

TOWN OF DERRY

Town Council Meeting
Derry Municipal Center

April 15, 2008
Tuesday 7:30 p.m.

Staff Present: Chief Garone, Capt. Feole, Mike Fowler, Beth Thompson

Town Administrator Gary Stenhouse, Town Clerk Denise Neale–Recording, Attorney Boutin

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

Roll Call: Wetherbee, Fairbanks, Carney, Coyle, Chirichiello, Benson and Chairman Metts

Consent Agenda

- 08-50** Acceptance of Non-Public Minutes – April 1, 2008
- 08-51** Acceptance of Minutes – April 1, 2008
- 08-52** Acceptance of Minutes – January 20, 2008 – Joint Meeting Town Council, Planning Boarding & Conservation Commission
- 08-53** Schedule Public Hearing- May 6, 2008 – Maple Hills Water Interconnection Agreement (Water Commissioners)
- 08-54** Approval of Elderly Exemptions / Veterans Credits

Move 08-56 Request to Release Deed Restrictions – West Broadway for a Public hearing on May 6, 2008

Consent agenda – Approved with amendment to move 08-56.

Chairman's Report

The Chairman gave a synopsis of the Budget Reviews past 3 meetings. The Public Hearing on the Budget will be April 22, 2008. There are two Budget Reviews remaining. The Budget vote will be sometime in May at a Town Council meeting.

Town Administrator's Report

TA Stenhouse gave an update on Rainbow Lake roads as requested by Councilor Wetherbee. There are plans to grade the roads this spring after the roads become more stable. TA Stenhouse and CFO Childs have done two brief shows on Cable 17 regarding the Budget.

Public Forum

Al Dimmock, High St – Requested the Public volunteer for Commissions & Board openings.

Marge Bisson, Cole Rd – Spoke about gas stations in Town that are not complying with ADA. There is one particular gas station that the Handicap call buttons do not work at all. The Senior Health Fair is Tuesday, April 29th from 10am – 1pm at West Running Brook School.

George Chaloux, Karen Ave – Spoke on the Rainbow Lake roads and the court order requirements.

Public Hearing

- 08-42** Offenders Against Children Restriction Ordinance

Chief Garone and Capt Feole submitted a report to Town Council and reviewed this report. It included statement and letters from other States and Coalitions regarding Public Ordinance restrictions placed on Offenders of Children and most do not agree with this ordinance. There was a map shown of the affected areas by this proposed ordinance. The State of NH needs to work on these laws.

Councilor Chirichiello asked about the court case in Dover NH since this ordinance was basically create from their ordinance.

Councilor Coyle stated that this ordinance was drafted due to public request. He questioned what the Town Council would do next time there is an issue with a public offender?

Chief Garone replied that they will do the same thing as last time. Identify, notify residents in the immediate area, and educate the public. We need to be careful not to come from our heart; we need to stand back and look objectively at what we do.

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

Grace Mattern, Dir. Of the NH Coalition Against Domestic and Sexual Violence (Northwood NH) – stated their opposition to the ordinance. While on the surface these ordinances seem to protect children, the opposite often ends up being true. This is an opportunity to do more education in your community about how to make children safer and what parents should be looking for and be concerned about in attention from other adults toward their children. Sex offenders often shop for states to go to that they won't be on a public list. It makes sense that if we are going to have Sex Offender registries that they are the same across states so we know who we are keeping track of.

Diane LaRochelle, YWCA Crisis Service – We have developed a strong relationship between the YWCA and the Derry Community. The parents and the community members have become very involved, there is an email group that sends information out to parents, teachers, educators, and youth service providers in the community on how to recognize and prevent Sexual Abuse. Children are most often groomed for sexual assault, building trust, bestowing favor, alienating others and demanding service and violating boundaries. They are against this ordinance.

Lori Peterson, Manchester – Wanted to share what residency restriction will not do. They will not stop the offender who lives three feet from the bedroom door of its victim. A residency restriction will not help in the home. She would like hospitals to have a program much like birthing classes on sexual abuse. Pedophiles often look for single mom's with children.

Phyllis Katsakorik, Bradford St (State Legislature) – Last year a bill came before the Criminal Justice Committee and there were too many problems with this bill. It was unanimously defeated. Education is the best.

Angela Gagne, Rockingham Rd – Education is the key. Much of this needs to be taken care on the State level and support of HB 1640. It's commendable for the Town Council to want to take care of our children. The best thing to do is to go to the State and testify.

Linda Reed, Highland Ave – Also is in support of HB 1640. Not for the ordinance. Knowing where they are and being able to watch them is more productive.

Kathryn Prudhomme-O'Brien, Beacon Hill Rd – thankful for the people who have spoken and their expertise. There's been a lot of talk about the registry and these ordinances don't work. Believes that there are things to iron out in this ordinance but don't think this ordinance is a bad idea.

Wayne Curto, Lake Shore Ave – How are sex offender monitored. If we make the penalties so severe that Sex Offenders will not want to come to our State.

Chief Garone answered the process is primarily the responsibility of the parole officers and probation officers.

