

TOWN OF DERRY

Town Council Meeting
Derry Municipal Center

April 20, 2010
Tuesday 7:30 p.m.

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: Chairman Benson, Councilors: Milz, Olbricht, Wetherbee, Coyle and Fairbanks
(Chirichiello-Absent)

Consent Agenda

- 10-60** Acceptance of Non-Public Minutes – April 6, 2010
- 10-61** Acceptance of Minutes – April 6, 2010
- 10-62** Acceptance of Non-Public Minutes – April 13, 2010
- 10-63** Acceptance of Budget Workshop – April 13, 2010
- 10-64** Approve Veterans' Credits, Elderly Exemptions, Blind Exemption
- 10-50** Schedule Public Hearing – May 18, 2010 – Amend the Code of the Town of Derry, Section 165-30 Zoning Map by rezoning certain parcels from Medium High Density Residential District Zone to Medium High Density Residential District II – Purpose of Amendment: to rezone 68 properties that lie within the corner of Birch Street and East Broadway to include Oak Street, Park Avenue, Fenway Street, Grove Street & Wilson Avenue from Medium High Density Residential to Medium High Density Residential II. If amendment is adopted, these properties will be subject to the Medium High Density District II zoning requirements contained in Section 165-45.1 of the Derry Zoning Ordinance. An amendment to the zoning map delineating the lots in the Medium High Density Residential II District is being adopted to reflect these changes. For the lots affected, this amendment is COMPREHENSIVE IN NATURE.
(See attached list of the 68 properties)
- 10-65** Schedule Public Hearing – May 4, 2010 – Amend the Code of Derry, Chapter 55, Health Ordinance
- 10-66** Schedule Public Hearing – May 4, 2010 – Supplemental Appropriation of \$50,000 for Cable TV17 Equipment & Facilities

Consent Agenda - accepted

Chairman's Report – Benson

- Downtown Meeting will be held Saturday April 24th beginning at 8:00 a.m.
- There are Boards & Committee openings remaining. Please apply by April 23rd with Sheila Bodenrader or the Town Clerk
- The Exit 4A report is on the website
- DOT will hold a meeting on April 28th Re: Windham Rd, Kilrea Rd & Rte 28 intersection
- May 15th is Hazardous Waste Day
- Worthley Rd petition has been removed from the agenda.

Chairman Benson asked the Town Council if they would like to incorporate a monthly Council Workshop; instead of two business meetings per month, one would be a workshop or a one hour workshop prior to their regular meeting.

I

Councilor Milz suggested the one hour prior at 6:30pm to the regular meeting

Councilor Fairbanks felt it would be limited by doing one hour before.

Councilor Coyle okay with either

Councilor Wetherbee preference 1 council meeting 1 workshop

Councilor Fairbanks suggested they may have to implement a day.

Chairman Benson asked for the vote to replace the Cable Administrator be put under old business

Administrator's Report –Gary Stenhouse

Handed out a copy of the flagged items from the budget session and has attached an explanation regarding the visual server justification.

The Town Planner & Planning Board Chair have been invited by Council to a meeting on May 4, 2010 at 6:30 p.m. to discuss Item 10-50.

Public Forum – Non Agenda Items

Open Public Forum 6-0-0

Susan Dionne, Worthley Rd – The petition was submitted on time with 100% of the signatures. It was heard by the Planning Board and approved to send to Town Council. They feel they had followed the timelines and it is their position that the Town did not. The residents are going to pursue this further. They would like the road accepted with or without a petition. They would like direction from here. And would like this back on the agenda at the next meeting.

Brian Corliss, Worthley Rd – Wanted to echo his neighbor's request. He did a subdivision at the top of Worthley Rd and the reason it was accepted was because Worthley Rd was public. He asked if the Town Administrator could explain why the item was taken off the agenda. Mr. Stenhouse replied it was due to the fact that one of the petitioners had directed the town in writing to remove his name from the petition. Once that was done legal counsel opined that the petition was no longer valid under the "private roads ordinance" as 100% of all property owners were required to sign.

Joan Bostwick, Mundy Lane – Was a petitioner for Mundy Lane and hasn't heard from the Town regarding this petition. She would like information. Ms. Bostwick supports Worthley Rd becoming a public road.

Paul Dionne, Worthley Rd – All eighteen families that signed the petition were registered owners of deed on file with Rockingham County.

Diane Gill, Worthley Rd – Lower Worthley Rd should become public and the upper portion should stay private. She did not sign the petition and the petition stated all owners must sign. The Gill's concern is there is a lot of information that upper Worthley Rd is not a public road. Ms. Gill presented information to the Town Council.

Charlie Pearson, Main St –Sandown NH. Land Surveyor – He has done 5 or 6 survey plans regarding the legal opinions on Worthley Rd. He cautioned the Town Council to not use one plan. It should be reviewed by Legal Counsel. He submitted a report to the Planning Board.

