

TOWN OF DERRY

Town Council Meeting Derry Municipal Center Amended Minutes

November 1, 2011
Tuesday - 7:30 PM

7:30 PM Call to order

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

Roll Call: Councilors Milz, Olbricht, Wetherbee, Coyle, Fairbanks, Chirichiello and
Chairman Benson Also: Attorney Boutin, Craig Bulkley and Pat Dowling

Consent Agenda

- 11-108** Acceptance of Non-Public Minutes – October 18, 2011
- 11-109** Acceptance of Minutes – October 18, 2011
- 11-110** Acceptance of Special Meeting Minutes – October 24, 2011
- 11-111** Acceptance of Special Meeting Minutes – October 27, 2011

Accepted as written: Councilor Chirichiello was not present for the October 18th minutes and abstains from acceptance.

Chairman's Report

Halloween has been rescheduled to November 6, 2011 from 5-7 pm
Trick or Treat on Main St. was held on October 22nd and was a huge success.
The Chamber of Commerce's Annual Dinner recognizing Businesses & People of the Year had a great turnout.
Last week the Derry Boys & Girls Club had a "Bowl-A-Thon" that went well and was a lot of fun.

Administrator's Report

Public Works and Safety have been very busy. PSNH is reporting approximately 50% of the Town of Derry is still without power. The following roads are closed or have limited access: Coles Rd, Grove Rd at Pond Rd, Cunningham Dr. was cleared this afternoon and opened, Debbie Terrace, Lake Ave, Old Coach Road, Pond Rd was opened last night at 8pm and Maxwell Dr. is down to one lane. All public schools will open tomorrow. All of the power at Pinkerton Academy was restored yesterday. There was a small panel fire in the Arts Building.
The Municipal Center had a warming shelter available for residents on Sunday and Monday and has now moved to the Derry Public Library. The Shelter in Londonderry, 432-6241 x208, is still open. Pinkerton Academy has showers available as well as the Workout Club and Planet Fitness (bring your own toiletries). Please do not go near down power lines. There have been several fires; wood stove, candle and generator issues. There needs to be a lot feedback from where things stand. PSNH has discrepancies of the town's roads. There needs to be a discussion with the PUC.

Update Rte. 28 and Manchester Road

Mike Fowler – Preconstruction the cost was estimated at \$2.8M. There were 8 potential bidders, 6 bids were submitted, and the actual bid came in at \$2.43M. The bid was awarded to Continental Paving. It was originally anticipated the total project cost would be just over \$6.5M. It now appears the project will be just over \$5M. We are ready to advertise for the bond. Work will begin this fall and in earnest in the spring.

Frank Childs – There was a bond authorization of \$5.4M. However the bonding which will take place next Wednesday will be for \$3.4M, which is \$2M less than original estimate. We are waiting for Moody's review. Rates look to be very good below 3.3/4% Councilors will all need to

sign documents that need to be executed for Thursday the 10th of November. The rate was estimated in the budget as 4 ¼%.

A press release dated October 27th went out stating the tax rate for 2011 is \$27.27. This is down from \$28.48 in 2010 and reflects a 4.2% reduction. The bills are to be mailed this Friday (11/4) and will be due on 12/5/11.

Thanks to staff that assisted in EOC and were there until 8pm on Sunday evening.

Mr. Anderson gave an update for Tom Carrier in regards to all the pump and sewer operations. They are online and some are being run by generators.

Public Forum – Non Agenda Items

Open Public Forum

Vote: 7-0-0

Maureen Rose, Windham Rd – thank you to PSNH appreciate having power back

John Burtis, Lorri Rd – Historically Lorri Rd loses power constantly. Mr. Burtis is hoping someone can sway PSNH. If anything could be done it would be appreciated.

Al Dimmock, High St – Three people on the ZBA sent a letter to Town Council. The Town Council has not responded to the letter. The ZBA has had discussion with three attorneys and they were told that there did not need to be a vote to send the letter. Any member could send a letter without a vote.

Maureen Rose, Windham Rd – Suggested the Town Council review the last ZBA meeting as the members have made improper statements.

Bill Cooper, Hood Rd – Wants to know who the attorney was that the ZBA got the information from.

Al Dimmock – They did not inform the Town Attorney

Mike Gill, Gill Rd – He is upset with the arrogance of the ZBA and the statements they made. Chairman Benson - stated they have no control over this board. Mike Gill - stated they can remove the members for breach of conduct. They are out of line.

Joanne Gill, Gill Rd – She typically doesn't attend a meeting as she watches from home. It's an insult for one of the Town Council members to be treated incorrectly by a ZBA member. This is a misconduct of their members. PSNH should have a better system and better relationship with the town. National Grid can tell you what is happening.

Close Public Hearing

Vote: 7-0-0

Chairman Benson asked Mr. Anderson to bring them up to date on the capabilities of National Grid vs. PSNH.

Mr. Anderson replied that National Grid has a system available that can provide feedback immediately as to where services are out, where they are currently repairing them, priority lists and a queue as to how long it is going to take roughly do that. A conversation was held with PSNH about a year ago as to where that technology was with them. We are no closer today in implementing that system with PSNH than we were after the ice storm

Public Hearings

11-100 Lake Avenue, Rocky Road, Pebble Lane Layout, RSA 231A:8 and Acceptance

Fill-In Councilor Pat Dowling replaced Kevin Coyle on this item.

Public Works Director, Mike Fowler was sworn in by Attorney Boutin and gave the history and steps taken to get to this hearing today.

Open Public Hearing

Vote: 7-0-0

The audience participants were sworn to their testimony by Attorney Boutin.

Lisa Ormand, 3 Lake Ave - stated the road condition was in good shape. She hopes for acceptance of this road.

Kevin Coyle, 68 North Shore Rd – has been up on these roads. Each are paved and contain sewer. They will require little repair. He asked how much it would cost for the repairs.

Mike Fowler replied, "his estimate would be under \$1000".

Mr. Coyle asked if the only way to maintain the sewer would be to go over these roads.

Mike Fowler replied, yes.

Mr. Coyle stated so this is a public benefit.

Mike Gill, 8 Gill Rd – The town has plowed these roads for many years. In his opinion where he doesn't think the town should be taking private roads, where the town has been plowing this road a precedent has been set and there is sewer it's the town's duty and should be accepted.

Carl Accardo began to speak on Worthley Rd and was asked to wait until item #11-75 - Public Hearing.

Close Public Hearing

Vote: 7-0-0

Discussion:

Wetherbee: The road is in good condition but not up to town standard. What is Town Standard?

Mike Fowler gave explanation of requirement.

Olbricht: Any immediate cost?

Mike Fowler explained minor pothole repairs

Chirichiello: Any drainage issues?

Mike Fowler: he's not aware of any drainage problems.

Fairbanks: roads accepted they all had town sewer.

Mike Fowler stated that Field Rd, Kenro Way, Mundy Lane, McKinley/Lakeshore all had sewer. Only exception was Julian Rd.

Fairbanks: Do you have an estimate of how much money was put into these roads that the council has taken.

Mike Fowler: it depends. Collette's Grove was significant whereas Mundy Lane hasn't had any issues.

Wetherbee: is there public access to the lake or public utilities under Collette's Grove

Mike Fowler: no

Attorney Boutin: How many roads have been accepted that are private roads.

Mike Fowler: it depends, he referenced Collette's Grove Rd, Mundy Lane

The following roads were accepted: Zames Rd 2002, Julian Rd 2009, Collette's Grove Rd 2009, Field Rd 2010, Mundy Lane 2011, Anna Circle 2004, and McKinley/Lakeshore Rd 2008.

The Derry Town Council has determined that occasion exists to layout Lave Avenue, Rocky Road and Pebble Lane in accordance with a plan prepared by Blaisdell Survey titled "A Survey and Plat for Layout of Lake Avenue, Pebble Lane and Rocky Road" to be recorded at the Rockingham County Registry of Deeds along with permanent easements provided by all abutting landowners.

Motion by: Wetherbee, seconded by Milz.

Vote: 7-0-0

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

Fill-In Councilor Craig Bulkley replaced Neil Wetherbee.

Benson: I just want to have a brief discussion. At the special meeting I called, we had a discussion about recusal and whether Councilor Coyle should sit or not sit. I just want to read Section 43:6

Disqualification - No selectman or other officer shall act in the decision of any such case who would be disqualified to sit as a juror for any cause except exemption from service in the trial of a civil action in which any of the parties intended in such case was a party.

So I just want to make sure that you are clear that you don't believe there's a problem here.

Coyle: Mr. Chairman to address that I do not have any pecuniary or financial interest in any property on Worthley Rd. I do not have friends on Worthley Rd, I do not go out drinking with somebody that stands to benefit on Worthley Rd unlike several members of this Town Council. So I don't believe I have any interest or bias that does not extend to many members of this Town Council.

Benson: you don't think you would be disqualified as a juror?

Coyle: I do not.

Benson: so with that said I just want to open this up to the public. If anyone has an objection to Councilor Coyle sitting on this case, I'd like to hear that now.

Paul Dionne, 22 Worthley Rd: I am one of the two public officials that have been mentioned at each one of these meetings. I feel that Councilor Coyle should step down from this; my understanding is that he has filed a suit against the town regarding Worthley Rd. In addition I think his actions have shown he has a predetermined prejudice regarding particular individuals on Worthley Rd and thus we've had several delays that I attribute directly to him. That's all I have to say. Thank you.

