

## TOWN OF DERRY

Town Council Meeting  
Derry Municipal Center

February 16, 2010  
Tuesday 7:30 p.m.

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### Non-Public Session - RSA 91A:3 II (c)

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

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

### Consent Agenda

- 10-22 Acceptance of Non-Public Minutes – February 2, 2010
- 10-23 Acceptance of Minutes – February 2, 2010
- 10-17 Re-schedule Public Hearing – March 16, 2010 – Revision of Town Code, Section 118 – Second Hand Dealers
- 10-24 Schedule Public Hearing – March 2, 2010 – Change the Purpose of the Recreation Facility Capital Project Fund to allow for the Town to perform renovations to Veterans Hall to supplement \$133,200 received from an EECBG Grant, and approves use of up to \$145,000 for the renovation project at Veterans Hall from the Recreation Facility Capital Project Fund Balance
- 10-25 Schedule Public Hearing – March 16, 2010 – Supplemental Appropriation of \$50,000 for possible litigation regarding school funding
- 10-26 Schedule Public Hearing – March 2, 2010 – Approve application and authorize Town Administrator to accept and expend the 2010 Medical Reserve Corp Capacity Building Award Grant for \$5,000
- 10-29 Schedule Public Hearing – March 2, 2010 – Supplemental Appropriation of \$396,000 to assist in the construction of a Senior Citizens' Center
- 10-30 Schedule Public Hearing – March 2, 2010 – Authorization to apply for and expend grant for Enforcing Underage Drinking Laws and related purposes for \$9,387.50

Approved with the following addition:

Move item #10-28 to Schedule a public hearing March 2, 2010 if the agenda allows. Motion by: Councilor Coyle seconded by Councilor Wetherbee. Vote: 7-0-0

10-28 Schedule Public Hearing – March 2, 2010 -Intermunicipal Agreements to provide Transport Ambulance Services to Auburn and Chester

Councilor Wetherbee requested a staff report on item # 10-25 prior to the Public Hearing. Schedule a Non-Public with the School Board regarding litigation on March 16, 2010

### Chairman's Report – Rick Metts

- Frost Festival this past weekend was successful, although there was a lack of snow and some activities were cancelled. Thanks to Public Works, Parks & Recreation and all the vendors in town who helped out.

- On 2/12/10 the Transportation Update Meeting took place at the DMC and thanks to all
- On 2/18/10 School Board Chairperson Brenda Willis, Superintendent of Schools Maryellen Hannon, Town Administrator Gary Stenhouse and Chairman Rick Metts will be meeting with Governor Lynch to discuss Exit 4, Water & Sewer Reimbursements and school funding.
- The ceremony for Walter Borowski was a great event and the newspaper coverage was very good. Thanks to Richard Holmes, Rebecca Rutter, the French Consulate and all the others who contributed to this successful event.
- Voting is March 9, 2010 District 1 & 4 @ Hood Middle School and District 2 & 3 @ West Running Brook Middle School. Polls are open 7 am – 8 pm
- Board & Committee openings are listed on the website and there is an application online for anyone interested in volunteering.

\*\*\*\*\* Energy / Environmental Advisory Committee Quarterly Update  
Presentation by Tom Minnion, Chairman of the Committee, introduced members present and expressed gratitude to Councilor Carney for his help in introducing the motion to form the committee. Tom gave an update of the progress to date of the committee's work. One near term goal is to do Energy Audits on all Town Buildings and they have completed grant applications to complete the energy audits and install an experimental solar array on the DMC. The Town will not have to match any funds that might be received. Tom gave an overview for consumers as well as the municipality on ways to conserve energy. There are State and Federal rebates available. He also advised the board of the activities that the committee will be going forward to accomplish over the next year.

Councilor Carney thanked the committee for their dedication.  
This presentation will be available on Cable 17 and the Energy/Environmental Advisory Committee link on the Town's website.

- The petition received on the Marriage referendum will not be placed on the March ballot. According to a legal opinion received from Counsel, the Town Council does not have the authority to place this question on the ballot.

