

TOWN OF DERRY

Town Council Meeting
Derry Municipal Center

February 19, 2008

Staff Present: Frank Childs CFO, Larry Budreau HR, George Sioras CDD, Mike Fowler PWD, Chief Klauber FD, Kerran Vigroux Health

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

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

Consent Agenda

08-23 Acceptance of Minutes – February 2, 2008 – Special Meeting

08-16 Acceptance of Non-Public Minutes – February 5, 2008

08-10 Acceptance of Minutes – February 5, 2008

Consent agenda – Approved

Chairman's Report

Regarding the TA serving on the Planning Board: Town Counsel has given an opinion on this and TA Stenhouse and Phil Piccolo have requested that Mr. Piccolo continue on the board for the TA.

A motion should be made for Mr. Piccolo to continue in place of the TA. Motion made by Councilor Chirichiello, seconded by Councilor Ferrante. No Vote

Councilor Fairbanks asked Atty. Boutin if state law takes precedence over the Town Charter. (Atty Boutin replied, "It does". He interpreted it as there is no inconsistency between the two.)

Councilor Coyle stated that the Charter can be more restrictive than state law. Therefore he respectfully disagrees with Atty Boutin.

There was more discussion on past Town Administrators serving on the Planning Board.

Councilor Coyle expressed concern over this vote as it was not on the Agenda.

Councilor Metts motion to table, seconded by Councilor Fairbanks Vote: 5-2-0 (Chirichiello & Ferrante) Will be scheduled for March 4th meeting.

Town Administrator's Report

Upper Village Hall Committee Update – Presented by Rebecca Rutter & Margaret Ives

Steering Committee members are: Rick Holmes- Chair, David Barka, Paul Dionne, Paul Doolittle, Margaret Ives, David McPherson, Janice Rieux, Rebecca Rutter & Ginny True.

Their mission is to save The Upper Village Hall. The group recognized the important historical and architectural value of the Upper Village Hall and advocates for a public and/or private restoration of this building. Ms. Rutter gave a historical perspective of the Hall. The Committee has partnered with Maggie Stier of the NH Preservation Alliance who will assist the Committee with securing state, federal and private funding. They are raising community awareness. There will be a public meeting at a later date. Contact info: Rick Holmes 603-434-6042 or email: savethehall08@aol.com. Website: www.savethehall.org

Council asked that agenda item 08-13 Public Hearing be held prior to item #08-10 all in favor.

Public Hearing

08- 13 Regional Public Health Network Grant (Health Dept)

Kerran Vigroux presented the information on this grant regarding its purpose and request acceptance & expenditure by the Town Council.

Motion to open the Public Hearing vote 7-0-0

Motion to Close the Public Hearing Vote: 7-0-0

Move that the Derry Town Council approve the application for, and acceptance and expenditure of the Public Health Network Grant, in the amount of \$75,000. Motion by: Councilor Ferrante, seconded by Councilor Metts. Vote: 7-0-0.

08-10 Private Roads Ordinance

Councilor Carney author of the ordinance requested that by holding the public hearing today it gives the Town Council an opportunity to take in what the public has to say and has asked for Council discussion and vote at the next meeting. Referenced a Supreme Court case *Hersh v Plonski*. His reason for having the 100% residence agreement is that he does not want anyone living on a Private Road to be overruled by everyone else on the street. This is changing your lifestyle as it could be a choice to live on a private road.

Mike Fowler commented that the Public Works Dept has a vested interest in this from a maintenance standpoint for them.

Atty Boutin explained this draft ordinance doesn't take away anyones right to petition under the Town Charter or the State law for layout of a highway. Anyone who can't get unanimity still has an avenue.

