

GORHAM TOWN COUNCIL  
REPORT OF THE REGULAR MEETING  
February 7, 2012

Gorham Municipal Center Burleigh H Loveitt Council Chambers

Chairman Caldwell opened the meeting with the Pledge of Allegiance to the Flag. There were 14 members of the public present at the start of the meeting.

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

Moved by Councilor Mattingly, seconded by Councilor Phinney and VOTED Acceptance of the minutes of the January 3, 2012 Regular Meeting as Amended and the January 17, 2012 Special Meeting. 6 years.

#### Open Public Communications

Blanche Alexander of Wilson Road, Secretary of the Lakes Region Senior Center thanked the Town of Gorham for the opportunity to use the old Little Falls School as their meeting place as temporary as it may be.

Representative Jane Knapp reported on the Legislative Committees that she is a member of and invited anyone who would like to shadow her for a day to contact her. Ms. Knapp reported that there is a National Student Transportation Group who offers bullying prevention training; the DEP recommends reevaluation of Product take-back programs to improve recycling rates, protections; there is a link on the State web site for reporting welfare fraud and abuse. She also reported on the Commissioner of Education's "Education Evolving: Maine's Plan for Putting Learners First". Representative Knapp spoke about changes to ADA restrictions and guidelines and that the Attorney General warns consumers of supplemental health insurance scams.

#### Councilor Communications

Councilor Phinney reporting for the Ordinance Committee stated that they had met with two (2) representatives of Maine Gas, the company provides natural gas to the Town. There was a discussion as to how extending natural gas in the Town, basically how they would like to work with the Town of Gorham. The Ordinance Committee also discussed South Gorham briefly and that discussion would be back at the next Ordinance Committee meeting.

Councilor Phillips reported that the Founders Festival Committee will meet and the public is welcome to attend Thursday, February 16, 2012 at 6:00 PM Conference Room in the Recreation Dept. The Festival will be two (2) days this year May 25<sup>th</sup> and May 26. She also volunteers for the Gorham Clothes Closet which is at the Little Falls School. There are clothes drop off containers at Little Falls School, Gorham Recreation Department and Baxter Memorial Library.

Councilor Gagnon reported for the Finance Committee. They finished reviewing the audit and obtained some information that was felt would help Council during budget time. The United Way is doing taxes for people of different income levels at various locations. It is called Cash Tax, you can go to the United Way web site to find a location.

Councilor Mattingly sent congratulations to the Public Works Department for their efforts in keeping the roads clear during the last snow event. Councilor Mattingly reported that the Council met on

behalf of the Gorham Economic Development Corporation as the members of the Corporation. They reviewed the purpose of the Corporation, and came up with some consensus items that will be compiled and distributed to the Council.

Councilor Pressey as Chairman of the Appointments/Personnel Committee reported that there are some seats open on various boards and committees.

Chairman Caldwell reported that Collett Monument Company will be here early in the spring to pick up the Founders Monument and she has the wording that will be re-inscribed on the monument. Chairman Caldwell has requested that Collett Monument Company inform Public Works when they are going to be here to pick up the monument.

#### Town Managers Report

Town Manager, David Cole reported that last Wednesday the Town went out and priced the Bonds for refinancing. He reported on the savings to the Town, School Department and the State. The School Committee has voted to return the White Rock School to the Town effective June 30, 2012. He also reported that after a conversation with Phil Grondin, Mr. Grondin thinks that they are about half way done with the cleanup of the material at Plan-it Recycling and it seems to be going well. Mr. Cole presented Fire Chief Bob Lefebvre with a 25 year service pin.

#### School Committee Report

James Hagar, Chairman of the Gorham School Committee, reported on the General Purpose Aid for local schools. The 2012-2013 GPA values will not be official until voted on by the Legislature in the supplemental budget. On January 11, 2012 the School Committee unanimous voted to return the White Rock School to the Town. The School Committee's Finance Subcommittee is planning to meet with the Town Council's CIP committee on February 10<sup>th</sup> at 3:00 pm. The next School Committee meeting will be February 8<sup>th</sup> in Council Chambers.

