



# Town of Windham

Town Offices  
8 School Road  
Windham, Maine

## Meeting Minutes - Final

### Town Council

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Tuesday, September 12, 2017

7:00 PM

Council Chambers

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#### I. Roll Call of Members.

**Present:** 6 - David Nadeau, Dennis Welch, Bob Muir, Jarrod Maxfield, Donna Chapman and Brett Jones

**Absent:** 1 - Tim Nangle

#### II. Pledge of Allegiance.

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

#### III. Minutes to be Approved:

[CD 17-255](#) To approve the minutes of the August 22, 2017 Council meeting.

**Attachments:** [Minutes-Town Council-8-22-2017](#)

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

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

**Absent:** 1 - Councilor Nangle

#### IV. Public Participation.

*Larry Eliason: The Sebago Lakes Region Chamber of Commerce has coordinated an Economic Development Bus Tour with our Lakes Region Legislatures. The tour will be next Thursday, September 21, 2017. They will first meet for coffee and refreshments at the Sebago Lakes Region Chamber of Commerce and then their stops will be: Enterprise Drive in Windham, Sabre Yachts in Raymond, Great Northern Docks in Naples, Saint Joseph's College in Standish for lunch and a tour, Inn at Fogg Farm in Gray, and to the site of the Maine Narrow Gauge Railroad in Gray to show them what is there for business now and the potential that is there for a potential tax base and jobs.*

#### V. Councilors' Comments.

*Councilor Chapman: The Parks & Recreation Department is working on a first ever Arts in the Park to be held here, and if you know anyone who is a crafter or artisan, please have them contact Linda Brooks in the Parks & Rec Department. It will be on October 14th from 1:00 to 4:00.*

#### VI. Council Correspondence.

*Councilor Maxfield: He read that the school got back more money than anticipated and*

that we get back a portion. He asked Tony how we allocate that?

Tony Plante: He said the legislature is part of the state budget this year, and they approved an additional school funding. School Boards all around the state had to make decisions on how to apply those funds. By law, at least half of that had to go for tax reduction. They had originally planned to have the Council act on the tax rate earlier than we did, because we had to wait to allow time for the RSU Board of Directors to make that decision. The school assessment, that they had originally be given a notice of after the school district meeting and the school budget validation vote, was actually reduced. It did appear in the tax rate setting materials that the Council had on August 22nd, and it did significantly reduce the increase in the tax rate this year.

[CD 17-251](#) Windham Historical Society Correspondence

**Attachments:** [Windham Historical Society Thank You](#)

[CD 17-252](#) Portland Water District Newsletter

**Attachments:** [Sebago Lake Watershed News - Summer 2017](#)

[CD 17-253](#) Windham Raymond School District RSU#14 - Notice of Revised Assessment

**Attachments:** [RSU14 Revised Community Assessment](#)

[CD 17-254](#) Correspondence - Highland Lake Resident Concerns

**Attachments:** [Correspondence from Resident J. Goodall](#)

[CD 17-261](#) The Opportunity Alliance Correspondence

**Attachments:** [Opportunity Alliance Letter of Thanks](#)

[CD 17-262](#) VNA Home Health Hospice Correspondence

**Attachments:** [Letter of Thanks VNA Home Health Hospice](#)

[CD 17-268](#) Windham Public Library Newsletter

**Attachments:** [Check It Out September 2017](#)

[CD 17-278](#) Family Crisis Services Correspondence

**Attachments:** [Family Crisis Services Letter of Thanks](#)

[CD 17-256](#) Junkyard Inspection Memo-2017

**Attachments:** [Junkyard Inspection Memo-2017](#)

[CD 17-257](#) Windham Public Library Monthly Report - July 2017

**Attachments:** [Windham Public Library Monthly Report - July 2017](#)

[CD 17-264](#) Investments as of June 30, 2017

**Attachments:** [Investments 06302017](#)

[CD 17-265](#) Liability Accounts with Carryover Balances

**Attachments:** [Liability Accounts](#)

[CD 17-267](#) Planning Board recommendation on amendment to Town of Windham Land Use Ordinance, Chapter 140, Section 800 Site Plan Review and Section 900 Subdivision Review to change the number of required hardcopy application submissions and number of signature sheets for approved plans.

**Attachments:** [PB recommendation toTC Submission requirements 08-30-17 packet](#)

## VII. Town Manager's Report.

[CD 17-266](#) Town Manager's Report.

**Attachments:** [Town Manager's Report 20170908](#)  
[WIN 19812 - 2017 Windham Vote Flyer, Final](#)  
[Projects & Issues List 20170908](#)  
[Projects & Issues Sheets 20170908](#)

*Tony Plante: Tony, Councilor Nadeau, Councilor Maxfield, members of the RSU Board of Directors, other staff people and representatives from the local press and Channel 13 attended the press conference. It was held at the Maintenance Facility shared by the town's Public Works Department and the School Districts Transportation and Maintenance Department to announce a \$9.3 million dollar bond issue that will go before the voters this coming November, assuming the Council formally votes to put it on the ballot this coming Tuesday. He said today was just the beginning of public education and awareness.*

*There will be open houses at the joint facility scheduled for Saturday, September 23 and Saturday, October 28 from 9 am to noon. It will also coincide with Home Coming events on the school campus with special events to appeal to kids on Saturday, October 7 from 10:00 am to 12:00. Tony said they will also be promoting Public Safety Day on October 14th from 10:00 am to 1:00 pm. Starting this week you will be seeing a lot more about the project around town.*

