

TOWN COUNCIL AGENDA
June 3, 2019
7:00 P.M.

The Town Council meeting will be held in the Moose Hill Council Chambers, Town Hall, 268B Mammoth Road, Londonderry, NH. Regular meetings are cablecast live and videotaped for the convenience of our viewers at home. 7:00 PM.

A. CALL TO ORDER

B. PUBLIC COMMENT

- 1.) **Sleep Out Event to Benefit Homeless Veterans Organization**

C. PUBLIC HEARING

- 1.) **Transfer of Map 7, Lot 40-13 from the Town of Londonderry to Vernco Apple, LLC (2nd Public Hearing)**
- 2.) **Resolution #2019-05 – A Resolution Relative to the Town of Londonderry Family Medical Leave of Absence Policy Presented by Lisa Drabik**

D. OLD BUSINESS

E. NEW BUSINESS

- 1.) **Order #2019-14 – An Order Relative to the Expenditure of Maintenance Trust Funds Presented by Steve Cotton**
- 2.) **Order #2019-15 – An Order Relative to the Distribution of Cemetery Acquisitions, Maintenance & Repairs Capital Reserve Fund Presented by Steve Cotton**
- 3.) **Order #2019-16 – An Order Relative to the Withdrawal from Fire Truck Capital Reserve Chief Darren O'Brien**

F. APPROVAL OF MINUTES

Approval of May 20, 2019 Town Council Minutes

G. APPOINTMENTS/REAPPOINTMENTS

- 1.) Resignation of Kyle Foden From Budget Committee
- 2.) Appointment of Greg DePasse to LHRA

H. OTHER BUSINESS

1. Liaison Reports
2. Town Manager Report
3. Assistant Town Manager Report

I. ADJOURNMENT

J. MEETING SCHEDULE

- A. Town Council Meeting – 06/17/19 Moose Hill Council Chambers, 7:00PM
- B. Town Council Meeting – 07/15/19 Moose Hill Council Chambers, 7:00PM
- C. Town Council Meeting – 08/12/19 Moose Hill Council Chambers, 7:00PM
- D. Town Council Meeting – 09/02/19 Moose Hill Council Chambers, 7:00PM

LEGAL NOTICE

Per NH RSA 41:14-a, the Londonderry Town Council is required to hold two (2) PUBLIC HEARINGS on the following item:

The Transfer of Map 7, Lot 40-13 from the Town of Londonderry to Vernco Apple, LLC

The first Public Hearing was held on Monday, May 20, 2019. Notice is hereby given that the second public hearing will occur on Monday, June 3, 2019 at 7:00 PM at the Londonderry Town Hall, 268B Mammoth Road, Londonderry, NH 03053.

Londonderry Town Council

TITLE III TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

CHAPTER 41 CHOICE AND DUTIES OF TOWN OFFICERS

Selectmen

Section 41:14-a

41:14-a Acquisition or Sale of Land, Buildings, or Both. –

I. If adopted in accordance with RSA 41:14-c, the selectmen shall have the authority to acquire or sell land, buildings, or both; provided, however, they shall first submit any such proposed acquisition or sale to the planning board and to the conservation commission for review and recommendation by those bodies, where a board or commission or both, exist. After the selectmen receive the recommendation of the planning board and the conservation commission, where a board or commission or both exist, they shall hold 2 public hearings at least 10 but not more than 14 days apart on the proposed acquisition or sale; provided, however, upon the written petition of 50 registered voters presented to the selectmen, prior to the selectmen's vote, according to the provisions of RSA 39:3, the proposed acquisition or sale shall be inserted as an article in the warrant for the town meeting. The selectmen's vote shall take place no sooner than 7 days nor later than 14 days after the second public hearing which is held.

II. The provisions of this section shall not apply to the sale of and the selectmen shall have no authority to sell:

(a) Town-owned conservation land which is managed and controlled by the conservation commission under the provisions of RSA 36-A.

(b) Any part of a town forest established under RSA 31:110 and managed under RSA 31:112.

(c) Any real estate that has been given, devised, or bequeathed to the town for charitable or community purposes except as provided in RSA 498:4-a or RSA 547:3-d.

Source. 1994, 197:3. 1997, 38:1. 2001, 187:2. 2005, 80:1. 2007, 221:2. 2008, 109:1, eff. July 27, 2008.



Town of Londonderry
Michael J. Malaguti - Assistant Town Solicitor
268B Mammoth Road - Londonderry, NH 03053
tel: (603) 432-1102 - mmalaguti@londonderryhpd.org

November 29, 2018

Shaw's
M.S. 10501 P.O. Box 29093
Phoenix, AZ 85038
Attn. Legal Department

To Whom It May Concern:

I represent the Town of Londonderry, New Hampshire (the "Town"). For a number of years, "Shaw's Realty Co." owned a large tract of land in the Town. (While neither Shaw's nor its successors-in-interest own the realty any longer, there remains a Shaw's store in the Appletree Mall at 1 Orchard View Drive, Londonderry, New Hampshire.)

In 1981, Shaw's Realty Co. quitclaimed to the Town a small strip of land that was intended for use as a road. That tract is currently identified as lot 7-40-13 and is indicated by an arrow on the map attached hereto as "Exhibit 1." In the 1981 quitclaim deed (attached hereto as "Exhibit 2," Shaw's reserved "the right to use the [tract] for any and all purposes, at any time the Town of Londonderry is not using said premises as a public roadway." I will hereinafter refer to this reserved right as the "Easement."

By accepting and recording that deed, the Town also covenanted as follows: "In the event the Town of Londonderry, at any time in the future, determines that (i) the above described premises are not to be used as a public roadway, or (ii) that said above described premises once improved as a public roadway shall terminate being used as a public roadway, then the Town of Londonderry covenants and agrees to immediately re deed [*sic*] said premises to Shaw's Realty Co. or its successors and assigns, subject only to encumbrances of record as of this 1981 deed." I will hereinafter refer to this obligation as the "Covenant."

In 1984, Shaw's conveyed the larger mall tract to Appletree Mall Associates by warranty deed (attached hereto as "Exhibit 3") "together with the benefit of and subject to all rights, easements and restrictions of record including but not limited to . . . "The right to use [the small strip] . . . at any time the Town of Londonderry is not using said premises as a public roadway[.]" While this language appears to refer to the Easement, the 1984 deed does not specifically refer to the Covenant. The question arises whether Shaw's intended to convey or retain the Covenant. The subject tract was never used as a public road.

It should be noted that Shaw's did not appear to retain any other realty rights in or around the Appletree mall. While the Town believes there is a strong argument that the Covenant was incorporated into the 1984 conveyance under the benefit and burden clause quoted above, the Town nevertheless recognizes a lack of clarity and certainty in this regard. Therefore, I am writing to you at this time to inquire whether Shaw's would be willing to execute a quitclaim deed for the Covenant and to discuss the terms of such an arrangement.

Thank you for your attention and I look forward to hearing from you.

Sincerely,

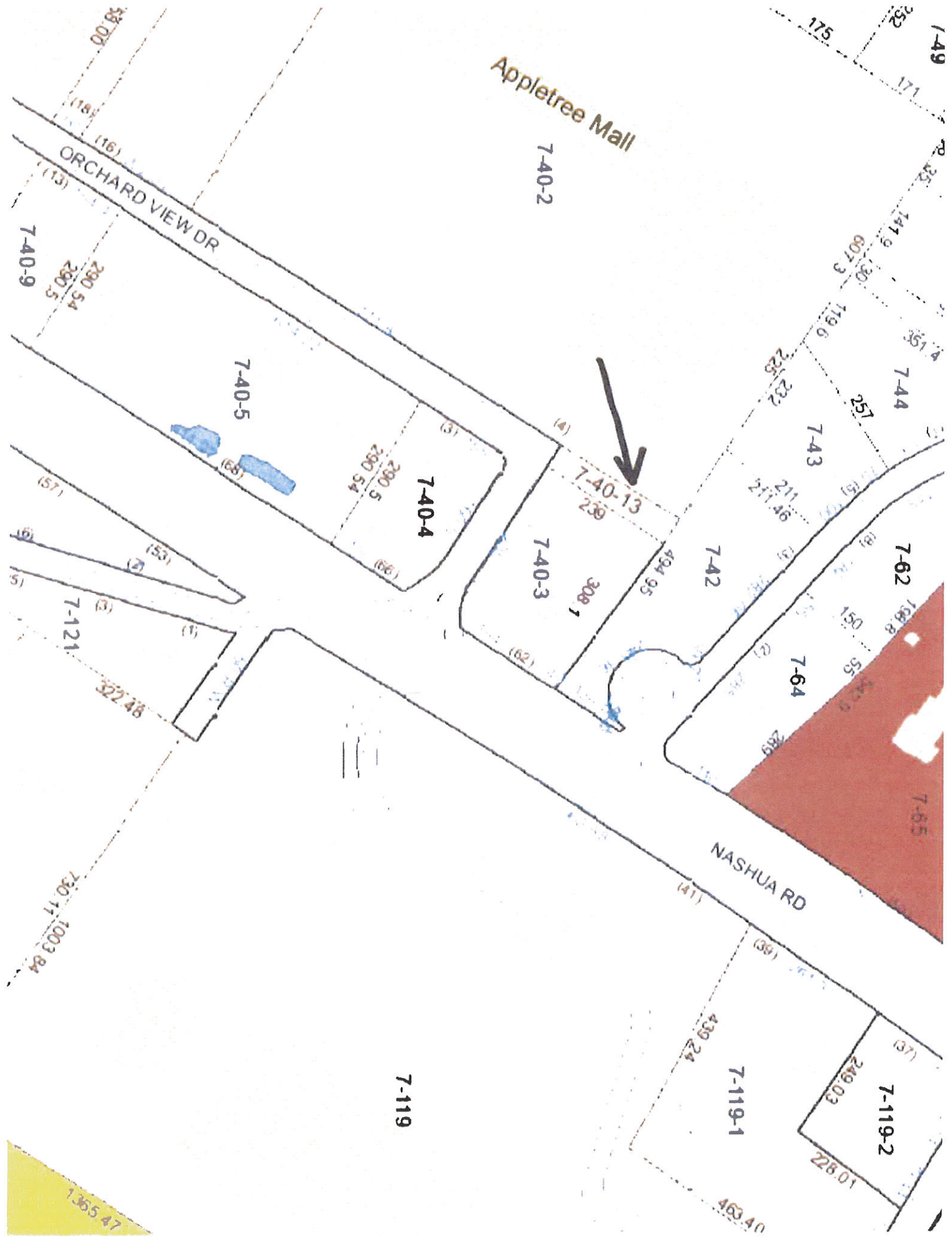


Michael J. Malaguti
Assistant Town Solicitor

Enclosures: As indicated

cc: Kevin Smith, Town Manager
Lisa Drabik, Assistant Town Manager

EXHIBIT 1



Appletree Mall

ORCHARD VIEW DR

NASHUA RD

7-40-2

7-40-5

7-40-4

7-40-3

7-40-13

7-42

7-43

7-44

7-62

7-64

7-65

7-119-1

7-119-2

7-119

1365.47



EXHIBIT 2

21663

QUITCLAIM DEED

Without Covenants

SHAW'S REALTY CO., a Maine Corporation with a mailing address at P. O. Box 3566, Portland, County of Cumberland, State of Maine, for consideration paid, grant to the TOWN OF LONDONDERRY, a municipal corporation of the State of New Hampshire, and having a place of business in the Town of Londonderry, New Hampshire, without any covenants,

