

TOWN OF DERRY

Town Council Meeting
Derry Municipal Center

September 20, 2011
Tuesday - 6:30 PM

6:30 PM

Consultation with Legal Counsel

Call to order 7:40 p.m.

Pledge of Allegiance, Warning of Fire Exits, Handicap Access, Turn off all Cell Phones & Pagers

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

Consent Agenda

11-97 Acceptance of Minutes – September 6, 2011

Accepted as written

Chairman's Report – Benson

Congratulations to all the Derryfest participants; it was a great event.

***** Schedule for Workshops

Council agreed that the workshops would be scheduled for the second meeting of the month with a brief regular meeting including public forum.

***** Schedule for November & December Meetings

November meetings: 1st and 15th December meetings: 6th and possibly 20th

****Public Informational Meeting – September 22nd – Adams Pond Dam

To be held at the DMC @ 7:00 p.m.

Administrator's Report – Acting Town Administrator Larry Budreau

The 2011 Dr. David Connor Memorial Emergency Medical Services Appreciation Award will be presented to Derry's Director of EMS Chuck Hemeon of the DFD by the State of New Hampshire Department of Safety Bureau of EMS on September 28, 2011. Also, the EMS Educator of the Year Award will be presented to former Derry Firefighter/Paramedic Ed Gannon.

***** Government Finance Officers Association CAFR Presentation for 2010

This is the 13th year that the Town has received this award for Excellence in Financial Reporting. Mr. Budreau presented this award to Frank Childs CFO and Janice Mobsby Controller.

Public Forum – Non Agenda

Open Public Forum

Vote: 6-0-0

No input

Close Public Forum

Vote: 6-0-0

Public Hearings

11-75 Worthley Road Layout, RSA 231:8 and Acceptance

(Councilor Wetherbee recused himself from this item as he is a resident of this road.)

Councilor Fairbanks motioned to send this item back to the Planning Board, seconded by Councilor Coyle. (Pertaining to RSA 673:14 disqualification of member)

Vote: 2-3-0 (Milz, Olbricht and Benson)

Ms. Fairbanks explained the reasoning regarding this RSA as the Town Administrator sits and vote on the Planning Board.

Chairman Benson asked Attorney Boutin to comment on this RSA. Mr. Boutin reviewed the steps taken by the Planning Board to arrive at this recommendation. His view was that he hadn't heard something that's disqualifying. *(Mrs. Fairbanks gave Attorney Boutin a copy of the RSA 673:14)* After review, Attorney Boutin stated that any disqualifications are made by the Planning Board, not the Town Council. This is not a quasi judicial action.

Mr. Coyle questioned the motions made by the Planning Board and Mr. Anderson. Mr. Milz attested to his recall of the motions made. *(See Planning Board minutes of 9/14/11 page 3 Draft)* There was discussion with Mr. Coyle and Attorney Boutin regarding the Planning Board meeting.

Mike Fowler gave an overview and presentation of the Planning Board and Public Works. Residents of Worthley Rd had presented a 'layout' to the Town Council on June 1, 2010 and was accepted. There was confusion by Planning Board over consideration due to each section involved. The prescriptive right dates back to 1911 in the lower section Area A (RSA 674:40). Area B is a layout under RSA 231:8. The Town required easements from each owner at no cost to the town. Section C is recorded in the Rockingham Registry of Deeds Plans 18796 and 19360. These plans show this right of way being dedicated to the Town for future use as part of a subdivision for Orchard Dr. aka North Shore Heights. It was approved back in 1989 by the Planning Board and has been recorded. It would need to be accepted by the Town Council at this point. The final section D is a layout over the Nottolson land for a turnaround. *(See attached maps)* The first step is to accept the area layout of the rights-of-way under RSA 231:8. The second is to accept these laid out areas and two sections of right-of ways as a Class V road.

Open Public Hearing

Vote: 5-0-0

John Gill, 17 Worthley Rd – opposes layout or eminent domain of his land. He gave information in his words of the facts he has obtained regarding the plat plan and will be taking Superior Court action if his land is taken by eminent domain. He asked the Town Council to look at RSA 231:51, which asks the Town Council to have Mr. Gill sign a release of property however he maintains ownership. He read a memo from Gary Stenhouse to Mike Fowler 5/4/10 regarding the first petition and the Private Roads Committee 2007 minutes.