Motion to Open the Public Hearing Vote: 7-0-0

Paul Kimball, McKinley Ave – Summer 2001 residents of so called Private Roads received notification that the Town would no longer be providing maintenance or winter maintenance because of a new state law. The notice was then presented to the Town Council by the PW Department. The residents at that time came to the Council and complained about the formation and inaccuracy of the list. The Superior Court judge in the Rainbow Lake case stated that the Town Council's decision was arbitrary and lacking in reason. Zames Street filed a petition and the road was accepted by prescription. One would think that the inaccurate road list would have been reevaluated by the PW Dept. but it was not. When the Town had the opportunities to let people know that these roadways were private, they didn't do it. Beaver Lake is a perfect example. When the Beaver Lake sewer system went in, it was a perfect opportunity to get road maintenance agreements. The judge also pointed to 20 years maintenance of a dedicated roadway. The roadways were dedicated a long time ago by the owner. The 20 years maintenance or public use constitutes an implied acceptance of these dedicated roadways. Most of these roadways were dedicated to the Town of Derry before the Planning Board in 1960 so therefore couldn't go through the procedure of today. As far as Beaver Lake is concerned, we have also raised the questioned about easement interest that is also mentioned in RSA 229:1. The Town has claimed that they took easement around Beaver Lake. 229:1 states that easement interest is a way in which a road becomes public. Finally, the ordinance we are discussing this evening has very little to do with the petition that was filed in August of 2006. We have requested an answer to this petition on numerous occasions based in current state law. We need a common sense decision by accepting these roads and by accepting them all and if someone wants them to be private they can come before the Council and have the road discontinued and get a road maintenance agreement and it's done.

Nick Arancio, McKinley Ave – running for Town Council for District #3. I always thought the Registry of Deeds was the place to go to discover who owns Real Estate. I always thought the Town Tax Assessors records would also help to shed light on who owns Real Estate. I never thought the Town Council would want to go to court on every action or decision that is made. The road issue is not behind us the Council has held meeting after meeting over these roads. At each meeting citizens have stated their concerns and as a result the Council has drafted its final road ordinance. I'd like take a few quotes from the final road ordinance. Page 2, Section 2, Part A subsection "Contents of Petition". "Petition under this section shall be signed by all the owners. The Town Council shall not consider the petition unless all such signatures shall appear". Page 3, Section 2, Part B subsection 3 "Action on Petition". "Upon receipt of a petition, the Town Council shall refer the petition to the Town Clerk and the Town Tax Assessors to confirm that all required signatures have been affixed to the petition". Page 3, section 3 parts A "Burden of Proof". "The burden of proof in any of these proceedings under this ordinance shall be borne by the

petitioner". They show a pattern not of problem solving but of problem avoidance. The Council has used some of its resources. There is no document showing ownership or taxes on these roads. The Town has ownership.

Wayne Curto, Lakeshore Ave – Mr. Kimball has sent the Town Council numerous amounts of information regarding RSA's, and reasons why our road should be accepted by the Town. If you look at the Rainbow Lake situation, that set the precedence for the Private Road issue in Derry. As far as Rainbow Lake, Attorney is concerned the Town of Derry did everything to our road that they did to Rainbow Lake. The Town gave us the services, it was plowed, repaired. But the Town went one step further, a sewer line was put in and RSA 674:40 Municipalities with a Planning Board that has planning authority cannot install a sewer on anything other than a public road. This is clear. We had the Attorney who did the Rainbow Lake case send a letter to the Town Council, Attorney Anderson stated that our case is better than Rainbow Lake. The question is do you want to waste taxpayers money by going to court and forcing the citizens to spend money and waste all this time and money for something that has already been set and questioned by the Rainbow Lake case.

Regine Bley, Collette's Grove Rd – Had questions regarding when the ordinance speaks about all of the abutters are you referring to the folks who actually live on that street. "I don't live on Sanborn or Collette's Grove Rd that would be the two roads that would be petition for should we choose to. Would it be the actual physical abutters? We have an association there are some grey areas."

Atty Boutin replied, "It depends on which road you are petitioning for. If not petitioning for the road you front on then you are probably not part of it. But if petitioning for the road that you are fronting on then you are an abutter. There is a provision but depends on facts that I do not know here. But the ordinance says that it has to be unanimous even though part of the road is subject to the petition and part of the road isn't. Because downstream could be effected by the petition. And this is really an abbreviated process. Unanimity is a way to assure the Council that if they get this done they are not facing the typical appeal that would occur in a traditional layout. I would need to know specific facts about your situation."

Regine Bley, "I don't have frontage on either of those roads but I have a vested interest in which way either one of them go."

Atty Boutin, "I don't see you as an abutter. But it's something to think about. It maybe a situation that we need to take a further look at."

