprehensive Plan update, at page 68, it specifically addresses the rural economy as a major component of the total economic landscape in Windham. It identified fourteen existing mineral extraction operations in Windham as one key aspect of that rural economy, along with forestry and farming.

What was not mentioned in the Comprehensive Plan, either on page 68 where Mineral

Extraction Operations were discussed or in any of the other 173 pages, were any of the concerns expressed in the moratorium. CSG Properties, my client, has received their DEP permit for the proposed quarry operations and it is required to comply with state law under the terms of that permit. When you have existing state laws and significant local regulations that govern the impacts of this operating and its permitting, the moratorium's need for necessity under Title 30-A cannot be satisfied. The town admits, and we all know that this moratorium is targeted, specifically, at my client. Imagine if that was your business or your families business that was being specifically targeted. It is not only unfair fundamentally at the core but it is also discriminatory. Under Maine's Constitution Article 1, Section 6-A, which prevents the government entity from taking another person's property without due process of law. This is why, today, we filed a law suit against the Town of Windham in Cumberland County. We have to protect our clients rights and protect them from any continuing discrimination.

I also want to say as a former City Councilor in the City of Auburn, and also a member of the School Committee, I know what it is like to sit in your chairs and to face vocal opposition to any particular development, but I also learned that when all of those residents are screaming "not in my backyard" that doing what is politically convenient, at the time, always comes with a cost. There's lost opportunities, lost tax revenue and law suits that can be very expensive.

I am here today to express our passionate defense of the applicant's rights to move forward with this process and to urge you to consider the state's statute that I cited to you, Title 30-A, Section 4356, and its implications on emergency moratoriums and their validity under state law and what the courts are going to weigh. Furthermore, even if there was some way that the town could prevail along the validity of the moratorium by establishing that it was necessary, our client and their application is grandfathered by Title 1, Section 302, which is also specifically referenced in the moratorium, as I am sure you are all aware.

The Planning Board substantively reviewed the application at its March 26 meeting and took action upon the application by unanimously voting to conduct a sitewalk. So this moratorium that has been adopted is unlawful, and to protect our clients rights we filed that lawsuit in court today. We didn't want a certain period of time to lapse without taking further action. What happens tonight, with regard to this moratorium, if you were to vote to make it permanent, that could have an impact on the course of the litigation and the arguments that are going to be made.

Councilor Chapman: Excuse me, are you threatening the Council and the Town of Windham with that statement? Jim Pross: It is a matter of fact. Councilor Chapman: Would you please give a copy of what you just read with our Town Clerk. Jim Pross: Absolutely. Councilor Chapman: I don't like to have threats in Council Chambers. Jim Pross: I only want the Council to be apprised of what's happened today, in regard to that law suit, and the reasons why this vote is so pertinent to what happens going forward with regard to my clients legal rights to the property. Councilor Chapman: Thank you.

Councilor Muir: When did you notify the town of the law suit? Jim Pross: We filed the law suit today. Councilor Muir: When did you notify the town? Jim Pross: Right now. Councilor Muir: That's great. Councilor Chapman: You are suing us right now and our lawyer is not present in the room, I would suggest we do not talk back and forth, and we are done. Again, please give a copy of what you just read with our Town Clerk in case she didn't get the exact verbiage.

Jennifer Capolich: I think you have shown successful leadership in having the

moratorium in place, and I think you have shown successful leadership in taking the time to review this and taking the time and the commitment to our land, our lakes and our people of Windham, and we greatly appreciate that. I think you have proven that tonight in allocating money to protect our environment. Thank you very much.

Dennis Brown - Pond Villa: Based upon what I heard tonight, at least with respect to the first point, I think that there is a necessity for this moratorium, and that is based on the findings that I shared with this Council in the past, relative to all the loop holes that we found with the DEP processes, and I don't think you can just go forward and assume because the DEP has looked at it that everything is okay. I think there is a real necessity to take a look at how all of these aspects interact in the permitting process and in terms of projects that I've been involved with before. Just the fact that it came before the town Planning Board doesn't mean it was approved or anything else. There was no motions; I was at that meeting, there were no motions or anything to accept or approve that project. Thank you.

Margaret Pinchbeck - Nash Road: I want to thank you for what you've been doing for the moratorium, and I just pulled up the Mission, Vision and Values of the Town Council. The mission of the Town of Windham means government is to provide governing services and pursue policies responsive to the needs of its citizens and the public in order to maintain, support and improve the quality of life in the community.

I can tell you since I live across the street from a quarry, the quality of my life has gone down the tubes. We had a blast just this last Wednesday that cracked our walls and that quarry has been there for five years, at least five years, Shaw Bros. took it over five years ago.

