

REPORT OF THE
GORHAM TOWN COUNCIL
REGULAR MEETING
September 3, 2019

Chairman Hartwell opened the meeting with the Pledge of Allegiance to the Flag. There were 12 members of the public in attendance at the start of the meeting.

Roll Call: Chairman Hartwell, Councilors Shepard, Phillips, Hager, Smith, Pratt and Wilder Cross. Also in attendance were Town Manager Ephrem Paraschak and Town Clerk Laurie Nordfors.

Moved by Councilor Hager, seconded by Councilor Shepard and VOTED to accept the minutes of the August 6, 2019 regular Town Council meeting. **7 yeas**

Open Public Communications

Janet Kuesh asked the Council to consider changing the Town Charter to allow Town Employees to be able to run for Town Office. She stated that she has enough signatures on her nomination papers but is not allowed to run for Council because she works for the School Department.

Councilor Communications

Councilor Shepard reported that the Ordinance Committee met on August 20th and discussed the Disorderly Housing Ordinance which is on the Agenda. The next Ordinance Committee meeting will be September 17, 2019.

Councilor Phillips reported that the High School Building Committee met on August 13th and discussed new options for the project. She stated that the next steps would be to bring the options to the School Committee. She also reported that the Economic Development Committee met to discuss the various Capital Projects going on in the Town and will report to Tom Ellsworth their findings. She also attended the USM Opening Breakfast and reported that it was very interesting and well attended.

Councilor Hager reported that the Finance Committee met on August 12th and reviewed the Rescue Fee Schedule increase that is on the Agenda.

Chairman Hartwell expressed his concern with the ongoing issues at the Silver Bullet recycling bins around Town. He would like the Town to better enforce the rules on recycling to cut down on the contamination at the bins.

Town Manager Report

Town Manager Paraschak addressed the concerns of the public on the Main Street construction project. He reminded people that the reason the steel plates were on the roads was because the DOT does not allow construction over holiday weekends. Going forward, he stated that there will be improvements in the Village. He also congratulated Chief Dan Jones on his retirement and thanked him for his 4 years of service to the Town of Gorham. He revealed that the Fire Department has received a grant for \$94,000 to help sprinkle the West Gorham Fire Station. Town Manager Paraschak recognized Sharon LaFlamme and the Finance Department for earning the Excellence Award in Town Financial Reporting for the 15th consecutive year.

School Committee Report

Chairman Wright thanked Staff and Parents that helped make the transition into the new school year go as smooth as possible. He reported that the unofficial student enrollment numbers are as follows: K-5 Elementary 1313, GMS 639 and GHS 875 with a total enrollment of 2827. This is a difference of only 8 from the projections. He also stated that this is only preliminary numbers and they will most likely change. He reported that the following summer work has been completed at the schools, including new ramps installed at GHS per the fire inspection; a new "time out" room for Special Ed students plus movement of some adult Ed spaces to make way for additional spaces at GMS; movement of Special Ed spaces with new partitions were added to allow for more class room space at Village; Renovation to existing "team spaces" to allow for two additional classroom spaces to be created at Great Falls; and major renovation to two bathrooms off the Gym, movement of Special Ed timeout space, movement of copy room space and movement of 5 classrooms all to create additional classroom space at Narragansett. Chairman Wright noted that the GHS Building Committee met on August 13th and reviewed the latest designs for the GHS Renovation/Addition. It was agreed by the Committee that they have taken the designs as far as they could and the School Committee needs to discuss the next steps. The School Committee will be looking at the plans and discussing next steps at the September 25th workshop. He reported the the Narragansett Modular project is continuing to move forward. A deposit to Schiavi for the modular was made and they are due to arrive by late October. Work has begun for the new fire and emergency access road along the east side of Narragansett. Also, site work for the modular foundations has begun. The next steps are to complete the site work and have the new modular in place by mid-November so the interior work can be completed over the winter and spring. Chairman Wright announced that Gorham High School Homecoming will be the week of September 29th and reminded people that they can keep track of the many activities happening throughout the District by checking out the School's website. The next School Committee meeting will be on September 11th.

Moved by Councilor Shepard, seconded by Councilor Smith and VOTED to waive the reading of **Item #9327** due to length. **7 yeas**

Item #9327 Moved by Councilor Shepard, seconded by Councilor Wilder Cross and ORDERED, that the Town Council forward a proposed amendment to the Land Use & Development Code to require a satisfactory water test on private wells prior to the issuance of a certificate of occupancy, to the Planning Board for public hearing and their recommendation as follows:

CHAPTER 1 ZONING REGULATIONS **SECTION 1-3 – ADMINISTRATION**

F. CERTIFICATE OF OCCUPANCY

It shall be unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure until a Certificate of Occupancy shall have been issued therefore by the Code Enforcement Officer and endorsed to the effect that the proposed use of the building or land conforms with the requirements of this chapter.

No Building Permit shall be issued until an application has been made for a Certificate of Occupancy, and the Certificate of Occupancy shall be issued in conformity with the provisions of this Code upon completion of the work.

A temporary Certificate of Occupancy may be issued by the Code Enforcement Officer for a period of six months during construction or alterations for partial occupancy of a building pending its completion, provided that such temporary certificate may require such conditions and safeguards as will protect the safety of the occupants and the public.

The Code Enforcement Officer shall maintain a public record of all Certificates of Occupancy.

Failure to obtain a Certificate of Occupancy prior to use of the premises shall be a violation of this Code.

No Certificate of Occupancy shall be issued until the applicant has presented **the following** evidence to the Code Enforcement Officer:

- 1** ~~That~~ any restrictions or conditions of approval imposed by the Planning Board or Board of Appeals have been recorded in the Cumberland County Registry of Deeds, either by means of notation(s) on a recorded plan or by filing of such other certificate as will provide record notice of such conditions of approval. The cost of recording any such plan of certificate shall be borne by the applicant. If a Building Permit has been previously issued for the pertinent use, and if the aforementioned evidence has been previously supplied, pursuant to Chapter 1, Section 1-3 (D) (2) of this Code, then redundant evidence shall not be required before Issuance of a Certificate of Occupancy.
- 2** **Properties on a private water supply shall be required to provide a standard water test showing the water meets acceptable standards from a State of Maine accredited laboratory. The standard water test from the property shall test for the following parameters at a minimum: Bacteria, Nitrate, Nitrite, Arsenic, Uranium, Manganese, and Lead meeting the National Primary Drinking Water Regulations standards as set forth in the Environmental Protection Agency EPA's National Service Center for Environmental Publications. The test results shall be supplied to the Code Enforcement Office prior to any Certificate of Occupancy being issued for any residential or commercial property, and also shall be provided for any property that has been left vacant for over a year.**

*Additions: **Underlined**

Deletions: ~~Struck Through**~~

Item #9327 VOTED 1 yea, 6 nays (Phillips, Wilder Cross, Pratt, Smith, Hager, Hartwell) ITEM FAILS

Chairman Hartwell opened **Public Hearing #1**. There were no comments from the public and the hearing was closed.

Moved by Councilor Phillips, seconded by Councilor Shepard and VOTED to waive the reading of Item #9362 due to length. **7 yeas**

Item #9362

Moved by Councilor Shepard, seconded by Councilor Hager and ORDERED, that the Town Council amend the Land Use & Development Code to allow for a reinstated Middle School Impact Fee using the described methodology as follows:

Proposed Ordinance Language

CHAPTER 7 - IMPACT FEES

SECTION 7-2 -MIDDLE SCHOOL FACILITIES IMPACT FEE #1

A. DESCRIPTION OF THE IMPROVEMENT

In 2002, the Town of Gorham and the Gorham School Department identified the need to construct a new middle school to serve grades 6 through 8 and to replace the former Shaw School. The Shaw School was an older facility that was last expanded in the late 1970s and further expansion of the facility was not financially feasible. The facility had a capacity for 309 students based upon state space standards and was inadequate to meet projected enrollments. In October of 1991, there were 472 students in grades 6 through 8. From 1991 through 2002, middle school enrollment grew steadily. As of October 1, 2002, the Gorham School Department had 683 students in grades 6 through 8. Most of this growth was the result of net in-migration in the school system since the number of births to Gorham families remained relatively stable from 1987 - 2002. Much of the in-migration during that period was related to new housing rather than to turnover in the existing housing stock.

