

## TOWN OF DERRY

Town Council Meeting  
Derry Municipal Center

February 6, 2007  
Tuesday 7: 30 pm

Member Present:  
Chairman Chirichiello  
Councilor Reisdorf  
Councilor Ferrante  
Councilor Bulkley  
Councilor Fairbanks  
Councilor Coyle  
Councilor Dowling

Staff Present:  
Mike Fowler, PW Director  
Janice Mobsby, Comptroller  
Barbara Ellingwood, Cable Director

Acting Town Administrator, John Moody  
Town Clerk, Denise Neale

Called to Order at 7:30 pm

Salute to Flag, Notice of Fire Exits & Handicap Access

Roll Call-Present: Fairbanks, Ferrante, Bulkley, Chirichiello, Reisdorf, Coyle Dowling

**Consent Agenda**

- 07-13** Acceptance of Minutes – Upstone Lane Sewer Work Session-  
January 9, 2007
- 07-14** Acceptance of Minutes – January 16, 2007 – with responses
- 07-15** Schedule a Public Hearing – February 20, 2007 – Approval of Private Roads Sub-  
Committee Report
- 07-16** Schedule a Public Hearing – February 20, 2007 – Fire Ordinance
- 07-17** Schedule a Public Hearing – February 20, 2007 – Public Well Ordinance
- 07-18** Abatement & Exemptions

**Discussion: Move 07-17 Schedule a Public Hearing – Public Well Ordinance was moved to March 6, 2007 meeting to allow more time for public notification by Public Works. Motion by Councilor Coyle, Second by Councilor Bulkley Vote: 7-0-0**

**Consent Agenda - Approved****Chairman's Report****Presentation from Derry Veteran's Monument Committee**

Councilor Ferrante introduced Mark Brassard for the presentation of the First in the Nation unveiling of a commemorative monument for the Veteran's of the Iraq and Afghanistan Wars to be placed at MacGregor Park.

Senator Bob Letourneau presented an American Flag, which had been flown over the State House in Concord, in a ceremony through Veterans of Past Wars to the Langelier's a Derry Family who's son is a Sergeant in the United States Army and has received a Bronze Star in Iraq. The family & their son Sgt. Steve Langelier Jr. will return the American Flag in a

dedication ceremony to be flown over the monument when the monument is complete.

The committee asked for Private and Corporate donation for the monument to be made to Derry Parks and Recreation.

### **Administrator's Report**

#### Reminders:

Feb 7	Planning Board Meeting
Feb 12	Conservation Commission
Feb 13	School Board Meeting at WRB
Feb 14	Derry Housing & Redevelopment
Feb 14	Heritage Commission
Feb 15	Highway Safety Committee
Feb 15	Zoning Board

Acting Town Administrator Moody asked BC Mike Gagnon and Lt Bill Gillis of the Fire department to report on the Emergency Management Operation of the Ice Storm of January 15 – 18, 2007.

BC Mike Gagnon presented the After Action Report of the Ice Storm and Power Outage. They gave an insight to what had been done during the emergency, what could have been done better and the corrections made for future emergencies. Statistics will be provided of the number of responses, calls and actions taken at the completion of the report.

#### New Items instituted:

Sign at Central Fire Station  
Enhancement of Town Website  
Primary Shelter in Derry (TBA)  
Requesting a new AM broadcast system in FY08 Budget

BC Mike Gagnon spoke regarding the actions that could be taken by the Citizens for preparedness in case of an emergency. Information a: [www.ready.gov](http://www.ready.gov). (FEMA website)

Councilor Dowling questioned if there were citizens in Derry trained to assist in these situations. (*Lt Bill Gillis replied the Medical Reserve Corp membership has 128 medical members*)

Councilor Coyle stated the whole community should be involved in Emergency Management. The Town needs to recruit volunteers to assist the Emergency Management Team. (*Council Ferrante agreed*)

Chairman Chirichiello stated an AM broadcast system would be beneficial.

### **Public Hearing**

#### **Approve Amendment to Purchasing Policy**

Janice Mobsby, Comptroller - reviewed the updated Policy including it's efficiency and effectiveness for purchasing in the Town of Derry.

**Councilor Bulkley motioned to open the Public Hearing, Second by Councilor Coyle**

**Vote: 7-0-0**

Paul Hopfgarten, Hampstead Rd – requested that policy be changed to have the majority of the Council approve purchases over \$10,000.