Brendan Walsh, Ryan Ave – does support this ordinance. For the past seven years he has been a correctional officer working in Boston and he has plenty of experience with these Sex Offenders. There have been many of times that he's overheard them say they'd like to go up to NH because it's easier

here for them. Education is very important but it's time for Municipal Government to take charge.

Tim Martinson, Old Manchester Rd – Had a general question for the PD, Town Council or Public what about the sex offenders who have done their time, they've been punished and they want to come out and say I messed up, I want to start over again. Is every Sex Offender the same? No, but don't we as a society say you are bad. I am not supporting Sex Offenders but when are we ever going to give them a chance to make up for their wrong.

Councilor Carney for clarification that this Ordinance this does not treat everyone equal just the severe offenders.

Laurie Peterson, Manchester – She explained her own experiences. It would be irresponsible to pass this type of Ordinance before the State of NH before NH actively classifies registered Sex Offenders by risk. There are families behind some of those offenders who are trying to lead a normal life.

Councilor Coyle stated that this Ordinance would not prevent a Registered Sex Offender from going to the park with his children. It's where they can live not where they can go.

Diane LaRochelle YWCA – We need to focus on conditions of release. There may be other conditions placed of these offenders as part of their release it's not just registering with the Police Departments.

Councilor Coyle stated he was wrong when he stated the ordinance would not prevent a registered sex offender from going to a park with his children.

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

Councilor Coyle moved to table the Ordinance at this time, seconded by Councilor Chirichiello. Vote: 7-0-0

Chairman Metts thanked Chief Garone, Captain Feole and the people who came up to speak about this issue.

Old Business

08-48 Appointments to Boards and Commissions

Chairman Metts nominated Phil Picillo, who is currently a Planning Board Alternate, to move into a member position currently open (expires 2009), seconded by Councilor Chirichiello. Vote: 7-0-0

Chairman Metts nominated Richard Tripp for the Alternate Member position on the Planning Board which expires in 2009, seconded by Councilor Wetherbee Vote: 7-0-0

Chairman Metts nominated George Chaloux who is currently a Zoning Board Alternate to move into a Member position currently open (expires 2009), seconded by Councilor Fairbanks. Vote: 7-0-0

David Thompson, Chester Rd – applied as he had seen the openings in the newspaper
James Webb, Independence Ave – applied as he had seen the openings in the newspaper.

Chairman Metts nominated David Thompson for the Alternate Member position to the Zoning Board which expires in 2009, seconded by Councilor Coyle. Vote: 7-0-0

Chairman Metts nominated James Webb for the Alternate Member position to the Zoning Board which expires in 2011, seconded Councilor Coyle. Vote: 7-0-0

New Business

08-55 Accept Grant from NH Highway Safety Agency for Seat Belt Enforcement Program

Chief Garone gave an overview of the grant which provides money for local PD to establish monitoring station for compliance with seat belt laws.

Move to grant authority to the Town Administrator Gary Stenhouse to accept on behalf of the Town, grant funds associated with the NH Highway Safety project titled "Derry Join the NH Clique Seat Belt Campaign" #08-01, 07 and to execute on behalf of the Town all contracts or documents associated. Motion by: Councilor Coyle, seconded by Councilor Carney Vote: 7-0-0

08-57 McKinley Avenue, Cole Avenue, Lake shore Avenue Petition

Paul Kimball wanted to present a power point presentation; however, there were technical difficulties with the equipment.

Paul Kimball, McKinley Ave – reviewed the petition and information he has provided the Town Administrator and Town Council. The petition evidence that he had for Public Acceptance is the following:

Dedication, Public Use, Municipal Action and Public Need. He gave detailed evidence of each item for petition.

Councilor Wetherbee questioned a road maintenance agreement that shows that the road be maintained by the residents and calls it a private way.

Paul Kimball answered that it was in regards to a pathway that connected Lake Shore to McKinley Ave. Councilor Wetherbee referred to the Platt Plan #1226 where it showed McKinley Ave being longer than it is today. He questioned that difference and stated before accepting this road clarification is needed to know how much of the exact existing road is being accepted.

Paul Kimball replied that the residents only want the existing roadway to be maintenance.

Councilor Fairbanks asked for clarification on the pathway and questioned it was never properly deeded.

Barbara Hoyt, Lake Shore Ave - stated that they wanted to put an addition on the home and did not have the footage because of the right of way so they purchased the right of way in order that the Town would give him permission to build. Barbara stated that it was just a right of way for the homes in the back to get to the lake.

Councilor Chirichiello just wanted to mention that Mr. Kimball did not want to do upgrades to road. Overtime there maybe new neighbors and they may want have the road upgraded.

Paul Kimball replied he believes the Rainbow Lake case has set precedence where the Town would only have to apply passable standards where this road pre-dates the Planning Board.

Attorney Boutin – I have given you an opinion which is privileged of course. Mr. Kimball has presented reliable evidence for the position he's taken. The documents he has referred to I am satisfied are actually probative and you can rely on them. The issues are dedication and acceptance. There is dedication. It doesn't mean you have to accept. You can accept it in its present condition. You make it part of your vote that you are going to accept it in its present condition. You accept it on the understanding that upgrades are not being called for.

