



Town of Windham

Town Offices
8 School Road
Windham, Maine

Meeting Minutes - Final

Town Council

Tuesday, October 26, 2021

6:30 PM

Council Chambers

I. Roll Call of Members.

Present: 5 - David Nadeau, Nicholas Kalogerakis, Jarrod Maxfield, Mark Morrison and Ed Ohmott

Absent: 2 - Tim Nangle and Brett Jones

II. Pledge of Allegiance.

Council Chair Nadeau led the Pledge of Allegiance.

III. Minutes to be Approved:

[CD 21-154](#) To approve the Minutes of the October 12, 2021 Council meeting.

Attachments: [Minutes-Council-10-12-2021.pdf](#)

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

In Favor: 5 - Council Chair Nadeau, Councilor Kalogerakis, Vice Chair Maxfield, Councilor Morrison and Councilor Ohmott

Absent: 2 - Councilor Nangle and Councilor Jones

IV. Adjustments to the Agenda.

V. Public Participation.

Town Clerk Linda Morrell let the residents know that Absentee Voting will end on Thursday, October 28th at 7:00 p.m. The Clerk's Office will stay open from 4:00 to 7:00 so people can absentee vote, register to vote, or update their name or address.

VI. Councilors' Comments.

Councilor Maxfield wanted to thank Tim Nangle for his service over the last 6 years being on the Council. They were both on the Council for a long time together. He wished him the best of luck.

Councilor Nadeau said this was probably his last time acting as the Chair, and he wanted to thank everyone, it has been a privilege and an honor to sit there. He said they have got a lot of work done and this was a fine group of Councilors to be working with. Thank you.

VII. PUBLIC HEARINGS.

[21-190](#)

To receive public comment and act on a proposed Designated Private Ways Ordinance, Chapter 210 of the Code of the Town of Windham.

Attachments: [21-190 Cover Sheet.pdf](#)

[Chapter 210 Streets and Sidewalks PROPOSED AMENDMENT 2021 1025.pdf](#)
[Ordinance re maintenance of designated private ways KMC 102521.pdf](#)
[LD 1723 AG Letter to State and Local Gov. 10.1.2021.pdf](#)

Manager Tibbetts said about 20-25 years ago the Town of Windham started to plow certain private roads to assist for access, whether it was emergency vehicles or just general safety concerns. This went on for a number of years, and when it first started there were some agreements, but since that point those agreements probably should have been recorded but were not. From that time the town has continued this practice. Under Maine State Law they are not allowed to place municipal vehicles on private property or private roads for servicing or any work. Because we've kept this practice up for so many years, what they want to do, as a town, is try to reconcile that back so the practice could continue, but there would also be by the home owners abutting that road, and taking responsibility for improvements in the road for when our trucks are going over it for the winter, and they would take care of their own summer maintenance and improvements.

They went to the Legislature and got a private and special law to come up with a program of how that might work. They have developed that program. and what is before the Council tonight is a draft of a designated Private Ways Ordinance that would allow the town to continue that service. but there are some conditions that must be met. Tonight they want to talk through those conditions with the Council, and the Attorney is here tonight to do that. From that point we can decide to send this out to every resident who abuts one of those roads to review it and start from that practice.

Douglass Boise a resident of Standish and who owns property in Windham on Sebago Lake spoke. He is President of his road association, and he said he was unaware of this work in progress until today. As the president of a road association with about 34 members, they have worked actively with the Public Works Department over the years to do what they needed to do. He was curious, to the fact, that this item had gotten this far and he had not heard about it yet, and feels it is a little bit concerning. He wondered if there was a mailing list of road associations, had they been notified would there have been additional or earlier public input to the process?

He said there are, undoubtedly, a lot of complex legal issues associated with road associations, some probably have more than one owner or various agreements that may make it very difficult for them to create the type of easement document that is being suggested by this ordinance change. As to the public access issue, itself, speaking for his own association, they have a twelve foot wide road that snakes through these 30 odd properties about a half mile long and is a dead end, with a makeshift turn-around at the end. He said most of their membership would not want to entertain a lot of traffic that didn't need to be there, and he thinks it will be the case for many of these road associations, particularly the ones on narrow roads and lake frontages.

A lot of the lake front properties pay huge taxes. They provide a lot of revenue to the town for which there are relatively few services derived, a lot of these residences are seasonal and do not have a lot of school children. However, the service of getting the

road plowed has been something that is greatly appreciated by the membership that might live there year round.