**Motion to close Public Hearing, Council Bulkley, Second by Councilor Dowling Vote: 7-0-0**

Councilor Bulkley questioned putting a specific vendor name on the policy why not generic vendor name. *(Janice Mobsby explained that we have a contract with WB Mason for a number of years.)*

Councilor Fairbanks asked if these expenditures were included in the budget and if there was a department head required before the 3 proposals. *(Janice Mobsby replied, yes they are included in the budget and the department head is required to review but not necessarily involved in the bid process.)*

Councilor Ferrante reviewed her understanding of the approval process.

Councilor Bulkley asked if the Town Auditors had reviewed this policy and if they had any comment on it? *(Janice Mobsby answered that there had been no feedback to her knowledge)* Councilor Bulkley suggested it would be worthwhile, for the Auditors to comment on the policy, before returning to the Council.

Councilor Reisdorf noted that on page 6 it required the Council Chair and another Councilor be involved.

**Councilor Bulkley motioned to move this item to the next meeting agenda, Seconded by Councilor Ferrante Vote 7-0-0 (February 20, 2007)****07-10 Cardinal Circle – Extinguishment of Pedestrian Easement to the Derry Boys & Girls Club**

Mike Fowler, Public Works Director - reviewed the staff report and the events from the Planning Board provided in regards to this easement.

**Motion to open the Public Hearing by Councilor Coyle, Second by Councilor Bulkley Vote: 7-0-0****No Public Comment****Motion to close the Public Hearing by Councilor Coyle, Second by Councilor Bulkley Vote: 7-0-0**

Councilor Coyle questioned if the residents had rights to this easement? *(Mike Fowler, doesn't believe so, so it reverts back to the town)* Note: In a follow-up conversation it was clarified by Mike Fowler that the easement actually reverts to the landowner, not the Town)

Councilor Reisdorf stated that it was an easement across an individual lot and is owned by an individual now.

Councilor Bulkley stated he is recusing himself from the vote, as he is a member of the Board of Directors for the Derry Boys & Girls Club.

**Motion: The Derry Town Council moves to extinguish the pedestrian easement of parcel ID 38119-005, Cardinal Circle through release of Public Servitude as afforded under RSA 231:51 and RSA 231:52. Motion by Councilor Reisdorf, Second Councilor Coyle Vote: 6-0-1 (Councilor Bulkley, abstained)**

**07-12** Supplemental Appropriation of \$12,208 from Cable Special Revenue Fund  
Balance for Cable Equipment

Barbara Ellingwood, Cable Director- presented her department request to expand playback capabilities while adding equipment to support a dedicated government channel. Also providing video on demand through DSL or Broadband. There is no fiscal impact it is funded through Franchise fees.

Motion to open the Public Hearing by Councilor Coyle, Second by Councilor Bulkley Vote 7-0-0

**No Public Comment**

**Motion to close the Public Hearing by Councilor Coyle, Second by Councilor Bulkley Vote 7-0-0**

**Motion: Move a Supplemental Appropriation in the amount of \$12,208 from the Cable Revenue Fund to the Cable Equipment Line 740000 – Cable Machinery and Equipment. Motion by Councilor Fairbanks, Second Councilor Ferrante Vote: 7-0-0**

**Council Requested short recess.**

**07- 19** Route 28 TIF District – Agreement with Wal-Mart

Mike Fowler, PW Director reviewed the staff report and history of this TIF District. Attached to this report is an agreement with Wal-Mart for funding of the road project. There is some concern in the agreement line Section 6 in which if Wal-Mart were not to build the Town would have to reimburse Wal-Mart for the pre-use of Escrow funds for the road construction and any remaining Escrow balance.

Motion to open the Public Hearing by Councilor Coyle, Second by Councilor Bulkley Vote: 7-0-0

Brent Carney, Goodhue Rd – Addressed Section 6, believes the Council should protect the Town and not sign the agreement as it is for Wal-Mart's benefit.

Steven Barry, Kendall Pond Rd – would like Economical Development to go forward whether Wal-Mart builds or not. The benefit of this TIF would be for any business to relocate to Derry.

Paul Hopfgarten, Hampstead Rd – Also has concerns on Section 6.

Maureen Rose, Windham Rd – Believes businesses should pay their own way. The documentation states Estimated to cost in #3. This concerns her. Also has a concern on

## Section 6.

Al Dimmock, High St –believes our State Representatives should have assisted with project more and made it part of the 4A project which will be funded by the State.

Joseph Dichiaro, Humphrey Rd – questioned if the Town was prepared to payback Wal-Mart in 30 days if they decided not to build for the Escrow funds regarding the road project.

