

MINUTES  
GORHAM TOWN COUNCIL  
REGULAR MEETING  
July 5, 2011 – 7:00 p.m.  
Gorham Municipal Center – Burleigh H. Loveitt Council Chambers

There were 16 members of the public present at the start of the meeting.

Chairman Robinson opened the meeting at 7:12 pm with the Pledge of Allegiance to the Flag.

Roll Call Present: Chairman Robinson, Councilors; Caldwell, Gagnon, Mattingly, Miner, Phinney and Pressey, Town Manager, David Cole and Acting Town Clerk Connie Loughran

Moved by Councilor Mattingly, seconded by Councilor Miner and VOTED to accept the minutes of the June 7, 2011 Town Council Regular Meeting and the June 24, 2011 Special Meeting. 7 years

#### Open Public Communications

Gorham Police Chief, Ronald Shepard introduced our new police officer, Chelsea Emmans. Susie Phillips of Harding Bridge Road announced that The 275<sup>th</sup> Commemorative Committee is publishing a book this fall commemorating 25 years of Gorham history in pictures. Books will be available at Gorham Historical Society, Baxter Memorial Library and the Town Clerk's Office for \$10.00 each.

Representative Knapp reported that there had been a special ceremony in April in Augusta honoring Mark Badeau for his work with veterans and their families and she wishes to congratulate him for his contribution. The Legislature wrapped up last week. They tried to keep the environment as people in Maine have come to expect it while creating fewer hoops for businesses to jump through so that we can have some economic development here in the State. The Legislature will be reconvening in September for redistricting.

#### Councilor Communications

Councilor Miner reported that he attended the Baxter Memorial Spring into Summer Event and the annual Eco-Maine Board meeting. He has once again been appointed to the Board and if anyone has questions regarding Eco-Maine he would be glad to assist them. The Capital Improvements met on June 30 and reviewed all the property leases, there will be further discussions and they will then report back to the Council.

Councilor Mattingly had been concerned that the turnpike spur might get caught up in the scandals surrounding the former executive director of MTA. Councilor Mattingly, Burleigh Loveitt and Mike Phinney were invited by Interim MTA Director, Peter Mills to a Board Meeting. The MTA Board is very much in support of developing this spur. The bad news is that there is a massive amount of debt that MTA is responsible for and they cannot borrow any more money. He encourages Councilors and the public to attend the MTA meetings

Councilor Gagnon is a member of the Jetport Noise Abatement Committee. There is another meeting of the Committee in a few weeks and if anyone has concerns please email me.

Councilor Pressey reporting as chairman of Personnel and Appointments Committee stated that there are some open seats on our boards and committees and if anyone is interested in community participation they can find more information under news and announcements on our web site.

Councilor Caldwell reported that there was a finance committee meeting June 10<sup>th</sup>. They discussed foreclosed tax liens and there is one property that will be sold, and one that the Finance Director researching. She reported that the Great Falls school committee will meet tomorrow night at the school.

Representative Knapp spoke at this time. Her report can be found under Open Public Communications.

#### Chairman's Report

Chairman Robinson stated that Marc Badeau is also a member of the Gorham Economic Development Corporation and wishes to thank him for his service to the Gorham community. Chairman Robinson reported that he met with Councilor Miner regarding comments made last month and he apologized to Councilor Miner and wishes to do that again here publically. He thanked the Council for attending numerous meetings this year. There are additional workshops scheduled for the next three months starting at 6 pm. The new crosswalks at Routes 25 and 114 will start to be replaced this week. This will make travel through that intersection inconvenient for commuters. Construction on the new round-about at Brackett Road /New Portland/Libby Ave. has also started.

