

TOWN OF DERRY

**Town Council
Derry Municipal Center**

**March 4, 2014
Tuesday - 7:30 PM**

**7:00 PM Review Sealed Non-Public Minutes – (March 2013 – December 2013)
Non-Public Session RSA 91A:3 (a), RSA 91A:3 II (b),
RSA 91A:3 II (c), RSA 91A:3 II (d), RSA 91A:3 II (e)**

Call to order 7:35 pm

Pledge of Allegiance, warning of fire exits, handicap access, & turn off all cell phones

Roll Call: Councilors, Benson, Wetherbee, Katsakiores, Cardon, Osborne, Dimmock and Chairman Fairbanks

Consent Agenda

- 14-21** Approve Meeting Minutes – February 18, 2014
- 14-12** Schedule Public Hearing – March 18, 2014 – Town Owned Property

Approved as Written

Chairman's Report –

The following Non-public minutes were unsealed:

- March 26, 2013 - 13 Manchester Rd
- May 2, 2013 - Session I Elderly Exemption
- May 2, 2013 - Session II Sale of 13 Manchester Rd
- September 11, 2013 - Session II Sale of 13 Manchester Rd
- September 17, 2013 – Offer for 13 Manchester Rd
- November 5, 2013 – Session II 13 Manchester Rd Extension of intent
- November 19, 2013 – Fairpoint Settlement
- December 3, 2013 – 13 Manchester Rd Purchase & Sale
- April 25, 2013 – Town Administrator Salary & Teamster Collective Bargaining Agreement
- June 4, 2013 – Schedule Town Administrator review & Town Administrator Communication w/Town Council
- June 18, 2013 – Session I Town Administrator Review
- June 18, 2013 – Session II Town Administrator Raise
- Vote 7-0-0**
- October 15, 2013 – Session III Litigation Sawyer Court - Law Firms
- Vote: 6-1-0**

Councilor Fairbanks made a statement regarding the PATE Collective Bargaining Agreement that was voted on at the February 18th meeting. Mr. Fairbanks said he incorrectly called the outcome of that vote. He read into record the following memo provided by the Town Attorney Brenda Keith.

So that the Council understands the votes needed to achieve a majority under certain situations, he reviewed:

1. Section 10.8 (E) of the Charter defines a majority vote. Unless otherwise stated, as "a majority of those present and voting with a quorum of the body present". Under §5.9 (B) for non-appropriation votes that means abstentions are not counted in determining the vote count.
Robert's Rules of Order and a survey of case law supports this interpretation.
2. Under § 5.9 (B) appropriation votes require a majority vote of the entire Council.
3. The cost items of a labor contract must be approved by the legislative body (Council) and are considered for an appropriation vote.
4. If there is a budgetary impact in the current year (as opposed to successive years in a multi-year contract), the vote may be seen as a supplemental appropriation in the current year and Charter §9.6 must be considered, which requires a 2/3 majority of all Council members to adopt a supplemental appropriation after the annual budget is adopted.

This vote was actually for an appropriation vote and needs 2/3 of the Council's approval.

Town Elections are next Tuesday, March 11th and voting places will be at the following areas:

District 1 & 3 Pinkerton Academy
District 2 Calvary Church
District 4 Hood Middle School

Six Councilors are needed to sign ballot seals and two are needed for each district. Councilors need to be present between 8:00-8:30PM at the following schools.

Pinkerton Academy – Councilors Wetherbee and Fairbanks
Calvary – Councilors Cardon and Katsakiores
Hood Middle School – Councilors Dimmock and Osborne

On March 31st terms will be expiring for some members of boards and commissions. The Chairman read the list of openings. The last day to sign-up will be Tuesday, March 25th. Sign-up can be done online or at the Town Clerks office.

Chairman Fairbanks then went on to thank Councilors Wetherbee and Fairbanks for their many years of service.

Town Administrator's Report –

Acting Town Administrator Budreau responded to a question asked at the public forum during the last meeting regarding how he personally benefited from PATE Collective Bargaining Agreement. Mr. Budreau replied, "It doesn't benefit me at all, my benefits and compensation are directed by the non-represented employees personnel policy".

Councilor Katsakiores wanted to make a statement as to why she abstained on the PATE Collective bargaining Agreement vote. She said "My son Chuck works for the Fire Department and some people felt it was a conflict of interest if she supported it. But he lives in Danville, he doesn't even live in Derry, and he supports her in no way. I support him in no way. So I really don't know or feel that it is a conflict but to save a lot of headaches and upsets, I at that point abstained."

