

REPORT OF THE
GORHAM TOWN COUNCIL
REGULAR MEETING
November 12, 2013
Burleigh H. Loveitt Council Chambers

There were twelve (12) members of the public present at the start of the meeting. Vice-Chairman Phinney opened the meeting with the Pledge of Allegiance to the Flag.

Roll Call of the 2012-2013 Council: Present: Vice Chairman Phinney; Councilors: Pressey, Phillips, Robinson, Benner, Moulton. Also present were Town Manager David Cole, Town attorney William Dale and Acting Town Clerk Jennifer Elliott. Absent: Chairman Gagnon

Moved by Councilor Robinson, Seconded by Councilor Moulton and VOTED to accept the minutes of the October 1, 2013 Town Council Regular Meeting as printed and distributed. 6 years

Open Public Communications

Jim Means congratulated the new members of Council and School Board.

Susan Smith would like a timely response from the Town in regards to litigation regarding Phinney Rd. Ext.

Hans Hansen expressed his concern of the cost to the Town and the family over the ongoing court case regarding Phinney St. Ext. and he also gave his support to the Council members.

Attorney representing the C&C Family expressed frustration over the Phinney St. Ext. litigation and advocated that the Town use Eminent Domain again, and is willing to help with a solution.

Councilor Communications

Councilor Moulton thanked the new School Committee members and the new Council members as well as the candidates. He also thanked the outgoing Councilors for their service. Councilor Moulton thanked all the Veterans for serving.

Councilor Benner gave her praise for the Veteran's Day celebration ceremony. She stated that the number of people in attendance was heartwarming. Pam Turner and Georgia Humphrey did a great job and that it was very special when Police Chief Shepard read off service recognitions.

Councilor Robinson thanked the voters for voting for him and congratulated the new councilors and School Committee members. He thanked outgoing School Committee member Kyle Currier for her years of service. He mentioned he had a great opportunity on Election day to meet with the candidates and get to know them.

Councilor Phillips stated that the Veteran's Day Ceremony was wonderful and the brass band was also wonderful. She thanked the outgoing Councilors for the hard work they have done for the community. She thanked outgoing Chairman Gagnon for his involvement in the Founder's Festival and that she looks forward to the new year.

Councilor Pressey thanked the Council and thanked the citizens of Gorham for the support.

Vice-Chairman Phinney thanked the outgoing Councilors.

Town Manager Report

David Cole reported that he gave 5 year service pins to Laurie Nordfors and Lisa Sangillo, a 10 year pin to Julie Flannigan and a 20 year pin to Pam Turner. He thanked them for their years of service. He reminded everyone that the Christmas Lights Parade is December 1st at 4 pm. Mr. Cole stated that the Town has issued a \$1.4 million dollar Bond and Raymond James was the successful bidder out of three bidders. The interest rate for that Bond is 3.148%.

School Committee Report

Darryl Wright thanked outgoing School Committee members Roger Marchand and Kyle Currier, and welcomed new members Kyle Bailey and John Doyle. On November 7, 2013 the Village School had a 50 year celebration. He stated that on November 16th, 2013 the Chamber singers will be performing at Merrill Auditorium in Portland.

Election Report

Acting Town Clerk Jennifer Elliott reported that at the November 12, 2013 Annual Municipal Election Bruce Roullard and Benjamin Hartwell had been elected to the Town Council for 3 year terms and Matthew Robinson had been re-elected to the Gorham Town Council for a 3 year term. John Doyle and Kyle Bailey were elected to the School Committee for 3 year terms. There were 2700 ballots cast for a 22% voter turnout.

Swearing in of the newly-elected Councilors

Acting Town Clerk Jennifer Elliott swore in the newly-elected Councilors Bruce Roullard, Benjamin Hartwell and Matthew Robinson.

Roll call of the 2013-2014 Council

Present: Councilors: Benner, Hartwell, Moulton, Phillips, Phinney, Robinson, Roullard

Item # 8377 Moved by Councilor Robinson, Seconded by Councilor Moulton and ORDERED that the Town Council elect Michael Phinney as Chairman of the Town Council for the 2013-2014 year. 7 years

Item #8378 Moved by Councilor Benner, Seconded by Councilor Robinson and ORDERED that the Town Council elect Shonn Moulton as Vice-Chairman of the Town Council for the 2013-2014 year. 7 years

Item #8379 Moved by Councilor Robinson, Seconded by Councilor Moulton and ORDERED that the Town Council appoint the following to the Council Committees for the 2013-2014 year with the first Councilor named as Chairman.