*They will be looking for opportunities to schedule meetings with civic and community groups, and making plans for a public forum to understand more about the project and the need for it.*

*They have been working on an updated on-line request tracking tool, which was launched earlier this summer. They also have been working on a mobile ap, which was submitted last week, and they have approval from Google and it is now available for download but they are still waiting on Apple.*

*Strategic Planning has already been postponed twice because of full agendas, but they do not want to go into a strategic planning session unprepared. They need to look for another date and one that everyone can participate in.*

## **VIII. Committee Reports.**

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

*Parks & Recreation Advisory Committee:*

*Councilor Chapman: The Parks & Rec postponed their meeting last night, and it will now be on September 18.*

*In regard to the Appointment's Committee, she said she hope they receive more volunteers to join the various committees.*

### **B. Other Committees.**

*Windham Economic Development Corporation:*

*Councilor Nadeau: They meet only four times a year, and their annual meeting will be on October 4 at 5:00 p.m. at the Microtel.*

## **IX. PUBLIC HEARINGS.**

[CD 17-263](#) To receive public comment on a new liquor license application submitted by Sonje Swensen d/b/a Windham Billiards.

**Attachments:** [Windham Billiards-New Liquor](#)

*No public comment.*

[CD 17-270](#) Public hearing on LUO amendments re. retail marijuana establishments definitions.

**Attachments:** [PB recommendation to TC Retail Marijuana 08-31-17 packet](#)

*No public comment.*

[CD 17-271](#) Public hearing on LUO amendments re. private roads.

**Attachments:** [TC packet PB recommendation Private Roads 09-01-17](#)

*No public comment.*

[CD 17-277](#) To receive public comment on a new special amusement permit application submitted by Kennebec Hospitality LLC/Microtel Inn & Suites.

**Attachments:** [Kennebec Hospitality-Microtel-Special Amusement](#)

*No public comment.*

## **X. CONSENT AGENDA.**

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

[17-155](#) To approve a liquor license application submitted by the Riding to the Top Therapeutic Riding Center for a fund-raising event to be held on October 14, 2017.

**Attachments:** [17-155 Cover Sheet](#)  
[Riding to the Top-Liquor App](#)

*Councilor Chapman: Stated that they run a wonderful program and urged people to stop in. It is one of the best riding programs in the state.*

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

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

**Absent:** 1 - Councilor Nangle

[17-156](#) To approve a victualer's permit application submitted by Sonje Swensen d/b/a Windham Billiards, located at 824 Roosevelt Trail.

**Attachments:** [17-156 Cover Sheet](#)  
[Windham Billiards-new Victualer's](#)

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

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

**Absent:** 1 - Councilor Nangle

[17-157](#) To find that the requirements of 28-A M.R.S.A. § 653 have been met and to approve an application submitted by Sonje E. Swensen d/b/a Windham Billiards for a new liquor license.

**Attachments:** [17-157 Cover Sheet](#)  
[Windham Billiards-New Liquor](#)

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

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

**Absent:** 1 - Councilor Nangle

[17-166](#) To approve an application submitted by Kennebec Hospitality LLC d/b/a Microtel Inn & Suites located at 965 Roosevelt Trail for a new special amusement permit.

**Attachments:** [17-166 Cover Sheet](#)  
[Kennebec Hospitality-Microtel-Special Amusement](#)

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

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

**Absent:** 1 - Councilor Nangle

### 17-167

To adopt an emergency ordinance establishing a moratorium on certain development activities in the Highland Lake watershed.

**Attachments:** [17-167 Cover Sheet](#)  
[Moratorium on Highland Lake development to Council 090717](#)  
[Highland Lake Moratorium Letter - Terradyn Consultants](#)  
[Highland Lake Letter 2017\\_9\\_10](#)

*Thomas Petersen - Johnson Rd: He said he is very interested in the lakes health and he spoke the DEP to find out what has been going on with Highland Lake, and thanked the association for what they are doing. He said according to the state Highland Lake has good water quality. He did some research and found it was above average for cleanliness and water quality. He read some findings in regard to the quality of the lake, and said he understood things may be changing. He said he would like to know what the Watershed Waste Management Plan being developed through the MDEP and the Cumberland County Soil & Water Conservation District says, and he would like to know what they have to say before we have a moratorium. He said it seemed they were putting the cart before the horse because they do not know what the problem is. He would like to see them work as a community with the DEP and come up with a solution that fits all the needs of the lake and people around.*

*Nancy Cloutier: She said they purchased property on Hilghland Lake, and has just sold their house and are living in an apartment. They are now concerned about getting a permit to build their home. They have been to the town several times making sure they can build there, an engineer just did their driveway, and now she is concerned she won't be able to build her house. Mrs. Cloutier said she bought the property on June 12 and was never notified about any any of this.*

*Dennis Brown: He wanted to clarify some statements made earlier. The Highland Lake is on the state's list of lakes most in danger of new development. He said there are a lot of moving parts to this, a lot of activities that are going on. They have a large group meeting with the Town Managers from Windham and Falmouth, the Cumberland County Soil & Conservation and the DEP to try and identify the issues associated with the lake. This will affect a lot of people, and it will also affect a lot of people if they do not address this now and try to figure out what it is before they make it worse. This is the only lake in Maine that has exhibited this, it is not an algae bloom, it is a bacteria bloom, which is very different. They are trying to come up with a solution that will work out for everybody.*

*Chantel Scott - Highland Lake in Falmouth: She said they have spent more than 40 hours a week in studying this lake. She said this bloom has gone on for four years in a row. In the previous three years when a bloom came, the lake went from six meters to one meter in about a two week period of time. When it happened this summer it was a matter of three or four days and it went from six meters to one meter; it really has*

accelerated. Highland Lake experienced, in the late 1990's early 2000's, an excessive amount of phosphorus into the lake, and 60% of it was due to development around the lake, and as a result the Cumberland County Soil & Water Conservation, DEP, Highland Lake Association, the Town of Windham, and the Town of Falmouth came together to give them \$600,000. The residents all around the lake pitched in \$300,000, almost a million dollars was spent to clean up the phosphorus that was going into the lake. They needed to decrease the phosphorus by 23% in order to be taken off the impaired list. The impaired list the lake was put on means the lake was impaired and is really at risk of dying, but they are still on the list of most endangered lakes in the State of Maine.