Benson: are there any other objections to Councilor Coyle listening to this? Just objections. I'm just asking for objections. Let's move on. Mike, it's all yours.

Attorney Boutin: before he starts I'd like to know if Councilor Bulkley has had a chance to review the minutes of the previous public hearing on this?

Bulkley: I've reviewed everything that was provided to me in the package from the Town Administrator.

Boutin: and what was in that package?

Anderson: the entire agenda package which included the minutes from the last meeting.

Boutin: ok thank you.

Benson: are we okay to proceed?

Boutin: yes we are

Benson: do we need to swear him back in?

Boutin: no he's been sworn - he's okay.

Mike Fowler: I am going to review briefly the base line testimony from my previous visit here to the Town Council, back a couple of weeks ago. Worthley Rd has obviously somewhat complicated history and there is a petition that was filed on the same day as Lake, Rocky and Pebble, June 1, 2010. A survey was completed by Promise Land survey to review the conditions that exist as we show Worthley Rd you start down at the bottom of North Shore you work your way in a northerly or northeast direction up to a point around number 16 Worthley Rd. This a section where I believe there is sufficient evidence has been produced by Charlie Pearson to the

Planning Board back in February 2010. It also confirmed independently by our surveyor that this area has evidence of previous dedication. Essentially this area here you'd be looking only to do an acceptance. As you move further up the road you are in a section identified as area A overland owned by Gerald Bouthillette. This is any area of which we could not find evidence of any previous layout. So therefore a 50ft right of way was asked for and an easement was granted by this individual homeowner. You can see that the more narrow lines are represented right here, that's the roadway and again it's a 16ft plus or minus width it's a paved surface through this area. There is a little triangle down here identified as area B which is roughly 339 sq. ft. which is over land owned by Joan Boswick her actual address is up on Mundy Lane. Next section is C and this is land owned by Wendy & Neil Wetherbee it's an area of 9920 sq. ft. same situation here a 50ft right of way requested for a paved surface that's roughly 16ft in width. Now we are in the section that we believe had prior dedication across the land owned by and identified on the plan of John Gill, I know there has been a lot of discussion relative to the protocol. This particular area does not have a right of way and we are not recommending expanding that right of way. You can see the existing surface is identified it's paved up to this point and then it is a gravel surface as it take a little bit of a turn; then to end the road area D in the land of Steven and Karen Nottonson 4562 sq. ft. That area is going to be used for a turn around, for the Town. Essentially as we look at these areas you've got areas identified as A, B, C and D will require a layout. Once the Town Council finds occasion for that if you so choose to do so, then you would also have to take an action to formally accept the prior dedicated areas. The lower section of Worthley Rd which I have identified initially in my presentation and then also the area over where the Gill's own which we believe there is a prior dedication. As I had mentioned before there is a sewer main up to a certain point on this particular road. It's not carried all the way throughout. Also winter maintenance has been done on Worthley Rd up to #14 according to the records since 2001. Obviously emergency vehicles have responded over time whether or not they have been fire, police to various calls using Worthley Rd. And the existing section as you get to talk a little about the geometry is a fairly narrow section as you can see there are several dwellings that abut right up against the existing roadway. There would not be any need or desire to widen the road in that section. But as we talked about heading back up Worthley Rd, if we can acquire 50ft right of way we felt it was prudent to do so. For no other reason that if you have the right of way you can deal with drainage issue, trees to try and conform to the modern standards. Essential that's our presentation the Public Works Department has reviewed it and even identified that there would be some immediate needs required for some drainage issues. Obviously depending on how quickly things move in this winter season we may need to address that sooner rather than later and I'm sure there is some gully wash up there as well that we would need to address, so those are our comments and obviously a public hearing to follow thereafter.

Coyle: Mr. Chairman I was a little slow on the uptake but I should have brought it out to you because you asked me the question under RSA 46:9 or 46:6, is there anyone else on this board who feels that they may have a conflict of interest or bias? Anybody that maybe friends with somebody that stands to gain financially or somebody that you've gone out with, somebody that you've attended meetings regarding this road. Anybody that wants to speak to that?

Benson: Are we ready to open the public hearing? **Motion to open the public hearing please. Councilor Milz motion to open the public hearing**

Coyle: I'll take that as a no

Benson: yah I said no

Chirichiello, second

Benson: all those in favor of opening the public hearing.

Council "I"

Benson: any opposed. Public hearing is now open

Boutin: again before you testify I am going to ask anybody who intends to testify in this matter raise your right hand. Do you solemnly swear that the testimony you are going to give in this matter is going to be true to the best of your knowledge and belief.

Audience participants – yes

Mike Gill: Mr. Chairman, I come with a little baggage. I was on the original board of the DEDC, Nutfield Housing and Development Corp, Derry Housing and Redevelopment Corp; you name it I've been on one of these boards, town appointed or tax exempt. Now you seem to bring up

some comments about Mr. Coyle not being able to stuff in all fair standing. Mr. Coyle in my opinion defined conflict of interest. If there is no fiduciary gain and he's made his points clear then you as a board can decide to make him speak or not speak. You as a board! I find it offensive that you will not take anybody in support. I find it offensive Brad.

Benson: I understand that.

M Gill: okay. Worthley Rd is in total disrepair. I heard the Public Works Director say something about John Gill do you have a signed paper from John Gill, because the last time I heard about this meeting he was supposed to sign some paper. Do you have that signed by John Gill

Benson: Ed you had a meeting

M Gill: Ed was going to get that done. Did that happen?

Boutin: He did not sign it and I will inquire as to why when he gets up here.

M Gill: okay as it stands right now in my mind you don't have all things put together. You are having a public hearing without documentation from John Gill, so you shouldn't go forward go period. You shouldn't. Because you don't have that piece of paper signed and I'm surprised, I would be surprised you didn't all know about or know about it, I'm not sure. I'm going to take the high road say none of you knew about it. But if you did know about it then you should of said stop this meeting. You should have. So in my opinion this meeting shouldn't take one more step forward and everybody should go home and you should cancel it Mr. Chairman you don't have all the paperwork in place.

Carl Accardo, Olsen Rd: Sorry about the confusion but it was listed on the Town website as the first item of business, so I presumed.

Benson: don't worry about it.

Accardo: every homeowner in town understands well the multi-dimensional cost benefit analysis when they sign on the bottom line when purchasing a home. Those who made a decision to purchase a home on Worthley Rd extension are no exceptions to this natural process of evaluation. They all knew Worthley Rd was a private road and if not as some whom directly benefit would have you believe they own due diligence should have raised the same red flags that now they are waving to make their case for the public road acceptance. Having been on Worthley Rd Ext its clear the residences have failed in their responsibility to collectively work to ensure their road was maintained to a minimum acceptable standard. So now with what appears like years of neglect behind it and avoidance of expenditure, Worthley Rd residents are demanding their neighbors and fellow citizens bail them out of the mess, which is a proper word used by Attorney Boutin born out of their own neglect. I think not for this council to ignore or distort procedures that are clearly outlined by a recent NH Supreme Court decision that seeks to standardize these matters in a fair and equitable manner is simply wrong. We have witnessed many questionable deals go down in this town over the years, ranging from Sewer line spurs extended to Councilors residence, a sitting Councilor voting on an appropriation only to resign within days to assume appropriated position, from a disproportionate number of Conservation land purchase that are curiously just happen to be contiguous with one town official or another from no show town administrators to a council quorum that regularly convenes outside of these chambers. Bottom line if Worthley Rd Ext residents want to go public they will need to pay privately to get there, just as the rest of us did by following the rules. Thank you.

John Burtis, Lorri Rd: I agree with Mr. Accardo. I believe this Worthley Rd caper is a lightening rod for every single thing that is wrong with Derry. Mr. Dionne was up here a few minutes ago explaining that he is one of the public officials on this road concerned about Mr. Coyle's behavior. As far as I can see there are six people on this road at one time or another 50% of the residents on this road were public officials Mr. Dionne, Mr. Nottonson and now Mr. Wetherbee. So let's go back a couple of years. Mr. Wetherbee was vice chair of the Private Roads Committee and after an in-depth analysis he stated publicly from the same seat I'm sitting in right now he said that there were in this town with all the private roads we have only two roads deserving public status Worthley Rd and another road. His own roads and some other road I can't recall. So we have the Town Derry which plans no doubt to take productive capital our taxes from folks that have it we'll set aside for some bureaucratic cause and then we'll funnel some in this case over to Worthley Rd in this particular venture which is purely a political situation. There is no doubt in my mind as we look around here that at one time or another at 50% of the residents on this road a public official that somehow, somewhere that's who we're helping out. This is a waste of resources and it's rained on the money we take in. Sure we've done a lot of work on this road since 2010 but as Carl pointed out and other people have indicated who's it going to benefit, how

much is it going to cost, do we have a cost for this road? Is it going to be \$10,000, \$50,000 or \$100,000 bucks? All these areas all these problem areas, taking peoples land, running a road very close to some woman's house. Punishing somebody perhaps the very people who haven't signed something that's not in tonight. We're supposed to use our tax money for something of a public of advantage for us. We're supposed to use our tax monies to provide for the common good, something we use to call the common wheel. Something we are supposed to give the widest area of benefit. In this particular case we're gonna give a benefit to six people. I guess five now since somebody else hasn't signed if it goes forward without their signature. We must also remember that at the very end of the road there was a very large conservation land purchase, which seems to have benefitted people who live on this road because studies have shown that?

Conservation land boosts property value within a certain space contiguous to that land. I guess as a citizen of Derry we are looking at a road which is going to cost us what \$100 or \$200,000.