And yes, there are lots of pages of rules and regulations that the applicant has to go by, but all they have to do is ask for an amendment and that rule is thrown out the window. The time I was here before you I had a card that I had received in the mail talking about two more amendments to the Nash Road quarry, well it turns out it wasn't for a public hearing, it was just a public notice that you would see in the paper. The Planning Board doesn't have to have public hearings for amendments. Now in most cases I can see that; if a developer has a big subdivision and wants to move a driveway, they don't have to have a public hearing, but these amendments were taking away conditions of approval, so that the Planning Board that looked at the original application years ago, stacks of papers this big, heard testimony from the applicant, scientists, his hydrogeologist, noise engineer, and the traffic engineer, these are the ones that put the conditions of approval on that quarry, and the current Planning Board, through no fault of their own, were given barebones information, they say "okay, the DEP is okay with this, we'll just take away this condition of approval." It was the applicants hydrogeologist that recommended that the water be tested every year.

So I am just saying that just because somebody follows all of the rules doesn't mean they are going to keep following all the rules, and I would argue that the town is short on resources to do this, because that would be almost a full-time job for a code enforcement officer to keep checking every pit and every quarry. I just talked with Mr. Hanson, and he went over there today and they have gotten way ahead of themselves. There is a lot of problems there, and I don't know who to talk to, I want to find out what the vibration level was for that blast that damaged our walls. He said he will eventually get it, and he will forward it to me. If they are within the state's limits and they are damaging my house, how are we going to fix that; we have to make our limits lower than the states. What happened with us is somebody came and plunked a quarry right in the middle of an established neighborhood, and we are not even as densely populated as the

next one that is proposed, and who knows where the next one after that will be proposed but it really has changed our quality of life. It really has reduced our property values, and I still have sleepless nights; I still have flashbacks when I walk in here. The neighbors paid over \$70,000 in legal fees all for nothing, so let him threaten all he wants but you are doing the right thing. Thank you.

Mike Manning- Bruschi Way: I want to make a couple of quick points - number one, everybody deserves the opportunity to utilize their property how they should, responsibly, and the key word is responsibly. We've heard the horrors about the pit over on Nash Road, we've seen what has been going on with our town roads and our private roads and trying to make end roads on that.

I hear the story about how the pit over on Nash Road was put in, how it was circumvented, how the Council was turned, how the Planning Board was turned. We call our selves leaders, we call our selves responsible citizens but things like that happen because people don't speak up, people don't do the hard job like the gentleman we were just speaking about. Hard jobs require hard decisions, they require you to be put in harms way, they require you to do the things that other people don't want to do.

Speaking of that, the Council opened up a committee for people to be able to join and discuss openly and hopefully as neighbors, how to possibly have this quarry or locate it in a different place or how to live together at least as neighbors and friends. People thought that somebody was going to be on that committee, and that person is not allowed to be because that person is now on the Planning Board. So I would like the Council, if possible, to open it up for 24 hours, or 48 hours for other people to apply. They thought they had the most qualified candidate, and he was told he couldn't, which makes sense, don't want to have double jeopardy there, so I would like to have that opened up again.

But going back to the actual problem tonight, what we are talking about is what was the process that the Planning Board went through to get ready to conduct their sitewalk. They looked at a checklist, the things on the checklist were met so they decided to have the sitewalk without any Council oversight. That checklist was developed, and no disrespect to people who may be listening, a corrupt individual who had an agenda. That person then turned the Planning Board, and then they turned the Council, and that checklist that was used to accomplish those two things is still the same checklist.

We listen constantly, on a daily basis, about what happens with our elections, what happens when people make decisions and nobody calls them on it. If we have something that is wrong, needs to be reviewed, needs to be evaluated, that possibly is contaminated, it's the responsibility of the people who vote, the responsibility of the people who were voted in to look at that document and make sure it is correct. You can't do that overnight but you can make it happen within 180 days. 180 days is not going to bankrupt anybody, it can screw up an aquifer, it can poison a lake but it won't bankrupt anybody in 180 days. If in 180 days you guys review that checklist and that checklist is correct and the way that they do the process of the Planning Board approving it and the Council approves it and the betterment of Windham, I will be quiet and I will go back to my hole.

Once you review it and you see the process that was used then and the same process we are using, how many years later, 10, 12, 14 years later; we need to evaluate what we do on a daily basis. We need to evaluate what we do on a weekly, monthly and yearly basis and we damn sure with a town of 18,000 people and is growing, need to review a process that will allow something like this to happen and that is going to impact a lot of people.



Earlier the Council said the majority of your tax revenue is from what, private property, correct? Over on our side, we are cheap money, you pick up our trash and you listen to me complain and you get all of our tax dollars, which are going up 3%. What happens when they drop 25%, what happens when they drop 30%? As much as the economic boom is of new jobs, what is a 15th pit really going to bring to the town? You can't throw a rock without hitting a sand pit or an ice cream shop while you are in Maine. You can't throw a rock without hitting a gravel pit, why do you need a 15th pit in a town? Soon there will be a pit for every 1,200 people in the town. It seems to be excessive to me. Thank you.

