

**TOWN COUNCIL
AGENDA
December 03, 2007**

The Town Council meeting will be held in the Moose Hill Council Chambers, Town Hall, 268B Mammoth Road, Londonderry. **Scheduled agenda times are advisory only.** Regular meetings are cablecast live and videotaped for the convenience of our viewers at home.

- 7:00 PM I. CALL TO ORDER – PUBLIC SESSION
- 7:01 PM II PUBLIC HEARING
- A. Ordinance #2007-12 – Relative to the Establishment of a Code of Ethics
- 8:00 P.M. III. PUBLIC COMMENT
- A.
- 8:15 PM IV. OLD BUSINESS
- A. FY09 Budget Recommendations
- 9:15 PM V. NEW BUSINESS
- A. Town Economic Development Plan
- B. Order #2007-17 – Relative to the Expenditure of Maintenance Trust Funds
- 9:30 PM VI. APPROVAL OF MINUTES
- A. Minutes of the Council’s November 15 and 19, 2007 Public Meetings
- 9:35 PM VII. OTHER BUSINESS
- A. Liaison Reports
- B. Town Manager’s Report
- C. Board/Committee Appointments/Reappointments/Resignations

1. Re-Appointment of Mark Oswald as an Alternate Member on the Conservation Commission, term to expire 12/31/08.
2. Re-Appointment of Larry O'Sullivan as a Full Member to the ZBA, term to expire 12/31/10
3. Appointment of Lynn Wiles, an Alternate on the Planning Board to fill the Full Member opening left by resignation of Tom Freda. Term to expire 12/31/10.

10:00 PM

VIII. ADJOURNMENT

MEETING SCHEDULE:

- A. Town Council, December 17, 2007 @ 7:00 PM, Moose Hill Council Chambers – Council Meeting (Budget Discussion)
- B. Town Council, January 7, 2008 @ 7:00 PM, Moose Hill Council Chambers – Council Meeting (Public Hearing – FY09 Budget)
- C. Town Council, January 21, 2008 @ 7:00 PM, Moose Hill Council Chambers – Council Meeting (Bond Public Hearing – FY09 Budget)

Introduced: 11/05/07
Second Read: 11/19/07
Public Hearing: 12/03/07
Adopted: XX/XX/XX

ORDINANCE 2007-12
*AN AMENDMENT TO THE MUNICIPAL CODE,
CHAPTER XXVI, CODE OF ETHICS*

WHEREAS there is a need to establish guidelines for the ethical standards of conduct for Town Officials, Board Members and Employees:

WHEREAS it is important that the public have confidence in the integrity of its government and that Town Officials, Board Members, Volunteers and Employees have an opportunity to protect their personal reputation;

WHEREAS the Town Council has the authority pursuant to state statute and Town Charter to enact such regulations;

NOW THEREFORE BE IT ORDAINED by the Town Council of the Town of Londonderry that the Municipal Code of the Town of Londonderry, Chapter XXVI Code of Ethics, is hereby amended as attached.

Joseph Paradis
Chairman - Town Council

A TRUE COPY ATTEST:

Marguerite Seymour - Town Clerk
xx/xx/xx

Town Seal

Please respond to the Concord office

November 30, 2007

David R. Caron, Town Manager
Town of Londonderry
268B Mammoth Rd.
Londonderry, NH 03053
Dear Dave:

This letter is in response to your request that I review the proposed Code of Ethics, proposed by Brian Farmer and, in addition to providing you with a general legal overview of the Code, provide you with the procedures for adoption of this document in the context of the Town

Re: Code of Ethics

Charter and Town Manager Plan.

At the outset, it should be understood there is a distinction between the roles public officials may assume. For example, a planning board may act in both a legislative and quasi-judicial capacity. “Legislative and administrative action...is marked by ‘its high visibility and widely felt impact,’ from which an aggrieved person can find an ‘appropriate remedy...at the polls.’” Appeal of City of Keene, 141 N.H. 797, 800 (1997). An example of the former would be the adoption of subdivision regulations. An example of the latter would be consideration of a specific site plan or subdivision application. A legislator is disqualified when he has a direct, personal and pecuniary interest different from that of a member of the general public. The mere fact that a public official has spoken out on one side of an issue in advance of voting upon a proposed legislative act does not disqualify that individual from participating. However, a financial conflict of interest could have an impact on the decision.

In contrast, the standard for a conflict of interest involving a public official engaged in a quasi-judicial role is much higher. Part I, Article A35 of the New Hampshire Constitution states that “it is the right of every citizen to be tried by judges as impartial as the lot of humanity will admit.” Thus, for example, RSA Chapter 43, governing hearings before selectmen or certain other local officers, provides that “no selectman or other officer shall act, in the decision of any such case, would be disqualified to sit as a juror for any cause...in the trial of a civil action in which any of the parties interested in the case was a party.” Similarly, RSA 673:14 provides that

no member of a local land use board “shall participate in deciding or shall sit upon a hearing of any question which the board is to decide in a judicial capacity 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 in any action at law.” Of course, knowledge of the facts involved gained in the performance of the member’s official duties does not constitute a basis for disqualification.