Close Public Hearing

Vote: 5-0-0

Councilor Coyle moved to dismiss the petition as no petitioner has come forward to present it as required by state law and case law to bring reasons for the petition, seconded by Councilor Fairbanks. Vote: 2-3-0 (Milz, Olbricht, and Benson)

Chairman Benson asked Attorney Boutin to address this motion. Attorney Boutin addressed the variables of each section of this road as it applies to the motion. The state of the facts is that the Gill lot was not buildable without a variance. The plan note states "shall be" not "may be". The dedication was required for the plan approval. The first section is not a layout, the upper section of the Gill property is not a layout as it has been dedicated and it's a question of acceptance. Attorney Boutin's opinion was that once that land was dedicated it was dedicated as a public road and he believes that was the contemplation of the Zoning Board.

Councilor Olbricht asked for clarification of the motion being presented this evening. Mike Fowler explained the breakdown of the motion. Attorney Boutin reviewed the motion. There was discussion on what is considered acceptance of the petition.

Mr. Coyle asked questions of each section in regards of public utilities and sewer and pavement of the road. Mike Fowler answered these questions. *(On the record see page 5)*

Councilor Coyle and Attorney Boutin referenced the Rock House MTN and the Rogers Dev vs. Town of Tilton cases. There was much discussion following these references, in regards to the differences between easements vs. ROW, the purported dedication vs. layout, road benefits vs. town, RSA 231:28 vs. RSA 231:1, costs to bring the road to passable. Mrs. Fairbanks asked Attorney Boutin if he would work with the Town Administrator and Mr. Gill to resolve the issue of maintaining ownership of his land. Attorney Boutin will wait for the Town Administrator to return and schedule a meeting.

11-93 Overnight Parking – Wall Street Parking Lot

Mike Fowler explained the winter parking lot use presently approved. He is asking the Town Council to authorize the use of seven parking spaces in the Wall Street lot in lieu of the Abbott St Court lot.

Motion to Open Public Hearing

Vote: 6-0-0

No Public input

Motion to Close Public Hearing

Vote: 6-0-0

Council asked a question about the restriction of amount of parking spaces. If there is a larger request would it be brought back to the Town Council. Mr. Fowler stated, "Yes".

Move the Derry Town Council moves to designate seven parking spaces in the Wall Street parking lot as exempt from the overnight parking bank (Section 150-9). It is further moved that the Department of Public Works administer a first come first served permit system with a fee of \$100 per season (November 15 – April 1). Further, the Derry Town Council moves to rescind winter overnight parking for 14 spaces in the Abbott Court parking lot originally voted on September 18, 2001. Motion by Councilor Wetherbee, Seconded by Councilor Milz

Vote: 6-0-0

Old Business

11-83 FY 2012 Municipal Water System Improvements/Expansion:
Zone 3 – Route 28

11-84 FY 2012 Municipal Wastewater System Improvements/
Expansion: Route 28, Sunset Acres, Maple Hills

Tom Carrier responded to some of the questions asked by Town Council at the Public Hearing held on September 6, 2011.

Mr. Coyle would still like to see requests for proposals for the engineering projects. Chairman Benson asked if everyone was in agreement for the development of Rte 28 water and sewer. Council was in agreement for the portion of Rte 28, not the residential area.

Motion to extend 5 minutes Wetherbee/Milz

Vote: 5-1-0 (Coyle)

Mr. Carrier is to do additional financial modeling, specific to the Rockingham Rd connection with Rte. 28. This item will be continued at the next meeting.

New Business

None

Council Requests / Open Discussion

Mrs. Fairbanks asked if the Council had received the request by email. She would like members of the Town Council to take a drive to the intersection of Overledge Dr and Hemlock Rd., which she believes requires a stop sign. It's similar to the intersection at Fenway and Grove St.

Chairman Benson reviewed the agenda for the 10/4/11 meeting as follows:

Town Administrator Evaluation

Assistant Town Administrator position

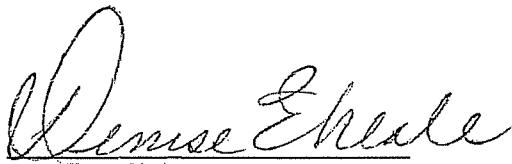
Charter review

Legislature vacancy

Worthley Rd

Water & Sewer

Adjournment 10:05 p.m.


Town Clerk

10/6/11
Date

Council Clerk, Denise E Neale, Town Clerk

Reviewed by, Larry Budreau, Acting Town Administrator

Note: upon advisement of LGC legal this document is included as a request of Councilor Coyle and Attorney Boutin as stated "on the record and to clarify the record" in the audio minutes. (see page 5)

On the Record Q&A

After reviewing the staff report and motion Attorney Boutin made this statement:
The discussion by Mike Fowler in the staff report constitutes evidence that meets occasion whether it meets the town councils' test it's up to you." If I have to defend it, I believe that I could subject to some further discussion if you want to have it on record.
Mr. Coyle replied, "Believe me I want to make a record."