In 2003, the new Gorham Middle School was constructed with a capacity for 900 students, which was more than adequate to serve the enrollment growth projected at that time. Part of the capacity in the new middle school was intended to serve the students that lived in the existing housing stock of the community. The remaining capacity was intended to be available to accommodate middle school students who live in new housing units that have since been built or will be built in the future. Based upon an analysis of various development scenarios and enrollment projections, 600 of the 900-student capacity in the new middle school was needed to meet the needs of the residents of the Town's existing housing stock and the balance of 300 was the incremental capacity available to serve enrollment growth resulting from new residential development. This incremental capacity for 300 students in the new middle school and the share of the new middle school capacity that was available to accommodate students from new residential development were the "facilities" upon which the Middle School Facilities Impact Fee established in 2002 was based. The analysis of the establishment of that impact fee was detailed in the METHODOLOGY FOR DEVELOPING A MIDDLE SCHOOL FACILITIES IMPACT FEE, dated July 30, 2002.

In anticipation of the new middle school construction project, the Town issued debt in 2002 in the amount of \$21,225,000, \$20,375,000 of which was for the purpose of constructing a new middle school. The Town began to pay debt service on the bonds in 2003 and will continue to pay debt service through 2022. The Town also began collecting fees under the Middle School Facilities Impact Fee Ordinance in 2002, but repealed the Middle School Facilities Impact Fee in 2009 due to growing concern regarding the increasing cost to develop new homes within the community and the impacts of the economic recession beginning in 2007. The total amount of Impact Fees collected between 2002 and 2009 was \$1,063,488.20. 100% of those Impact Fees were applied to the payment of the debt service on the bonds.

The middle school enrollment in the Town was at a peak in 2002 with 694 students and experienced a slight overall decline to a middle school enrollment of 618 by the year 2010. However, the trend in school enrollment in Town between 2002 and 2009 was relatively stable according to the School District's records. In 2015, the Town experienced a spike in school enrollment and current projections through 2029 show a continued increase in overall school enrollment within the Town. The middle school enrollment as of the current school year (2018-19) is 627 and is projected to reach 824 by the 2028-29 school year. In addition, the overall trend in increasing school enrollment since 2015 has required the School Department to shift resources in a way that has placed a greater burden on the new middle school than originally anticipated when the school was constructed. For example, the enrollment within the high school has increased from 783 students in 2002 to 868 students in the current school year (2018-19). In order to accommodate these additional students, the adult education and facilities management functions that were previously housed at the high school have been relocated to the middle school.

Since 2002, the Town has experienced the construction of 1,712 new units of residential development and such development in the Town of Gorham continues to trend in a positive direction. While there is still adequate capacity to serve the trend of increasing students at the middle school and to meet the projected capacity through at least 2029, the demonstrated trends of increasing residential development and increasing school enrollment necessitate the reenactment of this Ordinance.

B. ACTIVITIES SUBJECT TO THE FEE

Although housing development and the number of middle school students has fluctuated at times since 2002, there has been a consistent link between new residential development in Gorham and increasing school enrollment overall. The middle school has absorbed much of the impact of the increasing school enrollment within the Town and the debt service on the new facility continues to be paid from the Town's general fund. The Town seeks to offset the impact of the cost of the new middle school by imposing an impact fee on new residential development activity that has the potential to produce school aged children. Therefore, any residential development activity anywhere in Gorham that may potentially have school aged children living in the units will be subject to the impact fee. This shall include the construction of new dwelling units whether or not such units are part of a subdivision, the conversion of an existing building that creates or increases the number of dwelling units in the building, or the expansion or alteration of an existing building that increases the number of dwelling units in the building or an increase in the number of

bedrooms in a dwelling unit for which an impact fee has been paid. In the case of a development activity that increases the number of dwelling units in a building, only the new dwelling units shall be subject to the impact fee.

In the situation where the number of bedrooms within any dwelling unit for which an impact fee has been paid is being increased within twenty-four (24) months of the issuance of a certificate of occupancy, the impact fee due shall be the difference, if any, between the impact fee that would be due based upon the proposed utilization of the dwelling unit prior to the change. (For example, an existing two-bedroom single-family home is being converted into a four-bedroom home. The required impact fee for a four-bedroom home would be calculated and the fee paid for the existing two bedroom single-family home subtracted from this amount to determine the amount of the additional impact fee due.)

C. CALCULATION OF THE FEE

- 1) The amount of the impact fee is proportional to the average number of middle school students that typically live in a particular type of housing (single-family home, mobile home, apartment, retirement housing). The amount of the impact fee charged to each residential unit is based upon the METHODOLOGY FOR DEVELOPING A MIDDLE SCHOOL FACILITIES IMPACT FEE, dated July 30, 2002 and revised _____. The Town Council of the Town of Gorham has determined that the methodology referenced herein establishes a fee that is reasonably related to the portion or percentage of the infrastructure (i.e., the middle school) that is made necessary by the new development to which this fee applies.

In determining the impact fee payable for each dwelling unit, the fee shall be based upon the number of bedrooms in the unit. For the purpose of the impact fee calculation, a bedroom shall include any room designated as a bedroom on the building plans and any other private room in the dwelling unit that is larger than one hundred (100) square feet, meets the bedroom egress requirements of the building code, is separable from other rooms by a door or door frame that can accommodate a standard door, and does not have facilities or furnishings for cooking, eating, or laundering and is not solely a bathroom, living room, family room, kitchen, dining room, laundry room, or a utility room for central heating/cooling equipment.

- 2) For any other type of residential use or where the application of the fee schedule is unclear, the Planning Board shall determine the applicable impact fee based upon the anticipated number of middle school students that would typically be expected to live in the residential use and a base impact fee of \$8,492 per middle school student.
- 3) Any residential use that is permanently limited to occupancy by residents that are at least sixty-five years of age by binding legal restrictions shall be exempt from the Middle School Facilities Impact Fee.
- 4) Any residential use that is permanently limited to occupancy by residents that are at least fifty-five years of age by binding legal restrictions that are consistent with the Federal Fair Housing provisions shall be exempt from

ninety (90) percent the Middle School Facilities Impact Fee that would otherwise be applicable to the use.

- 5) In the situation where the number of dwelling units in an existing building is being increased, the impact fee due shall be the difference between the impact fee that would be due based upon the proposed utilization of the building minus the fee that would have been charged based upon the utilization of the building prior to the change. (For example, an existing single-family home is being converted into a multifamily building with four, two-bedroom apartments. The required impact fee for the four apartments would be calculated and the required fee for a single-family home subtracted from this amount to determine the amount of the impact fee due.)

D. USE OF FEES COLLECTED

The Town adopted a Comprehensive Plan in 2016, which identified the Town's goal to establish a plan to finance and develop an efficient system of public facilities and services to accommodate anticipated growth and economic development in the community. Among the policy objectives outlined in the 2016 Comprehensive Plan to meet that goal was the use of impact fees to minimize the cost to the taxpayers of providing expanded facilities to serve new development and to spread the costs of such improvements over the projects that benefit from them. In addition, a long range study conducted in 1999 identified the middle school as a priority project and the Capital Improvement Plan set forth in the 2016 Comprehensive Plan highlighted the completion of the priority projects identified in that study.

