

Corrected
AGENDA AND PROPOSED ORDERS
GORHAM TOWN COUNCIL
REGULAR MEETING
November 12, 2013
Burleigh H. Loveitt Council Chambers

Pledge of Allegiance to the Flag

Roll Call of the 2012-2013 Council

Acceptance of the minutes of the October 1, 2013 Town Council Regular Meeting.

Open Public Communications

Councilor Communications

Town Manager Report

School Committee Report

Election Report

Swearing in of the newly-elected Councilors

Roll call of the 2013-2014 Council

Item # 8377 Action regarding Election of a Council Chairman for 2013-2014 (Admin spon.)

Proposed

Order # 8377 Ordered that the Town Council elect _____ as Chairman of the Town Council for the 2013-2014 year.

Item # 8378 Action regarding election of a Council Vice-Chairman for 2013-2014. (Admin.Spon.)

Proposed

Orders # 8378 Ordered that the Town Council elect _____ as Vice-Chairman of the Town Council for the 2013-2014 year.

Item# 8379 Action regarding appointment of members to the following Council Committees.
(admin. Spon.)

Porposed

Order# 8379

1. Finance Committee
2. Ordinance Committee
3. Appointments Committee

4. Economic Development/Capital Improvements Committee
5. Representative to Greater Portland Council of Governments
6. Representative to Ecomaine
7. Representative to Jetport Noise Abatement Committee

Item# 8380 Action regarding acceptance of the Council Rules for 2013-2014. (Admin. Spon.)

Proposed

Order #8380 Ordered, that the Town Council adopt by reference the same Council Rules as were adopted for the year 2012-2013, as the Council Rules for the 2013-2014 year.

Public

Hearing #1 Public Hearing on a proposal to amend the Land Use and Development Code by adding definitions of ATV, All Terrain Vehicle, Motor Cross Track and by amending permitted uses in the Rural District by clarifying that a use in the Rural District for commercial purposes is not a social institution.

Item# 8381 Action to consider a proposal to amend the Land Use and Development Code by adding definitions of ATV; All Terrain Vehicles and Motor Cross Track and by clarifying that a commercial use in the Rural District was not a social institution. (Admin. Spon.)

Whereas, the Town of Gorham has a Land Use and Development Code that regulates land use and development and,

Whereas, the Code does not contain any definitions for ATVs, All Terrain Vehicles or Motor Cross racks, and

Whereas, the Board of Appeals has previously ruled that activity associated with riding all-terrain vehicles at a motor cross track was allowed as a social institution, and

Whereas, the Town Council believes that an active motor cross track, whether a commercial business or for non-commercial purposes, can have a substantial adverse impact on abutting property owners and the surrounding neighborhood, and

Whereas, the planning Board, after a public hearing, recommended approval of the following amendments:

Now Therefor Be It Ordered that the Town Council approve the following amendments to the Land Use and Development Code:

Chapter I: Zoning Regulations, Section V – Definitions:

ATV: ATV means All-Terrain vehicles.

All-Terrain Vehicle: “All-Terrain Vehicle” means a motor driven, off-road, recreational vehicle capable of cross-country travel on land, snow, ice, marsh, swampland or other natural terrain. It includes, but is not limited to, a multi-track, multi-wheel or low pressure tire vehicle; a motorcycle or related 2-wheel, 3-wheel, or belt-driven vehicle; an amphibious machine or other means of transportation deriving motive power from a source other than muscle or wind. For purposes of this ordinance, “All-Terrain vehicle” does not include a snowmobile, a construction or logging vehicle used in the performance of its common function; a farm vehicle used for farming purposes; a vehicle used exclusively for emergency, military, law enforcement or fire control purposes.

Motocross Track: An area of land for the **primary** purpose of racing or riding dirt bikes, motorcycles, or ATVs over a natural or simulated rough terrain. A motocross track shall not be considered an activity or a facility of a social nature.

