

AGENDA AND PROPOSED ORDERS
GORHAM TOWN COUNCIL
January 7, 2014
BURLEIGH H. LOVEITT COUNCIL CHAMBERS

Pledge of Allegiance to the Flag

Roll Call

Acceptance of the minutes of the December 3, 2013 Town Council Regular Meeting.

Open Public Communications

Councilor Communications

Town Manager Report

School Committee Report

Public Hearing #1 A Public Hearing on the renewal Restaurant Liquor License in the name of Thatcher's of Gorham.

Item #8402 Action regarding a renewal Restaurant Liquor License in the name of Thatcher's of Gorham. (Adm. Spon.)

Proposed
Order #8402 Ordered that the Town Council approve a renewal Restaurant Liquor License in the name of Thatcher's of Gorham d/b/a Thatcher's Restaurant and Sports Pub located at 29B School Street

Public Hearing #2 Public Hearing on a proposal to update the Town's Comprehensive Plan.

Item #8403 Action to consider scheduling a second Public Hearing on a proposal to update the Town's Comprehensive Plan. (Admin Spon.)

Proposed
Order #8403 Ordered, that the Town Council schedule a Public Hearing for _____ on a proposal to update the Town's Comprehensive Plan.

Public Hearing #3 Public Hearing on a proposal to amend Chapter III, Section III, Subdivisions, Section IV Preliminary Plan and Section V, Final Plan, of the Land Use and Development Code.

Item #8404 Action to consider a proposal to amend Chapter III, Section III, Subdivisions, Section IV Preliminary Plan and Section V, Final Plan, of the Land Use and Development Code. (Ordinance Comm. 3-0)

Proposed
Order #8404 Ordered, that the Town Council approve the following;

WHEREAS, the Town has a Land Use and Development Code that regulates the development of Subdivisions, and

WHEREAS, some portions of the Code regulating Subdivisions are not consistent with State Law and need to be made consistent, and

WHEREAS, some portions of the existing Code regarding performance guarantees, partial or full release of performance guarantees and other aspects of the Code are administratively inefficient, time consuming, and require Planning Board approval for administrative tasks that are better performed by staff,

Now Therefor Be It Ordered by the Town Council that the amendments to the Land Use and Development Code as proposed are approved.

CHAPTER III, SECTION III, Preliminary Plan

SECTION III – PRELIMINARY PLAN

B. REQUIREMENTS

- 7) Proposed construction schedule and phasing of improvements. Plans requiring phasing shall be designed so that each subdivision phase must be recorded in the registry of deeds as a distinct and separate plan. The required Planning Board signature block shall be added to each of the phased subdivision plans.
- 24) Submissions for preliminary subdivision approval shall include evidence that affirmatively demonstrates that the developer has the financial capacity to undertake the proposed development, including the following information:
 - a) Accurate and complete cost estimates of the development;
 - b) Time schedule for construction;
 - c) One of the following three items:
 1. A letter from a financial institution, governmental agency, or other funding agency indicating a commitment to provide a specified amount of funds and the purposes for which the funds may be utilized; or
 2. In cases where funding is required but there can be no commitment of money until approvals are received, a letter of “intent to fund” from the appropriate funding institution indicating the amount of funds and their specified uses; or
 3. Copies of bank statements or other evidence indicating availability of funds when the developer will personally finance the development.
 - d) Any other information deemed relevant by the Planning Board for the specific project.

C. PRELIMINARY PLAN REVIEW

- 2) j) Financial Capacity to Meet Subdivision Regulations. The applicant must have adequate financial resources to construct the proposed improvements and meet the criteria standards of these regulations. The Board will not approve any plan if the applicant has not proven its financial capacity to undertake it.