No clear and unequivocal rule has been established regarding conflicts of interest when an official is serving in a quasi-judicial capacity, but rather a broad principle exists which requires an analysis of the factual situation in each case. “It is a general rule of law, and the law in New Hampshire, that ‘there is a conflict of interest when a public officer votes on a matter in which he has a direct personal and pecuniary interest.’” Atherton v. Concord, 109 N.H. 164 (1968). “However, the rule is also well established that, to disqualify, the personal pecuniary interest of the official must be immediate, definite, and capable of demonstration; not remote, uncertain, contingent, and speculative, that is, such ‘that men of ordinary capacity and intelligence would not be influenced by it.’” Id. at 165. The Supreme Court concluded: “If every possibility of conflict, no matter how remote, uncertain, contingent, insubstantial or speculative, were cause for disqualification, many persons who are peculiarly suited for public office by the reason of their commercial or professional experience would be prevented from contributing their services to the community.” Atherton, supra at 165.

The juror standard, contained in RSA 673:14 and 43:6 is a subtle one. “It is not any and every business relation that disqualifies a juror and if it did the newspaper subscriber, the telephone user, the electric and water consumer and those who engage in a host of common every day habits or ordinary commercial and domestic life would be eliminated from the average jury panel.” McLaughlin v. Union Leader Corp., 99 N.H. 492 (1955). Thus, a person who regularly ran an ad in the Union Leader was not disqualified from sitting on a jury. In a case involving a slip-and-fall on a sidewalk, the court refused to disqualify three people as jurors: (a) one was employed by the company which had sanded the defendant’s parking lot and drive (which was not, however, a party to the case); (b) a second was related to an employee of the defendant; and (c) the third had been a client of the defendant’s attorney at some prior time. The Supreme Court said that the trial judge had the authority using the juror questioning procedure to take these factors into account, and still find these people were impartial. In other words, none of these relationships were disqualifying *per se*. Matthews v. Jean’s Pastry Shop, Inc., 113 N.H. 546 (1973).

RSA 31:39-a provides broad authority to municipalities to adopt conflict of interest ordinances which are stricter than those specified by state law. Thus, the Council may adopt a conflict of interest ordinance, in accordance with the terms of Section 3.7 of the Town Charter. It is worth noting that Section 9.1C of the Charter provides that the Town Council has the authority to establish administrative boards and committees, as it deems necessary. Consequently, the authority and procedure for adopting the ordinance and creating the committee is well established.

Turning now to the specifics of your proposal, I note that the Code defines a conflict to include “even the appearance of one.” The Supreme Court has not been willing to adopt such a standard. In the case of Appeal of Hopkinton School District, 151 N.H. 478 (2004), a principal appealed the decision of the school district not to renew her contract. The State Board of Education decision found that there was an “appearance of bias” in the school board’s decision affirming the superintendent’s recommendation for non-renewal of her contract. The Supreme Court overruled the State Board of Education, finding that an “appearance” standard is not the law. The Court observed, “local government and school boards would be seriously handicapped if any conceivable interest, no matter how remote and speculative, would require the disqualification of a public official.” Id. at 481.

An “appearance” standard places the Town on a very slippery slope. I notice that this term is not defined under the Code. There is probably good reason for that: It is impossible to know the precise parameters of what would constitute an appearance of a conflict of interest such that it is sanctionable by the committee. It seems to me that municipal officials and employees are entitled to a clear statement of what is defined as improper conduct. In a situation where it is not possible to define what conduct is unacceptable, officials and employees will be subject to an unlimited number of spurious or frivolous claims. I suggest that reference to the “appearance” of a conflict of interest be deleted from the Code.

Similarly, Section I.A. defines a conflict to exist where there is a “personal interest which may directly **or indirectly** affect or influence the performance” of the official or employee’s duties. The term “indirect” is again not defined. The problem with this is that what one perceives as a conflict is dependent upon personal perspective. If the Town is considering the purchase of a truck, is a town official who owns stock in General Motors disqualified from participating? What if the stock is in a mutual fund that is owned by the official? Is a realtor or builder barred from serving on the planning board? I think the Supreme Court’s observations in the Atherton case above apply with considerable merit here: “However, the rule is also well established that, to disqualify, the personal pecuniary interest of the official must be immediate, definite and capable of demonstration; not remote, uncertain, contingent and speculative...” So that municipal officials and employees may be aware of what conduct is prescribed, reference to an “indirect” effect or influence should be deleted.

The policy behind the disclosure requirements of Section I.C. is not entirely clear. If an official or employee is recused, why is it necessary for there to be a disclosure? If the individual has recused him or herself, then what “dealings,” “interests,” “relationships,” “friendships,” and “possible conflicts,” must be disclosed?

Section I.F. prohibits all officials and employees from accepting any gift from any individual. It seems to me that the Board could refine this position. It is extremely common for gifts of minimal value to be provided, such as a box of chocolates during the holiday season.

You may wish to revisit the definition of the word “board” in Section II. It appears to be too narrow. I was given to understand that the Code was to apply to all boards and committees, not just those established by the Town Council.

Please correct the spelling of the word “respondent” in the definition section. See also Section D.3.

The definition of the word “recuse” is not a definition, but rather a regulation, which is previously addressed in Section I.A. The word “recuse” may be defined as “to withdraw from participation in a matter in one’s official capacity.”

