



Town of Windham

Town Offices
8 School Road
Windham, Maine

Meeting Minutes - Final

Town Council

Tuesday, October 9, 2018

7:00 PM

Council Chambers

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 led the assembly in the Pledge of Allegiance.

III. Minutes to be Approved:

[CD 18-305](#) To approve the minutes of the April 17, 2018 Council special meeting.

Attachments: [Minutes-Special Town Council-4-17-2018](#)

[CD 18-298](#) To approve the minutes of the June 12, 2018 Council special meeting.

Attachments: [Minutes-Special Town Council-6-12-2018](#)

[CD 18-299](#) To approve the minutes of the June 19, 2018 Council meeting.

Attachments: [Minutes-Town Council-6-19-2018](#)

[CD 18-300](#) To approve the minutes of the June 21, 2018 Council special meeting.

Attachments: [Minutes-Special Town Council-6-21-2018](#)

[CD 18-301](#) To approve the minutes of the July 10, 2018 Council special meeting.

Attachments: [Minutes-Special Town Council-7-10-2018](#)

[CD 18-302](#) To approve the minutes of the August 27, 2018 Council special meeting.

Attachments: [Minutes-Special Town Council-8-27-2018](#)

[CD 18-303](#) To approve the minutes of the September 4, 2018 Council meeting.

Attachments: [Minutes-Town Council-9-4-2018](#)

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

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

Abstain: 1 - Councilor Haskell

IV. Public Participation.

Liz Wisecup - Requested that they do a workshop regarding the expansion of the Smith Cemetery. She was on the Council about 10 years ago and at that time the town purchased property for about \$400,000 to expand the Smith Cemetery, knowing they would not need all of that land, but a good chunk to go towards the cemetery. In a newspaper article she saw they were looking to build a community center and that piece of property was a possible location and she called the Town Manager and he indicated they would expand the cemetery this fall. That has not happened, and she also found out that it was going to be expanded by only two acres, she said that is not what she voted on. She thinks the Council needs to be the driver on this and make the decisions.

Councilor Welch said he remembers the discussion was about two acres, he asked how much of an expansion she thinks is needed? She didn't recall that there was a set number of acres was made. Her personal opinion would be to have five or six acres.

V. Councilors' Comments.

Councilor Nangle read an email from a constituent.

Dear Councilors,

I cannot tell you how disappointed I am to read in our local newspapers that some members of the Council wish to have the Town Manager resign or be fired. With all due respect, the towns people should not read about personnel disputes in the public domain. All parties, including yourselves, should be part of a dignified process where honesty, fairness and good faith and sincerity carry the day, not one of grandstanding.

As a prior elected official in Windham I am all too aware of the delicacies in personnel matters.

Regards, Jeffrey M. Pierce, 28 Webb Road, Windham, ME

Councilor Haskell said in response to what Liz was saying, the Funeral Director says we ought to have a whole lot more than five acres in that field for the cemetery. He thinks, at least, two thousand plots. He feels it should all be left for the cemetery and not use it for anything else. There are not many lots left, and that is about the only land we have left that is next to a cemetery.

Councilor Cummings received an email regarding the Mineral Extraction Committee and concerns that a deadline is coming up.

Also, would like to see if they can get one ordinance at a time placed on our agenda to review them?

Councilor Chapman said the Mineral Extraction is on the agenda for next week.

VI. Council Correspondence.

None.

[CD 18-324](#) GPCOG Provided Opioid Misuse Toolkit for Cities and Towns

Attachments: [Action Steps to Address Opioid Misuse: A Toolkit for Cities and Towns](#)

[CD 18-325](#) Windham Hill United Church Electronic Recycling Fundraiser

Attachments: [Electronic Recycling Event](#)

[CD 18-331](#) Notice of Proposed 2019 State Valuation

Attachments: [Proposed 2019 State Valuation](#)

[CD 18-332](#) United Way - 6 Who Care Award

Attachments: [United Way Thank You](#)

[CD 18-333](#) Senior Tax Assistance Program - Thank you

Attachments: [Sr Asst Tax Program Thank You](#)

[CD 18-334](#) Archangel Committee - Celebrating 30 Years of Friendship

Attachments: [Archangel Commemoration and Celebration Ceremony](#)

[CD 18-335](#) Resident of Lakeside Drive - Correspondence to Council

Attachments: [Resident Correspondence - Quarry concerns](#)

[CD 18-336](#) Lakeside Drive - Forest Lake Concerns

Attachments: [Resident Concerns Forest Lake area quarry](#)

VII. Town Manager's Report.

None.

