



Town of Windham

Town Offices
8 School Road
Windham, Maine

Meeting Minutes - Final

Town Council

Tuesday, October 10, 2017

7:00 PM

Council Chambers

I. Roll Call of Members.

Present: 6 - David Nadeau, Dennis Welch, Tim Nangle, Bob Muir, Jarrod Maxfield and Donna Chapman

Absent: 1 - Brett Jones

II. Pledge of Allegiance.

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

III. Minutes to be Approved:

[CD 17-310](#) To approve the Town Council Minutes from the September 26, 2017 meeting.

Attachments: [Minutes-Town Council-9-26-2017](#)

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

In Favor: 5 - Vice Chair Nadeau, Councilor Nangle, Councilor Muir, Councilor Maxfield and Councilor Chapman

Absent: 1 - Councilor Jones

Abstain: 1 - Council Chair Welch

IV. Public Participation.

There was no public participation.

V. Councilors' Comments.

There was no Councilor comment.

VI. Council Correspondence.

Councilor Nangle: Regarding CD 17-305 Financial reports- the report comes through all broken down by percentages and he wondered if there was a way they could see what percentage of the year they have been through?

[CD 17-300](#) Thank you note from Cumberland town manager dated 9/11/2017.

Attachments: [Thank you note from Cumberland town manager dated 9/11/2017](#)

[CD 17-301](#) Maine Development Foundation Correspondence

Attachments: [Maine Development Foundation](#)

[CD 17-302](#) Windham-Based Everlasting Gratitude Wreath Program

Attachments: [Wreath Program - Everlasting Gratitude](#)

[CD 17-307](#) Sebago Lake Region Chamber of Commerce - 2018 Membership

Attachments: [SLR Chamber of Commerce Letter](#)

[CD 17-308](#) PACTS Destination 2040 Regional Transportation Plan

Attachments: [PACTS Destination 2040 Correspondence](#)
[Portland Destination 2040](#)

[CD 17-309](#) Electronic Recycling Fundraising Event October 14, 2017

Attachments: [Electronic Recycling](#)

[CD 17-304](#) End of the Year Financial Reports

Attachments: [Appropriation Control Report](#)
[Revenue Control Report](#)

[CD 17-305](#) Financial Reports through 08/31/17

Attachments: [memo](#)
[YTD Revenue Report](#)
[YTD Budget Report](#)

VII. Town Manager's Report.

[CD 17-311](#) Town Manager's Report.

Attachments: [Town Manager's Report 20171006](#)
[Projects & Issues List 20171006](#)
[Projects & Issues Sheets 20171006](#)

Tony Plante: The following are upcoming events:

There was an Open House with participants from the Fire-Rescue and Windham Police Departments.

This Thursday, October 12 from 6:30 to 9:00 p.m. in the enclosed Caf at the Windham High School will be a public information forum about the project. There will be members of the Joint Project Team, Council, School Board, Design Team, and they will run through

a presentation and have time for questions and answers. They will carry the forum live on Facebook live.

Saturday, October 14 is Public Safety Day at 375 Gray Road. There will be a display for the Shared Maintenance Facility there, along with all of the various public safety displays and time for Fire Prevention Month. There will also be something special happening that day from 10:00 to 1:00 p.m.

Saturday, October 28 from 9:00 to 12:00 p.m. at the Maintenance Facility they will host their final Open House. They are looking for some other activities and working to have a pumpkin face painting and drop activity.

The town now has a mobile app available that you can carry around a pocket sized version of the Town of Windham with you. You can make requests, provide feedback and receive notifications of up coming events or alerts. If you go to the Apple app store or the Google Play Store and look for Civic Plus and or Civic Mobile, you should be able to load it and start it up.

In this weeks Projects and Issues lists and sheets there is now an individual sheet for the Highland Lake Water Quality and Watershed Issues. There will be pertinent individual updates in his report.

Tony said the Town of Falmouth will be talking about the Highland Lake issues; whether they will specifically consider a moratorium, he could not say at this point.

VIII. Committee Reports.

A. Council Subcommittees.

B. Other Committees.

Parks & Recreation Advisory Committee:

Councilor Chapman: They will be meeting next week, and they are looking for crafters or an artists who might have something to sell. They can come to the Town hall on Saturday to participate in the Arts in the Park located in the playground area from 1:00 to 4:00 p.m.

Also, there is an upcoming Halloween event on Saturday, October 28th.

Energy Advisory Committee:

Tony reported that there were two proposals, and that they have done reference checks and they are finalizing scoring of the proposals and they expect to have that wrapped up by the end of the week. Councilor Chapman said with the pedestrians who were hit up in North Windham Friday night, she thinks they should fast forward this and see what they can do to get Route 302 lit up.

Councilor Maxfield: He said he believed that when the companies come through to figure out the lights, they will have a van that they drive through at night with and it literally takes measures and will give them a graph of where they have light issues. He said based on the timelines they have seen, maybe by this time next year Windham can be a LED community.

IX. PUBLIC HEARINGS.

[CD 17-276](#) To receive comment on the proposed issuance of up to \$9,300,000 in general obligation bonds or notes of the Town and appropriate of the proceeds thereof to pay the costs of design, construction and equipping of a new shared vehicle maintenance facility located at property on Windham Center Road, with the details of such borrowing (including provisions that the bonds may be prepaid or subject to call for redemption with or without premium and the dates, maturities, denominations, and interest rates) to be determined by the Town Council.

