

TOWN OF DERRY

Town Council Meeting
Derry Municipal Center

September 18, 2007
Tuesday 7:30 p.m.

Call to Order

Salute to Flag led by Councilor Fairbanks, Warning of Fire Exits, Handicap Access, Turn off all Cell Phones and Pagers

Staff Present: Frank Childs, George Sioris, and Mike Fowler

Roll Call: Fairbanks, Carney, Metts, Coyle, Chirichiello, Ferrante, and Chairman Bulkley

Consent Agenda

07-83	Acceptance of Minutes – September 4, 2007
07-84	Schedule Public Hearing – October 2, 2007 – Accept Corporate Park Drive as Class V Roadway as recommended by the Planning Board

Consent Agenda Accepted**Chairman's Report:**

Asked Council to schedule an Economic Development Workshop for Tuesday October 23rd. Asked TA Stenhouse to invite others participants. TA Stenhouse suggested a facilitator.

Administrator's Report:

Heart Safe Program – Tuesday, September 25th Derry will be promoting Public Access Defibrillation and CPR/AED Training throughout the community. Chuck Hemeon our EMS Director is offering a CPR/AED Training Course on this evening at 7:00 pm at the DMC. Anyone interested contact Chuck Hemeon at 432-6751

NHDOT 10-Year Highway Plan- will hold a Public Hearing on October 10th at 7:00 PM at the DMC.

Iraq-Afghanistan Monument Project Update – Mark Brassard gave an update of the funds raised to build the monument. There will be events and planning continuing with the Derry Parks and Recreation Department for the dedication. Construction will begin in the early spring. The dedication date will be Memorial Day 2008. We suggest that the town drop its motto "Space Town USA" for that day and be named "A Place where Hero's Gather". All Veterans of Wars and Conflicts will be invited to march in the parade on dedication day. He will return to the Council in the spring to give a construction update.

Public Hearing**07-74 Supplemental Appropriation of \$147,116 for Engineering Services related to Exit 4-A**

Chris Bean, CLD Project Manager– spoke on the schedules being adjusted for the I-93 widening and the exit 4A project. Stressed the fact that the EIS for Exit 4 –A needs to be completed.

Motion to Open the Public Hearing 7-0-0

Doug Newell, English Range Rd – disagreed with funding more money for this project.

Ron Goldthwaite, Scenic Dr – believes Council was short-sited not putting additional funds in the budget for this project.

Bob Letourneau, South Ave (Senator) – agrees to the Supplemental Appropriation.

Carl Accardo, Olsen Rd – would like Council to ask question who will benefit more Derry or surrounding towns.

Jack Dowd, Sundown Dr (DEDC) – This appropriation will finalize the EIS. He feels it's important for Derry to have Exit 4-A.

Al Dimmock, High St – is against the way the project is being funded but not against Exit 4-A.

Council Discussion Councilors asked various questions regarding the funding and billing of the EIS by CLD. When and if the project would be scheduled. If they could receive an exact amount it would cost. The main focus of this project is to relieve Rte 102 of the major traffic issues we presently have.

Councilor Coyle asked to review the Contract with CLD for this project. (Councilor Coyle stated he would be rescuing himself from any vote on this project.)

Councilor Fairbanks would like to also review this Contract and questioned who bid on this project and what the clauses were in the contract.

Chris Bean, CLD answered that due to the Public Hearing held 9/12, they would have to review the comments to know if they would need additional funding to resolve any issue brought about by this Public Hearing from other State Departments and other Agencies.

Motion: To have CLD return to the Town Council when the comments have been reviewed and a firm price has been determined.

Council Discussion on the Motion

Town Administrator Stenhouse advised the Council on the process of this project as he has been through this process before to try and clarify the issues the Council were discussing. Town Administrator Stenhouse stated that there were unpaid bills for CLD awaiting Councils approval.

Motion made by: Fairbanks Seconded by: Carney Vote: 2 – 4 –1 (no: Metts, Chirichiello, Ferrante, Bulkley) (abstention: Coyle) - Motion failed

Town Council authorized to pay July and August bills to CLD out of the FY08 appropriated budget of \$37,847.

Chairman Bulkley requested that Town Administrator Stenhouse or CFO Frank Childs become the active Town Project Manager to relay billings and updates to Council.

Chairman Bulkley reserved the 1st meeting in November as a tentative date for CLD to return to the Council.

Old Business

07-78 Approve purchase of 25 +/- acres – 7 Orchard Drive, Tax ID #56/019/011

Councilor Fairbanks motioned to Table 07-78 until the Council has the opportunity to review the allegation brought by a citizen of Derry in regards to this purchase. She also requests the email & response to be put into the minutes of this meeting. Seconded by Coyle. Vote: 2 –5 – 0 (Carney, Metts, Chirichiello, Ferrante, Bulkley)

Chairman Bulkley explained for public benefit that an abutter requested to purchase this land.

