

GORHAM TOWN COUNCIL  
AMENDED and CORRECTED MEETING MINUTES  
REGULAR MEETING  
March 6, 2012  
Gorham Municipal Center – Burleigh H. Loveitt Council Chambers

Chairman Caldwell opened the meeting with the Pledge of Allegiance: there were fourteen (14) members of the public present at the start of the meeting.

Roll Call of the Town Council: Present Chairman Caldwell; Councilors: Pressey, Phillips, Robinson, Gagnon and Mattingly Absent: Councilor Phinney Also present were the Town Manager, David Cole and the Town Clerk, Connie Loughran

Moved by Councilor Gagnon, seconded by Councilor Pressey and Voted to accept the minutes of the February 7, 2012 Regular meeting of the Gorham Town Council. 6 yeas

#### Open Public Communications

State Representative Jane Knapp reported that each year, the Legislative Memorial Scholarship Committee awards sixteen (16) \$1,000 scholarships, one to a student from each county. These monies are raised through the Legislative Memorial Scholarship Auction. She thanked two Gorham citizens for donating to the auction. Representative Knapp reminded everyone that they could do on line filing of tax returns for the State and Federal Returns. She also reminded citizens that there is a list of unclaimed property being held by the State Treasurer's office on the State's website.

#### School Committee Report

James Hager, Chairman of the School Committee was not able to attend the meeting; however his emailed report is attached.

#### Councilor Communications

Councilor Phillips reported that the next Founders Festival planning meeting will be Thursday, March 8, at 6:30 pm in the Recreation Department Conference Room.

Councilor Gagnon reported that the Finance Committee had met prior to this meeting reviewing Fire and Public Works overtime accounts.

Councilor Mattingly reported that he and several others had attended the Gorham Economic Development Corporation tour of Clean-O-Rama facility.

Councilor Pressey reported that the Appointments/Personnel Committee is still accepting applications for various boards and committees. There will be a meeting of the Appointments/Personnel Committee on March 23, 2012 to review applications.

Councilor Robinson thanked Tom Ellsworth for the hard work that the Economic Development Corporation is doing. He also thanked Grondin for the significant clean up at the former Plan-It Recycling facility where the material has been removed to an out of town facility. Councilor Robinson thanked Georgia Humphrey for bringing live streaming of meetings to our web site. Since he was out of town last month he was able to watch the meeting. He also asked that there be a monthly report for the Founders Festival and in response Councilor Phillips reviewed what amounts were rolled over from last year and what the vendor costs would be this year.

#### Town Manager's Report

Town Manager, David Cole reported that the Town is proceeding with the competitive bid process for the property casualty insurance. He also reported that Police Chief, Ronald Shepard had found 2 new leftover 2011 Crown

Victorias which we will purchase from cash flow and budget for in the upcoming budget year. We will be saving a significant amount of money.

#### Old Business

Item #8105 Moved and seconded at a previous meeting, ORDERED that the Town Council authorize the Capital Improvements/Economic Development Committee of the Gorham Town Council to engage in a discussion with regard to the property located on the corner of Main Street and New Portland Road formerly known as the Mobile Gas Station and to provide ideas, options and a possible direction in a report with recommendations back to the Town Council. 6 years

Item #8127 The prepared order was moved and seconded at the February 7<sup>th</sup> meeting, as the taxes have been paid it is ORDERED that the Town Council approve a renewal Liquor License in the name of Siphanh and Somkhouan Phongbivhith d/b/a Lucky Thai Restaurant at 25 Elm Street. 6 years

Item #8129 The prepared order was moved and seconded at the February 7<sup>th</sup> meeting, and an agreement has been entered into regarding payment of taxes therefore it is ORDERED that the Town Council approve a renewal Special Amusement Permit for the Church Banquet Center Sons of Italy Lodge at 29 School Street. 6 years

#### New Business

Chairman Caldwell opened the Public Hearing on two applications to operate Games of Chance in the name of Sons of Italy Lodge, 29 School Street. There were no public comments and the Public Hearing closed at 7:39 pm.

Item #8143 In response to Council questions Mr. Salvaggio stated that no liquor would be served and the games are to be held in a separate area from where dancing and shows are held. Councilor Gagnon requested that the Ordinance Committee review a table games ordinance. Moved by Councilor Robinson, seconded by Councilor Gagnon and ORDERED that the Town Council approve two (2) new Game of Chance Licenses for poker games and Lucky 7's in the name of Sons of Italy Lodge doing business at 29 School Street, and

BE IT FURTHER ORDERED, that the Town Clerk send a letter to the Chief of the State Police so notifying him of the Council action. 6 years Prior to this vote a motion to amend the order to limit games to members with the exception of Texas Hold'em Tournaments FAILED OF PASSAGE. 1 yea 5 nays (Mattingly, Gagnon, Robinson, Caldwell, Phillips)

The meeting recessed for a Public Hearing for a renewal Liquor License for Gorham Country Club. There were no comments from the public and the Public Hearing closed at 7:49 pm.

