

Town of Windham

Town Offices 8 School Road Windham, Maine

Meeting Minutes - Draft

Town Council

Tuesday, February 19, 2019

7:00 PM

Council Chambers

Postponed from 2/12/2019 due to inclement weather.

I. Roll Call of Members.

Present: 7 - David Nadeau, Tim Nangle, Bob Muir, Jarrod Maxfield, Donna Chapman, Clayton Haskell and Rebecca Cummings

II. Pledge of Allegiance.

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

III. Minutes to be Approved:

<u>CD 19-028</u> To approve the Minutes of the January 22, 2019 Council meeting.

Attachments: Minutes-Town Council-1-22-19

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

In Favor: 7 - Councilor Nadeau, Councilor Nangle, Councilor Muir, Councilor Maxfield, Councilor Chapman, Council Chair Haskell and Vice Chair Cummings

<u>CD 19-042</u> To approve the Minutes of the January 29, 2019 Council meeting.

Attachments: Minutes-Town Council-January 29, 2019

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

In Favor: 6 - Councilor Nadeau, Councilor Nangle, Councilor Muir, Councilor Maxfield, Councilor Chapman and Vice Chair Cummings

Abstain: 1 - Council Chair Haskell

CD 19-043 To approve the Minutes of the February 5, 2019 Council meeting.

Attachments: Minutes-Town Council-February 5, 2019

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

In Favor: 7 - Councilor Nadeau, Councilor Nangle, Councilor Muir, Councilor Maxfield, Councilor Chapman, Council Chair Haskell and Vice Chair Cummings

IV. Public Participation.

Larry Eliason on Colby Drive expressed his deep concern with the Culture of the Council. (See attachments)

Carol Waig of Casco & former Windham Councilor brought up a conversation she saw on Facebook about one month ago about 3 dogs at a residence here in Windham and the living conditions involving these three dogs and communications between the ACO and Windham Police.

Holly Tubbs wanted to address a few of the Councilors concerns expressed the last time they spoke about allowing Construction Services in C-3. (See attached)

V. Councilors' Comments.

Councilor Nadeau said their hearts go out to the walker who was killed on White's Bridge Road recently. He has received several telephone calls of concerned citizens who say speed is a factor.

Councilor Chapman touched on what Larry Eliason spoke to in public participation. She told Holly Tubbs that her concerns are coming up on an agenda soon. She acknowledged to Carol that she is aware of this dog situation. She said Windham's Legislative Delegation have all been made aware, and the Manager was going to get an update as to whether an agent from the State of Maine has been there to check on things. She is thankful that they have the Police support and also support from surrounding communities when Duck Pond Variety was robbed yesterday. The criminal was caught quickly.

Councilor Maxfield also heard from a couple of folks in regard to the accident on White's Bridge Road. He touched on the dog situation that has been happening. He reminded people that anything that goes up on the Town's Facebook page is preserved and nothing should be deleted. He spoke in regard to Larry Eliason. He is a resident who comes in and volunteers his time and energy and be part of the process. The question that should be asked is "what have we done as a body to push a guy like that, that he is so ticked off?"

Councilor Muir asked the Manager for a full report on the dog situation. He also spoke a little to what Larry Ellason said.

VI. PUBLIC HEARINGS.

VII. CONSENT AGENDA.

19-016 To find that the requirements of 28-A M.R.S.A. § 653 have been met and to

approve an application by Smoke This Two, LLC d/b/a Buck's Naked BBQ

for a renewal Liquor License.

Attachments: 19-016 Cover Sheet

Buck's Naked BBQ renewal Liquor Lic

19-017 To approve an application submitted by Smoke This Two LLC d/b/a Buck's

Naked BBQ located at 4 Turning Leaf Drive for a renewal Special

Amusement permit.

Speech given to the Windham Town Council on the evening 02/19/2019.

Good Evening. I am Larry Eliason of 19 Colby Drive here in Windham.

I am here tonight to express my deep concern regarding the "Culture of our Windham Town Council Operating Practices" along with a loss of "Trust and Confidence" in the Town Council.