Public Forum – Move to Open 7-0-0

John Burtis, Lori Road – Thanked Councilors Benson and Wetherbee for their service. He apologized to Mr. Dimmock on the Webber issue. He asked Mr. Budreau if he received his 91A request. He then spoke in regards to the fire on Island Pond Rd and the death that occurred. He continued on the subject of fire protection in Derry. (9 minutes)

Mark Brassard, Birchwood Drive – Spoke on the tones of the council meetings and gave a compelling request to the Town Council and citizen participants who attend these meetings and voice their opinions. He reminded everyone of the sacrifices our Veterans have made so that the people can partake in democracy. He requested that people go to MacGregor Park and stand in front of the Memorials and read the names of all the citizens listed on the memorials that fought in these wars and conflicts that gave us the ability to enjoy the democracy of this government. (9 minutes)

Linda Benson Morrison Road – she is a member of the Derry Frost Festival Committee. The Frost Festival was held over this weekend and she highlighted the events. Donations are made by all local business. This was their 15th year. They are looking for a few new committee members and would like to find people. The committee meets once per month starting in September. You can contact Linda @ 765-0593 (3 minutes)
Close Public Forum 7-0-0

Public Hearings –

	14-16	Establish Adams Memorial Building Capital Project Fund and approve Supplemental Appropriation of \$130,000 from the Public Works Capital Reserve Committed Fund Balance for capital improvements, including structural repairs, to the Adams Memorial Building
(New Business)	14-20	Adams Memorial Building Project Update
	14-22	Budget Transfer of \$20,000 for the Adams Memorial Building Capital Project

Mike Fowler, Public Works Director – Reviewed 14-20 Adams Memorial Building Project Update (New Business). Adams Memorial Building was built in 1904 and there had been significant upgrades performed in 2000 & 2001. During the FY2014 budget process, Public Works began reviewing the need to reinforce the stage flooring. There was an appropriation of \$30,000 to proceed with that work. A structural engineer did a detailed analysis. As a result of the analysis the balcony was deemed unsafe and closed immediately in September. However the building is in need of a larger project.

Recommended Repairs:

1. Removal of tar and gravel section of the roof to reduce load on structural members. (*means less cost and less upheaval in building*)
2. Installation of R20.5 insulation and a new rubber roof (white). (*building currently does not have insulation in roof and there is major heat loss*)
3. Installation of structural steel beams to support roof. (*over the stage*)
4. Installation of LVL joists to reinforce the stage floor to support 100 psf.
5. Installation of LVL beams to reinforce the ceiling framing and roof framing. (*in select locations*)

Mr. Fowler has brought in a contractor to get a bona fide estimate. The price is \$138,000. Mr. Fowler recommends appropriating \$150,000 which will provide some kind of contingency. This work could be done between August 4 and August 29, which will not

impact the theater. The Town has \$20,000 remaining from the FY14 budget to transfer to Capital Project Fund, we would ask for \$130,000 as a supplemental appropriation to the Adams Memorial Building Capital Project Fund. There would be no tax impact in doing this. There is \$1.35M in the Capital Reserve Fund, essentially moving the money from one reserve fund to another.

Three individual motions needed to be made.

Open Public Hearing Wetherbee/Katsakiores 7-0-0

Kelly Martin, Bayberry Lane – asked what impact of not doing the repairs now would have on ticket sales for shows. Ms. Martin would like to see the money spent in FY2015 budget.

Mr. Fowler replied that the Greater Derry Arts Council is losing 100 seats per performance. They would like to wrap the whole project into a four week period. The Arts Council has received a grant for painting and repairing cosmetics for the hall.

Marc Flattes, Linlew Drive. – Asked about the historical value. He questioned if the repairs would change the acoustics. What is total occupancy?

Mr. Fowler replied, some of reinforcement would be exposed. In 1984 the building was designated and place on the National Historic Registry. He would have to file an application with the state historical society. However unless you are doing a major exterior restoration these fixes would be deemed minor as we are not changing the historical character. Total capacity is rated at 375, including balcony.

