

TOWN OF DERRY

Town Council Meeting
Derry Municipal Center

May 6, 2008
Tuesday 7:30 p.m.

Non-Public Session RSA 91-A:2 I (b) (c) and 91-A:3 II (c)

Staff Present: Larry Budreau, Tom Carrier, Frank Childs, Beth Thompson, Chief Klauber, Capt. Feole, George Sioras, Janice Mobsby, Chief Garone, Mike Fowler, and Alan Cote

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

Row Call: Wetherbee, Fairbanks, Carney, Coyle, Chirichiello, Benson, Chairman Metts

Consent Agenda

- 08-58** Acceptance of Budget Workshop Minutes – April 8, 2008
- 08-59** Acceptance of Budget Workshop Minutes – April 10, 2008
- 08-60** Acceptance of Non-Public Minutes – April, 10, 2008
- 08-61** Acceptance of Budget Workshop Minutes – April 12, 2008
- 08-62** Acceptance of Non-Public Minutes April 15, 2008
- 08-63** Acceptance of Minutes - April 15, 2008
- 08-64** Acceptance of Budget Workshop Minutes – April 17, 2008
- 08-65** Acceptance of Minutes – April 22. 2008- Public Hearing – Budget & CIP
- 08-66** Acceptance of Final Budget Workshop Minutes – April 24, 2008
- 08-67** Schedule Public Hearing – May 20, 2008 – Apply for a Grant from the Alexander Eastman Foundation in the amount of \$12, 667 for the purpose Establishing Derry as a “HeartSafe Community”
- 08-68** Abatement Request (Acting as Water Commissioners)

Councilor Coyle motioned to seal the Non-Public Minutes of April 15, 2008 #08-62, seconded by Councilor Chirichiello. Vote: 7-0-0

Amend #08-66 Acceptance of Final Budget Workshop Minutes – April 24, 2008 page 3 Vote

Consent agenda accepted with Motion on #08-62 and amendment to #08-66. Vote: 7-0-0

Administrator’s Report - None

Chairman’s Report

In regards to the incident on March 3, 2008, the Attorney General's Office, Paul Brodeur Investigator sent a letter to Councilor Coyle and Councilor Carney that they were unable to substantiate who may have uttered the phrases; therefore, the inquiry is closed at this time.
These letters will be released to the public and maintained in the Town Clerk’s Office.

Public Forum

Gary Williams, Union Chairman of the Derry Firefighters asked for a public apology for the Derry Firefighters and their families.

Public Forum -Closed

Move to recess as Town Council and reconvene as Derry Water Commissioners

Public Hearing

08-53 Maple Hills Water Interconnection Water Agreement

Tom Carrier gave the background information on this agreement with Pennichuck Water Works. The agreement has been reviewed by Counsel.

Present: Don Ware, VP Pennichuck Water Works

Move to Open the Public Hearing 7-0-0

Al Dimmock, High St – Questioned if the water rate would go down as it had risen when Sanmina left Derry as a water user.

Mark Connors, Cabot Dr – questioned what benefit the Town would receive from this agreement. His main concern is the aesthetics as the building will be placed at the beginning of his road. He also asked about fire hydrants.

Move to Close the Public Hearing 7-0-0

TA Stenhouse pointed out that the plan would still have to go before the Planning and Zoning Boards since a “special exception” and site plan approval are both needed.

Councilor Chirichiello asked if there was a water quality issue.

Tom Carrier – there is Iron, Magnesium and Radon in the water but they are secondary water metals. There is an advantage for the water customers for this project to go forward. He also stated that Pennichuck had notified residents of this evening’s meeting.

Councilor Fairbanks questioned the issues that have been brought forward by Mr. Connors that haven’t been addressed by Pennichuck.

Tom Carrier – stated this will go before the Planning Board in which these issues will be addressed. Chief Klauber can look into the fire hydrants issue with Pennichuck if the Town Council would like him to. Also the Planning Board has a 200ft radius notification for abutters to the project when it comes before them.