#### New Business

Chairman Caldwell opened the Public Hearing for a renewal Liquor License in the name of Siphanh and Somkhouan Phongbivhith d/b/a Lucky Thai Restaurant, 25 Elm Street. There were no public comments and the public hearing closed at 7:25 p.m.

Item #8127 The prepared order was Moved by Councilor Phinney, seconded by Councilor Gagnon; Moved by Councilor Mattingly, seconded by Councilor Pressey and VOTED to POSTPONE to next Town Council meeting a renewal Liquor License in the name of Siphanh and Somkhouan Phongbivhith d/b/a Lucky Thai Restaurant at 25 Elm Street. 6 years

Chairman Caldwell opened the Public Hearing for a renewal Liquor License in the name of JAAAMM's Assoc. LLC d/b/a Church Banquet Center Sons of Italy Lodge at 29 School Street. There were no public comments and the public hearing closed at 7:27 p.m.

Item #8128 No action was taken on a renewal Liquor License in the name of JAAAMM's Assoc. LLC d/b/a Church Banquet Center Sons of Italy Lodge at 29 School Street as the State has informed the Town that they already have a liquor license.

Chairman Caldwell opened a Public Hearing for a renewal Special Amusement Permit for the Church Banquet Center Sons of Italy Lodge at 29 School Street. There were no comments from the public and the public hearing closed at 7:29 p.m.

Item #8129 The prepared order was Moved by Councilor Phinney, seconded by Councilor Gagnon. Moved Councilor Mattingly, seconded by Councilor Phillips to POSTPONE to the next regular Council meeting action on a renewal Special Amusement Permit for the Church Banquet Center Sons of Italy Lodge at 29 School Street to give the finance department an opportunity to converse with the owner of the Church Banquet Center regarding the real estate taxes. 6 yeas

Moved by Councilor Mattingly, seconded by Councilor Gagnon and VOTED to take Item #8140 out of order. 5 yeas 1 nay ( Phinney) For continuity this item will be reported on in its proper order.

Chairman Caldwell explained that the following public hearing involves the next four (4) agenda items, they will be voted on separately.

Chairman Caldwell opened the Public Hearing on a request from Kurt Albert to develop a contract zone for property located at 103 and 109 County Road Tax Map 4, lot 9.002 and Tax Map 4, Lot 9.003 and a request from Chandler and Christine Bearce to develop a contract zone for property located at 18 County Road, Tax Map 6, lot 8 and a request from James Bruni to develop a contract zone for property located on County Road Tax Map 4, lot 6.008 and a request from Donna Burke to develop a contract zone for property located on County Road, Tax Map 6, Lot 27. One member of the public spoke in favor of these contract zones. The Public Hearing closed at 8:22 p.m.

Item #8130 Moved by Councilor Phinney, seconded by Councilor Mattingly and VOTED to WAIVE the reading of the prepared order due to its length. 6 yeas Moved by Councilor Phinney, seconded by Councilor Gagnon and VOTED that

WHEREAS, Kurt Albert (the “Property Owner”) is the owner of two parcels of real estate located at or near 103 and 109 County Road in Gorham, Maine,

WHEREAS, the Properties consist of two lots identified on the Town’s assessing records as Tax Map 4, Lot 9.002 and Tax Map 4, Lot 9.003, and

WHEREAS, the Properties are currently located in the Rural and Shoreland Protection Zone Districts, as established by the Town’s Land Use and Development Code; and

WHEREAS, the Properties are 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 February 7, 2012;

NOW THEREFORE BE IT ORDERED, that the Town Council in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. The Zoning Map of the Town of Gorham, is hereby amended to incorporate this Contract Zone
2. **Permitted uses.** The Property Owner 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. 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.

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 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 including 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 uses that do not include the sale of gasoline.
- b. Entrances and exits shall be designed to minimize the number of entrances and exists.

- 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 required buffer area between Rt. 114/22 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 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 an application fee equal to \$3500 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 \$3500 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 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.