VIII. Committee Reports.

A. Council Subcommittees.

1. Appointments Committee.

Councilor Maxfield said they met tonight with five applicants for the Marijuana Task Force Retail Adult-Use. They have five names to put forward but they need some clarification from staff. They have two applicants who are not Windham residents, and they have conflicting feedback on whether you need to be a resident to join a committee. Can you be a business owner, a tax payer, and live somewhere else? He thanked David Whitten, Charles Bone, Charlotte DeWhite, Travis Connolly and Maggie Terry.

2. Finance Committee.

Councilor Chapman said the Committee would have to have a meeting, there are a few issues they will need to address right off.

B. Other Committees.

1. Land Use Ordinance Committee.

No report.

2. Public Easement Advisory Committee/Roads Policy Task Force.

No report.

3. Windham Economic Development Corporation

Councilor Maxfield said they have not had a meeting since the annual meeting. There will be a public meeting later in October.

Councilor Chapman said in regard to the LED Street Light Committee she had an email from someone who asked if that was where committees go to die? She would like an update.

Councilor Maxfield said we do not have an LED Street Light Committee, we have an Energy Committee, and he used to be on it but he lapsed out of that committee before he became a Councilor. He believes they are run by Amanda Lessard from Planning.

IX. PUBLIC HEARINGS.

[CD 18-322](#) To receive public comment on proposed amendments to the town's General Assistance Ordinance, Chapter 111 of the Code of the Town of Windham, which update appendices establishing certain benefit maximums as required by statute.

Attachments: [GA Ordinance Changes eff 10.1.2018](#)

No public comment.

X. CONSENT AGENDA.

XI. UNFINISHED BUSINESS & GENERAL ORDERS.

Councilor Muir moved to take Orders 18-195, 18-196, 18-197 & 18-198 out of order and do them first, as they require the lawyer, second by Councilor Welch.

Vote 5-2 (Maxfield, Nangle) - Failed, needs to be unanimous

[18-186](#) To adopt proposed amendments to the town's General Assistance Ordinance, Chapter 111 of the Code of the Town of Windham, which

update appendices establishing certain benefit maximums as required by statute.

Attachments: [18-186 Cover Sheet](#)
[GA Ordinance Changes eff 10.1.2018](#)

Councilor Welch asked who does these increases and what happens if the Council does not accept the increases? Phyllis Moss said the town really does not have a choice. The Department of Health and Human Services sets these. Rene Daniel, GA Administrator said the numbers come from HUD, and it is federal guidelines. Windham is lumped in with Portland because we are attached to Portland by land masses. We have to go by Portland's numbers, not Cumberland County. Councilor Welch said he asked because he wanted people to know that we don't have a choice, and it is a formality we go through every year.

Councilor Cummings had a question in regard to basic necessities and what constitutes a basic necessity and what does not. Her concern is that she sees cigarettes and alcohol listed as non necessities but she didn't see marijuana listed, medical or recreational? She contacted the state and there is a provision about when calculating expenses, they could take that into account if there is a prescription from a licensed physician. Why was it not listed as a basic necessity? Rene said it goes back to federal and state rule. We, as a state, elected to allow marijuana medically, so therefore it became part of our state, however, because the federal government mandates us to go by our Maine Care, that is fed my Medicare to follow the federal rules, hence, until the Federal Government or 42 states out of 50 vote in favor, we are in a catch 22. We can use it as an expense, but we can't provide it as a basic necessity.

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

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

18-190

To approve the expenditure of \$3,000 from the Planning Professional Services account (17110-44400) to the Highland Lake Association for the remediation of the Swan Road right-of-way and Highland Shore Road in an effort to improve the water quality of Highland Lake.

