



Town of Windham

Town Offices
8 School Road
Windham, Maine

Meeting Minutes - Final

Town Council

Tuesday, November 14, 2017

7:00 PM

Council Chambers

Swearing In of Councilors-Elect

Deputy Town Clerk Rita Bernier administered the oath of office to Rebecca Cummings and Clayton Haskell.

I. Roll Call of Members.

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

II. Pledge of Allegiance.

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

Councilor Muir made a motion to take articles 17-209 to 17-217 out of order. There was no public comment. There was no Councilor comment.

Vote: All in favor

III. Minutes to be Approved:

[CD 17-334](#) To approve the minutes of the October 10, 2017 Council meeting.

Attachments: [Minutes-Town Council-10-10-2017](#)

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

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

Abstain: 2 - Councilor Haskell and Councilor Cummings

[CD 17-335](#) To approve the minutes of the October 24, 2017 Council meeting.

Attachments: [Minutes-Town Council-10-24-2017](#)

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

Councilors Cummings and Haskell abstained.

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

Abstain: 2 - Councilor Haskell and Councilor Cummings

IV. Public Participation.

Gary Plummer - Windham resident: Offered advice to the new Councilors to read the Charter and be respectful. He thanked those who participated in the maintenance and care of the flower gardens at the rotary and Babb's Bridge and offered congratulations to the Windham High School football team for their recent Regional Finals win.

Walter Lunt - Windham Historical Society: He was concerned that work on the River Road would require the movement of the first stone marker placed in town in 1735 at the northwest corner of lot #1 in then, New Marblehead. He requested the Town of Windham to contact MDOT on behalf of its citizens regarding keeping the stone marker in its exact spot.

V. Councilors' Comments.

Councilor Maxfield introduced Anthony Webster, Junior Vice-Commander of the Military Order of the Purple Heart. Mr. Webster explained the program which designated parking signs for Purple Heart Veterans.

Councilor Nangle voiced his support for the program and suggested having at least one such sign at every town facility.

Councilor Chapman expressed the need to review the food truck ordinance soon.

VI. Council Correspondence.

There was no Councilor Correspondence.

[CD 17-336](#) Windham Public Library Newsletter

Attachments: [Check It Out November 2017](#)

[CD 17-337](#) Presumpscot Regional Land Trust Newsletter

Attachments: [Newsletter of the PRLT Fall/Winter 2017](#)

VII. Town Manager's Report.

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[CD 17-345](#) Town Manager's Report.

Attachments: [Town Manager's Report 20171109](#)

[Projects & Issues List 20171109](#)

[Projects & Issues Sheets 20171109](#)

Tony Plante: The process of development for the shared maintenance facility has begun. Public meetings would be held during the process.

Bids had been submitted for the Library renovation. The Library may have to be closed briefly at some time during the renovation.

Major projects that were being worked on were:

*Highland Lake Watershed
21st Century Downtown Plan
Wastewater
Strategic Plan
Implementation of the Comprehensive Plan*

VIII. Committee Reports.

A. Council Subcommittees.

B. Other Committees.

Parks & Recreation Advisory Committee:

Councilor Chapman announced the Tree Lighting would be held at the Public Safety Building on November 26th. The Community Center process continued and would use funding from impact fees. Town parks needed additional parking area.

IX. PUBLIC HEARINGS.

[CD 17-338](#) To receive public comment on proposed amendments to the Surface Water Protection Ordinance strengthening water quality protection in the Highland Lake watershed.

Attachments: [TC packet surface water protection 10-27-2017](#)
[Mark-up from comments by John MacKinnon](#)

Dennis Brown, Pond Villa – He lived on Highland Lake. The Council would be reviewing the charge for the Steering Committee. The version that they had was not the correct version. The version the Falmouth Town Council had was the correct one. The purpose was to look out for the water quality of Highland Lake for the benefit of the residents, the towns, and the future. He had just sent an email with the right one.

One of the things they were doing with the Steering Committee was to try to work together with the HLA, Windham, and Falmouth so they ended up with a uniform, consistent, well thought-out ordinance on both sides. They were not against what was being done here but there may be a better idea. Rather than vote on it and pass it the way it was he thought it would make more sense to hold off a few weeks until they could get together with the appropriate folks from Falmouth. They understood the urgency, he had shared with them that Windham was way ahead of them on this and they needed to catch up. He had the sense that they were very serious. They wanted to jump into it as well.