SECTION IV – FINAL PLAN

C. IMPROVEMENT GUARANTEE

- 1) ~~Purpose: Improvement guarantees shall be provided to ensure that the applicant has the financial capability to properly install and maintain the required street, utility,~~

~~and other improvements. The nature and duration of the guarantee shall be structured to achieve this goal without adding unnecessary costs to the developer.~~

~~2) Application:~~

~~a) Before the recording of final subdivision plats, or as a condition of final subdivision plan approval, the Planning Board shall require and shall accept in accordance with the standards adopted by ordinance, the following guarantees:~~

~~(1) The furnishing of a performance guarantee in an amount equal to one hundred twenty-five percent (125%) of the cost of installation for proposed public or quasi-public improvements.~~

~~(2) Provision for a maintenance guarantee for a period not to exceed one (1) year after final acceptance of the improvement, in an amount not to exceed fifteen percent (15%) of the cost of the improvement. In the event improvements are covered by a performance or maintenance guarantee to another governmental agency, which guarantee is at least as stringent as that required hereunder, in which case, no performance or maintenance guarantee, as the case may be, shall be required by the Planning Board for such utilities or improvements.~~

~~(3) The time allowed for installation of the improvements for which the performance guarantee has been provided may be extended by the Planning Board but for no more than two additional years.~~

~~b) Upon substantial completion of all required improvements, the developer may notify the Planning Board of the completion or substantial completion of improvements, and shall send a copy of such notice to the appropriate municipal officials: The Director of Planning and Zoning, the Fire Chief, and/or the Town Engineer. The respective municipal officials shall inspect all improvements of which such notice has been given and shall file a report with the Planning Board indicating either approval, partial approval, or rejection. The cost of the improvements as approved or rejected shall be set forth.~~

~~c) The Planning Board shall approve, partially approve, or reject the improvements on the basis of the report of the municipal officials.~~

~~d) Where partial approval is granted, the developer shall be released from all liability except for that portion of improvements not yet approved.~~

~~3) Performance and maintenance guarantees shall be provided by a variety of means including, but not limited to, the following which must be approved as to form and enforceability by the Town Manager and Town Attorney:~~

~~a) Security Bond. The applicant may obtain a security bond from a surety bonding company authorized to do business in the state.~~

~~b) Letter of Credit. The applicant may provide an irrevocable letter of credit from a bank or other reputable lending institution.~~

~~c) Escrow Account. The applicant may deposit cash, or other instruments readily convertible into cash at face value, into a non interest bearing~~

~~account with the Town. The applicant shall enter into an escrow agreement with the Town, which shall stipulate that the Town can withdraw the money upon forty-eight (48) hour notice to the applicant.~~

D. C. FINAL PLAN REVIEW

- ~~7.~~ Two signed copies of the Final Plan as approved shall be retained by the Planning Department Board (1) and the Town Clerk Assessing Department (1). One (1) original mylar of the signed plan shall be recorded in the Registry of Deeds. A mylar copy of the recorded mylar shall be returned to the Planning Department. ~~If any subdivision of land is proposed in the Final Plan, all material required to be recorded by the Cumberland County Registry of Deeds shall be submitted by the developer within thirty days of the date of written notice of Approval by the Planning Board.~~
- ~~8.~~ No subdivision plan shall be released for recording at the Registry of Deeds until the required performance guarantee has been posted. If an approved plan is not recorded in the Registry of Deeds within one (1) year of the original approval, it shall become null and void. If a plan has received phased approval, the first phase shall be recorded within one (1) year of the original approval and subsequent phases shall be recorded within five (5) years of the original approval. If a phased plan is not recorded within those time periods, the phases that have not been recorded shall become null and void.
- ~~8-9.~~ Municipal subdivision approval granted prior to August 1, 1972 of any final plan or other subdivision plat shall be deemed withdrawn unless said plan is recorded in the Cumberland County Registry of Deeds by August 1, 1982.