Attachments: [CD 17-276 Cover Sheet](#)
[2017 Special Town Meeting Warrant and Financial Statement](#)
[2017 Windham Bond Referendum Specimen Ballot](#)
[SMF Flyer 20170907](#)
[Project Budget 20170907](#)

No public comment.

[CD 17-279](#) To receive public comment on the Highland Lake watershed moratorium ordinance.

Attachments: [CD 17-279 Cover Sheet](#)
[Moratorium on Highland Lake development Enacted 2070912](#)
[Highland Lake Summary, Maine DEP Report September 2017](#)
[Highland Lake Watershed Moratorium List 20171006](#)

Tom Peterson - Johnson Road: I am very concerned about Highland lake; I own property and right-of-ways to it. I spoke first about this and that I felt we didn't do enough before we made the decision last time, so I went out and did some more research, Google is a great thing. I probably spent about two days Googling and getting information together. I found out a lot more information than I have seen presented to the Town Council. One of the things is I did was do a deep research. I asked last time if there were any other lakes around here having problems, and there is one in New Hampshire. Lake Erie had a severe problem in 2014 where the water was so bad, and that is their drinking supply, that 500,000 people couldn't drink their water. In 2015 they invited people from seven countries and fifteen states to come to a big meeting to share the information they had on it. Then in 2016 they came up with a report on it; which I read parts of, and a lot of it is scientific jargon, but they basically came up with a lot of ideas. Ideas on how to prevent, what they call, external nutrients coming into the lake, which is what the moratorium is about. They also had three other methods, depending on the size of the lake, they said could work. Compared to Lake Erie, Highland Lake is a puddle.

There is metals that you can put into the lake that will lock up the phosphorous for several years. The other thing you can use is an extremely diluted solution using hydrogen peroxide, which gets reduced 15,000 to 1. It will not hurt any fish, won't even hurt the other algae in the lake, it only goes after picocyanobacteria, which is what the conference is all about. They also said the best job you can do preventing the external intrusion of nutrients, you still need to do some of this other activity to clean up the lake.

Anybody who is doing any study about this, read the Lake Erie study, I can give you the web address, it was pretty comprehensive. Those are things that need to be considered and those making the decisions needs to look at that.

Beyond that, the Moratorium, and I spoke to someone at the DEP, and got a report from them that I have in front of me. The final thoughts in the last paragraph, the last sentence "our understanding of the nature of picocyanobacteria bloom is particularly weak, both in terms of its characterization and underlying factors which control it. More study along this front is needed in order to plot the best path forward for Highland Lake." We don't own Highland Lake, the DEP is responsible for Highland Lake, and I would like to see Westbrook, Falmouth and Windham all look at this together through the DEP's eyes, and I have sent the report to them to study.

One of the things you may find interesting is that DEP thinks the problem might be due to fish coming in. We have a herring run that was established in the lake a few years back, and I guess the fish ladder was finalized in 2005 so the fish can go to the ocean and come back. It takes about five years and they come back to the lake where they came from. They basically came back to the lake in 2013. Now they have been out in the ocean and god knows what they got into, but that could very well be the source of the picoplankton and if you want, close the fish ladder. To me, that is no more extreme than saying that no one can build within the watershed.

The person I spoke to at the DEP, she had some advice that I want to share with you. She said the DEP is very interested in Highland Lake because it is an important lake to study in a residentially developed environment, which they expect more of to be occurring in Maine. Phosphorus is low in Highland Lake, but the big increase from 8-10 to 10-12 parts in the last eight years; something is changing that we need to address and look at. She said the most important thing is addressing the existing properties near Highland Lake, especially near or at shore frontage. Her advice was to enforce the current silt fence construction rules and laws very diligently.

I took a walk around a few properties on Highland Lake but I will not say where, but the Code Enforcement knows about it. I found a lot of things wrong with the silt fences, and I used to be a builder so I am familiar with silt fences, and you don't just use them on Highland Lake, you use them wherever you are building or where ever the runoff is going to go. I couldn't see water not being able to get around in both cases, in my opinion, that is a major problem for any lakeside operation. She said you need to think about allowing exemptions for any moratorium to be balanced with people's economic interest. We had a woman in here the last time that said they have property all ready to build a house on, and they can't get a building permit.

One of the key things they say in the Lake Erie study, in terms of stopping the external phosphorous coming into the lake, was to have wetland, either existing ones or establish new ones that will basically stop the water from rushing into the lake and hold them back so the nutrients can go into the ground in the swamp area, and the paper recommend doing that. I do want to mention around the Highland Lake area there is an awful lot of wetland areas where there are properties that have no place to drain but into those wetlands, so those could possibly be excluded from any moratorium because they would be going into a solution system that they advocated.

Another fish story, if you don't mind - they also comment about the fact that adult fish used to be stocked at Highland Lake; these are the big old breeders that they have at the fish hatchery that have a lot of eggs in them, and can produce a lot of eggs in the water system. I think they stopped stocking them in 2012 because, I guess, there is a

public access to Highland Lake that is a carry in that is in Westbrook. Whomever made a decision, I guess that wasn't good enough, so they stopped stocking the fish, that may be a coincidence. I don't know if the fish created it or solved it, I don't want to blame the herring because it could be the trout.

I guess what I would like to see is the town take a look at the whole situation, try to balance the economic interest with the interest of preserving the lake and I would like to see us act as a community, which includes Falmouth, Westbrook and the DEP, which basically owns Highland Lake. I think all the parties need to come together with an agreement and do what should be done, opposed to Windham acting independently. Thank you.