Kevin Clark - James Way: I remember what my parents said when I was growing up, they told me that just because something is legal or just because you are able to do something, does not mean it is the right thing to do, and I think we see that clearly here. I know the person representing the contractor here for the quarry, and said that we only hear from a few people and there are only a few people that are going to be impacted. Well that is wrong, we just watched you guys raise the budget to help pay for other developments that are polluting our town, so this is actually effecting everybody in this town, if something isn't regulated right or if the Planning Board decides to deregulate things five or six things down the road. I want to push for you guys, there is nothing wrong with comes with waiting, with understanding, with learning more and maybe looking at some of our regulations and some of our land use ordinances, and I think that anyone who loves this area would say the same exact thing. I ask you guys to do the right thing and think of everyone in this town.

Ann Spaulding - James Way: Just to repeat what we are hearing tonight, I hope you continue with the moratorium despite your threats tonight, and do what is right. There are plenty of quarries, more than enough, we don't need one in this fragile area. So I support the moratorium, and I support changing it so that there are no more of these type of developments, particularly in these sensitive areas where there is an aquifer and water tables and such. Thank you for doing your job.

Public Hearing Closed at 9:11.

CD 18-158 To receive public comment on amendments to Code Chapter 176, "Peddling and Soliciting."

Attachments: Chapter 176 - Peddling and Soliciting AMENDMENTS 20180502  
Markup  
Chapter 176 - Peddling and Soliciting AMENDMENTS 20180502  
Clean

Tony Plante: Explained that the notice for the public hearing was not published in time, and they will have to postpone this Order until June 12, 2018.

CD 18-163 To receive public comment on proposed amendments to Town of Windham Land Use Ordinance, Chapter 140, Section 800 Site Plan Review and Section 900 Subdivision Review regarding stormwater management and cluster subdivisions within the Highland Lake watershed.

Attachments: TC packet PB recommend HL ordinances 05-01-18

Tony Plante explained that this was a series of amendments that relates to subdivisions and site plans in the Highland Lake Watershed, applying a phosphorus allocation of 0.020 pounds per acre per year, prohibiting the use of payments in lieu of meeting the phosphorus limit and not allowing density bonuses for cluster subdivisions in the

Highland Lake Watershed. Also, per the Planning Boards recommendation, a retroactive effective date of September 5, 2017.

Dennis Brown: I wanted to share with the Council that we have made some significant movement. We did conduct our watershed survey this past Saturday; we had about 50 volunteers participate in that and over the next month or two we will be pulling together all of the information so we will be able to prioritize the sites that we've found. Also tomorrow night there will be a seminar for anyone from a road association from private roads that would like to get together and learn how to best maintain their roads, proper materials, etc. It will be held at the South Windham Fire Station, and there will be representatives from both Highland Lake and Forest Lake participating in that, so I am hoping that turns out to be successful as well. I know one of the issues that we've had as we've spent the last ten months together is that there was always concerns on what are we doing. We are finally getting to the phase where we are actually being able to have some items where we are making some progress. I wanted to report that to you.

Back in December the Town Council approved some ordinance changes for residential houses, and originally some of the drafts that were put together by the staff included some of the subdivision ordinance as well, but that got dropped at the end for reasons only the town knows, but in any event those were dropped. We had looked at a number of things we thought made some sense to be addressed on the subdivision side as well. There's a whole series of other issues that are being reviewed through the Highland Lake Leadership Team effort, but our concern was without knowing when the moratorium would end and we wanted to at least get in some that were going to have an impact immediately, and all of these are driven around phosphorus.

The first one was to make sure nobody who was not permitted could escape and come through with a higher phosphorus level.

The second one had to do with, what we call "pay to pollute", and I know that there are people at the DEP who feel differently about that, but I think I shared with you that I spoke with Wendy Garland who runs that project, and she said it is a nightmare, and I what I found really troubling about that is that there is one development in Windham that did put some money in the "pay to pollute" in 2010, and the money is still sitting, right now, in Cumberland County's Soil and Water Conservation District. No projects have been found. So that development has been out there dumping phosphorus into Highland Lake since 2010 and yet we haven't done a damn thing about it since, and it makes no sense to me. We are not taking away the ability for them to go find another project for them to mitigate at the time, but you can't just find the easy path out and pay a fee and then go wash your hands of it and you're done.

The third one had to do with cluster housing, and it makes no sense to us that one of the main reasons going with cluster housing is to reduce your phosphorus output, and then to give a bonus if you are going to open up that land for public use. These can be ten acre plots; I don't know if they are listed anywhere in the town, or if they are open to the public. Some I have seen proposed don't even include parking, so I am not sure they are really getting used, and this seems to me this is much more of an opportunity for developers to add more houses than to provide more open space for the Town of Windham. I think there are far more effective ways of doing that. That's the basis for our three proposals, and there are more coming and more tuning, I don't think there will be anything drastic coming out and most of the effort is to try to blend the ordinance between Windham and Falmouth so it is roughly consistent between the two towns. Thank you.