The Highland Lake Association wanted to participate, and they also wanted to add some additional items to be considered by the Council. The problems on Highland Lake weren't the new proposed developments because they weren't there yet. In trying to address the concerns on the lake they had a healthy discussion that they would also look to include the requirement for points as suggested in the ordinance any time somebody came in to replace a deck, or add a garage, or change their driveway, or anything like that. It would also be required on the sale of property. Doing it on the sale of property

would get everybody up to speed that much faster. He offered that as a suggestion. They had talked with Code Enforcement Officer, Chris Hanson.

He also noticed in the ordinance that there was nothing in there that had been talked about the phosphorous issues that had been discussed at the last meeting. It looked like it was primarily residential houses not subdivisions. He didn't know if there was a rationale for that. He thought there were a lot more phosphorous issues that had to be addressed. Since the last meeting it was official that the new phosphorous budget for both Falmouth and Windham had been dropped on Highland Lake from .027 to .020. One of the key elements that he thought should go into it, given the seriousness of the condition of the lake now, was that should be adopted by the towns of Windham and Falmouth and be retroactive to anyone who did not have full permits before the moratorium started.

John McKinnon, Haven Road: He had a markup to pass around. He thought the concerted effort between the towns, in terms of the surface water protection ordinance, made a lot of sense for some consistency around the lake in terms of the application of the important ordinance.

He had gone through the ordinance and had some specific comments that he had marked up.

On the second page, Applicability, at the bottom of the page where it said, "c. Activities where in none of the area of soil disturbance has a slope steeper than two percent, but it shall be the applicant's responsibility to furnish a topographic survey demonstrating such gradual slope." He didn't think there should be an exemption for any piece of property that was disturbed per the ordinance. Just because it was less than 2%, you could still have heavy rainfall and because it was heavy rainfall the rainfalls can exceed the ability of the soil to absorb the rainfall and you'd have run-off. So you still have run-off, potentially even from these low slopes. He thought striking that exemption would make more sense, just to be more thorough.

On the next page, under K. Storm Water Runoff, it was just a typo, under a. Buffers. The second sentence, "Within the required setback of the corresponding zone, there shall be a vegetated buffer, rather than three will be a vegetated buffer,

Towards the bottom of that same page, number 5, this was an addition to the original ordinance. "Additional requirements for projects in the Highland Lake watershed." He struck that because he thought that Highland lake was not the only thing they should be concerned with. There was Little Sebago Lake. He knew they had water quality concerns as well. He thought it would make sense to consult associations associated with other watersheds and see if they wanted to be included in the ordinance. It shouldn't be just about Highland lake.

On the next page, reducing the amount of impervious surface in the first place was kind of the goal for any storm water plan for a new development. The less impervious surface you have the less you need to treat. He thought it would make sense, instead of having a point system under a. ii. Points for building. He had added, "driveway, less than 2,000 square feet." He thought it made sense to add a driveway. Almost every house had a driveway. If you had a driveway it was impervious surface. If you had a driveway that was 500 feet long, but you still had a footprint for a building less than 1,500 square feet then you kind of defeated the purpose. He thought having building and driveway combined made sense in terms of the point system. In light of that, he was just throwing points out there, it was probably for discussion later on. Twenty points for a building and driveway

footprint less than 2,000 square feet, that accounted, basically, for a 50 foot driveway.

Number iv. The separation between the seasonal high water table and the bottom of any proposed infiltration structure. Right now there was one foot in there. To be consistent with the DEP BMP manual it should be three feet. He wasn't sure where the one foot came from, whether it was a septic situation or what. Moving on, he had added to that same section. He had added, "pretreatment practices sized to hold one-year's worth of sediment shall be provided to reduce clogging of infiltration systems." He wanted to make sure the pretreatment practices were employed because if you just put in an infiltration system with no kind of capture of sediments in upstream of it it would plug very quickly. So it made perfect sense and he wanted to be sure it was a part of the ordinance as well.

Adding three feet in paragraph v., same as above in terms of separation between seasonal high water table and the bottom of infiltration. And again at the bottom of that same paragraph adding that pretreatment practices paragraph, sizing the pretreatment system for one year's collection. He'd add that in too.