Rosie Hartzler: Thanks Tom for your comments. Tom and I have been in conversations over his ideas about helping out with the lake, and I really appreciate his input. I just want to thank the Town Council again for the courage to take on the moratorium, in terms of the development around the lake.

The reason for this is that it is all about the lake, and I don't know how many of you here, in attendance tonight, live within the watershed, but when you choose to live in a watershed, no matter where you are in that watershed, you are implicitly contributing to that lake, and that is the thing that I think is the most difficult piece to understand. You might live a mile from the edge of the lake, have no rights to the lake, have no deeded rights, aren't able to put a boat in, and quite frankly, it makes you mad about this moratorium because you wonder what benefit you get from the lake. Well, here's the thing. We, as a Highland Lake Association, are working very hard right now to try to make everyone in the watershed feel like they are a part of this ongoing effort, because we are all in this together, and not just the people in the watershed but the people in the entire town. Because the economic vitality of this community is so connected with our natural resources, there is no way that we cannot all take responsibility for this.

So I want to remind people too, that at the last meeting where we approved the moratorium, I made a couple of promises to the community that was gathered here that night about what we would be doing during the time of the moratorium, and I am happy to report tonight that many of the things that we promised to start are all ready underway, and Tom, you'd be happy to know that there is a concerted effort between the towns of Windham and Falmouth; it's called the Highland Lake Leadership Team, and we are actively working together as a group that includes DEP, the Cumberland County Soil & Water Conservation District, Highland Lake Association, there is a Town Councilor in the group, and the Town Managers of Windham and Falmouth, and we are actively working on several pretty significant projects right now. One of those is the development and implementation of a science forum where we are going to bring together the experts on December 1 to figure out what is going on in this lake. The first part of the forum is basically for the scientist so they can get together. This is a very complex issue, and Tom, we might be considering some of the ideas that you have. I really appreciate you giving us those ideas.

Following that science forum one of the key things that is going to come out of that meeting is a recommended plan for testing in Highland Lake so that next season, this season is done as far as testing, but for next season we can get out in front, and test for the things that we really consider the most important components of this issue. This has never been done in the Town of Windham before, and following that science forum, we are going to organize and implement a forum for you, for everyone in the community; to learn what did we learn at this science forum, and what can we do as a community to come together to protect not just Highland Lake, but other natural resources like other

lakes within the towns. So this is a huge thing that is happening; it is going to have implications for many, many people in the community. So that is one of the things we promised to do and that we are doing.

Another thing that we are implementing right now is, we are in the beginning stages of planning a full watershed survey of Highland Lake so we can really figure out, like Tom eluded to, where is the phosphorous coming from? Phosphorous is the ingredient that is creating the issue in Highland Lake. There are many, many possible contributors to the Picocyanobacteria bloom, but phosphorous is a big one. In that watershed survey we are going to be figuring out where is it coming from. Now, this fall, we have already set in place a stream sampling of all the key streams that flow into Highland Lake because we have a hunch, just like I said before about the Watershed, the streams that flow into Highland Lake, they start up in the watershed. They start collecting things from the soil, since phosphorus is a natural occurring ingredient, and when it rains, like it did the other night, when it rains that is the prime time to take a sampling to find out what is coming down into the lake. We have one of our water quality people who is in charge of conducting that sampling. Hopefully we will get those results within a month and a half so we can feed those back to you as a committee, and with this new app that you have designed, Tony, that would be something that would be part of that.

This Jeff Dennis report, that Tom referred to, is another big combination of data that has never really been put in a format like it's been put before. If you go to the Highland Lake Maine website: www.highlandlakemaine.org on that website, which is a website for the Highland Lake Association, this report from Jeff Dennis is posted. I would invite anyone who wants to know more about what is happening in Highland Lake to go to that website and read that.

The other key thing that is happening in the Highland Lake Association is that over this last year, and thanks to the Town of Windham, we had a grant of \$4,000 to use towards the discovery of the Picocyanobacteria, and we didn't figure out what was going on, but we did use the money for the testing that was done this summer, and we bought some new equipment so we could further analyze what is going on in the lake. We have a reporting now of the funds that were used, and those are going to be forwarded to the Town Council within the next week. That is another thing we followed up on and we were true to our promise.

There's been a concerted effort, lastly, in terms of communication with the Highland Lake Watershed. I don't think we've ever had this kind of energy and enthusiasm for what is going on, and in response to that we have increased the number of people on our email list, so when there is a notice about a meeting, like tonight, if you are on that email list you will get our announcement. Also, we would invite anyone who would like to become a part of that email list, even if you are not in the watershed, you could become a part of that list and get regular updates on what is happening within the watershed. Thank you very much for your time.

Jim Lydon and Elias Eder: We began working with our realtor over a year ago and during the search we saw a lot of properties. We became very familiar with the Town of Windham and decided that this is where we wanted our home to be. Since that time we've seen countless properties, we put offers on three different ones, and we were outbid on all of them; it is a tough market right now. Six months ago we decided that building was our best option, and shortly after we met with the builder Jarrod Robie and began the search for a suitable lot. We found a lot on Frenchman's Lane in Windham and fell in love with it, with the town, the lake and the area. It was the only one that worked with our budget, literally the only one that worked for us.

