

GORHAM TOWN COUNCIL
REPORT OF THE REGULAR MEETING
October 4, 2011

Gorham Municipal Center – Burleigh H. Loveitt Council Chambers

Chairman Robinson opened the meeting at 7:06 pm with the Pledge of Allegiance to the Flag.

There were 43 members of the public present at the start of the meeting.

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

Moved by Councilor Phinney, seconded by Councilor Miner to accept the minutes of the September 6, 2011 Town Council Regular Meeting as printed and distributed.

Open Public Communications

Representative Jane Knapp reported that LD1590 redistricting passed. The Maine Foliage website is once again available and there will be a Maine Creamery Day, October 9th.

Councilor Communications

Councilor Miner reported that he attended the Ecomaine open house on September 24th and he thanked the folks at Ecomaine for a very informative and well run event.

Councilor Mattingly asked that whoever is using the recycling area at Public Works on Huston Road to dump trash and large items to please stop. It would be unfortunate if the recycling 'silver bullets' had to be removed because of this abuse.

Councilor Caldwell reported that the Finance Committee met September 12th and discussed the Town Founders Monument and the cost of moving it to the Municipal Center. They reviewed the financials and the next meeting would be October 14th.

Councilor Phinney reported the Ordinance Committee had met and discussed items that are on tonight's agenda and made their recommendations.

Chairman's Report

Chairman Robinson reported that there will be a special meeting on October 18 on Plan-it Recycling at 7:00 pm. He also reported that the Council and the Economic Development Corporation met in a lengthy and productive meeting. The Council will rotate members going to the Economic Development Corporation meetings and he asked that the Town Manager set a schedule. Councilor Robinson also reported that he had attended a TRIAD fund raiser which Officer Ted Hatch is involved in and he also attended the Chili, Chowder cook-off sponsored by the Gorham Business and Civic Exchange, which was a very nice event. Chairman Robinson noted that today he, Councilor Pressey, Councilor Miner, Town Manager, David Cole had visited New England Treads & Custom Millwork and that Rep. Knapp was also there. Chairman Robinson reminded everyone that committee meetings are public meetings. The general public needs to know when there is a meeting. Also a reminder that November 8th is Election Day. Chairman Robinson was pleased that the Council took a moment to remember and acknowledge 9/11 at their last meeting.

Town Manager's Report

David Cole is pleased to announce that he has awarded 5 year service pins to Gail Platts of the Recreation Department and Brian White also with the Recreation Department. Congratulations to both of them and thanked them both for 5 years of dedicated service to the Town of Gorham.

School Committee Report

Dennis Libby, Chairman of the School Committee reported that there would be a dedication and open house at the new Great Falls School on October 16, 2011. He also reminded everyone that the next meeting of the School Committee would be October 12th.

New Business

Chairman Robinson opened the Public Hearing on a proposal to create a Contract Zone in South Gorham on property of Hans Hansen. Chairman Robinson submitted 2 letters he had received opposing this contract zone. Hans Hansen of South Gorham thanked the Town Manager and staff for helping to write the contract. Two members of the public spoke requesting that their property also be allowed a contract zone. One member of the public requested the contract zone minimize the impact on surrounding properties. Another member of the public asked that the Town look at rezoning the entire stretch of Route 114. There being no further comments the Public Hearing closed at 7:39 p.m.

Item #8064 Prior to the reading of the full contract it was Moved by Councilor Miner, seconded by Councilor Phinney and VOTED to waive the rules requiring a full reading of the order due to its length. 7 yeas. Moved by Councilor Phinney, seconded by Councilor Miner to AMEND the order by accepting the changes that the Planning Board recommended .7 yeas Moved by Councilor Phinney, seconded by Councilor Gagnon to Amend the order Section 2, c by deleting the word Service and inserting 'Business Services, Personal Services and Repair Services' before the word Establishments. 7 yeas. Moved by Councilor Mattingly, seconded by Councilor Phinney and Voted to Amend Sec 2 f by inserting 'foot print' after the word feet. 7 yeas The order as AMENDED was voted resulting in the following:

WHEREAS, Hans Hansen, Inc. ("Hansen") is the owner of a parcel of real estate located on Route 22/114 in Gorham, Maine, consisting of 23.8 acres located on or near the intersection of Route 22 and Route 114 (hereinafter "the Property"); and

WHEREAS, the Property consists of Lots 22.401 - 22.404 and 22.502 - 22.507 on the Town's Tax Map 3; and

WHEREAS, the Property is currently located partially in the Suburban Residential District and partially in the Rural 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 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 October 4 , 2011;

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

This Contract Zoning Agreement, made this _____ day of _____, 2011, 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 **HANS HANSEN, INC.**, a Maine corporation with a mailing address of P.O. Box 264, Gorham, Maine 04038.