Paragraph vi. on that same page, 25 points for the installation of rain gardens, he added a comma, soil filtration systems, or bioretention area designs. He struck out wetpond. Wetpond was not really suitable for a house lot. That was usually applied for a bigger type of subdivision development. A bioretention area was consistent with a raingarden and soil filtration systems. He had again struck out wetpond and put in bioretention area further down that paragraph. Pretreatment is important. He added that onto paragraph vi. As well.

On the next page, number vii. The same philosophy as far as the application to raingardens. Again, pretreatment practices. Then getting into the vegetated buffers, and he wasn't really sure where the authors were going with it. But he thought it would be good to clarify what they were talking about in paragraph vii. 30 points for a 50 foot wide, no greater than 15% slope. He had added natural wooded buffer strip or a 75 foot wide manmade vegetated buffer. They were giving a higher value to the natural wooded buffer strip than they were to a manmade. That was consistent with practices in the DEP manual. He had carried that down through the other paragraphs concerning the point system for buffers. Lastly, under b. Deductions, it wasn't clear, paragraph ii., 5 points deducted for clearing more than 50% disturbance. That didn't make a lot of sense to him. He was guessing it meant 50% of the lot. He wasn't sure but it needed clarification. He had added one more paragraph, "c. A BMP maintenance plan shall be submitted along with the sketch plan." One thing he didn't think anyone wanted to happen was a build it and forget it type of thing where a homeowner would put in BMPs but they'll forget it. They wouldn't do any maintenance. So he thought at least having a homeowner go through the exercise of putting together a maintenance plan and maybe the town could come up with a template for a maintenance plan that would be appropriate and add that to the sketch plan. He was also thinking that it would be nice to recertify BMPs on individual lots. He knew it was a huge added burden to the town, but it was worthy of consideration anyway. Maybe every five years a recertification a homeowner had to go through in terms of their BMPs. A lot of it was trying to catch up with the subdivision rules were in terms of BMPs. He thought they were closer if they got to this. If they combined their efforts with Falmouth in terms of coming up with a common surface water protection ordinance, including some of his comments, it would be great.

Tom Peterson, a resident of Windham in the Highland Lake watershed. He also had an interest in Highland Lake personally. He was concerned about it being a good lake. A couple of concerns he's had from what was said was that he understood Westbrook

should also be concerned with it and it wasn't. All of a sudden, six months from now, "Oh, we never involved Westbrook, get them involved now." It was good to start with everything at the beginning.

The other thing that concerned him was the DEP had told him, and he'd heard from several other people that the problem may be our alewives migration. That the alewives coming up into the lake, lay their eggs in the spring and then all these little fish, and there are a zillion of them, they live off of the algae that live in the lake. That was their food source. What happened with them was maybe they were disrupting things in the sense that if they eat all the algae, when the picoplankton, it's their turn to bloom, they may not have any completion against the food and so, all of a sudden the phosphorous that's in there, it's theirs. It's not the regular algae fish food. So there is a concern from DEP that it was the fish ladder. The fish ladder is located in Westbrook. Let's not wait. Let's do everything we can initially. Let's get Westbrook involved as soon as possible with the understanding that the fish ladder and the fish may be a problem. He did understand that everyone had heard about China Lake and he understood they had established a herring run and it had been speculated that was what had caused the problem in China Lake. As much as the fish may be good for the fish, they may not be good for overall lake conditions.

One other point he'd like to make was he wanted to be much more involved in what was going on with the lake association. He'd had no communication from the lake association. He'd sent letters to them asking for feedback and hadn't gotten any. Who was in charge of that communication? It needed to be improved, whoever was in charge of it, if it was the Town Council or whatever, when they had a public meeting.

Rosie Hartzler, Beach Road – She was the president of the Highland Lake Association. She's had conversations with Tom at various times and would be very happy to engage him with the Highland Lake Association. She wanted it to be public knowledge that she had reached out to Tom several times and they had actually taken his advice in terms of thinking about the alewives situation. They were very concerned about it also.

Just to let the Council know that the Highland Lake Association was deep into the weeds, so to speak, planning for a science round table on December 1. It would be a closed meeting. It was a meeting of scientists only, to figure out what was going on in the Highland Lake. What were the issues? What were the questions that needed to be raised and addressed in the context of the town, in the context or the association? They were a community together in terms of trying to solve the problem. She thought that was the message. For many years the Highland Lake Association was a little private organization and it did a lot of great work but nobody really knew what was going on. They were connecting with folks. They were enthusiastic by that connection. In regard to the changes in the surface water protection ordinance, she thought the thing that she was concerned about was what were they doing now in terms really looking at what did they know were possible problems at Highland Lake like septic systems that they knew were old and maybe were not functioning the way they should.