Jack Dowd, Sundown Rd – This road is being built for the Town of Derry. It has been in failure for twenty years. It's not about Wal-Mart. This issue is about the other lots available. If Derry is serious about Economic Development this project is needed now not five years from now. The cost keeps rising.

John Myer, Donmac Dr – If we wait to build that road it's going to cost more, if you wait for all possible objections to be resolved then nothing will ever be accomplished. He lives on the other side of the woods where the development will take place; he's more concerned that this will help his tax burden and Economic improvement for Derry as a place to live.

David MacPherson, Colony Brook Lane, if we don't act it will pass us by. The Council has to make a decision now, not wait for another Council.

Steven Falconer, Buttonwood Dr- Has looked at some other Towns where Wal-Mart has come in and the growth that has taken place. If Wal-Mart walks away well have another large business come in. Time to move on with development.

Motion to close the Public Hearing by Councilor Coyle, Second Councilor Bulkley Vote: 7-0-0

Councilor Coyle clarified that the TIF District has already been approved the Council is here to approve the Wal-Mart agreement. The agreement is very one sided in Wal-Mart's favor and is not needed. How much is the design fee going to cost. *(Mike Fowler, roughly between \$400 & \$500,000 according to the bond resolution this money is available through the unrestricted fund balance)* Coyle continued that the Council could go through with the project on it's own. The Town, not Wal-Mart, should drive economic Development.

Mike Fowler stated that this agreement was asked for from Wal-Mart by the Council. The Town could start this project in 10 days from now using the \$1.5M in fund balance.

Councilor Reisdorf the commitment was asked for the \$950,000. Now we have one and now we're throwing it away. Gave a summary of an estimated timeline for construction. This money is for building Rte 28 not Ashleigh Drive. To me this is a commitment for \$950,000. Is in favor of the agreement.

Councilor Bulkley, the public demanded that we have something in writing from Wal-Mart. Legal counsel has reviewed the agreement and approved it. He is going to vote to fix the road as soon as possible, to look out for the taxpayers and vote to show companies that we are willing to help them move into the town and make their business accessible to the citizens of this town.

Councilor Fairbanks would like clarification from Russ Marcoux. If Wal-Mart comes we will issue the bond, and if it doesn't we won't bond for this TIF.

Russ Marcoux stated that if Wal-Mart doesn't come the Council still needs to proceed with the TIF District; however there would be a loss of the Ashleigh Dr project and the monies that Wal-Mart would have paid towards the project. The Commercial and Industrial tax base needs to be increased. Councilor Coyle is correct in stating we should proceed without the Wal-Mart agreement.

Chairman Chirichiello asked if our legal counsel had reviewed this agreement. *(Mike Fowler yes it had back in December)* He agrees with Councilor Reisdorf that the Council needs to act on this agreement now.

Councilor Coyle asked who negotiated the agreement. *(Mike Fowler answered Russ Marcoux, Jack Merchant and himself it was drafted by Arkansas Corporate Wal-Mart)* Councilor Coyle is willing to start the project now but the Town takes control without their agreement. The project can begin now. He was referencing #2 c of the agreement.

Councilor Reisdorf questioned the issue being #2 Construction Phase and Section 6 Termination of Agreement. He asked if this was brought to Wal-Mart. *(Councilor Coyle replied that he brought this up and Wal-Mart refused to change either.)*

Discussion ensued over whether the Council accepts or doesn't the agreement what will happen. There is no commitment that Wal-Mart will or will not build.

Councilor Ferrante would like to make a motion: The Town Council moves to accept the legal agreement between the Town of Derry and Wal-Mart in association with the Route 28 TIF District road improvements. The Town Council authorizes the Town Council Chairperson to sign the agreement on behalf of the Town Council, Second Councilor Reisdorf.

#### Discussion:

Councilor Coyle moved that pursuant to section 6.6 A Charter Objection as stated in the Derry Town Charter, that if a single Councilor objects to taking the vote, the vote shall be postponed to the next meeting or a special meeting after the Charter Objection has been used.

Councilor Bulkley moved to hold a special meeting Wednesday, February 07, 2007 at 6:00 pm to vote on this. Second Councilor Dowling Vote: 5-2-0 (Councilor Coyle & Council Fairbanks) Council needs to provide public notice for a special meeting, questioned by council.

#### **Old Business**

- None

#### **New Business**

- **07-19** New Hampshire Retirement System Resolution

- Russ Marcoux gave background on the legislation being introduced on this subject. Derry needs to have this resolution sent to Derry's State Senator, & State Representatives.