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.** Hansen is 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 Services, Personal Services and Repair Services 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 have a 7,000 square feet foot print or less in total floor area.
- g. Professional offices, including real estate offices, medical offices, attorneys’ offices, and similar offices that are not high generators of traffic.
- h. Banks.

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 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, distilling, forging, brewing 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 either Blue Ledge Road or the South Gorham Crossing private driveway.
- e. Minimum setback from Route 22/114: 75 feet.
- f. Maximum building height: None.
- g. Minimum setbacks from residential properties: 20 feet.

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

- a. The minimum landscape buffer along Rt. 22/114 shall be 70 feet of plants and materials as required by the Planning Board.
- b. There shall be no new entrances or exits to the property from Route 22/114.
- c. The hours of operation will be established by the Planning Board.
- d. To the extent possible, parking shall be in the rear of building and parking lots shall be interconnected. The Planning Board may consider parking at the side of the building if a use can show a hardship, but under no circumstances shall parking be allowed in the front yard or in the 75 foot buffered area between Rt. 22/114 and the project. 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 either Blue Ledge Road or the South Gorham Crossing private driveway 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 an application fee equal to \$500 for each lot that is sold for each of the first 7 lots. Payment is due at closing for each individual lot.
- g. The applicant shall make a contribution towards the future extension of public sewer of \$10,000 per lot or business unit for each lot sold. 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. Sidewalks shall be added along Blue Ledge Road and South Gorham Crossing.
- j. Buffering along residential properties will meet the approval of the Planning Board during the site plan review of individual lots.
- k. Signage for lots within the Property shall be governed by the Roadside Environment requirements of Chapter II, Section III of the Land Use and Development Code. No signage shall be placed in locations where it can be seen from Route 22/114, except for one freestanding business park directory sign meeting the requirements of Chapter II, Section III.2.b (regulations for multi-occupant property). Signage for individual lots must be placed so that it can be seen from Blue Ledge Road or from the South Gorham Crossing private driveway from which the property has access or to which the front of the building is oriented.

7. **Agreement to be recorded.** Hansen 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 Hansen or its 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 Hansen, any entity affiliated with Hansen 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 Sections 2 and 3 and the dimensional requirements, are intended to replace the uses and dimensional requirements of the existing Suburban Residential and Rural Districts. The above restrictions, provisions and conditions are an essential part of the rezoning, shall run with the Property, shall bind Hansen, its 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 Hansen or its 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, Property shall then be used only for such other uses as are otherwise allowed by law.

BE IT FURTHER ORDERED that the Zoning Map for the Town of Gorham is hereby amended to incorporate this contract zone.

Prior to the above vote a motion to waived the rules and suspend reading of the proposed order FAILED of PASSAGE. 6yeas 1 nay (Miner) and a motion to amend the order to limit the height to three stories FAILED OF PASSAGE 2 yeas 5 nays (Gagnon, Phinney, Caldwell, Mattingly and Robinson)

Chairman Robinson opened the Public Hearing on the renewal of Automobile Graveyard/Junkyard Permits for 2012. There were no comments from the public and the public hearing closed at 8:02 p.m.

Item #8065 Moved by Councilor Gagnon, seconded by Councilor Phinney and ORDERED, that the Town Council approves renewal of the following Automobile Graveyard/Junkyard Permits for 2012:

LKQ CORP./GORHAM AUTO
M & D REALTY
CHET'S AUTO SALES
HOPKINS SALVAGE
YOUNG'S AUTO SALVAGE
REICHERT'S AUTO BODY
SOUTH STREET AUTO BODY, INC
MOODYS/INS AUTO AUCTION
DUMBO ENTERPRISES

7 yeas.