**Councilor Carney made a motion to not accept this petition based on the legal opinion. Amended to add the legal-opinion will be made public, seconded by Councilor Coyle. Vote: 6-0-1 (Fairbanks)**

#### **Administrator's Report – Gary Stenhouse**

\*\*\*\*\* Legal Opinion – Geothermal Energy  
72:61 – 72:65 Statue does not reference Geothermal. The Town Attorney rendered his opinion that individual, home based geothermal installations are not covered by the tax exemption statute and thus the proposed resolution governing said installations was not appropriate.

#### **Public Forum – Non Agenda Items**

##### **Open Public Forum 7-0-0**

Al Dimmock, High St – Strongly urges the Public to step up and fill these positions on the Boards & Committees. He stated, "There are elections coming up and we need a good turnout - people need to show up".

Lori Wood, Ryan Rd – She submitted the petition on the Marriage referendum. She wants to know what her recourse is since Derry will not put it on the ballot. She stated this is a survey question.

Chairman Metts explained that there are only two towns in NH that have the same form of government and Derry is one of them the other is Durham. We do not have a deliberative session Town Meeting form of government and the town does not have an annual town meeting warrant.

Mr. Stenhouse stated that he could not help Ms. Woods determine what form it should be put into. He did not know how to advise her to prepare a proper petition. He referred her to the Secretary of State's office or a private attorney.

She stated that she did contact the Secretary of State's Office and they would be in touch with Mr. Stenhouse for more information.

Councilor Benson requested that the information Mr. Stenhouse receives is forwarded to Town Council and Ms. Wood.

Ms Wood gave Mr. Stenhouse the information on who she contacted.

#### **Close Public Forum 7-0-0**

#### **Public Hearing**

- 10-16** Approve Supplemental Appropriation of \$10,000 from the Taylor Library Capital Reserve Fund for the purpose of Energy Efficiency Upgrades at Taylor Library

Tom Minnon gave a presentation on the necessary energy upgrades that the Taylor Library needs. They are requesting a Supplemental Appropriation of up to \$10,000 to make these upgrades and repairs. He gave a full explanation of the project's needs. Tom also showed the future energy cost savings for these upgrades. He also stated that the Taylor Library would eventually need a new furnace.

#### **Open Public Hearing 7-0-0**

#### **No Public Input**

#### **Close Public Hearing 7-0-0**

Councilors asked various questions pertaining to the Energy Efficiency upgrades.

**Motion by Councilor Carney, Move that the Derry Town Council approves a supplemental appropriation of \$10,000 to be funded from the Taylor Library Capital Reserve Fund for the purpose of energy efficiency upgrades to the Taylor Library. Any funds unexpended or not encumbered by December 31, 2010 shall be returned to said Capital Reserve Fund, Seconded by Councilor Wetherbee. Vote: 7-0-0**

- 10-18** Wind-Powered and Solar Energy Property Tax Exemptions  
**&**  
**10-20**

Tom Minnon explained the exemption is from local property taxes for certain renewable energy installations. Home Owners would not be taxed on this as an improvement to their property. This is not a credit or rebate. There are 84 towns or cities in NH that have this tax exemption.

#### **Open Public Hearing 7-0-0**

#### **No Public Input**

#### **Close Public Hearing 7-0-0**

Councilor Benson questioned how the exemption would work as opposed to a normal improvement. His concern was that there would be abatements due to home owners who have already installed this equipment. Does the ordinance state that there is a look back to equipment installed before this Tax Exemption?\_\_\_\_\_

Councilor Carney asked if the Town Council could receive information from the Tax Assessor's office on how many of these home owners are presently taxed on this equipment as an improvement. The Town Administrator will see if this information is available.

Councilor Coyle feels it would be a logistical nightmare for the Tax Assessors office.

Chairman Metts has a concern with the 100% abatement and that enforcement would be tough.

**Vote to take place at the March 2, 2010**

- 10-21** Approve Conservation Commission to purchase 67+/- acres from Robert C. Low, parcel 06-096 for \$80,000 and to purchase 65.9+/- acres from Benjamin F. Low, parcels 06-027 and 06-025-001, for \$160,000. Funding for purchases shall be drawn from Conservation Commission Land Acquisition Fund

Town Administrator Stenhouse gave the balance of the Conservation Land Fund which is \$542,071.