1. Finance Committee
Councilors: Phillips, Moulton, Roullard
2. Ordinance Committee
Councilors: Robinson, Benner, Hartwell
3. Appointments/Personnel Committee
Councilors: Moulton, Hartwell, Robinson
4. Economic Development/Capital Improvements Committee

Councilors: Benner, Phillips, Roullard

5. Representative to the Greater Portland Council of Governments

Councilors: Roullard, Robinson

6. Representative Ecomaine

Town Manager, David Cole

7. Representative P.A.C.S.

Town Manager, David Cole

8. Representative to Jetport Noise Abatement

Councilor, Benner

7 years

Item # 8380 Moved by Councilor Moulton, Seconded by Councilor Benner and ORDERED that the Town Council adopt by reference the same Council Rules as were adopted for the year 2012-2013, as the Council Rules for the 2013-2014 year. 7 years

Chairman Phinney opened the Public Hearing for a proposal to amend the Land Use and Development Code by adding definitions of ATV, All Terrain Vehicles, Motor Cross Track and by amending permitted uses in the Rural District by clarifying that a use in the Rural District for commercial purposes is not a social institution. Hans Hansen spoke with concern of enforcement of the rules. There were no further comments from the public and the public Hearing was closed.

Item #8381 Moved by Councilor Moulton, Seconded by Councilor Benner and VOTED to waive the reading of the order. 7 years Moved by Councilor Moulton, Seconded by Councilor Robinson and ORDERED that,

Whereas, the Town of Gorham has a Land Use and Development Code that regulates land use and development and,

Whereas, the Code does not contain any definitions for ATVs, All Terrain Vehicles or Motor Cross racks, and

Whereas, the Board of Appeals has previously ruled that activity associated with riding all-terrain vehicles at a motor cross track was allowed as a social institution, and

Whereas, the Town Council believes that an active motor cross track, whether a commercial business or for non-commercial purposes, can have a substantial adverse impact on abutting property owners and the surrounding neighborhood, and

Whereas, the planning Board, after a public hearing, recommended approval of the following amendments:

Now Therefor Be It Ordered that the Town Council approve the following amendments to the Land Use and Development Code:

Chapter I: Zoning Regulations, Section V – Definitions:

ATV: ATV means All-Terrain vehicles.

All-Terrain Vehicle: “All-Terrain Vehicle” means a motor driven, off-road, recreational vehicle capable of cross-country travel on land, snow, ice, marsh, swampland or other natural terrain. It includes, but is not limited to, a multi-track, multi-wheel or low pressure tire vehicle; a motorcycle or related 2-wheel, 3-wheel, or belt-driven vehicle; an amphibious machine or other means of transportation deriving motive power from a source other than muscle or wind. For purposes of this ordinance, “All-Terrain vehicle”

does not include a snowmobile, a construction or logging vehicle used in the performance of its common function; a farm vehicle used for farming purposes; a vehicle used exclusively for emergency, military, law enforcement or fire control purposes.

Motocross Track: An area of land for the **primary** purpose of racing or riding dirt bikes, motorcycles, or ATVs over a natural or simulated rough terrain. A motocross track shall not be considered an activity or a facility of a social nature.

Amend Chapter I, Section VIII – Rural District, B. Permitted Uses

12) School, hospital, church, or any other institution of educational, religious, philanthropic, fraternal organization, or social nature which is not used for residential or commercial purposes, which has less than two thousand (2000) square feet of floor area and generates less than two hundred (200) vehicle trips during any twenty-four hour period. (B) Permitted Uses

6 Yeas, 1 nay (Phillips)

Chairman Phinney opened a Public Hearing on a request by Anthony K. Kourinos to re-zone his property (tax map 6, Lot 43.2) located on County Road, to a Contract Zone similar to other Contract Zones in South Gorham. Jim Means spoke to the fact he feels that this is de-facto zoning, and the Town should just re-zone the whole area. There were no further comments from the public and the hearing was closed.

Item #8382 Moved by Councilor Moulton, Seconded by Councilor Phillips and VOTED to waive the reading of the order. 7 yeas Moved by Councilor Moulton, Seconded by Councilor Robinson and ORDERED that, Town Council approve the following Contract Zone;

**CONTRACT ZONING AGREEMENT
BETWEEN ANTHONY K. KOURINOS
AND THE TOWN OF GORHAM**

This Contract Zoning Agreement, made this _____ day of _____, 2013,
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 **ANTHONY K. KOURINOS**, a resident of the Town of Gorham, County of Cumberland and State of Maine, with a mailing address of 52 Mosher Road, Gorham, Maine.

WHEREAS, **ANTHONY K. KOURINOS** (the “Property Owner”) is the owner of a parcel of real estate located on County Road in Gorham, Maine, consisting of approximately

2.80 acres located near the intersection of Route 22 and Route 114 (hereinafter “the Property”);
and

WHEREAS, the Property consists of one lot identified on the Town’s assessing records
as Tax Map 6, Lot 43.002, 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 _____, 2013;

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

4 yeas, 3 nays (Hartwell, Roullard, Benner) Prior to the vote, David Galbraith, Zoning administrator, spoke about the language that eliminated gas pumps and the applicant is not looking to have a gas station.

Chairman Phinney opened a Public Hearing for a renewal Liquor License in the name of Sebago Brewing Company. There was no public comment and the hearing was closed.

Item # 8383 Moved by Councilor Phillips, Seconded by Councilor Robinson and ORDERED, that the Town Council approve a renewal Liquor License in the name of Sebago Brewing Company located at 29 Elm Street. 7 yeas

Chairman Phinney opened a Public Hearing for a renewal Liquor License in the name of Angelo Sotiropoulos, d/b/a Gorham House of Pizza. There were no public comments and the hearing was closed.