The impact fees collected under this Ordinance shall be deposited into a fund that is segregated from the Town's general revenues. Consistent with the goals identified in the 2016 Comprehensive Plan, impact fees collected under this Ordinance shall be expended for the sole purpose of paying debt service on the bonds issued to finance the construction of the Gorham Middle School in the amounts and for the time period associated with the debt service schedule of the bonds, plus a period of ten years beyond the expiration of debt service to account for the period of time during which this Ordinance was suspended and no impact fees were collected. Any impact fees collected under this Ordinance that exceed the Town's debt service payment on the bonds issued to finance the construction of the Gorham middle school shall be refunded on a prorated basis in the same manner as the fees are assessed under the Methodology referenced in Section D hereof.

E. EFFECTIVE DATES

Notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law, this ordinance, when enacted, shall govern any plan or application for permits or approvals under the Land Use Code submitted on or after _____, and any such plan or application submitted before that date, but which had not received at least one substantive review, within the meaning of § 302, on or before that date, by the Town board or official having authority to grant any such permit or approval.

REVISED METHODOLOGY FOR DEVELOPING A MIDDLE SCHOOL FACILITIES IMPACT FEE

A. THE FACILITY FOR WHICH THE IMPACT FEE IS PROPOSED

In 2003, the Gorham School Department constructed a new middle school serving grades 6 through 8 to replace the former Shaw School. The Gorham Middle School created the capacity for 900 students in grades 6 through 8. Part of the capacity in the new Middle School was intended to serve the students that lived in the then-existing housing stock of the community. The remaining capacity was intended to be available to accommodate middle school students who live in new housing units that have since been built or will be built in the future. As required by State law, the Middle School Facilities Impact Fee is intended to apply to the proportionate share of the cost of the new Middle School that is available to accommodate students from new residential development within the Town.

When the Middle School was proposed to be constructed in 2002, the Town engaged a consultant to develop a detailed methodology as the basis for this impact fee. The Town suspended the impact fee in 2009 due to growing concern regarding the increasing cost to develop new homes within the community and the impacts of the economic recession beginning in 2007. However, the Town has identified a renewed need to impose the impact fee based on the trends and projections for middle school enrollment and residential development within the town in the near future. As a result, the Town has reviewed the ordinance and the methodology previously adopted and has determined that the assumptions surrounding the original adoption of the ordinance and methodology remain true, and seeks to reestablish the impact fee according to the methodology developed in 2002.

B. ENROLLMENT ASSUMPTIONS

The first step in developing the impact fee methodology in 2002 was to understand what share of the 900 student capacity was needed to serve middle school students that do or will reside in the Town's then existing housing stock.

As of 2002, the Shaw School had a capacity for 309 students based upon state space standards (PDT Architects Long Range Facilities Study 1999). In October of 1991, there were 472 students in grades 6 through 8. As of October 1, 2002, the Gorham School Department had 683 students in grades 6 through 8. Most of this growth was the result of net in-migration in the school system since the number of births to Gorham families remained relatively stable from 1987-2002. While there was not a demonstrated direct correlation between residential development in Gorham and enrollment growth in the 2002 Methodology, much of the in-migration was determined to be related to new housing rather than to turnover in the existing housing stock and the data related to new residential development and school enrollment in Gorham since 2002 continues to support that assumption.

To understand the impact of in-migration on middle school enrollments, and thus the share of the 900 student capacity needed to serve the students living in the current housing stock, the consultant developed a number of alternative enrollment scenarios under various migration assumptions using their "cohort survival model."

One scenario was a "No Migration" model that assumed that there would be no net inflow of either pre-school or school age students since there would be no development to produce in-migration. Under a "No Migration" model, middle school enrollment dropped to under 600 students by 2005 and to under

500 students by 2010. Under this model, the Town would probably choose to provide a middle school that could accommodate 500 to 550 students. This model overstated the impact of new development since some migration occurs as a result of turnover in the existing housing stock.

A second "Turnover Migration" model assumed that 75% of the net in-migration is the result of new residential construction while 25% is the result of turnover in the existing housing stock. This split between new development and turnover migration impacts is similar to the level identified in studies in other communities. Under this model, middle school enrollment dropped to 600 by 2006 and to around 500 students by 2013. Under this model, the Town would probably choose to provide a middle school that could accommodate 550 to 600 students.

Based upon these scenarios, the consultants determined that 600 of the 900 student capacity in the new middle school would be needed to meet the needs of the residents of the Town's then existing housing stock and the balance of 300 was the incremental capacity available to serve enrollment growth resulting from new residential development. The actual enrollment of the middle school in the year 2010 was 618 students and is projected to increase to 824 by the 2028-29 school year. The consultant believed that this was a conservative basis on which to develop the impact fee. Since 2002, the Town has experienced the construction of 1,712 new homes and residential development in the Town of Gorham continues to trend in a growth direction. The original methodology assumed that the incremental capacity for 300 students in the new middle school was the "facility" upon which the impact fee should be based. The assumption remains true that the incremental capacity for 300 students in the new middle school is likely to result from new residential development.

C. ESTIMATED COST OF THE FACILITY

Based on the proposed middle school construction in 2002, the State of Maine approved the construction of a middle school with capacity to accommodate 750 students and agreed to pay approximately 80% of the approved costs for a 750-student facility even though the Town proposed to build a larger school to accommodate future enrollment growth resulting from residential development. The state-approved cost for building a 750-student capacity middle school was \$14,775,000 which was expected to be shared between the Town (19.3% or \$2,850,000) and the State (80.7% or \$11,925,000). In addition, construction of a 750-student school was expected to involve the expenditure of approximately \$2.1 million in additional local costs above what was allowed by the state, resulting in an estimated local cost for a 750-student capacity facility of approximately \$4.95 million or a local cost of approximately \$6,600 per student.

The proposed construction of a middle school with a 900-student capacity was 150 students larger than approved by the state. The Town would have been responsible for 100% of the costs of creating the incremental capacity for 150 additional middle school students. The estimated cost for building this increased capacity was approximately \$3,375,000 or \$22,500 per student.

The local cost that served as the basis for the impact fee was the proportionate share of the local cost for constructing the first 750 units of capacity plus the entire local cost of building the additional 150 units of capacity. Of the initial 750-student capacity, 600 units were allocated to students from the existing housing stock while 150 units or 20% were available to serve students from new residential development. Therefore 20% of the local cost of constructing the first 750 units of capacity were included in determining the impact fee. This was approximately \$1.0 million. In addition, the entire local cost of construction the additional 150 units of capacity or \$3,375,000 was included in the impact fee calculation. This resulted in a total cost basis for the 300 incremental units of available middle

school capacity of \$4,365,000 or approximately \$14,550 per student. This figure served as the basis of the impact fee calculation.

The total cost for the construction of the new 900-student capacity middle school that was financed in 2002 was \$20,375,000, or approximately \$22,639 per student (based on the full 900-student capacity). This figure does not include the cost of financing the construction of the school. Approximately 72.5% of the costs of the new school or \$14,573,900 were paid by the State of Maine with the remaining 28.5% or \$5,801,100 paid by the Town of Gorham. In addition to these principal amounts, the Town incurred costs of financing of approximately \$2,373,773. In 2012, the Town refunded the bonds issued to finance the middle school construction, which resulted in a total principal amount financed by the Town of \$5,699,106 and costs of financing totaling \$2,144,030. Based on the total costs incurred by the Town to construct and finance the new 900-student capacity middle school, the average local cost is approximately \$8,492 per student.

C. CALCULATION OF THE IMPACT FEE

The local cost for the 900-student capacity in the new middle school was \$8,492 per student. The impact fee paid by any residential development should therefore represent the share of this capacity that will be potentially utilized by each new residential unit. This includes units in subdivisions as well as homes built on individual lots that are not part of a subdivision.