Section IV raises an interesting question where it indicates that the ethics committee “will provide advice and counsel.” I assume that the word “counsel” was intended to mean “guidance.” However, one is left to wonder whether every employee who is called before the ethics committee to defend any claim of an “appearance” of a conflict, filed by any resident of the community, will be required to pay for his own attorney, or whether an attorney will be provided. If the employee is vindicated, will the Town reimburse the employee for having to defend the claim? Indeed, the entire process, though not the establishment of ethical standards, seems ill-applied to employees of the community. The Town Manager is generally responsible for the management of employees, and can be responsible for insuring that employees meet the standards prescribed under the personnel policies, or under an ethics code. Is it wise, however, to subject all employees to a public spectacle, initiated by any resident of the community? It is one thing for the Town Manager to initiate disciplinary action against an employee. It is entirely another matter, however, to allow any resident to do, and subject the employee to the expense of defending a third party claim.

You may wish to consider whether election is the best way to fill committee positions. Given the power of this committee and the likelihood that there will be many unfounded, and even frivolous claims, the Council will want to be sure that the individuals who serve on the committee are of a proper temperament. This cannot be achieved through an election process. Indeed, one is left to wonder who really would want to serve on such a committee, given the burdens presented.

I confess that my concern is that the ethics committee component of the proposal is destined to become a disaster. I have no doubt that it will be misused, consume excessive amounts of time, be very expensive, and will generate a great deal of ill will. This is particularly so if any resident can accuse someone of having an “appearance” of a conflict, or having failed to disclose an “indirect” interest.

I am not sure that an ordinance can vest in those not otherwise authorized by law the authority to administer oaths or subpoena documents. See, Section IV.D.4.

The procedures enumerated under Section IV.D. suggest that every complaint requires a hearing. Can the committee dismiss a complaint where it has no jurisdiction, or if the complaint

is frivolous on its face? I suggest that some vehicle be provided to the committee for this purpose.

I understand that the committee is an advisory one, with no authority to impose punishment. In the case of employees, it would appear that matter remains with the Town Manager, as prescribed under the Town Charter and RSA 37:6.

Finally, it is worth noting that this ordinance has the potential of creating liability on the part of the municipality. Will employees or officials who are falsely accused have the right to bring suit against the Town or the complainant? If an employee is vindicated, can he or she make a claim for attorneys' fees? If the committee finds a conflict to have existed, has the committee created the basis for a lawsuit against the Town by an unsuccessful bidder, for example?

As you can see, there are numerous elements the Council should consider before proceeding with adopting this code. I hope that the foregoing assists you in charting a course that meets the needs of the Town of Londonderry. If you have any questions or require further assistance, please do not hesitate to contact me.

Very truly yours,

Barton L. Mayer
bmayer@upton-hatfield.com

BLM/bgb

Town Budget Recommendations
Action Schedule

Mon., Dec. 3, 2007	Town Council	Pg. 38
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	Moderator	Pg. 43
	Budget Committee	Pg. 45
	Conservation Comm	Pg. 47
	Town Clerk-Tax Collector	Pg. 49
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	General Government	Pg. 71
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Mon., Dec. 17, 2007	Planning & Economic Dev.	Pg. 78
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	Capital Improvements	Pg. 123
	Bonds	
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	Special Article	
	Sewer Division	Pg. 149

TO: Town Council

FROM: Dave Caron, Town Manager
Andre Garron, Director of Planning and Economic Development

RE: Town Economic Development Plan

DATE: November 29, 2007

The Town Council identified as one of its primary goals the need to better understand the economic development process, and develop strategies to foster additional non-residential development consistent with the vision set forth in the Master Plan. The following outline serves as a guide for the development of the plan:

- 1) Review the Town's current mix of residential, commercial and industrial properties; compare to surrounding communities.
- 2) Identify recent additions to non-residential tax base.
- 3) Undertake a Londonderry economic SWOT (strengths, weaknesses, opportunities, threats) analysis to establish direction:
 - a. Utilize existing inventory and update as needed
 - b. Scan region to see where Londonderry fits economically
 - c. Review existing infrastructure to identify what our needs will be to accomplish our economic development goals.
 - i. Also what infrastructure upgrades Londonderry will need to make to carry out our plan – ***POLICY DIRECTION***
- 4) Pull together all past and present strategies around economic development
 - a. Exit 5 TIF Plan
 - b. Pettengill Road Design Charrette plan
 - c. Rt. 28 Traffic Plan
 - d. Pettengill Road Traffic Plan
 - e. Sewer Facility Plan
 - f. Airport Access Road plan
 - g. I-93 Widening Plan
 - h. NHDOT Ten year plan
 - i. 2004 Master Plan
 - j. Housing Taskforce Plan
 - k. Historic Properties Plan
 - l. Target Industry Study
 - m. Traffic Impact fees

- 5) Market Analysis- Who can we realistically attract
 - a. Workforce
 - b. Housing
 - c. Land
 - d. Local & Regional Economy

- 6) Action Plan Development
 - a. Identifying funding sources and financing strategies – ***POLICY DIRECTION***
 - b. Map of targets areas
 - c. Create a marketing strategies- Establish Public/Private Partnerships- ***POLICY DIRECTION***
 - d. GIS Integration- Create a Londonderry property search portal
 - e. Timeline & program evaluation

Upon a review of the status and availability of reports and studies, staff will return at a later date with a proposed study and implementation timeline.