In my opinion, the "Culture of our Windham Town Council" is not representative of a Business-Friendly Community. There seems to be a separate rule book for our Windham Town Councilors. It appears to be a make up

your own rules as you go along and move the goal post approach.

Business owners and developers are constantly caught up in conflict and incur substantial added legal expense after working in "Good Faith" with the various Departments of the Town.

Recent articles in the Lakes Region Weekly are just one example of how far over the line our Town Councilors have stepped.

Maggie, a local business woman who happens to own a medical marijuana business and volunteered to sit on a Marijuana Task Force, was recently villainized in the public eye for allegedly being biased. Her views and standpoint on Marijuana were clearly recognized and understood by all before her appointment.

She was fully vetted and appointed by the Town Council but now she has received a "Character Assassination" by the hands of our Town Council and a local Newspaper.

Other recent actions and operating procedures by our Windham Town Council are, in my opinion, absolutely inappropriate and open the door to more examples of abuse of power from our Town's Leaders. It certainly appears there are multiple violations of the Windham Municipal Code of Ethics. The Standards of Conduct establish ethical standards and clearly, there is the appearance of impropriety from the public's perspective.

Read first paragraph of the Windham Municipal Code of Ethics... Atached

WINDHAM MUNICIPAL CODE OF ETHICS Declaration of Policy

The proper operation of the Town of Windham requires that all Town officials with executive decision-making authority, whether elected or appointed, be impartial, equitable and responsive to the needs of the people and each other in the performance of their respective functions and duties; that proper conduct by Town officials will promote public confidence in the integrity of government and will be maintained by all Town officials; that public office not be used for personal or financial gain or advantage; that the structure of Town government be used properly in decision and policy making. In recognition of these goals and the importance of protecting public interest and Town officials, a Code of Ethics is hereby established for all.

History repeats itself over and over again. This Town Council Body is, in my opinion, responsible for the destruction of the Busque Family and ultimately the Death of Peter Busque years ago.

A Town Council Body should never be able to repeat what happened to the Busque Family, however, it appears we are seeing it again today. Welcome to Windham and a Town Council Body of Bullies.

Going after John Chase after his housing project on Highland Lake was well along the way with the Planning Board but conveniently calling it something else to stop it.

Going after the Copp Family for proposing a mineral extraction project and again waiting for something permitted to be proposed and stop it vs. making changes as part of a bigger organizational plan.

And, of course, going after Ken Grondin because his project is bigger than the other projects proposed in that area. Again, calling it something else and an emergency after he has spent serious investment money working with the Planning Board to create a responsible project.

This Town Council is by no means impartial and, in my opinion, is an extremely Biased, Anti-Business, Anti-Development, Anti-Tradesman, Anti-Marijuana, Anti-Broadband, Anti-TIF, Anti-Community Center and even Anti-

Taxpayer. Your Biased Views, Statements and Heavy-Handed behavior are well-documented by your actions and recorded for any and all to see after the fact.

In addition to my concerns on Ethics, I have grave concerns regarding a "Civil Conspiracy" that may be happening right in front of us. Read "Civil Conspiracy"... Uthacked

The Elephant in the room today is that we have Town Councilors frivolously spending our hard-earned taxpayer dollars on inappropriate and excessive legal bills to satisfy a Town Council Body Agenda!

It is clearly time for our Town Council to show transparency and for Windham Taxpayers to have the right see all these

Civil Conspiracy:

A civil conspiracy or collusion is an agreement between two or more parties to deprive a third party of legal rights or deceive a third party to obtain an illegal objective. A conspiracy may also refer to a group of people who make an agreement to form a partnership in which each member becomes the agent or partner of every other member and engage in planning or agreeing to commit some act. It is not necessary that the conspirators be involved in all stages of planning or be aware of all details. Any voluntary agreement and some overt act by one conspirator in furtherance of the plan are the main elements necessary to prove a conspiracy. A conspiracy may exist whether legal means are used to accomplish illegal results, or illegal means used to accomplish something legal. "Even when no crime is involved, a civil action for conspiracy may be brought by the persons who were damaged."

expenditures being incurred. An internal audit of all legal expenses incurred by our Town Councilors over the past 5 years should be required.