For the purposes of calculating the middle school facilities impact fee, the following estimates of the average number of middle school students per new housing unit were used by the consultant following an analysis of the various models used to estimate the number of middle school students per housing unit based on US Census data, national studies and local surveys of new subdivisions. These figures were conservative and thereby underestimated the impact fee. As a result the Town believes they may still be relied upon for the reenactment of this impact fee ordinance.

| | |
|---|---------------|
| two bedroom single-family home which include modular housing units and manufactured housing units on residential lots | 0.05 per unit |
| three or four bedroom single-family home which include modular housing units and manufactured housing units on residential lots | 0.15 per unit |
| five or more bedroom single-family home which include modular housing units and manufactured housing units on residential lots | 0.20 per unit |
| one bedroom apartment or condominium in a multiunit building | 0.00 per unit |
| two bedroom apartment or condominium in a multiunit building | 0.02 per unit |
| three bedroom apartment or condominium in a multiunit building | 0.05 per unit |
| one bedroom apartment or condominium in a two-family building | 0.00 per unit |
| two bedroom apartment or condominium in a two-family building | 0.02 per unit |
| three bedroom apartment or condominium in a two-family building | 0.10 per unit |
| two bedroom mobile home or manufactured housing unit in a mobile home or manufactured housing park | 0.05 per unit |
| three bedroom mobile home or manufactured housing unit in a mobile home or manufactured housing park | 0.05 per unit |

Based upon a local cost of \$8,492 per student to construct the new middle school to accommodate students from new residential development, this translates into the following impact fees:

| | |
|---|---------------------|
| two bedroom single-family home which include modular housing units and manufactured housing units on residential lots | \$424.60 per unit |
| three or four bedroom single-family home which include modular housing units and manufactured housing units on residential lots | \$1,273.80 per unit |
| five or more bedroom single-family home which include modular housing units and manufactured housing units residential lot | \$1,698.40 per unit |
| one bedroom apartment or condominium in a multiunit building | \$0.00 per unit |
| two bedroom apartment or condominium in a multiunit building | \$169.84 per unit |
| three bedroom apartment or condominium in a multiunit building | \$424.60 per unit |
| one bedroom apartment or condominium in a two-family building | \$0.00 per unit |
| two bedroom apartment or condominium in a two-family building | \$169.84 per unit |
| three bedroom apartment or condominium in a two-family building | \$849.20 per unit |
| two bedroom mobile home or manufactured housing unit in a mobile home or manufactured housing park | \$424.60 per unit |
| three bedroom mobile home or manufactured housing unit in a mobile home or manufactured housing park | \$1,273.80 per unit |

Item #9362 VOTED 7 yeas.

Chairman Hartwell opened **Public Hearing #2**. There were no comments from the public and the hearing was closed.

Moved by Councilor Phillips, seconded by Councilor Pratt and VOTED to waive the reading of **Item #9482** due to length. **7 yeas**

Item #9482 Moved by Councilor Phillips, seconded by Councilor Pratt and ORDERED, that the Town Council adopt a Disorderly Housing Ordinance as follows:

TOWN OF GORHAM
DISORDERLY HOUSE ORDINANCE
Adopted: September 3, 2019

SECTION 1. TITLE.

This Ordinance shall be known as the "Town of Gorham Disorderly House Ordinance."

SECTION 2. PURPOSE.

The purpose of this Ordinance is to protect the health, safety, and welfare of the residents of the Town of Gorham by eliminating the proliferation of properties with occupants who disturb the peace and tranquility of their neighborhoods. Nothing contained in this Ordinance is intended to dissuade, discourage or prohibit any person whose safety is in jeopardy, or who is a victim of domestic violence, from contacting the appropriate authorities, including, but not limited to, the Gorham Police Department.

SECTION 3. LEGISLATIVE FINDINGS.

The Town Council hereby finds that:

(a) The Town has a substantial and compelling interest in protecting the health, safety, property, and welfare of its citizens and the neighborhoods affected by chronic unlawful or nuisance activity as well as in not dissuading, discouraging or prohibiting any person whose safety is in jeopardy, or who is a victim of domestic violence, from contacting the appropriate authorities.

(b) Chronic unlawful or nuisance activity of various kinds on and near disorderly houses adversely affects the health, safety and welfare of citizens and diminishes the quality of life in neighborhoods where this chronic activity occurs. Chronic unlawful or nuisance activity constitutes a public nuisance and should be subject to abatement.

(c) The existing ordinances and enforcement processes of the Town do not adequately control chronic unlawful or nuisance activity or its detrimental effects on citizens and neighborhoods where such chronic activity occurs.

(d) Establishing the regulatory framework contained herein will alleviate the problems created by chronic unlawful or nuisance activity through early intervention by the Police Department.

SECTION 4. DISORDERLY HOUSES PROHIBITED.

(a) No person shall occupy as owner-occupant or shall allow another to occupy any dwelling, dwelling unit, or rooming house (hereinafter jointly and severally "building") which is a disorderly house as defined herein.

(b) A "disorderly house" is any building which:

(1) The Police Department has visited a minimum number of times in any thirty (30) day period response to situations that are created by the owner, tenants, or owner's or tenants' cohobitees, guests or invitees and that would have a tendency to unreasonably disturb the community, the neighborhood or an ordinary individual in the vicinity of said building, including, but not limited to: loud music; boisterous parties; sounds emanating from within the structure which are audible outside the building; loud noise or fights within the building or in its vicinity involving tenants of the building or their invitees (excluding any request for police protection or any police intervention in the face of a threat or a perceived threat to person or property, or any request for the assistance of the police to enforce a court order, including, but not limited to, circumstances in which the request for assistance or other police intervention arises from an incident relating to domestic violence, dating violence, sexual assault or stalking against any person at or near the building); owners, tenants, or invitees of owners or tenants being intoxicated on public ways in the vicinity of the building; other similar activities in the building or outside the building itself; or

(2) The police have visited five (5) or more times in any thirty (30) day period in response to situations which are created by the owner, tenants, or owner's or tenants' cohobitees, guests or invitees and involve the arrest or summons of owners or tenants or their invitees for activities which constitute either a crime or civil infraction under either state or local law (excluding arrests or summonses arising from an incident relating to domestic violence, dating violence, sexual assault or stalking against any person at or near the building), or create a reasonable suspicion that illegal drug use or sales under 17-A M.R.S.A. Chapter 45 or prostitution or public indecency under 17-A M.R.S.A. Chapter 35 has occurred at the property.

(c) The situation to which the visit pertains shall be documented by the Police Department. Such documentation may include sworn affidavits by named citizens that may be sufficient to create a reasonable suspicion said illegal activity has occurred.

SECTION 5. NOTICE OF DISORDERLY HOUSE.

(a) Whenever the Police Department has identified a building as a disorderly house, it shall cause written notification of the events that form the basis for that designation to be given to the owner. The notice shall require the owner to meet with representatives of the Town (including the Police Department) within five (5) business days from the date of the written notification, or such other time as is agreed upon by the Police Chief or his/her designee, to identify ways in which the problems that have been identified will be eliminated.

(b) At the time of said meeting, the owner shall be obligated to provide to the Town the following documentation:

(1) A list of the names of all tenants or other persons authorized to reside or presently residing in the building and the units they occupy;

(2) Copies of all leases or occupancy agreement(s) with tenants or other persons residing in the building (confidential personal or financial information may be omitted);

(3) Contracts with any property manager or other person responsible for the orderly operation of the building; and

(4) Proof of building ownership.

In addition, the owner shall agree to take effective measures to address the disorderly house, which measures shall be memorialized in a written agreement at the conclusion of the meeting with the Town and shall be implemented within one (1) week of said meeting unless another date is agreed upon by the Police Department. The Police Chief or his or her designee has authority to execute such agreements on behalf of the Town. Failure to enter into such an agreement at the conclusion of the meeting will be deemed a violation of this Ordinance, and the Town may file a complaint in court seeking all remedies permitted by law as set forth in Section 7 of this Ordinance.