ORDER 2007-17

AN ORDER RELATIVE TO THE EXPENDITURE OF MAINTENANCE TRUST FUNDS

First Reading: 12/03/07
Second Reading: N/A
Adopted: 12/03/07

WHEREAS voters at recent Town Meetings approved funding for the maintenance of public building and grounds in the town; and

WHEREAS necessary improvements include funding various improvements at the Mayflower Grange; and

WHEREAS emergency electrical work was required at the Grange to address deficiencies with the interior wiring;

NOW THEREFORE BE IT ORDERED by the Town Council of the Town of Londonderry that the Town Treasurer is hereby ordered to expend \$1,057.50 from the Expendable Maintenance Trust Fund for Buildings and Grounds to complete emergency electrical work at the Mayflower Grange.

Joseph Paradis - Chairman
Town Council

Meg Seymour

Town Clerk

(TOWN SEAL)

A TRUE COPY ATTEST:
12/03/07

TOWN COUNCIL MEETING
November 19, 2007

The Town Council/Budget meeting was held in the Moose Hill Council Chambers, Town Hall, 268B Mammoth Road, Londonderry, NH. .

PRESENT: TOWN COUNCIL; Chairman Joe Paradis; Vice Chairman, Marty Bove; Councilors Mark Oswald; Brian Farmer, and Kathy Wagner; Town Manager Dave Caron, Assist. Town Manager/Finance Dir. Sue Hickey, and Margo Lapietro, Executive Assistant.

BUDGET COMMITTEE: Mike Brown, John Robinson, Ron Campo, (School Board Liaison), Tom Freda, (7:09 PM), Tom Dolan, Sean O'Keefe (7:25PM), Jay Hooley, (7:45 PM).

CALL TO ORDER

Chairman Paradis opened the meeting at 7:03 PM with the Pledge of Allegiance. This was followed by a moment of silence for the men and women fighting for our country.

PUBLIC COMMENT

Meg Seymour, Town Clerk announced there is a box in lobby of Town Hall for Toys for Tots and will be accepting unwrapped gifts until 12/20.

Tom Dolan had a question asked if the Code of Ethics document could be re-written. He stated it is difficult to vote on the Ordinance the way it is written. Chairman Paradis said the Ordinance will be brought up later in the meeting.

OLD BUSINESS

FY09 Budget Deliberations - S. Hickey reviewed questions that were brought up at the October 25 and November 5 budget workshops. Chairman Paradis clarified that at the 12/3/07 meeting additional questions could be brought up. Budget Member Tom Freda asked if there were increases in the rates for Motor Vehicle (MV) fees. Town Manager Caron responded that there have been none in the past 4-5 years. Town Clerk/Tax Collector Meg Seymour said the maximum rate of 18 mils is set by state. T. Freda asked her if there is a decline in MV registrations. She responded that there was no change in activity other than loss of one rental car company, but the lack of new car sales does adversely impact revenues. Councilor Bove requested that S. Hickey supply an updated summary sheet as listed on page 16; would like it projected on the screen. Councilor Oswald also requested that the actual tax rate be listed. Councilor Farmer asked if the Budget Committee has set a time frame for their input to the budget, T. Freda said they

were trying to meet next week. Councilor Farmer asked Town Manager Caron if there was any particular order so they can have their input ready. He responded it was broken out in the budget calendar, and can provide additional detail for distribution tomorrow. M. Brown said default with 1% reduction was excellent idea, he gave Town Manager credit for coming back with an honest assessment to achieve that. He said that the Town Manager showed that \$252,656.00 in reductions can be accomplished without affecting staffing. He reminded everyone that we still don't have three contracts finalized yet. The economy is different this year, 15.5% increase in consumer index over the past several years and residents have same economic pressures. Chairman Paradis said they will continue Budget discussion on December 3.

Ordinance #2007-12 – Relative to the Establishment of a Code of Ethics – The Councilor's took turns reading the entire Code of Ethics. **Councilor Farmer made a motion to release attorney Bart Mayer's letter to Town Manager Caron. Second Councilor Bove.** Councilor Wagner stated it should also be read. **Councils vote 5-0-0.** Attorney Bart Mayer's comments were read by Councilors Paradis, Wagner, Oswald and Farmer. Copies were distributed to the public Chairman Paradis said there was a third version with the words "and employees" struck out. Councilor Wagner asked about e-mails being released; Chairman Paradis responded they were released to the press. If the public wants copies of the e-mails they should contact the Town Manager. Councilor Farmer read Section III Old Business from the Town Manager's supporting documentation. Chairman Paradis stated there are two parts to the Ordinance; first is establishing the code and the second is establishing an Ethics Committee. Councilor Wagner clarified that tonight's meeting was to move or not move Councilor Farmer's Ordinance. Councilor Oswald talked about the process, this Ordinance was introduced as a non-agenda item, he was not privy to it being brought up. He asked what is the rush for this whole process? He observed that the Dunbarton people had people research the whole process. Do we want to draft something unique for our Town or use a copied version? Councilor Farmer said yes there are some language issues, yes some things brought up by attorney are valid. No rush, there has been a number of incidents and things that happened in the community over the last few years. One person asked him to enumerate; he said he views that as counter productive to the discussion of reasonable people talking about the code. He also stated he had received responses against the ethics committee. He views it as the Council can set aside their responsibilities and hand it to an Ethics Committee. He looked at 14 ethics codes, several molded on Dunbarton's. He stated when Dunbarton founded their Ethics Committee, there were attorneys on it. Best way to move this forward was to present a draft, which course of action is allowed by the Charter. Does not think it is being rushed, would like to go into public hearing to hear from more people. He stated he would like to separate the code from the committee in public hearing. Believes community needs this. Part of this is in Town Charter, discussion needed through public hearing process. Could take comments from public hearing and work it out in a workshop. Councilor Wagner said she was disappointed, not given the opportunity to discuss, would like to have examples of unethical behavior, should have option to discuss. If it doesn't get on the ballot this year, what is the rush. Whole code would have to be established by 2/1/08 in order for Ethics Commission members to be on the ballot. Councilor Wagner said she is opposed to it because one