#### Town Manager's Report

David Cole reported that he issued a 5 year service pin to Brian Key, Gorham Police Department and a 5 year service pin to Ross Larrabee of the Fire Department and he thanks both these employees for their dedicated service to the Town. Mr. Cole reported that we have received a recognition award from COG for participating in Phase 1 of the East West Corridor Study. He thanked Councilor Pressey for submitting us for this award along with Scarborough, South Portland and Westbrook along with the Maine Department of Transportation and the Maine Turnpike Authority. Mr. Cole reported that this is the eighth straight year that we have received the Certificate of Financial Achievement for Financial Reporting from the Government Financial Officers Association. There are only

ten other municipalities in Maine that have received this award and Maureen Finger our Finance Director deserves a lot of the credit for this award. Chairman Robinson thank Councilor Pressey for nominating us for the COG award and he thanked Maureen Finger for her service

#### Election Report

Acting Town Clerk, Connie Loughran reported that there were a total of 1590 voters, a 7% turnout for the June 14 Municipal Elections. Darryl B. Wright was elected to the School Committee with a term to expire in 2012 with 1275 Votes. The \$3,000,000 bond issue for Public Safety Improvements at the Narragansett School and the competition turf field failed with 309 yes to 1272 no votes. Voters passed the School Budget Validation Question with 1047 yes votes to 517 no votes.

#### School Committee Report

Chairman Dennis Libby welcomed Darryl Wright to the School Committee. He thanked the voters for approving the School Budget. Chairman Libby reported that the legislature enacted into law a change in the distribution of the general purpose funds. Essentially this will shift funds from southern Maine to northern Maine, this will start in FY 2013 and means less funding for our District. He reported on the facilities being made ready for the next school year. July 22 is the date for substantial completion of the new Great Falls elementary School. Chairman Robinson asked if we knew how our representatives voted on the shifting of funds.

#### New Business

The meeting recessed for a public hearing on a proposal to amend the Land Use and Development Code to allow Caretaker Residential units in the Urban Commercial, Roadside Commercial, and Industrial Zones and in the Narragansett Development District. Sherrie Fontaine of Church Street spoke in favor of the proposed amendment. The public hearing closed at 7:46 pm.

Item #8026 Moved by Councilor Caldwell, seconded by Councilor Phinney to waived reading of the entire order. Moved by Councilor Phinney, seconded by Council Caldwell and voted that

Whereas, the Town has a development Code that restricts residential development in commercial or industrial zones by either requiring minimum lot size or prohibits any residential units, and

Whereas, in limited situations, allowing a residential caretaker unit associated with a business would enhance the security of said business and be beneficial while still providing for development that is predominately commercial or industrial, and

Whereas the Planning Board held a public hearing on June 6, 2011 and after hearing voted to recommend approval of the proposed amendment, and

NOW THEREFORE BE IT ORDAINED by the Town Council of the Town of Gorham, Maine, in Town Council assembled, that Chapter I, Zoning Regulations, of the Gorham Land Use and Development Code be amended as follows:

(Proposed additions to the Code are underlined; proposed deletions are ~~struck through~~.)

#### CHAPTER I – ZONING REGULATIONS, SECTION V – DEFINITIONS

Caretaker Unit: An accessory dwelling unit that is incorporated into, and is part of, a non-residential use and is occupied by an owner or an employee of the business occupying the principal use, and having a gross floor area of less than two thousand (2000) square feet.

#### CHAPTER I, ZONING REGULATIONS, SECTION X - Urban Commercial District

##### B. PERMITTED USES

- 3) Accessory uses and buildings including a caretaker unit.

#### CHAPTER I, ZONING REGULATIONS, SECTION XI – Roadside Commercial District

##### B. PERMITTED USES

- 3) Accessory uses and buildings, including a caretaker unit.

#### CHAPTER I, ZONING REGULATIONS, SECTION XII – Industrial District

##### B. PERMITTED USES

- 6) Accessory uses and buildings, including retail and service uses accessory to another permitted use and also including a caretaker unit for residential use~~residential uses~~ provided that there shall be no more than one residential unit on a property and such unit shall be resided in by an owner of the property, an

employee of the industrial operation, or a person who serves as a security person. In the event that the principal industrial use or other permitted use terminates, then the accessory residential use shall also terminate.