Mike Fowler PW – in his staff report he has provided a brief history of how PW views the acceptance of this road. He wanted to make it very clear that if PW were to take the road over today they would suggest there would be a need to do some repair. Approximately 150 – 200 ft from North Shore Rd there was a puddle that had built up the hole seemed to have grown over time. He would like to investigate the culvert and drainage work that needs to be done.

Councilor Benson asked who currently did the summer maintenance on this road.
Mike Fowler stated no one did.

Councilor Benson asked if the \$11,000 right now would be the cost to the Town for repairs.
Mike Fowler answered yes; however, next year would only be the \$1,500 cost for annual maintenance.

Councilor Fairbanks asked if there were signed easements for this road.
Mike Fowler replied that the easements that the Town has are for the grinder pumps that are placed on each individual lot out to the road.

Attorney Boutin – he surmises that every situation has different facts. McKinley Avenue does not have an easement on the road. There are easements for the grinder pumps. The sewer connections to individual homes do not need easements.

Councilor Fairbanks - If the road was private, wouldn't the Town have to have had an easement to lay the sewer under the road?

Attorney Boutin – usually that's what happens. However if it doesn't a land owner can claim inverse condemnation and seek damages.

Council Coyle moved that the Derry Town Council finds clear and convincing evidence that McKinley Ave, Cole Ave and Lake Shore Ave have been dedicated to the Town and further move the Derry Town Council accept the roads in its current condition, seconded by Councilor Carney. (Withdrawn)

Councilor Wetherbee is concerned that the Platt Plan #1226 shows a longer road than exists. He has questions regarding what they are accepting.

Councilor Coyle and Councilor Carney withdrew the above motion.

Councilor Coyle moved that the Derry Town Council finds that there is clear evidence that McKinley, Cole and Lake Shore Avenues have been dedicated to the Town as show on a Plan #1226 in locations and width as recorded in the Rockingham County Registry of Deeds and further move that the Derry Town Council accept the road in its current condition as presently laid out, seconded by Councilor Carney.*

Attorney Boutin – tried to clarify the motion by the Platt Plan#1226 and where the road actually ends today. He reviewed the plan with Councilor Wetherbee and his concern. He suggested Mr. Kimball and Mr. Fowler need to get together and figure out where the road presently ends. It may take another meeting. When the Council makes its vote everyone needs to be clear that the Town is accepting to a point and no further.

Chairman Metts asked if the Council could accept the road contingent upon certain conditions. Attorney Boutin stated no it needs to be resolved.

Councilor Chirichiello stated he would be voting no until this is resolved.

Moved to accept the pending Motion* Vote: 4-3-0 (Wetherbee, Chirichiello, Benson)

Chairman Metts would like Mike Fowler –PW and Paul Kimball to come back to the May 6th meeting with a resolution.

Attorney Boutin will address the procedure in a letter. First everyone must be in agreement as to how far the road goes, find some way to memorialize it, and he wants to avoid having to start a discontinuance proceeding for part of that road as it involves a fair process.

Chairman Metts asked Mike Fowler if he had a jersey barrier he could place where the road ends or at the end of the pavement.

Mike Fowler and Paul Kimball will get together shortly and put together the information as necessary.

Chairman Metts stated they will come back with a definitive road marking on May 6th based on the Platt Plan #1226 of 1968. It will be laid out on a permanent basis. If the Council needs to do a discontinuation or abandonment then Council can take it up at that time based on Attorney Boutin's recommendation.

Councilor Benson wanted to express that the reason he voted no was he thinks the plan needs to be cleaned up before the roads are accepted. He is in favor of accepting the road and so do the other Councilors who voted no.

Chairman Metts stated he voted yes because he wanted to finish it as it has taken several years even

though he would like to have seen the Platt Plan#1226 changed first.

Public Forum

George Chaulox, Karen Ave – he just wanted to clarify to Councilor Wetherbee he wasn't complaining about the roads not being done. Councilor Wetherbee had asked about the status of the Rainbow Lake Roads. It is his opinion not his neighbors that he does not like the way the roads are being handle on Rainbow Lake.

Wayne Curto, Lake Shore Ave – He believes he can explain the plan. The old McKinley Ave went straight through now there are trees there where Paul Kimball lives.

Council moved to extend 10 minutes, seconded by Councilor Carney Vote: 7-0-0

Al Dimmock, High St – Thanked the Town Council for appointing the people to the Zoning Board.

Council Requests/open discussion

Councilor Carney – wanted to discuss the issues surrounding the Sex Offenders Ordinance, regardless of whether the Ordinance is accepted or not the Town needs to have a comprehensive evaluation of how we handle this situation in the Town. Do we need to have security cameras in appropriate locations, do we need to add some, do we educate in the right places, and are we supporting groups around town to build neighborhood watches. Asked the Town Administrator to evaluate all of the assets in Town and where we can make improvements.

Adjourned @ 10:05 p.m.

Town Clerk

Date