Attachments: [18-190 Cover Sheet](#)
[19HLA request for funds to supplement WPG 9 20 18](#)
[Highland Shore Road quote](#)

Dennis Brown from the Highland Lake Association said they gave good detail last week on what these monies would be for. He said they ended up with some confusion over whether the money should be spent on this particular project that was outlined, or another one that is a high phosphorus emissions into the lake, and it ends up the monies that they are asking for will be used in conjunction with the \$10,000 that the town had provided to them earlier this year, and they are also looking at \$6,000 from a phosphorus fund that is being held by Cumberland County Soil & Water Conservation District. He said they are having a meeting Thursday to clear up any misunderstandings.

Tom Peterson from the Highland Lake Leadership Team said it became clear what the problem was, and they will meet this Thursday, and hopefully it will be worked out and everyone will be happy. What is not clear to him is the relative status of how the

Highland Lake Leadership Team and the Highland Lake Association are to work together or not? His perception is the HLLT was formed to oversee and coordinate all land use remedial actions involving Highland Lakes phosphorus and algae bacterial issues. Whether or not the HLLT has any jurisdiction over the spending of money from whatever source on remedial projects is not clear to him. He said as a member of the HLLT team, he wants to know what the Council expects of him, and was it designed to have any oversight over the HLA or not?

Councilor Chapman said she thought the committee work was doing the management plan, and everyone agreed to that, which would bring out the scope of work or the hot spots that needed to be remediated sooner, rather than later. She thinks that is what got them to this meeting tonight. The funds to fix those two priority spots. She believes the committee was all okay with that.

Dennis Brown said part of the answer to Tom's question is they go back to the Charge of the HLLT, it was to provide some general oversight to look at ordinances, and to see what they could do to improve the water quality. The original \$10,000 that was awarded to HLA and others was specifically to the Association to do it, I don't think the HLLT, which is comprised of two towns, ever had the authority to oversee those projects, that was given to the HLA. They still have some growing pains and they are working through that.

Rose Hartzler from the Highland Lake Association thanked the Council. She said this was presented way too complicated. Basically, what they are asking for, the Highland Lake Association, the Watershed Protection Grant Committee is asking for an additional \$3,000 from you, as a Town Council, because of the additional costs that was accrued in one of the projects that was deemed to be a high priority site, that is why they are asking for the \$3,000.

The money and the discussion with the HLLT is related, but is not part of what we are deliberating tonight. We would ask you not to get too confused with those details.

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

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

Opposed: 1 - Councilor Haskell

[18-195](#)

To approve the severance agreement between the Town of Windham and Anthony T. Plante.

Attachments: [18-195 Cover Sheet](#)

Stephen Langsdorf Town Attorney - The severance agreement with the Town Manager that I negotiated with his attorney, based on guidance from the majority of this Council, and although the way the compensation is paid off, has a number of different steps and looks a bit complicated, that was basically done for tax reasons. It actually adds up to one year salary, plus half of the accrued accrued sick time, accrued vacation, per policy of the town, retirement, and insurance. This is a straight forward agreement, it designates the Town Managers final day of employment as tomorrow, which will give him the opportunity to say good-bye, clean out his desk, etc., and there are release provisions in this agreement, so this is a final agreement between the town and the manager that there will be no claims, no legal action, which is prohibited after this, and this does have a provision which asks everyone to treat each other respectfully and to not make disparaging comments about each other.

Marge Govoni asked if the severance agreement would be made public? Stephen Langsdorf said it was a public document, and if someone wants to request a copy they can go to the Clerk's Office.

Liz Wisecup said Tony has been a Town Manager for many years, and he has done a lot of good things for the town, and she personally wants to wish him and his family well in whatever happens.

Councilor Nangle said he just received this agreement when he walked in the room and had some questions. Section 1 under binding promises, what does it cover, it seems redundant with section 5? Stephen said it is formal release language that you see in number 1 and number 2 as well. The non disparaging clause is for what you would say afterwards. This is formal language that waives any claims that either the town might have against the Town Manager, and in no way, am I saying that there are any claims at all, but if there are any out there when somebody leaves, you want to make it a clean break.