Mark Connors commented that none of the residents, unless they are giving Pennichuck easements, were notified of this meeting. He had seen the paint in the area.

Chairman Metts apologized as he had asked PWW to send notices to their customers therefore new users were not included.

Chairman Metts and Councilor Coyle stated they would abstain from voting on this agenda item as it is a conflict of interest.

Don Ware of Pennichuck East answered questions of the Town Council in regards to cost of the System, rebuilding the current system vs. new system, aesthetics of the building, and other various questions related to the project.

Chief Klauber discussed the removal the Cistern Tank and addition two fire hydrants one on Cabot Drive and one at the intersection of Bedard Street and Dustin Avenue.

Moved by Councilor Benson: The Derry Town Council acting as the Water Commissioners Moves to approve the Maple Hills Water System Interconnection Agreement with Pennichuck East Utility dated May 6, 2008, Seconded by Councilor Chirichiello. Vote: 5-0-2 (Metts and Coyle)

08-56 Request to Release Deed Restriction-1 W Broadway

Councilor Benson rescued himself from this agenda item and stepped down.

Attorney Steve Patterson, with Wiggin & Nourie and Chris Tamula, Sr. Design Engineer

with MHF Design, gave an explanation of the three restrictions on the property which the Town of Derry abuts.

Motion to adjourn as Water Commissioners and reconvene as Town Council Vote: 6-0-0

Motion to Open the Public Hearing 6-0-0

Ron Goldthwaite, Scenic Drive – The lot associated with the deed is made up of four parcels and it is not clear if the lots were combined and where the buffer is located. He also indicated that the Town's GIS maps are not to be used for lot lines as they are not correct. This makes the lot unclear.

Attorney Patterson answered Mr. Goldthwaite's questions.

George Sioras, Planning Director – There was a lot consolidation done by the Planning Board in 1997. This plan is legally recorded.

Al Dimmock, High St – questioned if the building would infringe on the Railroad bed. Attorney Patterson replied that there would be no construction on the Town's property.

Motion to Close the Public Hearing 6-0-0

Councilor Fairbanks stated that where the building abuts the Pocket Park and there will be trees removed will Martingate replace the trees with landscaping.

Chris Tamula showed the Town Council where the building ends.

Councilor Fairbanks asked Brad Benson if landscaping could be done.

Brad Benson replied "yes".

Councilor Coyle stated that since the Town was releasing its' interests on the property owned by Martingate, that the Town should at least be reimbursed for costs incurred by the Town on this release of deed restrictions.

Councilor Carney is concerned with the bike path and the pedestrian path that there would not be clear view of each other.

Chairman Metts stated that there are ways to address this concern.

Discussion continued regarding the clear view of the corner of the building and the landscaping ideas.

Chairman Metts and the Town Council allowed Mr. Dimmock to speak.

Al Dimmock, High St – questioned if the Town would be losing property from this project.

Councilor Coyle stated that the Town is giving away an easement.

TA Stenhouse stated the Traffic Study done a couple of years ago identified roughly 2000 parking spaces downtown.

George Sioras stated parking would be addressed at the Planning Board level. There is some parking within the lot.

Al Dimmock stated that he is on the Zoning Board and he will abstain from this subject as he is against the project.

There were more questions for Mr. Tamula, Mr. Benson and Planning Board Chairperson Virginia Roach.

Moved by Councilor Wetherbee, That the Derry Town Council discharge, extinguish and forever release of record all the covenants and restrictions burdening a parcel of land known as 1 W. Broadway and for the benefit of the railroad right of way as set forth in the deed of Boston and Maine Railroad and to Olena M. Dion and Yvonne Dion dated September 20, 1963 and recorded in the Rockingham Register of Deeds as Book 1689 Page 439. I further authorize the Town Administrator to sign the Release of Covenants and Restrictions document on behalf of the Town of Derry, seconded by Councilor Chirichiello.