Item #8066 Prior to the following vote Councilor Gagnon requested to be recused from discussion and voting as he lives in the subdivision. 6 yeas, 1 abstention (Gagnon) The prepared order was Moved by Councilor Phinney, seconded by Councilor Miner. Chairman Robinson presented a letter in support of this item. An individual from the subdivision representing 13 members of the public spoke in favor of this item. Another member of the public not associated with the development spoke in favor of the order. The order as moved and seconded was voted resulting in the following: ORDERED that the Town Council appropriate \$125,000 from the Finance and Server Upgrade Reserve Fund, \$27,187.39 from the Vacuum Truck Reserve Fund and \$30,000 from the Capital Reserve Fund for the purpose of paving the roads in Phase 1 and Phase 2 of Gordon Farms Subdivision, and

BE IT FURTHER ORDERED, that consistent with an agreement between the Town, Smith & Smith Construction and Diversified Properties to provide proceeds from the sale of properties in Gordon Farms Subdivision, to the Town, that \$10,000 first be repaid to the Finance and Server Upgrade Reserve Fund, then \$30,000 be repaid to the Capital Project Reserve Fund and the balance to go into the Road Project Account.

6 yeas, 1 abstention (Gagnon)

Item #8067 Moved by Councilor Phinney, seconded by Councilor Mattingly and ORDERED that the Town Council accept Mercier Way located in Gordon Farms Subdivision off Fort Hill Road/Route 114, as a public way, and

BE IT FURTHER ORDERED, that Mercier Way be classified as a Rural Subcollector Road, and

BE IT FURTHER ORDERED, that because base paving has been placed for a prolonged length of time without the benefit of having surface pavement which may cause the base pavement to deteriorate quicker, and because the initial performance bond lapsed and the contractor and Town have established a process to restore the funds over time, the Council is willing to accept this road now to minimize further deterioration in the base paving and therefore reduce overall costs. 6 yeas, 1 abstention (Gagnon)

Item #8068 Moved by Councilor Phinney, seconded by Councilor Caldwell and ORDERED that the Town Council accept Gordon Farms Road located off Fort Hill Road (Route 114,) as a public way, and

BE IT FURTHER ORDERED, that Gordon Farms Road is classified as a Rural Subcollector Road, and

BE IT FURTHER ORDERED, that because the base paving has been placed for a prolonged period of time, without the benefit of surface paving, which may cause the base pavement to deteriorate quicker, and because the initial performance bond lapsed and the contractor and Town have established a process to restore the funds over time, the Council is willing to accept this road now to minimize further deterioration in the base paving and therefore reduce overall costs. 6 yeas, 1 abstention (Gagnon)

Chairman Robinson called for a recess and the meeting resumed at 9:09 p.m.

Item #8069 Moved by Councilor Phinney, seconded by Councilor Caldwell and ORDERED, that the Town Council ask the Ordinance Committee to develop an amendment to the Land Use and Development Code to require roads that are intended to become public roads, be offered to the Town within a reasonable period of time. 7 years.

The Council decided to discuss Items #8070 through #8074 together and vote on them separately.

Item #8070 Moved by Councilor Phinney, seconded by Councilor Mattingly and ORDERED, that the Town Council refer a request from Dennis and Demetria Chadbourne to develop a contract zone for property located at 83 County Road (Tax map 6, Lot 30) with substantially similar requirements that are included in the proposed contract for the Hans Hansen property, to the Planning Board for public hearing and the Board's recommendation. 6 years. 1 nay (Miner)

Item #8071 Moved by Councilor Phinney, seconded by Councilor Gagnon and ORDERED, that the Town Council refer a request from Albert Frick to develop a contract zone for property located at 95 County Road (Tax Map 6, Lot 31 and Tax Map 4, Lot 09) with substantially similar requirements that are included in the proposed contract zone for the Hans Hansen property, to the Planning Board for public hearing and the Board's recommendation. 6 years. 1 nay (Miner)

Item #8072 Moved by Councilor Phinney, seconded by Councilor Pressey and ORDERED, that the Town Council refer a request from Mike and Sally Ordway to develop a contract zone for property located at 94 County Road (Tax Map 4, Lot 6.001) with substantially similar requirements that are included in the proposed contract zone for the Hans Hansen property to the Planning Board for public hearing and the Board recommendation. 7 years

Item #8073 Moved by Councilor Caldwell, seconded by Councilor Gagnon and ORDERED, that the Town Council refer a request from Mary McFarland to develop a contract zone for property located at 86 County Road (Tax Map 3, Lot 22.002) with substantially similar requirements that are included in the proposed contract zone for the Hans Hansen property, to the Planning Board for public hearing and Board recommendation. 7 years

Item #8074 Moved by Councilor Gagnon, seconded by Councilor Pressey and ORDERED, that the Town Council refer a request from Marion Green to develop a contract zone for their property located off County Road in South Gorham (Tax Map 6 Lot 28) to the Planning Board for their review and recommendation. 7 years

Item #8075 Moved by Councilor Phinney, seconded by Councilor Gagnon and ORDERED, that the Town Council authorize the purchase of property at 55 Morrill Avenue, based on the appraised price of \$155,000 and in recognition that this property is surrounded by school property, and

BE IT FURTHER ORDERED that the Town Council appropriate funds from the Land Acquisition Reserve Fund for this purpose. 7 years.