Item #8144 Moved by Councilor Robinson, seconded by Councilor Gagnon and ORDERED that the Town Council approve a renewal Liquor License in the name of Harold and Kathy Hawkes d/b/a Gorham Country Club at 93 McLellan Road. 6 years

The meeting recessed for a Public Hearing on a request from Carol Wood to develop a contract zone for property located at 34 County Road, Tax Map 6, lot 14. There were no comments from the public and the Public Hearing closed at 7:59 pm.

Item #8145 Moved by Councilor Gagnon, seconded by Councilor Robinson to WAIVE the reading of the proposed order due to its length. 6 years Moved by Councilor Robinson, seconded by Councilor Gagnon and VOTED that

WHEREAS, Carol Wood (the "Property Owner") is the owner of a parcel of real estate located at or near 34 County Road in Gorham, Maine, consisting of approximately 15.69 acres located near the intersection of Route 22 and Route 114 (hereinafter "the Properties"); and

WHEREAS, the Property consists of one lot identified on the Town's assessing records as Tax Map 6, Lot 14, 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 March 6, 2012;

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

1. Amendment of Zoning Map. The 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. Business, Personal and Repair Service Establishments as defined in Chapter I, Section V of the Land Use and Development Code.
  - d. Convenience stores, either with or without associated gasoline sales.
  - e. Sit-down restaurants.
  - f. Retail stores that are 7,000 square feet or less in total footprint.
  - g. Professional offices, including real estate offices, medical offices, attorneys' offices, and similar offices that are not high generators of traffic.
  - h. Banks.

- i. Residential uses in existence on the Property on the date of this Agreement.
- j. Distilling and brewing.
- k. Residential dwelling units above the first floor as part of a mixed use building.

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

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

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

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

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

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

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

- a. The required minimum landscape buffer along Rt. 22/114 shall be 70 feet of plants and materials as required by the Planning Board for those uses that include the sale of gasoline. The required minimum landscape buffer along Rt. 22/114 shall be 40 feet of plants and materials as required by the Planning Board for all other uses.
- b. The site shall be designed to minimize the number of entrances and exits.
- c. As needed, the hours of operation will be established by the Planning Board.
- d. To the extent possible, parking shall be behind the building. The Planning Board may consider parking at the side of the building if an applicant can show a hardship, but under no circumstances shall parking be allowed in the front yard or in the required buffer area as stated in paragraph 6(a). For purposes of this section, the front yard for a lot without street frontage shall be considered to be the area between the property line parallel with the principal access to the property and the front of the building on the lot.
- e. All property shall pay normally assessed property taxes or if the property is otherwise exempt from property taxes, shall make a payment in lieu of property taxes that is equal to 100 % of the amount that would have been paid if the business was subjected to the property tax.
- f. The application fee for the contract zone normally due at the time the application is submitted shall be deferred. The applicant shall pay a \$3,500 application fee as a final condition for the completion of any required site plan review, or, if more than one lot is subject to this Contract Zoning Agreement, shall pay the deferred application fee for the contract zone in the amount of \$3,500 divided by the subject number of lots, up to the first 7 lots, with the first payment due at the completion of any required site plan review and the per lot payment for the remaining lots due at the closing for each of the respective lots.

- g. The applicant shall make a contribution of \$10,000 per lot or business unit for each lot sold towards the future extension of public sewer. The contribution shall be due at closing for each individual lot.
- h. The building and lot design shall be consistent with a traditional New England Village Character.
- i. Vehicular and pedestrian connections shall be required between parking lots located on the Property and parking lots located in any adjoining contract zones, with the location and design to be approved by the Planning Board during site plan review.
- j. Sidewalks shall be required along any roads created on the Property.
- k. Signage on the Property shall be governed by the Roadside Environment requirements of Chapter II, Section III of the Land Use and Development Code.

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

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

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

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

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

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

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

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

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

6 years

The meeting recessed for a Public hearing on a proposal to amend Chapter IV, Site Plan Review, Section VIII, of the Gorham Land Use and Development Code to provide the Planning Board with the ability to waive the requirement for site walks. There were no comments from the public and the Public Hearing closed at 8:00 pm.

