

Corrected Minutes (highlighted page 3)

TOWN OF DERRY

**Town Council Meeting
Derry Municipal Center**

**October 18, 2011
Tuesday - 7:30 PM**

7:15 PM

Non-Public Session 91A:3 II (c) – Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the body or agency itself, unless such person requests an open meeting

Call to order: 7:30 p.m.

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

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

Consent Agenda

- 11-103** Acceptance of Non-Public Minutes – Session I & II – October 4, 2011
- 11-104** Acceptance of Minutes – October 4, 2011
- 11-105** Abatement Refund for Interest Request
- 11-75** Schedule Continued Public Hearing – November 1, 2011 – Worthley Road Layout RSA 231:8 and Acceptance

Accepted as written

Chairman's Report

***** Adams Pond Dam

The chairman has received an opinion from legal counsel regarding the Adams Pond Dam and has asked for the Town Council to review.

What Chairman Benson would like to do is schedule a meeting to explore discussions on this matter. He polled the Town Council for a discussion meeting.

Poll: Coyle-no, Fairbanks-no, Chirichiello-yes, Milz-yes, Wetherbee-yes and the Chair-yes. A meeting will be scheduled.

- Congratulations to Councilor Olbricht as he has been named Citizen of the Year by the Chamber of Commerce. Also Frank Childs will receive the Director's Choice Award, Tim Barchard's Professional Martial Arts Academy will receive the Business of the Year Award, and the Service Award will go to the Upper Room. These awards will be given out at the annual dinner on Wednesday, October 26th at Promises to Keep
- Mary Ellen Hannon, School District Superintendent, has announced she will be leaving her post as of 6/2012.
- Trick or Treat on Main St will be held on 10/22/11 from 10am – 3pm

Administrator's Report

The former Depot Steak House building was sold at auction to Sabatinos North LLC. They are scheduled to close in 30 days.

The Town's Surplus Property Auction yielded a little under \$20,000. Selling two vehicles brought the most revenue.

Welcome to the Town of Derry the new prosecutor, C. Scott Jordan who started on Monday morning.

The Derry Indoor Farmers Market will move indoors to Veterans Hall for November and December. In January, February and March the Indoor Market will be held at West Running Brook School Cafeteria the 1st and 3rd Saturdays.

Public Forum – Non Agenda Items

Open Public Forum

Vote: 6-0-0

Mike Gill, Gill Rd – Referenced the zoning board meeting of last week. Disappointed with how the public hearing was run. It was disrespectful. He has read the agenda in regards to the appointment of fill in councilor under RSA 43.7, which he doesn't understand. He expressed his displeasure of taking private roads and making them public.

Maureen Rose, Windham Rd - Spoke in regards to the Adams Pond Dam. On the topic of Worthley Rd her opinion is we should not spend public money to benefit a private road. In regards to the Zoning Board meeting she watched the disregard for the public speakers at the meeting.

Al Dimmock, High St - Defended the ZBA and its actions in the meeting last week. Explained who has authority over this board. He then congratulated Councilor Olbricht on receiving the Citizen of Year Award.

Bill Cooper, Hood Rd – stated that at the last two meetings of the Zoning Board the board was disrespectful.

John Burtis, Lorri Rd - Attended the 10th anniversary of 911 at the Fire Station. He felt it was an exceptional community event and program. On Worthley Rd there has been a perception in community since it started, as three public officials live on this road. It's using taxpayer money and looks bad.

Mr. Coyle would like to seek a second legal opinion on RSA 231:8 vs. 231:28. He gave an explanation of why.

Move to obtain a second legal opinion regarding 231:1 to 231:31

Motion by: Coyle, seconded by Fairbanks.

Vote: 3-3-0 (Milz, Wetherbee and Benson) tie-failed

Move to dismiss Mr. Wetherbee from the above vote

Motion by: Coyle, seconded by Fairbanks.

Vote: 2-4-0 (Chirichiello, Milz, Wetherbee and Benson) failed

Following the motions to get a second legal opinion and the recusal vote, the following verbatim conservation took place.

"Benson: Can I move on to my public hearing now.