Closed at 9:19

- CD 18-166 To receive public comment on the proposed FY 2018-2019 municipal budget.

Attachments: Proposed Municipal Budget Cover  
Proposed Municipal Budget Introduction  
11000 General Government  
12000 Public Works  
13000 Police & Safety  
14000 Fire/Rescue & Emergency Management  
15000 Recreation & Culture  
16000 Property & Inspection  
17000 Development & Conservation  
18000 Health & Welfare  
19000 Capital, Debt & Other  
22110 Sewer Fund  
22120 Recreation Program Fund  
Appendix A & B - Strategic Plan 2021 Draft  
Appendix C - FY 2017 Audited Financials  
Appendix D - Property Tax Levy Limit

*No public comment.*

## **X. CONSENT AGENDA.**

- 18-107 To approve applications for fifty-nine (59) renewal Victualer's permits.

Attachments: Cover Sheet 18-107  
Renewal Victualer's for 2018-2019

- 18-108 To approve a Victualer's permit application submitted by Ben Dubois d/b/a Frenchman's BBQ, located at 4 White's Bridge Road.

Attachments: Cover Sheet 18-108  
Frenchman's BBQ - New Victualer's permit

- 18-106 To approve one (1) application submitted by Ben Dubois d/b/a Frenchman's BBQ for a new Mobile Food Service Unit license.

Attachments: Cover Sheet 18-106  
Frenchman's BBQ-new Mobile Food Permit

- 18-090 To approve an application submitted by Robyn's Ice Cream for a renewal Mobile Food Service Unit license.

**Attachments:** Cover Sheet 18-090  
Robyn's Ice Cream Mobile Food App

- 18-103** To approve an application submitted by North East Ice Cream for a renewal Mobile Food Service Unit License.

**Attachments:** Cover Sheet 18-103  
North East Ice Cream-Mobile Food

- 18-104** To approve an application submitted by Kelly's Ice Cream Truck for a renewal Mobile Food Service Unit License.

**Attachments:** Cover Sheet 18-104  
Kelly's Ice Cream-Mobile Food

A motion was made by Councilor Muir, seconded by Councilor Maxfield that the Consent Agenda be approved. The motion carried by the following vote:

In Favor: 6- Councilor Chapman, Councilor Cummings, Councilor Haskell, Councilor Maxfield, Councilor Muir and Councilor Welch.

Absent: 1- Councilor Nangle

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

- 18-031** To find that the requirements of 28-A M.R.S.A. §605 have been met to approve an application submitted by Windham Billiards located at 824 Roosevelt Trail Suite 9/10, moving to 770 Roosevelt Trail for an on premise transfer of a liquor license by a current licensee.

**Attachments:** Cover Sheet 18-031  
Windham Billiards On Premise Transfer

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

In Favor: 6 - Councilor Welch, Vice Chair Muir, Councilor Maxfield, Council Chair Chapman, Councilor Haskell and Councilor Cummings

Absent: 1 - Councilor Nangle

- 18-070** To appoint a representative to the ecomaine board of directors.

**Attachments:** Cover Sheet 18-070

Councilor Maxfield nominated Tony Plante as the member and Clayton Haskell as the alternate, seconded by Councilor Welch. The motion carried by the following vote.

In Favor: 5 - Councilor Welch, Vice Chair Muir, Councilor Maxfield, Council Chair Chapman and Councilor Cummings

Absent: 1 - Councilor Nangle

Abstain: 1 - Councilor Haskell

18-085 To adopt an ordinance establishing a moratorium on new mineral extraction operations.

Attachments: Cover Sheet 18-085

Mineral Extraction Moratorium Adopted 20180424

Active-Inactive Gravel Pits 2015

Gravel pits 2015 with zones

Windham Watershed Basemap 11x17

Windham Watershed Inventory FINAL 20180316

*Janine Gore - Forest Lane - She said she felt general sadness that it had to come to this point of a lawsuit. She feels they are all just ordinary people who came together to protect our land, our properties and our water, and she is thinking isn't there something we could have worked out as friends and neighbors, we all know each other. She just wanted to express her sadness that it came to this point of a lawsuit. It feels threatening, and she said she feels victimized. Thank you.*

*Tim Dalton Johnson: He works for Mr. Copp and he wanted to follow up on what she said. When they were at the Planning Board they wanted them to get together and talk with the Forest Lake, they haven't met with them once, they don't want to meet with them. The sitewalk has never been done, even before they bombarded the meeting and got this done, nobody wanted to follow through what was done they just took action other ways, he said this needs to be backed off and go back to what the Planning Board said and let it go through the due process and see what happens. Thank you.*