And, it is also time for Windham Taxpayers to be able to see all correspondence and emails between Town Councilors as it relates to running the Town of Windham over the past 5 years.

We need Transparency and Accountability to restore the Public's Trust. Oversight is surely needed to maintain integrity. Good Evening. My name is Holly Tubbs

I would like to address a few councillors concerns expressed the last time we spoke about allowing Construction Services in C-3.

On the handout of Commercial 3, intent and permitted uses - I have marked my concerns, and the comparison of C-1 and C-3 as far as setbacks go etc.

The 10th listed permitted use is - Dwelling - mixed use which addresses one councillors concern. The same as C-1.

The Construction Services (Excavating) company near the Westbrook line with sand/material stored outside, on the opposite side of Rte 302 from Highland Lake buffered by a swamp (wetland), doing what it's supposed to do. The Town has the area on the Highland Lake side of Rte 302 zoned Farm residential and mobile/modular home park. Another Councillors concern.

Let's take a look at Rte 302 from the Westbrook line to Varney Mill Rd. mostly C-3 like we were a business owner new to the area looking at Windham to move to. A flooring company, an excavating company, a kitchen cabinet co., some neat tidy houses and some that look vacant. A number of auto repair places, a roofing co., a couple of cell towers, public storage places, a insulation co., builders, a gas station, Shaw Bros. Pit., a lot of outside storage of equipment, service vehicles of a cleaning co., a heat pump co., fireworks store, Hancock Lumber, Hall Implement. Lee's Trailer Sales, Construction Consultants, Tractor & Supply, F.W. Webb, a plumbing wholesaler. All of these businesses are allowed, grandfathered, or under a conditional use. Driving through, no one would expect their business would <u>not</u> be allowed. Surely, builders, roofers, subcontractors, electricians, plumbers, painters etc. must be allowed to locate and expand their hopefully growing company in this zone?

I've worked hard and had a lot of help to get almost 200 signatures on my petition. It is signed by taxpayers, voters, prominent business men and women, citizens of Windham. The petition very plainly states "We the undersigned support the inclusion of "Construction Services" as defined by the Town of Windham in the Commercial - 3 zone of the town."

The planning department would not have to change much of anything, just allow the same definition in C-3 as they already have in C-1. Very plain and straightforward. Not adding conditional uses etc. As far as I know they have had no complaints about big equipment in C-1, and C-3 does not allow mineral extraction.

From the 1985 Comprehensive Plan - Approximately 15% of the tax base was non - residential, compared to 60% in Yarmouth. Expanding commercial development "can contribute significantly

to municipal revenues without placing the same level of demand on services that residential development does." 30 years ago we were at about 15% today we are at about 20% we aren't doing very well.

Please, let's open C-3 for "Constructions Services" businesses. Let's welcome them, they are the people that work hard to take care of their "customers", the people of Windham.

Thank You

-OW FFICE

Commercial District III (C3) G.

Intent

The intent of the Commercial District III is to provide areas for a mixture of light, low-traffic generating commercial uses and single-family housing.

Permitted Uses 2.

The following uses, as they are defined in Section 300, shall be permitted in the Commercial District III as a matter of right. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

		11/19	1
•	Agriculture	- Par Growers'	٠,

- Adult Business Establishment Low TRAFFIC
- Building, Accessory
- Business and Professional Office
- Child Care, Facility
- Child Care, Family Home
- Dwelling, Single-Family
- Dwelling, Two-Family
- Dwelling Multifamily

Dwelling, Mixed Use SAME ASC-

- Forestry
- Home Occupation 1
- Home Occupation 2
- Medical Office
- Place of Worship

- Public Building
- Recreation Facility, Indoor
- Retail Sales
- Retail Sales, Convenience
- Retail Sales, Nursery
- Retail Sales, Outdoor
- Service Business, Landscaping -
- Service Business, Personal
- Theater
- Use, Accessory
- Warehousing, Private
- Warehousing, Public
- Wireless Telecommunications Tower and Facility

MINERAL EXTRACTION CONSPICUOUSLY ABSENT

Conditional Uses 3.