The following premises located in Londonderry, County of Rockingham, State of New Hampshire, more particularly bounded and described as follows:

Beginning at a point which is the northwest corner of land now or formerly of Indian Head National Bank and which point is on the easterly sideline of a proposed road, which road is now in existence and is commonly known as Orchard View Drive, all as shown on a plan prepared by Edward H. Herbert and entitled "Plan of Land in Londonderry, N.H., subdivided for, James Matarozzo and Howard Hirschberg" dated September, 1976, and which Plan was approved by the Londonderry Planning Board on September 29, 1976 and is recorded in the Rockingham County Registry of Deeds as Plan #C-6299; and which point is 300 feet, more or less, from the northerly sideline of New Hampshire Route 102 (also known as Nashua Road); thence N 41° 15' 00" W. 43 feet, more or less, to a point at the corner of said Orchard View Drive Road and a corner of Grantor's premises; thence turning and running N 48° 45' 00" E 240 feet, more or less, to a stone wall at land now or formerly of Mary Gyorda; thence turning and running S 37° 40' E along said land of Mary Gyorda 43 feet, more or less, to a point at the northeast corner of land now or formerly of Indian Head National Bank; thence turning and running S 48° 45' 00" W 239.26 feet, more or less, to the point of beginning.

The premises now or formerly of Indian Head National Bank is shown on said Plan as lot 7-40-3.

The purpose of this deed is to convey a strip of land to be used as a possible public roadway for the extension northeasterly of Orchard View Drive. In the event the Town of Londonderry, at any time in the future, determines that (i) the above described premises are not to be used as a public roadway, or (ii) that said above described premises once improved as a public roadway shall terminate being used as a public roadway, then the Town of Londonderry covenants and agrees to immediately redeed said premises to Shaw's Realty Co. or its successors and assigns, subject only to encumbrances of record as of the date of this 1981 deed. Notwithstanding anything contained in this deed to the contrary, Shaw's Realty Co., for itself and its successors and assigns, reserves the right to use the above described premises for any and all purposes, at any time the Town of Londonderry is not using said premises as a public roadway.

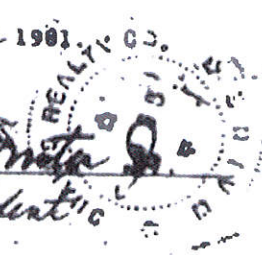
Said distances and directionals are based on the distances and directionals as shown on said above referred to Plan.

WITNESS its hand and seal this *8th* day of *September* 1981.

Witness:

SHAW'S REALTY CO.

By *Jack C. Thornton*
Its *Vice President*



OCT 13 11 11 AM '81

EXHIBIT 3

Feb 7 10 06 AM '84

03823

02478 P1549

-RERECORDING-

02477 T0406

WARRANTY DEED

SHAW'S REALTY CO., a Maine corporation with a mailing address at Box 3566, Portland, County of Cumberland, State of Maine, for consideration paid, grants to APPLE TREE MALL ASSOCIATES, a general partnership with a principal place of business at 111 Devonshire Street, Boston, Massachusetts, with warranty covenants,

The premises located on the northwest side of Orchard View Drive in Londonderry, County of Rockingham, State of New Hampshire, being Lot 7-40-2 as shown on a plan entitled "BOUNDARY PLAN OF LAND AND 'AS BUILT' IMPROVEMENTS KNOWN AS APPLE TREE MALL LONDONDERRY, ROCKINGHAM COUNTY, NEW HAMPSHIRE" by Rose, Foreman and Associates, Inc., to be recorded herewith.

Said premises are more particularly described as follows:

Beginning at a point at the EASTERLY corner of said premises then S.32°49'25"W 242.01 ft. to a concrete bound, then S32°49'25"W 771.84 ft. to a pin, then N57°10'35"W 869.38 ft. to a pin, then N16°56'20"E 679.64 ft. to a point then N37°23'25"E 176.89 ft. to a pin, then S54°44'30"E 607.42 ft. to a point, then S31°19'30"E 184.24 ft. to the point of beginning.

Together with the benefit of and subject to all rights, easements and restrictions of record including but not limited to the following:

Easements, restrictions and covenants set forth in a deed from James A. Matarozzo, et al. to George C. Shaw Co. recorded in Rockingham County Registry of Deeds at Volume 2266, page 441 as affected by a Waiver of Right of First Refusal recorded herewith;

Easement granted by James A. Matarozzo to New England Telephone & Telegraph and Public Service Company of New Hampshire by instrument recorded with said Registry of Deeds at Volume 1208, page 1415;

An Agreement recorded with said Registry at Volume 2266, page 1468;

A certain "Pond Agreement" recorded with said Registry at Vol. 2345 pg. 1907;

The right to use the premises described in deed of Shaw's Realty Co. to the Town of Londonderry recorded with said Registry at Volume 2399, page 1143, for any and all purposes, at any time the Town of Londonderry is not using said premises as a public roadway;

Easement granted by Shaw's Realty Co. to New England Telephone & Telegraph and Public Service Company of New Hampshire recorded with said Registry of Deeds at Volume 2404, page 1584;

Provisions of a Storm Water Drainage Agreement recorded with said Registry Vol. 2407 pg. 664;

Rights under lease of Oaco Drug, Inc., a memorandum of which is recorded with said Registry in Volume 2408, page 909;

Insofar as any or all of the same are in force and effect.

Subject also to the rights of tenants, leases or parties in possession.

For grantor's title see deed of Shaw's Supermarkets, Inc., to grantor dated July 31, 1979 recorded with said Registry Vol. 2395 pg. 377 and confirmatory deed recorded herewith.

EXECUTED under seal on behalf of Shaw's Realty Co., by its Vice-President on this 24 day of January, 1984.

SHAW'S REALTY CO.

By John D. Kelleher
John D. Kelleher,
Vice President,
fully authorized



COMMONWEALTH OF MASSACHUSETTS

Plymouth, ss.

January 24, 1984

Then personally appeared the above-named John D. Kelleher and acknowledged the foregoing instrument to be the free act and deed of Shaw's Realty Co., before me.

David C. Kelleher
Notary Public

My commission expires: July 6, 1985

This deed is re-recorded to correct the within-referred-to lot number which, by scrivener's error, was incorrectly recited as lot M-40-2 instead of 7-40-2 as shown on the above-referred-to plan.



CORRECTIVE
QUITCLAIM DEED

Without Covenants

Shaw's Realty Co., a Maine Corporation with a mailing address at P.O. Box 3565, Portland, County of Cumberland, State of Maine, for consideration paid, grants to the Town of Londonderry, a municipal corporation of the State of New Hampshire, and having a place of business in the Town of Londonderry, New Hampshire, without any covenants.

The following premises located in Londonderry, County of Rockingham, State of New Hampshire, more particularly bounded and described as follows:

Beginning at a point which is the northerly corner of said premises, thence S50°19'30"E forty-five and 023/1000 (45.023) feet to a point; thence S32°49'25"W two hundred forty and 56/100 (240.56) feet to an iron pipe; thence N57°10'36"W forty-five (45.0) feet to a concrete bound; thence S32°49'25"W two hundred forty-two and 1/100 (242.01) feet to point of beginning, said last course being by land of grantor.

The purpose of this deed is to convey a strip of land to be used as a possible public roadway for the extension northeasterly of Orchard View Drive. In the Event the Town of Londonderry, at any time in the future, determines that (i) the above described premises are not to be used as a public roadway, or (ii) that said above described premises once improved as a public roadway shall terminate being used as a public roadway, then the Town of Londonderry covenants and agrees to immediately redeed said premises to Shaw's Realty Co. or its successors and assigns, subject only to encumbrances of record as of September 8, 1981. Notwithstanding anything contained in this deed to the contrary, Shaw's Realty Co., for itself and its successors and assigns, reserves the right to use the above described premises for any and all purposes, at any time the Town of Londonderry is not using said premises as a public roadway.

The purpose of this corrective deed is to confirm the original deed dated September 8, 1981 from grantor to grantee, recorded at the Rockingham Registry of Deeds in Book 2399, page 1143 and to correct the description used therein.

WITNESS its hand and seal this 24 day of January, 1984.

SHAW'S REALTY CO.

Witness:

[Signature]

By

[Signature]
Vice President, duly authorized

COMMONWEALTH OF MASSACHUSETTS

Suffolk
Plymouth, ss.

January 24, 1984

Then personally appeared the above-named John D. Kelleher and acknowledged the foregoing instrument to be the free act and deed of Shaw's Realty Co., before me.