*Randy Copp: Hi I am Randy Copp and I didn't want to see it get to this point either, and by state law you have so many days after a Council in your position makes a motion and approves a moratorium in this circumstance to file to protect our rights or those rights are forever lost. I don't like being in this position either but because of the enactment of the moratorium we've been forced to be in this position. I don't think it is fair but it is where we are at. I just wanted you to understand we don't like it either.*

*Margaret Pinchbeck: When we went through this I really felt like it divided the town and I didn't like that. I made a lot of enemies in town. Some people took it very personal; they thought it was me against the other developer, and if they were friends with him they automatically hated me. There was one guy that said, well maybe they will put a farm there and the smell of manure will go over to Margaret's house. Now this is someone that I've never hurt in anyway. I think the moratorium is a good idea. Take a step back and figure out what is wrong, there is something wrong. The quarry on Nash Road is proof of it. I am sorry they feel they have to sue the town, but I urge you to stand strong and follow the path you've started down, look at everything carefully. Every point he made, I can rebut with stories of my own. If the town needs any help, call me. Thanks.*

*Councilor Chapman said everyone knows she has been sitting there for a long time, and she does not like being threatened. She had a criminal threat recently, her first one in nine years and they are still looking for that person. She said they are there to protect water quality and was in the comprehensive plan, and it was very important to everyone that lives, they like the beauty of the town, they like our natural resources and they task us with protecting it, and we've not done a very good job so far. We have five watersheds on a DEP list. That gives us the right to protect the water quality from a state level.*

Forest Lake is on that list, Highland Lake is on that list, they are two impaired watersheds. She said she was going to make a motion tonight to amend mineral extraction and to only have it, this particular moratorium cover just any new mineral extraction in any impaired watershed within our community. I am not going to ask for that motion, she is going to ask that this moratorium stays as it is and we look at the comprehensive plan and we decide do we even want mineral extraction in Windham at all anymore. Do we want to add more. Waterboro did the same exact thing, they felt they had way too many. So yes, they can do this, and she thinks they have a good attorney and she is sorry it did come to this, she believes that somebody has to get their facts correct in what was actually presented at the planning Board and she will support this moratorium tonight. They are appointing that committee and hopefully everyone can work through what is the best for the entire town. She believes they did not turn anyone away yet.

Councilor Muir said he has been sitting there awhile as a Councilor and he figures they all put themselves out when they run and if someone from the public wants to stand up and disagree that's fine, and he has tried not to take people to task when they do that because it was his choice to run. If they don't like what he does, they've got the freedom to say that. He would have liked to have had the town notified about the suit being filed today, but when he hears that they are notified tonight and then a few seconds later, he paraphrases, comes a statement that depending on how you vote on this moratorium could affect the legal actions and to him that is a threat. As an elected official he does not like being threatened.

Councilor Maxfield said he agrees with everybody; he agrees with the comments. He said they are there to work together and he strongly disagrees with their assessment and he is sure they will make those arguments in court. They have safety issues down there, and it is the number one bus stop, that road is garbage, trucks don't go on our end at the moment. He knows the applicant made offers to do the road but that needs to be worked out with the neighborhood. They have a strong commitment to our lake's health with a tax base for the rest of the town to protect. He doesn't like the good cop bad cop stuff, they just came in and strong armed him, and he knows he is doing his job for the applicant but there is a much more tactful way he could have gone about that and if somehow the thought was that is going to push the Council in the direction to somehow to not vote this, you literally pushed us more entrenched, they have no choice, they have to now entrench. They are there to represent the people. They are dealing with lots of issues with land rights, what can I develop, who can I develop, I want to build this, this guy wants to build that and everyone is trying to live harmoniously together and there is no right answer that will work for everybody. A moratorium for six months to pause and look at the neighborhood, and he thought he heard the applicant say there can be ways to work together. He understands the applicant has to defend his rights and do what he has to do, but now they have to do what they have to do, and they have to listen to the majority of the people who elected them.

He said he thinks they united this Council and they are there to take a stand. He thinks the way in the past that this whole process was changed, as Miss Pinchbeck pointed out, is a scam. He thinks, back in the day, the town got scammed in taking the Town Council and taking their view point, which is the view point of the people out of this process. He will support it and he will also support working on how can they find some opportunities to work together, but at this point, if they are getting sued, they are getting sued, so he will vote for a moratorium.