She said all of them are guilty of building a house and each putting a little bit of phosphorus in the lake. You can keep putting in a little bit of phosphorus, but then you reach a tipping point, and they are at that point. She read this from Frank Woodard: "My opinion can be expressed in a simple statement. Highland Lake is already overloaded with phosphorus to the point that, because of the result of growth of Picocyanobacteria, it is not suitable for swimming or contact with the water. Highland Lake cannot safely accept even one more molecule of phosphorus." Chantel said once they clean up the phosphorus they can all go on their merry way.

Larry Eliason - Colby Dr.: He said as a resident and tax payer he is against a retroactive moratorium. He thinks it sends the wrong message. Windham has had five or six years of a bad perception of attracting investment and development. We have a new Code Enforcement Director coming on board later this month, and we are heading in the right direction. He is seeing more commercial activity up and down Route 302 then he has seen in the last five or six years. He does not think a moratorium is the magic bullet to fix this. There are about 1,000 properties in the Highland Lake Watershed, give or take. He is sure that there are a lot of owners who do not realize what is going on. He realizes there are some developers doing projects and this is really why we are here, because they got down the path with working with Planning Board and DEP, in a good place relationship, and all of a sudden you are going to put a stop to that. Six months can run into another six months.

He said he is not anti Highland Lake, he thinks the lake should be protected. He has a different perspective, as far as educating the public; what is being used for dish washing liquid, is it the eco friendly version, and what about many other household cleaning products? He feels there needs to be a big task force that goes out and educates everybody in the community and everyone who lives around the lake.

Richard Abbondanza - representing Chase Custom Homes: He said no one wants to see Highland Lake damaged anymore. They are here to night for a request for an emergency relief, and the town's charter is very clear on what needs to be proven. The draft paperwork that has been submitted for the public states what that is. There needs to be a showing to meet a public emergency affecting life, health, property or a public peace. In that instance, you may adopt an emergency ordinance. This application that is before the Planning Board has been in the works for seven months. Chase Custom Homes has gone through the whole process; they have applied to DEP, and they are about to get DEP approval within a matter of a few days. The DEP approval has taken all the current ordinances and requirements into effect. The notice they just received today said there is going to be a third party inspection, inspector ordered. Chase will have to have the safety requirements in place, so the valid concerns will be addressed. The problem with an emergency order is it will treat everybody the same; like the new owner, she will not be able to build her house. In this instance, the standard that they have is in the state law is that ordinances are passed prospectively. That has always been a sense of fairness so someone can go apply for permits and know what the rules are. To change the rules retroactively, is almost unheard of. If it is going to be done on an emergency basis, it is a very high standard that you have to be satisfied that it has been met, and he would

question whether that standard has been met. As a developer, Mr. Chase does not want to hurt anything that will affect his property values, but for someone who has invested, in good faith, over a seven month period, to have something come forward and put a halt on something that he is only a few days away from, does not seem fair. They have submitted a letter from an expert saying this is not going to address the problem, the problem, as Mr. Eliason says, will be addressing a bigger, overall community effort. He respectfully asks that the emergency relief standard has not been met and therefore do not pass the moratorium.

Susan Army - Highland lake resident: They want to have the lake for their children and grandchildren, so if we have to hold off for six or twelve months we should do it. It is scary for us and our children. We need to protect our paradise.

John Dow - His family has lived on the lake for close 100 years, and he has summered there for 67 years. He said this summer is the worse he has seen the lake. They are the biggest blooms and worse clarity he has ever seen. He goes around the lake in his kayak, he cares about the quality of the lake, and he would like it to be there for hundreds of more years, and if it goes green, it is all over.

John Chase: He is asking the Town Council to make sure they are following every state, local and federal law to the "T", all city ordinances to the "T" to make sure this is a required emergency directed moratorium. As his Attorney said, you need to prove certain criteria that must be met. He said he fails to see anything from the Lakes Association to be factual that has been proven by the DEP or any other parties that has been given to the Council. Mr. Chase said he has an approval from David Cherry from the DEP in his hands, and they are the most governing agency that says his firm is going to be making sure that they protect that lake.

He thinks the people who lived on the lake have failed; where did the money go that was given to them? He said he has video tapes of several properties that, with the last rainstorm the water is pouring down into that lake. There are a lot of problems out there, and he said he will protect that lake because the DEP is going to make sure he does.

He said that if you stop him for six months, you will probably hurt that lake even more if he isn't allowed to go in there and protect the lake. He will put up the necessary barriers to make that happen. He said if he has to, in discovery, he will show very plainly where the properties are where there is runoff pouring into the lake. This didn't happen because he bought the property one and half years ago. This has been going on and on.