Paul Dionne, Conservation Chair – if an individual is willing to purchase the land and a conservation easement is in place for this land then he doesn't believe there would be anything wrong with this. They would withdraw their application for the grant.

(The email and response are attached at the end of these minutes.)

Motion: To authorize the Derry Conservation Commission to purchase 25+/- acres of land from Gary & Heather Johnston. Tax ID #56/019/01, 7 Orchard Drive. The cost of the land purchase is \$120,000, and will come from the Derry Conservation Commission Land Conservation Fund, established per RSA 36-A: 5, I.

**Motion Made by: Metts
(abstained: Coyle)**

Seconded by: Ferrante

Vote: 5-1-1 (no: Fairbanks)

07-78 Approve purchase of development rights – 112 English Range Road, Tax ID #11/097, 75 +/- acres and 121 Chester Road, Tax ID #12/021, 16.50 +/- acres

Motion: To authorize the Derry Conservation Commission to purchase the development rights of 94 +/- acres of prime agricultural lands, in the form of a conservation easement, from Phil Ferdinando, Tax ID #11/097 112 English Range Road and Tax ID #12/021 121 Chester Road the cost of the purchase is \$250,000,00 and will come from the Derry Conservation Commission Land Conservation Fund, establisher per RSA 36-A: 5-I

Motion made by: Metts

Seconded by: Carney

Vote: 7-0-0

New Business

07-85 Marion Gerrish Community Center Water Extension

Mike Fowler gave the background for this fund appropriation. A sprinkler system needs to be installed and the existing water service to the building is inadequate to support the fire protection needs. The cost for the exterior piping is estimated at \$20,000-\$25,000. The source of funding will be from the FY08 Buildings & Grounds Budget.

Motion: The Derry Town Council moves to authorize the installation of an exterior water main to Marion Gerrish Community Center for the purpose of providing fire protection to the building.

Motion made by: Carney

Seconded by: Fairbanks

Vote: 7-0-0

07-86 Manning Street Extension

Chairman Bulkley asked the Council if they would agree to have public input in three minute intervals for comment. Everyone Agreed.

Mike Fowler, Director of Public Works, gave information and input for this project. He gave his knowledge of the basic reasons for the connectivity and suggested it be a two-way street.

Councilors discussed and asked questions pertaining to the bike path, the Fiber Optic "Right of Way", drainage, safety of children going to and from Hood Park, the 2001 Traffic Impact Evaluation.

Councilors Ferrante and Chirichiello disagree with this connectivity.

Councilor Fairbanks asked if this 2001 Study was to bring traffic in and out of the court house and the DMC. Mike Fowler, the body of this study was from Maple St/Broadway, Manning/Broadway, etc. The Manning St Ext was a piece of a larger study. The study was actually 17 pages the report given to the Council is an excerpt regarding Manning St.

Councilor Chirichiello asked if the Planning Board under RSA would have to lay this out. *(Mike Fowler replied yes)*

Then Councilor Chirichiello referred to the study on page 11, Summary of Unsignalized Intersection Capacity Analyses - it was broken down as No-Build, Build, and Build w/Connector Rd. What is that Connector Rd they are talking about?

(Mike Fowler replied it would be I believe the Manning St Ext.)

Councilor Chirichiello replied then in fact this study would be for the Manning St Ext. For the record I would like this to be noted.

Public Input

Maureen Rose, Windham Rd – made suggestions that might be looked at to help with trucks and traffic. She also supports the connection of Manning St Ext

Bill Cooper, Central St – Supports the connection of Manning St Ext. Expressed his concern with air quality due to traffic backups presently.

Raigh Paradis, Sawyer Ct – Since this traffic study was done there is more and more traffic to this Street due to Family Court being moved from Auburn. Benson's trucks have no problem. Made a suggested for left turn only.

Motion to extend 10 minutes Councilor Coyle, Seconded Councilor Metts. 7-0-0

Eric Whitney, Wilson Ave – spoke in regards to the bike path as he and his family use this. If it is continued with the street need to put in a safe way to cross to the park bike path.

Chairman Bulkley asked if there could be an elevation for the Bike Path. *(Mike Fowler gave and explanation of achieving this.)*

Holly Whitney, Wilson Ave – in favor of extending Manning St.

Edie McGillian, Rollins St – There will be more pollution if we open the road up. The fiber optics is in place. Site view onto Rollins is not good. Against Manning St Ext.

Janet Conroy, High St – This summer during swimming lessons and the tennis courts are being used, the Hood Park parking lot is full and the overflow is to park on both sides of the road. Concerned in regards to turning. Would prefer a Greenway. Is against Manning St Ext.