The following uses, as defined in Section 300, shall be allowed as a Conditional Use in accordance with Section 516. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- Assisted Living Facility
- Automobile Repair Services
- Bed and Breakfast Inn
- Campground, Commercial
- Campground, Personal -
- Club -
- Hotel
- Industry, Light

- Motel
- Nursing Home
- Public Utility Facility
- Restaurant 2
- **Shipping Container**
- Small Engine Repair

4. Prohibited Uses

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

5. Dimensional Standards

	The following dimensional standards shall apply in the Commercial District	III: <u>C-3</u>
	(a) Minimum Lot Size: (1) Dwelling, Single-Family; Two-Family; Multifamily NonE (2) Dwelling, Mixed Use CAN'+ See Anythraca (3) Non-Residential	80,000 s.f. 80,000 s.f. 20,000 s.f.
	(b) Net Residential Density:	60,000 s.f.
	(c) Minimum Frontage: (1) Dwelling, Single-Family; Two-Family; Multifamily (2) Non-Residential	200 ft. 100 ft.
DEER LOVE URUBS	(d) Minimum Front Setback: (1) Arterial Street (2) Non-Arterial Street (3) Minimum Landscaped Buffer Strip CREATING A TRAFFIC HAZARD (e) Minimum Side Setback:	60 ft. 40 ft. 20 ft.
	(f) Minimum Rear Setback:	10 ft.
	(g) Maximum Building Height: (1) Dwellings (All associated structures) (2) Non-Residential **Non-Residential** **Non-Residential**	35 ft. None

6. District Standards

In addition to Section 500, Performance Standards, these standards shall apply to the following uses in the Commercial District III:

- (a) Automobile Repair Services. The repair of commercial trucks shall be limited to those vehicles with a Gross Vehicle Weight Rating equal to, or less than, 26,000 lbs.
- (b) Controlled Access Street. For standards pertaining to controlled access streets in the C3 District see Section 500 Performance Standards.

Attachments: 19-017 Cover Sheet

Buck's Naked BBQ renewal Special Amusement

19-013 To find that the requirements of 28-A M.R.S.A. § 653 have been met and to

approve an application submitted by Smitty's Cinema-Windham, LLC for a

renewal Liquor License.

Attachments: 19-013 Cover Sheet

Smitty's Cinema renewal Liquor License

A motion was made by Councilor Nadeau, seconded by Vice Chair Cummings,

that the Order be approved. The motion carried by the following vote:

In Favor: 7 - Councilor Nadeau, Councilor Nangle, Councilor Muir, Councilor Maxfield, Councilor

Chapman, Council Chair Haskell and Vice Chair Cummings

VIII. UNFINISHED BUSINESS & GENERAL ORDERS.

19-023 To reconsider the Council vote, at its January 29, 2019 meeting, that did

not approve an ordinance establishing a "Moratorium Ordinance on Subdivisions in the Farm Zone," which would prohibit the location of new subdivisions and addition of more than two lots to pending and existing subdivisions in the Farm Zone. (Sponsored by Councilor Cummings.)

Attachments: 19-023 Cover Sheet

Attorney Langsdorf - Opinion on Motion for Reconsideration

Moratorium on Subdivisions in Rural Zone 2019-01-29 revised

Moratorium on Subdivisions in Rural Zone

TC memo LRPC work plan 01-04-19

Jim Cummings - Email Correspondence to Council

K Grondin Correspondence to Council

Interim Planning Dir. - Applications impacted by moratorium

S Daigle Correspondence to Council

There was discussion about whether it was right or wrong having Order 19-023 to reconsider the vote on this agenda. There was much debate over this between the Council and the Parliamentarian.