SECTION V. IMPROVEMENTS POST APPROVAL ACTIVITIES

A. Performance Guarantee:

1. Purpose: Improvement guarantees shall be provided to ensure that the applicant has the financial capability to properly install and maintain the required street, utility, and other improvements.
2. Types of Guarantees. The applicant shall provide one of the following performance guarantees for an amount adequate to cover 125% of the total construction costs of all required improvements. Performance and maintenance guarantees shall be provided by a variety of means including, but not limited to the following, which must be approved as to form and enforceability by the Town Manager and Town Attorney:
 - a. Escrow Account: Either a certified check payable to the municipality or a savings account or certificate of deposit naming the municipality as sole owner;
 - b. Security Bond: A performance bond payable to the municipality issued by a surety bonding company authorized to do business in the State of Maine;
 - c. Letter of Credit: An irrevocable letter of credit, from a bank or other reputable lending or financial institution.
3. Contents of Guarantee: The performance guarantee shall must contain the following:
 - a. Construction schedule; and

- b. Cost estimates for each phase of construction taking into account as-built drawings, survey monumentation, required legal documents, provisions for inspections of each phase of construction, and a date after which the applicant will be in default and the municipality shall have access to the funds to finish construction.
4. Escrow Account. A cash contribution for the establishment of an escrow account shall must be made by either a certified check made out to the Town of Gorham, the direct deposit into a savings account, or the purchase of a certificate of deposit.
 - a. For any account opened by the applicant, the Town of Gorham shall must be named as owner or co-owner, and the consent of the Town shall must be required for a any withdrawal.
 - b. The Town shall be authorized to make withdrawals without the signature of the applicant, pursuant to the performance schedule.
5. Performance Bond. A performance bond shall must detail the conditions of the bond, the method for release of the bond or portions of the bond to the applicant, and the procedures for collection by the municipality. The bond documents shall must specifically reference the subdivision for which approval is sought and the approved costs estimates.
 - a. The applicant shall submit a draft copy of the performance bond to the Town Planner for review and approval prior to issuance of the final performance bond.
6. Letter of Credit. An irrevocable letter of credit from a bank or other reputable lending institution with offices in the region shall must indicate that funds have been set aside for the construction of the subdivision.
 - a. The letter of credit shall must use the template established by the Town of Gorham, unless waived by the Town Manager in consultation with the Town Attorney.
7. Phasing of Development: The Planning Board may approve plans to develop a subdivision in separate and distinct phases. The phases shall must be designed so that they can be recorded at the registry of deeds as separate and distinct plans. No phased plans shall will be released for recording in the registry of deeds until the performance guarantee for that phase has been established as required under this section.
8. Release of Guarantee. While partial draws are permitted, the amount of each shall must be no less than twenty percent (20%) of the original amount. The developer shall submit to the Town Planner a copy of the approved schedule of values identifying items substantially completed and being requested for release. The Town Planner shall send a copy of such notice to the appropriate municipal officials: The Zoning Administrator, Fire Chief, Town's Inspecting Engineer, and/or the Public Works Director or the Director's designee. The respective municipal officials shall inspect all improvements of which such notice has been given and shall file a report with the Town Planner indicating either approval, partial approval, or rejection. Prior to the release of any part of the performance guarantee, the Town Manager, or his designee, shall determine to his/her satisfaction, in part upon the report of the Town's consulting engineer or other qualified individual retained by the municipality and departments who may be involved, that the proposed improvements meet

or exceed the design and construction requirements for that portion or phase of the subdivision for which the release is requested.

9. Default: If upon investigation, the Town or the Town's consulting engineer finds that any of the required improvements have not been constructed in general conformance with the plans and specifications filed as part of the application, he or she shall report in writing to the Code Enforcement Officer, the Town Manager, the Town Planner, and the applicant or builder. The Town Manager, or his designee, shall take any steps necessary to preserve the municipality's rights.
10. Performance guarantees for subdivision containing streets designed to the Town's public way standards and meant to be offered to the Town for ~~accept~~ acceptance are subject to the provisions under Chapter II, Section V: Minimum Standards for the Design and Construction of Streets and Ways, E. Acceptance of Streets and Ways, 4), h).