Regine Bley other question in adequacy when you do a petition and there are inadequacies or the petition does not get approved who handles those inadequacies? Will they be absorbed by the Town's budget or are they going to be assessed to the actual abutters.

Councilor Carney, "that depend on if the road was accepted or not. Accepted it would be the Town's responsibility to deal with those issues. If it wasn't it would be the property owners. "

Regine Bley, "Would you continue to snow plow and provide the cold patches that has been provided for the last 40 years?"

Councilor Carney, "the legal opinion that we have states that we cannot."

Atty Boutin stated that, I would qualify that by saying the Town still has option of doing a layout for Winter Maintenance by assessing a fee for plowing a road that remains private. That's a possibility.

Al Dimmock, High St – does not live on a private road. It is time that the Town Council and the Town Attorney get together with the people on these private roads and come to a conclusion. I really think Mr. Carney is trying to straighten this mess out. I do feel that Mr. Carney by himself can't do it or the Town Attorney. Everybody that is involved in this needs to get together. Have a round table.

Maureen Rose, Windham Rd – does not live on a private road. If there was a fire or an ambulance needed to get to these homes, isn't it our responsibility as a town to make sure these roads are accessible for the equipment and save these people's lives they are paying taxes in the Town.

Kerry Reid, Collette's Grove Rd- Issue with Fire and Medical emergency the road has been virtually

impassable. Slated as an emergency lane and the Town said they could get through. She doesn't believe this as there are two foot craters down the road. Abutters issue does not have any frontage on Collette's Road. The Grove is filled with lanes; there are approximately 50 homes that do not have frontage. Yet I do not have a say whether these roads become private. The only way in/out is over these roads.

Atty Boutin, "Collette's Grove is an interesting situation and I am not sure, it would probably come out in a petition that if the association were the petitioner, then the problem of frontage is really not an issue. I do not know if the association controls the roads and if they do then the petition involves all of the roads. That's something that would have to be looked at if a petition was brought in and considered on that basis. I just don't have the facts to go further with this.

Ronald Patrick, Collette's Grove Rd – Derry did not have an engineer until 1972 and until that point they had no idea what they had for roads. Someone was hired part-time to look at the road and at that point it was worked on for two years and never completed. Our roads were put in back in the 30's and 40's and make note that the Town of Derry has taken funds from the State for years to put in roads and repair roads that were never illustrated where the money was put. The people of the Town of Derry got together with the selectmen back in the 50's and installed these roads. The Town installed these roads, it's not a question are these private roads they're public roads. Just because someone doesn't have it on an inventory list and all these people have been fighting this issue for 30-40 years. Why can't they conclude that these roads were installed years and years ago and if someone is going to have an ordinance it shouldn't be up to 100% of abutters because they are already town roads? If you are looking at a streamline way don't look at an ordinance that only looks at one small situation, you should be looking at all the old town roads. We should do as Hampstead did. This ordinance doesn't apply to all the roads around the lake areas.

Dana Barney Collette's Grove Rd – Gave a history of Collette's Grove. "In one occasion in 2001 following the floods of 1996 after the town accepted federal funds for Collette's Grove Bridge and road repair and then spent the funds elsewhere you quickly backpedaled and effectively cut Collette's Grove Rd in half and you agreed then that it was a public road. So after I led a petition signed by the majority of homeowners in my neighborhood and sought acceptance of the lower portion of the road using the same exact evidence that was good enough to get the town to agree that we did live on a public roadway when you disbursed those federal funds on the upper portion. During the hearing, my petition was thrown out in favor of a petition that was fraudulent. By requiring 100% agreement, this ordinance seeks to cut off all recourse in this matter and is totally inequitable. Now your attorney and ours will get a double day in court and a double payday because now we are faced with a fight because of this ordinance before we can even get to the table and present simple facts and evidence to gain acceptance of a road as public which we were allowed to do with a petition through the Town Charter."

Joan Cornetta, Sanborn Rd (Collette's Grove) - We had a punch list from Alan Cote on how to bring the road to standard. We have 710 ft of road the road is public/private/public. The only way Hampstead residents can get in or out is over our road. The burden is on us. We have put culverts, drainage, duct line in and gravel. This was after that the town put the millings in years ago. Town report June 30, 1997-1998 states what was done to all these roads by PW. I really feel that you should take that road over we have done all the work on Alan Cote's punch list. Alan Cote even came back and told us he wanted it higher and we had to dig it again.