## **CHAPTER I, ZONING REGULATIONS, SECTION XVI – Narragansett Development District**

### **B. PERMITTED USES**

#### 2) Other uses

- e) Uses and buildings that are accessory to the above-mentioned uses, including [caretaker units and parking lots](#), are also permitted uses.

#### **7 years**

The meeting recessed for a public hearing on a proposal to adopt an updated Zoning Map. There were no comments from the public and the public hearing closed at 7:50 pm.

Item #8027 Moved by Councilor Phinney, seconded by Councilor Pressey and ORDERED that

Whereas, the Town’s official Zoning Map was last updated on March 14, 2000, and

Whereas, the Town has approved many amendments to the Land Use and Development Code, including the approval of a new Development Transfer Overlay District, that is not on the current map and,

Whereas, the Planning Board held a public hearing on June 6, 2011 and after hearing voted to recommend approval of the new Zoning Map.

NOW THEREFORE BE IT ORDAINED by the Town Council of the Town of Gorham, Maine, in Town Council assembled, that the Zoning Map be updated and adopted. 6 years 1 nay (Gagnon)

The meeting recessed for a public hearing on a proposal to adopt a Property Assessed Clean Energy (PACE) Ordinance. There were no comments from the public and the public hearing closed at 7:56 pm.

Item #8028 Moved by Councilor Caldwell, seconded by Councilor Phinney to waive the reading of the complete order. 7 years Moved by Councilor Phinney, seconded by Councilor Caldwell that

Whereas, the 124<sup>th</sup> Maine Legislature has enacted Public Law 2009, Chapter 591, “An Act to Increase the Affordability of Clean Energy for Homeowners and Business,” also known as the Property Assessed Clean Energy Act” or the PACE Act” ; and

Whereas, that Act authorizes a municipality that has adopted a Property Assessed Clean Energy (“PACE”) Ordinance to establish a PACE program so that owners of qualifying property can access financing for energy saving improvements to their properties located in the Town, financed by funds awarded to the Efficiency Maine Trust under the Federal Energy Efficiency and Conservation Block Grant (EECBG) Program and by other funds available for this purpose, and to enter into a contract with the Trust to administer functions of its PACE program; and

Whereas, the Municipality wishes to establish a PACE program;

NOW THEREFORE, BE IT ORDAINED by the Town Council of the Town of Gorham, Maine, in Town Council assembled, adopt the following Ordinance, and

Be it furthered ordered that the effective date of this Ordinance shall be July 6, 2011.

### **PROPERTY ASSESSED CLEAN ENERGY (PACE) ORDINANCE**

#### **ARTICLE 1 - PURPOSE AND ENABLING LEGISLATION**

##### **1.1 Purpose**

By and through this Chapter, the Town of Gorham declares as its public purpose the establishment of a municipal program to enable its citizens to participate in a Property Assessed Clean Energy (“PACE”) program so that owners of qualifying property can access financing for energy saving improvements to their properties located in the Town. The Town declares its purpose and the provisions of this Ordinance to be in conformity with federal and State laws.

##### **1.2 Enabling Legislation**

The Town enacts this Ordinance pursuant to Public Law 2009, Chapter 591 of the 124<sup>th</sup> Maine State Legislature -- “An Act To Increase the Affordability of Clean Energy for Homeowners and Businesses,” also known as “the Property Assessed Clean Energy Act” or “the PACE Act” (codified at 35-A M.R.S.A. § 10151, *et seq.*).

#### **ARTICLE 2 - TITLE AND DEFINITIONS**

##### **2.1 Title**

This Ordinance shall be known and may be cited as “the Town of Gorham Property Assessed Clean Energy (PACE) Ordinance” (the “Ordinance”).”