(c) If the same building should be classified as a disorderly house by the Police Department on a subsequent occasion within three (3) years, then the Town is under no obligation to meet with the owner but may, after notice and hearing before the Town Council, condemn and post the building or any units therein against occupancy as set forth in Section 7(a), and/or proceed directly with a complaint in court seeking all remedies permitted by law as set forth in Section 7(a).

(d) The notices provided for in this section may be given to any person, including any legal entity having the right of legal title or the beneficial interest in the disorderly house or any portion thereof, as that interest is recorded in the assessing records of the Town or the Registry of Deeds of Cumberland County, which shall be sufficient for all legal purposes. Notice shall be provided to the owner and any non-owner occupants of the building (if known).

SECTION 6. APPEAL PROCESS.

The owner and/or any non-owner occupant(s) of a building that has been classified as a disorderly house by the Police Department may appeal such classification in writing to the Zoning

Board of Appeals within fourteen (14) days of notification of such classification or within seven (7) days of any meeting with representatives of the Town pursuant to Section 5. In the event of a timely appeal, the Zoning Board of Appeals will provide the property owner, non-owner occupants (if known), and the Police Chief with seven (7) days' advance notice of a hearing date and time. At such hearing, the appellant and the Police Chief shall have the right to present oral or documentary evidence for the Zoning Board of Appeals' consideration. The owner and any non-owner occupants shall have the right to explain the events or any mitigating circumstances surrounding the alleged violation(s) and to present oral or documentary evidence for the Zoning Board of Appeals consideration. The Zoning Board of Appeals shall issue a written decision on the appeal, determining whether the violation(s) occurred, within fourteen (14) days of the hearing.

SECTION 7. ENFORCEMENT.

(a) It shall be the duty of the Police Department to administer and enforce the provisions of this Ordinance. If the owner (a) refuses to meet with representatives of the Town as set forth in Section 5 above, (b) refuses to agree to take effective measures to address the disorderly house, (c) takes ineffective measures to address the disorderly house as determined by the Town, (d) fails to implement the agreement reached with the Town to address the disorderly house, or (e) if, in the discretion of the Town, the disorderly house requires immediate posting in order to protect the public health, safety or welfare, the Town may condemn and post the building or any units therein against occupancy, and/or may file a legal action against the owner and/or violator seeking any and all remedies to which it is entitled pursuant to State and local laws, including, without limitation, declaratory and injunctive relief.

(b) In the event that condemnation and posting the building or any units therein against occupancy is necessary to address the disorderly house, the Town shall provide all non-owner occupants of the building with written notice of said condemnation at least thirty (30) days in advance of the act of condemnation or the posting against occupancy.

(c) In the event of legal action against an owner and/or violator for a disorderly house violation, the Town shall name the non-owner occupants of the building (if known) as parties-in-interest to said legal action.

SECTION 8. VIOLATIONS.

Any person violating any of the provisions of this Ordinance or failing or neglecting or refusing to obey any order or notice of the Police Department issued hereunder shall be subject to a penalty as provided herein.

SECTION 9. CIVIL PENALTIES.

Any person who is found to be in violation of any provision of this Ordinance shall be subject to a civil penalty of not less than one thousand dollars (\$1,000.00) and not more than two thousand dollars (\$2,000.00), or as otherwise provided by 30-A M.R.S.A. § 4452, as may be amended from time to time. Each violation of a separate provision of this Ordinance, and each day of violation, shall constitute separate offenses. In addition, if the Town is the prevailing party in an enforcement action, said person shall also be liable for all reasonable expenses incurred by the Town in the enforcement of this Ordinance, including, but not limited to, staff time, attorney's fees, and costs. All civil penalties shall inure to the benefit of the Town of Gorham.

Chairman Hartwell opened **Public Hearing #3**. There were no comments from the public and the hearing was closed.

Item #9483

Moved by Councilor Wilder Cross, seconded by Councilor Shepard and ORDERED, that the Town Council issue a renewal liquor license to M and G X-Max II, LLC, dba Ocean Gardens Restaurant and Tavern, 390 Main Street. **7 yeas**

Item #9484

Moved by Councilor Shepard, seconded by Councilor Wilder Cross and ORDERED, that the Town Council authorize the Town Clerk to issue the warrant for the November 5, 2019 Annual Municipal Election; and

Be It Further Ordered, that the polls be open from 7:00am until 8:00pm; and

Be It Further Ordered, that the Town Council appoints the following persons for the designated voting districts and if any of the following should fail to serve, the Town Council hereby authorizes the Town Clerk to appoint substitutes:

District 1-1 – Susan Emerson, Warden and Laurel Smith, Ward Clerk

District 1-2 – Katherine Corbett, Warden and Cornelia Loughran, Ward Clerk

District 2 – Martha Towle, Warden and Nancy Kenty, Ward Clerk

Central – Paula Nystrom, Warden and Teresa Sanborn, Ward Clerk

Be It Further Ordered, that the Registrar of Voters be in session during the hours of 8:00am and 4:00pm on Tuesday, October 29, 2019 and Wednesday, October 30, 2019; between the hours of 8:00am and 6:30pm on Thursday October 31, 2019, between the hours of 8:00am and 1:00pm on Friday November 1, 2019 and between the hours of 8:00am and 4:00pm on Monday November 4, 2019, and

Be it Further Ordered, that the Town Clerk be authorized to process absentee ballots on Monday, November 4, 2019 at 10:00am, 1:00pm and 4:00pm and on Tuesday, November 5, 2019 at 10:00am, 2:00pm and 8:00pm. **7 yeas**

Item # 9485

Moved by Councilor Phillips, seconded by Councilor Pratt and ORDERED, that the Town Council accept the resignation of Brian Plowman from the Planning Board and,

Be it further Ordered, that the Town Council express its appreciation for his services to the Town of Gorham. **7 yeas**

Item #9486

Moved by Councilor Wilder Cross, seconded by Councilor Shepard and ORDERED, that the Town Council appoint James Hall to the Planning Board with his term ending April 1, 2020. **7 yeas**

Chairman Hartwell announced that he leases farm property from a Nephew of M.P. Rines but does not believe that it is a conflict of interest for the following item.

Item # 9487

Moved by Councilor Hager, seconded by Councilor Smith and ORDERED, that the Town Council authorize a referendum on November 5, 2019 to authorize the Town to borrow and expend up to \$4,000,000 to finance the cost of the purchase of 93 acres located off Cobb Road, Tax Map 30, Lot 1, and 47.88 acres located off of Libby Avenue, Tax Map 29, Lot 1, from the M.P. Rines Trust (the "Property"), and to borrow and expend up to \$1,900,000 to finance the costs of survey, design, local, state and federal approvals, and construction of initial phases of road and utility infrastructure on the Property, such authorization to be for a total borrowing and expenditure of up to \$5,900,000, a portion of the debt service for which may be offset by TIF funds; and Be It Further Ordered, that the Town Council schedules a Public Hearing on October 1, 2019 related to said referendum. **7 yeas**

Moved by Councilor Wilder Cross, seconded by Councilor Shepard and VOTED to waive the reading of **Item #9488** due to length. **7 yeas**

Item #9488

Moved by Councilor Phillips, seconded by Councilor Hager and ORDERED, that the Town Council authorize and direct the Town Manager to execute a Purchase and Sale Agreement with M.P. Rines, Trustee of the M.P. Rines Trust, substantially in the form attached hereto, for the acquisition of approximately 141 acres of land located on Libby Avenue and Cobb Road in Gorham, for a total cost not to exceed \$4,000,000.