[Signature]
Notary Public
My commission expires: July 6, 1985

RELEASE DEED

Without Covenants

Shaw's Realty Co., a Maine corporation with a mailing address at c/o Albertsons Companies, Inc., 250 East Parkcenter Boulevard, Legal Department, Boise, Idaho 83706 ("Grantor"), for consideration paid, grants to the Town of Londonderry, a municipal corporation of the State of New Hampshire, and having a mailing address of 268B Mammoth Road, Londonderry, New Hampshire 03053 ("Grantee"), without any covenants, certain interest(s) in realty located in Londonderry, County of Rockingham, State of New Hampshire:

WHEREAS, by deed dated September 8, 1981, and recorded on October 13, 1981 at Book 2399, Page 1143 in the Rockingham County Registry of Deeds (the "1981 Deed"), the Grantor conveyed to the Grantee certain realty described in such instrument; and

WHEREAS, as set forth in the 1981 Deed, the Grantor reserved the right to use the property conveyed therein "for any and all purposes, at any time the [Grantee] is not using said premises as a public roadway" (the "Retained Easement"); and

WHEREAS, by accepting the 1981 Deed, the Grantee covenanted and agreed to re-convey the property conveyed therein to the Grantor upon certain conditions set forth in the such instrument (the "Covenant"); and

WHEREAS, by Corrective Quitclaim Deed dated January 24, 1984, and recorded on the same date, at Book 2477, Page 0401 in the Rockingham County Registry of Deeds (the "1984 Deed"), the Grantor confirmed the terms of the 1981 Deed, including the conveyance to the Grantee and the terms of the Retained Easement and the Covenant, and corrected the legal description contained in the 1981 Deed; and

WHEREAS, by deed dated January 24, 1984, and recorded on the same date at Book 2477, Page 0406 in the Rockingham County Registry of Deeds (and re-recorded on February 7, 1984 for reasons immaterial hereto), the Grantor conveyed its interest in surrounding property to a third party, and expressly incorporated into that conveyance the Retained Easement but omitted specific reference to the Covenant; and

WHEREAS, the Grantor and Grantee now wish to clarify their respective interests in the

Covenant.

NOW, THEREFORE, the Grantor hereby releases to the Grantee the Covenant, to the extent it retains any interest therein, with no deed covenants or representations whatsoever as to the state or quality of title, the language of the released Covenant being as follows:

The purpose of this deed is to convey a strip of land to be used as a possible public roadway for the extension northeasterly of Orchard View Drive. In the event the Town of Londonderry, at any time in the future, determines that (i) the above described premises are not to be used as a public roadway, or (ii) that said above described premises once improved as a public roadway shall terminate being used as a public roadway, then the Town of Londonderry covenants and agrees to immediately redeed said premises to Shaw's Realty Co. or its successors and assigns, subject only to encumbrances of record as of the date of this 1981 deed.

AND THE GRANTOR CONFIRMS the conveyance to the Grantee of the property identified in the 1981 Deed, the legal description of which was corrected in the 1984 Deed, free and clear of the Covenant.

For identification purposes, the subject property is known in the records of the Town of Londonderry as Map 7, Lot 40-13.

This is not homestead property of the within Grantor.

Exempt from transfer tax under RSA 78-B:2, I. Exempt from LCHIP under RSA 478:17-g, II(a).

WITNESS its hand and seal this ____ day of _____, 2019.

Witness:

SHAW'S REALTY CO.,
a Maine corporation

By: _____
Name: Joel H. Guth
Its: Authorized Signatory

STATE OF IDAHO)
 : ss.
County of Ada)

On this _____ day of April, 2019, before me, _____, personally appeared Joel H. Guth, known or identified to me to be an Authorized Signatory of Shaw's Realty Co., the entity that executed the instrument or the person who executed the instrument on behalf of said entity, and acknowledged to me that said entity executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

NOTARY PUBLIC FOR IDAHO
Residing at _____, Idaho
My Commission Expires _____

[SEAL]

QUITCLAIM DEED

The Town of Londonderry, a municipal corporation of the State of New Hampshire, and having a mailing address of 268B Mammoth Road, Londonderry, New Hampshire 03053 (“Grantor”), for consideration paid, grants and releases, with quitclaim covenants, to **Vernco Apple, LLC**, a New Hampshire limited liability company with a mailing address of 70 Washington Street, Suite 310, Salem, Massachusetts 01970 (“Grantee”), the following premises located in Londonderry, County of Rockingham, State of New Hampshire, lying and being described as follows:

Beginning at a point which is the northerly corner of said premises, thence S 50° 19’ 30” E forty-five and 023/1000 (45.023) feet to a point; thence S 32° 49’ 25” W two hundred forty and 56/100 (240.56) feet to an iron pipe; thence N 57° 10’ 36” W forty-five (45.0) feet to a concrete bound; thence S 32° 49’ 25” W two hundred forty-two and 1/100 (242.01) feet to point of beginning.

For identification purposes, the subject property is known in the records of the Town of Londonderry as Map 7, Lot 40-13.

For Grantor’s title see Release Deed of Shaw’s Realty Co., recorded herewith.

This is not homestead property of the within Grantor.

Shaw’s Realty Co. signs this Quitclaim Deed solely to confirm that it renounces any right to use the above property “for any and all purposes at any time the Town of Londonderry is not using said premises as a public roadway,” which right was previously reserved to Shaw’s Realty Co. and subsequently conveyed to its successors-in-title.

Exempt from transfer tax under RSA 78-B:2, I. Exempt from LCHIP under RSA 478:17-g, II(a).

WITNESS its hand and seal this ____ day of _____, 2019.

Witness:

TOWN OF LONDONDERRY

By: _____

Name:

Its: Authorized Signatory

STATE OF NEW HAMPSHIRE
County of Rockingham

On this ____ day of April, 2019, before me, _____, personally appeared _____, known or identified to me to be _____ of the Town of Londonderry, a New Hampshire municipal corporation, the entity that executed the instrument or the person who executed the instrument on behalf of said entity, and acknowledged to me that said entity executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

NOTARY PUBLIC

My Commission Expires _____

[SEAL]

Witness:

SHAW'S REALTY CO.,
a Maine corporation

By: _____
Name: Joel H. Guth
Its: Authorized Signatory

STATE OF IDAHO)
 : ss.
County of Ada)

On this _____ day of April, 2019, before me, _____, personally appeared Joel H. Guth, known or identified to me to be an Authorized Signatory of Shaw's Realty Co., the entity that executed the instrument or the person who executed the instrument on behalf of said entity, and acknowledged to me that said entity executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

NOTARY PUBLIC FOR IDAHO
Residing at _____, Idaho
My Commission Expires _____

[SEAL]



Londonderry Conservation Commission
Tuesday, May 14, 2019
Minutes

1 **Present:** Marge Badois, Chair; Gene Harrington, Vice Chair; Deb Lievens, member; Mike Noone,
2 member; Bob Maxwell, member; Mike Byerly, member, and Jocelyn Demas, alternate member

3
4 **Absent:** Richard Floyd, member; Raymond Brown, alternate member and Mike Speltz, alternate
5 member; and Town Council liaison member

6
7 **Also present:** Amy Kizak, GIS Manager/Comprehensive Planner

8
9 Marge Badois called the meeting to order at 7:30 pm. She appointed J Demas to vote for R Floyd.

10 **Glenn Aprile - Conservation Ranger:** M Badois introduced Glenn Aprile to the Commission stating that
11 he was the new Conservation Officer. G Aprile introduced himself to the Commission noting that he has
12 been a Londonderry police officer for 32 years and this Friday is officially his last shift. He told the
13 Commission that the retirement board requires a person to take 28 days off, which would be the month
14 of June, so he would officially start July 1, 2019. He pointed out that a Kawasaki 4-wheeler had been
15 purchased for him to use in this position. He asked what the Commission had for expectations of him in
16 this position. M Badois said that she felt the position was going to be morphing as it has never been
17 done before.

18 **ROW Access property release (Map 7 Lot 40-13):** A Kizak reviewed the proposed ROW access property
19 release with the Commission. She said that when this was originally done the land was given to the
20 Town for the potential for a road to be built and connect with Devonshire Lane. She explained that in
21 the original deed the language stated that if a roadway was not to be built, the lot would revert back to
22 the owner of the Shaws Plaza. She said that a road will never be built as there is a house now. She said
23 before the Town can release the deed, it needs to be presented to the Heritage Commission,
24 Conservation Commission and the Planning Board. G Harrington made a motion to recommending
25 returning the ROW access property release Map 7 Lot 40-13 to parcel Map 7 Lot 40-2 to expand their
26 green space with native shrubs. B Maxwell seconded the motion. The motion passed, 7-0-0.

27 **Unfinished Business**

28 **Kendall Pond projects:** M Noone told the Commission that he thought that after all the new items are
29 in place, he would like to have a grand re-opening of Kendall Pond for the public. He said that he might
30 consider moving picnic tables to a better location that might discourage some bad behavior. M Byerly
31 suggested the weekend of June 22, 2019, for a grand re-opening.

32 **Gates:** M Badois asked B Maxwell if he had an update on the Eversource gates. B Maxwell said that he
33 did not at this point and would reach out again to his contacts.



Londonderry Conservation Commission
Tuesday, May 14, 2019
Minutes

34 **Doug Martin, KW Commercial Real Estate, and Paul Kerry, Northeast Nursery:** Doug Martin introduced
35 Paul Kerry from Northeast Nursery, 234 Newbury St, Peabody, MA, to the Commission. D Martin said
36 that Northeast Nursery has found location in Londonderry that is under agreement and had a lot of
37 engineering done to it back in 2006, which was revised again in 2009. He said that the plans never
38 received final approval because the developer never completed them. He told the Commission that they
39 are here tonight for a DRC to see if there have been many changes in setbacks or buffers. Paul Kerry
40 gave an overview of the company noting that they are a full service landscaping company based out of
41 Peabody MA. He said that they currently have a location in Londonderry that they are renting and the
42 owner would like to purchase this property, as he does not want to rent anymore. He said they try to be
43 a one-stop shop for landscaping companies. He said there are three employees at this location, a
44 manager, an outside salesman and a delivery driver/inside salesman. He asked if the 50 foot setback
45 still applied to the edge of wet. M Badois said that was correct. J Demas asked if the company only sells
46 to landscapers. P Kerry said that they will sell to anyone, but they are mostly wholesale. D Martin
47 concluded that there were no big changes from the 2006 plans.