Sylvia Booty, Lenox Rd – is against Manning St Ext and town should be preserving open space. Town should look at signage for Maple and Elm St to direct people to 28N. Has circulated a petition not to open Manning St. Ext.

Motion to Extend 10 minutes Councilor Coyle, Seconded Councilor Metts 7-0-0

Mark Samsell, President of the Windham Trail Alliance – Submitted a letter to the Chair. The Manchester/Lawrence rail bed is a benefit as a Bike Trail that would ultimately assist the trail connection from Salem to Concord. Suggested paving be 8 – 10 ft wide.

Al Dimmock, High St – the tractor-trailer trucks from Benson's have not had problems with site view. Agrees with opening Manning St Ext.

Carl Accardo, Olsen Rd – question regarding the CIP funding for the project. Recommended a procedure for notifying abutters to this type of project.

**Motion to Suspend the Rules by Councilor Metts, Seconded by Councilor Chirichiello
Vote: 6-0-0 (Councilor Coyle, absent)**

Margaret Ives, Field Rd – Hear concerns over safety and traffic. Would like to see some kind of Greenway but doesn't have any suggestions at this time.

Motion: To direct the Planning Board to layout the road for construction by the Public Works Department with in the appropriation that was voted by the Council in the FY08 Budget with construction of a bike path to be included.

Motion by: Councilor Carney Seconded by Councilor Fairbanks Vote: 5-2-0 (Chirichiello, Ferrante)

Adjourned 10:30 PM

To whom it may concern,

My name is Brian Pellerin, I reside at 5 Orchard Drive in Derry. I am writing today just to clear up some inaccuracies that I have seen reported in the news and that I watched on the community channel. I am an abutter to the land being planned to purchase at 7 Orchard Drive. My land at 5 Orchard Drive is in direct contact with both the Caras Property previously purchased by the town and the proposed purchase at 7 Orchard Drive.

For the record I support the towns efforts to purchase land and keep it from getting developed. This effort will keep our community from becoming a huge city and keep the taxes down so that we stop the flow of residence being forced to sell their homes because the taxes are so high. I think the town should look to all the land not just all the land around my house (or the houses of the Conservation Commission).

I am writing to you today in response to a statement made by Paul Dionne that was misleading at best, and an outright lie at worst. He indicated at a town meeting that a developer had made an offer on the land. This is outright false and I would claim that Paul knew it when he made the statement.

I approached the Johnson's (Gary and Heather my neighbors for the last 6 years) about buying the acreage out behind my land. I knew the Conservation Commission had approached them when they first moved in, asking them to donate their land. I also knew that the town was now offering to purchase the land for \$100,000. I offered the Johnson's \$120,000 for 25 acres. This was \$20,000 more than the Conservation Commission had offered. The Johnson's asked for some time to consider my offer and then later accepted it. I gave them a \$10,000 deposit and we agreed to get the paperwork together to finalize the deal.

About 3 days later I got a frantic call from Heather. She indicated that she was worried about the Conservation Commission and that she may incur some legal penalties from the town and/or Walmart if she proceeded with our agreement. She was extremely nervous and acted in a manor uncharacteristic for her. She was going on about needing to return to me the \$10,000 before the 3 day right of recidivism. She said she wanted to give the town 45 days to honor their agreement and indicated that if she didn't have the money in hand by then our agreement could continue. I explained to her there is no 3 day right of recidivism on real estate especially where she was the seller, that she was getting very bad advise and that the town did not *have any* legal document signed *that* would hold *her to any agreement*. She said Paul *had* told *her that* because the town spent money with an appraiser she was legally obligated and may face some punitive action if she didn't continue with their pursuit from the town. She also seemed very worried about getting sued by Walmart, which I told her was impossible since she never had any agreement with them. My belief is that this was another threat made by Paul Dionne but I don't know that for sure. Heather has left for Oregon where her and Gary are moving too.

I accepted Heather Johnson's return check because I call her a friend and I saw how distraught she was from the pressure being applied to her by Paul Dionne and the Conservation Commission. I did not have to accept the return check, by her cashing my check we had a binding agreement.

To be clear I am NOT a developer. This statement was made by Paul Dionne on more than one occasion. I have worked for the past 20 years in the Software Industry and had no intentions of developing any land. My only purpose for purchasing that land was to tie it to my 8.81 acres so that I could put it in Conservation Easement and lower my exorbitant tax bill. Because I own under 10 acres of land (all swamp in the Beaver Lake Watershed) I am unable to get any tax relief. If I was successful in purchasing the Johnson's 25 acres I could have placed the whole thing except for the 1 acre where my house sits and gotten some tax relief. My taxes are \$1000 per month to live in this town. My land is taxed at \$20,000 per acre even though all the land around me {Carases 11 acres, The Caras Conservation land 99 acres, the Johnson's land 28 acres, and the swamp in front of my house) are all taxed at \$3,000 - \$4,000 per acre because it is all swamp and worthless. In fact the town saw fit to only offer the Johnson's \$4000 per acre while taxing me \$20,000 per acre for the same land.