Margaret Ives, Chairman Conservation Commission – She highlighted the staff report done by Janice Mobsby. The properties are owned by Benjamin and Robert Low. Benjamin is here tonight. The allocation from the Commission would be \$240,000. It would supplement the grant for the value of the land. The land is ecologically rich; it is some of the richest in the county. Pennichuck has a well-head in this area. She recommends Town Council to approve.

**Open Public Hearing 7-0-0**

Paul Dionne, Worthley Road- this parcel was recommended back in 2000 from EPA and UNH Extension Service for the mitigation property for Route 93. The commission and the Town chose the Sibiak property which is protected. This property has been on the Conservation Commission's list for the past 10 years. He recommends the Town Council allow the Commission to expend the money on this property for Water quality and Water quantity protection.

Chairman Metts read a statement from Maureen Rose (see attachment)

Ben Low – First what is making this possible is the Federal government have come up with a wetlands program and they are paying a considerable amount for the cost of land. The Town will pay a minority of the amount for the cost of the land. Second, his brother & he have been approached many times by developers. If it doesn't go to Conservation, it will probably go to a developer. The highest use of the land is Conservation. This is the largest single asset that he and his brother have and they need to feed their families.

Paul Dionne, Worthley Rd – "This land is not in East Derry, it is in the southern part of Derry. He wanted to rebut Maureen Rose's statement. The Town of Derry has one of the best reputations in the state for being the fourth largest town in the state in the southern tier where land is very rarely protected. The Commission has come up with criteria over the last 15 or 16 years so that they objectively obtain lands. The Council knows that there are 3 parcels of land in the Western part of the Town which is actually the south range for protection for recreation and conservation and in addition the commission applied and received the Sibiak property regardless of the politics that said the commission tried to scuttle that acquisition.. We asked to have it switched because a developer came to us for a proposal for 46 Commercial Units that they were moving forward with. We thought it was the best use of the taxpayer's money and the State of NH to switch it to the parcels that we actually had as our first choice. I really do not think it is fair for the Commission to be hit again as people trying to line our pockets to protect land close to our properties to increase our property values. I was attacked personally about these three years ago. I've been here 30 years; I'm not moving. How do I benefit by protecting land that has a very high agricultural soil value near my property. The fact that I live near a particular area really should not penalize me. So I hope that you will all just think objectively about this and vote to approve it".

**Close Public Hearing 7-0-0**

Councilor Fairbanks asked if there was a survey of the boundaries performed, how much is wetland, how many homes could be placed on this land and if the Town is purchasing an easement or will own the land?

Margaret Ives answered that Robert Low's property has been surveyed by the NRCS and Ben Low's will be done. The land is not on the tax map as wetland and most of it is wooded. She does not know how many homes could be built on this property but on both properties there are beavers and there are ponds. There are few taxes paid on the land as it is in current use and only if the land is developed would there be a tax. Margaret explained the process of obtaining the land and that the Town would own the land and the easement.

Councilor Coyle asked who was going to hold the title to this land. He also asked if the easement would be given over to another group. What can we and can't we do on this property can it be used for recreation. Also how is the property accessed?

Margaret Ives and Paul Dionne answered the questions. This land is for water quality protection. People hunt on this property, walk the property and there are moose, deer and beavers. The access is through Hubbard Hill Rd and up through the Pennichuck wells and the other place is to access this is off the trail at Ballard Pond. The Sawyer property has a parking lot for the trails. A parking lot could be put on the property through the entrance at Hubbard Hill Road.

Councilor Wetherbee stated he would not address Ms. Rose's comments. The property speaks for itself and he doesn't think Conservation has gotten this kind of deal in years. He feels this is a no brainer.

**Motion by Councilor Wetherbee: Whereas the Derry Conservation Commission has authorized an appropriation of \$240,000 for a land purchase in support of land conservation, Move the Derry Town Council approve the Derry Conservation Commission purchase 67+/- acres from Robert C Low, parcel 06-096 for \$80,000 and to purchase 65.9 +/- acres from Benjamin F. Low, parcels 06-027 and 06-025-001 for \$160,000. The funding for said purchases shall be drawn from the Derry Conservation Commission Land Acquisition Fund, established per RSA 36-A: 5-1, Seconded by Councilor Carney.**

Discussion:

Councilor Benson asked if the Sawyer property was considered for purchase for active recreation?