Rebecca Cummings she said she is reading a book because she is going on a vacation to Gettysburg; and she said "the town's water bodies are our hilltop, and it won't fall, not

*under her watch." She said Donna is our Chamberlain and they are taking it. It's not going to happen.*

*Councilor Haskell said he thinks they all know where he stands on it, he does not like moratorium. He said there are other ways to work on things.*

*Councilor Welch said he agrees with Jarrod and Councilor Cummings and he will support the moratorium.*

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

**In Favor:** 5 - Councilor Welch, Vice Chair Muir, Councilor Maxfield, Council Chair Chapman and Councilor Cummings

**Opposed:** 1 - Councilor Haskell

**Absent:** 1 - Councilor Nangle

**18-091** To adopt amendments to Code Chapter 176, "Peddling and Soliciting."

**Attachments:** Cover Sheet 18-091

Chapter 176 - Peddling and Soliciting AMENDMENTS 20180502

Markup

Chapter 176 - Peddling and Soliciting AMENDMENTS 20180502

Clean

*Postponed to June 12, 2018.*

**18-095** To approve amendments to Town of Windham Land Use Ordinance, Chapter 140, Section 800 Site Plan Review and Section 900 Subdivision Review regarding stormwater management and cluster subdivisions within the Highland Lake watershed.

**Attachments:** Cover Sheet 18-095

TC packet PB recommend HL ordinances 05-01-18

*Tony Plante said that it would be pursuant to the Planning Board's recommendations in a memo dated May 1, 2018, including retroactive applications to September 5, 2017.*

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

**In Favor:** 4 - Councilor Welch, Vice Chair Muir, Council Chair Chapman and Councilor Cummings

**Opposed:** 2 - Councilor Maxfield and Councilor Haskell

**Absent:** 1 - Councilor Nangle

**18-097** To approve a municipal services budget for fiscal year 2018-2019.

Attachments: Cover Sheet 18-097Proposed Municipal Budget CoverProposed Municipal Budget Introduction11000 General Government12000 Public Works13000 Police & Safety14000 Fire/Rescue & Emergency Management15000 Recreation & Culture16000 Property & Inspection17000 Development & Conservation18000 Health & Welfare19000 Capital, Debt & Other22110 Sewer Fund22120 Recreation Program FundAppendix A & B - Strategic Plan 2021 DraftAppendix C - FY 2017 Audited FinancialsAppendix D - Property Tax Levy Limit

*Tony Plante said that at each of the Council's places he placed an updated budget amendment digest. There are extra copies on the table for the audience. He suggested they have a motion to approve the budget as proposed and then amend it from there. He said the budget as proposed by the Town Manager was \$18,979,239. Once you have that motion the entire budget is open. There are amendments listed there, S01 - S05 and then Councilor/Finance Committee amendments numbers C01 through C06. He said when it comes S05 and C06 there are adjustments to the levy to get the budget to balance once the other changes are made. He said he would suggest skipping over S05 until you get down to the end to see what the number is.*

*Councilor Welch made a motion to accept the budget at \$18,979,239, seconded by Councilor Cummings.*

*Councilor Muir moved amendment S02, adding two truck drivers starting October 1, 2018, seconded by Councilor Cummings.*

*Councilor Maxfield moved amendment S03, seconded by Councilor Welch.*

*Councilor Maxfield moved amendment S04, seconded by Councilor Welch.*

*Tony Plante said the \$27,500 would be matched by the Town of Falmouth and they have a draft scope of work for that, and Council will have to approve that, but if they were to add anymore to it, he suggested it simply be stated as for support of watershed protection, so that way it is not specifically earmarked for the Soil & Water Conservation District. There may be other resources the Team may want to use.*

*Brian Wolcott - Finance Director: He said the unassigned Fund Balance at the end of June last year was \$8,136,759. The amount available at the end of last June was \$1,623,813 over the target.*



Tony said proposed so far is \$1,286,289.

Councilor Chapman would like to add another line of \$30,000 (unassigned) for Forest Lake or other issues they might have going on.

Councilor Maxfield moved amendment C01, seconded by Councilor Welch.

Councilor Maxfield moved to amend and have a full-time Compliance Officer, seconded by Councilor Welch.

Tony Plante said the salary for this position, middle of the range, would be about \$35,000.

Councilor Maxfield moved amendment C02, seconded by Councilor Cummings.

Kevin Kimball : If we eliminate the Operations Manager and go back to an equipment operator, is that a lateral move, or are we going to post that position? Tony said it would have to be posted.

Councilor Welch stated he was in favor of eliminating the Operations Manager position from the budget, seconded by Councilor Muir.

Councilor Chapman stated that there were phone calls and emails asking to hold on this or not hold on this based on information that came in; she said she does not do anything based on information somebody gives her. She said they do numbers and bodies, that is what they base their decisions on, nothing beyond that.

Councilor Welch said it is not personal, and he knows there are needs in the Public Works Department for more drivers and he'd rather see more drivers at this time. Councilor Maxfield said he would keep the position; he thinks they are a growing department and it seems like something the department will need and they already have it. Councilor Haskell said he would like to eliminate it all together and Councilor Cummings agreed.