In my conversations with Heather she made it very clear that she told Paul who I was and why I wanted to purchase the land. When she gave me the deposit back she said she spoke to the Conservation Commission about maybe selling me a few acres so that I could achieve my goal of getting more than 10 acres to meet the easement requirements. I told Heather she was dealing with dishonest people and there was no way they would ever approach me to help in any way. I was not happy about her not honoring our agreement but decided to let it go so that she could just move on in peace. The fact that Paul now misrepresents the facts to get a ruling in his favor does not surprise me. I just wanted to set the

record straight.

Thanks,

Brian Pellerin

5 Orchard Drive Derry, NH 03038

Subject: RE: Land Purchase at 7 Orchard Drive

Attachments:

Brain:

It doesn't appear this left my mail server. If you received this twice, I apologize.

Sincerely,

Paul Dionne

Sent: Monday, September 17, 2007 6:28 PM

Subject: Land Purchase at 7 Orchard Drive

Dear Brian:

I received r e-mail by one of the Council members. To say I was surprised is an understatement. To the best of my recollection, we have never met.

The Derry Conservation Commission (DCC) has spoken about land protection with Gary & Heather Johnson for over 4 years. Following the Town's purchase of the Cares property, it became all the more valuable from a water quality standpoint. Sometime in 2005, Keith Coviello contacted me indicating that the Johnson's were considering a timber harvest of the property for financial gain. I asked Keith & he agreed to co-ordinate a meeting with Heather & Gary. Margaret Ives, Conservation Commission Treasurer & I met with Keith, Gary & Heather. At this meeting, the Johnson's agreed to work with the DCC for a land protection project. From there, the DCC had a non-public meeting and felt this was appropriate for protection. Once we received the letter of interest from the Johnson's, the DCC arranged to have an appraisal of the property done by a licensed appraiser. Upon receipt of the appraisal, a copy was given to the Johnson's, and we had a subsequent meeting. Present were Gary, Heather, Margaret, Heather's father & I. During this meeting, the Johnson's stated that *they* would agree to sell the 25+/- acres to the Town for \$100,000.00. The DCC agreed to this. At that time, the Johnson's were very patient. As you may know, the Wal-Mart Corporation had offered \$100,000.00 to the DCC Land Conservation Fund; in return the DCC agreed to release a 2 +/- acre easement we held that happened to be located at the only entrance in to the proposed Wal-Mart Superstore site. As the Johnson's were in no hurry, *they* agreed to wait for the land purchase until we received the funds form Wal-Mart. The Johnson's were extremely patient for about a year.

On May 22, 2007, T received an e-mail from the Heather Johnson that their plans had changed: Gary was accepting a position in Oregon & the family would be locating to the West Coast before the end of 2007. The correspondence also stated that they had received a counter offer from an unknown individual for \$120,000.00. On May 29, 2007, the Johnson's agreed to hold off on any decision until the DCC meeting of June 5, 2007. At that meeting, the DCC agreed to match the offer of \$120,000.00. From

there, the process continued.

I was unaware who had tendered the offer to the Jonson's. At no time did they notify me who the other buyer was. I was led to believe from general discussion, that the unknown other buyer was not looking to keep it undisturbed. It was my understanding from discussions with the Johnson's that an individual who had abutting land wanted to purchase the parcel for development potential.

The testimony I presented to the Town Council at their last meeting was truthful based on the information I had at hand. I did make some mistakes: one in particular was the status of the land. I stated incorrectly that the land was not in current **use**. It is, in fact, in current use.

If The DCC had known that an abutting neighbor wished to purchase the "back land" to qualify for current use and there were no plans to develop it, I would have contacted you immediately & discussed a possible easement on the property to prevent it from being developed at any time in the future.

At no time did anyone indicate to **me** that you wished to purchase the land for the above stated reason. Further, there was at no time any mention of allowing you do purchase enough property to qualify for current use status. That simply is not true.

Would you like to discuss the possibility of you putting your parcel in a conservation easement? You have a relatively small parcel standing alone. However, with the protection of the Caras property & the hope that the Town Council will authorize the DCC to finalize the land protection of the Johnson parcel, we would be very interested in seeing a layer of protection for your parcel. Your property has one of the prime wetlands so very important to the continued water quality for the Beaver Lake Watershed & the aquifer which provides drinking water to many, many homes in the area.

If you would like to discuss this further, please feel free to call my cell number: 1-781-953-2898. I would also be willing to share the e-mail correspondence with the Johnson's from May 2007 on.

Very truly yours,

Paul Dionne, Chairman

Derry Conservation Commission

Town Clerk

Date

Attachments: Email & Response