person's interpretation of the code goes through. Councilor Oswald agreed, need time to review and consider. If the concern is a matter of trust all the more reason not to perform a disservice to the community by rushing process. Next meeting should be a workshop so it can be talked about. He said the people from Dunbarton said to make it your own a number of times. The Code has to be deliberately thought out, so we don't offend our volunteers. We rely heavily on community-minded volunteers. Councilor Bove said it was not being rushed, Sean O'Keefe brought it up at the 6/12/07 meeting, Councilor Farmer brought it forward. It is not one person's opinion because we are bringing it to a public meeting to discuss the issue. He talked about the "conspiracy" aspect. If you run for office, people watch you. Not sure if we need it. In favor of having some kind of code of ethics, good planning on Councilor Farmer's part to bring it forward. He questioned if we should have the next Council deal with it as a goal, he said he supports it, should go to public at next meeting. Budget Member Tom Dolan wanted to see the goals and objectives the Council had set for this year at the next meeting. Councilor Farmer suggested bringing goals and objectives for last 5 years to next meeting to analyze what goals and objectives were not met. Looking at goals and objectives will result in unproductiveness, look ahead. Chairman Paradis said it will be provided at next meeting. Councilor Wagner said it is common courtesy to have been notified ahead that it was on the agenda. Chairman Paradis was on an ethics and standards committee long ago, it was a watered down version of how people should act at town meeting. We should have a code of ethics, everyone should know what the rules are if they become involved in town politics. We can self-police ourselves, if we have a code in front of us and someone feels it has been violated than it should be challenged. If a code of ethics turns away volunteers, then that it is, don't volunteer. Employees should follow code as well, it is a guideline. Not sure if a task force would make it better **Councilor Oswald made a motion to move the Ordinance to a public workshop on 12/3/07 and allow public input. Second by Councilor Bove.** Councilor Farmer asked Town Manager if by the reading of the Ordinance does one motion override the other, is that allowable. Town Manager Caron responded the only guidance in the Charter is to move to public hearing once the readings have been set. Councilor Bove asked for clarification on the motion, public hearing or public workshop. Councilor Oswald responded he said public workshop. **Councilor Bove withdrew his second for a public workshop this should go to a public hearing. Second by Councilor Wagner to move this to a public workshop.** Chairman Paradis asked Town Manager Caron if this was to go to a public hearing can it be amended, he responded yes it can be amended at that time. Town Manager Caron stated that Council can vote to adopt it, don't have to take action at that time or you can vote to reject it. He said there is no requirement to act on an issue immediately after a public hearing. Councilor Bove asked Town Manager Caron with potentially the kind of change we want to make can we continue the public hearings until we are at the point we want to vote on something? Town Manager Caron said there are two ways; if you want to continue the public hearing, you have to notify the public at that hearing the date and time of the continuation of the hearing; if not that is not done then it will have to be re-advertised. Councilor Farmer asked him if they moved to public hearing, the Council can set their rules for how they are going to conduct their hearings. Town Manager Caron responded that was correct. Councilor Farmer verified that they could advertise a public hearing on the Ordinance and operate that hearing in a workshop

format, Town Manager Caron responded in the affirmative. Chairman Farmer said that is the easy solution to this. Councilor Wagner asked Town Manager Caron if she tabled the Ordinance would the hearing be the same thing as a workshop. She stated she does not want the Councilors to be placed into a public hearing and at that point end up adopting a document that she and a lot of the public have clear concerns about. What is the difference between a hearing and workshop. **Councilor Wagner said she wants to table the issue until the next meeting.** Town Manager Caron said he was not sure of the exact language in the Charter said but he thought you could only use that prerogative on the first read of the issue brought before Council. Councilor Farmer said it is for the adoption of a measure, and we are not adopting. Councilor Wagner said if the process is not working at our next meeting, she can use her Council prerogative to table the discussion. Town Manager Caron said based on what Councilor Farmer said yes but he does not have a copy of the Charter in front of him. **Councilor Oswald called the question.** Chairman Paradis clarified that Council is voting on Councilor Oswald's proposal to bring Ordinance 2007-12 to a public workshop. **Councils vote 3 against the workshop, 2 for the workshop. Councilor Bove made a motion to bring this Ordinance to a public hearing on 12/3/07. Second Councilor Farmer. Councils vote 2 against, 3 for the public hearing.**

NEW BUSINESS

Presentation of Comprehensive Annual Financial Report – Sue Hickey informed the Council that a link will be put on the Finance Department's page on the Town website for CAFR. She proceeded to explain the components and briefly review the report. She specified it is our audited financial statements and it has been submitted for review by a national organization for a potential award. Councilor Wagner verified that the information in the CAFR report was also listed in the Annual Report, S. Hickey responded most of it was. Councilor Oswald referred to pg 98 where it listed largest employers from 1998 – 2000. He questioned why Manchester/Boston Regional Airport (MHT) was not listed. S. Hickey replied MHT business offices were located in Manchester. He also questioned part time and temporary help. Councilor Farmer asked S. Hickey to briefly explain total net taxable assessed value and the total tax rate per thousand dollar value. She responded the total assessed value is used as a component when calculating the budget. When the assessed value goes up the tax rate value goes down. The budget is divided into the assessed valuation to arrive at the property tax amount per thousand. The higher the assessment the lower the rate, which does not mean we collect less property taxes.