Fowler: the testimony that I've given is that immediately \$10k as is we are going to have fill potholes, deal with drainage issues and that's the extent of what's been represented. If you want to upgrade it in anyway which is obviously not part of the recommendation the costs escalate you know much higher than that \$10K but nobody is recommending anymore just the minimum measures to make it passable.

Burtis: well if we're going to do that for our friends it's going to cost more than \$100 grand. In conclusion let me just say that it doesn't make any sense to me that we are going to upgrade this road for five families currently. Two of which are public servants, one of which use to be and at the end of the road is conservation land we've already paid for and it just doesn't make any sense to me. As Mr. Accardo pointed out these people knowingly purchase their land on a piece of private road. As Mr. Gill pointed out people usually do that for a particular reason which is because they wish to live on a private road. Unless of course they then later have the chance to have it upgraded by the town they live to a point where it is going to increase their property values or in a particular case if it is going to open a particular parcel of land for future sale. That to me, I just don't buy. So for a small man living in a small piece of property over on Lorri Rd I just don't see this as a good investment by the town.

Susan Dionne 22 Worthley Rd: "In March of 2009 the Council put forth a road ordinance pertaining to private roads. During the summer of 2009, I obtained all the signatures from all 18 residents of that road and submitted that original petition 674:0 within the required months. Several months later one resident removed their signature requiring us to resubmit a petition for layout under RSA 231:8. This layout petition was accepted by the Town Council in June 2010. About one year later the town completed their research and survey work. During this process we've appeared before the Planning Board multiple times. In the last meeting they voted to recommend acceptance of Worthley Rd to the Town Council. Seventeen families want the road made public. As you know, the Town has paved the bottom section of the road and installed and maintain drainage in several area. The Town has also installed and maintained a street light as well as plowed the road the entire 30 years that we have lived here. I know that you said definitely since 2001 but I have been watching Town plows go up that road for 30 years. Sewer lines were also installed without obtaining easements. There is a legal existing right of way dedicated to the Town of Derry in perpetuity that covers most of the remaining unpaved section of Worthley Rd. Because of everything that I previously mention, the town has essentially treated Worthley Rd as public already. We want it made it official to ensure continued services from the town. And after nearly, we are going on almost three years now, after a three year process I would hope and assume this council can make a well and informed decision. And we would like to see this vote finally happen tonight. Thank you."

Dionne: "With all due respect, Councilors Fairbanks and Coyle, your position on this is already made. You've already made a decision on this. And at this point at the 11th hour to be coming up with new questions for us, I don't feel the need to answer your questions and if the Chairman says that I must in order to keep moving this process forward I will. But I don't, everything so far that you've questioned has been used against us to derail and delay this process over and over again. And I don't feel the need to answer any questions from either one of you."

Fairbanks: you are the petitioner correct? You brought the petition forward.

Dionne: yes I did and as I said if the Chairman says that I must answer further questions I will.

Fairbanks: with all due respect I am assuming you are making a petition for occasion when you are speaking this evening you are presenting a case for occasion for layout of the road. And that

is the purpose for speaking and as a petitioner I do have a question in regards to the signature that was obtained from the individual that actually resides in Germany as to how you obtained it.
Benson: you don't have to answer anything. You are here to present your case, you are here as a resident, you are not here in any other capacity except for a resident, if you'd like to the answer the Councilors question you can. But I don't think you are required to.

Dionne: our written petitions were filed following everything that was outlined to us in the original ordinance that we kept. We kept all the time lines. The Town over and over did not meet timelines. This should have been over about two years ago, had the Council kept all the timelines that were originally laid out. And it never said anywhere that we had to present this over and over. I have presented this several times to the planning board. And what it said was we had to file a written petition and we did that.

Fairbanks: I understand that and I did have an opportunity to review that about a month ago. And I just notice that there was an individual that resided in Germany and I was wondering how you obtained his signature.

Dionne: I don't want to answer any further question. That is something that was filed two years ago and now at the 11th hour you're questioning a signature.

Fairbanks: I have a right to Ms. Dionne according to the RSA that you are filing under. The whole process of this is to give testimony and we are also able to ask questions. I don't feel the question is offensive as I just explained; I haven't had an opportunity in which to speak to you in regard to that but I did remember seeing a signature

Dionne: you have a phone and an email you could have contacted me in the last two years.

Fairbanks: with all due respect I saw it a month ago.

Dionne: I hear what you're saying.

Fairbanks: I saw it a month ago

Dionne: perhaps you should have looked at two years ago.

Fairbanks: I didn't see it two years ago in my package

Benson: Janet if she doesn't want to answer your question, she's not on trial, she's not being interrogated.

Fairbanks: she is to a certain degree

Benson: she's not, she's not at all. She's sitting here as a resident.

Fairbanks: she's required to give testimony.

Benson: she's not required, she's sitting here as a resident of the Road and she's come up to ask the council to accept the road and she's giving us reasons why. That's what she's doing.

Fairbanks: based on a petition that I have a question on

Benson: and if she doesn't want to answer it I don't believe she is obligated to answer it.

Coyle: Respectfully, I think what the statue say is that we have the opportunity to. Witness may come forward and we have the opportunity to examine them. That's what it says. And if we could just take a quick time out and let Ed review it. Let tempers calm down.

Boutin: I don't need a time out. The witness is not obligated to answer any questions. Of course the council can consider the lack of an answer fi it chooses to. Whether the witness should answer the question is up to you. But most of the time I would say that you should. You shouldn't have to answer questions that are insulting or argumentative. But if you know the answer to a question, then say so. And if you don't know the answer just say that. Is that fair enough?

Dionne: Yes. As I originally said it was submitted in September '09, it took me all summer to obtain all those signatures. Some of them I had help with. Charlie Pearson helped me with some of them. There's nothing that stands out in my mind that stands out about that signature. I obtained it.

Coyle: Ms. Dionne when you bought the property you said, you lived there 30 years, I assume you knew it was on a private road when you bought it.

Dionne: yes

Coyle: and there is not town sewer that services your property.

Dionne: there is town sewer on Worthley Rd and Worthley Rd is one road. I don't live on Worthley Rd extension or upper Worthley Rd there's no such thing.

Coyle: I'm not going to argue that, I'm just asking if you have town sewer.

Dionne: I do not

Coyle: and finally over your 30 years I know that some of the neighbors have come together to maintain that road. I am assuming that you participated at sometimes during those 30 years in grading and that nature on that road. Is that true?

Dionne: Yes.

Coyle: Thank you I have nothing else.

Benson: Thank you

Maureen Rose: I found an article from 2008, I believe it was in the Derry News and it said, basically about Worthley Rd needing some upgrades and stuff. It says, the road is private but has been plowed by the town trucks for years according to Steve Nottonson a resident of the road for 12 yrs. "So it is private." But the condition of the road has deteriorated to such of a degree due to erosion that unless it is repaired in the next couple of weeks the town won't be able to safely get a plow truck up and down the street. With that in mind Nottonson and his neighbors have undertaken a proactive cooperative effort to maintain the road as best they can. Last year Nottonson said a couple of residents pitched in to purchase a couple of loads of road material to help with drainage problems but that it only helped for a couple of months before it washed away. This year he intends to lay more road material and rent a backhoe to create ditches to help with the drainage problems. Now that was in 2008 and I understand the petition was in 2009. There is a little bit more on this article. While Nottonson and his neighbors are more than willing to do the work needed to maintain the road and protect the safety of their neighbors he admits the project can be rather expensive for the residents. So this is about money and expense. Nottonson request falls into a gray area and "Metts who was on the councilor chair at that time", said he is not sure how the town should respond. He said residents of some private roads have been receiving perks from the town for years that residents of other streets are not receiving and it's time to level the playing field. Everybody gets the same treatment or everyone gets no treatment, Metts said.

For the now the residents are joining together to take matters into their own hand and pay for the materials out of their own pockets, if the town can encourage people to do things for themselves you don't know who could benefit, Nottonson said. Okay, then I am looking at the private roads document which is a resolution, I guess that is the private road bylaws or whatever that you are using. From the Derry website it says, Private Roads, occasion for layout. In doing so they shall determine there is a public need for the road. That there is no undue burden imposed upon the town and that the rights of individuals whose lands may be affected are considered. I don't think there is a public need for this road. Then also it says the right of way must either have been dedicated to the town on a plan or all owners shall conduct and pay for survey sufficient to permit a deeding of a right of way to the town. Now I just heard earlier testimony saying we paid for the survey. Correct? So you're violating your own regulation here, is that the way I'm reading it? Also the adequacy of a right of way the existing row is sufficient to allow for drainage which does not, does not present a danger to the public such as repeated wash outs or unnecessary expense to the town to make improvements such as would allow for safe package by the public.

Two cars can't get down that road together, I've been on it, and it's unbelievable. On this paperwork tonight that was handed out in the back of the room, I heard testimony that we spent \$10,000 and this says fiscal impact is approximately \$8000. So isn't that under oath wrong?

Fowler: no, no let me put a clarification to this and I'll answer this and extinguish the concern. The staff report if you notice was put on the agenda, I drafted this on September 20, 2011 when the Public Hearing had started. That is an indication of the legal research and survey costs to date.

The question asked of me was what is the future cost of maintaining the road and that was \$10K at this point so that's the disparity in the two number the 8 and the 10.

Rose: so the legal research and survey costs to date we have already spent \$8000.