Lisa King Turner, Collette's Grove Rd – I have a handicapped son who has consistently had problems with his transportation coming up and down the main road. We have a two foot ditch right in front of our driveway. I am not the only family with a handicapped son on this road.

Paul Hopfgarten, Fairway Dr - does not live on a private road. Past Councilman and this was one of those issues. He gave Councilor Carney credit for trying to tackle this issue. Probably at this point he believes that the Town needs to look at accepting as many of these roads as possible. Couple of issues though is liability that the Town would incur. Maybe there needs to be an agreement when accepting these roads regarding liability. His big concern is that these roads are narrow. Mr. Curto is correct we accepted Zames Street because of the sewer.

Joe Dichiaro, Humphrey Rd – Does not live on a private road. Has a lot of experience with road projects. The 100% requirement is a killer, there is no way you will ever get a 100% on anything. As far as the liability issue even if you have an agreement with the owner it's a public road. You will still be defending a

lawsuit. If they have a community association, you want it to be an assessment project and share the cost.

Judy Taneau, North Shore & McKinley Ave – Owner of two properties. Has been here since 1968 and has been to Council meetings regarding this situation. Getting potholes where sewer line is. If Paul Kimball is going to court with this, I am too.

Nick Arancio, McKinley Ave – Why is the Town trying to privatize.

Chairman Bulkley – The roads that this ordinance is designated to deal with are currently categorized as private roads. They are not public roads, they have not been accepted by the Town.

Nick Arancio – Then why has the Town been taking care of the roads?

Councilor Carney – is accurate and there has been mismanagement of this process for years and years. That's why I think the people on this council now are committed to coming to some sort of resolution.

Nick Arancio – Is it money?

Councilor Carney – some of it is State laws. Some of it is finance and some of it isn't. Once one road wants to become public, it's only fair to look at them all.

Chairman Bulkley – the Council is here to listen. The fact is that there were roads in Town when they were built that were private just as there are today in developments. Developers today know that if they want their road to be public they have to build it to Town specs. When they build their roads that's what they do. Unfortunately those rules didn't necessarily exist back when the Town was growing out of the 1800 & 1900's long before we were keeping records of the roads in Town. What Councilor Carney is trying to do is to treat everyone fairly with the same set of rules and try to deal with this once and for all. The Council has dealt with this several times.

Nick Arancio- Why can't you say if you're building a road these are the rules you need to follow. Everything before that accept, and start with a clean slate.

Ronald Patrick, Collette's Grove Rd – "The Town should remember that these roads, if taken to court, the court would probably find them as public roads. So you have to look at the liability the other way. If someone gets hurt or dies on these roads, do you think they will be able to sue their abutter? Or do you think they are going to take the Town to Court. Then the court will say these are Town roads. My understanding is that less than 1/3 of the roads ever went through the process of acceptance."

Wayne Curto, Lakeshore Ave – "I don't think we want the Town to come in and do a huge construction project and rebuild the road, all we are asking for is the Town to go in repair the roads so that they are passable. Our road failed because when they put the sewer line in they only put 2" of asphalt in the road. The culvert was put in incorrectly. It goes under the road. Just fix them so that we can pass safely and emergency vehicles can pass safely that's all we're asking for."

Paul Kimball, McKinley Ave – The roads were dedicated many years ago. I think it's important to remember that we maintained these roadways for decades and they were not private. It was the internal workings of the Public Works Department that came up with that list. That list needs to be reviewed with the present information that we have regarding roadway law.

Al Dimmock, High St – questioned Councilor Carney regarding the repair of the roads. Doesn't their tax dollars pay for anything?

Councilor Carney replied absolutely they count. My concern when I speak about finance of this issue is more about what happens if we have to accept at a level that makes these all paved roads and placing an enormous burden on the taxpayers all up front. I'm not saying that if we accept these roads we can't look at maintaining them at current levels. There has to be some thought based on these issues and the cost.

Kelly Rosen, Collette's Grove Rd – New comer to the area didn't realize when they moved that there was this private/public road issue. My main question is where my taxes dollars go? Why for an issue like this

is there a 100% agreement. Even in the Senate, it's a 2/3 vote. You are setting up people who live on these roads for failure. It's a matter of safety now on this road.