August 4th they executed a building contract for that lot on 9 Frenchman's Lane, long before the moratorium on construction in the Highland Lake Watershed was enacted. At this time, they have made a significant investment, both financially and in time to ensure this is where we can build our home. This isn't a temporary or starter house for us, this is where we want to put down roots and eventually start our family. We have given notice to our current landlord who expects us to vacate our apartment on January 15, which is our expected completion date, and after that date we will be homeless if we are not allowed to build here. The last thing we want to do is harm the lake. Our lot on Frenchman's Lane is over 3,000 feet from the nearest point on Highland Lake. In addition, the HOA that governs our lot dictates that we clear no more than 12,000 sq. ft., which is about 29% of our .93 acre lot, and that we must maintain a minimum 10 ft. barrier of untouched vegetation around the perimeter of the lot. The last thing we want to do is harm the lake, and we want to take an active roll in part of the solution, but we can't do that if we can't become a part of the community. So, we are asking to please, very seriously, consider the impacts that this will have on us and many other people who are in our situation as well. Thank you.

Paul Caron - Vista Drive: Tom mentioned about the launching area that was brought up from the state, DEP and Fish and Game. I was at that meeting back a few years ago and Tom was, and it was quite an interesting meeting. The state put the alewives in the lake without us even knowing it, and that might have created a problem because it did in China Lake, and that is a long time ago. This discussion was it was too small, and they wanted to install a larger launching area in Highland Lake, which would have taken quite a bit of work, quite a bit of money, would have had to purchase property and would have been a large area for boats to come in of larger quantities. Specifically, the Fish & Game said it was the closest lake off the Maine Turnpike and someone said it would be a perfect spot to advertise, but what better way to kill a lake, bringing all these bigger boats in, we have enough of a problem. They voted it down and the Fish & Game got a little bit aggressive and said 'if we can't do this we won't stock the lake, and we said fine don't stock the lake, we will stock it', and we did for one year, then Fish & Game said 'you can't stock it the way you did because you went to New Hampshire and bought these fish for \$5,000 and put them in. These fish came into the State of Maine and we won't allow it.' I thought I would let you know that the Fish & Game can sometimes be really nasty. Thank you.

Buddy Minot - Swan Road: I am trying to build a garage on Swan Road. I really didn't think it was going to be that big of an impact, it is just a garage at my house. I am not digging a foundation, and I am not putting in a septic, well or anything major, just a garage. After a month or so of working on plans, and finances, I got everything in order and I went to the town office for the third time to get my building permit, and I was told I can't build now. It just seems like a lot of wasted time and effort. I didn't even know about this being on the agenda or was being thought about by the town. By the sounds of it, the building isn't the issue for the lake, it is fish, so I can't build a garage because of the fish in the lake or something? I just wanted to bring that up. Thank you.

Dennis Brown: I am a resident on the lake and a tax payer to Windham. I've spoken with you folks before, and I think that at all the meetings that we've had, up until now, there was still some speculations as to what was causing some of the problems that we have, and as Rosie pointed out, we've got this forum coming up in the beginning of December to really try to pin this down, but there was a letter to Donna that I thought was really important, it wasn't part of the record tonight and I thought it was worth reading it into the record because the ending of this, I think, is the most significant information that we have received to date. This is to Donna from Jeff Dennis from the DEP - "I am sorry

that it took this long to produce this document (that is the one that is attached to the agenda tonight) I hope you find it useful. I will be sharing it with a number of other people, including the lake association members, some other town officials and some interested lake scientists. I learned a lot more about Highland Lake in this process, and I have you to thank for prodding me to look more deeply. I think the recent Picoplankton bloom is a complex phenomena that needs a lot more study, but after looking at the data more closely, especially, all the large of amounts of phosphorus data that Keith had collected but had not shared with us, it is very clear that the lake has changed a lot over the years, and that it is still changing and that phosphorous is the driving force. Efforts to continue to reduce phosphorous inputs from existing sources and to strictly limit them from new sources are needed."

Much of the effort that we're doing working with the towns of Falmouth and Windham is to look at ourselves, and try to figure out how we can reduce the phosphorus that is coming in. I think that it is really important for you and those who are being impacted by this. We are working straight out, as fast as we can, to try and pull this together, and figure out what is going on so we can come back to you and everyone will be able to move on with their lives. There is actually a Town Council meeting tomorrow with the Town of Falmouth, where they are going to be learning a whole lot more about this as well.

The other thing I learned with talking with the DEP is that because of their recognition, of where this is now, they are in the process of significantly lowering the phosphorus budget standards that will be used to determine how much phosphorus can be allowed to go into the lake with new development. I think that is a significant recognition, on the part of the DEP, of the seriousness of the problem that we have. As Rosie shared too, I want to thank you folks for being so supportive of trying to get to the bottom of this and giving us the opportunity to work with you all, and to solve this problem for everyone sake. Thank you.

Rich Murk - I am a resident of Otis Field but I own a subdivision in Windham in the Highland Lake Watershed. Let me first say that I have no regrets about your attention that is being paid to the issue. The lakes are ultimately important, and we need to get to the bottom of the issue. I am here tonight to speak to you because I had two house lots under contract, one was to close September 21, the other was to close by the end of November and I've lost both sales because of the moratorium. I understand from your 'whereas' the severity of the problem and the need to focus on it, but I question whether it needs to be a moratorium. I don't think people would work any less fast to get to the issue, and I am not sure, since we are not really sure what is the cause of the additional phosphorus, or what should be the budgeted numbers that should be used, and a lot of other questions as to whether you need a formal moratorium.