Coyle; Worthley rd from the corner of N. Shore Rd to approximately number 14 are there public utilities?

Fowler: among others there is a sewer line installed by the Town of Derry

Coyle; the sewer end where?

Fowler: ends near the land of Buothlette #16 and Mazzone #14

Coyle: from there on up the road is dirt

Fowler: it actually is paved a little further across Area the property by gills

Coyle: have you been up there?

Fowler: had been out there with Alan Cote 4-5 weeks ago

Coyle: does that road meet current standard?

Fowler: no

Coyle: So you are going on to check that the mortgage holders have released the easements?

Boutin: yes

Coyle: Mr. Gills property, I don't disagree that there was a purported dedication, I agree there has never been an acceptance, I don't personally agree that this portion should be accepted. It's in poor condition its probably part of the \$10,000 that needs to be spent on that and beyond that portion serves three or four house, two of whom are public officials. **That needs to be part of the record.**

Coyle: Asked Alan Cote if he had knowledge of this?

Alan: not in the time I've worked here.

Coyle: drainage

Alan: not above the sewers since I've been here. Mark Cooper who owned the Gill property paved it.

Coyle: you have obtained easements have the mortgage holders signed off?

Fowler: no they are signed solely the owners

Coyle: to Boutin: Do you have a problem with that; the easements haven't been signed off by the mortgage holders?

Boutin: If I think about it that is one thing I would do I don't know it might have been done I simply don't know. I wasn't involved with that. **I do have a question to clarify the record.**

Mike, you talked about the Pavement Management Plan and that you might have to pave the lower section of the road and we all know what that means now from N. Shore up to 14. After that I wasn't clear and I think if I have to probably defend this I should know, you propose to some repairs to the dirt road but that is not contemplated to be paved it would still be a dirt road if it were a public street?

Fowler: that is correct. To some extent that is to the prerogative to the town council. Many of these private roads like Rainbow Lake being the example we get hit every single year that my road is in terrible condition when is the town going to pave it, I pay X in taxes and I don't expect this to be any different here or on any other private roads we deal with. To be clear there is no intent to upgrade that particular section with pavement today or tomorrow without town council authorization to do so.

Coyle: the minimum cost is \$10,000 that you will have to put in day one.

Fowler: correct.

Mr. Granese advised the Board would now recess to meet with legal counsel. The Board invited Mr. Fowler, Mr. Sioras and Mrs. Robidoux to attend.

Motion by Anderson, seconded by MacEachern to recess the meeting. The motion passed with all in favor and the meeting recesses at 7:37 p.m.

Motion by Milz, seconded by Anderson to reconvene. The motion passed with all in favor and the meeting reconvened at 7:37 p.m.

Worthley Road

Motion by Anderson to reconsider the vote at the last meeting relative to Worthley Road, under RSA 674:40 for sections A and C. The motion was seconded by MacEachern.

Alongi, Chase, Anderson, O'Connor, Fairbanks, Milz, MacEachern, and Choiniere all voted in favor; Granese abstained, and the motion passed.

Motion by Choiniere to reconsider the vote regarding parts of the road defined by RSA 231:8, seconded by Anderson.

Alongi, Chase, Anderson, O'Connor, Fairbanks, Milz, MacEachern, and Choiniere all voted in favor, Granese abstained, and the motion passed.

Mr. MacEachern stated there was a lot of public discussion during the last public hearing. Understanding the votes that just took place, he thinks the Board needs to take a series of motions with regard to Worthley Road. It is important to point out that the Board will look at this in sections.

The first section of road starts at North Shore Road and goes as far as 56039 and 56043, denoted on the Board's plan set in yellow highlighter. That portion of road already has the status of a public street. That is due to maintenance and the history of the road and what the town has done for years in taking care of it.

In accordance with RSA 674:40, I, MacEachern moved to recommend acceptance of that road and move the matter on to Town Council. Milz seconded.

Alongi, Chase, Anderson, O'Connor, Fairbanks, Milz, MacEachern, Choiniere and Granese all voted in favor and the motion passed.

Mr. MacEachern said extending further along Worthley Road, the next section is outlined in green on the plan before the Board, beginning at Parcel 56039, abutting 56043 and continuing up to Parcel 12009.