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (the "Agreement") is made this ____ day of September, 2019 (the "Effective Date") by and between the **TOWN OF GORHAM**, a body politic and corporate, having a mailing address of 75 South Street, Gorham, Maine 04038 (the "Town") and **M.P. RINES, TRUSTEE OF THE M.P. RINES TRUST, DATED JUNE 23 2000**, having a mailing address of 174 South Collier Boulevard #1201, Marco Island, Florida 34145-4333 (the "Seller").

1. **Property.** The Town agrees to purchase from Seller, and Seller agrees to sell to the Town (a) approximately ninety-three (93) acres of land located on Cobb Road, in the Town of Gorham, County of Cumberland and State of Maine, said land being identified on the Town of Gorham Tax Map 30, as Lot 1, and being further described in a deed from Mark Phinney Rines to the Seller and recorded in the Cumberland County Registry of Deeds in Book 15793, Page 229; and (b) approximately forty-seven and 88/100 hundredths (47.88) acres of land located on Libby Avenue, in the Town of Gorham, County of Cumberland and State of Maine, said land being identified on the Town of Gorham Tax Map 29, as Lot 1, and being further described in a deed from Mark Phinney Rines to the Seller and recorded in the Cumberland County Registry of Deeds in Book 15793, Page 229, together with all appurtenant rights and

easements (collectively, the "Property").

2. **Purchase Price.** The total purchase price ("Purchase Price") for the Property is Four Million and 00/100 Dollars (\$4,000,000.00), to be adjusted as provided in Paragraph 6, and payable as follows:

a. within forty-eight (48) hours of the execution of this Agreement, as security for the Town's agreement to perform its obligations hereunder, the Town shall pay to Jensen Baird Gardner & Henry, as Escrow Agent, the sum of Five Thousand and 00/100 Dollars (\$5,000.00) (the "Deposit"). The Deposit shall be paid to Seller at Closing, as defined in Paragraph 3 hereof, or otherwise shall be applied in accordance with the terms of this Agreement; and

b. at Closing, the Town shall pay Seller the balance of the purchase price equal to Three Million Nine Hundred Ninety-Five Thousand and 00/100 Dollars (\$3,995,000.00), by bank check, check drawn on Escrow Agent's real estate trust account, or confirmed wire transfer.

3. **Closing.** The closing shall occur, except as may otherwise be provided herein, on or before thirty (30) days from the satisfaction of all of the Town's contingencies set forth in Paragraph 6 herein, at the offices of the Town's Counsel, Jensen Baird Gardner & Henry, Ten Free Street, Portland, Maine, or such earlier time or other place as mutually agreed to by the Town and Seller, but not later than January 17, 2020.

4. **Conveyance; Title.** At the Closing, Seller shall execute and deliver to the Town a good and sufficient Trustee's Deed conveying to the Town the Property in fee simple, with good and marketable title thereto, free and clear of all liens and encumbrances, except for: (a) real estate taxes which are not yet due or payable; (b) any encumbrances or easements of record which do not materially interfere with the current use of the Property, and have been approved by the Town; (c) usual public utilities servicing the Property; and (d) easements for public water and gas utilities already known to exist by the parties on the property.

At Closing Seller shall provide such affidavits regarding tenants in possession, mechanics liens and other statutory liens, and survey matters, as the Town or the Town's title insurance carrier may reasonably request.

At Closing the Property shall be (a) in compliance with the provisions of any instrument of record affecting use and title to the Property except as heretofore disclosed, and (b) not be in material violation of zoning laws.

Seller shall apply the Purchase Price relieved at closing to discharge and terminate outstanding liens and encumbrances encumbering the Property.

5. **Prorations and Adjustments at Closing.** The following prorations or adjustments shall be made at Closing:

a. Current real estate taxes and personal property taxes based on the municipality's fiscal year shall be prorated as of the date of Closing. Seller is responsible for paying any unpaid real estate and personal property taxes, including accrued interest, costs and fees, accrued prior to the Closing.

b. The Town and Seller will each pay their share of the transfer tax as required by the State of Maine.

c. Utilities servicing the Property including, without limitation, water, sewer, gas and electricity, if any.

6. **Contingencies to the Town's Obligations.** The Town's obligations under this Agreement shall be contingent upon the following:

a. **Referendum.** The approval of the purchase of the Property pursuant to the terms of this Agreement by referendum of the voters of the Town of Gorham. If the referendum fails to approve the purchase of the Property and this Agreement, then the Town shall have the right to terminate this Agreement, provided that the Deposit be paid to Seller as Seller's liquidated damages, and the parties shall be relieved of any further liability or obligation hereunder, except with respect to those obligations that are expressly stated herein to survive the termination of this Agreement. The parties agree that determining Seller's damages for the failure of such referendum to pass default would be difficult, and that the Deposit is a reasonable estimate of Seller's damages

b. **Title to Property.** The Town's approval within forty-five (45) days from the Effective Date of this Agreement, of a commitment of title insurance issued by Escrow Agent, as agent for a title insurance company of the Town (or Escrow Agent's) choosing, with liability in the amount of the Purchase Price, showing title to the Property to be vested in the Town, subject only to those exceptions approved by the Town (the "Title Period"). If the Town is not satisfied, in its sole discretion, with the results of its title review for any reason except the Permitted Exceptions, then the Town shall have the right, by notice given to Seller on or before 5:00 P.M. on the last day of the Title Period, to either (i) terminate this Agreement and receive the return of its Deposit, in which case each party hereto shall be released from their obligations hereunder, or (ii) specify those matters in title that are not acceptable to the Town ("Title Defect Notice"). To exercise such termination right, the Town shall give written notice of termination to Seller on or before 5:00 P.M. (EST) on the last day of the Title Period. If the Town elects to give Seller the Title Defect Notice on or before said deadline, then Seller shall notify the Town, within five (5) business days after Seller's receipt of the Title Defect Notice, whether Seller will attempt to cure such title defects. If such defect is not removed by Seller prior to Closing, the Town may either (a) terminate this Agreement and receive the return of its Deposit, in which case each party hereto shall be released from their obligations hereunder; or (b) consummate the purchase of the Property in accordance with this Agreement, with no reduction in the Purchase Price.

c. **Inspections.** The Town shall have the right, at its sole cost and expense, to conduct inspections, surveys and tests of the Property, and to perform such other due diligence with respect to the Property as the Town deems necessary. The Town acknowledges and agrees that its inspection right shall expire forty-five (45) days from the date of the approval of the purchase of the Property pursuant to the terms of this Agreement by referendum of the voters of the Town of Gorham (the "Inspection Period"). If the Town disproves of the results of any inspections, surveys or tests within the Inspection Period, the Town may either (a) terminate this Agreement and receive the return of its Deposit, in which case each party hereto shall be released from their

obligations hereunder; or (b) consummate the purchase of the Property in accordance with this Agreement, with no reduction in the Purchase Price. To exercise such termination right, the Town shall give written notice of termination to Seller on or before 5:00 P.M. (EST) on the last day of the Inspection Period. If Town does not give written notice of disapproval to the Seller prior to the expiration of the Inspection Period, such failure to give notice shall be deemed Town's approval of the item.

d. Representations and Warranties. Seller's representations and warranties set forth in Paragraph 9 below shall be true and correct as of Closing.

e. Bond Financing. The Town's procurement of bond financing on terms and conditions acceptable to the Town in its sole discretion, sufficient to fund the purchase of the Purchase Price set forth in Section 2 of this Agreement and any costs associated with the closing of this transaction.

7. Possession. Possession shall be given to the Town, free of all tenants or parties in possession, at Closing.

8. Risk of Loss/Damage to Property. Until the Closing, the risk of loss or damage to the Property or destruction of the Property by fire or otherwise is assumed solely by Seller. Said Property shall, at Closing, be substantially in the same condition as at present. If the Property is damaged or destroyed prior to Closing, City may either terminate this Agreement, or close this transaction and accept the Property in its "as is" state.