B. Improvements:

In no event shall building permits be issued for more than 50% of the lots or units within a development until:

1. All required off-site public improvements have been completed, unless otherwise approved by the Planning Board, based upon the Board's determination that extenuating circumstances exist and an adequate performance guarantee is in place to ensure the completion of the uncompleted public improvements. For purposes of this section only, extenuating circumstances may include, but are not limited to, delays in related Town, State or Federal improvement projects that impact the required public improvements of delays caused by weather or unforeseen site conditions. The Planning Board's decision on whether extenuating circumstances exist to excuse completion of required off-site improvements prior to the issuance of more than 50% of the building permits shall be final.
2. All required streets are either constructed or the guarantee required by Chapter II, Section V.E.4.f has been posted with and accepted by the Town.
3. All required storm water facilities and erosion control measures have been installed, as required by the approved plan, other than those facilities required as part of the development of an individual lot.
4. Where the Planning Board has approved a phased development, this limitation shall apply to each separate phase. Public improvements both on- and off-site shall be assigned to a phase of development as part of the Planning Board's approval of the subdivision.

Item #8405 Action to appoint a Town Clerk (Admin. Spon.)

Proposed

Order #8405 Ordered, that the Town Council appoint Jennifer Elliott as the Town Clerk.

Item #8406 Action to consider designating the Little Falls School building as an Activity Center for Community use. (Admin Spon.)

Proposed

Order #8406 Ordered, that the Town Council designate the former Little Falls School building as a facility to be used as an activity center which may include meeting space for recreation programs, community groups and community center activities, and

Be It Further Ordered, that the Recreation Department be responsible for administrating and scheduling the activities in the building, and

Be it Further Ordered that the Town council appropriate \$12,000 from the Bond funds for the Little Falls Building Project to provide funds to evaluate the work needed to be done.

Item #8407 Action to consider asking the Ordinance Committee to review the Town's Special Amusement Ordinance and recommend to the Town Council changes that reasonably allow outdoor Special Amusement Events. (Admin Spon.)

Proposed

Order #8407 Ordered, that the Town Council ask the Ordinance Committee to review the Town's Special Amusement Ordinance and recommend to the Town Council changes that reasonably allow outdoor Special Amusement Events. (Admin Spon.)

Item #8408 Action to consider giving final acceptance of the assets of Gorham Cemetery Association (including Eastern Cemetery) (Admin Spon.)

Proposed

Order #8408 Ordered, that the Town Council approve the following;

WHEREAS, since 1907, the Gorham Cemetery Association, a nonprofit corporation organized under the laws of the State of Maine (the "Association"), has held and managed all of the assets, both real property and personal property (both tangible and intangible), of the Eastern Cemetery and the South Street Cemetery in Gorham;

WHEREAS, the Association's Trustees now desire to dissolve the corporation, resign as trustees of the Eastern Cemetery's and the South Street Cemetery's assets and transfer all of the Association's assets to the Town of Gorham ("Town"), all of such assets to be held, IN TRUST, in furtherance of the Association's purposes to care for and manage the Eastern Cemetery and the South Street Cemetery;

WHEREAS, on April 3, 2013 the Association Trustees voted to begin the formal, legal process to resign as the Association's trustees and to transfer, IN TRUST, all of its and their interests in the Association's assets to the Town of Gorham, pursuant to State statute, 18-B M.R.S.A. § 705(1)(B), under the conditions that:

(1) the Town of Gorham, acting by and through its Town Council, agreed to accept and maintain all of the Association's assets, as aforesaid, to be held IN TRUST, (excepting only the Association's historical documents, which are to be transferred to the Gorham Historical Society, but nonetheless to be available for public inspection and reference as may be needed by the Gorham Town Council and for historical purposes) for the purpose of managing and protecting the Eastern Cemetery and further subject to the limitations set forth in State statute, 13 M.R.S.A. §§ 1031-1386 and the Maine Uniform Trust Code; and

(2) that the Maine Attorney General and the Maine Probate Court have formally approved of the Town's becoming the trustee of the Association's assets pursuant to 18-B M.R.S.A. § 704(4)(B) and (C);

WHEREAS, on May 5, 2013 the Town Council voted to take over the care and management of the Eastern Cemetery and to take ownership of all of its assets, both real and personal, IN TRUST, as aforesaid for such limited purpose, subject to approval by the Cumberland County Probate Court;