48 **New Business**

49 **Finance:** D Lievens told the Commission that the total money from the rabbit habitat project was \$93,
50 779. 59. She said that she spoke to Justin, Finance Director, about the budget and accounts. She stated
51 that the current budget for the Commission is \$3,350 and there is approximately \$350 left in it, which
52 should be used by July 1, 2019. She said rather than the Commission opening up another escrow
53 account, they should turn the Conservation Fund money into the Habitat Protection Fund, and the
54 money will stay in this account for future rabbit cuts. She noted that everything else, as there is no bond
55 money left, could be called the Open Space Protection Fund. M Badois asked if Justin was okay
56 comingling purchase money with maintenance money. D Lievens said that is he is okay with that. She
57 suggested the accounts be called Habitat Protection Fund and Open Space Protection Fund. The
58 Commission agreed.

59 **Ingersoll:** D Lievens reported going to obtain an estimate from Rockingham Conservation Commission
60 District (RCCD) for Ingersoll property.

61 **Fish & Game meeting with neighbors:** M Badois told the Commission that Fish & Game would like to
62 meet with the neighborhood off of Iroquois to explain that they are trying to create a turtle habitat. She
63 said that she is waiting for Fish & Game to get her a date and she suggested they meet in the evening to
64 try and get the most number of people to attend.



Londonderry Conservation Commission
Tuesday, May 14, 2019
Minutes

65 **Stream brochure:** M Badois passed out a brochure that M Speltz gave her about streams for the
66 Commission to review. She said that M Speltz is asking the creator of the brochure if he/she minds if the
67 Commission uses it/makes one similar in nature.

68 **Commission Vacancy:** M Badois told the Commission that unfortunately, Ray Brown has resigned, and
69 his position will be re-posted.

70 **Phragmites:** M Badois said that she has the month of May in her calendar for monitoring this. D
71 Lievens said that the Commission does need to go out and monitor this at Lot 6-113. She said that this
72 would be extremely wet and hard to access. M Badois suggested trying to monitor this in the fall. D
73 Lievens said she thought they should go out in July.

74 **Ray Breslin, Three Gary Drive:** Ray Breslin told the Commission that Londonderry has two superfund
75 sites in town and feels that Londonderry should be requesting money from the state to help with this.
76 He said that Londonderry is doing a water quality and quantity study now and will hopefully get the
77 results next month.

78 **The Baldwin Senior Living at Woodmont Commons Wetland Permit Application:** The Commission
79 reviewed the Baldwin Senior Living at Woodmont Commons Wetland Permit Application and has no
80 objection.

81 **77 & 83 Nashua Road Wetland Permit Application:** The Commission reviewed the 77
82 & 83 Nashua Road Wetland Permit Application commenting that they have no objection to Dredge and
83 Fill area #1; however, Dredge and Fill area #2 is not required for access to the property and if the
84 building was shrunk, it would not be needed.

85 **Minutes:** The Commissioners went over the public minutes from April 23, 2019. D Lievens made a
86 motion to accept the minutes as presented. G Harrington seconded the motion. The motion passed, 5-0-
87 2, with M Byerly and J Demas abstaining.

88 **Driveways:** M Badois read an email from M Speltz regarding the Meadows issues from last week. She
89 said that they came up with two work arounds beyond simply deleting the seven homes with no back
90 yards, either post buffer signs at 10 foot intervals, so there is no mistaking the line on a narrow lot or
91 install white picket fence around the buffer. She said that Colleen Mailloux, Town Planner, will suggest
92 these options as illustrative ways the developer can meet our concern regarding the encroachment from
93 the homes with no backyards and it will be up to the developer to come up with a solution that satisfies
94 or resolves our concerns. She said they also discussed the issue of buffer mitigation and came up with
95 the idea of using the 75 foot well radius, shown on the plan, as an extension of the 50 foot buffer. She



Londonderry Conservation Commission
Tuesday, May 14, 2019
Minutes

96 said that the well is located near the edge of the wet and since the developer is very limited in what he
97 can do within the well radius, it would be giving up very little, and would add some architecture to the
98 wetland. She said that if possible, the Commission should attend the Planning Board meeting to present
99 these issues.

100 **DRC**

101 **Larson Site Plan (Map 13 Lot 64):** The Commissioners reviewed the DRC for the Larson Site Plan (Map
102 13 Lot 64 asking what is going to be stored in outside storage and if it will be vehicles, will there be any
103 maintenance/mitigation for leaking fuel, oil, etc., into the existing well. The Commission also asked what
104 can be done to prevent run-off or surface water from entering the well and contaminating aquifer.

105 **Adjournment:** G Harrington made a motion to adjourn the meeting at 9:30 p.m. J Demas seconded the
106 motion. The motion passed, 7-0-0.

107 Respectfully Submitted,
108 Beth Morrison
109 Recording Secretary
110

1 **LONDONDERRY, NH PLANNING BOARD**
2 **MINUTES OF THE MEETING OF May 8, 2019 AT THE MOOSE HILL**
3 **COUNCIL CHAMBERS**

4
5 **I. CALL TO ORDER**
6

7 Members Present: Art Rugg, Chair; Mary Wing Soares, Vice Chair; Al Sypek,
8 member; Giovanni Verani, Ex-Officio – Town Manager; Chris Davies, Secretary;
9 Rick Brideau, Ex-Officio – Town Employee; Ted Combes, Town Council Ex-Officio;
10 Jake Butler, member; Roger Fillio (alternate member); Ann Chiampa (alternate
11 member) and Peter Commerford (alternate member)
12

13 Also Present: John R. Trottier, P.E., Assistant Director of Public Works and
14 Engineering; Colleen Mailloux, Town Planner; Laura Gandia, Associate Planner and
15 Beth Morrison, Recording Secretary
16

17 Chairman Rugg called the meeting to order at 7:00 PM, explained the exit and
18 emergency procedures, and began with the Pledge of Allegiance. He appointed A.
19 Chiampa to vote for S. Benson.
20

21 **II. ADMINISTRATIVE BOARD WORK**
22

23 **A. APPROVAL OF MINUTES:**
24

25 **Member M. Soares made a motion to approve the minutes of April 3,**
26 **2019, as presented.**
27

28 **R. Brideau seconded the motion.**
29

30 **The motion was granted 8-0-1, with C. Davies abstaining. The Chair**
31 **voted in the affirmative.**
32

33 **Member M. Soares made a motion to approve the minutes of April 10,**
34 **2019, as presented.**
35

36 **R. Brideau seconded the motion.**
37

38 **The motion was granted 7-0-2, with A. Sypek and G. Verani**
39 **abstaining. The Chair voted in the affirmative.**
40

41
42 **B. REGIONAL IMPACT DETERMINATIONS:** Town Planner Mailloux informed the
43 Board that she had one project for their consideration.
44

- 45 1. Application for formal review a lot line adjustment between 23 Wilson
46 Road, Map 16 Lot 9, Zoned AR-1/IND-I, Evans Family Limited Partnership
47 (Owner) and 55 Wilson Road, Map 18 Lot 24-5, Zoned AR-1, Douglas B. &

48 Maria F. Jones (Owners) AND subdivision to create 9 residential lots, 23
49 Wilson Road, Map 16 Lot 9, Zoned AR-1/IND-I, Evans Family Limited
50 Partnership (Owner and Applicant)
51

52 Town Planner Mailloux recommended that the Board find this project is not a
53 development of regional impact as it does not meet the criteria set forth by the
54 Southern New Hampshire Regional Planning Commission.
55

56 **M. Soares made a motion to find that this project is not of regional**
57 **impact.**
58

59 **R. Brideau seconded the motion.**
60

61 **The motion was granted, 9-0-0. The Chair voted in the affirmative.**
62

63 C. DISCUSSIONS WITH TOWN STAFF:

64 1. Capital Improvement Plan (CIP) Committee Representatives
65

66 Chairman Rugg informed the Board that they need to appoint two members for the
67 CIP, as well as the liaison to the Heritage Commission. He said that members M.
68 Soares and R. Brideau have been on the CIP and he has been the liaison to the
69 Heritage Commission.
70

71 **A. Sypek made a motion to approve R. Brideau and M. Soares as the**
72 **CIP representatives and A. Rugg as the liaison to the Heritage**
73 **Commission.**
74

75 **R. Brideau seconded the motion.**
76

77 **The motion was granted, 9-0-0. The Chair voted in the affirmative.**
78

79 2. Request for extension of Conditional Approval, Cross Farm Phases 2-3
80

81 Town Planner Mailloux informed the Board that the conditional approval would have
82 to be satisfied by tomorrow, May 9, 2019 and the applicant is requesting an
83 additional 120 days to finalize the conditions of approval. She said that the
84 applicant is working out the final permits with New Hampshire Department of
85 Transportation (NHDOT) and addressing engineering review comments. She said
86 that Staff recommends the Board grant an extension until September 8, 2019.
87

88 **M. Soares made a motion to approve the applicant's request for an**
89 **extension of the conditional approval of Cross Farm Phases 2-3, to**
90 **September 9, 2019.**
91