Coyle: Mr. Chairman respectfully based upon the decision made by this board, I am going to have to step down from this particular hearing and think you will have to appoint someone else to sit in my place. Let me if I could just further that I think that based upon the actions I intend to take I would be excluded from hearing any evidence in this particular case.

Wetherbee: would you like to elaborate on that, Kevin.

Coyle: Not at this time, Neil.

Wetherbee: do you plan on taking legal action against the town

Coyle: Not at this time Neil. I - I shouldn't say that, I am not answering that question.

Benson: So let's move on"

Councilor Coyle left his seat and sat in the audience.

The Council had a discussion with legal counsel about the process from this point forward.

"Benson: So what we're going to do is we are going to continue the public hearing until the Nov. 1st meeting. At that point we will do the Lake, Rocky, Pebble. We will have another, we will have a temporary councilor sitting in at that point in time. On the agenda further on you'll notice in there we have the appointment of a new fill-in councilor so we will do that at that point in time and they will sit for both ... ah... we're going to have to have two councilors, one for Councilor Wetherbee for the Worthley Road issue and one for Councilor Coyle for all four of the those road issues apparently. Does anyone have any problem with that?"

[no one spoke] and Chairman Benson moved onto next agenda item."

Councilor Coyle returned to his seat.

Public Hearings

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

Moved to the 11/1/11 meeting

11-83 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

Tom Carrier reviewed the three actions from the last Town Council meeting.

Open Public Hearing

Vote: 6-0-0

Maureen Rose, Windham Rd – is there a rush to do this now? Ms. Rose feels the Town is spending too much money.

Al Dimmock, High St – Questioned who posts the bond - the town or water/sewer users. He is concerned that the water bill will go up and not be a benefit to his area of town.

George Sioras, Planning Director – supports Water/Sewer proposal. This project is in the Master Plan 2010 – 2011 and recommended.

John Burtis, Lorri Rd – Asked, what is this project a result of other than the Master Plan. He disapproves of spending money.

Al Dimmock, High St – wants an answer to his question.

Phillip Abirached Rte 28 – Council should be looking at the good this project could do, not the cost. Town should invest today at best rates and costs.

Richard Metts - Duston Ave and commercial property owner – Spoke in regards to the acreage on Rte 28 for development. Look at Tsienetto Rd and the development that happened thereafter the water/sewer was in.

John Burtis, Lorri Rd - Lowe's closed, a 120 jobs are gone. There's a problem in this area.

Public Hearing Closed

Vote: 6-0-0

Mr. Carrier answered the above questions.

Both the water/sewer projects will not raise the rates. The Beaver Lake bond is retiring.

Pennichuck coming onboard provided revenue to assist with this project.

There is an opportunity for potential development. Property taxes will not increase due to this project.

***Vote to be held on November 1, 2011, as the Council agreed Councilor Olbricht should be present for vote.**

11-84 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

Tom Carrier reviewed the three actions requested of the Town Council.

Open Public Hearing

Vote: 6-0-0

Al Dimmock – disagrees with this project.

Maureen Rose – Is there any thought about waiting and having only the owners of the commercial property pay.

Rick Metts – State law has to set parameters.

Close Public Hearing

Vote: 6-0-0

Tom Carrier further explained.

From State Statute and Town Ordinance; if a property does not have a new septic design after January 1, 1988, anyone within 125ft needs to hook-up. There are assessments for the connection. Going for low interest bond, the debt service payments expiring old bonds will go to new bonds.

There are sufficient funds for normal maintenance. Mr. Carrier has talked to Planning regarding zoning in this area. He is being proactive before development of this area.

Mr. Coyle questioned if there was any thought about expanding the roadway in this area with a turning lane. Mr. Carrier replied, The State is encouraging us to put our infrastructure outside of the travel lanes, Planning would handle this. This is a state road we need to speak with the state."

***Vote on 11/1/11 meeting**

11-99 Amend the Code of the Town of Derry, Chapter 150, Traffic Ordinance Article I, Section 150-4 Prohibited Parking – Eastgate Road

Open Public Hearing

Vote: 6-0-0

Al Dimmock – The Highway Safety committee has made a recommendation to this board. Highway Safety has passed this to the Town Council to decide.