Amend Chapter I, Section VIII – Rural District, B. Permitted Uses

12) School, hospital, church, or any other institution of educational, religious, philanthropic, fraternal organization, or social nature which is not used for residential or commercial purposes, which has less than two thousand (2000) square feet of floor area and generates less than two hundred (200) vehicle trips during any twenty-four hour period. (B) Permitted Uses

Public

Hearing #2 Public Hearing on a request by Anthony K. Kourinos to re-zone his property (Tax map 6, Lot 43.2) located on County Road, to a Contract Zone similar to other Contract Zones in South Gorham.

Item# 8382 Action to consider a request from Anthony K. Kourinos to re-zone his property (Tax map 6, Lot 43.2) located on County Road to a Contract Zone similar to other Contract Zones in South Gorham. (Admin. Spon.)

Proposed

Order# 8382 Ordered, that the Town Council approve the following Contract Zone;

**CONTRACT ZONING AGREEMENT
BETWEEN ANTHONY K. KOURINOS
AND THE TOWN OF GORHAM**

This Contract Zoning Agreement, made this _____ day of _____, 2013, by and between the **TOWN OF GORHAM**, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter “the Town”) and **ANTHONY K. KOURINOS**, a resident of the Town of Gorham, County of Cumberland and State of Maine, with a mailing address of 52 Mosher Road, Gorham, Maine.

WHEREAS, **ANTHONY K. KOURINOS** (the “Property Owner”) is the owner of a parcel of real estate located on County Road in Gorham, Maine, consisting of approximately 2.80 acres located near the intersection of Route 22 and Route 114 (hereinafter “the Property”); and

WHEREAS, the Property consists of one lot identified on the Town's assessing records as Tax Map 6, Lot 43.002, and

WHEREAS, the Property is currently located in the Suburban Residential District, as established by the Town's Land Use and Development Code; and

WHEREAS, the Property is located in an area with significant motor vehicle traffic, especially at the nearby intersection of Route 22 and Route 114; and

WHEREAS, a greater flexibility of uses than is allowed in the underlying zoning district is appropriate in light of the unique nature of the site and its proximity to the major intersection; and

WHEREAS, the high volume of traffic, particularly at the intersection, makes it difficult to develop the Property for residential purposes; and

WHEREAS, certain non-residential uses have been determined to be appropriate for the site, subject to the restrictions set forth in this Agreement, in addition to the applicable requirements of the Land Use and Development Code; and

WHEREAS, the Town has the authority to enter into a contract rezoning for property, pursuant to 30-A M.R.S.A. § 4352(8) and Chapter I, Section I, Subsection H, as amended, of the Gorham Land Use and Development Code; and

WHEREAS, after notice and hearing and due deliberation upon this rezoning proposal, the Gorham Planning Board recommended the rezoning of the Property; and

WHEREAS, the rezoning will be consistent with the goals of the 1993 Gorham Comprehensive Plan, by promoting additional job opportunities and providing for development that is "carried out in a manner that is environmentally sound and which minimizes the impact on surrounding properties" (Chapter 3, Section 3.g); and

WHEREAS, a portion of the Property is located in an area shown on the Revised Land Use Plan in the Comprehensive Plan as “Neighborhood Center,” which calls for “a mix of land uses in these centers, including residential uses, services, small scale retail uses that primarily meet local needs, and specialty commercial uses that are appropriate to the area”; and

WHEREAS, the Town, by and through its Town Council, has determined that said rezoning will be pursuant to and consistent with the Town’s Comprehensive Plan and has authorized the execution of this Contract Zoning Agreement on _____, 2013;

NOW, THEREFORE, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. **Amendment of Zoning Map.** The Town will amend the Zoning Map of the Town of Gorham, as amended, a copy of which is on file at the Gorham Municipal Offices and which is incorporated by reference in the Land Use and Development Code, Chapter I, Section I, Subsection C, by adopting the map change amendment shown on Attachment 1.