He is asking the Council to make sure they have facts, scientific facts and logic. He said he does not think they have any because he doesn't think any of the residents have shown anything from the DEP to the town. If they say something, please ask for the facts and logic because you took an oath. He probably has more invested than anyone in this crowd to protect that lake. He asked if they thought he would do something to make his property valueless, and do something so he can't sell his product? He wants the DEP and anyone else to come by every day to monitor his actions and make sure he is doing it right.

Mr. Chase called the Town of Falmouth, and if he wants to develop something there they said to come on over. How come the Boards have not gone over there, this doesn't just affect Windham, he asked if they are just targeting his firm? He has heard nothing from Westbrook either and questioned if it is just Windham? He asked the Council to research that before they take a vote. He said if you really want to control that lake, don't just pick Windham, go to Falmouth, go to Westbrook and see the bigger picture. The bottom line is this - the DEP will regulate him, more than anyone of the property owners, and he will be monitoring their properties as well, because they have been given grant money. He said they should get their facts straight and logic straight and science straight before they vote. He is a property owner and probably owns more property on



*that lake than anybody in the room, and the last thing he wants to do is hurt that lake. He is going to move there, he will have his children there, his office is four miles down the road and his children will be swimming there.*

*Dennis Brown: He does not believe Mr. Chase has DEP approval yet, because he would have a copy of it. They are not accusing Mr. Chase of causing the problems in the lake and he acknowledged that there are a lot of problems with the lake and that is why they are working with the towns and DEP. There has been communication with the Town of Falmouth to put in a moratorium; he did talk with Westbrook as well. It is not targeted at Mr. Chase, and they are still on the list of lakes most at risk for new development.*

*Tom Petersen: He spoke to DEP today and they don't know anything about this; they said they do know there are some problems there. The erosion that is occurring and the problems that are happening are from the people who are living there on the lake. He thinks they need to address the existing problems and not go after a developer who is trying to do everything right.*

*Councilor Chapman: There is a phosphorous management plan that should have been updated, so some of the facts we do not have. They do not know what the critical tipping point is going to be on the lake; if they had that scientific data tonight, they might not be talking moratorium language. She learned today that Mr. Chase will be getting a third party review on his phosphorus loads that he will be putting into the lake through the Cumberland County.*

*She has talked with numerous people at the DEP, including the Commissioner's Office, and they are trying to get the information for her, that she has repeatedly asked for, because she does not want to see the lake killed off. She has been looking at cleanup costs to mitigate the phosphorus problem, and she is sure that nobody wants to be assessed \$25,000 per household or whatever it will take to clean the lake up again. She said she believed Mr. Chase's office had been sitting there back when they had the first clean up, and she believed he was doing some development on the lake. She told him this was not just about him, it is about the lake, not about what he is doing there, nobody has said not to anything. They need to find out what the lake can handle without killing it, and not everyone is going to agree with the approach the Council is taking. Councilor Chapman is interested, town-wide, in making sure all of the town's water bodies come off the watch list that they all seem to be on through the DEP. Maine is a vacation land, and who is going to want to vacation here when we have lakes that are questionable. She said the Highland Lake Association did utilize the \$4,000 they were given; it was for the studies they are doing for this year. She stated she would support the moratorium.*

*Jarrold Maxfield: He said he frustrated with most everyone in the room because he thinks they should take a look at how the whole process unfolded; how the town let an overlay zone sit there that should have been removed, and everyone forgot about it, and Mr. Chase is the only one who really knew about it and paid attention to it. His business half does not like government stepping in and making this a problem, because this should of been fixed, and he should not have been in the position to do the development he wants to do now; it should have been zoned normally like everything else around the lake. He is frustrated that it got through the town for so many months and this Town Council, about 4 weeks ago, was thrown into the pit, with both sides threatening to sue the town. He said, why should they do anything?*

*He is also frustrated with the DEP, and he is not convinced that they are smarter than the people in this room. He is frustrated with the Highland Lake group for showing up at the last minute; he knows things change, but they should have been talking about this a long time ago; he is frustrated with the developers for coming in tonight. He has a public*

phone number, email address and nothing has been provided to him by anyone doing any development on the lake. He received a letter yesterday from Mr. Amos talking about the things that will be done. He said at this point, the way he looks at this vote is that we are in family court and when you go to family court the judge does not care about the parents, because you both bicker, they care about the kid, and right now he looks at the lake as the kid.

The problems are not there from developments that have not been built yet, that makes no sense, but there is the possibility that those developments could put that lake at a tipping point. He will support the moratorium, but not to block one development. He feels horrible that Mr. Chase's development gets caught up in it, and for the woman who has bought land and will now be delayed in building, but at the end of the day if that lake tips, you will all be in the same boat. At the end of the day we are voting to not just represent you folks on Highland Lake, but the rest of the folks in the town, and the rest of the folks in the town are going to be the ones who pick up the bill. This is a Windham problem, and we need to find a solution so everybody can move forward. Councilor Welch said he was in 100% agreement.

Councilor Nadeau: He agrees with Councilor Maxfield too, and thinks there is a lot of fault to go around here and has said that. Forty percent of the last study showed the phosphorus came off of private roads, another private road issue. That is one of the other reasons we have to look at private roads. All of the people will have to step up to the plate and take care of their properties. He has looked at other lakes and why they have failed, and this lake is at a tipping point. We need to look at the lake, look at the science and see what is wrong. You have to understand that a lot of this is private property; you all have to step up to the plate and take care of your private property. He is in favor of moving this forward. He told Mr. Chase he is fine with his development and he does not believe in moving backwards, and he was sorry that Mr. Chase was going to have to wait.