Councilor Nangle asked if section 5 protected the Councilors individually and Stephen said that is not really a protection provision, that is actually something that binds both the Council and the Manager to that provision. Councilor Nangle said they are paying the Manager well over \$200,000, and Stephen said that was incorrect, the number is \$155,000. Councilor Nangle said he is not able to pursue any slander against any Councilor, Stephen said he has agreed, in exchange for that severance payment, that he will not pursue any type of legal action against the town or any of the employees, Councilors or anyone connected with the town. Councilor Nangle said, "so the tax payers are paying off the Manager for Councilor Chapman's slanderous comments. Stephen - the town is paying a one-year severance agreement to the Town Manager who has worked here since 1996.

Councilor Maxfield asked if it was normal practice, if somebody is let go or separated without cause, to pay such an extraordinary amount? Stephen said he has seen severance agreements of all different sizes in different towns and situations. It is 100% dependent on whatever the circumstances are. Councilor Maxfield rephrased and asked if somebody is let go for a cause or a fireable offense, would it be typical they would receive such an amount? Stephen said they would be entitled to whatever benefits are available to them under their provisions of their town. Here, at minimum, he would have been entitled to the half of his accrued sick time, his vacation time, and whether or not a severance agreement would be paid to someone who is has been here for over 20 years, is something that would be a case by case situation.

Councilor Maxfield said they were just handed all of these agreements, and are now being asked to immediately vote on a \$155,000 severance, and that is on top of a \$8,600 we paid for a management study, on top of \$25,000 paid for another management study, on top of another \$600.00 a day, plus expenses for an interim Manager, and that does not include the \$8,000 consulting fee to Eaton Peabody. Stephen said the interim Manager is proposing to work only 3 days per week, not 5 days, but more if necessary, and attending Council meetings as requested. He noted that towns often take 3 to 4 months to find a new town manager.

Councilor Nangle said he just added up all the payouts for the Manager it is about \$175,000. Stephen said he misspoke.

Councilor Maxfield read a statement (See attached) He said he will not be voting for this.

Councilor Muir said he stands by his statement.

Councilor Welch said he will support this tonight because he looks at it as severance pay for Tony's 20 plus years of service. In the paper Councilor Welch said, a couple of times, that he supports Tony. There were two reports done, and he believed the full Council voted for; he does not believe there is just-cause to terminate the Town Manager, and he would not have voted to terminate the Town Manager. He also said in the paper that he would support his retirement, and in this case, he wants to leave the Town of Windham, for whatever reason, because of the article or some other reason. He said if he votes no on this, he comes back as a Town Manager, and Tony already stated he didn't want to come back. In supporting Tony he believes that in his own 20 plus years of service he has seen severance pay to Managers or a County Manager, this kind of pay is not unusual. He has spent 25 years representing employees, he knows just cause and has been appointed to the Maine Labor Relations Board by this Governor to represent employees on the Labor Board, and you have to know just cause, and he said this is not a termination for Tony. You need five votes and just cause to get rid of a Manager, and there was no just cause and there were not five votes; if Tony wanted to come back he could have. He doesn't want to and if I vote no, that is more of a dig to Tony, and I am not going to do that.

Councilor Maxfield asked the attorney if the numbers they came to were based on a contract or negotiations? Stephen said negotiations. Councilor Maxfield asked if a Town Manager, under normal circumstances, just decided to retire, outside of the things going on here, debatable, public attacks in the newspaper or not, that did happen, did that put the town in a worse negotiation position?

Stephen said he was not really able to comment on that. There were meetings and discussions with his attorney and these were the terms they were able to come to. These issues were going on long before there was a newspaper article that appeared a few weeks ago. Councilor Maxfield asked if Town Managers just normally retire and they had a contract, would there really be negotiations? Stephen said the Manager of Augusta has a very specific contract. Some of these things Tony would have been entitled to even without a negotiation. No, without some negotiation or agreement, he would not have been entitled to everything that is in this severance agreement.

Councilor Maxfield said he will vote not against it, but he certainly is not doing it as a dig to the Town Manager; he knows this will pass, but at the same time they are also there to represent the tax payers.

Councilor Chapman said she thinks there is a policy that they will be looking at in the future that will explain a lot.

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

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

Opposed: 2 - Councilor Nangle and Councilor Maxfield

[18-196](#)

To authorize a professional services agreement between the Town and Eaton Peabody Consulting Services for an interim Town Manager.