What were they doing now about the fact that they had McIntosh Brook as the feeder brook coming into Highland Lake? It was the biggest brook coming in and they knew that the phosphorous readings out of McIntosh Brook were pretty high. They had to figure out why was that? The readings at Little Duck Pond seemed pretty good. It was a long way from Little Duck Pond to Highland Lake but it was the main feeder brook.

As they got to know the people around the lake there were many voices they needed to hear from. People who were concerned about what was going on around the lake. How

were they really taking care of the resource? They really needed to improve their communication and their collaboration. How did they do that? She didn't think there was a magic bullet to that. They just really had to focus on how do they work together to solve the problem. It wasn't going away. If they didn't continue their efforts the lake would go. They didn't want that to happen as a community, as a lake community, as a town. She was cautiously optimistic because they had to be. At the same time they had to be realistic and vigilant and on their guard. That's what she was advising all of us to do.

Dennis Brown – Early on, as they had started getting into the issue they had reached out to the City of Westbrook and spoke with them. Their share of the lake was 8%, just at the outlet, and they had said they were more than happy to let Windham and Falmouth go through the whole process, keep them plugged in as to what was going on, and they were happy with that status.

There was no more public comment. The public hearing was closed.

Town Manager, Tony Plante explained the correct version of the charge for the Highland Lake Leadership Team had been emailed to the Town Councilors.

[CD 17-347](#)

To receive public comment on proposed amendments to the Town's Land Use Ordinance, Chapter 140, Sections 800 and 900, to change the number of required hardcopy application submissions from fifteen (15) to three (3), the number of signature sheets for approved plans, and to specify that an electronic submission is required.

Attachments: [Ch 140 application submission](#)

Although the public hearing had been advertised and was part of the posted and published agenda, it did not appear on I Legislate. The public hearing was postponed until the November 28 meeting.

X. CONSENT AGENDA.

[17-198](#)

To appoint Sparky Hurgin to the Long Range Planning Committee.

Attachments: [CoverSheet 17-198](#)

[17-199](#)

To appoint Allan Phinney to the Long Range Planning Committee.

Attachments: [CoverSheet 17-199](#)

[17-200](#)

To appoint Thomas Matthews to the Summerfest Organizing Committee.

Attachments: [CoverSheet 17-200](#)

[17-201](#)

To appoint Debra Matthews to the Summerfest Organizing Committee.

Attachments: [CoverSheet 17-201](#)

[17-202](#)

To appoint Liza Libby to the Summerfest Organizing Committee.

Attachments: [CoverSheet 17-202](#)

[17-203](#) To appoint Tim Graham to the Summerfest Organizing Committee.

Attachments: [CoverSheet 17-203](#)

[17-204](#) To appoint Robin Mullins to the Summerfest Organizing Committee.

Attachments: [CoverSheet 17-204](#)

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

In Favor: 7- Councilor Chapman, Councilor Cummings, Councilor Haskell, Councilor Maxfield, Councilor Muir, Councilor, Nangle and Councilor Welch.

XI. UNFINISHED BUSINESS & GENERAL ORDERS.

[17-205](#) To approve amendments to the Surface Water Protection Ordinance strengthening water quality protection in the Highland Lake watershed.

Attachments: [Cover Sheet 17-205](#)

[CD 17-322 Cover Sheet](#)

[TC packet surface water protection 10-27-2017](#)

Councilor Haskell stated he would like more time to look it over and have some input from Falmouth.

Councilor Chapman said there was probably more work to do with the ordinances. She wanted more time for additional discussion.

Councilor Maxfield wanted a firm understanding regarding what triggered it. He wanted to be sure everyone in the watershed had the opportunity to be part of the process.

Councilor Nangle requested notification of the changes in the ordinance to every property owner in the watershed which would solicit feedback. His preference was that the ordinance would apply to any watershed that was impaired, not just Highland Lake.

Council Muir made a motion to postpone until December 12th, seconded by Councilor Haskell.

There was no public or Councilor comment.