92 **T. Combes seconded the motion.**
93

94 **The motion was granted, 9-0-0. The Chair voted in the affirmative.**
95

96 3. Two Orchard View Drive, Map 7 Lot 40-13 – deed transfer
97 Michael Malaguti, Prosecutor for the Town, addressed the Board. M. Malaguti said
98 that this parcel was originally intended to be used as an extension of Orchard View
99 Drive. He informed the Board that one problem with this is that no extension
100 appears to be forthcoming and there is a house built there now between the parcel
101 in question and Devonshire Lane. He said that this parcel has been owned by the
102 Town since 1981 and was explicitly acquired to extend Orchard View Drive to
103 connect with Devonshire Lane. He stated that the parcel was acquired from Shaws
104 Realty Company, when Shaws owned the plaza and now Shaws leases the plaza
105 and has no ownership interest in the parcel. He told the Board that when the Town
106 acquired the parcel there was an easement permitting Shaws to continue to use
107 that parcel for any purpose as long as it was not being used as a public road. He
108 said that the parcel was also subject to covenant or redeed to Shaws Realty or its
109 successors in the event that "the town of Londonderry at any time in the future
110 determines that those premises are not to be used as a public roadway or that if
111 they improved as a public roadway and shall cease being used as such then the
112 Londonderry covenant agrees to immediately redeed to Shaws Realty Company or
113 is successors." He informed the Board that in 1984 Shaws conveyed the larger tract
114 to Apple Tree Mall Associates where the easement was conveyed but did not make
115 specific reference to the redeed. He said that late last year discussions began to
116 redeed the parcel as was required by the 1981 deed. He said that Shaws agreed to
117 cure the title problem of the unreleased covenant. He said this is being proposed
118 with a two part transaction noting the first step Shaws will release to the Town any
119 unreleased interest in the covenant that might continue to hold. He said that the
120 second step would be for the town is proposing to qid claim this tract to Vernco
121 Apple, LLC, which is the current owner of the plaza. He said this will accomplish the
122 curing of the title and will also discharge the town's engagement under the original
123 1981 deed. He said this will also assist in the revitalization of the plaza and return
124 the parcel to the tax base. He told the Board that he was here before them tonight
125 pursuant to RSA 41:14-A stating "the selectman have the authority to acquire or
126 sell land, buildings or both provided, however, that they shall first submit any set
127 proposed acquisition or sale to the Planning Board and to the Conservation
128 Commission for review and recommendation by those bodies where a Board or
129 Commission or both exist." He said that the Planning Department has requested
130 that if this transaction does get approved that the owner agree to merge it
131 voluntarily with the larger parent tract, which he stated the owner has agreed to.

132
133 Chairmn Rugg opened it up to questions from the Board. M. Soares asked if the
134 owner has any plans to develop the land. M. Malaguti said he could not speak to
135 that specifically, but did think the parcel could be used for additional parking.

136
137 **R. Brideau made a motion to recommend to the Town Council that**
138 **the Planning Board is in agreement that the parcel in question serves**
139 **no planning purpose.**

140
141 **T. Combes seconded the motion.**

142
143 **The motion was granted, 8-1-0. The Chair voted in the affirmative.**

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III. Old Business/Continued Plans -

A. Application for formal review a lot line adjustment between 23 Wilson Road, Map 16 Lot 9, Zoned AR-1/IND-I, Evans Family Limited Partnership (Owner) and 55 Wilson Road, Map 18 Lot 24-5, Zoned AR-1, Douglas B. & Maria F. Jones (Owners) AND subdivision to create 9 residential lots, 23 Wilson Road, Map 16 Lot 9, Zoned AR-1/IND-I, Evans Family Limited Partnership (Owner and Applicant) **Continued from April 3, 2019**

Chairman Rugg read the case into the record noting it was continued from April 3, 2019. He informed the Board that the applicant has requested a continuance to June 12, 2019 meeting. J. Trottier told the Board that the applicant has worked with Staff regarding the improvements required to improve the roadway to town standards. He said that the applicant's engineer met with Staff in the field on April 11, 2019 and plans are currently being prepared for improvements to Wilson Road. M. Soares asked if Staff felt this would be ready in time for the June 12, 2019, meeting. Town Planner Mailloux said that Staff has had meetings with the Town Attorney to discuss procedure and believes the applicant will come to the June 12, 2019, meeting with the additional information required. She said that she could also have the Town Attorney meet with the Board before the June 12, 2019, meeting to advise them.

A. Sypek made a motion to continue the application for formal review a lot line adjustment between 23 Wilson Road, Map 16 Lot 9, Zoned AR-1/IND-I, Evans Family Limited Partnership (Owner) and 55 Wilson Road, Map 18 Lot 24-5, Zoned AR-1, Douglas B. & Maria F. Jones (Owners) AND subdivision to create 9 residential lots, 23 Wilson Road, Map 16 Lot 9, Zoned AR-1/IND-I, Evans Family Limited Partnership (Owner and Applicant) to June 12, 2019

R. Brideau seconded the motion.

The motion was granted, 9-0-0. The Chair voted in the affirmative.

Chairman Rugg noted that the plan is continued until June 12, 2019, at 7 p.m. at the Town Hall and this would be the only formal public notice.

B. Application for formal review of a subdivision plan of one lot into 10 residential lots, 162 High Range Road, Map 9, Lot 5, Zoned AR-1, Belize Real Estate Holdings, LLC (Owner & Applicant) **Continued from April 3, 2019**

Chairman Rugg read the case into the record noting is was continued from April 3, 2019. G. Verani recused himself from this case. J. Trottier informed the Board that Staff has confirmed with the Town Attorney that this parcel is not located within the town's Airport Noise Overlay District and as the zoning ordinances and subdivision

192 regulations have no provisions to existing noise, the Planning Board may not
193 impose conditions of approval on a subdivision relating to noise.

194
195 Chairman Rugg opened it to questions from the Board. T. Combes said that some
196 residents have expressed their concern to him about water issues. Eric Mitchell
197 addressed the Board. E. Mitchell asked if T. Combes had a specific property of
198 concern. T. Combes said the residents live on Sherwood Road. J. Trottier asked if it
199 was water supply or storm water. T. Combes said he believes it is regarding storm
200 water. E. Mitchell explained that they are required to take the storm water coming
201 off the site, treat it and not have any increase in storm water run-off from pre-
202 development to post-development.

203
204 Chairman Rugg opened it up to questions from the public.

205
206 Deborah Dunn, 21 Sherwood Road, addressed the Board. D. Dunn read a letter
207 (Exhibit 1) that her husband Neil Dunn wrote as he could not be at the meeting
208 tonight.

209
210 Martin Srugis, 17 Wimbledon Drive, addressed the Board. M. Srugis asked if the
211 town looked at well water and supplies for aquifer in this area. Town Planner
212 Mailloux said that wells are regulated by New Hampshire Department of
213 Environmental Services (NHDES) for approval. She said that the Conservation
214 Commission is currently working on a Water Resources Management Plan looking at
215 water quantity and water quality and there may be some new information on this
216 coming to the Board in the near future.

217
218 Chairman Rugg brought the discussion back to the Board as there was no further
219 public input. M. Soares asked Town Planner Mailloux for clarification on the
220 authority of the Board to impose any noise restriction on this case. Town Planner
221 Mailloux stated that under current regulations there is no authority for the Planning
222 Board to deny this application that would be legally defensible from the Town
223 Attorney.

224
225 **M. Soares made a motion to grant conditional approval of the**
226 **subdivision plan of one lot into 10 residential lots, 162 High Range**
227 **Road, Map 9, Lot 5, Zoned AR-1, Belize Real Estate Holdings, LLC**
228 **(Owner & Applicant) in accordance with plans prepared by Eric**
229 **Mitchell & Associates, LLC dated September 14, 2018, last revised**
230 **March 13, 2019 with the following precedent conditions to be fulfilled**
231 **within two years and prior to plan signature and subsequent**
232 **conditions to be fulfilled as noted in the Staff Recommendation**
233 **Memorandum dated May 8, 2019.**

234
235 **R. Brideau seconded the motion.**

236
237 **The motion was granted, 8-0-0. The Chair voted in the affirmative.**
238

239 "Applicant", herein, refers to the property owner, business owner, or organization
240 submitting this application and to his/its agents, successors, and assigns.

241 **PRECEDENT CONDITIONS**

242
243 All of the precedent conditions below must be met by the Applicant, at the expense
244 of the Applicant, prior to certification of the plans by the Planning Board.

245 Certification of the plans is required prior to commencement of any site work, any
246 construction on the site or issuance of a building permit.

247
248 1. The Applicant shall address all appropriate items from the Planning & Economic
249 Development Department/Department of Public Works & Engineering/Stantec
250 review memo dated April 3, 2019.

251
252 2. The Applicant shall provide the Owner's signature(s) on the plans.

253
254 3. Required permits and permit approval numbers shall be noted on the plan.

255
256 4. The proposed road deed and easements shall be provided for review and
257 approval by the Town and shall be recorded concurrently with the final plan.

258
259 5. The Applicant shall provide a digital copy of the complete final plan to the Town
260 prior to plan signature by the Planning Board in accordance with Section 2.05.n of
261 the Subdivision Regulations.

262
263 6. The Applicant shall provide a check for \$25 (made payable to the Rockingham
264 County Registry of Deeds) for LCHIP.

265
266 7. The Applicant shall note all general and subsequent conditions on the plans.

267
268 8. Outstanding third-party review fees, if any, shall be paid within 30 days of
269 conditional site plan approval.

270
271 9. Financial guarantee be provided to the satisfaction of the Department of Public
272 Works and Engineering.

273
274 10. Final engineering review.

275
276 **PLEASE NOTE** – If these conditions are not met within two (2) years of the
277 meeting at which the Planning Board grants approval, the Board's approval will be
278 considered to have lapsed and re-submission of the application will be required. See
279 RSA 674:39 on vesting.

280
281 **GENERAL AND SUBSEQUENT CONDITIONS**

282
283 All of the conditions below are attached to this approval.

284
285 1. **No construction or site work for the subdivision may be undertaken until**
286 **a pre-construction meeting with Town staff has taken place, filing of an**

287 **NPDES – EPA Permit (if required), and posting of the appropriate financial**
288 **guaranty with the Town.** Contact the Department of Public Works to arrange the
289 pre-construction meeting.

290
291 2. The project must be built and executed as specified in the approved application
292 package unless modifications are approved by the Planning Department &
293 Department of Public Works, or, if Staff deems applicable, the Planning Board.

294
295 3. All of the documentation submitted in the application package by the applicant
296 and any requirements imposed by other agencies are part of this approval unless
297 otherwise updated, revised, clarified in some manner, or superseded in full or in
298 part. In the case of conflicting information between documents, the most recent
299 documentation and this notice herein shall generally be determining.