WHEREAS, on September 25, 2013, the Cumberland County Probate Court issued an order approving 1) the resignation of the Gorham Cemetery Association as trustee of the Eastern Cemetery Trust; and 2) the appointment of the Town of Gorham in its stead as successor trustee for the Eastern Cemetery Trust;

WHEREAS, on December 6, 2013, the Association and the Town held a closing at which the Association presented the Town with an executed deed and bill of sale transferring legal title to the Association's real property and personal property (both tangible and intangible) in trust to the Town and voted to authorize the Association's president to take further action to effectuate the transfer;

WHEREAS, as of December 6, 2013 the Association's intangible personal property, i.e., its financial assets, totaled \$ 190,552.12; and

WHEREAS, this document shall be recorded in the Cumberland County Registry of Deeds with the deeds for the Eastern Cemetery and the South Street Cemetery, as provided by State statute in 13 M.R.S. §§ 1221 and 1224;

NOW, THEREFORE, IT IS HEREBY ORDERED, that the Town of Gorham, acting by and through its Town Council, shall, and hereby does, accept ownership of all of the Association's assets, both real property and personal property (including both tangible and intangible assets), as aforesaid, to be held IN TRUST, nevertheless, with the Town Council members, in office from time to time, to serve as the trustees, and to take all actions, as reasonably necessary, to accomplish the same, including, without limitation, accepting delivery of deeds to the Eastern Cemetery and the South Street Cemetery real property, excluding only the Association's historical documents, which are to be transferred to the Gorham Historical Society to be available for public inspection and reference as may be needed by the Gorham Town Council and for historical purposes; and

BE IT FURTHER ORDERED that, the Town of Gorham, acting by and through its Town Council, as trustees, shall hold and manage all such assets IN TRUST to oversee and care for the Eastern Cemetery and the South Street Cemetery as public cemeteries, subject to the limitations set forth in 13 M.R.S.A. §§ 1031-1386 and the Maine Uniform Trust Code.

Item #8409 Action to consider giving final acceptance of assets of White Rock Cemetery association. (including Saplin Hill Cemetery) (Admin Spon.)

Proposed

Order #8409 Ordered, that the Town Council approve the following;

WHEREAS, since 1899, the White Rock Cemetery Improvement Association, a nonprofit corporation organized under the laws of the State of Maine (the "Association"), has held and managed the assets, both real property and personal property (both tangible and intangible), of the Sapling Hill Cemetery in Gorham;

WHEREAS, since 1901, the White Rock Improvement League, a Maine association (the "League"), has raised and expended funds to improve and beautify the Sapling Hill Cemetery in cooperation with the Association;

WHEREAS, the Association Trustees and the League Trustees now desire to dissolve their respective organizations, resign as trustees of the Sapling Hill Cemetery's assets and transfer all of the Association's assets and the League's assets to the Town of Gorham ("Town"), all of such assets to be held, IN TRUST, in furtherance of the Association's and the League's purposes to care for and manage the Sapling Hill Cemetery;

WHEREAS, on June 20, 2013 the Association Trustees and the League Trustees voted to begin the formal, legal process to resign as trustees and to transfer, IN TRUST, all of its and their interests in the Association's and the League's assets to the Town of Gorham, pursuant to State statute, 18-B M.R.S.A. § 705(1)(B), under the conditions that:

(1) the Town of Gorham, acting by and through its Town Council, agreed to accept and maintain all of the Association's and the Leagues' assets, as aforesaid, to be held IN TRUST, (excepting only their historical documents, which are to be transferred to the Gorham Historical Society, but nonetheless to be available for public inspection and reference as may be needed by the Gorham Town Council and for historical purposes) for the purpose of managing and protecting the Sapling Hill Cemetery and further subject to the limitations set forth in State statute, 13 M.R.S.A. §§ 1031-1386 and the Maine Uniform Trust Code; and

(2) that the Maine Attorney General and the Maine Probate Court have formally approved of the Town's becoming the trustee of the Association's assets pursuant to 18-B M.R.S.A. § 704(4)(B) and (C);