Item #8146 Moved by Councilor Mattingly, seconded by Councilor Gagnon to WAIVE the reading of the prepared order due to its length. 6 yeas Councilor Gagnon reported that the Ordinance Committee approved the following amendment to the Land Use and Development Code by a vote of 3-0. Moved by Councilor Robinson, seconded by Councilor Gagnon and VOTED that,

Whereas, the Town's Land Use and Development Code currently requires the Planning Board to conduct a Site Walk for any application related site plan review, regardless of whether the project is significant or minor, and

Whereas, Site Walks require advertisement, substantial staff resources developing packets of materials, and notification time that can delay the start of projects, and

Whereas, the Town wants Site Walks where they assist the Planning Board in understanding the property but does not wish for applicants or the Town to incur unnecessary expense or delays for projects when Site Walks will not assist the Planning Board's understanding or because the project is not significant enough to warrant a site walk,

Now Therefore Be It Ordained by the Town Council of the Town of Gorham, Maine, in Town Council assembled, that CHAPTER IV, SITE PLAN REVIEW, Section VIII, Procedures for Major Developments, relating to site walks, 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 IV – SITE PLAN REVIEW**

##### D. Review Procedures

4. Site Walk - ~~The Planning Board shall hold an on-site inspection of the proposed site for each application for site plan review of a major development.~~ Site walks may be called by the Planning Board Chairman or a majority of the members of the Planning Board. The site walk shall be held within ~~fifteen (15)~~ thirty (30) days of the Planning Board's calling for a site walk. ~~issuance of the staff review report or revised review report if supplemental materials were submitted by the applicant~~ This time may be extended with the consent of the applicant if inclement weather or snow cover make a site walk impractical. The site walk shall be an official meeting of the Planning Board and notice of the site walk shall be provided to the Planning Board, staff, applicant, abutters, and the media in accordance with Town procedures.

~~At least five (5) days prior to the site walk, The Planning Director~~ The Town Planner shall provide informational packets to the members of the Planning Board. These packets shall include:

- The application and any supplemental submissions;
- The site review report; and
- Any correspondence from the applicant or abutters.

The applicant and/or his representative shall attend the site walk. The applicant shall be responsible for assuring that the major features of the proposed development (i.e., roads, buildings, waterways, etc.) or such other features as requested by the Planning Board can be visually identified at the physical site location. ~~can be located on the face of the earth.~~

6 yeas

Item #8147 Moved by Councilor Robinson, seconded by Councilor Mattingly and ORDERED, that the Town Council accept the bid of Peter and Susan Legere in an amount of \$5,101.00 for a parcel of Town owned land Tax Map 81, lot 28, in accordance with the bid specifications. 6 years

Item #8148 Moved by Councilor Gagnon, seconded by Councilor Phillips and ORDERED, that the Town Council ask the Capital Improvement Committee to review the White Rock School facility to determine appropriate uses for the site, and report their findings back to the council. 6 years

Item #8149 Moved by Councilor Mattingly, seconded by Councilor Gagnon and ORDERED that the Town Council refer a proposal to rezone a parcel of land in the Industrial Park (Tax Map 12, lot 26.1) from the Industrial Zone to Roadside Commercial Zone, which it currently abuts, to the Planning Board for public hearing and their recommendation. 6 years

Item #8150 Moved by Councilor Gagnon, seconded by Councilor Pressey and ORDERED, that the Town Council refer a proposal to amend Chapter II, Section V and Chapter III, Section IV of the Land Use and Development Code to require roads that are intended to become public roads be offered to the Town with a reasonable period of time to the Planning Board for public hearing and their recommendation. 6 years

Moved by Councilor Gagnon, seconded by Councilor Robinson and VOTED to take Item 8152 up at this time. 6 years

Item #8152 Prior to the following vote Councilor Pressey disclosed that he attends Life Church but feels he can vote impartially on this item. Moved by Councilor Mattingly, seconded by Councilor Robinson and ORDERED, that the Town Council authorize the Town Manager to accept proposals from the Life Church for up to 2 portable buildings and a proposal from the Lyman Snowmobile Club for 1 portable building subject to the following conditions:

1. All buildings are to be moved at the expense of the receiving organizations (the Life Church and the Lyman Snowmobile Club).

2. The specific portable buildings to be donated to each organization are subject to the final approval of the Town Manager.

3. The details of moving the portable buildings are subject to the approval of the Public Works Director with the intent to minimize any disruption to municipal services.

4. The moving of the buildings will be completed by May 1, 2012 with the Town Manager having the right to extend the deadline to June 1, 2012 for good cause. 6 years

Item #8151 Moved by Councilor Mattingly, seconded by Councilor Robinson and ORDERED that the Town Council go into Executive Session pursuant to Title 1, MRSA Section 405 (6) (D) for the purpose of discussing labor negotiations.

Moved by Councilor Mattingly, seconded by Councilor Pressey and VOTED to come out of Executive Session. 6 years

Moved by Councilor Gagnon, seconded by Councilor Phillips and VOTED to ADJOURN. 6 years Time of adjournment 9:15 pm.

A TRUE RECORD OF MEETING

ATTEST:

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Cornelia C Loughran, Town Clerk