7. **Agreement to be recorded.** The Property Owner 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 Owner or his 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 Owner, any entity affiliated with the Property Owner that takes title to the Property, his 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 Owner, his 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 Owner or his 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. 6 yeas

Item #8131 Moved by Councilor Phinney, seconded by Councilor Gagnon and VOTED to WAIVE the reading of the prepared order due to its length. 6 yeas Moved by Councilor Phinney, seconded by Councilor Gagnon and VOTED that

WHEREAS, Chandler and Christine Bearce (the “Property Owners”) are the owners of a parcel of real estate located at or near 18 County Road in Gorham, Maine, and

WHEREAS, the Property consist a lot identified in the Town’s assessing records as Tax Map 6, Lot 8; and

WHEREAS, the Property is currently located in the Suburban Residential Zoning 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 February 7, 2012;

NOW THEREFORE BE IT ORDERED, that the Town Council in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. The Zoning Map of the Town of Gorham, is hereby amended to incorporate this Contract Zone
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. 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.

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 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 including 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 uses that do not include the sale of gasoline

- b. Entrances and exits shall be designed to minimize the number of entrances and exists.
- 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 required buffer area between Rt. 114/22 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 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 an application fee equal to \$3500 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 \$3500 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 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.

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, Property shall then be used only for such other uses as are otherwise allowed by law. 6 years

Item #8132 Moved by Councilor Phinney, seconded by Councilor Phillips and VOTED to WAIVE the reading of the proposed order due to it length. 6 years Moved by Councilor Phinney, seconded by Councilor Gagnon and VOTED that

WHEREAS, James Bruni (the "Property Owner") is the owner of a parcel of real estate located on County Road in Gorham, Maine, and

WHEREAS, the Property is identified on the Town's Tax Map 4, Lot 6.008; and

WHEREAS, the Property is currently located 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 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 February 7 , 2012;

NOW, THEREFORE BE IT ORDERED, that the Town Council in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

- 1. The Zoning Map of the Town of Gorham is hereby amended to incorporate this Contract Zone
- 2. **Permitted uses.** The Property Owner 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. 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.

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 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 including 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 uses that do not include the sale of gasoline.
- b. Entrances and exits shall be designed to minimize the number of entrances and exists.

- 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 required buffer area between Rt. 114/22 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 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 an application fee equal to \$3500 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 \$3500 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 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.

7. **Agreement to be recorded.** The Property Owner 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 Owner or his 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 Owner, any entity affiliated with the Property Owner that takes title to the Property, his 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 Owner, his 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 Owner or his 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. 6 years

Item #8133 Moved by Councilor Phinney, seconded by Councilor Phillips and VOTED to WAIVE the reading of the prepared order due to its length. 6 years Moved by Councilor Phinney, seconded by Councilor Gagnon and VOTED that

WHEREAS, Donna Burke (the "Property Owner") is the owner of a parcel of real estate located on County Road in Gorham, Maine, and

WHEREAS, the Property is identified on the Town's Tax Map 6, Lot 27; 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 February 7, 2012;

NOW THEREFORE BE IT ORDERED, that the Town Council in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. The Zoning Map of the Town of Gorham is hereby amended to incorporate this Contract Zone.
2. **Permitted uses.** The Property Owner 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. 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.

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 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 including 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 uses that do not include the sale of gasoline.
- b. Entrances and exits shall be designed to minimize the number of entrances and exists.
- 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 required buffer area between Rt. 114/22 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 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 an application fee equal to \$3500 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 \$3500 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 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.

7. **Agreement to be recorded.** The Property Owner 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 Owner or his 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 Owner, any entity affiliated with the Property Owner that takes title to the Property, his 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 Owner, his 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 Owner or his 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. 6 years

Item #8134 Moved by Councilor Phinney, seconded by Councilor Pressey and ORDERED, that the Town Council amend the Rules of the Town Council, adopted on November 15, 2011 by adding the following at the end of the first sentence of Sub-section 12.01: “or in the instance when an item is recommended for action by one of the Council’s standing committees, shall be sponsored by the Committee with the Committee’s vote reflected.” 6 years

Item #8135 Moved by Councilor Phinney, seconded by Councilor Gagnon and ORDERED, that the Town Council, pursuant to Title 15, MRSA, Section 5824 (3) and Section 5826 (6) approve a transfer of assets to the Town of Gorham in the criminal case of State of Maine v Yvette Cote, on the grounds that the Town of Gorham Police Department made a substantial contribution to this or a related case, and