Fowler: and that's even dated because there had been a lot of legal research been done since these public hearings have been conducted. I can tell you the most recent update that I have, not that it's germane to this argument but I think we're up to \$19K.

Rose: so we've already spent 19K of taxpayer money on this issue - correct

Fowler: correct

Rose: Ok and you also said in this statement the paved portion of Worthley Rd is in good condition overall and the immediate needs appear to be minimal. When these people are actually saying in 2008 they didn't do something quick it's really in tuff shape.

Fowler: and again there is a difference in where Steve Nottonson lives and I am going to show this to you on the plan, it at the very end of Worthley Rd. He lives on the unpaved section not the paved section. And the point I was trying to express in that statement that you just referenced was, the paved portion is not in terrible condition. There is some potholes that need to be addressed, but there is not a wide scale mill or grind job that needs to be done. The work that I reference going forward in what that Steve Nottonson had asked for in 2008 is there is some erosion in the gravel section at the very top of the road up there. Completely separate from the paved section that is an unpaved section of the top of Worthley Rd.

Rose: so the unpaved section is in good shape?

Fowler: no, no

Rose: so the paved section is in good shape?

Fowler: paved section is in good shape obviously potholes need to be addressed

Rose: potholes you could lose a car in. I mean you could lose a car in those potholes.

But anyway I'm not going to argue with you, that's your statement. I'm under oath as well.

Pecuniary definition means any advantage in the form of money, property commercial interest or anything else. The primary significance of which is economic gain. RSA 49:82 says no city official shall take part in a decision in which he has a financial interest greater than any other citizen or taxpayer. "Like me". Financial interest in the outcome-A public officer is disqualified if he has a direct personal and pecuniary interest. Preston vs. Gilum 104 NH 261. Land use Boards RSA 673:14. Now this is my interpretation, I'm not a lawyer but this is how I am ready this. RSA 673:14 which prevents a member from sitting on a case if that member has a direct personal or pecuniary interest in the outcome which differs from the interest of other citizens or if that member would be disqualified for any cause to act as a juror upon the trial of the same matter action at law. In my opinion, the Worthley Rd issue should be thrown out due to a conflict of interest and pecuniary interest by Councilor Neil Wetherbee. Mr. Wetherbee was on the private roads committee of which his road became recommended to be made public. He participated on that board in which in my opinion he should not have and I believe the result should be null and void for this road. Worthley Rd should not be here up for discussion. Where here tonight after several spearheaded meetings blatantly demanded by Neil Wetherbee and his strong influence on Town Council Chair Brad Benson and others to act according to Neil's wishes. Neil has been involved with meeting after meeting and until recently has decided to step down after being questioned by councilor Coyle. Now he has even chosen who will sit and vote for him. Neil Wetherbee.

Benson: "can we keep it non-personal please" This is very personal. Let's just not do this.

Rose: Neil Wetherbee is a party in this issue and stands to unlock land owned by his wife which has been landlocked by the Gills owing most of this private road. Also residing on this road is a conservation member Paul Dionne which has been brought up earlier prior chair of the Conservation Commission and my opinion this no coincidence. The public does not benefit, Mr. Wetherbee and his family benefit and the Dionne family benefits. I do not support any town officials having private and personal gain with the misuse of his public office. And in my opinion anyone who votes for this knowing these facts is just as guilty of supporting such conduct in office. Thank you.

Nancy Leonard, Ezekiel Dr.: I just wanted post that I am opposed to this becoming a public road.

We came before the board last year, we filed all of the documentation and we were just thrown aside. We have two fully paved cul-de-sacs that the school buses go up. We have two fully paved cul-de-sacs that the mail carrier comes up. I just want to post unfortunately we do not have power and the other members of the development have all left and no one was here except for myself and one other resident to oppose this road going through. Because we were just set aside and it wasn't even discussed it was discussed a couple of times and then we were just tossed aside and told we could not do it anymore. So I am just here as a resident to oppose going forward.

And I am not going to name names and yell and scream or anything. You know we are opposed because we weren't considered and we did file all of the paper work when we were supposed to.

Coyle: your road you said is paved?

Leonard: it is paved

Coyle: and you said it has a cul-de-sac so it has a turnaround

Leonard: there's two cul-de-sacs

Coyle: I assume they are both paved

Leonard: they are both paved everything is paved
Coyle: and how many residents on the two roads
Leonard: there are 20 residents on the two cul-de-sacs
Coyle: not 20 residents but 20 homes?
Leonard: 20 homes

Coyle: Thank you that's all.

Joan Bostwick, Mundy Lane: I have no axe to grind here but I do, there is a piece of my property that will be taken for Worthley Rd. I want to support the actions of Worthley Rd being made public. Mostly because I don't see, I've been here 30 years or so. Worthley Rd as Mundy Lane has always gotten plowed. I felt that they were equal. I'm glad and very thankful that you all decided to vote Mundy Lane to be made public. There was the same issue on Mundy Lane as on Worthley Rd that the sewer line came up Worthley Rd. They wanted the sewer line to go all the way up originally there was talk about the sewer line go all the way up Worthley Rd but because of the cost they cut it half way up Worthley Rd and only got it part way up. So I know that, that definite section is definitely a public road, to me in my opinion. I spoke with Jack Gill at one of the last council meetings that I was in. I understood that he was in some kind of agreement with the town around what he had originally said was gonna be done. I don't know why he didn't sign the paper because he had agreed and talked to me about it at that time. And I don't know what happened. Even without that, my understanding the Gills should be, was an easement given to town. Originally the way the road was laid out and I know I wrote the council. I know the new member or the people filing don't have that documentation. I went back and looked at all my notes about the town. Orchard Lane was originally going to go all the way up and go into Worthley Rd and was going to be a total pass through. I don't know but somehow in that discussion when that happened, Mr. Cooper, who was doing the building discussed to keep that separate. He was the one who paved the road. I don't know why he did it; he didn't do a very good job. The Town agreed to let Mark Cooper pave Worthley rd. up to the Gill's property, I think so he could sell the piece of land to the Gill's. That was done and a few years later the road started to deteriorate. But that was who paved the road; it was Mr. Cooper who paved the road. But the town has been plowing the road since I have lived there. It is no different than Mundy Lane. When the sewer line came up Mundy Lane, I did the same thing. I got a lawyer because there was always this confusion, is Mundy Lane private is it public what is going on. When I originally got it my MLM statement said it was public then there was all of a sudden this confusion. Was it private but the Town has always plowed Mundy Lane. They went and put the sewer up I got a lawyer at the time, cause I wanted to know, I wanted to make sure it was on the state highway map, it was gonna be public and it was going to maintain public. I thought my lawyer had done that, he has deceased, I have no way to go back to him but what I found out was that my little piece at the end of Mundy Lane was made public and house below me were still private and they had to get easement in order to make it a public road. That has been done I'm glad it's finished. I'd like to see Worthley Rd handled in the same way. I have no axe to grind I just, I would like to see this road treated just the same as all private roads have been. Everyone had come up and signed the petitions. I took Mundy Lane just like Ms. Dionne took Worthley Rd and got all the paperwork in. I did whatever I could to be supportive of her and she did what she could to be supportive of me because there were people I couldn't get signatures for on Mundy Lane. So I do know of the person who lives in Germany, I Don't know how the signature was, but I'm sure signature was achieved. So any questions?

Coyle: Ms Bostwick Mundy Lane is a paved road correct.

Bostwick: yes

Coyle: and it has sewer going up the entire length of the road.

Bostwick: yes except for my back two buildings.

Coyle: but the road itself is entirely paved rd

Bostwick: yes

Coyle: when the town took it over they did not have to do a significant amount of work

Bostwick: no

Coyle: you said that mark cooper owner of property where gills now live actually paid to upgrade the road correct. It wasn't done by the public

Bostwick: but the town agreed to that, you know no one else gave an easement to Mark Cooper, I didn't

Coyle: he actually owned the land

Bostwick: he did not own the road. He didn't come to me and say can I do anything. I don't think he went Mr. Bouthilette.

Coyle: but Mark Cooper was a private individual

Bostwick: he got an agreement from the town from someone in the town at the time to do it. It was definitely some substandard pavement and that's why it has deteriorated.

Coyle: and nobody on the road has fixed it for a long period of time.

Bostwick: they have tried to do, I think there's been, I have some drainage ditch under my road and I have to keep going in and having my son dig it out

Coyle: I'm assuming you've been up on that road

Bostwick: I do not drive up very often it's in pretty bad shape, but yes it's easier to go up for me in the winter time, it's easier access road to my property.