Dan Abate, Collette's Grove Rd – "Just for the record in the instance of Collette's Grove Rd when that road was planned and deeds were filed with the county that road was laid out at 24 ft wide. Because of lack of Code Enforcement people have been allowed to encroach on that road with fences and walls. The road is no longer allowed to drain.

Christine Arancio, McKinley Ave – from what I've been told is that if the roads become private our homes will decrease in value.

Motion to close the Public Hearing Vote: 7-0-0

Council Discussion

Councilor Fairbanks – the question I have is when they bought these houses were they not aware they were living on a private road? The only clarification I'd like to give is "why the 100%", we are trying to protect the people out there who want to live on a private road. Atty Boutin had stated he suggested that we leave the roads as they are and possibly for those who want to remain private but that we set forth some type of a maintenance fee and my first suggestion is to make it as possibly low as we could because you are taxpayers. Make it as minimum as can be because of the law that states we cannot legally maintain these roads unless they are public.

Atty Boutin – he was addressing the statue regarding winter maintenance of these roads. The Council can lay out roads for winter maintenance the statue says that there would be damages assessed on an annual basis as far as a rental. That says to me that the Town has to assess something. It has to be equitable. There is only a certain layout to be a public road. You don't have that pedigree. What the ordinance tries to do is establish the pedigree. I've heard a lot of things tonight and most of the things that people are saying are elements of those things that if they filed a petition would be considered by the Council and would probably be considered by the Council as acceptance or layout.

Councilor Coyle – Council Carney started off reading from a recent case and he left out a portion for legal standards for acceptance. One of the things that this ordinance says is we won't consider removing of snow but that case specifically says the one of the things that should be considered is removing snow from it or assigning police patrols to it or repairing it. We probably have done that illegally but those are things of acceptance. I know Brent has worked really hard on this ordinance but frankly we are setting people up as many people have said for failure. We will accept very few of these roads. I don't think that this is the right way of doing this ordinance. Some of the roads on Beaver Lake have sewer on them and we probably already own them and haven't acknowledged that fact. I don't know if I can support this ordinance. I don't know how to change it but we need to start again.

Councilor Carney- Do we have the legal authority to accept these roads as is without having to upgrade them.

Atty Boutin- that was the real issue when we went to court with Rainbow Lake it wasn't the issue of the Town fighting it out. It was under what circumstances if the evidence in that case would allow them to be public roads what does the town have to do. The way you've drafted this ordinance is that the Town has to make them passable if you accept them but not necessarily to do other improvement except that they then go into the Town's maintenance program. But you do take care of hazards, that's part of it and there would be a cost.

Councilor Carney- But there is no immediate obligation to upgrade or pave them. We can take them into the regular maintenance.

Atty Boutin – it depends. I would say no but I want to qualify that because there could be conditions that are such that, that is what you would have to do. I just don't know if that circumstance exists.

Councilor Metts – "I can understand everyone's problem with the 100%. Any road that the Town has put sewer in has been given to the Town. The Town has taken and accepted it by putting that utility in it. Whether it's going to be a 24 ft Class V road, I don't believe those will ever happen but I think with those roads, those are ours. All others can be taken on a case by case basis maybe with something similar to

this ordinance maybe with something entirely different. Some of the other roads or lanes laid out in the Collette's Grove area it's hard put to have a 10ft road in some of those places. Those would need a long hard look to make those accepted as part of our road program but a maintenance program, plowing, gravel maintenance I would have no problem doing. At least we have something to start with. It may or may not with adjustments. But roads that we have put utilities in and I know I'm not a lawyer but the way I read it we own those roads. That's an implied easement and ownership."

Atty Boutin – it really depends on whether or not the sewer is in there because you obtained an easement which the legal significance is that you have an easement for the sewer and nothing else. If you didn't have an easement and you put the sewer in then that is a horse of a different color and it may have greater legal significance.