300
301 4. Prior to issuance of a certificate of occupancy, all site improvements and off-site
302 improvements, if any, shall be completed.

303
304 5. It is the responsibility of the applicant to obtain all other local, state, and federal
305 permits, licenses, and approvals which may be required as part of this project (that
306 were not received prior to certification of the plans). Contact the Building Division
307 at extension 115 regarding building permits.

308
309 **IV. New Plans -**

310 A. Application for formal review of a site plan amendment for
311 modifications to Block 9 and extension of First Avenue to Pillsbury Road,
312 Woodmont Commons Planned Unit Development, Garden Lane, Pillsbury
313 Road & Michels Way, Map 10 Lots 41, 52, 54-1, Zoned C-I & PUD,
314 Pillsbury Realty Development, LLC, Demoulas Super Markets, Inc., and
315 Robert D. & Stephen R. Lievens (Owners) and Pillsbury Realty
316 Development, LLC (Applicant).

317
318 G. Verani came back to the Board for this case. Chairman Rugg read the case into
319 the record. J. Trottier stated there are no outstanding checklist items and Staff
320 recommends the application be accepted as complete.

321
322 **M. Soares made a motion to accept the application as complete per**
323 **Staff's recommendation memorandum dated May 8, 2019.**

324
325 **R. Brideau seconded the motion.**

326
327 **The motion was granted, 9-0-0. The Chair voted in the affirmative.**

328
329 Chairman Rugg noted that the 65-day time clock had started.

330
331 Jeff Kevan, Project Manager at TFMoran Inc., addressed the Board. J. Kevan stated
332 that the site plan amendment is regarding blocks 6 and 9 to reconfigure First
333 Avenue from Main Street down to Pillsbury Road. He said they took some building

334 out of block 6 to come around the existing pond and changed the building style for
335 the residential component in block 9 to a duplex style. He told the Board there is no
336 real significant change in the uses, rather just realignment for First Avenue.

337

338 Chairman Rugg opened it up to questions from the Board. P. Commerford asked for
339 clarification as he was not on the Board when the site plan was approved. J. Kevan
340 explained that First Ave was tighter to the street channel before this reconfiguration
341 and now they are pulling away from the street channel. J. Trottier noted that First
342 Ave did not originally connect all the way to Pillsbury Road in the previous site plan.
343 P. Commerford asked if they were going to connect to the bus terminal. J. Kevan
344 said that they are in negotiation with New Hampshire Department of Transportation
345 (NHDOT) to do just that. P. Commerford said that he is worried this new change in
346 traffic will change the dynamics of the traffic study that was originally done. J.
347 Trottier noted that Staff is also concerned about this as they are now connecting to
348 Pillsbury and will work with the applicant on this. J. Kevan explained that they were
349 required to a traffic count update now that the brewery is going to open and will be
350 required to do more as the project continues. He said that the connection to the
351 bus terminal will hopefully make the traffic pattern easier. P. Commerford asked for
352 clarification on specifically what the Board is acting on tonight. Town Planner
353 Mailloux told the Board that there are several waivers that are being requested, a
354 modification request to the Planned Unit Development (PUD), as well as
355 outstanding engineering review items that Staff recommends ultimately to continue
356 this application as some of these items have yet to be addressed. She said that the
357 Conservation Commission reviewed the Dredge and Fill application and found there
358 is not a Conditional Use Permit (CUP) required for this, as there is no buffer that
359 applies to this wetland. M. Soares asked if there would be the same kind of
360 roundabouts on this road. J. Kevan said they were not going to do the roundabouts.
361 M. Soares said that this street in her opinion would be a speedway or cut through
362 without the roundabouts. C. Davies agreed with M. Soares and said that
363 roundabouts should be used here to cut down on speeding. J. Kevan told the Board
364 that there is one modification to the PUD regarding a street type called a private
365 commercial street. He said that with the ponds pressed up on two sides of the
366 street they are asking not to put parallel parking on those sides. He then reviewed
367 the seven waiver requests with the Board.

368

369 J. Trottier reviewed the seven waiver requests with the Board starting with the first
370 waiver from Section 4.01.C to allow a plan scale greater than 1"=40' for the
371 Existing Conditions plan and Stormwater Management plan. He said that Staff
372 supports this request as the plans are legible at the scales shown and a similar
373 waiver was previously granted for the Phase 1 Site Plan. He stated the second
374 waiver request is from Section 4.12.C.13 to not provide SCS soils (shown or noted
375 on the plan) on the existing conditions plan, which Staff supports this request as
376 site specific soils have been provided and a similar waiver was previously granted
377 for the Phase 1 site plan. He noted the third waiver request from Section 2.04.b. to
378 provide an Application Fee based on the Phase 1 development area rather than the
379 total site area, which Staff supports because the applicant submitted a fee based on

380 the current development area and it is consistent with past Board practice of
381 allowing a reduced fee based on the area of disturbance for projects located on
382 large parcels and a similar waiver was previously granted for the Phase 1 site plan.
383 He stated the fourth waiver request is from Section 3.07.g.3 of the Site plan
384 regulations to allow storm drain lines with less than the required minimum depth
385 cover of 36 inches from the top of the pipe to the finished grade and Staff
386 recommends that the Planning Board defer action on this waiver until additional
387 documentation is provided. He said the fifth waiver request is from Section 3.07 to
388 allow for a pipe slope of 0.5% and Staff recommends that the Planning Board defer
389 action on this waiver until additional documentation is provided. He noted the sixth
390 waiver request to be from Section 3.07.C.1 to permit four drainage pipes to be
391 surcharged during the 25 year design storm, which Staff recommends that the
392 Planning Board defer action on this waiver until additional documentation is
393 provided. He said the seventh waiver request is from Section 3.07.G.2 to permit
394 several pipes to provide pipe velocities less than 2 feet per second, which Staff
395 recommends that the Planning Board defer action on this waiver until additional
396 documentation is provided. Town Planner Mailloux reviewed the PUD modification
397 request with the Board noting they are seeking to modify Section 2.3.3.
398 Transportation Network – Street Type to allow parallel parking on only on one side
399 (west) of First Avenue from Main Street to Placeholder Avenue. She said that Staff
400 supports this request along the section of First Avenue between Main Street and
401 Placeholder Avenue as it is immediately adjacent to the drainage swale and pond,
402 and the proposed Senior Living development parcel which is subject to separate
403 review and approval. J. Trottier pointed out that Staff recommends the application
404 be continued as there are some outstanding design review items that need to be
405 worked out.

406

407 Chairman Rugg opened it up to the public.

408

409 Ray Breslin, Three Gary Drive, addressed the Board. R. Breslin asked about the
410 roadway changes. J. Kevan noted that they are extending First Ave from Eighth Ave
411 to Pillsbury Road. R. Breslin asked where the sewer would run for this. J. Kevan
412 said the sewer is going to be pumped to Derry.

413

414 Chairman Rugg brought the discussion back to the Board as there was no further
415 public input.

416

417 **M. Soares made a motion to approve the applicant's request for**
418 **waivers 1-3 as noted in the Staff recommendation memorandum dated**
419 **May 8, 2019.**

420

421 **R. Brideau seconded the motion.**

422

423 **The motion was granted, 9-0-0. The Chair voted in the affirmative.**

424

425 **M. Soares made a motion to approve the applicant's request for a**
426 **modification to the PUD Master Plan as outlined in Staff's**
427 **recommendation memorandum dated May 8, 2019.**
428

429 **T. Combes seconded the motion.**
430

431 **The motion was granted, 9-0-0. The Chair voted in the affirmative.**
432

433 **M. Soares made a motion to continue this application to the June 12,**
434 **2019 Planning Board meeting in order to allow the Applicant to**
435 **address outstanding engineering review items.**
436

437 **R. Brideau seconded the motion.**
438

439 **The motion was granted, 9-0-0. The Chair voted in the affirmative.**
440

441 B. Application for formal review of a lot line adjustment & consolidation
442 plan, Woodmont Commons Planned Unit Development, Garden Lane,
443 Pillsbury Road & Michels Way, Map 10 Lots 41, 41-1, 41-2, Zoned C-I &
444 PUD, Pillsbury Realty Development, LLC (Owner & Applicant).

445
446 Chairman Rugg read the case into record. J. Trottier stated that there are no
447 outstanding checklist items and Staff recommends the Board accept the application
448 as complete.
449

450 **M. Soares made a motion to accept the application as complete per**
451 **Staff's recommendation memorandum dated May 8, 2019.**
452

453 **R. Brideau seconded the motion.**
454

455 **The motion was granted, 9-0-0. The Chair voted in the affirmative.**
456

457 Chairman Rugg noted that the 65-day time clock had started.
458

459 Jeff Kevan, TFMoran Inc., addressed the Board. J. Kevan said the purpose of this
460 application is to create a lot for the senior housing development. He explained that
461 currently there are two lots, 41-1 and 41-2, and they are consolidating land from
462 Lot 41-2 with Lot 41-1 to create a 15.4 acre lot for the senior housing development.
463 He said there is a PUD modification with this regarding lot type and with working
464 with Staff they feel the best fit is an Institutional Building Lot. He noted that the
465 PUD limits the amount of frontage and depth of this type of lot, and they are larger
466 than the minimum frontage and depth. He reviewed the two waivers for this
467 application with the Board.
468

469 Chairman Rugg opened it up to the Board for questions. J. Trottier reviewed the
470 waiver requests with the Board. He said the first wavier request is from Section
471 4.01c to allow a plan scale greater than 1" = 40', and Staff supports granting this

472 waiver as the plans are legible at the scale presented. He noted the second waiver
473 request is from Section 4.17.A.23 and Checklist Item VI.24 to not show two-foot
474 contours over the entirety of the subject parcel, which Staff supports granting this
475 waiver as it is being requested only for the portions of the site which are currently
476 under construction and grades are not final. Town Planner Mailloux reviewed the
477 PUD modification with the Board stating that Staff does support granting the
478 modification requested. G. Verani asked why there is a curve on this lot line
479 adjustment as he thought the Planning Department only wanted straight lines.
480 Town Planner Mailloux said that there is a curve there because it is a PUD, which is
481 regulated by the PUD master plan where the perpendicular lot lines are not such a
482 requirement.

