

TOWN OF DERRY

Town Council Meeting
Derry Municipal Center

February 1, 2011
Tuesday - 7:00 p.m.

Consultation with Legal Counsel

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

Roll Call: Councilors –Milz, Olbricht, Wetherbee, Coyle, Chirichiello and Chairman Benson
(Fairbanks absent)

Consent Agenda Accepted

- 11-08** Acceptance of Non-Public Minutes – January 4, 2011
- 11-09** Acceptance of Minutes – January 4, 2011
- 11-10** **Water/Sewer Commissioners** – Approve Utility Billing Warrants and Adjustments

Chairman's Report

- Congratulations to Franciso Robert Silveria for achieving his Eagle Scout Award.
- Frost Festival is 2/11 - 2/13 tickets are available at Town Hall and Recreation
- Thanked Retiree, Mike Scott from the Derry Fire Department after 30 years of service
- Remembrance – Roy Feinauer & John Gleason both were very involved with the town and state

Attorney Brenda Keith on the Charter Commission Court Hearing – Atty. Keith updated the Town Council and public on a joint attempt by the Attorney General and the Town of Derry to reconstitute the Charter Commission. As you will recall, the Town Council withdrew the ballots from a vote back in September. This was due to the lack of the State returning recommendations for changes to the Town Charter after the 30 day time frame allotted by law.

On 1/19/11 at the court hearing, it became evident that the judge was not going to be convinced to go forward with a mandatory induction, as there would not be any irreparable harm suffered by the town. Another issue that occurred was if the judge had granted the reconstitution of the Charter Commission, they would have had to file a new town report on 1/21/11 to the State which was not time permitting. It was decided by Council Chair and Town Administrator Anderson to pull the petition from the court.

Atty. Keith continued in stating that there are three solutions at hand 1) the Town Council, under RSA 49B, can revise or amend the Town Charter and then put the questions before the citizens on the March 2012 elections; 2) Council can bring forth a new charter commission or; 3) Ignore the Attorney General's advice and use the old question.

Chairman Benson asked if the court felt that this could be rectified via the three solutions. Ms. Keith replied that the judge felt there were too many alternatives.

Councilor Coyle – suggested placing the proposal on the ballot as written. The Charter Commission did the job they were supposed to do and met the statutory deadlines. His personal opinion is the Town Council is required to put this question on the ballot and submit it to the voters at the March 2012 Election. RSA 34 reads the final report of the municipal officers shall order a vote be submitted at next primary or next town election. He feels it is deemed approved by RSA. He does not think the Attorney General would challenge.

Councilor Benson- feels the Town Council should use this year to correct the Town Charter and put it on March 2012 ballot.

Councilor Chirichiello - wants a Charter Commission re-established.

Councilor Benson - reminded the Town Council of the cost of a special election.

Councilor Wetherbee - feels that if another Charter Commission were formed, nine different issues could arise.

Councilor Milz agrees that a new Charter Commission could undo all the good already done

Councilor Chirichiello – stated he is in favor of establishing a new Charter Commission.

Councilor Coyle – we could provide education before the special election.

Councilor Wetherbee – *if voters have decide for another Charter Commission there would be two more elections and I think that is a disservice to the past Charter Commission.*

Motion to place recommendation for a new Charter Commission on the March 2011 ballot moved by Coyle. No second- motion failed

Motion to place a question on the March 8, 2011 ballot “To establish a Charter Commission” under RSA 49b-5, moved by Coyle, second by Chirichiello. Vote 2-4-0 (Milz, Olbricht, Wetherbee and Benson)

Councilors Milz and Coyle stated that the Town Council needs to put forth the corrections and correct only what needs to be corrected.

Councilors Olbricht and Wetherbee agreed that there should be a workshop.

Councilor Benson is in favor.

Atty. Keith then discussed issues related to New Hampshire's Right to Know Law, RSA Chapter 91A. The Councilors must be careful of and vigilant that they do not slip into discussing town business. She gave an example of a town where emails of a governing body were using sequential email and it appeared that a decision was made before meeting. Councilors cannot discuss or make decisions outside of the public. There are exemptions.

Councilor Coyle stated the first thing he learned in law school is to avoid appearance of impropriety

Councilor Benson stated he checked with Counsel when he became the Chair regarding this issue and was advised that as long as no town business was discussed it was well within the 91A rules.

Administrator's Report

Southern NH Planning Commission has three openings and you may apply on the Town's Website. They are looking for a citizen representative.

The 2012 Budget Workshop Schedule Calendar is in the packet. Chairman Benson stated Saturday 4/16/11 is not a good date.

The CIP Process will be presented to Planning Board on February 16th

Senior Citizen Center – February 15, 2011 workshop and the Town Bonding will be reviewed
Pennichuck / Nashua Workshop is rescheduled for March 1st

The Forest Hill Cemetery will not be doing burials throughout the rest of the winter season.