Councilor Coyle asked for an amendment “All associated costs incurred by the Town for preparation of these documents, seconded by Councilor Chirichiello. Vote 6-0-0

Chairman Metts questioned if the Town accepted the burden for other projects.

Councilor Coyle stated he would like this amendment for all easements.

Councilor Chirichiello asked Mr. Benson if this was an issue to him.

Mr. Benson stated he was fine with this but expects that everyone else who comes before the Town Council should be charged going forward. He's 100% okay with this.

Councilor Coyle stated that he believes everyone should be charged for the Town costs. The Planning Board does this.

Virginia Roach, Planning Board Chairman stated that everything associated with Town costs are charged to the Project.

Old Business

08-57 Road Acceptances of McKinley/Lakeshore/Cole Avenues

Chairman Metts explained upon the acceptance of these roads there have been more issues with the layout of McKinley/Lakeshore/Cole Avenue.

TA Stenhouse met with Mike Fowler and Attorney Boutin on Friday. He wanted it to be clear that the Town wanted to get this done right so that there aren't any problems for both sides down the road. The survey will cost between \$5,000 - \$7,000.

Mike Fowler explained that Alan Cote and he went out to the roads and took measurements and reviewed the Platt. There is a discrepancy in the Platt as it is laid out today. Attorney Boutin feels it would be best to rescind the acceptance of April 15, 2008. The pothole has been repaired by PW. Mike Fowler recommends that the Town Council give PW ninety days to have a proper survey done.

Councilor Wetherbee asked if the vote was rescinded would the Town be able to help the residents if a tree fell during this time period.

Mike Fowler stated that if the Town Council ordains the assistance it can be done.

Councilor Coyle asked why they couldn't rescind the vote after the survey is done, and then revote. Mike Fowler stated the advice from Attorney Boutin was to rescind it now. Then give it a proper acceptance.

Councilor Coyle asked if the vote is rescinded who would pay for the survey.

Mike Fowler there may be a question on the order of how this would be done. All he can recommend is what Attorney Boutin stated.

Councilors asked various questions regarding rescinding the vote and the consequence if this is not done properly.

Councilor Chirichiello believes the Town Council should do what the Attorney has suggested.

Chairman Metts stated that it makes logistical sense to leave the vote as is and get the survey done. The discussion continued on the original motion and survey costs.

Councilor Carney moved to table item #08-57 until there was a finalized land survey for the Town Council to review, seconded by Councilor Coyle. Vote 4-3-0 (Wetherbee, Chirichiello, and Benson)

New Business

08-69 Acceptance of Grant from Wal-Mart for \$1,000 to replenish Food Pantry

Moved by Councilor Coyle that the Derry Town Council authorize the application, acceptance and expenditure of a \$1000 grant from Wal-Mart to be used to defer the cost of food and cleaning supplies to Human Service clients, seconded by Councilor Carney.
Vote: 7-0-0

08-70 Accept grant from the NH Highway Safety for DWI Patrols

Move by Councilor Coyle 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 Statewide DWI Hunter Patrols" #08-12, 03 and to execute on behalf of the Town all contracts or documents associated, seconded by Councilor Fairbanks.
Vote: 7-0-0

08-71 Upstone Lane Sewer Extension Easements

Moved by Councilor Coyle that The Derry Town Council authorize the Town Administrator and the Chairman of the Town Council to execute the Upstone Lane Sewer Project Easement Agreements and accept the Easement Deeds as shown on the plan entitled "Utility Easement Plan, Tax Map 28 Lots 10, 14, 15, Upstone Lane and Bradford Street Derry, NH" dated December 20, 2007, seconded by Councilor Chirichiello.
Vote: 7-0-0

08-72 VOTE – FY 2009 Budget

I move to approve the FY 2009 Budget, Item 08-72, (as set forth in the budget presented to the Town Council on March 28, 2008 and at the Public Hearing on April 22, 2008, and as revised by the Council) as follows:

Community Development (Planning)	\$267,460
Emergency Management	\$75,711
Executive	\$1,535,133
Finance	\$6,010,257
(Finance Department-Other Municipal Obligations includes net appropriations for the Derry Public Library of \$1,089,631 {expenditures of \$1,138,276 net of use of fund balance of \$9,865 and various revenues of \$38,780} and for the Taylor Library of \$177,713 {expenditures of \$182,913 net of use of fund balance of \$1,500 and various revenues of \$3,700})	
Fire Prevention & Emergency Services	\$10,202,444
Police	\$7,797,111
Public Works	\$9,025,625
Town Clerk & Elections	\$151,791
Total Town Services	\$35,065,532
Wastewater	\$2,287,656
Water	\$2,459,415
Cable	\$212,459
Total for Other Services	\$4,959,530
Total Budget	\$40,025,062

I further move that, in conjunction with the approval of the FY09 Budget, the Town Administrator is authorized to enter into Lease Agreements and to take any action related thereto for vehicles and equipment whose acquisition is provided for in the budget via a Lease, as set forth below in the aggregate amounts shown:

Information Technology (copier)	\$5,718
Public Works-Highway (excavator)	\$180,000

Moved by Councilor Coyle, Seconded by Councilor Carney.

Councilor Benson moved to amended the adoption to add the monies for the TIF- Rte 28 back into the FY09 Budget in the amount of \$142,056, seconded by Councilor Chirichiello*

Councilor Benson stated that there is no net effect on the budget and explained his reasoning for the amendment.

***Amendment to take \$142,056 from the Fund Balance and add it into Other Municipal Obligation for the Rte – 28 Corridor TIF interest only payment. Vote: 5-2-0 (Fairbanks and Coyle)**

Revised numbers for the Amendment:

Finance Department	\$6,152,313
Total for Town Services	\$35,207,588
Total Budget	\$40,167,118

Councilor Chirichiello moved to accept the amended numbers, seconded by Councilor Benson.

Councilor Coyle raised a “Charter Objection”, seconded by Councilor Fairbanks, third by Councilor Carney.

Vote will be made at the May 20th Town Council Meeting.

Chairman Metts asked CFO Frank Childs to have a revised FY09 Budget Adoption proposal for the May 20th meeting.

08-73 VOTE FY2009 Capital Improvement Plan

Moved by Councilor Carney to approve the FY2009 Capital Improvement Plan (CIP) Item 08-73, as set forth in the budget presented to the Town Council on March 28, 2008 and at the Public Hearing on April 22, 2008 and as revised by the Council, in the amount of: \$992,854, seconded by Councilor Benson. Vote: 4-3-0 (Fairbanks, Carney and Coyle)

Public Forum

Al Dimmock, High St – He read a Derry News hotline article in regards to the downtown area. He was contacted as some thought he wrote the article. He did not.

Council Requests/open discussion

Councilor Fairbanks at the last Conservation meeting they were talking about Hazardous Waste on a property we purchased. She asked TA Stenhouse if he was able to procure another legal opinion on the Rail Trail.

TA Stenhouse replied, “Not yet”.

All the boards and agencies should go through the Town Administrator first for all legal opinions.

Franck Childs – stated he will include the summary budget and net revenues for the packages on May 20th.

Council Wetherbee – Conservation Clean up on trails is Saturday May 10 and May 17, 2008. Contact Paul Dionne or Margaret Ives.

Councilor Coyle- He would like to move to release the letter from the AG’s Office. The letter has been mischaracterized and he would like it to be released. AG’s Office could not identify who said what. They did not exonerate anyone.

Councilor Carney – The letter stated they could not substantiate who made the comments. Which didn’t surprise him.

Moved to Adjourn @ 9:50 p.m.

Recorded by: Denise Neale, Town Clerk

Reviewed by: Gary Stenhouse, Town Administrator

Town Clerk

Date