The one thing he would like to suggest is, he saw a date of October 20, 2022 of which an easement would need to be offered to the town for this public easement, and he would say that in the easiest of conditions it is probably going to take a lot longer than that for most associations, that could ultimately get there, to do the work or to have their folks meet and get together. A lot of these associations are seasonal, and they meet once a year in the summer, particularly if they have to vote on something as a group. He thanked them for their time and their service to the community.

Manager Tibbetts said they began this conversation last December/January from a staff level and in conversations with our attorney they ended up engaging our Legislative Delegation in Augusta for this special legislation. There were some hearings up in Augusta late February into March. It went through that process and was recommended for approval and then they had a couple more meetings in May and June and again during the summer they did more ground work on how to figure out how to notify and inform everyone about the changes, and what some of the next steps were. They had further discussions in September and October and this is how they got to where they are at.

They have not sent a direct mailing to every single abutter of the 101 private roads at this point. The number of abutters is 1,764. There are some side roads off of these roads that they have plowed, which are private roads, which we do not plow and that probably adds about another 400 people. They think the mailing will be about 2,000 to get to everyone. Prior to that they have built a website of information that has not been turned on yet. They want to get farther along with the Council before they release the information.

He said when they went to the Legislature and shared our position that they had been plowing these roads, they actually wanted a longer time period to go back to the residents. They told us that we had two years, and we had to report back in February of 2022. We have to go and give a full report of everything we have done, why we've done it, and where we are as to what the next steps are, for them to even give us another 12 months. The Council's position is they want to find a solution that is going to work, but they certainly want to work with the residents to find that solution, and we can make it legal and get the right liability insurance for our vehicles and our people and provide as much privacy for a resident.

Kristin Collins Town Attorney said the statute is what is giving the town protection right now to keep spending town money to plow these private roads, and that statute expires on June 30, 2022, and that is why we have put that deadline in the ordinance of October 20, 2022, as it is the beginning of that winter season.

They are going back to the Legislature and give our report and show what we've done, and that there is still work to do, and that it is still going to take time to get public easements. She would like to see that 2022 deadline be pushed out at least another year, but until then it is a little uncomfortable to have an ordinance that in an indefinite basis lets us continue to plow these private roads when we now have an Attorney General letter giving feedback to the committee that approved this bill saying we have problems with the fact that the Town of Windham and sanctioning the Town of Windham in using public money to plow private roads.

She said in her mind they have a deadline in this ordinance now, by which this practice would stop, but if we go to the Legislature this spring and the Legislature grants us

another year, we would go back to the Council and extend that deadline accordingly. She said we are not putting out necks out too far further than the Legislature has let us, at least in advance. She said when we took this bill through they got a lot of criticism, and it was stripped down quite a bit. They were looking for indefinite authority, they gave us authority for two years, and they were very, very concerned about the constitutionality of blessing this practice of plowing private roads. The Legislature is looking for evidence that distinguishes Windham from all the other towns out there that are being pressured to plow private roads, and what is special about our water bodies that we are trying to protect. They are looking for other information about why in Windham it is such a huge share of our overall road network, and we need to provide all this justification. She feels like we might get more time, but it is really a matter of doing what we were told, we have to pass an ordinance and make sure that the ordinance does not do something on a indefinite basis that the AG's Office has said might be problematic.

Public hearing closed

Councilor Maxfield said for everyone who is on a private road, including himself, that benefit from the plowing, and it is a benefit we are getting that the town should never have been giving us. It is a 20-30 year tradition, and it is unconstitutional, and we have been told so multiple times. They are trying to find a solution and he empathize and understands trying to get folks together in an association like yours to make such a large decision. If the Legislation does not grant the extra year, they do not have a choice. He would advise them to assume the worse and start gearing up for that. With an association like yours and many other roads around town who will have to decide whether that trade off of an easement is worth keeping your plowing or that is an expense you will take on.

Manager Tibbetts said he thinks the language on the designated private way ordinances are tweaked the way it should be. He could take the letter, that is pretty much ready to go, and modify it slightly and send a copy of this ordinance with that mailing or show a link to where they can go to view it. Maybe we pick a date for people to get comments back to the town.

Kristin Collins said she feels like the construct of this bill was intended to have us pass an ordinance and that ordinance is the predicate that allows us to do this for this winter season. She thinks the additional notice and the opportunity to speak is good, but before we get into the heavy winter maintenance and heavy expenditures she would want to have something approved.