Councilor Chapman: It is always after the fact that it comes to the Council. There was a phosphorus management plan from 2003 that they thought was being followed. It was supposed to be updated 5-10 years after the fact and it never was, and they are all responsible. She asked DEP who was in charge of keeping those management plans to make sure they are followed through and updated? If the DEP tells us we need to have these plans, then somebody needs to be enforcing that piece, because if they had, they might not have been sitting there today.

Councilor Nadeau: He was at the High School yesterday and he witnessed 27 people become citizens of this country. A retired Colonel spoke and in his speech he said "do the harder right over the easier wrong."

Councilor Maxfield: This message is to the people who want to build and get things done, "it is our job to protect the lake and look at the phosphorus loads but it is not our job to keep people off the lake and for moving on with more boats, etc." He said he doesn't think they are looking to block anything particular or looking for this to be extended forever. He is willing to work with the people who want to build in a productive way, because these developments being proposed have the ability to actually become the example of what needs to be done on the lake. You people have the ability to build in a way that these folks didn't have. The new developments can become a beacon of what everyone else needs to emulate. This does not have to be a six month process, they can end this moratorium anyway they want; it all comes down to the moratorium passing, they need to be moving at a quick pace about the zoning and ordinance rules.

Councilor Muir: He said that he agreed with most of what had been said. He believes

*there is a tipping point and that is why he wants to look at it, get some science backup to see what is going on. One of the jobs being elected is to look at the natural resources and protect them and this lake is a natural resource. He will support this because he feels it is the right thing to do, and hopes they can work together on it and not get bogged down.*

*Councilor Chapman: She mentioned that we have one of the best environmental lawyers, Sharon Newman, who is available to them, and it would be helpful if they could have some time with her at some point. Tony said he already made that contact.*

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

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

**Absent:** 1 - Councilor Nangle

### 17-161

To approve amendments to Sections 300, 500, and 900 of the Land Use Ordinance, Chapter 140 of the Code of the Town of Windham, regarding private roads and private ways, both as part of subdivision approval and outside of subdivision approval.

**Attachments:** [17-161 Cover Sheet](#)

[TC packet PB recommendation Private Roads 09-01-17](#)

*David Manchester: His family moved to Windham in 1739 when there was only three houses in the whole town. They have private roads and live on private dirt roads. He thinks it will be tough if they are required to put in asphalt roads where they have had dirt roads for a hundred years. With that expense it will be almost impossible to build house lots, even for their own family members who might be interested. He hears, sometimes, about the roads are not good enough to get the fire trucks and plow trucks through in the winter; it would seem like it could be possible to make their roads wider, they could cut down a few trees to get the trucks down there, which would help.*

*Keith Elder - Ethan Dr.: He hopes they would put a little more thought into how this does affect everybody. He understands the need for the roads to be updated, and there are roads that are not in the best of condition, but if this passes, the Council will affect people's property value greater than anything else can. If you take a back lot on anyone of these private roads that has 30 or 40 acres, and it takes a 1,000 feet of road upgrade, you've made that property valueless, and nobody is going to buy it, nobody is going to develop it, and the road is still going to remain in the same condition that it is. If you want to do something to bring the road to a better standard, he thinks you need to look at it a different way. It has to be a goal that is attainable for the landowner, so if somebody wants to gift property. Nobody will come in and spend \$360,000 to rebuild a road just to sell \$200,000 worth of property.*

*He said he didn't see a lot of people in the room and asked about the public notice; he asked if the property owners who would be affected by this was given a notice? This is generally where a public notice is given, for a project whose property is going to be affected and their neighbor. Mr. Elder showed a map that he got at the Planning Board meeting and it shows, in red and yellow, all the little pieces that will be affected. Not many of those properties are the first 200 feet of a private road, most of them are in the back, which means they won't have any value to their land or be able to sell it. He hopes they do not pass something that will devalue somebody's property to begin with, but also they don't pass something that will have no result.*

*Kevin Clark - James Way: He has been working on this road issue for the last two years, and it has been publicly put out there. Over the last couple of years he has not heard many people speak. He said they need to focus on how to stop things from getting worse if new development is contributing to the factors and issues that have been plaguing this town. He doesn't think doing nothing will fix it. A moratorium was put on their road that did nothing, so he does not think doing nothing will do anything but they have to do something, and he thinks the town is on the right track.*

*Michael Manning - Bruschi Road: He does not want to stifle development, he wants it to continue to grow but they have to do it responsibly. Over the last 50+ years the number of people who live in this town has grown dramatically. They don't want to prevent people from gifting a piece of property to their children, but what they do want is for the developers who come in, to do it right. He just heard that there is another 80+ acres in his area that has somehow been sold on a watershed, and if the proper ordinances are not in place, you will have a Highland/Forest Lake issue again.*

*Bill Walker-Woldbrook Drive: He said that he thinks it is important, and that many people have had different experiences that they draw on to make decisions, and as he presents to the Council, it is important that they understand his perspective. His former education is business and economics, he has been 25 years as a fire fighter/paramedic, has plowed and maintained private ways for people as a subcontractor. He is a president of a home owners association that has two miles of private roads that it takes care of. Mr. Walker also sits on the Planning Board for Windham.*

*One of the things they heard during the Planning Board hearing was they heard from three main areas in town - Johnson Road folks, James Way, Bruschi Road, Atlantic Drive, Lake Shore, and from Inland Farm. Councilors Chapman, Nangle and Maxfield were there that night and provided testimony, which proved valuable because they had not heard many things as to what was going on in town. Through that testimony he thinks there are three problems that became very evident and clear and delved into to better understand. Those three things were that people use roads and they don't pay for it, subdivisions pop up overnight and people are not getting emergency services to their homes, which is vital to everyone security and feeling safe.*