## 2.2 Definitions

Except as specifically defined below, words and phrases used in this Ordinance shall have their customary meanings; as used in this Ordinance, the following words and phrases shall have the meanings indicated:

1. **Energy saving improvement.** “Energy saving improvement” means an improvement to qualifying property that is new and permanently affixed to qualifying property and that:
  - A. Will result in increased energy efficiency and substantially reduced energy use and:
    - (1) Meets or exceeds applicable United States Environmental Protection Agency and United States Department of Energy Energy Star program or similar energy efficiency standards established or approved by the Trust; or
    - (2) Involves air sealing, insulating, and other energy efficiency improvements of residential, commercial or industrial property in a manner approved by the Trust; or
  - B. Involves a renewable energy installation or an electric thermal storage system that meets or exceeds standards established or approved by the trust.
2. **Municipality.** “Municipality” shall mean the Town of Gorham.
3. **PACE agreement.** “Pace agreement” means an agreement between the owner of qualifying property and the Trust that authorizes the creation of a PACE mortgage on qualifying property and that is approved in writing by all owners of the qualifying property at the time of the agreement, other than mortgage holders.
4. **PACE assessment.** “PACE assessment” means an assessment made against qualifying property to repay a PACE loan.
5. **PACE district.** “Pace district” means the area within which the Municipality establishes a PACE program hereunder, which is all that area within the Municipality’s boundaries.
6. **PACE loan.** “PACE loan” means a loan, secured by a PACE mortgage, made to the owner(s) of a qualifying property pursuant to a PACE program to fund energy saving improvements.
7. **PACE mortgage.** “PACE mortgage” means a mortgage securing a loan made pursuant to a PACE program to fund energy saving improvements on qualifying property.
8. **PACE program.** “PACE program” means a program established under State statute by the Trust or a municipality under which property owners can finance energy savings improvements on qualifying property.
9. **Qualifying property.** “Qualifying property” means real property located in the PACE district of the Municipality.
10. **Renewable energy installation.** “Renewable energy installation” means a fixture, product, system, device or interacting group of devices installed behind the meter at a qualifying property, or on contiguous property under common ownership, that produces energy or heat from renewable sources, including, but not limited to, photovoltaic systems, solar thermal systems, biomass systems, landfill gas to energy systems, geothermal systems, wind systems, wood pellet systems and any other systems eligible for funding under federal Qualified Energy Conservation Bonds or federal Clean Renewable Energy Bonds.
11. **Trust.** “Trust” means the Efficiency Maine Trust established in 35-A M.R.S.A. § 10103 and/or its agent(s), if any.

## ARTICLE 3 - PACE PROGRAM

### 3.1 Establishment; funding.

The Municipality hereby establishes a PACE program allowing owners of qualifying property located in the PACE district who so choose to access financing for energy saving improvements to their property through PACE loans administered by the Trust or its agent. PACE loan funds are available from the Trust in municipalities that 1) adopt a PACE Ordinance, 2) adopt and implement a local public outreach and education plan, 3) enter into a PACE administration contract with the Trust to establish the terms and conditions of the Trust’s administration of the municipality’s PACE program, and 4) agree to assist and cooperate with the Trust in its administration of the municipality’s PACE program.

### 3.2 Amendment to PACE program.

In addition, the Municipality may from time to time amend this Ordinance to use any other funding sources made available to it or appropriated by it for the express purpose of its PACE program, and the Municipality shall be responsible for administration of loans made from those other funding sources.

## ARTICLE 4 – CONFORMITY WITH THE REQUIREMENTS OF THE TRUST

### 4.1 Standards adopted; Rules promulgated; model documents.

If the Trust adopts standards, promulgates rules, or establishes model documents subsequent to the Municipality’s adoption of this Ordinance and those standards, rules or model documents substantially conflict with this Ordinance, the Municipality shall take necessary steps to conform this Ordinance and its PACE program to those standards, rules, or model documents.