9. Seller's Representations and Warranties.

a. Seller represents to the Town, both as of the date hereof and as of the Closing, to the best of Seller's knowledge, that the Property does not include any underground oil tanks, or above ground oil tanks with underground piping, of any sort. Seller further represents to the Town that, to the best of Seller's knowledge, there is not now, nor will there be at Closing, any other hazardous toxic or other dangerous substances, material and/or waste in, on or under the Property in any state of quantities that constitute a violation of, or require reporting, licensing or other remedial or responsive actions under any law, rule, regulation, order or ordinance of any applicable authority, or that might pose a potential or actual threat to the public health, safety and welfare or to the environment.

To the best of Seller's knowledge, no hazardous substance or toxic waste has been generated, treated, stored, used, disposed of or deposited in or on the Property including, without limitation, any underground tanks. To the best of Seller's knowledge, there is no hazardous substance, toxic waste or tank in or on the Property that may affect the Property or any use thereof or that may support a claim or cause of action under the common law or under any federal, state or local environmental statute, regulation, ordinance or other environmental regulatory requirement, nor has any action been instituted for enforcement of same.

b. Seller has no knowledge of any pending or threatened claim or litigation against the Property and Seller has not received any notice from any governmental authority of defects in the Property or noncompliance with any applicable law, code or regulation.

- c. Seller has full power and authority to enter into this Agreement and to perform all of its obligations hereunder.

10. **Real Estate Broker.** The Town and Seller each hereby represent and warrant to the other that there are no real estate brokers involved or real estate commissions or finder fees payable in connection with the sale of the Property and each agrees to hold each other harmless with respect to the same.

11. **Default.** In the event of default by the Town which is not cured upon ten (10) days written notice from Seller to The Town, and if Seller has fully performed Seller's obligations hereunder, Seller may terminate this Agreement and receive the Deposit as liquidated damages. In the event of default by Seller which is not cured upon ten (10) days written notice from the Town to Seller, and if the Town has fully performed the Town's obligations hereunder, the Town terminate this Agreement, and receive the return of its Deposit. The parties agree that determining each other's damages in the event of default by the other party would be difficult, and that the Deposit is a reasonable estimate of the non-defaulting party's damages.

12. **Mediation.** In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or the breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties which at the election of either party shall include non-binding mediation utilizing the American Arbitration Association's Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure.

13. **Duties and Responsibilities of Escrow Agent.** Escrow Agent shall deliver the Deposit to Seller or the Town promptly after receiving a joint written notice from Seller and the Town directing the disbursement of the same, such disbursement to be made in accordance with such direction. If Escrow Agent receives written notice from the Town or Seller that the party giving such notice is entitled to the Deposit, which notice shall describe with reasonable specificity the reasons for such entitlement, then Escrow Agent shall (i) promptly give notice to the other party of Escrow Agent's receipt of such notice and enclosing a copy of such notice and (ii) subject to the provisions of the following paragraph which shall apply if a conflict arises, on the fourteenth (14th) calendar day after the giving of the notice referred to in clause (i) above, deliver the Deposit to the party claiming the right to receive it.

In the event that Escrow Agent shall be uncertain as to its duties or actions hereunder or shall receive instructions or a notice from the Town or Seller which are in conflict with instructions or a notice from the other party or which, in the reasonable option of Escrow Agent, are in conflict with any of the provisions of this Agreement, it shall be entitled to take any of the following courses of action:

(a) Hold the Deposit as provided in this Agreement and decline to take any further action until Escrow Agent receives a joint written direction from the Town and Seller or any order of a court of competent jurisdiction directing the disbursement of the Deposit, in which case Escrow Agent shall then disburse the Deposit in accordance with such direction;

(b) In the event of litigation between the Town and Seller, Escrow Agent may deliver the Deposit to the clerk of any court in which such litigation is pending; or

(c) Escrow Agent may deliver the Deposit to a court of competent jurisdiction and therein commence an action for interpleader, the cost thereof to Escrow Agent to be borne by whichever of the Town or Seller does not prevail in the litigation.

Escrow Agent shall not be liable for any action taken or omitted in good faith and believed by it to be authorized or within the rights or powers conferred upon it by this Agreement and it may rely, and shall be protected in acting or refraining from acting in reliance upon an opinion of counsel and upon any directions, instructions, notice, certificate, instrument, request, paper or other documents believed by it to be genuine and to have been made, sent, signed or presented by the proper party or parties. In no event shall Escrow Agent's liability hereunder exceed the aggregate amount of the Deposit. Escrow Agent shall be under no obligation to take any legal action in connection with the Deposit or this Agreement or to appear in, prosecute or defend any action or legal proceedings which would or might, in its sole opinion, involve it in cost, expense, loss or liability unless, in advance, and as often as reasonably required by it, Escrow Agent shall be furnished with such security and indemnity as it finds reasonably satisfactory against all such costs, expense, loss or liability. Notwithstanding any other provision of this Agreement, the Town and Seller jointly indemnify and hold harmless Escrow Agent against any loss, liability or expense incurred without bad faith on its part and arising out of or in connection with its services under the terms of this Agreement, including the cost and expense of defending itself against any claim of liability.

Escrow Agent shall not be bound by any modification of this Agreement, unless the same is in writing and signed by the Town, Seller and Escrow Agent. From time to time on or after the date hereof, the Town and Seller shall deliver or cause to be delivered to Escrow Agent such further documents and instruments that fall due, or cause to be done such further acts as Escrow Agent may reasonably request (it being understood that the Escrow Agent shall have no obligation to make any such request) to carry out more effectively the provisions and purposes of this Agreement, to evidence compliance with this Agreement or to assure itself that it is protected in acting hereunder.

Escrow Agent shall serve hereunder without fee for its services as escrow agent, but shall be entitled to reimbursement for expenses incurred hereunder, which expenses shall be paid and borne equally by the Town and Seller, unless such expenses are associated with litigation between the Town and Seller, in which event they shall be borne by the party that does not prevail in the litigation. Escrow Agent agrees that it will not seek reimbursement for its services but only for its actual and reasonably incurred out-of-pocket expenses. Escrow Agent executes this Agreement solely for the purpose of consent to, and agreeing to be bound by the applicable provisions of this Agreement.

14. **1031 Exchange.** Seller may, at Closing, elect to effectuate a like-kind exchange of the Property, with respect to all or a portion of the Purchase Price, with a view toward such exchange qualifying for tax deferred treatment under Section 1031 of the Internal Revenue Code, as amended (the "Code") (the "1031 Election"), by notifying the Town in writing, at or prior to the Closing, that it is making the 1031 Election. In the event of a 1031 Election, Seller may, in accordance with Treasury Department regulations, assign this Agreement to a qualified exchange intermediary ("Qualified Intermediary") of Seller's choice to effectuate the exchange. The Town agrees to cooperate with the Seller in qualifying for such like-kind exchange and in accordance with and subject to the terms, provisions, and limitations of this Agreement, including, but not limited to, the terms, provisions and limitations of this Paragraph; provided, however, the Town shall not have any responsibility, obligation or liability with respect to any such transaction or the effectiveness of the same; and provided, further, the exchange does not delay or postpone the Closing Date. The Town agrees to execute such documents and instruments as are reasonably necessary to implement such an exchange, provided such documents and instruments are in form and substance reasonably acceptable to the Town. In no event, however, shall Seller's obligations under any other provision of this Agreement be diminished as a result of the 1031 Election or the effectuation of the like-kind exchange contemplated thereby. The Town's sole obligation as to the like-kind exchange shall be to cooperate in good faith with Seller's efforts to

effectuate such an exchange in accordance with and subject to the terms, provisions and limitations of this Paragraph and at no cost or expense to the Town.