Update Reports - Kilrea Rd/Rte 28 State Public hearing was well attended. Attendees supported the concept. The only issue is with Web Palmer's house due to changes with road. If this didn't get funded in this cycle, it would not have been funded until 2023. Pinkerton Tavern had made an agreement to vacate on 2/1/11. After consulting with Mike Fowler, the agreement has been extended to 3/15/11 and is to be signed.

Public Forum – Non Agenda Items

Open Public Forum 6-0-0

Al Dimmock High St- Sidewalk cleaning is not done. Sidewalks are treacherous. Spoke to Mr. Fowler that these pieces of equipment aren't up to snuff. Why are we paying for equipment to plow 38 miles of sidewalks when they are a disgrace. ***If the equipment is not up to snuff it is a waste of taxpayers' money.***

Close the Public Forum 6-0-0

Public Hearing

- 11-04** To enter into a grant agreement with the NHDOT to receive funds for the purchase of a new truck equipped for salt management plan and authorize Town Administrator to apply for and accept and expend funds, provided the matching funds are approved in FY 2012 Budget

Mike Fowler presented - last year Public Works came to Town Council to endorse a "Salt Reduction Plan", which was approved. DOT upgrades technology. The department will be looking to replace truck #578 with a new five ton truck equipped with ground speed control, a spreader which includes brine saddle tanks, in-cab air/ground temperature sensors, on-spot chains, and possibly a scraper. Total cost is \$187,500. What is needed is a supplemental appropriation from the Town Council for \$37,500 which is an 80/20 split.

Open Public Hearing 6-0-0

Al Dimmock High St- asked questions regarding cost of the truck to town and what is the life expectancy of this truck?

Mr. Fowler replied that the present truck will be handed down to Wastewater. The new truck will be good for 10-15 years.

Mr. Dimmock agrees with the purchase.

Close Public Hearing 6-0-0

The Derry Town Council moves to enter into a grant agreement with the State of NH Department of Transportation to receive funds for the purchase of a Five Ton truck, authorizing the Town Administrator to apply for accept and expend such funds, provided that the matching funds are approved in the Fiscal Year 2012 budget. Motion by Councilor Wetherbee, seconded by Milz Vote: 6-0-0

11-05 NHDES Household Hazardous Waste Agreement

Mr. Fowler presented – this is the Hazardous Waste Day that is jointly held by the Towns of Derry and Londonderry each spring and fall.

Open Public Hearing 6-0-0

No public Input

Close Public Hearing 6-0-0

The Derry Town Council Moves to authorize John Anderson, Town Administrator, to sign contracts on behalf of the Town with respect to grant contracts with the State of NH Dept of Environmental Services and to enter into a grant agreement with the State of NH Dept of Environmental Services to receive funds and hold a household hazardous waste collection event into FY12. Motion by Wetherbee, seconded Milz Vote 6-0-0

Councilors asked Mr. Fowler where the plowing funds stood after these last storms. Mr. Fowler stated the FY11 budget was \$600,000 and expended so far is \$327,000 not including last week's storm. With these two storms, it will reach 95% of the budget and then there is \$100,000 in the snow fund.

Old Business

11-06 Moving Derry Forward Update Discussion

Councilor Olbricht – The cable show on the MDF and its process and conclusions began airing. There are a couple of parties asking questions and more meetings scheduled. MDF report on issues on ECO Park and why advanced planning is necessary are getting some of other owners looking at this type of development. Action plans moving forward RSA 179 redevelopment and the TIF.

New Business

11-11 Appointment to Planning Board – F. Bartkiewicz

Motion by Chairman Benson to appoint Frank Bartkiewicz as member of the Planning Board to expire March 2012, second Wetherbee Vote: 6-0-0

Council Requests / Open Discussion

Councilor Coyle stated after reviewing the County Budget Letter from its delegation, the county budget is up 6%. I am asking as a board for the Town Administrator to write letter regarding its inappropriate increase.

Councilor Olbricht suggested maybe a consolidated workshop with county, town, and school should meet to discuss the tax rate.

Councilor Chirichiello explained the increase has to do with health care increase.

Councilor Benson added they should have a meeting going forward be placed in the letter.

Councilor Olbricht feels all entities should have a talk about what they envision budgets to be going forward. The delegates should be copied also.

Councilor Coyle told Mr. Benson that he would like to meet with department heads to go over their budgets as Councilors Benson and Wetherbee had in the past. Mr. Benson stated any one of the Town Council may do this by contacting the department head and setting aside time. It gives an overlay of the budget process.

Adjournment 9:00 p.m.

Denise E Neale, Town Clerk

Date

Recording Clerk, Denise Neale Town Clerk
Reviewed by, John P Anderson, Town Administrator