2. **Permitted uses.** The Property Owners are authorized to establish on the Property any of the following uses without additional Town Council authorization:

- a. Funeral home.
- b. Day Care Centers, as defined in Chapter I, Section V of the Land Use and Development Code.
- c. Business, Personal and Repair Service Establishments as defined in Chapter I, Section V of the Land Use and Development Code.
- d. Convenience stores, ~~either with or without associated gasoline sales.~~
- e. Sit-down restaurants.
- f. Retail stores that are 7,000 square feet or less in total footprint.

- g. Professional offices, including real estate offices, medical offices, attorneys' offices, and similar offices that are not high generators of traffic.
- h. Banks.
- i. Residential uses in existence on the Property on the date of this Agreement.
- j. Distilling and brewing.
- k. Residential dwelling units above the first floor as part of a mixed use building.

No drive-through or drive-up facilities shall be allowed with any of the above-listed permitted uses, unless the Planning Board finds as part of site plan review, based upon a traffic study to be provided by the applicant, that the proposed use will not result in vehicles queuing in front of the proposed building or on the roadway serving the lot. The applicant for a use shall be responsible for all required traffic mitigation costs identified by the traffic study and/or the Public Works Director and those required by the Planning Board. The applicant shall acquire any permits required by the Maine Department of Transportation.

3. **Additional uses allowed with Town Council approval.** The following uses may be established if specifically authorized by the Town Council:

Light industrial uses of 10,000 square feet or less in total floor area. Such uses shall include the assembly of materials but shall exclude basic processes such as smelting, refining, forging, and similar processes involving converting raw materials to a finished or semi-finished product. Examples of light industrial uses are bakeries, laboratories, and businesses that assemble materials into a finished product.

4. **Performance standards.** All development and uses shall be subject to all applicable performance standards set forth in Chapter II of the Land Use and Development Code.

5. **Dimensional requirements.** All development on the Property shall comply with the following dimensional requirements:

- a. Minimum lot size: None.
- b. Minimum street frontage: None.
- c. Minimum side and rear setbacks: 10 feet, unless the side or rear of a lot is located on Route 22/114.
- d. Minimum front setback: 10 feet, unless the lot has frontage on Route 22/114. For a lot without frontage, the front setback shall be measured from the property line parallel with the major access to the property.
- e. Minimum setback from Route 22/114: ~~70 feet for any business that includes the sale of gasoline;~~ 40 feet for all other uses.
- f. Maximum building height: None.
- g. Minimum setbacks from residential properties: 20 feet, measured from the property line.

6. **Other requirements.** All development on the property shall comply with the following requirements:

- a. ~~The required minimum landscape buffer along Rt. 22/114 shall be 70 feet of plants and materials as required by the Planning Board for those uses that include the sale of gasoline.~~ The required minimum landscape buffer along Rt. 22/114 shall be 40 feet of plants and materials as required by the Planning Board for all ~~other~~ uses.
- b. The site shall be designed to minimize the number of entrances and exits.
- c. As needed, the hours of operation will be established by the Planning Board.
- d. To the extent possible, parking shall be behind the building. The Planning Board may consider parking at the side of the building if an applicant can show a hardship, but under no circumstances shall parking be allowed in the front yard or in the required buffer area as stated in paragraph 6(a). For purposes of this section, the front yard for a lot without street frontage shall be considered to be the area between the property line parallel with the principal access to the property and the front of the building on the lot.
- e. All property shall pay normally assessed property taxes or if the property is otherwise exempt from property taxes, shall make a payment in lieu of property taxes that is equal to 100 % of the amount that would have been paid if the business was subjected to the property tax.