Be It Further Ordered, that the Town retain \$1,000 to reimburse the Police Department Drug Account and return the balance of assets to the defendant. 6 years

Item #8136 Moved by Councilor Mattingly, seconded by Councilor Phillips and ORDERED that the Town Council refer a proposal to develop an ordinance to regulate dumping and littering to the Ordinance Committee for the Committee's review and report at a future Council meeting. 6 years

Item #8137 The prepared order was Moved by Councilor Pressey, seconded by Councilor Phinney. Moved by Councilor Phinney, seconded by Councilor Mattingly and VOTED to AMEND the prepared order by adding "send to the CIP committee to develop plans and then" before Finance Committee. 6 years The Order as amended was Voted resulting in the following: ORDERED, that the Town Council of the Town of Gorham Maine in Town Council assembled, send to the CIP committee to develop plans and then the Finance Committee to determine the feasibility for construction of public safety site improvements at and near the Narragansett School; the intent being to separate bus and parent student drop-offs and to reduce pedestrian/vehicular conflict.

BE IT FURTHER ORDERED, that the Town Council allows the Finance Committee to determine the scope and funding of the project and report their findings to the Council. 6 years

Item #8138 Moved by Councilor Gagnon, seconded by Councilor Phillips and ORDERED, that the Town Council appropriate \$4,000 from the Contingency Account to the Gorham Founders Festival. 6 years

Item #8139 Moved by Councilor Pressey, seconded by Councilor Mattingly and ORDERED, that the Town Council appropriate \$10,000 from the Contingency Account to conduct a feasibility study for reuse of the former Little Falls School, as proposed by PDT Architects. 6 years

Item #8140 The Prepared order was Moved by Councilor Pressey, seconded by Councilor Mattingly. Moved by Councilor Phinney, seconded by Councilor Mattingly to AMEND the prepared Order to send to the Ordinance Committee instead of a work shop. 5 years, 1 nay(Pressey) Moved by Councilor Gagnon, seconded by Councilor Phinney, to Amend the Order by adding "Be It Further Ordered that the Town Council directs the Town Planner and the Zoning Administrator to prepare Form Based zoning language and zoning map to be used as a reference to the committee." 6 years Moved by Councilor Gagnon seconded by Councilor Pressey that any cost regarding the use of outside consultants or services will be made to the Council for consideration prior to approval. 6 years The Amended order was VOTED resulting in the following. ORDERED, that the Town Council send to the Ordinance Committee to discuss re-zoning South Gorham from the area near and around the Hansen Contract Zone along the Route 114/22 corridor to the Gorham Town Line.

BE IT FURTHER ORDERED, that the Town Council directs the Town Planner and the Zoning Administrator to prepare both zoning language and zoning map to be used as a starting point and reference, with substantially similar terms and conditions that were approved for the Hans Hansen Contract Zone, and

BE IT FURTHER ORDERED, that the Town Council directs the Town Planner and the Zoning Administrator to prepare Form Based zoning language and zoning map to be used as a reference for the committee, and

BE IT FURTHER ORDERED, that any cost regarding the use of outside consultants or services will be made to the Council for consideration prior to approval. 6 years

Item # 8141 Moved by Councilor Mattingly, seconded by Councilor Gagnon and ORDERED, that the Town Council authorize the Public Works Director to inquire into purchasing mining rights at a local sand pit and to prepare a long range cost analysis comparing the purchase of mining rights with the outsourcing of sand to determine if there is any long term cost savings. 6 years

Item #8142 Moved by Councilor Pressey, seconded by Councilor Mattingly and ORDERED, that the Town Council adjust the fees for new construction and alterations from the current fee structure of \$105.00 for the first thousand cost and \$10.00 for each additional thousand to a new fee structure of \$12.00 per thousand of cost with a \$35.00 minimum fee, and

BE IT FURTHER ORDERED, that the new fee structure be effective February 8, 2012. 6 years

Moved by Councilor Phinney, seconded by Councilor Phillips and VOTED to ADJOURN. Time of adjournment 9:16 p.m.

A TRUE RECORD OF MEETING

Attest:

---

Cornelia C Loughran, Town Clerk