483
484 Chairman Rugg opened it up to the public and there was none.
485
486

487 **M. Soares made a motion to approve the applicant's request for the**
488 **above waivers 1 and 2 as outlined in Staff's recommendation**
489 **memorandum dated May 8, 2019.**
490

491 **R. Brideau seconded the motion.**
492

493 **The motion was granted, 9-0-0. The Chair voted in the affirmative.**
494

495 **M. Soares made a motion to approve the applicant's request for**
496 **modification to the PUD Master Plan as outlined in Staff's**
497 **recommendation memorandum dated May 8, 2019.**
498

499 **R. Brideau seconded the motion.**
500

501 **The motion was granted, 9-0-0. The Chair voted in the affirmative.**
502

503 **M. Soares made a motion to grant conditional approval of the site plan**
504 **for a lot line adjustment & consolidation plan, Woodmont Commons**
505 **Planned Unit Development, Garden Lane, Pillsbury Road & Michels**
506 **Way, Map 10 Lots 41, 41-1, 41-2, Zoned C-I & PUD, Pillsbury Realty**
507 **Development, LLC (Owner & Applicant) in accordance with plans**
508 **prepared by Hayner/Swanson, Inc., dated September 19, 2018, last**
509 **revised April 11, 2019, with the precedent conditions to be fulfilled**
510 **within two years of the approval and prior to plan signature and**
511 **general and subsequent conditions of approval to be fulfilled as noted**
512 **in the Staff Recommendation Memorandum, dated May 8, 2019.**
513

514 **R. Brideau seconded the motion.**
515

516 **The motion was granted, 9-0-0. The Chair voted in the affirmative.**
517

518 "Applicant", herein, refers to the property owner, business owner, or organization
519 submitting this application and to his/its agents, successors, and assigns.

PRECEDENT CONDITIONS

All of the precedent conditions below must be met by the Applicant, at the expense of the Applicant, prior to certification of the plans by the Planning Board. Certification of the plans is required prior to commencement of any site work, any construction on the site or issuance of a building permit.

1. The Phase 1 Amended Site Plan (extending First Avenue to Pillsbury Road and giving frontage to this parcel) shall be approved by the Planning Board.
2. The Applicant shall address all outstanding DRC comments.
3. Draft easements shall be provided to the Town for review and final executed easements be provided for recording concurrent with the plan.
4. If approved, the waivers and modification requested shall be noted as such on the plan.
5. The Applicant shall provide the Owner's signature(s) on the plans.
6. The discontinuance of Holmes Road with the appropriate Town Council reference Resolution #2019-04, A Resolution Relative to the Discontinuance of Highway (Holmes Road) reference shall be noted on the plan.
7. The typographical error in the spelling of Catesby Lane be corrected.
8. A note shall be added to Sheet 1 indicating that the required Open Space and Green space per Section 2.2.3 of the PUD Master Plan is shown on the reference plans.
9. The Applicant shall provide a digital copy of the complete final plan to the Town prior to plan signature by the Planning Board in accordance with Section 2.05.n of the Subdivision Regulations.
10. The Applicant shall provide a check for \$25 (made payable to the Rockingham County Registry of Deeds) for LCHIP.
11. The Applicant shall note all general and subsequent conditions on the plans.
12. Outstanding third-party review fees, if any, shall be paid within 30 days of conditional site plan approval.
13. Financial guarantee be provided to the satisfaction of the Department of Public Works and Engineering.
14. Final engineering review.

567 **PLEASE NOTE** – If these conditions are not met within two (2) years of the
568 meeting at which the Planning Board grants approval, the Board’s approval will be
569 considered to have lapsed and re-submission of the application will be required. See
570 RSA 674:39 on vesting.

571
572 **GENERAL AND SUBSEQUENT CONDITIONS**
573

574 All of the conditions below are attached to this approval.
575

576 1. All of the documentation submitted in the application package by the applicant
577 and any requirements imposed by other agencies are part of this approval unless
578 otherwise updated, revised, clarified in some manner, or superseded in full or in
579 part. In the case of conflicting information between documents, the most recent
580 documentation and this notice herein shall generally be determining.
581

582 2. It is the responsibility of the applicant to obtain all other local, state, and federal
583 permits, licenses, and approvals which may be required as part of this project (that
584 were not received prior to certification of the plans). Contact the Building Division
585 at extension 115 regarding building permits.
586

587
588 **V. Other - N/A**
589

590 **VI. Adjournment**

591
592 **Member M. Soares made a motion to adjourn the meeting at**
593 **approximately 8:25 p.m. Seconded by R. Brideau**
594

595 **The motion was granted, 9-0-0.**
596

597 **The meeting adjourned at approximately 8:25 PM.**
598

599 These minutes were prepared by Beth Morrison.
600

601 Respectfully Submitted,
602

603 _____
604 Chris Davies, Secretary
605

606 These minutes were accepted and approved on June 5, 2019, by a motion made by
607 _____ and seconded by _____.

LEGAL NOTICE

The Londonderry Town Council will hold a PUBLIC HEARING on the following item:

Resolution #2019-05 – A Resolution Relative to the Town of Londonderry Family Medical
Leave of Absence Policy

The Public Hearing is scheduled for Monday, June 3, 2019 at 7:00 PM at the
Londonderry Town Hall, 268B Mammoth Road, Londonderry, NH 03053.

Londonderry Town Council

RESOLUTION #2019-05

A Resolution Relative to the Town of Londonderry FAMILY MEDICAL LEAVE OF ABSENCE POLICY

First Reading: 05/20/2019
Hearing/Second Reading: 06/03/2019
Adopted: 06/03/2019

WHEREAS by Resolution #1997-1 – Rev. 2 (Adopted 9/22/97), the Town of Londonderry adopted the Town “Family Medical Leaves of Absence Policy” (“FMLA”) pursuant to the federal Family Medical Leave Act, and said Town FMLA Policy is codified as Title VI, Chapter XI of the Town Municipal Code;

WHEREAS the Family Medical Leave Act and applicable regulations have evolved since 1997, thereby necessitating an update to the Town’s FMLA policy; and

WHEREAS the Town Council may, pursuant to Article 3 of the Town Charter, revise the Municipal Code as necessary; and

WHEREAS the Revised FMLA policy is attached hereto and shall replace Resolution #1997-1 – Rev. 2 “Family Medical Leaves of Absence Policy,” as the new Title VI, Chapter XI, in the Town Policy section of the Londonderry Municipal Code.

NOW THEREFORE BE IT RESOLVED by the Town Council of the Town of Londonderry, that Resolution 2019-05 is hereby adopted as **Title VI – Town Policy, Chapter XI – Family Medical Leave of Absence Policy** and it shall become effective on the date of adoption set forth herein and reviewed as necessary thereafter.

John Farrell, Chairman
Londonderry Town Council

A true copy attest: 06-03-2019

Sharon Farrell - Town Clerk

(TOWN SEAL)

Chapter XI - FAMILY MEDICAL LEAVE OF ABSENCE POLICY

SECTION I GENERAL PROVISIONS

- A. Under the provisions of the Family and Medical Leave Act of 1993 ("FMLA"), any employee who worked¹ at least 1,250 hours in the 12-month period immediately preceding a request for FMLA leave² is entitled to take not more than twelve (12) workweeks of unpaid FMLA leave (26 weeks for Military Caregiver Leave) in a twelve (12) month period (as defined below in paragraph I.B.) for any of the following reasons:
1. The birth of a child of the employee and/or to care for the child (leave must be taken within twelve (12) months of the birth);
 2. The placement with the employee of a child for adoption or foster care and to care for the child (leave must be taken within twelve (12) months of the placement);
 3. To provide care for the employee's spouse, child or parent with a "serious health condition" (as defined by the FMLA and applicable law);
 4. To take leave when the employee is unable to perform any one of the essential functions of the position by reason of his or her own "serious health condition" (as defined by the FMLA and applicable law);
 5. For a qualifying military-related exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty or has been notified of an impending call or order to active duty in support of a contingency operation (as defined by the FMLA and applicable law); or
 6. To provide care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the covered service member ("Military Caregiver Leave").
- B. The 12-Month Period: As stated above, an eligible employee is entitled to a total of twelve (12) workweeks of leave during any twelve (12) month period. That twelve (12) month period is defined as a "rolling" twelve (12) month period backward from the date an employee first uses any FMLA leave. In other words, the number of weeks which an employee has available upon the beginning of a FMLA leave shall be twelve (12) weeks less the number of FMLA leave weeks taken in the twelve (12) month period immediately preceding the beginning of the current FMLA leave (the "Available Leave Weeks").

¹ "Worked" means the employee performed actual work. Worked does not include paid or unpaid time off.

² Accordingly, employees with less than one year of employment with the Town are not eligible for FMLA leave.

In the case of leave taken to care for a covered service member with a serious injury or illness, an employee who does not take all twenty-six (26) workweeks of leave to care for the covered service member during the single 12-month period will forfeit any remaining Military Caregiver Leave.

- C. Leave for Birth, Adoption or Foster Care of a Child: A FMLA leave for the birth or placement for adoption or foster care of a child must be taken all at once unless otherwise agreed to by the Town Manager or his/her designee. Pursuant to 29 USC §2612(e), the employee must give thirty (30) days' notice if the birth or adoption is foreseeable or, if not foreseeable, such notice as is practicable.
- D. Leave Due to a Serious Health Condition: A FMLA leave due to a serious health condition may be taken on an intermittent or reduced leave schedule. To qualify, the employee or family member must have a serious health condition and the intermittent leave or reduced leave schedule must be certified as medically necessary by a health care provider. An employee who takes intermittent leave for planned medical treatment has an obligation to make a reasonable effort to schedule treatment so as not to unduly disrupt the operations of the employee's department and, if leave is for planned medical treatment, to give thirty (30) days' notice or such notice as is practicable. If FMLA leave is requested on an intermittent basis, the Town Manager or his/her designee may require the employee to transfer temporarily to an alternative position which better accommodates intermittent periods of absence or a part-time schedule, provided that the position has equivalent pay and benefits (but the position need not have equivalent duties).
- E. Substitution of Accrued Paid Leave Required: The Town requires the substitution of accrued paid leave for unpaid FMLA leave time (i.e., any time during which the Town does not process any payment to the employee through payroll, hereinafter referred to as "Unpaid FMLA Leave") as follows: Accrued sick (including "family sick" time if applicable) leave, vacation leave (including personal time (if applicable) and floating holiday(s) (if applicable)), in that order, will be substituted for unpaid FMLA leave time. Upon the exhaustion of accrued paid leave, the remainder of any FMLA leave will be unpaid. In no case will the combination of paid and unpaid leave used for a FMLA purpose exceed twelve (12) workweeks (twenty-six (26) workweeks for Military Caregiver Leave) in any twelve (12) month period as defined herein.