APPROVAL OF MINUTES

Minutes of the Council's November 3 & 5, 2007 Public Meetings

Councilor Oswald made a motion to adopt the meeting minutes of 11/3/07. Second Councilor Farmer. Councils vote 5-0-0.

Councilor Wagner made a motion to accept meeting minutes from 11/5/07. Second

Councilor Bove. Councils vote 4-0-1, with Councilor Oswald abstaining

OTHER BUSINESS

Liaison Reports

Councilor Oswald attended Leadership Londonderry class last Thursday, dealt with Finance and Administration, Town Clerk/Tax Collector. Bob Lincoln did a presentation of athletic fields in Town. He is responsible for every athletic field in town and has saved the Town thousands in dollars using volunteers to help out with the fields. He produced a Field Study Report for the School District, requested that it be put up on the Town website. Next meeting will be held on 12/20 will be dealing with public safety. Had meeting with MHT met new proposed Airport Director who is from R.I. Again Capt Gerry Dussault and his officers are still receiving kudos from the airport.

Councilor Wagner attended Planning Board meeting. Chairperson Art Rugg appointed Lynn Wiles as a full member, staggered term to be determined. She also mentioned that the proposed new airport director was a good candidate.

Councilor Bove said Solid Waste had hazardous waste drop off this weekend. This was the last weekend it was open, closes for the winter.

Councilor Farmer will attend upcoming Heritage Commission Meeting.

Chairman Paradis said he has meetings within next couple of weeks.

All Councilors stated their inability to attend some meetings was due to the ongoing budget process.

Town Manager's Report – Town Manager Caron handed out a News Release for meetings scheduled for I-93 Transit Study. Councilor Farmer volunteered to attend. Town Manager Caron said the background investigation of proposed new fire chief is on going, should have final report within a week. He will schedule a non public session with the Council for an interview.

Town Hall will be closed for Thanksgiving Holiday this Thursday and Friday.

The Town is working with CGI Communications; they are doing a series of short videos to play on the Town website. It will include a community overview; will deal with education and quality of life. It is a free three year contract, and the focus is to use it as an economic development tool.

Monthly financial reports we given to the councilors no surprises at this point, no revenues or expenditures that are off track.

Board/Committee Appointments/Reappointments/Resignations

Councilor Bove said we have some people who are interested in volunteering for the vacant Budget position. Discussion ensued about interviewing the applicants by. Councilor Wagner said there is an Alternate position on the Planning Board, 4 people have applied. Southern NH Planning has an opening. M. Brown said there is an Alternate position on ZBA .

ADJOURNMENT

Councilor Oswald made a motion to adjourn at 8:50 PM. Second by Councilor Farmer. Councils vote 5-0-0.

Notes and Tapes by: Margo Lapietro Date: 11/19/07

Minutes Typed by: Margo Lapietro Date: 11/21/07

Approved: Town Council Date:

MEETING SCHEDULE:

- D. Town Council, December 3, 2007 @ 7:00 PM, Moose Hill Council Chambers – Council Meeting (Budget Discussion)
- E. Town Council, December 17, 2007 @ 7:00 PM, Moose Hill Council Chambers – Council Meeting (Budget Discussion)

**TOWN COUNCIL/BUDGET WORKSHOP MEETING
November 15 2007**

The Town Council/Budget meeting will be held in the Moose Hill Council Chambers, Town Hall, 268B Mammoth Road, Londonderry, NH. **Scheduled agenda times are advisory only.** Regular meetings are cablecast live and videotaped for the convenience of our viewers at home.

PRESENT: TOWN COUNCIL; Chairman Joe Paradis; Vice Chairman, Marty Bove; Councilors Mark Oswald; and Kathy Wagner; Town Manager Dave Caron, Assist. Town Manager/Finance Dir. Sue Hickey, and Margo Lapietro, Executive Assistant. Absent: Councilor Brian Farmer

BUDGET COMMITTEE: Mike Brown, Ron Campo, School Board Liaison (7:13), Tom

Freda, (7:30). Absent: Jay Hooley, John Robinson, Sean O'Keefe and Tom Dolan

CALL TO ORDER

Chairman Paradis opened the meeting at 7:05 PM with the Pledge of Allegiance. This was followed by a moment of silence for the men and women fighting for our country.

PUBLIC HEARING

NEW BUSINESS

Public Works & Engineering Department - Public Works Dir. Janusz Czyzowski; Admin. Assist. Donna Limoli; Environmental Engineer, Doris Beatty and Assist. Public Works Dir., John Trottier presented the 2009 Budget. The budget was \$2,042,796 the request for FY09 is \$2,111,817.14. Increases were due to contractual obligations. Solid Waste Collection and Recycling forced the increases. J Czyzowski explained the contract costs. He used an example of a \$350K house in the FY06 budget and calculated it cost 42 cents per day for the cost of solid waste collections and disposal. Based on the FY07 figures, Solid Waste will be 36 cents per household