15. **General.**

a. **Notices.** All notices, demands, and requests that may be given by either party to the other shall be in writing and shall be deemed to have been given, on personal delivery or 48 hours after deposit in the United States mail, registered or certified, return receipt requested, postage prepaid, addressed to the party to be notified at the address set forth above. Either party may designate by written notice to the other party in the manner set forth in this Agreement another address for notice.

Rejection or other refusal to accept or the inability to deliver because of changed address, of which no notice was given as required herein, shall be deemed to be receipt of the notice sent.

b. **Assignment.** Neither party may assign their rights under this Agreement without the prior written consent of the non-assigning party.

c. **Waiver.** The waiver of any provision of this Agreement shall be invalid unless evidenced by a writing signed by the party to be charged with it. The waiver of, or failure to enforce, any provision of this Agreement shall not be a waiver of any further breach of such provision or of any other provision of this Agreement. The waiver by either or both parties of the time for performing an act shall not be a waiver of the time for performing any other act required under this Agreement.

d. **Modifications.** No change or addition to this Agreement or any part of it shall be valid unless in writing and signed by each of the parties.

e. **Heirs, Successors and Assigns.** This Agreement shall inure to the benefit of and be binding on the permitted heirs, successors and assigns of the respective parties.

f. **Governing Law.** This Agreement shall be governed by the laws of the State of Maine.

g. **Headings.** The headings in this Agreement are for convenience only and shall not be used to interpret this Agreement.

h. **Further Acts.** Each party agrees to take such further action and to execute and deliver such further documents as may be necessary to carry out the purposes of this Agreement.

i. **Attorney Fees.** Each party shall bear their own attorneys' fees incurred to enforce this Agreement or related to a breach of this Agreement by the other party unless otherwise ordered by a court of competent jurisdiction.

j. **Time.** Time is of the essence of this Agreement.

k. **Faxed or Electronic Signatures.** The parties agree that faxed or electronic signatures may be used to expedite the transaction contemplated by this agreement. Each party intends to be bound by its faxed or electronic signature and

each is aware that the other will rely on the faxed or electronic signature and each acknowledges such reliance and waives any defenses to the enforcement of the documents effecting the transaction contemplated by this Agreement based on a faxed or electronic signature.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto, hereunto duly authorized, have executed and delivered this Agreement as of the Effective Date.

WITNESS:

SELLER:
M.P. RINES TRUST,
dated June 23, 2000

By: _____

M.P. Rines
Title: Trustee

Date:

TOWN (BUYER):
TOWN OF GORHAM

By: _____

Ephrem Paraschak
Title: Town Manager

Date:

Item #9488 VOTED 7 yeas

Item #9489

Moved by Councilor Shepard, seconded by Councilor Smith and ORDERED, that the Town Council authorizes the transfer of \$25,000 from the Land Acquisition Fund for the purposes of concept design work for a future industrial park, to be replaced in the Land Acquisition Fund after the issuance of bonds for the project. **7 yeas**

Item #9490

Moved by Councilor Phillips seconded by Councilor Wilder Cross and ORDERED, that the Town Council instruct the Town Manager to transition the position of Economic Development Director from part time to full time as outlined and approved in the FY2020 budget. **6 yeas, 1 nay (Smith)**

Item # 9491

Moved by Councilor Hager, seconded by Councilor Phillips and ORDERED, that the Town Council authorizes the Town Manager to enter into a lease agreement with the Shaw Family Foundation for the purposes of public use of the Shaw Cherry Hill Farm property located off of lower Main Street as he determines is in the best interests of the Town of Gorham; and
 Be It Further Ordered, that the Town Council offers its utmost appreciation on behalf of the citizens of Gorham for the continued generosity of the Shaw Family in promoting and maintaining outdoor opportunities in the Town of Gorham. **7 yeas**

A Point of Order was called by Norm Justice, Wood Road. Mr. Justice believes that Item #9492 is a function of the School Committee per the Town Charter, therefore Item #9492 would be in conflict with the Town Charter Section 203, Enumeration of Powers, (204.2) and therefore out of order for the Town Council to consider as it is the care and management of the School Committee.

Chairman Hartwell's ruling on the Point of Order was the Point was not well taken and he believes that this item does not direct the School Committee in what they can or cannot do and he does not believe that this item is in conflict with the Charter.

Item # 9492

Moved by Councilor Smith, seconded by Councilor Phillips and ORDERED, that the Town Council authorizes staff to hire a third party estimator from the Town's Contingency Account to review site plans for the Narragansett Modular Project to determine if any cost savings exist that may be used for the current project and/or future projects, and
 Be It Further Ordered, that similar projects have a third party estimator review projects before going to the voters as determined by the Council.

Moved by Councilor Phillips, seconded by Councilor Pratt and VOTED to amend **Item #9492** to read:
 Ordered, that the Town Council authorizes staff to hire a third party estimator to review projects before going to the voters as determined by the Council. **6 yeas, 1 nay (Hager)**

Item # 9492 VOTED as amended. 5 yeas, 2 nays (Shepard, Hager)

Moved by Councilor Phillips, seconded by Councilor Pratt and VOTED to waive the reading of **Item #9493** due to length. **7 yeas**

Item #9493

Moved by Councilor Phillips, seconded by Councilor Shepard and ORDERED, that the Town Council adopts a revised fire / rescue department fee schedule as follows:

| | Fee |
|-----------------|-------------|
| Fee | |
| EMS Fees | |
| BLS | \$ 580.00 |
| ALS-1 | \$ 785.00 |
| ALS-2 | \$ 1,000.00 |

| | |
|------------------------|-------------|
| Mileage | \$ 14.00 |
| Oxygen | \$ 75.00 |
| IV's | \$ 115.00 |
| Monitor | \$ 110.00 |
| Defibulation | \$ 100.00 |
| Airway | \$ 100.00 |
| No Transport | \$ 200.00 |
| Medic Intercept | \$ 300.00 |
| CPAP | \$ 100.00 |
| IO Infusion | \$ 150.00 |
| Glucose Scan | \$ 95.00 |
| | |
| Fire Fees | |
| Extrication | \$ 400.00 |
| Engine | \$ 125.00 |
| Tanker | \$ 125.00 |
| Brush Truck | \$ 50.00 |
| Ambulance | \$ 100.00 |
| Ladder/Tower | \$ 150.00 |
| Hazmat | \$ 2,500.00 |
| Command Van | \$ 100.00 |
| Squad Truck | \$ 125.00 |
| Personal | \$ 50.00 |
| | |
| Permits/Reports | |
| Sprinkler Permit | \$ 25.00 |
| | |
| Town Specific | |
| USM False Alarm | \$ 800.00 |

Moved by Councilor Phillips, seconded by Councilor Shepard and VOTED to amend **Item #9493** to state Sprinkler/Permit \$75 not \$25. **7 yeas**

Item # 9493 VOTED as amended 7 yeas.

Item # 9494

Moved by Councilor Shepard, seconded by Councilor Hager and ORDERED, that the Town Council authorizes the Town Manager to enter into a three year agreement with Cumberland County for continued regional assessing services. **7 yeas**

Item #9495

Moved by Councilor Wilder Cross, seconded by Councilor Phillips and ORDERED, that the Town Council go into Executive Session pursuant to Title 1 MRSA Section 405 (6) (A) for the annual performance evaluation of the Town Manager. **7 yeas**

Moved by Councilor Phillips, seconded by Councilor Shepard and VOTED to come out of Executive Session. **7 yeas**

Moved by Councilor Phillips, seconded by Councilor Shepard and VOTED to adjourn. **7 yeas**

Time of adjournment: 10:20 pm

A True Record of Meeting
09/04/2019

ATTEST _____ 09/04/2019
Laurie Nordfors, Town Clerk