WHEREAS, on August 6, 2013 the Town Council voted to take over the care and management of the Sapling Hill Cemetery and to take ownership of all of its assets, both real and personal, IN TRUST, as aforesaid for such limited purpose, subject to approval by the Cumberland County Probate Court;

WHEREAS, on September 25, 2013, the Cumberland County Probate Court issued an order approving 1) the resignation of the Association and the League as trustees of the Sapling Hill Cemetery Trust; and 2) the appointment of the Town of Gorham in its and their stead as successor trustee for the Sapling Hill Cemetery Trust;

WHEREAS, on December 6, 2013, the Association, League and the Town held a closing at which the Association and League presented the Town with an executed deed and bills of sale transferring legal title to the Association's and League's real property and personal property (both tangible and intangible) in trust to the Town;

WHEREAS, as of December 6, 2013 the Association's intangible personal property, i.e., its financial assets, totaled \$708.49; and

WHEREAS, as of December 6, 2013 the League's intangible personal property, i.e., its financial assets, totaled \$5,222.46; and

WHEREAS, this document shall be recorded in the Cumberland County Registry of Deeds with the deed for the Sapling Hill Cemetery, as provided by State statute in 13 M.R.S. §§ 1221 and 1224;

NOW, THEREFORE, IT IS HEREBY ORDERED, that the Town of Gorham, acting by and through its Town Council, shall, and hereby does, accept ownership of all of the Association's and the League's assets, both real property and personal property (including both tangible and intangible assets), as aforesaid, to be held IN TRUST, nevertheless, with the Town Council members, in office from time to time, to serve as the trustees, and to take all actions, as reasonably necessary, to accomplish the same, including, without limitation, accepting delivery of a deed to the Sapling Hill Cemetery real property, excluding only the Association's and the League's historical documents, which are to be transferred to the Gorham Historical Society to be available for public inspection and reference as may be needed by the Gorham Town Council and for historical purposes; and

BE IT FURTHER ORDERED that, the Town of Gorham, acting by and through its Town Council, as trustees, shall hold and manage all such assets IN TRUST to oversee and care for the Sapling Hill Cemetery as a public cemetery, subject to the limitations set forth in 13 M.R.S.A. §§ 1031-1386 and the Maine Uniform Trust Code.

Item 8410 Action to consider seeking competitive proposals for the Town's Banking Services. (Councilor Phillips Spon.)

Proposed

Order #8410 Ordered, that the Town Council ask staff to seek competitive proposals for the Town's Banking Services and to evaluate the proposals and make recommendations to the Town Council for approval.

Item #8411 Action to consider endorsing a letter to Gorham's State Legislative Delegation regarding the revenue sharing program. (Admin Spon.)

Proposed

Order #8411 Ordered, that the Town Council endorse the attached letter to Gorham's Legislative Delegation that asks them to prevent the State from further raiding the Revenue Sharing Program and shifting even more of the cost of State Government onto the property tax.

Item #8412 Action to consider an amendment to Chapter 1, Section IV of the Land Use and Development Code to clarify the powers and duties of the Board of Appeals. (Admin. Spon.)

Proposed

Order #8412 Ordered, that the Town Council refer a proposal to amend Chapter 1, Section IV of the Land Use and Development Code to clarify the powers and duties of the Board of Appeals, to the Planning Board for public hearing and their recommendation.

Item #8413 Action to consider an amendment to Chapter I, Section IX Gorham Village Center District to allow creative parking solutions. (Admin. Spon.)

Proposed

Order #8413 Ordered, that the Town Council refer a proposal to amend Chapter I, Section IX Gorham Village Center District, to allow creative parking solutions to the Ordinance Committee for their recommendation,

Item #8414 Action to go into Executive Session pursuant to Title 1 MRSA Section 405 (6) (C) to discuss the acquisition, disposition or use of property for economic development. (Admin Spon.)

Proposed

Order #8414 Ordered, that the Town Council go into Executive Session pursuant to Title 1 MRSA Section 405 (6) (C) to discuss the acquisition, disposition or use of property for economic development.

ADJOURN