Chairman Bulkley – It seems to me that there is enough of a difference of opinion on this ordinance that it might be good for the TA to work with the PW Director and poll the Council and see if there is any consensus view relative to some of the issues that have been talked about tonight. It can be reagendaized for March 4th if there seems to be a clear example of acceptance of the roads that have sewers in them versus some other method, and Mike Fowler is going to have to provide the Council with some sense of a cost, since we are about to face a difficult budget process. This will only add to this. We appreciate the fact that you only want us to fill potholes and fix drainage. There are certain liability issues when the Town accept roads and might require certain maintenance to occur above and beyond that in order to protect the Town's liability. So that there are a number of factors that play into this and we will try to pull that information together for the next meeting.

Councilor Carney – I think after tonight I am not necessarily opposed to discussing changing that requirement from 100% to something else as long as we are able to incorporate the opinions of those people who live on private roads who want to remain on a private road. We need to somehow incorporate their opinions into this. Secondly, I would like to ask Mike Fowler to put together some numbers as far as what the cost would be to the Town if we were to take on the roads that we put sewers on and working them into the normal maintenance routine that the rest of the roads in this Town have to come across.

Councilor Ferrante – Wanted legal clarification and it had to do with Rainbow Lake and the Court decision. Based on the Court decision did that have anything to do with when we would move forward and take out the bumps.

Atty Boutin - That was the real reason why the Town was there in the first place. If the Court would have held that the Town would have to bring those roads up to standard it was a \$900,000 hit. We went in and asked the Court that if they upheld that is was a public road, that they not impose that requirement and that the road is left essentially in the same condition. What we were worrying about was stepping into a dispute among neighbors because the right of way if we improved it was on their facilities, things that they have put down it frankly would have been years of hassle. With a court judgment, we could then live with what the court said and it didn't require very much of the Town except to record in public status and plowing and pothole fixing.

Councilor Ferrante – so therefore it's an entirely different situation. I constantly hear Rainbow Lake we can all go to court and we'll have the same judgment as Rainbow Lake but one has nothing to do with the other.

Atty Boutin – I wouldn't say that. Some of the things that the Court said were pretty well recognized, in fact certain things having happened led the Court to conclude that those roads had been accepted. There was never a doubt that they were dedicated. In these cases I have no idea if there is even evidence of proper dedication. No they don't necessarily parallel. But one of the things we did in the Ordinance that Council Carney made was to take those things that the court recognized and actually put them in as in a case where someone came in and could produce some evidence of those would be factors in favor of granting the petition.

Councilor Fairbanks – wanted to know if Council was going to work on this until it is resolved.

Chairman Bulkley – We are putting it on the next agenda and after that it's up to you.

08-18 Green Vehicles/Green Buildings Initiative**Motion to Open the Public Hearing 7-0-0**

John Burtis, Lori Rd – Green buildings can become expensive. At the bottom of the scale there are other things that the Town can do. Buildings can be changed with energy efficient windows and insulation. Studies have shown that green automobiles are much more expensive to operate. Recommends smaller engines and smaller vehicles.

Tom Minnon, D'Atillo Rd – supports the ordinance particularly the section on buildings. Gave Council information on US Green Building Council the authors of the LEED green building rating system. He is a LEED accredited professional. Reviewed their mission statement and the point system.

Erin Fillmore, Main St Hampstead – Student of Pinkerton Academy representing SEA (Students for Environmental Action). They are in support of the Green Vehicles/Green Building Initiative. Appreciates that Town looked into this.

Neil Colious, Bryant Lane- What would some of the upfront capital cost be if the Taylor Library and new kindergarten were to be LEED certified? Has anyone done a lifecycle cost analysis of what the payback time would be?

Steve Wallach, Birchwood Dr – His opinion is that the Town should do it on a cost basis project by project.

Elizabeth Ives, Field Rd – The scientific evidence is irrefutable. It's not always about cost in dollars; it's about cost to the world. The environment is the most important vital problem facing our world. Nothing else we do won't matter much unless we solve that problem.

Al Dimmock, High St – Disagrees with the Green Vehicles. Where are we going to get the fuel for these kinds of cars?

Maureen Rose, Windham Rd - Suggested to talk to the Planning Board to have them modify some of their regulations for housing developments and businesses.

Margaret Ives, Field Rd - Asked for consideration of Energy Efficient Upgrades. LEED certification in the end will save money. However if that is a stumbling block, drop LEEDs silver certification and use its basic energy level.

Paul Hopfgarten, Fairway Dr - When Green is cheaper everyone will go Green.