My sense is there is a lot of energy to get this thing resolved, and it will get resolved in perhaps in less than 180 days. But there are economic impacts to people like myself. I did the subdivision in 2010, because it went through the normal hydrology analysis, Dave Nadeau was on the Planning Board at the time, and a motion was made by the Planning Board because it was in the Highland Lake Watershed, that this six lot subdivision with a six hundred foot road should go to DEP for review because it was in the watershed. When it came back from DEP, it came back with a restriction that the lots could have no more than clearing for the house, septic system, the lawn and the driveway. The amount of clearing could not exceed 12,000 sq. ft., and every lot of the six lots is completely buffered all the way around it. Within each lot the clearing areas are completely buffered and they are pinned. One of the first setups in Windham, where we actually had to put pins in where the buffers were going to exist so that no one would go into those areas. Both sides of the road are lined in riprap and stone, with stone dams so the water can't

get off the property.

In addition, I paid an \$8,300 impact fee, because I was in Highland Lake, to the Cumberland County Soil & Water Conservation District so they could use that to do some water work some where in the county. I was a little frustrated because I thought the money should go towards Highland Lake, but that is what DEP wanted, and that is the deal they had with Soil & Water, and I wrote a check for \$8,300 on six lots to do that. I've build four lots in that subdivision since 2010. I decided to retire last year, and put these two lots on the market for someone else, and this summer I got two contracts and have now lost them. I question whether you need a moratorium, I think the points been made, the activity has been created; I also question whether the problem is with subdivisions like mine, that have gone through all of the analysis. I am worried that your sources of phosphorous are coming from areas that are not getting the kind of review that a subdivision gets, and I hope that you could either modify your moratorium or exempt certain types of transactions, whether it is for a garage or whether it is for a subdivision lot that is going through a lot of analysis.

This isn't just about Highland Lake, this is about all the lakes. We all live in a watershed, it doesn't matter where we are. I have served on the Board of Directors for the Thompson Lake Environmental Association so I am aware of very much that goes on around a lake. I really feel like I have paid my dues and I feel like I am getting kicked in the head, and would appreciate any consideration you could give me or give other people, like myself, that have gone through the effort to help keep the lake safe. Thank you.

Lisa Hennessey - Haven Road: I live at the beginning of Haven Road, and I don't think it is not close, at all, to the water, and we were about to start a project of tearing and down an empty house that is about ready to fall down, and we came to get our building permit and we were told we can't do it. We got preapproval, like some of the other people for rebuilding. We are not touching the septic, there is one that is already existing. I don't see how we are going to affect anything that has to do with the lake, so I kind of hope you will look at individual cases? Other than that, we have to sit and wait for the six months. I have a building that is sitting there empty and is a complete eye sore. I still have to pay taxes on it, and now we can't go any further. At the very least, look at it by individual cases. I am all for the lake, I have lived there since I was six years old, and love the area, but I don't see how I am going to affect the watershed. I am not near the lake, I am not doing anything that is going to harm it, as far as I am concerned. Thank you.

Paul Caron - Vista Dr: I have a advantage and know certain things about the lake, as I have lived there fifty years. When I first got here there was quite a project; the lake was being shut down. It was polluted so bad we had swimmer's ear, kids getting sick, we had algae, everything you could think of. The state came down and did this test that tested all the septic system that were going into the lake. They were nothing but barrels that filled up with cesspool stuff. They put a hold on them, told them to change them and get it all fixed up.

My point to this is we've always had a high phosphorous count and some where in a time of three years it hasn't gone up that much, it hasn't gone down that much. I am questioning that we are missing something, and it is not the phosphorous that is the big problem. I've seen this somewhere in the past, and it might have something to do with the alewives, so maybe we ought to step back a little bit and look both ways, because I still understand the phosphorous factor which could go to all the way back to a mile away from the lake, but the septic systems have been improved so much; like Mr. Maxfield said, the new systems coming out is supposed to be the cat's eye and that would be a

solution to eliminate all that stuff. Thank you.

Tom Peterson - Johnson Rd.: Something I have to say is Rosie is talking about a big meeting that is happening on December 1. In my opinion everyone who attends that meeting, especially the scientists, should look at the documents of the study that was done on Lake Erie. You look at existing research that supports what you want to do; you don't reinvent the wheel on December 1. I think most people here wants to have this situation resolved sooner rather than later, including the Town Council. I am just trying to make things happen sooner by doing that.

The other thing that is a bit deceiving is that the 180 days, if we don't look at making some changes and making some exceptions, that 180 days is probably going to turn into 365 days. What the Highland Lake Association has told me is that they are not going to do any major studies there until next April or May, in terms of the water and drainage. That is beyond the 180 days right there, so I don't know how their information is going to help determine where it is coming from? I think it should be done, I think we should figure out where it is coming, but I think we have got to look at alternatives to protect the lake, take care of the lake and also do this water study. The DEP told me that if we try to take care of all the externals, do all the research, where it is coming from, they will know if we succeed in three to five years. I don't think anybody in this room who has property, wants to wait three to five years. You have to look at alternative ways of doing it and quicker ways of trying to find out what is wrong. Thank you.
Closed at 7:53

[CD 17-281](#)

To receive public comment on a proposed Property Tax Assistance Program Ordinance.

Attachments: [CD 17-281 Cover Sheet](#)

[Chapter xxx - Property Tax Assistance Proposed 20170928](#)

[36 MRSA 6232](#)

Tony Plante: This Property Tax Assistance Program would set up a system where property owners, homeowners and renters, or people who have a homestead in Windham who are at least 65 years of age and have lived in the town, at least, ten years prior to application could be eligible to receive up to 50% of their property taxes, which would be capped at \$3,225, that is above 4% of their income or as long as their income is not more than 50% of the median household income. The upshot of it being that for certain elderly, low income home owners and renters, this could provide some assistance for property taxes up to \$500 a year year. By statute, such a program has to include both homeowners and renters so in the Ordinance, not only do we look at the property taxes that a property owner would pay, but we would count 15% of what a renter is able to document that they actually paid rent during the applicable program year.