*As he looked at the ordinance changes none of the changes address anyone of those three things, it does not fix those three problems. Could the amendments potentially affect the future so that another one of these do not develop, sure, but with everything, it comes with a price.*

*He said the State Statute is very clear that anytime that three lots are created, a subdivision is made. As a property owner everyone here, who has land, has a right to every five years to go ahead and subdivide a lot off and not have to go through the subdivision process. It is very clear that if you exceed or you create that third lot, that is a subdivision. In the case of Bruschi Road, James Way and Atlantic Drive if you go to the registry of deeds, you will see all those deeds, in a three year period, were done in large groups. How is it that someone subverted the subdivision law and also subverted the subdivision ordinance within the town and was not held responsible? That is why those folks on those roads have an issue, someone went around the State Statute.*

*The other thing it talks about is that after five years you can split your lot, you can gift a lot to a relative, and one of the themes that was used as you look at the deeds is, those lots that were gifted at the initial onset of the purchase of the land was to relatives, multiple lots. It also states the relative has to hold that lot for a total of five years, and if you do not hold that lot for five years, you are subverting the State Statute on subdivision. There are people who are doing it right but he asked "how do we deal with people who are not doing it right?"*

*The last thing is transfer to an abutter - If you transfer a lot to an abutter, the abutter*

has to hold that lot for five years. The only way they can sell that land is if they sell their entire parcel that they owned originally, including the abutting land that they absorbed; it is the only way that can happen, but the five year period still holds true for the new owner of the parcel.

He spoke about buying a home on a private road and what additional costs would be involved in living on a road that needs improvements. The price point of a property reflects those ownerships. If you live on a public road, you have more discretionary spending you can put towards a mortgage, therefore, the price point on a home would be more. If you have obligations under a private way, that price point is typically less so you can have money to pay for road type situations.

Because of the way those deeds were written and the road associations are set up, there is a personal responsibility and obligation of those residents that reside in those areas to maintain their roads. He said it is \$33.00 per linear foot to maintain an asphalt road versus a dirt road, which is \$6.00.

He spoke with the Public Works Director and he said we have seven miles of dirt roads within the Town of Windham. Are those roads going to be upgraded to paved roads? Are we putting standards upon developers or other people that we are not willing to hold ourselves to? The PW Director said when they consider budgeting they look at a road upgrade taking it from dirt to a paved road, and it is a million dollars a mile.

Mr. Elder brought up a backlot - You purchase a 40 acre backlot, and it would take 2,000 feet of road to get back there and it is coming off a public way. Based on this new ordinance you need to put in a paved road that meets the public standard. By doing that, based on the numbers provided earlier, it is \$250 a linear foot. If you have 2,000 feet of road just to get to the land, that is a half million dollars. Mr. Walker went on to give another scenario about trying to justify the money spent on building the road by creating a cluster subdivision.

He said he would ask the Council, as they look at other towns as he did, i.e. Cumberland, Yarmouth, Falmouth, Scarborough, Westbrook and Gorham to know that all of those towns have different sized roads, and they break it down. All of them allow private roads off of public roads. He thinks there is a right solution, and he does not think the Council should be saddled with this alone. He said he made a motion during the planning meeting to have a joint session between the Council, Planning Board, staff and the town attorney. There is many things that he has been told that has been relayed from the town attorney as "that's not possible", and he thinks the town attorney needs to start thinking about what is possible and what are our options. He thinks this body is looking to find solutions on how to get it done, to stop the Johnson Roads, Bruschi Road, James Ways etc.

Mr. Walker proposed that no private road in the Town of Windham is established unless it receives Planning Board approval. Three lots or greater goes before the Planning Board. Planning Board deals with subdivision, the Planner and the Planning Director deals with subdivisions. It goes through a process, it follows our rules and we have the ability to, hopefully, catch those developments that pop up over night and they can't just pull a permit and go build a road.

He thinks staff needs to stop issuing permits to developments that they suspect are subverting the subdivision rules. There is a possibility we will get sued, but at the end of the day, if we are in the right, they need to prove that they are not subverting the law. It should not be upon the town to prove that, we are not the one requesting the permit, they are.

He honestly would like a workshop. There are many different people that can come together to work on this.

Councilor Chapman: She thanked the Planning Board members for coming in. She was at that meeting and was frustrated because they probably should of had a meeting with them before they got to this point. She said sometimes she doesn't feel that what they

do at a Council meeting gets relayed properly back to the Planning Board.

*Councilor Jones:* As to some of the comments that were just spoken, he has been saying that repeatedly, since the beginning of when he came on the Council. The real issue of these roads is the statute problem; they are not addressing it. He understands both sides of the fence, he is a large land owner on a private road, and it does affect him. He understand as well, as far as the public safety goes with people building houses, tearing up the roads and then leaving. They made those changes and he was in favor of them, but he was in favor of sending it to the Planning Board for review and they unanimously voted to meet with Council. They did not approve what the Council sent to them, and he thinks the next step would be to have a joint workshop. He will not support the vote tonight as it stands.

*Councilor Muir:* He was involved with these discussions and had problems with some of the things in it. It was coming up with a way and try and do everything. He likes the idea of someone being able to gift a lot to a child or relative, and there is no way around it with this. He would not mind a meeting with the Planning Board before they go any further.