Highway FY07 budget was \$3,137,248.81 FY08 approved Budget was \$3,053,882.00. FY09 budget request is for \$3,063,573.00. \$195K for equipment & machinery from Capital Reserve Fund is not included in this number He reviewed the items we are under contract for and also rentals. Reviewed Non-Contractual items that are equal to FY08 budget. Gasoline items will go up. He reviewed street cleaning and maintenance costs. Have a warrant article for \$1.5M this year for street paving reconstruction. He listed the work scheduled for the 2007 season. They totaled \$20-40K. \$40K does not cover very much road. Chairman Paradis asked about painting the white fog stripes, J. Czyzowski responded the money was not in this budget. Would like to spend the money someplace else like using it for site distances. He listed the roads that were shimmed and overlaid in FY07. Reviewed Repair Strategies & Estimated Costs. He reviewed rehabilitation for shim and overlay cycle and the estimated cost of reconstruction which is estimated at \$24,500.000 He listed proposed projects for FY 09 of shim and overlay if the \$1.5M bond passes. Cost to maintain 180 miles of Town Roads in the FY06 is 64 cents per day. In FY07 it was 55 cents per day.

Solid Waste – FY08 budget was \$1,779,446.00, FY09 is \$2,054,342.00. Salaries and benefits went down. Usage was biggest increase paid to Manchester and Derry. We are obligated to pay 6% of cost of new sewer treatment plant. Fluctuates month to month he estimates it costs \$950K. Councilor Bove said that Solid Waste went to 16%. He asked if there is a plan in place to reach residents to educate them to be more effective in their solid waste use. J. Czyzowski said there is a move to create a coalition to promote solid waste. Mandatory recycling discussed. Councilor Bove said that the Solid Waste Advisory Committee has looked at a number of ways to

increase usage. He suggested finding ways to let taxpayers know they are saving money by doing this. Drop off center discussed and new recycling items discussed. D. Limoli announced that this Saturday is Hazardous Waste Day from 9:00 AM-noon at L.A.F.F.A. fields. Budget Member M. Brown questioned the fees for hydrants and questioned if they were regulated. Town Manager Caron said they are regulated by PUC, use complicated formulas. M. Brown asked how can there be a difference of \$600 from one hydrant to other. J. Czyzowski said they have different systems. M. Brown questioned cost of Clark Rd; is J. Czyzowski \$1.6 estimate to fully reconstruct Rd. J. Czyzowski responded the road is approximately one mile long at that estimate would be the approximate price to reconstruct the road. M. Brown asked if estimate is in today's current prices, would it have been less last year. Janusz yes to both questions. M. Brown asked what estimate would have been. J. Czyzowski responded there has been a 40% increase in construction this year. M. Brown said the State came up with new figure for construction. A recent article in the newspaper from DOT said construction costs went down to 3.2% compared to 15% over last year. J. Czyzowski does not agree with commissioner fuel and steel prices going up will affect cost of construction. M. Brown questioned 6% agreement with Manchester, is that negotiable? J. Czyzowski responded no room for negotiation, depends on our flow, formula developed years ago. Budget Member Tom Freda asked if streets listed for reconstruction were built by developers. J. Czyzowski said no because the Planning Board in the past 14 years has made the developers adhere to stricter standards for quality roads. All roads targeted are older roads. T. Freda questioned if there is any longevity in the roads based on 28ft. width, J. Czyzowski responded good roads are based on base and drainage of road. T. Freda also asked for clarification on the sewer bonds T. Freda questioned if sewer rates have gone up this year, J. Czyzowski said they were increased last year, will review again.

Building/Health/Zoning – Chief Inspector, Jim Smith and Assist. Inspector, Richard Canuel presented. Budget is the same as last years. Management Services should be \$7,500.00. Made changes to telephone, took training money and put it into seminars. Reviewed major services/responsibilities, department gives out a lot of information. He talked about the lack of contractors' adhering to building codes. He listed permits issued for total building, single family, new commercial buildings, septic, inspections COA. He spoke about licensing contractors in the state. He explained the Code Enforcement Officer's job. R. Canuel said we have a good source of revenue through our permit fees. He is working on updating fees that were established in 1989. Building permit fees are self-adjusting but we are falling behind in plumbing and electric permits. The flat fee basis is \$10.00 for adding onto an additional building and the stand alone permit is \$25.00. He suggested adjusting fees and he supplied the fee schedules from surrounding communities. If we increase fees for electrical and plumbing to a flat fee basis of \$25.00 for residential and \$50.00 for commercial permits he projects a revenue increase of 212%. Councilor Oswald asked if the other communities have increased recently, R. Canuel said Concord adjusts them annually. Questions ensued about multiple inspections, and charging for each time an inspection is done. R. Canuel said some towns do charge

a re-inspection fee but that would be judgmental and would not like to get involved in that, would prefer to just go with the flat fees. J. Smith explained they have to do inspections for different stages of construction. Department charges \$5/\$1000 of construction costs for many years. Fees increase because they use chart from International Code Council which lists construction costs based on square footage type of construction and type of use. As time has gone on, those fees have increased. R. Canuel said back in 1989 estimated construction cost for the year was \$26M in 2006 \$60M. Councilor Wagner said she likes flat fees charged by Hudson, we definitely should charge for commercial and industrial. Chairman Paradis suggested putting this on agenda in December. Councilor Wagner asked for an analysis on \$5/\$1000, should it be raised. Councilor Wagner asked for clarification under Building Management Services asked for \$53,600. Town Manager Caron reduced it by \$2,500. J. Smith explained he was attempting to include monies spent on mosquito control program funded by money from other budgets. Town Manager Caron came up with another funding source. At some point it will have to be included in the budget, was told to put it in management services. Town Manager Caron explained two years ago we had an overage in what was budgeted for health insurance. Same thing happened last year Put extra monies in special holding fund and used it for EEE. J. Smith had spoken about setting up files for all the plans they had in their department and Councilor Bove asked if that work could be performed by an intern J. Smith said they needed someone with the expertise to do that work, someone needed to be familiar with the system which is similar to labels found in doctors offices. Town Manager Caron said that Carolyn O'Connor spoke with J. Smith earlier this week about free labor available to Town, they are looking into it.