## ARTICLE 5 – PROGRAM ADMINISTRATION; MUNICIPAL LIABILITY

**5.1. Program Administration**

**A. PACE Administration Contract.** Pursuant to 35-A M.R.S.A. §10154(2)(A)(2) and (B), the Municipality will enter into a PACE administration contract with the Trust to administer the functions of the PACE program for the Municipality. The PACE administration contract with the Trust will establish the administration of the PACE program including, without limitation, that:

1. the Trust will enter into PACE agreements with owners of qualifying property in the Municipality's PACE district;
2. the Trust, or its agent, will create and record a Notice of the PACE agreement in the appropriate County Registry of Deeds to create a PACE mortgage;
3. the Trust, or its agent, will disburse the PACE loan to the property owner;
4. the Trust, or its agent, will send PACE assessment statements with payment deadlines to the property owner;
5. the Trust, or its agent, will be responsible for collection of the PACE assessments;
6. the Trust, or its agent, will record any lien, if needed, due to nonpayment of the assessment;
7. the Trust or its agent on behalf of the Municipality, promptly shall record the discharges of PACE mortgages upon full payment of the PACE loan.

**B. Adoption of Education and Outreach Program.** In conjunction with adopting this Ordinance, the Municipality shall adopt and implement an education and outreach program so that citizens of the Municipality are made aware of home energy saving opportunities, including the opportunity to finance energy saving improvements with a PACE loan.

**C. Assistance and Cooperation.** The Municipality will assist and cooperate with the Trust in its administration of the Municipality's PACE program.

**D. Assessments Not a Tax.** PACE assessments do not constitute a tax but may be assessed and collected by the Trust in any manner determined by the Trust and consistent with applicable law.

**5.2. Liability of Municipal Officials; Liability of Municipality**

**A.** Notwithstanding any other provision of law to the contrary, municipal officers and municipal officials, including, without limitation, tax assessors and tax collectors, are not personally liable to the Trust or to any other person for claims, of whatever kind or nature, under or related to a PACE program, including, without limitation, claims for or related to uncollected PACE assessments.

**B.** Other than the fulfillment of its obligations specified in a PACE administration contract with the Trust entered into under Article VI, §1(A) above, a municipality has no liability to a property owner for or related to energy savings improvements financed under a PACE program.

7 yeas

Item #8029 Moved by Councilor Phinney, seconded by Councilor Caldwell and ORDERED, that the Town Council approve a contract with Efficiency Maine Trust to administer the Property Assessed Clean Energy (PACE) program; and

Be it further ordered, that the Town Manager is authorized to sign any documents necessary to implement the contract. 7 yeas

Item #8030 Moved by Councilor Phinney, seconded by Councilor Pressey and ORDERED, that the Town Council appoint Cornelia (Connie) Loughran as the Town Clerk. 7 yeas

The meeting recessed for the swearing in of the newly appointed Town Clerk.

Item #8031 Moved by Councilor Phinney, seconded by Councilor Gagnon: moved by Councilor Phinney, seconded by Councilor Gagnon to amend the proposed order by adding "Restaurants and" prior to Professional offices in section 1.3(a). 7 yeas the amended order was then voted resulting in the following: ORDERED, that the Town Council refer a proposal as amended for a contract zone on property owned by Hans Hansen in South Gorham to the Planning Board for public hearing and their recommendation. 7 yeas

Prior to the above vote a motion to amend the proposed Contract Zone to strike paragraph E as amended FAILED of passage. 2 yeas, 5 nays (Robinson, Caldwell, Pressey, Phinney and Gagnon)

Item #8032 Moved by Councilor Phinney, seconded by Councilor Mattingly and ORDERED that the Town Council appropriate \$74,095.55 from a Town Clock Reserve Fund, \$127.82 from a North Street Cemetery Fence Reserve Fund and \$22,812.61 from the Vacuum Truck Reserve Fund for a total appropriation of \$97,035.98 to pay the Town's 15% local share of a State Road Project PIN 0087223.00 on Mosher Road completed in 2004, and