Councilor Maxfield moved amendment C04, seconded by Councilor Cummings. This money would come out of TIF and Councilor Chapman said they hadn't bought any lights on a municipal level because they are really expensive.

Councilor Maxfield moved amendment C05, seconded by Councilor Chapman.

Tony explained said this was enabled by statute, and the town's program is modeled closely after a Senior Tax Rebate Program in the Town of Cumberland. Assuming you meet the minimum requirements the way it works is you need to qualify for your age, income eligibility, be a Windham resident, lived in your home for the last 10 years, you are eligible up to \$250 to \$500 a year. You would have had to pay the taxes to begin with and then you are reimbursed to the extent your property taxes exceed a percentage of your income, and then you are eligible up to that maximum reimbursement. He said they will get information out on this once the budget is approved.

Councilor Cummings moved to amend the Social Services budget and take it from \$40,000 down to \$21,000, seconded by Councilor Welch.

Councilor Cummings said they also talked last night about renovations and possibly sound masking instead of renovating. Tony said they do not have a figure in the budget

yet.

Councilor Cummings asked if they could find some money to repair the two dry hydrants and maybe go further than that. Tony said the first two have already been accounted for in this year's budget, and Chief Libby said there is eleven total, and they will tackle the two this year and under Facilities there is another thirty requested for this year to tackle the next phase as they get to those.

Brian Wolcott said he may have found \$60,000 in the revenue arena for them. It is from interest on investments, account 1000-35100. He said in keeping with the town's normal practice, they budgeted conservatively for \$75,000 for the budget they are looking at, and through April they have collected \$135,000. He said that the federal reserve may raise rates maybe twice more this year and maybe three more times next year, so if they were to peg that at \$135,000, in his mind it would still be very conservative.

Councilor Maxfield moved to amend S01, seconded by Councilor Cummings. Councilor Chapman said this will reduce the property tax levy due to over-commitment in FY 2017 by \$129,662.

Mike Constantine - Public Works Highway Supervisor: He said they had a situation arise this year with their calcium contractor, he no longer does it, and the unit they have and own is pretty antiquated. They were hoping there would be enough money to buy one this year. It's a \$4,500 unit that would fit in any dump truck. They can use it for water systems and calcium and it will be more efficient. They wanted to try to do some salt brine, like the state does, on the really bad roads that ice up really quick, and this unit might give them another hour or two so they can get the guys in and out on the roads to sand and plow.

Tony Plante: He said what they are looking at is a further reduction in the property tax levy to balance the budget of \$17,561.

Councilor Chapman asked Chief Kevin Schofield to come up and talk about the patrol cars. The Chief explained the life and use of a patrol car, and what happens to them once they are done with them at the Police Station.

Tony said they started with a proposed budget of \$18,979,239, and as it stands now is a budget of \$19,155,878, but at the same time reductions to the property tax levy of \$147,223, which would put us at \$165,691 under the property tax levy limit, and somewhere around a 3% levy increase, meaning a 3% tax increase for people, which is about 35% of the total taxes.

Councilor Welch said last night they had a discussion about the Assistant Manager/H.R. Director, and he mentioned he'd like to get the Assistant Town Manager removed from the title and have the position be a full-time H.R. Director. Tony said it would be the same pay scale. There was more discussion on the Assistant Town Manager position and Councilor Chapman said they could discuss it further at their next meeting.

Tony Plante said the budget increased \$176,639.

Councilor Haskell said he was concerned about the people who are on a fixed income trying to survive on \$10,000 to \$20,000 and pay their taxes and all their other bills; and then the budget is increasing by better than 3%, which will add more burden on them to pay their taxes. He thinks they need to find a way to get it down so they can stay in their homes.