Dan McKenna, Fairway Dr – Understands staff is concerned with a 2% cost increase over traditional building construction. To meet LEED silver certification there are many different options which you can use to gain those points. Need to look at long term cost and effects of this ordinance.

Kelly Mahoney, Meadow Brook Rd – Wanted to speak to the cost to the taxpayers. Epping put a green heating energy system into their town hall and it's saving 70 -80% heating costs - in 10 years they expect it to save the taxpayers \$100,000 - \$120,000.

Jack Dowd, Sundown Rd – Agrees with Green. His only question is the ordinance itself - does the Town need this ordinance and why not a policy instead.

John Burtis, Lori Rd – The GPS system would be great to save labor costs as well as fuel. Put them in every Town Vehicle.

Tom Minnon, D'Atillo Rd - Made comments on staff report regarding construction and operating cost, and technology for certification.

Erin Fillmore gave Town Council signatures collected from Derry residents in support of the Green Vehicle/Green Fleet Initiative.

Motion to Close the Public Hearing 6-0-0 (Councilor Chirichiello absent from vote)

Council Discussion

Councilor Carney – clarified his ordinance in regards to vehicles and buildings to answer questions and statements made by the public. Councilor Carney requested to make a motion.

Chairman Bulkley suggested continuing the discussion at the next meeting. Overruled.

Councilor Carney suggested an amendment to the ordinance to give the Town more flexibility than silver standards.

Amendment to Ordinance

II. Construction

All new construction, and all major renovations to any existing structure's exterior or interior, completed or funded in full or in part by the Town of Derry, must meet minimum basic certification standard as prescribed by the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Green Building Rating System. When upgrading or conducting minor repairs to an existing Town owned or Town funded facility, repairs and upgrades will be done in a manner consistent with LEED certification stands. The Town shall strive to meet higher LEED certification standards when it is able to do so, without increasing the budget for a given project.

Mike Fowler – reviewed the meetings he had with Chief Klauber, Franks Childs, and Beth Thompson regarding the documentation provided. With this amendment for basic it's a very good first step, to be cost effective at this time.

Chief Klauber – if and when we will build our Fire Station these are the measures we would like to take.

Chairman Bulkley – was undecided if the Town needs an Ordinance or a Policy for this to be instituted. At the State level they looked at Energy Efficient Buildings and together with staff put together a grant proposal to the State. They got a company out of Massachusetts came in funded \$1.2M for energy improvements. They used the savings in Energy Costs to pay off the grant. This is something for Town Council to look into in the future.

Asked to agenzized for the next meeting. Send any questions to TA Stenhouse.

Motion by Councilor Coyle to Extend, Seconded by Councilor Metts Vote: 7-0-0

08-26 To establish a Special Revenue Fund and approve a Supplemental Appropriation in the sum of \$225,000 for the acquisition of property on Central Court, funded from the Land & Building Capital Reserve Fund.

Motion to Open the Public Hearing Vote: 7-0-0

TA Stenhouse gave a brief explanation of parcel 30-037 consisting of .42 acres. The Town owns 3 properties surrounding this parcel. The Town is seeking to purchase this property with clean-up included in the P&S Agreement.

Paul Hopfgarten, Fairway Dr – why are we purchasing this property? Is there a facility interested in building there? I would like to see the Town have a clearly defined plan. I don't agree with the purchase.

Chairman Bulkley – this is long range planning for the downtown area.

Raigh Paradis, Sawyer Ct – It sits on top of an aquifer. There are Cat O Nine Tails growing so that means that's wetlands.

Al Dimmock, High St – Spoke in regards to spending \$225,000 when there are other things in Town that it could be used for.

Jack Dowd, Sundown Dr – This land has been monitored by the State since the late 80's early 90's.

Motion to Close the Public Hearing Vote: 7-0-0

Councilor Chirichiello – questioned if this would qualify for a Brownfield's Grant.

TA Stenhouse replied if remediation is needed to be done it would qualify. He has a substitute motion he prepared with Atty Boutin that builds in extra protections to the Town under the motion.

Councilor Metts – questioned if there are tanks on the property now.

TA Stenhouse - the present owner is responsible to remove them prior to closing. This would be built into the P&S.

Councilor Metts moved to suspend the rules until 11:00 p.m. Vote: 5-2-0 (Carney, Coyle)

Councilor Metts – would like some of the information Mr. Paradis brought forward and would like it investigated.