Coyle: Okay that's all I have. Thank you

Benson: Thank you

Joanne Gill, 8 Gill Rd: I'm not related to the Gills on Worthley Rd. I'm not on anybody's side, I don't know all the RSA's whatever, I'm just talking from my own personal how I feel. I live on a private road, every year my husband and I spend money to maintain it, you have to. I've lived there going on five years; every year we have to maintain that road because if we didn't it would be a mess the following years. Potholes whatever, we've bought fill and I don't mean pebbles, I mean big rocks, costly we spend, probably about \$6,000 in the past five years just to maintain it. You go down Gill Rd and you'll see the difference going down Gill Rd and up Worthley Rd which is deplorable. I went up there a couple of weeks ago. Thank God I have an all-wheel drive or I wouldn't have gotten up there. But I have a steep driveway on Gill Rd and I went out and purchased an all-wheel drive to get up my driveway. My husband and I are in our 40's but we have to go to the dump and we get sand and we maintain my driveway so I can get up. We put a lot of time into it. I feel bad for the people on Worthley Rd they've done a petition, I'm sure they have done it legally. The Charter does allow us to do petitions and have them by registered voters all that and I know they've put a lot of time into it but you know you have to maintain the road. I don't have septic, I mean public but I have septic field, I paid big bucks for that and in addition to that, every other year I have that pumped, that's an extra cost. I have wetlands on both sides on my road. I have conservation state people that come down with a jeep and they go off my road to side roads, they get through because they have to check out Ballard Pond. I have debris, the other day we had a storm and to get down my driveway before I could even plow, because my husband and I in addition bought a 250 truck, we have a plow, we plow our road and my neighbor down the street has a truck to, we take care of our road. I love my road, I love living in the country, my big picture window, when I look out my big picture window I see the snow it's beautiful. I knew that when I bought, do I like it, do I like to plow it, no I don't, but I like the beauty. I knew that up front. I had a lot just to get out of my driveway the other day we had to cut down about 6 trees before I could even plow the driveway. I don't have the option of taking this debris and putting it on the street for you people to pick it up, I have to pay to have someone to do it but again I chose to do that. But I don't think my tax dollars should be used for other people who haven't maintained their property and I do not think that \$10,000 is going to get that road up to any standard at all. So I would really have you people look at this in deep thought and see where you are spending my tax dollars, because I don't think it's fair. If anybody has any questions I'm more than happy to respond.

Benson: thank you

J Gill: thank you

John Gill 17 Worthley Rd: It seems like the center of the universe sometimes like a lightning rod. Mike can I ask you a question? Did your estimate of \$10,000 also include excavation to cap an active well which use to be used to irrigate the apple orchard which is where Orchard Dr. came from and all the property that we are on and also one of our neighbors has a sewer line that crosses the road which after some discussion with John Anderson and Mr. Boutin we talked about that and they said it's an easy thing to do just to sleeve the pipe. Is that an expensive endeavor?

Fowler: relative to the well capping or filling I did not put any provisions in there for that item relative to the sewer that same issue had come up but that's not a major issue if you are talking about sleeving a pipe. You know it's probably about \$300 worth of pipe and then a couple of hundred dollars' worth of excavation expense. Because I have been told the pipe is not very

deep, so it's not going to be a major issue on that end of it. To clarify for everybody the \$10,000 that I have put out there for a cost is a rough estimate for grading, tree removal, will it be more or will it be less it all depends. You know the way estimating goes like when you are building a house, you're doing a sewer project there are always things that are surprise one way or another. Positively or negatively so \$10,000 is a round figure representing what based on my experience it would take to get the road to a minimum passable standard so that it's not in grading any other issues gullies and any other issues. And if there is things of this nature that need to be addressed we need to envelope that into the plan.

John Gill: in all fairness to the neighbors on the road we have made two major efforts since I moved in 2001 to repair the road and to sustain the surface which has disintegrated. since Mr. Cooper did pave the road there was about less than an inch of top on there and no gravel underneath, so it disappeared in about two years after we moved in and since then it has gone downhill steadily because of the volume of water that comes down both from mine and the Dionne's property. And it goes down at quite a velocity. What I'm gonna try to do tonight is ask point blank if the council will vote on something I'm going to offer. My neighbors all think I'm against the road becoming public and that's never been an issue but the issue that is at hand has been the dedicated area, which up until this point two of my neighbors both of whom are town officials have felt that the town already owns the property and have parked vehicles on it put a granite monument well out on the property parked one of their vehicles on it repeatedly and we've gone to court over this and have prevailed. The judge in his statement asked that the monument be removed, that the vehicles be removed and unfortunately that has not happened yet. What I am gonna ask is this, If the council would please vote tonight before you take any other votes that you on returning or releasing the dedicated area. It has been over 20 years and under 231:51 I believe that what it was and I know Mr. Boutin and I had a conversation about this, I would like to see that released because then I would immediately sign the same agreement with the town that the rest of my neighbors have signed where they retain ownership to their property. And yet they are allowing the town an easement and do what they need to do. I know I would have to seek a variance because it would change the variance for my property and I would like to do that. But I would like to see the town release the property and then we would follow suit with returning the right to the town for doing what they would like to do. I apologize this has taken so many years to go ahead but this has been an issue since I purchased the property that everybody who's been involved, I apologize it's getting late. The gentleman who spoke tonight, the first few gentleman, I had never met before I didn't even think anyone was interested or had ever heard me speak here about losing this portion of my property, it's a considerable amount it's ½ acre and the town can do with what it wants. So I'm gonna ask that right now, I don't know what the procedure is to doing something like that, so I'm going to throw that open to you Brad.

Benson: okay

John Gill: I could say a lot more but at this point, living across the street from, let me say one more thing. I do live across the street two neighbors who are both town officials they are the only ones who will be affected by my losing property. And there again, whether financial or by being able to park their cars or whatever but this has been going on for years and I am going to apologize to my wife on TV forever moving her there. Because she has been behind me all the way on this and I apologize because I apologize to her every day for it. So my motion is before the council thank you very much. Thank you by the way for visiting one of my neighbors who I know you talked to this week and listen to and I appreciate that as did Mr. Coyle. I appreciate any interest in this matter because it has been difficult. Thank you very much.

Benson: "would you like to answer a couple of question.

Coyle: The current status of the road is in pretty poor condition is that fair to say.

John Gill; yes it horrendous, it's like the Grand Canyon.

Coyle: difficult to drive up?

John Gill: yes we have to use one half of one side which is probably about the width of a car.

Coyle: I have nothing else on that

Fairbanks: Mr. Chairman if I may? Jack you made mention of a small claims suit.

John Gill: I didn't mention what court it was in but I did mention that it went to court yes

Fairbanks: was it small claims court?

John Gill: it was small claims yes

Fairbanks: and a judge found in your favor

John Gill: yes he did

Fairbanks: he didn't find it was town land

John Gill: no

Fairbanks: did not, what information did you give him.

John Gill: well every plot plan every tax map and then when the new layout survey came out I obtained a copy of that from promise land survey, maybe the day it was out and brought that to the judge. And it clearly marked the boundaries.

Fairbanks: do you have a copy of that ruling at some point you can provide to the town

John Gill: I'm sorry

Fairbanks: do you have a copy of that ruling that at some point you can provide to the town.

Benson: do you think that's necessary, it's a civil action it really doesn't have anything to us

Fairbanks: Isn't

Benson: he can provide it to you but not to the town. But it is a civil action it doesn't have anything to do with what's going on here.

Fairbanks: Isn't the piece of land that is

Benson: it's a dispute between neighbors. And that where it needs to stay

John Gill: I apologize to everyone I have hearing aids so once in awhile the sound bounces around in here.

Fairbanks: I would appreciate a copy I am one who likes to be informed. I'd like a copy of it.

John Gill: sure

Fairbanks: provide it to me please.

Boutin: Not a question a comment then I'll ask Mr. Gill to correct me if I'm wrong. First of all this land was developed by Mark Cooper and I forgot to ask whether any member of the council has a present or past relationship with Mark Cooper.

Fairbanks: that would be me and as of two years if not three I no longer do his books.

Coyle: and respectfully the road was not developed by Mark Cooper nor was the developer. He built the house.

Boutin: that may be, but I just heard it represented that Mr. Cooper was responsible for the dedication of the ROW in this lot. If I've misunderstood then that's fine. I will say to the council first of all to the extent a district court action would have nothing to do with the title to the land because the court has no jurisdiction to determine title to the land. Secondly this is a dedication it's on record at the registry of deeds its part of Mr. Gill's deed. Now I did meet with Mr. Gill and worked out an easement with him. I sent it to his counsel who informed me that it was acceptable to him. And I don't know what happened after that when Mr. Gill changed his mind about signing it, perhaps he can address that. But the dedication, the quest is to release the dedication and as I've heard things over time from Jack. What I hear is that he does not want to give up the underlying legal title, "Title to the Ground". He recognizes that the town has rights to put a road within the dedication - am I correct there?

John Gill: that's correct

Boutin: Therefore I designed an easement which would accomplish that purpose, where right now the dedication may convey more than that. But I do not recommend that the council release the dedication number because it would affect Mr. Gill's right and he would have to obtain a variance because it was a condition of the variance that that dedication is there even though it pre-existed the variance itself. I also feel that if the town is still willing to sign the easement that would preserve his underlining fee which is what he was concerned about. So I don't think there is any need to consider releasing the dedication and that's all I have to say on it. I always did hear what Jack was concerned with and I was prepared to meet and I tried my best to do so. And I think this council would agree with me that I had done so.

John Gill: I'm not going against that and I appreciate what you've extended to me. It just didn't seem to; I no longer have the ownership of the land as far as I understood that day. Maybe I misunderstood something if you'd like to explain further.

Boutin: No I think maybe rather than me giving you legal advice all I can tell you is your lawyer and I discussed it and he had the documents including the backup documents and was satisfied that what you had wanted to do. That document did for you. Maybe someone else is misinforming you I don't know. But at this point in time I don't need to have that signed document for them to proceed.

John Gill: I know you don't, I know we had to clear that up because I know where that came from tonight.

Boutin: Yeah well there's been a lot of things that come out of nowhere in these things.

John Gill: no because the first few gentlemen that got up and spoke I've never met and where they got that I have no idea.

Boutin: Well the town is not bailing out on what it agreed to do.

John Gill: okay

Boutin: and you should know that

John Gill: I appreciate that

Benson: Thank you

John Gill: Mr. Chairman Can I ask one more quick question, Mr. Boutin would be the harm in the town releasing that other than the fact that I would have to get an easement.