X. CONSENT AGENDA.

[17-183](#)

To approve an application submitted by JMA Enterprises Inc. d/b/a Pat's Pizza-Windham located at 844 Roosevelt Trail for a renewal Special Amusement permit.

Attachments: [17-183 Cover Sheet](#)

[Pat's Pizza - Renew Special Am.](#)

[17-188](#) To approve the Town Clerk's roster of warden and deputy warden for the November 7, 2017 election; for districts 24 and 25, warden: Marcia Blanchard, and deputy warden: Paulette Shepard.

Attachments: [17-188 Cover Sheet](#)

[17-189](#) To set poll hours and polling location for the November 7, 2017 State Referendum, Municipal, and Special Town Meeting Referendum Election as 7:00 a.m. to 8:00 p.m. at the Windham High School's Auxiliary Gym.

Attachments: [17-189 Cover Sheet](#)

[17-190](#) To set the date and time for extended hours of the Registrar of Voters as 4:00 to 7:00 p.m. on November 1, 2017.

Attachments: [17-190 Cover Sheet](#)

Councilor Nadeau: 17-188 needs to have the date changed from the June date to this November's date.

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

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

Absent: 1- Councilor Jones

XI. UNFINISHED BUSINESS & GENERAL ORDERS.

[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](#)

Elaine Pollock - Gentle Breeze: She said she was bringing potential solutions for private roads that actually upgrade existing roads. (See attachments) Elaine went on to explain an example of a property that she got off of the town's website on Bruschi Road, explaining the date of sale, price, and what the person would be responsible for in terms of upgrading, and how it progressed to other owners.

She said she really tried to come up with an example that would show them that what has been proposed does not really get at the heart of the issue. You are only addressing when this private road is extended in some way. A lot of owners on private roads are going to be sitting around for 5, 10, 15, 20 years waiting for someone to extended their private road in the way that meets the ordinance. She asked the Council to take additional time. She doesn't think what they have before them is the answer; it doesn't get to the heart of the issue.

Tom Peterson - Johnson Road: Mr. Peterson said communication is a big problem in

this town. He said the last two issues he came to speak for, he had just found out about them the day they were being discussed. This is probably affecting 25% of the town, and he understood that a map already exists that shows where these larger parcels are that will be subject to back lots; why couldn't we have been given a letter explaining what was being discussed, as it directly affected Mr. Peterson and he felt it was done behind his back. How do you find out about these meetings? He said he hopes the lawyer was there. If a town passes an ordinance that limits or changes the value of someone's property, the town is liable for the loss value.

Steve Curit - Owns land on Adam Roberts Road: He has owned land there for ten years, and he just found out about this the other day. He said he has two lots down there and it is dividable. He is getting ready to sell, he was going to build and now he found out about this. Now if he divides it, he will have to upgrade the road all the way out to the Chute Road, and the road is long. He said this makes his land unvaluable; he could not afford to divide his lot to give to his daughter and build his own house down there. The road would cost him around \$90,000 to upgrade the road. He pays over a thousand dollars a year in taxes for land that now he won't be able to do anything with. If this is going to happen, he is going to look into a lawyer to find out if he can get his land devalued because it isn't going to be worth anything, and he will be going after somebody to pay for for what he has been paying out. Mr. Curit said he is not out to make money, or be a developer, he just has property that is dividable but now it is not worth anything.

Mike Manning - Bruschi Road: He said this ordinance has been kicked around quite a bit, one gentleman that was at the co-meeting with the Planning Board said he has been watching this can get kicked down the road for 50 years. The reason you were having the meeting tonight was to look at what needs to be changed in the ordinance so it doesn't impact that gentleman back there. It sounds like he has a great piece of property; I do not want to screw my neighbor over; I don't think the Town Council wants to either. I think the review of the ordinance, as written, with proper changes being made is what we are looking for; it is called compromise. If we want to solve these problems, we have to stop yelling and bickering at each other and fix them.

He said it may not solve their problems with getting their road fixed, they are not asking the Town of Windham, nor asking the builder to "fix the road" but we are asking the person who is the builder to not put in five more homes or extend the road to put in another fifty homes without having some kind of block in place. They are going to spend another \$3,500, to hopefully, pave another section of their road and the last thing they want is excavator, logging machines, or cement trucks driving over our brand new pavement. They are not asking for a handout, they are asking for their fair share. Currently the town provides them with trash services and school bus pick-up; their mail is dropped off a mile and a half from their homes.

Tony Vance: He said Mr. Manning brings up some good points; it is a compromise. He thinks the confusion comes when you hear about it out on the street we think something is gong to be enacted tonight and doesn't have any more input. The town needs to take a little more time and implement and get some developers and others because if you think that limiting the fact that a neighbor is going to allow you to come onto their property and cut trees so you can do the road, it will not work. He doesn't think the Planning Board has used all the tools that they could have to work with individual projects. He doesn't think throwing a blanket over the town will work because ever corner of this town is different. Some have town water, some don't, some have smaller roads, some don't, some are paved, some aren't. He thinks it is an individual process and needs to be looked at a little stronger. Mr. Vance handed out a letter from Ken Cole dated April 14, 2005 in regard to subdivisions on Private Roads. (See attached)

Councilor Chapman: She said she would pretty much agree with everybody out there; this needs more work. They haven't thought of everything. If it passes, it passes, but she didn't like the way it is written. Some of Forest Lake near Bruschi, that has the logging going on could be that most people who are in tree growth have to have a forest management plan and they have to take trees out so many years.