Item # 8384 Moved by Councilor Robinson, Seconded by Councilor Benner and ORDERED, that the Town Council approve a renewal Liquor License in the name of Angelo Sotiropoulos, d/b/a Gorham House of Pizza located at 2 State Street. 7 yeas

Item #8385 Moved by Councilor Moulton, Seconded by Councilor Robinson and ORDERED, that the Town Council refer a proposal to amend the Land use and Development Code to allow Dog Boarding Kennels in the Rural Zone, and adopt performance standards for these Kennels, based on a request from Amy Beckwith, to the Planning Board for public hearing and the Board's recommendation. 7 yeas

Item #8386 Moved by Councilor Roullard, Seconded by Councilor Benner and ORDERED, that the Town Council, in recognition that the cost of renovating, improving and equipping the former Little Falls School building, could exceed the funding approved by the voters on November 6, 2012, accept a proposal from Great Falls Construction (the apparent low bidder) to make improvements to the former Little Falls School Building as a starting point to negotiate a more comprehensive contract that would prioritize the work to be done within the \$500,000 approved by the voters. 1 yay, 6 nays (Phinney, Roullard, Benner, Moulton, Robinson, Hartwell) Motion FAILS OF PASSAGE. Prior to the above vote and Council discussion, a motion to recuse Chairman Phinney because Phinney Lumber does business with the contractors, was moved by Councilor Robinson, seconded by Councilor Moulton and voted. 3 yeas, 3 nays (Benner, Phillips, Hartwell) Phinney Present

Item #8387 Proposed Order was Moved by Councilor Phillips, Seconded by Councilor Moulton. Town Manager, David Cole explained that Rob Lavoie had given him new information that changed the amounts from \$35,000 to \$14,000 for the Grant and the 20% amount from \$7,000 to \$2,820. Moved by Councilor Phillips, Seconded by Councilor Moulton to AMEND the proposed Order to read as follows; ORDERED, that the Town Council approve a request from the Gorham Parks and Conservation Commission to apply for a \$14,000 Recreation Trail Grant from the State of Maine Department of Conservation with a 20% (2,820) local match from the town to be provided by a combination of Parks and Conservation members time, volunteer work, Planning Department staff time and assistance from the Public Works Department, for a grant to reconstruct and improve the Tannery Brook and Claire Drew trail system. 7 yeas

Item #8388 Moved by Councilor Moulton, Seconded by Councilor Robinson and ORDERED, that the Town Council refer a proposal to amend the Land Use and Development Code by developing a Campground Overlay District, to the Planning Board for public hearing and the Board's recommendation. 7 yeas

Item #8389 Prior to the following vote, Jim Means spoke of his concern that tearing the buildings in question down would be a loss and would like full Council discussion on the issue of the Preble St. Parking Study. Moved by Councilor Phillips, Seconded by Councilor Moulton and ORDERED, that the Town Council accept the recommendation of the Finance Committee to reconsider the use of Town property located at 10 Preble Street, after completion of the Parking Study, and Be it Further Ordered, that the property be prepared for winter. 7 yeas

Item #8390 Moved by Councilor Robinson, Seconded by Councilor Benner and ORDERED, that the town Council accept the recommendation of the Ordinance Committee that staff no longer invests time or resources to develop a contract zone for a proposed residential subdivision located on South Street to incorporate the principles of greater residential density and the extension of the sewer system down South Street. 7 yeas

Item #8391 Moved by Councilor Moulton, Seconded by Councilor Benner and ORDERED, that the town Council ask the Ordinance Committee to evaluate the intersection of Railroad Ave. and Mechanic St. to determine the need for more traffic regulations to enhance safety and to recommend any changes that may be needed to local Ordinances to implement changes recommended by the committee. 7 yeas

Item #8392 Moved by Councilor Moulton, Seconded by Councilor Benner and ORDERED, that the Town Council go into Executive session Pursuant to Title 36, M.R.S.A., Section 841 (2) for the purpose of

considering two applications for abatement of taxes based on poverty, and Pursuant to Title 1, M.R.S.A., Section 405 (6) (E) to meet with the Town Attorney to discuss litigation. 7 yeas

Moved by Councilor Benner, Seconded by Councilor Phillips and VOTED to come out of executive session. 7 yeas

Moved by Councilor Benner, Seconded by Councilor Moulton and VOTED to grant an abatement of taxes based on poverty, pursuant to Title 36, M.R.S.A., Section 841 (2) for the 2012 tax year. 6 yeas, 1 nay (Roullard)

Moved by Councilor Phillips, Seconded by Councilor Benner and VOTED not to grant an abatement of taxes based on poverty, pursuant to Title 36, M.R.S.A., Section 841 (2) because the applicant failed to demonstrate that they were unable to contribute to the public charge. 7 yeas

Moved by Councilor Roullard, Seconded by Councilor Robinson and VOTED to ADJOURN.
Time of adjournment 10:00 pm

A True record of Meeting

Attest:

Jennifer Elliott, Acting Town Clerk