Councilor Fairbanks asked Mr. Pearson if he lived on Worthley Rd.

Mr. Pearson replied he grew up on Worthley Rd #4, lived at 8 and 10 Worthley Rd on the lower extension.

Councilor Fairbanks heard Mr. Dionne make a remark to Ms. Gill.

Chairman Benson asked that the Public, Board Members and Town Council refrain from derogatory remarks.

Mr. Dionne apologized to Mrs. Gill publicly.

Mike Gendron wanted to remind people that the Downtown Civic Profile meeting is Saturday at 8 a.m.

Public Hearing

10-49 Accept \$5,000 Grant from the Derry Community Fund

Jill McLaughlin, Human Services Director – Would like acceptance of these funds.

Open PH 5-0-0

No public input

Close PH 5-0-0

In accordance with the provisions of RSA 31.95-b, Move that the Derry Town Council authorize the acceptance of and expend a \$5,000 donation from the Derry Community Fund. Said donation to be used for assistance to eligible Human Services clients of the Town of Derry with little or no source of income, to enable them to search for employment, become more self sufficient or reduce the likelihood of homelessness that can result from loss of income and transportation. Reasonable efforts will be made to pursue and exhaust all other funding options prior to disbursement of these funds. Motion by: Councilor Wetherbee, seconded by Councilor Milz. Vote: 5-0-1 (Abstain-Fairbanks)

10-51 Acceptance of Field Road and Kenro Way as Class V Roads

Mike Fowler reviewed for the Town Council some of the facts brought forward in accepting these roads as public

Open PH 6-0-0

Barry Cohoon, Field Rd – ask that the Town Council to accept the Planning Board's recommendation. There were seven factors outlined in the ordinance to determine status that were met by these roads.

Close PH 6-0-0

Councilor Coyle questioned if they were accepting the layout or as built. Also how much it would cost.

Mike Fowler –there will be no changes or relocation of the road it is in "as is" in accordance with the 1966 layout. The cost would be \$75,000 - \$100,000 to repave these roads although there is no immediate need to do anything to the road.

The Derry Town Council moves to accept Field Road & Kenro Way as Class V ways based on recommendation by Derry Planning Board. Motion by: Councilor Wetherbee, seconded by Councilor Coyle Vote: 6-0-0

10-52 Supplemental Appropriation of \$450,000 from General Fund
Balance to the Drew Road Bridge Capital Project Fund
Drew Road Bridge Capital Project Fund

Mike Fowler undersize culvert and there were severe problems over past storms. The culvert was damaged. The Town has been in the process of repairing five bridges. This bridge was not

included. Preliminary study has been done. When reimbursement from the other bridge come from the State this will replenish the Fund Balance.

Open PH 6-0-0
No Public Input
Close PH 6-0-0

Councilor Wetherbee – questioned why the Town won't be reimbursed for 5 – 10 years. Mike Fowler stated this bridge does not qualify for the reimbursement at this time but should in the future. The State does not have current funding so reimbursement could come down the road.

Councilor Wetherbee- questioned if there were any other bridges that need attention. Mike Fowler stated the other bridges would be North High, Rockingham Rd, and Tsienneto Rd.

Move to establish a capital project fund entitled “Drew Road Bridge Capital Project Fund” for the purpose of engineering and constructing a bridge to replace the Drew Road culvert. Further, I move a supplemental appropriation of \$450,000 from General Fund Balance to the Drew Road Bridge Capital Project Fund. Unencumbered or unexpended funds at the completion of this project will be transferred to General Fund balance, including potential reimbursement from state aid grants that may become available. Motion by: Councilor Wetherbee, seconded by Councilor Olbricht. Vote: 6-0-0

Old Business

Councilor Coyle asked if this position could be part-time. The Town Administrator stated that, if anything, the need for this position is growing especially in regards to the addition of another public access channel to be managed by the town.

Move that the Derry Town Council approve the Town Administrator to fill the Cable Administrator position. Motion by: Councilor Wetherbee, seconded by Councilor Milz. Vote: 5-1-0 (Coyle)

10-17 VOTE - Revision of Town of Derry General Code, Section 118, Second Hand Dealers

Chief Garone – reviewed the updated proposed ordinance. Effective date would be May 20th. Changes had been made from the input of the vendors. The Chief received a tremendous amount of input from the vendors that would be impacted.

Move that the Derry Town Council vote to adopt Town Code 118 as revised and implement it within the dates authorized by the Town Charter. Motion by: Councilor Wetherbee, seconded by Councilor Milz. Vote: 6-0-0

10-57 Public Hearings on Union Contracts

Councilor Coyle thinks it would be a good idea for the public to have input at a hearing. Councilor Wetherbee feels putting the contracts on website gives it more transparency. Councilor Milz stated if the Council is going to listen to the public ahead of time it was not necessary. Mr. Budreau's opinion from counsel states not to have public hearings in advance of negotiations.