She apologized to anybody living in a watershed right now, because they have been told numerous times that there is nothing we can do, we can't spend tax payers money on private roads. She did some diggings on Google. It says "municipal assistance for the purpose of protecting or restoring a great pond - repairs for private road - for the purpose of protecting or restoring a great pond as defined in Title 38, section 480-B §5 - a municipality may appropriate funds to repair a private road, way or bridge to prevent storm water runoff pollution from reaching a great pond, if:" (See attachment) She said this problem with the lakes and watershed did not happen over night. She doesn't believe, we as a town, have spent a lot of time addressing the real issue with those watersheds to have this issue. So the town does have a tool and just did not know about it. She will not support it as written.

Councilor Muir: He said he never really was in favor of the upgrading, especially the paving that is being talked about. An individual who has some land and wants to divide it but he does not have the resources to do that. If you are talking about someone who wants to put in twelve or fifteen lots, you are talking about a developer, and while they have the resources to do it, it is still going to cost them money. If you have an existing dirt road going into a place, we could have the town engineer look at it and say that it will support a subdivision, or it does need to be upgraded. There needs to have something that says, if you go in with a bunch of trucks and you tear that road up, you will leave that road in the condition that you found it. Dirt roads are less expensive to maintain than paved roads but the problem with the little guys is, they don't have the backing or lines of credit; they just want to break off a lot or two. He stated he was not ready to vote on the order.

Councilor Chapman: Stated that the DEP does not want to see a lot of pavement in watershed areas because it makes the runoff run faster into the water bodies. They would rather see dirt roads around the watersheds.

Tony Plante: Tony wanted to address a couple points of concern he heard this evening. The activity that triggers a requirement to improve an existing private way back to the nearest public way is not the construction of a home. It is the extension of the existing private road or the addition of a new private road. So any private way that exists today, a private way is a private road that existed prior to October 2009, which is when the town adopted its first set of private road standards. A private road, by our definition, is a private road that was built to town standards after 2009. As written, these amendments would require improvements to existing private ways to the nearest public way only if a private road is added off that private way or if an existing private road is extended. If there is property along the existing private way and or private roads that will support the creation of additional lots, that does not trigger the requirement to improve the private way. It is the creation of new private roads and the extension of existing private roads. To the extent, that address some of the concerns. If you have got property on an existing private way or private road, you've got enough frontage to create one or more lots, you can create more lots, you can build on those, just as you can today.

The amendments, as proposed, would put an upper limit on the amount of additional new development that can occur on a private road or private way that can't be accessed with

the existing roads or private ways, but would need extensions or new private roads. That is when that gets triggered.

Councilor Nadeau: There are two issues that had to be addressed in putting the amendments together. One is development that occurs in subdivision where, currently, the Planning Board doesn't have a definition in the ordinance that says what is adequate for providing access to a proposed subdivision. That is the subject of Mr. Cole's 2005 letter, and Tony has made the argument with a subdivision application that was before the Planning Board last year that the Planning Board already had, available to it, a definition that said what the town found adequate. What Tony was told is "that's not good enough, it has to be written into the ordinance." This would write that definition into the ordinance for subdivisions. It doesn't do enough to deal with subdivisions, you also have to deal with activity outside of subdivision, which is why this is triggered by the addition of or the extension of private roads. It is not the creation of new lots outside of subdivision, it is not the construction of new homes; it is the extension or addition of private roads.

Councilor Maxfield : He said he will vote for this tonight. There is a lot of misinformation running around the room and the word tar or pavement seems to be a big part of it. He said there are only some things that trigger pavement. If you are in a farm zone and you want to put ten plus house there and build more roads, in some instances, that should trigger a better road, and in some instances it might not be necessary. We have ordinances that they pass and then fix all the time. He said the majority of people who live on private roads are not looking to develop land. He said he keeps hearing from people about their land rights, but he doesn't hear about the land rights of the people who already live there, and he said these folks have been neglected on so many levels. He encourages everybody to watch the meetings on TV or Facebook, or come to the meeting to be better informed.

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

In Favor: 4 - Vice Chair Nadeau, Council Chair Welch, Councilor Nangle and Councilor Maxfield

Opposed: 2 - Councilor Muir and Councilor Chapman

Absent: 1 - Councilor Jones

[17-168](#)

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

Attachments: [17-168 Cover Sheet](#)

[Moratorium on Highland Lake development Enacted 2070912](#)

[Highland Lake Summary, Maine DEP Report September 2017](#)

[Highland Lake Watershed Moratorium List 20171006](#)

Councilor Nangle: He has listened to the people who have come up and talked about how this moratorium is affecting them, i.e. the woman on Haven Road who wants to demolish a house and build a new one. He would hope they could come to some middle ground between now and when they get this figured out, to allow individuals to build their homes or garages. The lake is important, but they need to figure out quickly if there is any modification the Council can make within the ordinance or moratorium that can mitigate some of these situations. He would like to see this sooner rather than later.

Councilor Nadeau: He said they put this on a two-tier path, looking to see what they

could do with ordinances, and what they can do on the other path with science. He asked how close were they at putting ordinances together to stop phosphorous?