Close Public Hearing

Vote: 6-0-0

Mrs. Fairbanks asked why it couldn't just be restricted parking by a time frame.

Move to amend the Code of the Town of Derry, Chapter 150, Traffic Ordinance Article I, Section §150-4 Prohibited Parking to read:

Eastgate Rd South For a distance of 100 ft. from Route 28 By-Pass in an easterly direction.

Motion by: Wetherbee, seconded by Coyle

Vote: 5-0-1 (Benson – out of room for public hearing)

11-101 Amend the Code of the Town of Derry, Section 165-30 Zoning Map – Rezone 8 parcels from Office Research Development to Low-Medium Density Residential (LMDR)

George Sioras and Liz Robidoux made a quick presentation.

Parcels are as follows:

Parcel 02082, 20.5 Berry Rd, 02146 - 7 South Range Rd, 02147 – 15 South Range Rd, 02148 – 17 South Range Rd, 02082-001 – 25 South Range Rd, 02070 – 7.5 Willow St, 02149 – 57.5 Frost Rd, and 01027 – 105 Frost Rd

At a request to the Planning Board of a property owner who holds three of these parcels, the board after review has agreed to rezone this area. The following property owners agree Jeannette Towne, Mr. Karas, Mr. Dave Allen, Mr. Manger, and Mr. Bradley and Mr. Schindler.

Open the Public Hearing

Vote: 6-0-0

Arthur Caras – Original petitioner owns parcels 02082, 02082-1 and 02070. He would like the Town Council to vote in favor of this change.

Maureen Rose – She is an abutter. This is a wildlife corridor. She supports Mr. Caras' request. There is grant money for wellhead protection. She would like some of that land saved for open space.

Al Dimmock – There are plenty of wetland and these wetlands should come under conservation.

Close public hearing

Vote: 6-0-0

Mrs. Fairbanks - Agrees this is better use for the land and would like some conservation land kept

Mr. Chirichiello asked how many homes would fit on it at 2 acres.

George Sioras stated there is 265 acres he approximated about 75-100 house.

Move to amend the Code of the Town of Derry, Section 165-30 Zoning Map- Rezone 8 parcels 02082, 02146, 02147, 02148, 02082-001, 02070, 02149, and 01027 from Office Research Development to Low-Medium Density Residential (LMDR).

Motion by: Wetherbee, seconded by Milz.

Vote: 5-1-0 (Chirichiello)

Old Business

11-90 Vacancy – State Representative

Denise Neale, Town Clerk presented information from the Secretary of State and RSA's pertaining to filling this position. The Town possibly could not meet the time frame as required by

law due to the unknown, if a primary election were to be held for this seat. Unfortunately there is no way of knowing how many candidates from each party would file, until a filing period was established. There would most likely be a Special Election. The Governor and Executive Council will be meeting on October 26th. If the Town Council wishes to fill this position it would need to send its decision to the Governor immediately.

Chairman Benson announced there would be a hearing on re-districting for Rockingham County to be held Thursday, October 20th at the Hilton Auditorium, Rockingham County Nursing Home @ 7:00 p.m.

11-96 Charter Amendment Discussion

Discussion to be held at 11/1/11 meeting.

New Business

11-106 Appointment of new fill-in councilor – RSA 43:7

Moved to before 11-99 and 11-101

Whereas Councilor Neil Wetherbee has recused himself from participation in a matter involving a petition concerning the layout of Worthley Rd, move, pursuant to RSA 43:7 that for the sole purpose of this matter, the Derry Town Council appoint Beverly Ferrante to sit in his stead. Motion by: Chairman Benson, seconded by Councilor Milz.

Motion withdrawn as Ms. Ferrante is now a Town Employee.

Wetherbee asked if Coyle or he would be allowed to vote on this. Mr. Boutin replied "No". Mr. Coyle stated he will vote on Mr. Wetherbee's replacement but won't vote on his own replacement. He is fine with Mr. Wetherbee voting on his replacement. Chairman Benson read the questionnaire given to past councilors.