Margaret Ives replied, "It's a very long discussion and she would be happy to discuss it at another time in Non-Public".

Paul Dionne stated as a side light that the Conservation Commission has 75 acres on Drew Rd that the Commission has offered to the Town Council on two occasions in the fifteen years he's been on the Commission and both times it's been turned down because it is too far from the center of Town. It's still on the table.

Councilor Benson stated he not aware of that but one of his concerns is that we conserve land and obviously this is a very valuable piece of land that is being looked at but Derry does not have enough active recreation facilities for the size of the community that we have and the population we have. He would as we move forward with our Strategic Plan to develop more active recreation.

Paul Dionne stated he is only one member of the Commission but feels they would be willing to discuss it with the Town Council again.

Councilor Carney doesn't remember having a discussion about the Drew Rd property for active recreation but maybe for the next meeting they could try and put something on for discussion.

Paul Dionne stated the last time it was discussed was 2003.

Margaret Ives replied it would take more than a couple of weeks. She mentioned that Councilor Benson and she may have different meanings for the term "active recreation."

Chairman Metts feels Councilor Benson's meaning is sports activities.

Councilor Coyle stated he would not vote for this as the land doesn't include active recreation such as organized sports and this has consistently been his position. .

Paul Dionne explained that RSA 36A is not about active recreation; it talks about natural heritage, natural history, wildlife protection and water quality protection. This is what we are charged with.

There was discussion on the 3 properties and the site walk and non-public discussion on the Drew Rd properties.

Councilor Wetherbee stated he did not want delay the vote and would not withdraw his motion.

Councilor Fairbanks posed a "Charter Objection".

Margaret Ives stated they have the information ready for discussion on the property that could have active recreation.

Councilor Benson stated that dialogue can be restarted after they get through this item.

#### **Schedule Vote for 3/2/2010 meeting**

#### **Old Business**

**10-13 VOTE** - Amend the existing Green Vehicles / Green Buildings Initiative Title to read "Clean Energy and Environmental Initiative"

**Motion by Councilor Coyle, Move that the Derry Town Council amends the Green Vehicles/ Green Buildings initiative, changing the name of the ordinance to read: Clean Energy and Environmental Initiative, Seconded by Councilor Carney. Vote: 7-0-0**

#### **New Business**

**10-27** Request to regulate parking on Route 28

The Town Administrator explained the concern of PD, Fire and PW that the people who patronize the flea market will not know that it has lost much of its parking. Since the roads surrounding the flea market are state owned in order for the state to post for "No Parking" the Town Council would have to make a request to the State of NH.

**Motion by Councilor Coyle, move that the Derry Town Council vote to authorize the Town Administrator to formally request that the NH Department of Transportation restrict parking in accordance with staff recommendation, Seconded by Councilor Carney. Vote: 7-0-0**

**10-28** Intermunicipal Agreements to provide Transport Ambulance Services to Auburn and Chester

**Moved to a Public Hearing on March 2, 2010**

#### **Council Requests / Open Discussion**

Councilor Fairbanks requested an update on the Certificate of Insurance for J&F Farms. Mr. Stenhouse stated the Town has received it.

Councilor Fairbanks would like an updated Conservation Land map supplied for residents on the back table of the meeting room.

Margaret Ives stated there are current copies in the first floor kiosk.

Councilor Fairbanks asked if someone goes on town owned land and want to use equipment to remove brush are they required to have insurance before they proceed.

Mr. Stenhouse replied the Conservation does trail maintenance but under our insurance carrier they cannot use chainsaws and the like. Under state statute the property owner could have exposure if there is an accident. The Volunteer statute in NH specifically states that the volunteer him/herself is held harmless..

Councilor Carney requested an update on the Town Council goals and what actions have been taken so far to meet those goals and going forward what are the steps that are being made to continue meeting those goals.

Mr. Stenhouse will provide another update in the near future.

Councilor Coyle would like Town Council to be informed regarding the Town being sued before he reads it in the newspaper. He also would like updates on the Legal status in litigation and the status of legal expenditures to date.

**Adjourned 9:40 p.m.**

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**Town Clerk**

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**Date**

Recording by: Denise Neale, Town Clerk  
Reviewed by: Gary Stenhouse, Town Administrator