Boutin: What it is an why I think it may have been suggested to you, is if the town voted to release the dedication then it would have to actually do a layout as opposed to acceptance of that road and the procedure would have to be further delayed and have to start over again. To no effect, except to spending more money.

John Gill: Okay, well.

Boutin: maybe you could tell us who suggested that plan

John Gill: it was no one sitting on the council if that's what you're fishing for. That's my idea

Coyle: you can be assured he was fishing for that.

Brian Corliss, 111 Chester Rd: I'm here to just give you a moment about Worthley Rd and the top of it, I previously owned all of the land between Chester Rd and the top of Worthley Rd. I purchased that property now know as 12-10 and 12-06 on the tax lot in 1978. I had no interested in the lot 12-6 that's where Steve Nottonison lives and in 1988 I was approached by someone who wanted to buy that. The only reason I owned that was because it was land locked land on a private road. But through council and a few of the surveying firms we arrange to approach the town of Derry and subdivision was approved. The reason the subdivision was approved is because the town decreed that Worthley road was a public way at that time. As we all know that you couldn't approve a subdivision unless it had frontage on a public way. The question was improvement I had made to Worthley Rd at that time. I paved it and at the top of Worthley Rd I created a turnaround which made a passage by large vehicles adequate. I brought load so of lumber from Benson Lumber up there, I hope that wasn't a problem, we've had moving vans and other companies come up there. I no longer own land on Worthley Rd but I do retain a ROW across lot 12-6 and I drive up and down Worthley Rd regularly. I apologize that I have not maintained it as well since 1978 but I don't own I have other interest. But I did want you to know that as you can see by documents that have been filed with the town over twenty years ago, it's Worthley Rd according to these documents, it's not Worthley Rd extension or annex or anything else. And this town I have found and I have lived here for 70 years and did agree that that was a public way and subdivision was approved. Any questions?

Benson: Thank you

Mike Gill: I'll be very brief. Neil Wetherbee was that the fellow who was District 2 Councilor that brought this all up. Who was the councilor that brought this whole issue up?

Benson: Brent Carney

M Gill: did I understand Maureen Rose correctly to say the ordinance or the law says that the residents of a private road have to pay for a surveyor. Is that correct? Did I also understand Mike Fowler to say that the town picked up that portion of surveying the road and assuming that's correct how could we do that? Could somebody explain to me how that was done? When someone made the statement to go survey that road knowing the residents should have picked up the tab.

Chirichiello: we did the same on Paul Kimball's road.

Benson: we did the same on every single road

M Gill: How could that happen? Who's watching the gate? Who's the gatekeeper? That's my problem. Who's the gatekeeper? Is it the administrator going off on his own?

Benson: No

M Gill: if it's not the administrator, is it the Public Works director going off on his own? Or is it the town council off on their own? That's a fallacy again. A surveyor costs six to six thousand dollars.

Benson: we'll get back to you on that Mike we'll get you all the documentation and share that with you, just because the accusations have been flying like crazy through here. So let us get back to you on that.

M Gill: my issue is the only time anything makes sense is when all you people sit here not getting back to me. When you sit here in public that's when you have your communication with me. Not getting back to me.

Benson: I will have that information

M Gill: I would like to have that in public who did it?

Benson: You bet

M Gill: who did it

Benson: you bet

M Gill: Thank you

Ms. Rose: I won't sit down until you tell me to get away. This document is on the Town's website and it's a Private Roads Resolution. I'm not making up anything it's not an accusation. Another question I have quickly for Attorney Boutin is the petition that was signed does that have a statutory of limitation and has it expired?

Boutin: no

Ms. Rose: okay but this is the document I did not make up anything and I'm not accusing anything it says it black and white in here. So you can take a good look at it.

Benson and we will respond, as a council.

Coyle Motion to close the public hearing

Benson: all of those in favor of closing the public hearing?

Milz: excuse me we have one more person.

Benson: we are going to hear one more is that okay Councilor Coyle?

Neil Wetherbee, 18 Worthley Rd: for the record I am here as a private citizen, taxpayer and resident of Worthley Rd since 2001 and I am here to speak in favor of its layout. This is not about personalities this about 18 families and taxpayer and it's about a process. As many of you know private roads have been a political football since as far back as anyone can remember. There has been bad blood between residents and the town because of this issue and in the case of the Rainbow lakes road there was a court case that led to the town having to accept some of these roads as public. I should note that none of them had sewer on them. Because of that in recent years the town layout process by which roads which had been maintained by the town in various ways over the years could petition the town for their road sot be formerly accepted as public roads. I'd like to address why I believe this road should be laid out. First off Worthley Rd is just over 1500Ft in length or a little over ¼ mile. Of those 1500ft, 1000 of it, almost 1000 of it has been previously dedicated to the town. The lower portion was dedicated based on a number of different actions by the town and large section of the upper portion was dedicated as a requirement of the Zoning Board in 1987. These actions alone indicate that it was the intent of both the Zoning and Planning Boards that Worthley Rd should become public. To my knowledge with the exception of so called paper streets that were planned and never developed, there is no indication that the town has ever not excepted dedicate sections of road that have been developed. I mention these private dedications in the context of this layout hearing because these layouts are necessary to connect the dots so to speak between the dedicated sections. I'd like to just quickly address a few more issues that have not been previously addressed. The first is regarding the layout section for part B labeled in the Promise Land Survey. You will note even though this section is being laid out, if you look closely at the left side of the drawing, I'm sorry the left side of the property line of section B there is both Town sewer and drainage that extends onto that property and as we now know there were no easements take for this sewer or drainage. I mention this because for those who might hold the position, that if there are town utilities with no easements on a road, that is a criteria for whether it should be public or not. If you subscribe to that theory then your choice is clear on this section of layout. I'd also like to address a misperception that the upper part of Worthley was and extension or some kind of afterthought. The fact is that Victor and Claire Damboise have lived at the farthest end of Worthley Rd since the mid 1950's they have lived there full time, raised their kids there and have been paying taxes longer than many of us have been alive. They have watched house spring up all around them through the 70's, 80's and 90's and while the town maintained the road they never formally took action to accept it. The last issue I'll address is the current condition of the road. When I moved to Worthley Rd 10 years ago I can tell you that the upper part was actually in better condition than the lower part was. It had recently been paved by a developer and we have heard prior testimony that it was paved with the knowledge of the town, however while the upper dedicated section was paved all the way down to the lower dedicated section. It was still the town's position the road

was private and as such the town did not require specific standards for that pavement. While I know hind sight is twenty-twenty, the town could have required the developer to pave to town standards and subsequently taken action to accept the road in top shelf condition. I'd also like to point out that this petition process initially started back in June 2009 and even at that time road was in far better condition than it is now. While it is unfortunate that it has taken over two years finally get this issue before the council the families on this road should not be penalized for the lack of maintenance that has occurred in the interim. In closing I would just like to reiterate that this is about 16 families and a process that the town laid out. The actions of the Zoning Board, Planning Board and town itself clearly show that the town intended to be public and should be laid out as such.

You also have a recent unanimous vote of the Planning Board recommending that all of Worthley Rd become public. I hope you all consider these facts as they've been presented and finally put this private roads issue to bed. Thank You

(Coyle asked if he could ask a question, the Chair said, "Yes")

Wetherbee, I will not answer your questions Kevin, I don't believe you should be sitting on this case.

Coyle, Move to close the public hearing

Benson all those in favor to close this public hearing

Council Members, "I"

Benson any opposed. The public hearing is now closed.

Close public hearing 7-0-0

Coyle: Mr. Chairman I have questions of Mike.

Benson: "okay"

Coyle: I guess I'm going to start with Mike. I am going to refer you plan D 26722 which is a plan of land entitled Worthley Rd extension private road, which is referred to in a request for an abatement by a Neil Wetherbee and in it he or his wife writes that he's an owner of an unbuildable lot in the town of Derry, can't build on it on a private road without a variance. Are you familiar with that plan and that it calls for Worthley Rd extension? I believe that you provided it to us and I believe you are familiar with it.

Fowler: I don't remember it specifically but I may have provided it some point along the line there have been hundreds of documents.

Coyle: can I show it to everybody. I don't have that many copies

Coyle: The owners of those lots on Worthley Rd acknowledge that it is a private road, do they not.

Fowler: in this particular plan that's what it states.

Coyle: and then the application for abatement acknowledge it's a private road

Fowler: I don't deal with abatements that's not my department

Coyle: Michael getting onto other things, I want to talk to you, the lower part and Ed you can help us with this. The lower part of Worthley Rd we are not really considering and we are not laying out tonight.

Boutin: it is up for acceptance tonight

Coyle: but it is not being laid out

Boutin: it's up for acceptance as is the section in front of the Gills property

Coyle: I guess I'm going up one other time. So what we are laying out is from 14 and above correct which is basically the dirt portion of the roadway

Fowler: the area you are laying out is Area A across Bouthillette property, Area B across Bostwick property, Area C across Wetherbee property. Not the Gill property and Area D across the Nottonson property for layout.

Coyle: for layout and the first portion of the road I know Attorney Boutin said for acceptance but we are not laying out.

Fowler: that is correct.

Coyle: the portion of the road that you are going to spend the \$10,000 on is that significantly part of the portion that's being laid out.

Fowler: it's primarily and again without assessing the individual location it's primarily in the area of Wetherbee, Gill and Nottonson's properties.