Councilor Maxfield appealed the Parliamentarians ruling for the Order to be on the agenda, seconded.

Vote: 0-7

Councilor Cummings made a motion to reconsider the Moratorium Ordinance on Subdivisions in the Farm Zone, Second Councilor Muir.

There was a lot of discussion on whether things had been done wrong for quite sometime.

Councilor Maxfield made an appeal to the Parliamentarian on whether they can vote on the reconsideration.

Councilor Nadeau move the motion.

Vote was on do you agree or disagree with the Parliamentarian on whether the vote can be taken tonight: 2-5 - (DC, DN, CH, TN, JM)

19-011 To appoint members of the Voter Registration Appeals Board.

Attachments: 19-011 Cover Sheet

Voter Registration Appeals Board Nomlinees

The following members were appointed from the Democratic Party: Krystal Ash-Cuthbert and Alternate Jennie M. Butler

The following members were appointed from the Republican Party: Phyllis A. Hall and Alternate Colette Coulthard

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

In Favor: 7 - Councilor Nadeau, Councilor Nangle, Councilor Muir, Councilor Maxfield, Councilor Chapman, Council Chair Haskell and Vice Chair Cummings

To approve an application submitted by Central Maine Power Company and Northern New England Telephone Operations LLC to locate (1) utility pole and cables and wires there on Cedar Lane, approximately +/-200 feet in a generally east direction from Dirigo Lane.

Attachments: 19-014 Cover Sheet

19-014

CMP Pole Loc. Cedar Ln

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

In Favor: 7 - Councilor Nadeau, Councilor Nangle, Councilor Muir, Councilor Maxfield, Councilor Chapman, Council Chair Haskell and Vice Chair Cummings

To authorize the addition of various assigned fund balance amounts to the fiscal 2018-2019 budget accounts.

Attachments: 19-015 Cover Sheet
Assigned Fund Balance

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

In Favor: 7 - Councilor Nadeau, Councilor Nangle, Councilor Muir, Councilor Maxfield, Councilor Chapman, Council Chair Haskell and Vice Chair Cummings

To approve the write off of uncollected personal property taxes prior to 2011.

Attachments: 19-018 Cover Sheet

Personal Property Taxes

Don Gerrish explained that a number of years have gone by where there has been uncollected Personal Property, and it has been on the books since 1992. By statute we cannot go back more than 7 years to collect so it needs to be written off as uncollectible, and it needs to get off the books. This will be done from 1992 through 2010.

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

In Favor: 7 - Councilor Nadeau, Councilor Nangle, Councilor Muir, Councilor Maxfield, Councilor Chapman, Council Chair Haskell and Vice Chair Cummings

19-019

To schedule a public hearing on proposed ordinance changes to Section 800 Site Plan Review Committee and Section 900 Subdivision Review, related to Independent Review of development in watersheds of a lake most at risk from new development for the Council's regular meeting of February 26, 2019.

Attachments: 19-019 Cover Sheet

TC packet PB recommend Independent Review 02-05-19

Date of hearing was incorrect on the agenda, it should read March 12th for the date of the hearing.

Councilor Chapman would like more discussion on this because there were some things the Highland Lake Leadership Team had for recommendations and some might have gotten changed.

Amanda Lessard clarified some things that Councilor Chapman asked.

Councilor Nadeau moved to amend the motion to have, on behalf of the Planning Board's recommendation, the third party review engineer go on the site walks with the Planning Board, and to add this language to the section where the Planning Board's site walk is written, second by Councilor Cummings.

Vote on amendment 6-1 (CH)

Vote on Order as amended 7-0 passed

IX. Discussion Items.

None.

X. Council Correspondence.

CD 19-027 Sebago Lake Watershed News - Winter 2019

Attachments: Newsletter - Winter 2019

CD 19-031 MDOT Notice of Natural Resources Protection Act Permit - River Road Rehabilitation

Attachments: River Road Notice

CD 19-035 Windham Public Library Newsletter

Attachments: Check It Out February 2019

CD 19-038 Department of Public Works Monthly Report - December 2018

Attachments: Monthly Report - December 2018

Storm Reports - December 2018

CD 19-040 Windham Historical Society Newsletter.