- f. The application fee for the contract zone normally due at the time the application is submitted shall be deferred. The applicant shall pay a \$3,500 application fee as a final condition for the completion of any required site plan review, or, if more than one lot is subject to this Contract Zoning Agreement, shall pay the deferred application fee for the contract zone in the amount of \$3,500 divided by the subject number of lots, up to the first 7 lots, with the first payment due at the completion of any required site plan review and the per lot payment for the remaining lots due at the closing for each of the respective lots.
- g. The applicant shall make a contribution of \$10,000 per lot or business unit for each lot sold towards the future extension of public sewer. The contribution shall be due at closing for each individual lot.
- h. The building and lot design shall be consistent with a traditional New England Village Character.
- i. Vehicular and pedestrian connections shall be required between parking lots located on the Property and parking lots located in any adjoining contract zones, with the location and design to be approved by the Planning Board during site plan review.
- j. Sidewalks shall be required along any roads created on the Property.
- k. Signage on the Property shall be governed by the Roadside Environment requirements of Chapter II, Section III of the Land Use and Development Code.

7. **Agreement to be recorded.** The Property Owners shall record this Contract Zoning Agreement in the Cumberland County Registry of Deeds and shall submit proof of recording to the Gorham Code Enforcement Officer and the Town Planner before any site work is undertaken or any building permits are issued.

8. **Amendments to Agreement.** The provisions of this Contract Zoning Agreement shall be deemed restrictions on the use of the property and shall be amended only upon further written agreement of the Town of Gorham and the Property Owners or their successors in interest to the Property.

9. **Site plan and subdivision review.** Approval of this Agreement will not serve as a waiver of site plan or subdivision review if otherwise required by the Land Use and Development Code.

The above stated restrictions, provisions, and conditions, are an essential part of the rezoning, shall run with the Property, shall bind and benefit the Property Owners, any entity affiliated with the Property Owners that takes title to the Property, their successors and assigns, and any party in possession or occupancy of the Property or any part thereof, and shall inure to the benefit of and be enforceable by the Town, by and through its duly authorized representatives.

The provisions of this Agreement, including the permitted uses listed in paragraph 2 and 3 and the dimensional requirements, are intended to replace the uses and dimensional requirements of the existing Rural District. The above restrictions, provisions and conditions are an essential part of the rezoning, shall run with the Property, shall bind the Property Owners, their successors in interest and any assigns of said Property or any part thereof or interest therein, and any party in possession or occupancy of said Property or any part thereof, and shall inure to the benefit of and be enforceable by the Town of Gorham.

If any of the restrictions, provisions, conditions, or portions of this Agreement is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed as a separate, distinct and independent provision and such determination shall not affect the validity of the remaining portions hereof.

Except as expressly modified herein, the use and occupancy of the subject premises shall be governed by and comply with the provisions of the Land Use and Development Code of the Town of Gorham and any applicable amendments thereto or replacement thereof.

This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A M.R.S.A. § 4452) and the Land Use and Development Code. Following any determination of a zoning violation by the Court or the Code Enforcement Officer, the Town Council, after recommendation of the Planning Board, may amend, modify or rescind its conditional rezoning of the site.

In the event that the Property Owners or their successors or assigns fail to develop and operate the project in accordance with this Agreement, or in the event of any other breach of any condition set forth in this Agreement, the Town Council shall have the authority, after hearing, to resolve the issue resulting in the breach or the failure to develop or operate. The resolution may include a termination of the Agreement by the Town Council and a rezoning of the Property to the prior or any successor zoning districts. In such an event, the Property shall then be used only for such other uses as are otherwise allowed by law.

Public
Hearing # 3 Public hearing for a renewal Liquor License in the name of Sebago Brewing Company.

Item# 8383 Action regarding a renewal of a Liquor License in the name of Sebago Brewing Company, located at 29 Elm Street (Admin. Spon.)

Proposed
Order #8383 Ordered, that the Town Council approve a renewal Liquor License in the name of Sebago Brewing Company, located at 29 Elm Street.

Public
Hearing #3 Public Hearing for a renewal Liquor License in the name of Angelo Sotiropoulos, d/b/a Gorham House of Pizza.

Item #8384 Action regarding a renewal Liquor License for Gorham House of Pizza. (Admin. Spon.)

Proposed

Order #8384 Ordered, that the Town Council approve a renewal Liquor License in the name of Angelo Sotiropoulos, d/b/a Gorham House of Pizza located at 2 State Street.