Special Warrant Articles Town Manager Caron reviewed the following:

Warrant Article #5 – Expendable Maintenance. Trust has been level funded for past 3 years at \$205K. They include repairs, maintenance and improvements to General Government; Public Works; Recreation; Senior Center; and General Highway Garage Improvements. M. Brown questioned \$50K for Recreation asked if it was for playground, can impact fees be used. Town Manager Caron said can use impact fees; we use this trust fund for improvements and repairs. Recreation Commission is using those funds to install lights on fields at north and replace bleachers. He explained these are not impact fees, used for maintenance and repair.

Warrant Article #7 – Capital Reserve Funds - Town Meeting authorizes contributions into capital reserve funds, council authorizes expenditures from this fund. Requesting a Total of \$320K. It involves ambulances, highway trucks, highway heavy equipment and fire trucks. We are now in a position to pay off lease/purchase of fire trucks. Reviewed equipment proposed to be purchased.

Warrant Article #8 - Includes items that are not suited to be part of the bond for North/West Fire Station, totaled \$167,156K, Propose this be paid from undesignated fund balance which was done with the other buildings. Councilor Oswald asked about signage for South Fire Station. Town Manager Caron

responded has been ordered, paid half of already.

Warrant Article #9 - Bartley Hill/Stonehenge/Litchfield/Mammoth Road Intersection, Town needs to raise \$398K from undesignated fund balance. In 2002 Town approved \$3K, project will be advertised in March of 2008, work to begin work in Spring/Summer of 2008, completion in 2009.

North/West Fire Station Town Manager Caron said most of the site work has been done, design is the same as South Fire, if approved construction will commence about 4/08, fund balance from South Fire Station will be applied. Councilor Bove talked about using a car to answer calls at MHT rather than maneuvering a fire truck on Grenier Field Road and Harvey Road. Fire engines arrive first because located nearer than ambulance from Central Fire. He explained they need a certain amount of equipment, situation may arise that they need equipment on fire truck said it is expensive to roll trucks because of emergency but if they are called to a second emergency they can handle it. Building costs are the same proposed at last year's town meeting, 1,937,000, original cost was \$2M. Balance from South Fire was \$100K, so bond is for \$1,837,000.

FY09 Budget Adjustments M. Brown asked why adjust LAEA wages. Town Manager Caron explained it is contractual, have not had a contract for 2 years, advised by labor council to not carry merit adjustments for year three in the event that we do not have an agreement. We are in the process of reaching an agreement with LAEA, these costs are better assigned in the operating budget where they usually are; also gives the advantage of comparing contracts for year to year. If contract had not expired those funds would be in the operating budget. In the first two years of an expired contract you still award merit increases don't award COLA increases. Recent decision by Public Employees Relation Board may change this. No COLA's in addition to no merits if contract has expired. This decision will be challenged. Health insurance reduced from 14% to 4.3% savings of about \$185K. Total adjustments \$113,381 reduction.

Reviewed estimated 2008 town tax rate for a budget total of \$35,500,863; tax rate will be \$4.45, impact will be .07/\$1000 an increase of 1.71%.

The CIP committee recommended establishing a reserve fund for future master plan upgrades, estimated at \$120K. He proceeded to outline how that could be done. The reason to do it this year are auditors want to see us moving forward, match the estimated liabilities. Eco Park Expendable Trust does not match our liabilities, currently over \$140K. Amount of unexpended appropriations in the last 3-4 years has been very low except for this year. Our revenues are flattening, not a lot of excess in the future. Now that we have the money it can be used on this important issue.

Town Manager Caron reviewed budget schedule meetings. M. Brown asked when he wanted the Budget Committee recommendations. He responded the sooner the better to allow staff to answer questions. Hopefully on 11/19 we can have questions

from Budget Committee and be ready by 12/3.

Reed Paige Clark III asked if Bartley Hill Rd. was recently dropped by the State DOT, Town Manager Caron responded no.

OLD BUSINESS

None

ADJOURNMENT

Councilor Wagner made a motion to adjourn at 9:08 PM. Second Councilor Oswald. Council's vote 4-0-0.

Notes and Tapes by: Margo Lapietro Date: 11/15/07

Minutes Typed by: Margo Lapietro Date: 11/19/07

Approved: Town Council Date:

MEETING SCHEDULE

- A. Town Council, November 19, 7:00 PM, Moose Hill Council Chambers – FY09 Budget Discussion
- B. Town Council, December 3, 2007, 7:00 PM, Moose Hill Council Chambers – Follow-up Budget Workshop & Preliminary budget recommendations (General Govt.; Finance & Admin.; Comm. Services; Public Safety)
- C. Town Council, December 17, 2007, 7:00 PM, Moose Hill Council Chambers -