Attachments: Windham Historical Society Quarterly Review - Winter 2019

XI. Town Manager's Report.

Interim Town Manager Don Gerrish:

There are three openings on the Assessment Review Board; this is a five member committee and there are not enough members or enough people applying. There is an appeal coming in March, and they need more members.

They received information from public works today that they are bringing in more sand and salt. There is still money left in the overtime account to pay for it, but the salt and sand accounts will go over in those accounts.

The town sent out fifty certified letters for all the tax acquired property. They have been meeting with people, people are responding, and some payments have come in. There will be report next month of where they are. He will be bringing property to be sold to the Council.

XII. Committee Reports.

A. Council Subcommittees.

1. Appointments Committee,

Councilor Maxfield said the Appointment's Committee has met and have the following names to put forth:

Colin Swan to the Planning Board - alternate seat for a 3 year-term to expire August 15, 2021, which is the remainder of the alternate's seat current term.

Michael Devoid, who is currently the alternate on the Planning Board will be taking a vacated seat for a three-year term to expire on February 15, 2022.

Gary Lytle is a reappointment to Assessment Review Board, three-year term to expire February 15, 2022.

Paul Caron to the Public Easement Advisory Committee for a three-year term to expire February 15, 2022.

Marge Govoni to Zoning Board of Appeals for a three-year term to expire February 15, 2022.

Nick Kalogerakis to the Planning Board is a reappointment for a three-year term to expire February 15, 2022.

Mr. Kalogerakis and town staff requested to waive his interview because he has some family Issues going on, and they all know him and he has been on the board.

2. Finance Committee.

Councilor Nangle said they have not met recently but will schedule a meeting soon.

B. Other Committees.

1. Long Range Planning Committee.

Amanda Lessard said there is a meeting Wednesday at 7:30 for the first draft on Conservation Subdivisions.

2. Parks & Recreation Advisory Committee.

No report.

3. Windham Economic Development Corporation

No report.

4. Highland Lake Leadership Team.

Don Gerrish said he facilitated the meeting today and it went well. In the next month or so a report laying out where things are headed for the next two years will be ready, and also what the town may be requesting for funding for both communities.

5. Shared Maintenance Facility Joint Project Team.

Don Gerrish said the garage itself can be used, and the meetings room should be done at the end of the month and a ribbon cutting will be planned as well as an open house for the public.

Don wanted to also note that all department budgets were all in last Friday, as well as the CIPs. The budget will be done before he leaves on vacation and will be presented to Council by the end of March. He said they will see some changes in the budget and presentations. He noted that he may be working a few more days to get everything done before he goes on vacation.

6. Private Roads ad hoc Committee.

Councilor Nangle said they had the public forum last week and what came up was that the town is not real good about communication. A resident asked why can't they be sent

an email when things come up? Councilor Nangle said maybe Brett could look at maybe having a listserv.

7. Natural Resources Advisory Committee.

Councilor Chapman said they have their third meeting tomorrow. At their last meeting they went over their charge, set some goals, suggested to transition the committee to a conservation commission, etc.

XIII. Agendas & Scheduling.

CD 19-041

Future Agenda Items.

Attachments: Future Agenda Items 2.15.19

At next weeks meeting they will have something on the 3C zoning and the TIF. The March 5th meeting will have a discussion about the Animal Control Ordinance. The Chair of the Marijuana task force has asked for a meeting with the Council. Don is working on a change of the Council Rules.

XIV. ADJOURN.

A motion was made by Councilor Nangle, seconded by Councilor Chapman, that they be adjourned. The motion carried by the following vote at 8:59 p.m.

In Favor: 7 - Councilor Nadeau, Councilor Nangle, Councilor Muir, Councilor Maxfield, Councilor Chapman, Council Chair Haskell and Vice Chair Cummings

Respectfully submitted,

Sola S. MoVell

Linda S. Morrell

Town Clerk, CCM