A motion was made by Council Chair Muir, seconded by Councilor Haskell, that the Order be postponed. The motion carried by the following vote:

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

[17-218](#) To approve proposed amendments to the Town's Land Use Ordinance, Chapter 140, Sections 800 and 900, to change the number of required hardcopy application submissions from fifteen (15) to three (3), the number of signature sheets for approved plans, and to specify that an electronic

submission is required.

Attachments: [Cover Sheet 17-218](#)
[Ch 140 application submission](#)

Councilor Welch made a motion to postpone until the November 28 meeting, seconded by Councilor Muir.

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

17-207

To adopt a charge for and establish the Highland Lake Leadership Team in conjunction with the Town of Falmouth and the Highland Lake Association.

Attachments: [CoverSheet 17-207](#)
[Highland Lake Leadership Team Charge](#)
[2003 Highland Lake Phosphorus Control Action Plan](#)

Councilor Welch made a motion to amend the Order to use the correct version of the charge, seconded by Councilor Muir.

Public Comment: Who would decide the members of the Team?

Councilor Comment: Councilor Chapman explained that the Appointment's Committee would do that.

Councilor Nangle wanted representatives on the committee that were residents of the watershed, but not necessarily members of the Highland Lake Association.

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

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

17-209

To accept nominations for and elect a Chairman of the Town Council.

Attachments: [CoverSheet 17-209](#)
[Council Rules](#)

**Councilor Muir nominated Councilor Chapman as Chairman.
There was no public or Councilor comment.**

Vote: All in favor.

17-210

To accept nominations for and elect a Vice-Chairman of the Town Council.

Attachments: [CoverSheet 17-210](#)
[Council Rules](#)

**Councilor Welch nominated Councilor Muir.
There was no public or Council comment.**

Vote: All in favor.

[17-211](#) To accept nominations for and elect a Parliamentarian of the Town Council.

Attachments: [CoverSheet 17-211](#)

[Council Rules](#)

Councilor Maxfield nominated Councilor Welch.
There was no public or Council comment.

Vote: All in favor.

[17-212](#) To accept nominations for and appoint a Finance Committee.

Attachments: [Council Rules](#)

[CoverSheet 17-212](#)

Councilor Muir made a motion for the Council as a whole for the Finance Committee, seconded by Councilor Welch.
There was no public or Council comment.

Vote: All in favor.

[17-213](#) To accept nominations for and appoint an Appointments Committee.

Attachments: [CoverSheet 17-213](#)

[Council Rules](#)

Councilor Welch nominated Councilors Maxfield, Haskell and Cummings.
Councilor Maxfield nominated Councilor Nangle. Councilor Haskell declined the seat.

There was no public or Council comment.

Vote for Councilors Maxfield, Cummings and Nangle: All in favor.

[17-214](#) To accept nominations for and appoint two representatives to the Windham Economic Development Corporation board of directors.

Attachments: [CoverSheet 17-214](#)

[Council Rules](#)

Councilor Nangle nominated Councilor Maxfield.
Councilor Chapman nominated Councilor Haskell.
There was no public or Council comment.

Vote: All in favor.

[17-215](#) To appoint a Council representative to the Public Easement Advisory Committee.

Attachments: [CoverSheet 17-215](#)

[Public Easement Advisory Committee Charge](#)

Councilor Nangle nominated Councilor Haskell.

There was no public or Councilor comment.

Vote: All in favor.

[17-216](#)

To appoint a Council representative to the Parks and Recreation Advisory Committee.

Attachments: [CoverSheet 17-216](#)

[Parks and Recreation Advisory Committee Charge](#)

Councilor Nangle nominated Councilor Cummings.
There was no public or Councilor comment.

Vote: All in favor.

[17-217](#)

To appoint a Council representative to the Wastewater Management Planning Advisory Committee.

Attachments: [CoverSheet 17-217](#)

[Wastewater Management Planning Advisory Committee Charge](#)

Councilor Nangle nominated Councilor Maxfield.
There was no public or Councilor comment.

Vote: All in favor.

XII. Discussion Items.

XIII. Agendas & Scheduling.

[CD 17-344](#)

Agenda Items Reports.

Attachments: [Cover Sheet CD 17-344](#)

[Agenda Items Report 20171109](#)

[Projects & Issues List 20171109](#)

[Projects & Issues Sheets 20171109](#)

There was discussion of agendas and scheduling.

XIV. ADJOURN.

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

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

Respectfully submitted,

Lisa Fisher
Administrative Assistant