Attachments: [18-196 Cover Sheet](#)

Councilor Nangle asked how did we picked Eaton Peabody?

Stephen Langsdorf said there are only a few organizations that do this kind of work and provide interim town manager services and also job search services. Maine Municipal is one of them, a firm in New Hampshire and Eaton Peabody Consulting Services. When he asked some people, that he trusts in this field, in regard to Managers, it was directed towards Mr. Gerrish, who he knows, and he is a long-term Manager and he is part of Eaton Peabody Consulting Services. He is the person who will be performing those services as the interim Town Manager. Tonight there are two different orders, we are naming him individually, because by law you need to appoint him as the interim Town Manager and Treasurer for legal purposes, and how you do that is by approving this agreement with Eaton Peabody Consulting Services where he works. Those two go hand in hand.

Councilor Nangle asked what the \$8,000 fee was for, and Stephan said it was for the hiring process.

Councilor Nangle brought up number 7-Notices, and if it is to the Client, it is to the Chair. He said they know from personal experience how well that does not work as far as getting information from the Chair.

Councilor Maxfield said the Chair routinely comes in and talks about interactions with the attorney, and none of them know what she is talking about. He said that he is the town attorney, not her attorney.

Stephen Langsdorf wants to make clear that this agreement is not restricting communication at all, this is a formal notice under the agreement. Councilor Nangle said it sounded like every project that the town has in the pipeline is basically going to come to a halt. Councilor Chapman said "then you have no faith in staff because everything has been working and moving forward for the last three weeks, at least."

Councilor Cummings asked if they approve this, do they know when his first day will be, and Stephen said it will be tomorrow.

Councilor Welch asked the attorney if three days would be enough? Stephen said yes, he has done this before. He has done this for six months in Auburn, in Ogunquit, and this is what he proposed and feels comfortable with. If he thinks it is not enough, he will come back and talk to you.

Councilor Maxfield said there are projects in the pipeline that the former Manager was deep into, is an interim Town Manager who will work three days a week, can he pick up the ball with something like the North Windham Sewer, or is an interim Manager's basic job is to keep the day to day operations afloat during the transition? Stephen said it would be more towards the later part. He is a very, very experienced Town Manager, if there is a project that needs to be moved along and there are time frames, he was sure he would do it.

Councilor Welch said he has heard nothing but good things about him, he is a good Town Manager.

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

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

Opposed: 2 - Councilor Nangle and Councilor Maxfield

[18-197](#) To appoint Donald Gerrish as interim Town Manager and Treasurer and serve in such capacity on various boards and committees as required.

Attachments: [18-197 Cover Sheet](#)

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: 5 - Councilor Welch, Vice Chair Muir, Council Chair Chapman, Councilor Haskell and Councilor Cummings

Opposed: 2 - Councilor Nangle and Councilor Maxfield

[18-198](#) To authorize a professional services agreement between the Town and Eaton Peabody Consulting Services to conduct the search for the position of Town Manager.

Attachments: [18-198 Cover Sheet](#)

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

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

Opposed: 2 - Councilor Nangle and Councilor Maxfield

XII. Discussion Items.

[CD 18-178](#) GPCOG presentation to council regarding neighborhood master planning and other services they can provide.

Kristina Egan Director of the Greater Portland Council of Government was joined by Stephanie Carver who is the Planning Director gave a brief presentation.

XIII. Agendas & Scheduling.

Councilor Maxfield along with Councilor Nangle requested, in writing that on October 1 the OPUS report be put onto the agenda, and that the Council Rules states that any two members, in writing, can have anything put on the the agenda of any meeting, and they would like that on the next meeting.

Also, he would like the Council to discuss the disregard, of one of their only rules, by the Council Chair violating executive session.

[CD 18-339](#) Agenda Items Reports.

Attachments: [Agenda Items Scheduled 20181005](#)

[Agenda Items to be Scheduled 20181005](#)

[Projects and Issues List 20181005](#)

[Projects & Issues Sheets 20180921](#)

XIV. ADJOURN.

A motion was made by Councilor Nangle, seconded by Councilor Maxfield, that they be adjourned. The motion carried by the following vote at 8:50 p.m.

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

Respectfully submitted,

Linda S. Morrell
Town Clerk, CCM