Ms. Fairbanks had a question regarding voting members of Planning Board.

Councilor Fairbanks asked for verbatim minutes as follows:

Fairbanks: "If Jim McEachren can't sit because he is a member of the Planning Board and a voting member, how can David Milz sit if he is a voting member of the Planning Board? And if he's already voted on it."

Benson: "He is a Councilor; he's the Councilor Liaison to the Planning Board."

Fairbanks: "He's also a voting member."

Benson: "He has every right to sit here."

Fairbanks: "OK"

Whereas Councilor Neil Wetherbee has recused himself from participation in a matter involving a petition concerning the layout of Worthley Rd, move, pursuant to RSA 43:7 that for the sole purpose of this matter, the Derry Town Council appoint Craig Bulkley to sit in his stead.

Motion by Chairman Benson, seconded by Councilor Milz

Vote: 3-2-0 (Fairbanks, Coyle)

"Benson: Now, Attorney Boutin, is there any reason why Mr. Bulkley could not sit to replace Councilor Coyle, they are two very different cases, or no they have to be both sitting, as he has recused himself from all the cases going forward?"

Boutin: In the one case he is sitting for Mr. Wetherbee, in the other case there is no reason why he can't sit for Mr. Coyle, they are different cases.

Benson: But when Mr. Wetherbee is not sitting nor is Mr. Coyle for that one case of Worthley Road, so that doesn't work, is that correct?

Boutin: That's right he can't do both.

Benson: That's what I was afraid of. So we are going to have to go back out and find somebody to do this?

Chirichiello: A couple of people come to mind (Benson ok) Ex Councilors Rick Metts, (Benson - he was asked and declined to do this) Paul Needham, Chris Reisdorf.

Coyle: You know now that you say that there is no reason why you couldn't appoint Paul Needham for Neil's seat, except for the fact that he lives on Orchard Drive, which is part of the development of Worthley Road - that is a problem.

Chirichiello: Yeah

Wetherbee: I believe that Paul was originally from District 4 councilor, when he was on the board.

Chirichiello: He was 4 also an at large councilor as well, I think he was both.

Benson: So procedurally we are going to need to go back out and do the questionnaire, and then bring back to the council a replacement for Councilor Coyle, is that correct?

Boutin: Yeah, that means you better bump the hearing from November 1st, at least on the one where you have a vacancy problem.

Benson: Well

Coyle: If you appointed councilor to replace, if you appointed a councilor.

Benson: "We have a vacancy problem no matter what we do because we have appointed Mr. Bulkley.

Coyle: If you withdrew that and appointed Bulkey to replace me you could still theoretically do Rocky Lake and Pebble, if you did someone else to replace Neil.

Wetherbee: You could also do a special meeting next week to appoint somebody. Which is what I think we should do.

Benson: Ok I can call that afterward, which is what I think I will do, I don't need to call that tonight, so that is what I am going to do.

So I am going to sit tight on this for right now, I will get the questionnaire and the questions out and we will call a special meeting.

Council Requests / Open Discussion

Chairman Benson wanted to discuss the letter that was received. He asked Councilor Fairbanks if it was okay with her. She stated, "it's was not okay with her".

The letter was sent to Council from the Zoning Board in regards to the actions of a specific Councilor. Discussion continued as to whether the Zoning Board took a vote on this letter, and its actions. Some Councilors would like to view the meeting online.

Councilor Wetherbee asked Mr. Anderson in reference to the large 91-A request if his office is tracking the costs.

Councilor Fairbanks is still waiting on her 91-A request to be honored.

Councilor Fairbanks asked if going forward the Town Council could vote on obtaining a legal opinion. It's a cost to the Derry Taxpayers.

Chairman Benson - There is before us a draft letter in response to the Exit 4-A widening.

Move to send letter as written regarding Exit 4-A. Motion by: Chirichiello, seconded by Wetherbee

Vote: 4-2-0 (Fairbanks, Coyle)

Adjournment 9:54 p.m.

Denise E Neale

Town Clerk

11/2/11

Date

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