Town of Windham								
Municipal Budget FY 2018-2019								
Budget Amendments Digest								
5/22/18 11:06 AM		(figure = approved; n = not approved; p = postponed; w = withdrawn)						
Amnd#	Account	Purpose	Proposed	Approved	Budget	Revenues	Budget Updated	Notes Updated
	As proposed				18,979,239	18,979,239		
Staff Proposed Adjustments & Amendments								
S01	1000-31100	Reduce property tax levy due to over-commitment in FY 2017				(129,662)		
S01	1000-37150	Increase revenue from fund balance due to over-commitment				129,662		
S02	12200-41110	Adjust truck driver start dates to 10/1 from 4/1	36,082		36,082			
S02	11900-42110	Health insurance adjustment	8,118		8,118			
S02	11900-42210	Social security adjustment	2,761		2,761			
S02	11900-42310	Deferred compensation adjustment	2,165		2,165			
S02	11900-42410	Workers compensation adjustment	2,450		2,450			
S03	16110-41110	Adjust admin asst to start 10/1 from 1/1	10,475		10,475			
S03	11900-42110	Health insurance adjustment	5,249		5,249			
S03	11900-42210	Social security adjustment	802		802			
S03	11900-42310	Deferred compensation adjustment	629		629			
S03	11900-42410	Workers compensation adjustment	41		41			
S04	17110-44400	CCSWCD support services to HLLT	27,500		27,500			
S05	1000-31100	Levy to balance				96,272		
	Total		96,272					
As proposed, with staff and finance committee recommendations								
					19,075,511	19,075,511		
Council Amendments (subsequent to staff suggestions)								
C01	11200-41110	Compliance/safety officer, 1/2 FTE	17,548		17,548			
C01	11900-42210	Social security adjustment	1,342		1,342			
C01	11900-42410	Workers compensation adjustment	712		712			
C02	12100-41110	Eliminate ops mgr, go back to vacant equipment op	(53,904)		(53,904)			
C02	11900-42110	Health insurance adjustment	(12,054)		(12,054)			
C02	11900-42210	Social security adjustment	(4,123)		(4,123)			
C02	11900-42310	Deferred compensation adjustment	(3,234)		(3,234)			
C02	11900-42410	Workers compensation adjustment	(1,207)		(1,207)			
C03	12200-41110	Adjust to one truck driver, starting 10/1, from two starting 4/1	8,976		8,976			
C03	11900-42110	Health insurance adjustment	1,889		1,889			
C03	11900-42210	Social security adjustment	687		687			
C03	11900-42310	Deferred compensation adjustment	539		539			
C03	11900-42410	Workers compensation adjustment	610		610			
C04	11500-46930	Add for holiday lights	40,000		40,000			
C04	1000-37130	Transfers from TIF	40,000			40,000		
C05	18300 (new)	Senior tax credit/reimbursement	50,000		50,000			
C05	1000-37150	Fund senior tax credit from fund balance	50,000			50,000		
C06	1000-31100	Levy to balance	(42,219)			(42,219)		
					19,123,292	19,123,292		
					47,781	47,781		
					net surplus/(deficit)		-	

*Councilor Chapman said we get thirty-two cents on every dollar collected and then they try to do that they need to with that.*

*Councilor Maxfield moved to accept the budget as amended, seconded by Councilor Welch.*

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

**In Favor:** 4 - Councilor Welch, Vice Chair Muir, Councilor Maxfield and Council Chair Chapman

**Opposed:** 2 - Councilor Haskell and Councilor Cummings

**Absent:** 1 - Councilor Nangle

**18-098** To approve the warrant for the 2018 annual town meeting.

**Attachments:** Cover Sheet 18-098

Warrant for June 2018 Town Meeting

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

**In Favor:** 6 - Councilor Welch, Vice Chair Muir, Councilor Maxfield, Council Chair Chapman, Councilor Haskell and Councilor Cummings

**Absent:** 1 - Councilor Nangle

**18-101** To approve an agreement between the Town and Portland Natural Gas, owners of the properties at 8, 8A, 16 and 20 Highland Cliff Road, to allow the Fire Department to demolish identified structures on each property.

**Attachments:** Cover Sheet 18-101

8 & 8A Highland Cliff Rd Release Agreement

16 Highland Cliff Rd Release Agreement

20 Highland Cliff Rd Release Agreement

*Brent Libby said Portland Natural Gas acquired the properties, and they have been talking with them and PNG has had them for about a year now. The fire department will be doing live burns over the summer. They will be able to do both fire investigation training and fire fighter training, etc., and by the end of the summer the buildings will be burned down.*

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

**In Favor:** 6 - Councilor Welch, Vice Chair Muir, Councilor Maxfield, Council Chair Chapman, Councilor Haskell and Councilor Cummings

**Absent:** 1 - Councilor Nangle

**18-102** To appoint two delegates to the Greater Portland Council of Governments General Assembly.

Attachments: Cover Sheet 18-102

*Councilor Welch moves to appoint Donna Chapman and Tony Plante, seconded by Jarrod Maxfield.*

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

**In Favor:** 6 - Councilor Welch, Vice Chair Muir, Councilor Maxfield, Council Chair Chapman, Councilor Haskell and Councilor Cummings

**Absent:** 1 - Councilor Nangle

## **XII. Discussion Items.**

## **XIII. Agendas & Scheduling.**

CD 18-177      Agenda Items Reports.

Attachments: Agenda Items Scheduled 20180516

Agenda Items to be Scheduled 20180516

Projects & Issues List 20180516

Projects & Issues Sheets 20180516

## **XIV. ADJOURN.**

**A motion was made by Councilor Maxfield, seconded by Councilor Welch, that they be adjourned. The motion carried by the following vote at approximately 9:42 p.m.**

**In Favor:** 6 - Councilor Welch, Vice Chair Muir, Councilor Maxfield, Council Chair Chapman, Councilor Haskell and Councilor Cummings

**Absent:** 1 - Councilor Nangle

Respectfully submitted,



Linda S. Morrell  
Town Clerk, CCM