BE IT FURTHERED ORDERED, that it is the Town's understanding that this payment is the final payment and closeout of this road project. 7 yeas

Item #8033 Moved by Councilor Phinney, seconded by Councilor Gagnon and ORDERED, that the Town Council return to the Recreation Impact Fee Account the remaining balance of funds that had been appropriated by the Town Council on October 5, 2010 as seed money to develop the Chick Property Phase 2 project (the remaining balance estimated to be \$160,000.) 7 years

Item #8034 Moved by Councilor Miner, seconded by Councilor Mattingly: Moved by Councilor Phinney, seconded by Councilor Gagnon to AMEND the proposed order by deleting the Capital Improvements Committee 7 years. The Order as amended was then voted resulting in the following: ORDERED that the Town Council refer a request from BH2M on behalf of Chase Custom Homes, to amend the Town's Wastewater Ordinance, to the Ordinance Committee for their review and recommendation. 7 years

Item #8035 Moved by Councilor Phinney, seconded by Councilor Caldwell and ORDERED, that the Town Council ask the Town Manager to develop the concept and language for an impact fee to support the extension of public sewer down South Street for the Town Council to discuss and consider at a future meeting. 7 years

Item #8036 Moved by Councilor Miner, seconded by Councilor Mattingly, Moved by Councilor Gagnon, seconded by Councilor Pressey to DIVIDE the question into three parts. 7 years The amended order was then voted resulting in the following:

Ordered that the Town Council ask the Finance Committee to review the Town's wage and benefit packages, FAILED OF PASSAGE. 3 years 4 nays (Gagnon, Phinney, Caldwell, Robinson)

ORDERED that the Town Council ask the Finance Committee to assess the revenue from planning and code fees. 4 years 3 nays (Pressey Robinson and Caldwell)

Ordered that Town Council ask the Finance Committee to review the use of the excise tax to fund the municipal budget and report back to the Town Council at a future meeting with any recommendations FAILED OF PASSAGE. 2 years, 5 nays (Gagnon, Phinney, Pressey, Caldwell and Robinson)

Item #8037 Moved by Councilor Mattingly, seconded by Councilor Gagnon; moved by Councilor Phinney, seconded by Councilor Caldwell and VOTED to divide the question into three parts. 7 years The amended order was voted resulting in the following:

Ordered that the Town Council ask the Capital Improvements Committee to review the economic impact of planning and code fees and report back to the Town Council with any recommendations FAILED OF PASSAGE. 2 years 5 nays (Gagnon, Phinney, Robinson, Caldwell, Miner)

ORDERED that the Town Council ask the Capital Improvements Committee to review the structure of the Gorham Economic Development Corporation to improve funding and effectiveness and report back to the Town Council with any recommendations. 7 years

Prior to the above vote it was moved by Councilor Caldwell, seconded by Councilor Phinney to move the question. 7 years

Ordered that the Town Council ask the Capital Improvements Committee to develop a policy for capital investment for Gorham's transportation corridors, including a feasible maintenance and reconstruction plan and report back to the Town Council with any recommendations. FAILED OF PASSAGE 3 years 4 nays (Gagnon, Phinney, Robinson, Caldwell)

Moved by Councilor Phinney, seconded by Councilor Caldwell and VOTED to waive the rules and add item to the agenda. 7 years

Item #8038 Moved by Councilor Phinney, seconded by Councilor Gagnon and ORDERED that the Town Council approve a temporary extension of the privileges for Sebago Brewing Company's Liquor License to allow the sale of beer in a roped off area in their parking lot during the Classic Car Cruise Night events on August 1, August 8, August 15, August 22 and August 29, 2011 from approximately 5 pm to 8 pm. 7 years

Moved by Councilor Miner, seconded by Councilor Gagnon and VOTED to adjourn. Time of adjournment 10:25 pm. 7 years.

A True Copy  
ATTEST:

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Cornelia C Loughran, Town Clerk