Coyle: and the portion that we are laying out has a pipe under the ground, not a sewer pipe a private septic pipe underneath it

Fowler: I believe and again those in the audience can correct me but the pipe that has been referred to crossed the Gill property in the prior dedication section.

Coyle: but it's not the Gills pipe.

Fowler: to the best of my knowledge - no

Coyle: and you've been up the road?

Fowler: on occasion - yes

Coyle: and if we were to accept it tonight you would have to go out there pretty quickly to bring it up to town standards.

Fowler: I would be out there very soon

Coyle: that would be to protect the town from liability - is that correct.

Fowler: liability and also from service ability of a maintenance stand point to be actually able to plow it with some reasonable level of service.

Coyle: I'm assuming for liability purpose we are going to have to cap the well that was talked about.

Fowler: again Kevin I want to have an opportunity to review that a little bit more in depth. I know that has been brought up today, hadn't really been discussed much in the past. I could certainly take a look at that.

Coyle: the pipe you said, the septic pipe was not very deep you said.

Fowler: as has been anecdotally related to me, I believe that it is probably two feet deep it's not a 10ft deep pipe that I know.

Coyle: now to pave the road not up to town standards but just to pave the road so that it's passible, you estimated last time it was about \$100,000 is that a fair estimate.

Fowler: that's a fair estimate and again that's not to the 50ft ROW or 24ft wide of pavement that we had had some discussion earlier.

Benson: but that's not what we're doing

Coyle: No

Benson: and that's what we're not doing to any of the private roads. You know so, you know that is not what we are looking to do, that's not what we have talked about, that's not what we have discussed.

Coyle: you said we spent \$19,000 up on Worthley Rd. What does that number mean?

Fowler: when the number had been represented that had been the survey, and that's Ed's legal services to date for the various requests and easement preparations, etc.

Coyle: and that had been spent even before we had a discussion for occasion

Fowler: yes

Coyle: do you know who made that recommendation

Fowler: relative to cost

Coyle: to do it without discussion whether there is occasion to do.

Fowler: that was the town council

Coyle: Town Council or Counsel

Fowler: that was collectively a body of seven, you can't move forward on the survey when you accept the petition on or around June 1st you've got to move forward with the survey if you are going to be in a position to accept these roads.

Coyle: correct me if I am wrong I don't remember us giving you an order to do a survey. So it must have been somebody.

Fowler: I'm starting to get a little red under the neck here because I've heard on a couple of occasions that is the Public Works Director working rogue and that's absolutely not the case here. I'm trying to placate the demands and the needs of council and residents that live here and that's not fair to put out there that somebody like me. I'm trying simply to get the job done and I did not work in a rogue fashion and did not work outside the boundaries of what's been said here so. I resent those statements and even an inference along those lines.

Coyle: I'm not making an inference I'm just trying to find out who ordered it.

Benson: the Council ordered it.

Fowler: the Council ordered it!

Boutin: it wasn't me.

Coyle: okay I don't have any more questions Mike for you at this point. I do have a couple of questions for counsel.

Benson: Any questions from Council for Mike?

Olbricht: let me ask you and if I could sort of direct it this way. When I first moved to Derry I lived in a PUD, we knew it was a private road and knew it would always stay private. We wanted it to be private. There are reasons why over the years that I've lived here that I knew there was a debate going on with private because certain private roads had been maintained and still plowed by the town. The town never snow plowed our development. So as much from time to time we talked about asking the town to take over. We knew it wouldn't happen. My question I guess for you is that the case of Ezekiel, Clyde and Sarah there was no incidence of town road maintenance on that road.

Fowler: one of the prevailing issues of Ezekiel, Clyde and Sarah were submitted on or around the same time. My recollection was that the Town Council reviewed that petition on the same day as Lake, Rocky, Pebble and Worthley and voted 0-7-0 to not proceed. And one of the factors that was brought up was that the town had never done any plowing and winter maintenance. They had an association that did the work down there. Let me point out the best geometry of any of the private roads that were under consideration that evening but again it failed, but again I think that was one of the predominant reasons that the town had never done, there's no utilities that the maintains or put under ground in that particular area.

Olbricht: so then from what I know about the policy, I wasn't on the council when it passed its road policy but I sort of understood the debate and so far we've, it looks like to my count 17 roads that have come to this council. Thirteen had been accepted as of tonight, three had not been accepted, the three we just talked about and then there's Worthley Lane and I understand from that point that there is no other where we are going to have these incidents where we could get a petition.

Fowler: it's possible but you have a few other roads that had prior winter maintenance but could not muster the signature for, to bring it forward. Jenny Dickey Hill is one that comes to mind.

Olbricht: so we're getting to the end.

Fowler: yes,

Olbricht: and from what I know about the policy and I guess what I found most interesting is I think we've covered the ground here, we know why it happened I heard all the debate from the councilors to why you should have and why Brent Carney was insistent that we had a private road policy. I am just wondering about one section of this because I think it speaks to everyone of concerns about costs, well in the policy itself which I know is kind of interesting it was accepted 5-2-0 (Wetherbee and Chirichiello) voted against it. But even in the policy it says fiscal impact: acceptance under any of this ordinance will have a fiscal impact upon budget of the town from a perspective of the annual operating budget. It goes on about cost, but everyone knew when this private road policy was accepted that there was gonna be a cost. Nobody has come from the council side or from you and said, "we are going to take these roads as public and go pave them and make them to town standards". There has never any of your understanding, my understanding so I don't think that's ever gonna happen. But they are in the road maintenance plan now as I suspect as public roads. They have to be maintained for a lot of reasons. So after having thirteen roads accepted all I might note that have been accepted unanimously for what I can tell unless somebody was absent or some other issues were going on. These have been accepted without anyone saying no. I don't understand. This is my problem. I don't understand why Worthley has created such a problem. Here they are a road who has said here's the policy, they sign the petition, we come to the council and we are just like any other road. Just like the thirteen, they meet the conditions, there is little bit of cost to it but the town passed the thing that said there would be a cost to these. And personally I don't see a reason to vote no, I mean the council passed this as policy, I wasn't on the council then but I don't why I would vote no to a project that is not unlike any of those that the Town Council has accepted. Why this one is separate from all of the others? To me it only seems to be political and we get two councilors who continue be against this because of Neil. I don't have any problems with them or Neil; I don't have problems with the other two councilors but let's be fair. This is policy that the council passed. We've treated thirteen other roads fairly; it's time to treat Worthley fairly.

Coyle: can I just point something out, I know you have talked a lot about the policy but we are not operating under the policy. We are operating and this hearing is under state law. We're accepting this road under state law not under a policy that was written and a lot of those roads were taken under the policy. This is not the case in this particular situation and Attorney Boutin can correct me if I am wrong. We are operating under 231:8 and taking it with the state law which

says which there says there has to be an occasion. This means a greater benefit to the public, than the cost incurred by the public.

Benson: but there were other roads taken by 231:8. This is not the only road we've taken under that situation.

Coyle: He talked about the policy and other people have talked about the policy. It's not under the policy it's under state law but we are looking to lowlight this road.

Olbricht: I don't see any other issue where we brought up this occasion issue to the point we have with Worthley. Why is Worthley so important in the consideration when all the others weren't?

Coyle: Joel I'd be happy to have this discussion with you. Thank You

Benson: any other questions?

Coyle: actually Joel brought up a couple of questions. I'd like to ask Mike a couple more questions.

Benson: two more please.

Coyle: Mike have we taken a road that is in as poor condition as Worthley Rd, that required \$10,000 on emergency maintenance.

Fowler: no but Collette's Grove is a close second.

Coyle: have we ever accepted a dedication, in your time here, of a road in as poor condition as Worthley Rd

Fowler: I would say no as well.

Coyle: that's all I got.

Fairbanks: Mr. Chairman if I may, Michael did you feel pressured on this road. There is a reason why I'm asking. It's because Kevin and I were leaving the building after a meeting and Jack Gill said to you, "Mike I know you're being pressured." And you looked at Jack and said, "We are all being pressured."

Fowler: the words I said at that time was, "We are all under pressure." not being pressured. The Point of that being is this has been a very long process for everybody. And quite honestly some, of the comments have been brought up relative to the taxpayers and the waste of money; I also feel that because it's my budget and my bottom line. There is not been any direct or indirect any pressure in any direction from any of the other Councilors, from when questions have been asked, I've answered those through the administrator period end of story. I've got to be very honest that this has been a very draining procedure this one in particular for the number meetings it's involved. I'm trying to keep this on track as much as possible but, we have seemed to have strayed all the way around and so I just want to put that statement out there. My department's view is we will do the measures that are required to bring this, this point it is the council who will vote on that. If it is voted affirmatively, we will move forward with the maintenance that is required and follow it through thereon forward.

Fairbanks: Thank you

Coyle: Mr. Chairman does anyone else have any questions.

Coyle: I would like to make a motion we apply conditional layout statue for existing private rights of way for class VI highways under RSA 231:28 which would allow the town to lay the road out subject to the owners paying to bring it up to standards. I would suggest that the owners bring it up solely to what Mike has suggested the \$10,000 cost. Because I think that is reasonable. I don't think that we have, this would be unfair to anybody, I think they have left road to a standard that we should accept as a private way, most of the private ways accepted have been paved.

Benson: Are you making a motion or lecturing us.

Coyle: I'm sorry I'm making a motion.

Fairbanks: second

Olbricht: and what other road have we told them that they have to fill the potholes before we would allow it to be a public road.