Item #8385 Action to consider a request from Amy Beckwith, to amend the Land Use and Development Code to allow Dog Boarding Kennels in the Rural Zone. (Ordin. Comm. 3-0)

Proposed

Order #8385 Ordered, that the Town Council refer a proposal to amend the Land Use and Development Code to allow Dog Boarding Kennels in the Rural Zone, and adopt performance standards for these Kennels, based on a request from Amy Beckwith, to the Planning Board for public hearing and the Boards' recommendation.

Item #8386 Action to consider accepting a proposal to make improvements to the former Little Falls School Building. (Admin. Spon.)

Proposed

Order #8386 Ordered, that the Town Council, in recognition that the cost of renovating, improving and equipping the former Little Falls School building, could exceed the funding approved by the voters on November 6, 2012, accept a proposal from _____ to make improvements to the former Little Falls School Building as a starting point to negotiate a more comprehensive contract that would prioritize the work to be done within the \$500,000 approved by the voters.

Item #8387 Action to consider a request from the Parks and Conservation Commission to apply for a trail grant to improve the Tannery Brook and Claire Drew Trail system.

Proposed

Order #8387 Ordered, that the Town Council approve a request from the Gorham Parks and Conservation Commission to apply for a \$35,000 Recreation Trail Grant from the State of Maine Department of Conservation with a 20% (\$7,000) local match from the Town to be provided by a combination of Parks and Conservation members time, volunteer work, Planning Department staff time and assistance from the Public Works Department, for a grant to reconstruct and improve the Tannery Brook and Claire Drew trail system. (Admin. Spon.)

Item # 8388 Action to consider a proposal to amend the Land Use and Development Code by developing a Campground Overlay District. (Ordinance Com.2-0)

Proposed

Order #8388 Ordered, that the Town Council refer a proposal to amend the Land Use and Development Code by developing a Campground Overlay District, to the Planning Board for public hearing and the Boards' recommendation.

Item #8389 Action on a recommendation from the Finance Committee to reconsider the use of Town property at 10 Preble Street, after completion of the Parking Study and to winterize the property. (Finance comm. 3-0)

Proposed
Order #8389 Ordered, that the Town Council accept the recommendation of the Finance Committee to reconsider the use of Town property located at 10 Preble Street, after completion of the Parking Study, and
Be it Further Ordered, that the property be prepared for winter.

Item #8390 Action to consider a recommendation from the Ordinance Committee that staff no longer invest time or resources to develop a contract zone for a subdivision located on South Street. (Ordin. Comm. 3-0)

Proposed
Order # 8390 Ordered, that the Town Council accept the recommendation of the Ordinance Committee that staff no longer invests time or resources to develop a contract zone for a proposed residential subdivision located on South Street to incorporate the principles of greater residential density and the extension of the sewer system down South Street.

Item #8391 Action to consider asking the Ordinance Committee to evaluate the intersection at Railroad Ave. and Mechanic St. to determine the need for more traffic regulations to enhance safety and to recommend any changes that may be needed to local Ordinances to implement changes recommended by the Committee. (Councilor Moulton Spon.)

Proposed
Order #8391 Ordered, that the Town Council ask the Ordinance Committee to evaluate the intersection of Railroad Ave. and Mechanic St. to determine the need for more traffic regulations to enhance safety and to recommend any changes that may be needed to local Ordinances to implement changes recommended by the Committee.

Item #8392 Action to consider going into Executive session pursuant to Title 36, M.R.S.A, Section 841 (2) for the purpose of considering two applications for abatement of taxes and pursuant to Title 1, MRSA Section 405 (6) (E) to meet with the Town Attorney to discuss litigation.. (Admin Spon.)

Proposed
Order #8392 Ordered, that the Town Council go into Executive session Pursuant to Title 36, M.R.S.A., Section 841 (2) for the purpose of considering two applications for abatement of taxes based on poverty, and pursuant to Title 1, MRSA, Section 405 (6) (E) to meet with the Town Attorney to discuss litigation.

ADJOURN