## **NEW HAMPSHIRE RETIREMENT SYSTEM RESOLUTION**

**WHEREAS: The Derry Town Council sees the escalating costs associated with the New Hampshire Retirement System as a leading challenge facing Derry and other cities and towns across New Hampshire as they prepare their annual budgets; and,**

WHEREAS: The Town of Derry's required contribution to the NHRS on behalf of its employees is beyond the control and negotiating authority of the town of Derry; and,

WHEREAS: The Derry Town Council recently took action regarding a Local Government Center Legislative Policy position that amends the language to seek additional city and town representation on the Board of the New Hampshire Retirement System; and,

WHEREAS: This is an important issue that should be championed by Derry's State Delegation on behalf of the taxpayers of the Town of Derry.

NOW, THEREFORE, BE IT RESOLVED BY THE DERRY TOWN COUNCIL THAT:

The Town Administrator shall send a letter, the appropriate background information, and a copy of this resolution to Derry's State Senator and State Representatives informing them of the importance of this issue to the Derry Town Council and the taxpayers of this Town and seeking their support in working toward legislation that will accomplish this objective. Additionally, the same information shall be sent to city and town officials encouraging them to support this legislation and seek support from their State Delegation as well. A copy of this Resolution also be sent to the appropriate legislative committee.

Approved this Sixth day of February 2007

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Brian K. Chirichiello, Chair  
District #4

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Craig W. Bulkley  
Councilor at Large

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Kevin L. Coyle  
Councilor at Large

\_\_\_\_\_  
Patricia A. Dowling  
Councilor at Large

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Janet Fairbanks  
Councilor District #1

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R. Christopher Reisdorf  
Councilor District #2

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Beverly A. Ferrante  
Councilor District #3

**Vote: 6-0-0 (Chairman Chirichiello was not present for this vote)**

### **Public Forum**

Roberta Robie, Chester Rd – discussed economic development and the TIF District and Exit 4A and its aspects of funding.

Paul Hopfgarten, Hampstead Rd – Issued concern that a traditional bond for this project should be used instead and it should go to the voters.

Chris Kling, Village Brook Lane – commented on the New Hampshire Retirement Resolution.

**Councilor Bulkley motion: to extend the meeting, Second Councilor Coyle****Vote: 7-0-0**

Acting Administrator Moody gave clarification of the Charter regarding Special Meetings, 10.6 allows for Special Meetings with a 48-hour notice. Earliest meeting would be Friday night.

Al Dimmock, High St – gave his impression of the vote on the Wal-Mart agreement. He objects to the vote.

Maureen Rose, Windham Rose – had concerns regarding the Island Pond Fire Station when she needed assistance. Doesn't approve of Wal-Mart Contract.

Joseph Dichiario, Humphrey Rd – Questioned the Wal-Mart contract #3 paragraph (c).

Joe Holtz, Village Brook Lane – feels it is great that the Town Council is taken action on Economic Development. Would like the Council to go ahead with the agreement.

Steve Barry, Kendall Pond Rd – Spoke regarding the how well the Town's government works.

**Motion to extend by Councilor Bulkley, Second by Coyle Vote: 7-0-0**

Richard Metts, Dustin Ave – discussed #4 Commencement Notice of the Wal-Mart agreement. Spoke about the Rte 28 roadway.

Councilor Bulkley stated that he had just been informed that Mr. Merchant has said if the agreement is going to be a problem tear-it-up. As it has been stated this evening that the Town Council doesn't need the agreement. Let move forward. Someone who voted in the affirmative can bring it back up for consideration.

**Councilor Coyle made a motion that the Town Council approves up to \$500,000 of already approved funds to begin the design phase of the TIF District project. They do not approve the agreement as Mr. Merchant has withdrawn the agreement, Second by Councilor Bulkley.**

Councilor Bulkley asked if the Town Council does not sign the Wal-Mart agreement would Wal-Mart still agree to fund Ashleigh Drive and Rte 28.

Jack Merchant, the Ashleigh Drive and the intersection is a condition of the Planning Board, for the site.

**On the motion: Vote 7-0-0**

**Councilor Bulkley withdrew his motion and the second by Councilor Dowling for the special meeting.**

Councilor Ferrante, the fifth year in a row the Special Olympics held it's Penguin Plunge at Hampton beach and brought in over \$500,000. 775 People took the Plunge.

**Motion to adjourn 10:25 p.m.**



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Town Clerk

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Date