Coyle: no other road that I know of has cost us \$10,000.

Olbricht: I'm sorry I look at this sheet and I see more than just \$10,000 on four of them. I don't know what the real costs are. I don't see us being unfair because of the costs applies to Worthley. We've been consistent. We haven't seen the Council pull itself in so far has never said that if it cost more than "X" number then we can't do it. We have to be fair.

Chirichiello, Mr. Chairman Motion to extend 10 minutes

Milz, seconded

Vote: 7-0-0

Benson: can I have discussion on the motion on the floor.

Coyle: I would like to because you cut me off

Benson: because it should have been a motion, and a second then a discussion.

Coyle: we have not had a road like Worthley Rd come before us and what we are talking about is the upper portion of Worthley Rd that is dirt. That the residents have let go for whatever reason and has become virtually impassable. Now they come to the Town and say we want you to accept it. There isn't a road we have accepted in the past that has town sewer, and is paved and has minor pothole damage. This is a road that has significant issues that need to be done immediately. I don't see any harm in making the residents who should have been maintaining this road to begin with, pay for it.

Benson: other discussion

Chirichiello: the only question with that is, I think Joel has a good point. We didn't ask that of Collette's Grove and we didn't ask that of the road Mr. Kimball lives on. There was huge pothole in his road and the town did survey and spent money for that. I think it only fair that if we apply one then we need to apply with it all. That's my issue with it.

Coyle: I would just like to point out Brian that on that road, there was town sewer in the roadway which is not the case here.

Benson: there is town sewer in the roadway and there's actually town sewer that comes up to the part where some of the erosion has occurred.

Coyle: not in the dedication, not above the dedication and you are talking about maybe fifteen feet of the layout that you want to propose.

Benson: let's take a vote on your motion, how's that sound.

Boutin: I'm going to do Kevin a favor here, when you were saying what you did, you were saying that most of the expense would be in a part of the road that is not being layout but is up for acceptance and if that's unclear maybe you want to clear it up. Because that's the way I heard it.

Coyle: My motion only applied to the portion that was being laid out not that we were going to say that we were going to accept.

Boutin: But in your explanation you were talking about the area above that. Which is the Gill property? Which I thought. All I want you to do is have a chance make a clear record of that. You are entitled to that.

Coyle: yup, I agree that I am asking from above #14 the portion we are going to layout.

Benson: Okay

Anderson: the old green sections.

Fowler: just a suggestion just use area A,B,C,D that are marked on the plan that are the laid out sections.

Coyle: I guess any section we are going to lay out.

Benson: Right, I think we are okay with that. So I'll move to a vote. If everyone is okay with that?

Vote: Coyle-yes, Fairbanks-yes, Chirichiello-no, Bulkley-no, Milz-no, Olbricht-no and Chair votes no. Motion failed

Milz: Mr. Chair. I move that the Derry Town Council move to accept two sections of the ROW of a Class V ways: Intersection of Worthley Rd, North Shore Rd to 16 Worthley Rd: easement over land owned by John Gill of 17 Worthley Rd map 56 lot 7, recorded on plan D 19360 & D 18796, seconded by Coyle.

Discussion: I guess I'd like to discuss a couple of things, in the Planning Board it was done in four separate motions. And I understand that this is sort of, we are here under 231:8 A layout petition. Some of those portions that we are not layout you mentioned in your motion and I don't think that we have the authority to layout that, those portions or, I don't think your motion is valid, That the question I have.

Boutin: Frankly, it is just as easy to consider it all a layout but the Planning Board felt that the lower portion of Worthley Rd, and I'll discuss this with you privately but not now, was already a

dedication in defacto or implied accepted by the Town; therefore, they recommended acceptance. The upper portion short of the Nottonson property is clearly dedicated on recorded plans approved by the Planning Board and as a condition of a variance, that can be accepted so that the appropriate thing to do is to vote on acceptance of those two sections and to vote on layout of the Nottonson Section area D and then Areas A,B,C,.

Benson: isn't the motion on the floor, doesn't that do it for the acceptance of it

Boutin: yes it does.

Benson: so the motion on the floor is the acceptance motion we need to move forward with.

Boutin: that's correct.

Benson: Okay

Coyle: did you just read that from somewhere.

Benson: it's in your book

Coyle: can you just hang on a second so I can look at it.

Benson: 11-75 Kev

Coyle: I just didn't see the motion

Benson: turn the page, no go back one more. Right at the bottom

Benson: so then we need to do two motions

Coyle: shouldn't we do the second one first

Milz: I just read it.

Coyle: so Ed would you correct me if I am wrong occasion does not have to exists for this motion

Boutin: you're correct.

Coyle: and your comfortable given the Supreme Court case that council doesn't have the authority to determine whether a road is public that this motion is still valid. We talked about that case.

Boutin: you talking about the Gordon Case.

Coyle: yes

Boutin: I'm satisfied that you can act.

Coyle: Okay

Benson: does that take care of your concern Kevin

Coyle: I'd prefer you make it two motions because I can't vote in the entirety on this motion. I would prefer that you would have voted.

Benson: Well we have a motion on the floor, and I have a second. Any further discussion With no discussion we will move to a vote.

Vote; Bulkley-yes, Milz-yes, Olbricht-yes, Coyle-no (I don't think that we have the authority to do the intersection from Worthley Rd to North Shore Rd to 16 Worthley Rd, I think the Supreme Court has answered that and secondly on the easement over John Gills land this council has never accepted a layout of land in this deplorable condition and it's setting a dangerous precedence for further developers who want us to accept land for dedications without fully completing development.) **Fairbanks – no, Chirichiello- yes, Chair votes – yes Vote: 5-2-0 (Coyle, Fairbanks)**

Milz, Mr. Chairman further the Derry Town Council has determined that occasion exists to layout the following ROW pursuant to RSA 231:8

14,120 sq. ft. over a land owned by Gerald Bouthilette of 16 Worthley Rd Map 56 Lot 40
339 sq. ft. over land owned by Joan Boswick of 12 Mundy Lane Map 56 Lot 41

Benson: Dave just a minute please

Chirichiello: Mr. Chair make a motion to extend another 10 minutes, **second Olbricht.**

Benson: Discussion on that motion.

Coyle: I'll agree as long you don't extend it beyond the 10 minutes.

Chirichiello: well hopefully we won't have to.

Benson: **Vote: Coyle-yes, Fairbanks-yes, Chirichiello-yes, Bulkley-yes, Milz-yes, Olbricht-yes and the Chair votes yes. Please continue.**

Councilor Milz :

9,920 sq. ft. over land owned by Wendy & Neil Wetherbee of 18 Worthley Rd, Map 12 Lot 9

4,362 sq. ft. over land owned by Stephen & Karen Nottontson Trustee Nottontson Family revocable Trust 2002 of 24 Worthley Rd, Map12 Lot 6. Seconded Coyle

Benson: Discussion on that motion.

Coyle: this has to do with occasion. Occasion has been defined quite well by Attorney Boutin, there has to be a showing of a public benefit greater than the public cost. You have direct road that dirt road dead end road servicing six residences that's what we are laying out. The Public cost is a least \$10,000 plus the \$19,000 we spent already. There is no public benefit. There are no significant public utilities on these layouts. There is no public benefit what so ever to be had, there's a significant private benefit to be had but no significant public benefit. These road don't connect to anywhere, they don't do anything. So for that reason I respectfully will be voting no.

Benson: other discussion on that motion. With no discussion we'll move to a vote

Vote: Coyle-no, Fairbanks-no, Chirichiello – yes, Bulkley-yes, Milz-yes, Olbricht-yes and the Chair votes –yes. (Vote: 5-2-0 (Coyle, Fairbanks))

Benson: take a motion to adjourn. We've already extended that's okay.

Coyle: move to adjourn.

Benson: Can I have a second?

Fairbanks: seconded

Benson: all those in favor-I (7-0-0)

Benson: Thank you.

Coyle: Michael can you keep that as a public record, Thank you.

Old Business - Not taken up

- 11-83 **VOTE - WATER COMMISSIONERS - FY 2012 Municipal Water System Improvements/Expansion:** Zone 3 – Route 28 Supplemental Appropriation for Route 28 Phase only in the amount of \$1,050,000 in the FY 2012 Water Division Budget (for a total FY 2012 appropriation of \$1,968,500) and Vote on a Bond Resolution in the amount of \$1,968,500
- 11-84 **VOTE - SEWER COMMISSIONERS - FY 2012 Municipal Wastewater System Improvements/Expansion:** Route 28, Sunset Acres, Maple Hills – Supplemental Appropriation for Route 28 Phase only in the amount \$805,500 in the FY 2012 Sewer Division Budget (for a total FY 2012 appropriation of \$1,975,500) and Vote on a Bond Resolution in the amount of \$1,975,500
- 11-96 Charter Amendment Discussion

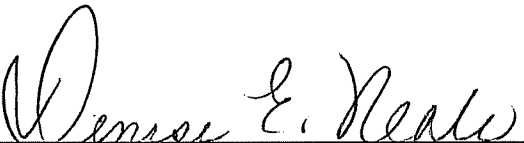
New Business - Not taken up

- 11-112 Southern New Hampshire Planning Commission Appointment


Council Requests / Open Discussion – None

Adjournment 10:33 p.m.

November 15th Meeting will be brief followed by a workshop on Council Rules and Assessors Plan



Town Clerk



Date

Recording & Transcription by: Denise Neale, Town Clerk
Reviewed by: John Anderson and Town Counsel