Councilor Fairbanks personally feels that you should engage the public. The public should be given the opportunity as taxpayers.

New Business

10-67 Sites for September and November Elections

The Town Council asked questions of the Town Clerk regarding the polling places.

Move that the Derry Town Council approve a third polling place at the Calvary Bible Church for the YR 2010 NH State Primary and the NH State General Elections.

Motion by: Councilor Coyle, seconded by Councilor Wetherbee. Vote: 6-0-0

**10-68 Water Commissioners – Morningside Drive Condominium
Association Community Water System Petition**

Tom Carrier- The homeowners association for the community water system has asked the Town to take over their system via a petition. Their water contains manganese, iron and lead. He explained the issues at hand with this water system.

The private water systems within the Town have been discussed. When the Master Plan was written in the early 1990's the action for these systems were in the master plan. The Town would acquire these systems and effectuate a rate structure. The Public Utilities Commission allows new franchises be given to town. However should the Town refuse to take a water system over they can be given to a private entity (Pennichuck) or a homeowner's association. Going forward all water systems which are new would go to Town.

Mr. Carrier will go back and obtain a rate structure. Mr. Carrier explained to the Town Council that if they were to take over the water system it would allow the town the ability to shut off the water for nonpayment or lien the properties. However in order to accomplish this each dwelling unit would need to have an individual meter with shutoff.

The Town Council was polled for the purpose of their opinions on who should pay for the cost of this system if the town were to take it over.

Councilors Coyle, Milz, Wetherbee, and Olbricht agreed the petitioners should pay and that the rate payers should not bear the burden.

Mr. Carrier stated there were different philosophies among the neighbors over who should or could pay.

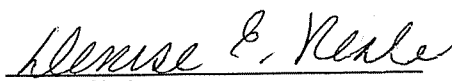
The Town Council agreed Mr. Carrier needs to contact the petitioners and let them know what the cost could be before making a decision and that they, not the town would need to incur the cost of bringing the system up to town standards.

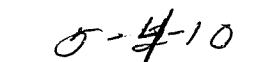
Council Requests / Open Discussion

Councilor Fairbanks was concerned with the message given about anyone making respectful remarks to where or where not a Town Councilor lives. There may be issues that need to be brought forth as to whether a personal interest is gained by a Town Councilor. She appreciates going forward with respect for everyone. The public has the right to come forward in a respectful manner.

Chairman Benson feels the public can come forward and not use names. He would like to keep the meetings fair and respectful. He apologized to Councilor Fairbanks for the issue she faced at a prior meeting.

Adjournment 9:30 pm


Town Clerk


Date

Non-Public Meeting Notice

The Town Council may, during any public meeting, elect to move in to a non-public meeting in compliance with RSA 91-A:3 Section II. A motion to do so will be made in public session and the motion will cite the applicable subsection of the law. Further, in compliance with RSA 91-A:2 Section I, the Town Council may recess a public meeting for a period of time in order to excuse itself for the purpose of discussing matters not subject to the definition of a meeting.

PID	Address
05044	121 East Broadway
30166	13 Oak
30167	11 Oak
30168	7 Oak
30169	5 Oak
30170	3 Oak
30171	1 Oak
30188	4 Wilson
30189	23 Oak
30190	21 Oak
30191	19.5 Oak
30192	19 Oak
30193	4 Oak
30194	6 Oak
30195	8 oak
30196	10 Oak
30197	12 Oak
30198	14 Oak
30199	8 Grove
30200	19 Park
30201	17 Park
30202	15 Park
30203	9 Park
30204	5 Park

30209	71 E. Broadway
30210	69 E. Broadway
30211	67 E. Broadway
30212	4 Park
30213	6 Park
30214	8 Park
30215	10 Park
30216	14 Park Ave
30217	16 Park
30218	12 Grove
30219	14 Grove
30220	9 Fenway
30221	5 Fenway
30222	3 Fenway
30223	1 Fenway
30226	4 Fenway
30227	6 Fenway
30228	8 Fenway
30229	10 Fenway
30230	12 Fenway
30231	14 Fenway
30232	16 Fenway
30233	15 Grove Street
30234	13 Grove S
30235	11 Grove Street
30236	9 Grove Street
30237	7 Grove Street
30238	5 Grove Street
30239	3 Grove Street
30240	16 Oak
30241	18 Oak
30242	20 Oak
30243	10 Wilson
30244	12 Wilson
30245	14 Wilson
30246	16 Wilson
30247	11 Wilson
30248	9 Wilson
30249	7 Wilson
30250	5 Wilson
30251	3 Wilson
30192-001	1 Grove
30204-001	7 Park
30218-001	11 Fenway