Mary McCarthy, Tigertail Circle – uses opera house for two productions per year as does Danielle Jean. The closing of balcony does affect the productions. It has already impacted two of her shows. She loves the community theater; it is an affordable rental and has character. However she may need to find an alternate place to showcase her productions if these repairs are not made.

Mark Berglund, Board of Trustees GDAC – wanted to answer on how many shows sell out. The Majestic Theater in Manchester are hosting some of their shows here, the next performance is in May and they are already sold out. Mr. Berglund worked with Kids Group Theater and they host four shows per year and they turn patrons away because there is not enough seating. The cost to put on a show is approximate \$13,000 per show.

Council Osborne asked how much money per performance goes back to the Town? Mr. Berglund states they pay a monthly fee and referred this question to David Nelson.

Matt Cahoon Manchester – works at Pinkerton Academy's Stockbridge Theater. He supports Mr. Fowler's presentation. When booking we have to sign agreements with agents on what the gross potential income is. If you reduce 100 seats it reduces the GPI. There are certain artists we have taken off table because we have no potential income to support their venue.

Dave Nelson, Old Chester Rd- the GDAC started in 1993 and they pay the Town of Derry rent of \$1000.00 per month; this includes utilities and janitorial services. The GDAC provides non-structural maintenance and repairs. Is the building a profit center for the Town? No, neither is the Recreation Department but they provide a valuable service to the community. Their income comes from rentals. They have been asked by

the downtown community and the Town Council to increase their base and they have been. They need the balcony capacity for more shows.

Councilors asked Mr. Nelson various questions regarding the Trustees and donors, fund raising, and parking issues.

Lynn Perkins, Woodland St- spoke about the water damage and its effect on the building. He suggested that the user fees could go up.

Close Public Hearing Councilors Wetherbee/Katsakiores 6-0-1(Councilor Dimmock)

- 1) Move to establish the Adams Memorial Building Capital Project Fund for the purpose of capital improvements, including structural repairs, to the Adams Memorial Building. Any unencumbered or unexpended funds shall lapse to the Public Works Capital Reserve on June 30, 2015.**

Motion by Councilor Wetherbee, seconded by Councilor Katsakiores

- 2.) Move a FY14 supplemental appropriation of \$130,000 from the Public Works Capital Reserve Committed Fund Balance to the Adams Memorial Capital Project Fund for capital improvements, including structural repairs, to the Adams Memorial Building.**

Motion by Councilor Wetherbee, seconded by Councilor Katsakiores

- 3.) Move a FY14 budget transfer or \$20,000 from the Public Works Building improvements (720) to Public Works Transfer to Adams Memorial Capital Project Fund (930), thus increasing the capital project appropriation to \$150,000 for capital improvements, including structural repairs, to the Adams Memorial Building.**

Motion by Councilor Wetherbee, seconded by Councilor Katsakiores

Discussion

Councilors asked various questions regarding the structural issues, costs previously spent on this building, storage, parking, and for the actual cost that Public Works spends for this building.

Mr. Fowler explained that he had a plan in mind for FY15 of projects to fund out of the Capital Reserve fund designated for Public Works. His plan was to do some work on the Adams Memorial Building \$130,000, replace a sidewalk plow \$150,000 and a lift for Vehicle Maintenance Department \$90,000. The balance in the fund is \$1.35M for the purposes of these.

Councilor Benson asked "in your opinion, Mr. Fowler, this year or next year doesn't change anything as it has no tax impact."

Mr. Fowler replied yes.

Councilor Benson also stated there was some conversation about being over in the snow removal budget.

Mr. Fowler replied that snow removal expense is \$180-200,000 over the appropriation. He will look for money in this year's Public Works budget and other departments before he will use the \$106,000 Winter Maintenance Fund - this fund is separate.

Councilor Osborne asked how much the Town spends on this building per year?

Mike Fowler stated the data as: In FY 2103, electricity, heating oil, contract services \$45,361, support 50% allocation with for one of the full-time positions in Building and Grounds \$40,259 at total roughly of \$85,000 to \$86,000. On top of the bond debt \$60,315, and Interest \$26,872 = \$87,077 in which the interest declines as the bond principal lowers.

There was more Council discussion as this is a supplemental appropriation and if there needed to be a majority vote. The answer was yes - a 2/3 vote is required.