Item #8076 Moved by Councilor Miner, seconded by Councilor Caldwell and ORDERED, that the Town Council refer a request from Peter and Susan Legere to purchase a parcel of Town Land located off Fort Hill Road, to the Capital Improvements Committee for their review and recommendation. 7 years

Item #8077 Moved by Councilor Phinney, seconded by Councilor Caldwell and ORDERED, that the Town Council appropriate \$3,370 from the Open Space Impact Fee Account for the Town's 20% local share of a grant to design a pedestrian trail from New Portland Road to Hutcherson Drive, instead of appropriating funds from the Contingency Account as previously voted on September 6, 2011. 7 years.

Item #8078 Moved by Councilor Miner, seconded by Councilor Gagnon and ORDERED, that the Town Council schedule their regular monthly Meeting in November for November 15, 2011. 7 years

Item #8079 Moved by Councilor Phinney, seconded by Councilor Caldwell and ORDERED by the Town Council that the polls be open for the November 8, 2011 Annual Municipal Election, State Referendum Election and Special Cumberland County Commissioner District 1 Election between the hours of 7:00 a.m. and 8:00 p.m.; and,

BE IT FURTHER ORDERED that absentee ballots will be processed on Monday, November 7, 2011 at 9:00 a.m. and on Tuesday, November 8, 2011 at 8:00 a.m., 2:00 p.m., 6:00 p.m. and 8:00 p.m.

BE IT FURTHER ORDERED, that the Town Clerk and the Registrar of Voters are in session between the hours of 8:30 a.m. and 4:00 p.m. on Wednesday, November 2, 2011; 8:30 a.m. and 7:00 p.m. on Thursday November 3, 2011 and 8:30 a.m. and 1:00 p.m. on Friday, November 4, 2011 and 8:30 a.m. and 4:00 p.m. on Monday, November 7, 2011 for the purpose of registering citizens to vote, correcting the voter list; and accepting Absentee Ballots, and

BE IT FURTHER ORDERED, that the Town Council appoint the following Wardens and Ward Clerks for the November 8, 2011 Annual Municipal Election, State Referendum Election and Special Cumberland County Commissioner District 1 Election and that the Town Clerk is authorized to make changes to these appointments as needed:

Ward 1: Warden - Linda Deering, Ward Clerk - Laurel Smith
Ward 2: Warden - Patricia Clay, Ward Clerk - Nancy Kenty
Central: Warden - Alida Landry, Ward Clerk - Cornelia Loughran

7 yeas

Item #8080 Moved by Councilor Miner, seconded by Councilor Pressey and ORDERED, that the Town Council approve a request from the Ordinance Committee to discuss and consider developing a proposal to rezone areas of South Gorham for the Town Council to consider at a future meeting. 7 yeas

Item #8081 Moved by Councilor Gagnon, seconded by Councilor Caldwell and ORDERED, that the Town Council appoint David Cole as the voting delegate and John Pressey as the alternate voting delegate for the Maine Municipal Associations Annual Business Meeting scheduled for October 6, 2011 at 8:00 a.m. 7 yeas

Item #8082 Moved by Councilor Gagnon, seconded by Councilor Pressey and ORDERED, that the Town Council accept the 3 year bid from Gorham Sand and Gravel to purchase sand for winter road maintenance. 7 yeas

Item #8083 Moved by Councilor Phinney, seconded by Councilor Gagnon and ORDERED, that the Town council refer a proposal to amend the Land Use and Development Code to clarify when construction or expansion of a paved area needs site plan approval from the Planning Board, to the Planning Board for public hearing and their recommendation. 7 yeas

Chairman Robinson reminded the public that there would be a Council Workshop on October 18, 2011 and that Election Day is November 8, 2011

Moved by Councilor Phinney, seconded by Councilor Miner to ADJOURN. 7 yeas Time of Adjournment 10:30 p.m.

A True Copy

Attest
Cornelia C Loughran, Town Clerk