Councilor Maxfield suggested they have a workshop on Tuesday, December 7 and make that the date, and if the town can get the letters out within a week, they will have 30 days notice.

Councilor Morrison said if we are referring to an ordinance, it would be helpful, as a resident, to see that ordinance and sink my teeth into it, and if I have questions, I can take them to the next public discussion.

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

In Favor: 5 - Council Chair Nadeau, Councilor Kalogerakis, Vice Chair Maxfield, Councilor Morrison and Councilor Ohmott

Absent: 2 - Councilor Nangle and Councilor Jones

VIII. CONSENT AGENDA.**IX. UNFINISHED BUSINESS & GENERAL ORDERS.****21-210**

To approve an application submitted by the Lake Region Eagles Aerie #4352 located at 456 Roosevelt Trail for a renewal Special Amusement permit.

Attachments: [21-210 Cover Sheet.pdf](#)

[Lake Region Eagles-Special Amusement \(2\).pdf](#)

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

In Favor: 5 - Council Chair Nadeau, Councilor Kalogerakis, Vice Chair Maxfield, Councilor Morrison and Councilor Ohmott

Absent: 2 - Councilor Nangle and Councilor Jones

21-211

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

Attachments: [21-211 Cover Sheet.pdf](#)

[Pat's Pizza - Special Amusement.pdf](#)

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

In Favor: 5 - Council Chair Nadeau, Councilor Kalogerakis, Vice Chair Maxfield, Councilor Morrison and Councilor Ohmott

Absent: 2 - Councilor Nangle and Councilor Jones

X. Council Correspondence.**XI. Town Manager's Report.**

Nothing to report at this time.

XII. Committee Reports.**A. Council Subcommittees.****1. Appointments Committee.**

No report.

2. Finance Committee.

No report.

B. Other Committees.

1. Long Range Planning Committee.

Councilor Nadeau said they met last week and went over some things that will be talked about tonight.

2. Parks & Recreation Advisory Committee.

Councilor Morrison said Parks & Rec did a really nice job over the weekend. They put on a Trunk or Treat and the Rotary Club participated. He was not there but he got a lot of good, positive feedback. There was over 300 kids that went through and it was a big success.

3. Windham Economic Development Corporation

Councilor Kalogerakis said they have their end of year meeting on November 9, 2021.

4. Highland Lake Leadership Team.

Councilor Maxfield said they met on October 19, and the next meeting will be in March. They have an ordinance committee that is working on Nutrient Management Ordinances, which will be presented to the towns around the lakes. They checked the water quality and this year Highland Lake is significantly better. It is one of the most studied bodies of water in the state. There are plenty of grants being applied for, and there is a lot of talk about septic and private roads around the waterways and some future ideas or proposals to come on those.

5. Natural Resources Advisory Committee.

No report.

6. Public Easement Advisory Committee.

No report.

XIII. Discussion Items.

Minutes are not taken for Discussion Items.

[CD 21-153](#) General Assistance Ordinance - MMA Update.

Attachments: [2021 1019 Council Memo.pdf](#)
[2021-GA-Ordinance-Adoption-Form.pdf](#)
[ATTACHMENT A Legislation re Recovery.pdf](#)
[ATTACHMENT B](#)
[GA ORD FINAL-9-3-21-REDLINED-updated-App-A-C.pdf](#)
[ATTACHMENT C GA ORDINANCE \(Revised 9.2021\).pdf](#)

[CD 21-129](#) Planning Board Waivers. (Planning Director & Town Attorney)

Attachments: [Waivers Granted 2015-2021.pdf](#)
[Section 808 Waivers.pdf](#)
[Section 908 Waivers.pdf](#)
[Waiver Request Form - Performance Standards.pdf](#)

[CD 21-151](#) Marijuana Business Licensing Ordinance - Definition Clarifications. (Town Attorney)

Attachments: [memo re Caregiver Stores v Dispensaries.pdf](#)

[CD 21-078](#) Short-term Rentals. (Town Attorney)

XIV. Agendas & Scheduling.

XV. ADJOURN.

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

In Favor: 5 - Council Chair Nadeau, Councilor Kalogerakis, Vice Chair Maxfield, Councilor Morrison and Councilor Ohmott

Absent: 2 - Councilor Nangle and Councilor Jones

Respectfully submitted,

Linda S. Morrell
Town Clerk, CCM