Tony Plante: Tony said the two-track approach that they are working on with the Town of Falmouth, the Highland Lake Association, Cumberland County Soil & Water, and DEP is getting the Highland Lake Leadership Team up and running. This was recommended in the 2003 Phosphorous Control Action Plan. Getting them up and running and beginning to do the work on the other recommendations that were in that phosphorous control action plan reviewing ordinance, they are getting the lay of the land, which is track one. Track two is the scientific track that Rosie mentioned earlier; which will likely take a considerable length of time.

Two weeks ago he met with the Planning Director and Code Enforcement Director and asked them to work with their staff to come up with some ideas on how we might do exactly what you and Councilor Nangle suggest. He said he cannot give a time frame now. Tony is looking for a track zero. If these things are going to take time, what can they do that will protect the lake? What is being said is protect the lake, protect the watershed from phosphorous from sediment runoff as a result of soil disturbance, which is why the moratorium deals with clearing, earth moving and excavation. They have a surface water protection ordinance in place, they have a post construction storm water ordinance which deals with certain projects. He said they have seven possible ideas for things that they could look at that could help with some of the individual situations they have heard about tonight. It would not bring things back to before the moratorium was enacted but it would allow development to go forward with some additional safeguards. He said if this moves to the top of the list, there are some other things that will have to move down the list in order for that to happen.

Councilor Chapman: She would like to know how many of those were in the process before any talk of a moratorium came into play? How many are into the construction loan phase? She would support trying to work something out with them, with the understanding that they may have to modify some plans because the letter from the biologist from the DEP said they need to get a grip on the existing phosphorous before adding anymore.

Andrew McDonald: He said Garrett McDonald is his brother, and their property at 172 Falmouth Road has already been cleared, stumped, the lots has been disturbed. He would argue that it would be better for them to put a house and lawn in then to let it sit as it is. He said it will be a big financial burden if they have to sit on this forever how long it might be.

Councilor Maxfield: This whole problem is paramount, and there are some folks who are caught up in it. It will be tough to take every circumstance because a moratorium is not a moratorium if we keep poking holes in it, and it defeats the purpose of what needs to be done. He would like to see, in the short term, to see what options they have for people who are locked into a financial agreement. If you are in the application process for financing, he didn't see that opportunity for them but those who are locked in, he would like to see what they can do for those people immediately.

He said it would be very hard for him, in six months, to vote for this moratorium again. He does not think that they will be able to wait for the science to give them all the answers, if they do, they will be dealing with the moratorium for a very long time. The best option is to use this remaining time to have the Highland Lake Group and town staff to come up with a list of best practices that will allow new development to come in and actually be a model for the people who are already there.

Councilor Muir: He said he has no problem with looking into those areas; the ones who already have some money tied up and stand to lose something. He hopes they can do this quickly with the rest of the moratorium, if they have to look at septic systems and state of the art measures that can be taken.

Councilor Nadeau: Phosphorous is the issue, and there are many ways of stopping phosphorous from leaving your property. Everybody who is already there should be looking at some of those ways. As a town, we have to look at our ordinance and make sure our ordinance doesn't allow any export. He personally does not think it will take that long to develop that and we then can move forward.

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

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

Absent: 1 - Councilor Jones

17-173

To adopt a Property Tax Assistance Program ordinance as Chapter 112 of the Code of the Town of Windham.

Attachments: [17-173 Cover Sheet](#)

[Chapter xxx - Property Tax Assistance Proposed 20170928](#)

[36 MRSA 6232](#)

Councilor Nangle: He said that he had asked for examples, and Tony said he was sorry that he did not have those.

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

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

Absent: 1 - Councilor Jones

17-186

To adopt a resolution to authorize the Town Treasurer to negotiate the terms of an Equipment Lease Purchase Agreement and related documents providing financing of up to \$191,535.00 including the interest rate, maturity, and other terms and conditions with whatever financial institution the Treasurer deems appropriate and to award the Equipment Lease Purchase Agreement to such financial institution as he deems to be in the best interests of the Town in order to provide the Town with one (1) 2018 plow truck with sanding gear, and eight (8) thermal imaging cameras at an aggregate cost of up to \$191,535.00 plus interest at a rate to be determined by the Town Treasurer.

Attachments: [17-186 Cover Sheet](#)

[Lease Resolution](#)

[Capital equipment replacement plan](#)

Tony Plante: Explained that these purchases have already been authorized by the

Council. This allows Tony and the Finance Director to work together to put the financing in place.

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

In Favor: 4 - Vice Chair Nadeau, Councilor Nangle, Councilor Muir and Councilor Maxfield

Absent: 3 - Council Chair Welch, Councilor Chapman and Councilor Jones

17-187

To appoint a member from the Town Council to the Long Range Planning Committee.

Attachments: [17-187 Cover Sheet](#)

[TC_packet_LRPC_membership_10-04-17](#)

Councilor Maxfield moved to nominate David Nadeau, seconded by Councilor Nangle.

In Favor: 5 - Vice Chair Nadeau, Councilor Nangle, Councilor Muir, Councilor Maxfield and Councilor Chapman

Absent: 2 - Council Chair Welch and Councilor Jones

XII. Discussion Items.

XIII. Agendas & Scheduling.

CD 17-312

Agenda Items Reports.

Attachments: [Agenda Items Report 20171006](#)

[Projects & Issues List 20171006](#)

[Projects & Issues Sheets 20171006](#)

There was discussion of agendas and scheduling.

XIV. ADJOURN.

A motion was made by Councilor Maxfield, seconded by Councilor Muir, that they be adjourned. The motion carried by the following vote at 9:10 p.m.

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

Absent: 1 - Councilor Jones

Respectfully submitted,

Linda S. Morrell
Town Clerk, CCM