Vote:

- 1.) 5-2-0 (Councilors Osborne, Dimmock)
- 2.) 5-2-0 (Councilors Osborne, Dimmock)
- 3.) 5-2-0 (Councilors Osborne, Dimmock)

14-17 Apply for New Hampshire Highway Safety Agency Grants for DWI Patrols, Pedestrian Enforcement Patrols, Red Light Enforcement Patrols & Speed Enforcement Patrols

Chief Garone – spoke as there are four grants: DWI Enforcement 120 hours, Pedestrian Enforcement 88 hours, Red Light 88 hours and Speed Enforcement 88 hours. This grant allows us to assign officers to these duties instead of using patrolman that are scheduled for normal duties.

Open Public Hearing Councilors Wetherbee/Katsakiores 7-0-0

Marc Flattes, Linlew Dr. – questioned if this had come before the Town Council before in this year and who would benefit from these patrols.

Chief Garone replied not this particular grant, everyone benefits; however, any tickets monies collected go to the State of NH.

Close Public Hearing Councilors Katsakiores/Wetherbee 7-0-0

**The Town Council move to authorize the Town Administrator to apply for the grants and execute any associated contracts with N.H. Highway Safety Agency.
Motion by: Councilor Wetherbee, seconded by Councilor Katsakiores**

Discussion

Councilor Osborne asked about the DWI enforcement and how do you respond if after 8pm.

Chief Garone answered they are always looking for DWI within their duties but this officer would be dedicated to that function.

Councilor Dimmock asked how is overtime assigned?

Chief Garone replied that it is on a rotating list. There is a patrol officer assignment. Details are given to all rank and files.

Councilor Cardon stated prosecution costs can be more and asked if there are records that could go back to give costs of this.

Chief Garone replied he does not have this information at this time.

Vote: 4-3-0 (Councilors Cardon, Osborne, Dimmock)

Old Business –

- 13-122** Search for new Town Administrator
(The Town Council may, during this discussion, elect to move in to a non-public meeting in compliance with RSA 91A:3 Section II (b) The hiring of any person as a public employee or RSA 91A:3 Section II (c) Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the public body itself, unless such person requests an open meeting. This exemption shall extend to any application for assistance or tax abatement or waiver of a fee, fine, or other levy, if based on inability to pay or poverty of the applicant.)

Motion to table as this should be discussed with new incoming Councilors.

Motion by Councilor Wetherbee, seconded by Councilor Katsakories

Vote: 7-0-0

New Business –

- 14-18** Waive 2012/2013 final tax bill balances

Frank Childs, CFO - There are 61 accounts to write-off totaling \$105.00. The time needed to process these for collection is not cost effective.

Move to authorize the Tax Collector to write-off \$105.10 from the 2012/2013 tax bills for the properties and amounts listed in Attachment A.

Motion by Councilor Wetherbee, seconded by Councilor Katsakiores

Vote: 6-1-0 (Councilor Benson)

- 14-19** Approve \$500 HealthTrust Health & Safety Grant

Larry Budreau, Acting Town Administrator - Derry is committed in continuing to raise awareness of the importance of employee health and wellness. Through the Local Government Center program a grant of \$500.00 is given to participants. Barbara Chapman facilitates employee activities towards these goals.

Move the Derry Town Council approve the receipt and expenditure of the award from the New Hampshire Local Government Center in the amount of \$500.00.

Motion by Councilor Wetherbee, seconded by Councilor Katsakiores

Vote: 7-0-0

- 14-23** Review Central Court/Central Street properties

Move to table by Councilor Wetherbee, seconded by Councilor Katsakiores

Vote: 7-0-0

Council Requests / Open Discussion

Councilor Cardon thanked Councilors Benson and Wetherbee for their service. He also recently met with Chief Klauber regarding the anti-blight ordinance and there are a lot questions on it. He would like to see Council move forward. He suggested having a couple of councilors work with the Chief on this ordinance. He would like to get on agenda for next meeting

Councilor Katsakiores – stated that Roberta Robie is here and would like to thank the council for saving the Adams Memorial Building.

Councilor Wetherbee thanked the residents of District 3 for last six years. It has been a great experience. He also thanked his wife and son for their support and patience and finally the town's staff.

Councilor Benson echoed Mr. Wetherbees' remarks and stated it has been a pleasure to be here and work.

Adjourned 9:40.pm

Denise E. Neale
Town Clerk

March 20, 2014
Date

Recording & Transcription by: Denise E Neale, Town Clerk
Review & Changes by: Larry Budreau, Acting Town Administrator