Move to agendaized this for a vote at the next meeting by Councilor Coyle, seconded by Councilor Metts Vote: 7-0-0

08-27 To establish a Capital Project Fund and approve a Supplemental Appropriation in the sum of \$225,000 for Rail Trail Improvements funded from the Land & Buildings Capital Reserve Fund

Eric Whitney gave a brief statement of the Derry Trail Alliance and its objectives for recreation. Current project total cost for the trail is between \$340,000 and \$380,000. They will receive donations from the Bike Walk Alliance of NH and Granite State Railman and area residents who support this project.

Tonight we ask that you establish a Capital Project Fund and approve a Supplemental Appropriation in the sum of \$225,000 which will enable us to start the RFP process.

Motion to Open the Public Hearing Vote: 7-0-0

Al Dimmock, High St – Made statements in reference to Windham's assessments and their ability to fund this type of project. He's not against the trail but they need to look at other ways to fund it.

Steve Wallach, Birchwood Dr – The Derry Rail Trail Alliance is a non-profit just the like the Derry Demons, Derry Little League and Soccer Club. They paid for all upgrades themselves. They could contact the other organizations to find ways to raise money and fund it themselves.

Joe Dichiaro, Humphrey Rd – Even the Monument that we are putting up for the wars is being funded by donations. Concerned it is going to be maintained by volunteers. Give them time to raise the money themselves. This is premature there is no sense of urgency.

Phil Bruno and Dick Bonner, Windham Rd – Are in favor. Have a few issues. Tunnel at Bowers Rd needs to be widened. Talking about going over Bowers Rd feel this is a safety issue. Questioned parking area to accommodate this new activity. RSA 215A:15 gives them the right to use snowmobiles in this area from Windham Rd to Kendall Pond Rd.

George Sioras, Planning Director – supports the project. Worked on original bike path as part of the Federal Highway Act. Applied through NH DOT 80/20 match. Feels it will be a great enhancement for the town.

Eric Whitney – stated that their plan was to go up and over Bowers Rd because it was a greater expense to the project to expand the Tunnel.

Jim MacEachern, Brookview Dr – It's a good idea but at this time I don't think the Town is ready to invest this kind of money in a project like this without a proper set of planning. Council needs to consider all the other aspects of the budget coming up.

Kelly Mahoney, Meadowbrook Rd – Takes her family to Windham if it linked up here she would use the trails here and spend her money here.

Mark Sampsal, Windham – Windham went to the state first, they were the benefactors of three

individuals who came forward privately with substantial funding. The town did present funding but not until last fall. This will show substantial invest by the Town so that they can go to business and private individuals and they see commitment.

Carl Arccardo, Olsen Rd – gave info on the unique asset of this trail to the Town. They've met with the School Board and they approve.

Motion to close the Public Hearing Vote: 7-0-0

Councilor Ferrante – put a challenge to the group to provide a marketing plan. They need to fund the project first. Would be happy to help you get this off the ground but not with the taxpayers monies. Chairman Bulkley asked TA Stenhouse if the other items could wait. TA Stenhouse replied that 08-31 should be taken up.

Councilors discussed that they agreed to adjourn at 11:00 p.m. The Public became upset that there would not be the Public Forum or a decision on item #08-27.

Chairman Bulkley explained to the Public that this is the Town Council's business meeting and sometimes the residents lose sight of that. Our job is to do the business of the Town in a way that we do due diligence to everything that comes before us. I appreciate the fact you may have inconvenienced yourself by being here and there are others who have sat here all-night as well. The fact of the matter is that it is our responsibility to do that due diligence. I apologize if that means that some people have to come back again. We are trying to do the right thing by taking the necessary time to review each of these items.

Motion by Councilor Carney to adjourn, seconded by Councilor Coyle. Vote: 4-3-0 (Fairbanks, Carney, Coyle) motion failed

Council continued discussion on adjournment.

Motion by Councilor Chirichiello to Suspend the Rules, Seconded by Councilor Metts Vote: 3-4-0 (Fairbanks, Carney, Coyle, Bulkley)

Adjourned 11:10 p.m.

TOWN CLERK

DATE

Recording Clerk Denise Neale
Town Clerk