*Councilor Nadeau:* He said they dug extremely deep into it, and they looked at the deeds and have taken deeds from two different individuals and presented them to legal to try and stop this mess. He has asked Tony to change the way they do business upstairs. If someone comes in for a permit, ask them for a deed, don't take a written piece of paper they have title and interest, ask for the deed. If the deed is less than five years old, ask them for the research deed and what it came out of, and then you'd have the ability to deny a permit.

He said history has put them there; the town did not have a road ordinance in the town until 2009. Before that he sat on the Planning Board for over ten years, and they were always told that is a private road, it is grandfathered, legally told that. That is the main problem and that is what needs to stop.

All the towns that were mentioned, when they put ordinances in place they grandfathered their roads, but if you went in to do anything, the grandfathering went away. This town did not do that. Giving a house lot to your kid, that should be allowed. He referenced Inland Farm and the 25 houses in there. He agrees, this might not be perfect, but it should be moved forward and tweaked later.

*Councilor Maxfield:* He is for this, and they did put a lot of thought into it. This process has gone through two attorneys. They have been told that the town has to prove intent; they essentially have to prove what is or is not in somebody's mind, did they use the loophole specifically to subvert the law? If they replay that they did not, how do we prove that?

Mr. Walker talked about safety and subdivisions are not the problem; people who create defacto subdivisions cut the corners and these rules are designed to take the financial incentive out of that. Mr. Elder is completely right, he is sure they meet all the legal standards, but he thinks public notice could be better and hopes it be addressed better with the new app and other ways of communicating with the public.

It is a tough decision, are you going to take some pieces of land and make them, quote unquote, less? In the short run, yes, and the flipside is other's land will be more valuable. The folks he has heard from are people who have been affected by large scale developments. They are completely right, people should take responsibility for the lakes and the roads, but we can't make them do anything.

He would be happy to support meeting with the Planning Board, but only have one meeting and walk out with a plan.

*Council Chair Welch:* He is fine with postponing and having a joint meeting, but it is

going to be one meeting only, he doesn't want to rip the whole thing apart and take another two years.

*Councilor Chapman: Again she said she is not supportive of this, there is too much in it and wasn't what was expected. At first it was supposed to be about the subdivisions and then all of a sudden they get private roads as well, instead of fixing a little fix to see if that worked. Now it is any type of development, you will trigger it. She said she would like Stephen Langsdorf at that joint meeting.*

*Kevin Clark - Hopes this isn't another false promise of two years ago.*

**A motion was made by Councilor Maxfield to postpone Order 17-161 pending the Council and Planning Board getting together for a joint meeting as soon as possible, seconded by Councilor Welch.**

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

**Absent:** 1 - Councilor Nangle

### 17-160

To approve amendments to Section 300 of the Land Use Ordinance, Chapter 140 of the Code of the Town of Windham, to add definitions related to retail marijuana establishments.

**Attachments:** [17-160 Cover Sheet](#)

[PB recommendation to TC Retail Marijuana 08-31-17\\_packet](#)

*Councilor Muir left the meeting at 9:42 p.m.*

*Thomas Petersen: Corrected what Councilor Nadeau said about him in the previous Order in regard to the number of houses he built on Johnson Road.*

*Joel Peppin: Mr. Peppin owns some commercial property in Windham. He said he reviewed the definitions of the amendment and he thinks they are very reasonable and supports them.*

*He grew up in Maine, graduated from Edward Little, went to the University of Maine and has been in the medical marijuana program since the early days and has about six years experience.*

*In Gorham in 2012 he was the first care giver in the Town of Gorham to receive occupancy for business operations, and through his efforts he has designed and engineered some different cultivation facilities in the state, and has also become Director of Corporations for a non-profit dispensary in Massachusetts. He has spent time working with municipalities in Maine and Massachusetts and has worked on some of the rule makings that come up around this issue. He said he has actively been involved in the lobbying at the state level prior to the election last fall, and since the election, and today the state released a draft of their regulations, which a lot of towns have been wanting to see.*

*As far as the Town of Windham goes, they anticipate the town having a lot of control on how to handle this whole new program and new industry. He met with an attorney today, and in terms of the timing of the whole thing they may be considering an emergency legislative session in October, which may or may not happen, and if it does not happen it will be taken up in regular session early January. The timing of the whole thing, at the earliest, could be the third or fourth quarter of 2018 when you will start to see the state start the application process or it could be as long as summer 2019.*

*Some of the legislation that was released was about obtaining a retail store or a*

cultivation permit. They would need to first obtain state conditional licensing approval before approaching the town. He would then have to come to the town and go through the town's processing in getting approval and then take that back to the state for final sign-off. He has secured some commercial property on Storm Drive and he has interest in having an adult retail store at that location. He has received approval from all the neighbors there. He plans on being at all the meetings when this topic is on the agenda, and he realizes there is a long way to go.

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

**In Favor:** 5 - Vice Chair Nadeau, Council Chair Welch, Councilor Maxfield, Councilor Chapman and Councilor Jones

**Absent:** 2 - Councilor Nangle and Councilor Muir

[17-159](#) To approve Amendment No. 1 to the professional services agreement with Wright-Pierce for wastewater planning and engineering services as approved by order 16-032 on February 23, 2016 for scope tasks 3 and 4 in the amount of \$88,900.

**Attachments:** [17-159 Cover Sheet](#)  
[W-P WindhamWWMManagementPlanningScopeLetter\(11-30-2015\)](#)  
[Windham Schedule](#)  
[TIF Fund Balances FY 2018 20170908](#)

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

**In Favor:** 5 - Vice Chair Nadeau, Council Chair Welch, Councilor Maxfield, Councilor Chapman and Councilor Jones

**Absent:** 2 - Councilor Nangle and Councilor Muir

[17-162](#) To approve a Memorandum of Understanding and Agreement with Jamar, Inc. regarding the joint investigation of the feasibility, and potential development, of a wastewater collection, treatment, and disposal system that would serve Jamar, Inc.'s property and other properties and users in the vicinity.

**Attachments:** [17-162 Cover Sheet](#)  
[MOU \(Jamar, Inc.\) 20170908](#)

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

**In Favor:** 5 - Vice Chair Nadeau, Council Chair Welch, Councilor Maxfield, Councilor Chapman and Councilor Jones

**Absent:** 2 - Councilor Nangle and Councilor Muir

[17-163](#) To approve an agreement for professional services with Wright-Pierce for a wastewater feasibility study of a site located on property of Jamar, Inc. (the "Lippman Site").



**Attachments:** [17-163 Cover Sheet](#)[WindhamLippmanSiteAgreement20170811\(WPSigned\)](#)[Windham Schedule](#)[17-162 Cover Sheet](#)

*Tony Plante: Tony explained that this has to do with the public/private partnership with Jamar LLC, which is Martin Lippman, for the potential to site a wastewater treatment and disposal system on property he owns adjacent to Lippman Park, and part of the conservation easement; that could then, potentially, with the addition of advanced treatment headworks be turned into a public system that would serve a portion of North Windham, extending considerably beyond Mr. Lippman's property.*

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

**In Favor:** 4 - Vice Chair Nadeau, Council Chair Welch, Councilor Chapman and Councilor Jones

**Absent:** 3 - Councilor Nangle, Councilor Muir and Councilor Maxfield

[17-164](#)

To authorize the sale of the Town's interest in a tax-acquired property located on Johnson Road (Map 24, Lot 24) to Jacquelynn and Daniel Brulotte for the amount of outstanding taxes, costs, and fees as outlined in a letter dated June 12, 2017 from attorney Stephen D. Bither.

**Attachments:** [17-164 Cover Sheet](#)[Stephen D. Bither, Esq. Letter of June 12, 2017](#)

*Councilor Chapman: She said she thinks the town has other tax acquired property that they have asked about in the past that they should consider liquidating. She would like to see that list at an upcoming meeting.*

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

**In Favor:** 5 - Vice Chair Nadeau, Council Chair Welch, Councilor Maxfield, Councilor Chapman and Councilor Jones

**Absent:** 2 - Councilor Nangle and Councilor Muir

[17-169](#)

To amend the charge of the Natural Resources Advisory Committee as discussed at the Council meeting of September 5, 2017 (item CD 17-273), by removing references to August 15th as a date following which the committee would elect a chair and vice chair.

**Attachments:** [17-169 Cover Sheet](#)[Natural Resources Advisory Committee Amendment DRAFT Mark-up 20170906](#)

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

**In Favor:** 5 - Vice Chair Nadeau, Council Chair Welch, Councilor Maxfield, Councilor Chapman and Councilor Jones

**Absent:** 2 - Councilor Nangle and Councilor Muir

[17-170](#) To establish a Summerfest Organizing Committee and adopt a charge therefor as presented at the Council meeting of September 5, 2017 (item CD 17-274).

**Attachments:** [17-170 Cover Sheet](#)  
[Summerfest Organizing Committee Charge DRAFT](#)

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

**In Favor:** 5 - Vice Chair Nadeau, Council Chair Welch, Councilor Maxfield, Councilor Chapman and Councilor Jones

**Absent:** 2 - Councilor Nangle and Councilor Muir

[17-171](#) To adopt a resolution designating the five mile section of the Presumpscot River between Mallison Falls and Sacarappa Falls a "Presumpscot Historic and Natural River Corridor" as an important local historical and natural resource.

**Attachments:** [17-171 Cover Sheet](#)  
[Resolution 17-171 Presumpscot Historic and Natural River Corridor](#)  
[Presumpscot Resolution ORIGINAL](#)  
[Presumpscot Resolution Revised 20170906 Mark-up](#)

*Councilor Welch moved to suspend Council Rules to take Order 17-171 out of order, seconded by Councilor Chapman.*

*In Favor: 6- Councilor Chapman, Councilor Jones, Councilor Maxfield, Councilor Muir, Councilor Nangle and Councilor Welch.*

*Absent: 1- Councilor Nangle*

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

**In Favor:** 5 - Vice Chair Nadeau, Council Chair Welch, Councilor Maxfield, Councilor Chapman and Councilor Jones

**Absent:** 2 - Councilor Nangle and Councilor Muir

## **XII. Discussion Items.**

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

[CD 17-280](#) Agenda Items Reports.

**Attachments:** [Agenda Items Report 20170908](#)  
[Projects & Issues List 20170908](#)  
[Projects & Issues Sheets 20170908](#)

*There was some discussion of agendas and scheduling.*

#### **XIV. ADJOURN.**

**A motion was made by Councilor Chapman, seconded by Vice Chair Nadeau, that they be adjourned. The motion carried by the following vote at 10:00 p.m.**

**In Favor:** 5 - Vice Chair Nadeau, Council Chair Welch, Councilor Maxfield, Councilor Chapman and Councilor Jones

**Absent:** 2 - Councilor Nangle and Councilor Muir

Respectfully submitted,

Linda S. Morrell  
Town Clerk, CCM