Note: In the event an employee on FMLA leave is receiving wage replacement through the Town's Short-Term Disability Policy or through workers' compensation, the employee is not required to use accrued time to make up the difference between the wage replacement amount and the employee's base wages; however, the employee may elect to apply accrued time (in the order set forth above) to make up the difference in pay and should consult with Human Resources with regard to his/her pay options.

- F. Designation of FMLA Leave: When an employee requests any leave of absence which qualifies as leave under the FMLA, it is the Town's responsibility and right to designate such leave as FMLA leave. FMLA leave may be designated upon

request by the employee or when the Town has sufficient information concerning the leave status of an employee to presume either that the employee or his/her family member has a qualifying serious health condition as defined under the FMLA, or that the leave is due to the birth of the employee's child or the placement with the employee of a child for adoption or foster care. The Town's Human Resources Department personnel will request and obtain sufficient information from the employee to determine whether the leave qualifies as FMLA leave, to include a medical certification from the employee's or family member's health care provider. In addition, the Town's Human Resources Department personnel or a physician authorized by the Town may contact the health care provider for purposes of clarification and authentication of the medical certification (whether initial certification or recertification) after the Town has given the employee an opportunity to cure any deficiencies with the certification as set forth in the FMLA regulations. Once the Town has determined the leave qualifies for FMLA leave, the employee will be notified that the leave has been approved for FMLA leave and will be counted towards the employee's FMLA leave entitlement.

- G. Leave for Purposes Not Covered Under FMLA: If an employee requests and is granted authorized leave for a purpose that does not qualify as FMLA leave (e.g., leave to care for a parent-in-law, or a blood relative other than a spouse, child or parent), that leave time will not be charged against the 12-week FMLA entitlement. Thus, the amount of FMLA leave eligible to an employee who takes two weeks of authorized vacation leave to care for a parent-in-law will not be impacted by the vacation leave.

SECTION II STATUS OF INSURANCE BENEFITS WHILE ON FMLA LEAVE

- A. While on FMLA leave, an employee may continue to participate in the Town's group health insurance in the same manner as employees not on FMLA leave. Coverage for Life and Disability Insurance will continue for the duration of the FMLA leave.
- B. In the event of paid FMLA leave (during which the employee is either using accrued leave time and/or receiving some form of wage replacement paid through payroll), the employee's share of any medical or dental insurance premiums will continue to be deducted in the same manner as it would be when the employee is not on FMLA leave.
- In the case of Unpaid FMLA Leave, an employee's share of any medical or dental insurance premiums must be paid in advance by the employee on the first day of each month.
- C. Reinstatement: At the end of an authorized FMLA leave, an employee will be reinstated to his or her previous job or to a position with equivalent pay, benefits and substantially equivalent duties. However, there are some limits of reinstatement. Employees returning from an FMLA leave have no greater rights to

reinstatement or other benefits and conditions of employment than if they had not taken FMLA leave. For example, if an employee's position was affected by a lay-off or reorganization or elimination, the employee may not be eligible for reinstatement. An employee who fails to comply with the Town's requirements for reporting and fitness for duty certification may also be denied reinstatement.

SECTION III BASIC REGULATIONS AND CONDITIONS OF LEAVE

- A. The Town will require medical certification to support a claim for FMLA leave for an employee's own serious health condition or to care for the employee's child, spouse or parent with a serious health condition whenever that leave is expected to extend beyond three (3) calendar days or will involve intermittent or part-time leave. The employee shall have no more than fifteen (15) calendar days to provide the medical certification to the Town.
 - 1. For the employee's own medical leave, the certification must include a statement that the employee is unable to perform an essential function of his or her position.
 - 2. For FMLA leave to care for a seriously ill child, spouse or parent, the certification must include an estimate of the amount of time the employee is needed to provide care.
- B. The Town may require a second medical opinion and periodic recertification at its own expense. If the first and second opinions differ, the Town, at its own expense, may require the binding opinion of a third health care provider, approved jointly by the Town and the employee.

SECTION IV NOTIFICATION AND REPORTING REQUIREMENTS

- A. As set forth above, when the need for FMLA leave is foreseeable, such as the birth or adoption of a child, or planned medical treatment, the employee must provide reasonable prior notice, and make efforts to schedule leave so as not to disrupt Town operations.
- B. In cases of a FMLA leave due to a serious health condition, the employee will be required to report periodically on his or her FMLA leave status and intention to return to work.
- C. At the expiration of any FMLA leave due to the employee's own serious health condition, the employee must present medical certification of fitness for duty **before** returning to work. The Town will require this certification to address whether the employee can perform the essential functions of his/her position.

SECTION V COORDINATION WITH MATERNITY LEAVE

- A. The Town provides female employees with a leave of absence for the period of temporary physical disability resulting from pregnancy, childbirth and related medical conditions (“Maternity Leave”). Although they may run concurrently as set forth below, Maternity Leave is separate from FMLA leave. An employee is eligible for Maternity Leave even if she has worked for the Town for less than twelve (12) months or less than twelve hundred and fifty (1,250) hours in the prior twelve (12) months. A Maternity Leave begins when an employee is medically determined to be disabled and ends when the employee is medically determined to be able to return to work, and is paid in accordance with the provisions of the Town’s Short-Term Disability Policy. If an employee also is eligible for FMLA leave, the employee’s FMLA leave and Maternity Leave will run concurrently. Maternity Leave is not limited by any measure other than the period of disability.

- B. Once an employee has exhausted her paid Maternity Leave, she may take additional FMLA leave to care for the child, assuming she has Available Leave Weeks remaining. However, in no event shall the total FMLA leave for the birth of a child (including the period of Maternity Leave) exceed 12-weeks total in the applicable 12-month period.

**SECTION VI COORDINATION WITH OTHER TOWN POLICIES;
REFERENCE TO FMLA AND FEDERAL REGULATIONS**

- A. In the event of any conflict between this policy and other Town policies, the provisions of this policy shall govern; however, if any provision of a Collective Bargaining Agreement exceeds the benefits offered herein, the Collective Bargaining Agreement shall control for those covered employees.

- B. The FMLA and the FMLA federal regulations issued by the U.S. Department of Labor (the “Federal Authorities”) contain many limitations and qualifications for entitlement and governance of FMLA leave not stated herein.

- C. Unless this Policy plainly states an intention to afford more generous benefits to the employee than the Federal Authorities, the terms of the FMLA and the FMLA federal regulations are incorporated herein and will be applied in all instances of requested or designated FMLA leave. If there is an ambiguity in this Policy, the ambiguity shall be resolved in favor of the construction most consistent with the Federal Authorities.

Chapter XI - FAMILY MEDICAL LEAVES OF ABSENCE POLICY

SECTION I GENERAL PROVISIONS:

- A. ~~In-General:~~ Under the provisions of the Family and Medical Leave Act of 1993 ("FMLA"), ~~any~~ employees who worked¹ (does not include any paid or unpaid time off) at least 1,250 hours in the 12-month period immediately preceding the request for FMLA leave² during the prior twelve (12) months ~~is~~ are entitled to take not more than twelve (12) work-weeks of ~~unpaid~~ FMLA leave/absence (26 weeks for Military Caregiver Leave) in a twelve (12) month period (as defined below in paragraph I.B.) for any of the following reasons: ~~in the event of:~~
1. ~~Type A:~~ the birth of a child of the employee and/or to in order to care for the child (leave must be taken within twelve (12) months of the birth);
 2. The placement with the employee of a child for adoption or foster care and ~~Type B: an adoption or foster care placement of a child in order to care for the child (leave must be taken within twelve (12) months of the placement);~~
 3. To provide care for the employee's spouse, child or parent with a "serious health condition" (as defined by the FMLA and applicable law regulations); ~~Type C: a serious health condition of the employee's parent, spouse, minor child or adult child when the ill person is not capable of self care and the employee is needed for such care; or~~
 4. To take leave when the employee is unable to perform any one of the essential functions of the position by reason of his or her due to their own "serious health condition" (as defined by the FMLA and applicable law regulations); ~~Type D: a serious health condition of the employee which results in the employee's inability to perform his or her job~~
 5. For a qualifying military-related exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty or has been notified of an impending call or order to active duty in support of a contingency operation (as defined by the FMLA and applicable law); or
 4. To provide care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the covered service member ("Military Caregiver Leave");
 6. _____

¹ "Worked" means the employee performed actual work. Worked does not include paid or unpaid time off.

² Accordingly, employees with less than one year of employment with the Town are not eligible for FMLA leave.

Town of Londonderry
Title VI - Town Policy

Resolution 1997-13 - Rev., Proposed 5/20/192
-Adopted 9/22/97

- ~~B. The 12-Month Period: As stated above, an eligible employee is entitled to a total of twelve (12) work-weeks of leave during any twelve (12) month period. That twelve (12) month period is defined as a "rolling" twelve (12) month period backward from the date an employee first uses any FMLA leave. For example, if an employee has taken eight~~
- ~~C. (8) weeks of FMLA leave during the past twelve (12) months, an additional four~~
- ~~B. (4) weeks of leave could be taken when a second leave is requested. As further example, if an employee takes four (4) weeks of FMLA leave beginning September 1, 1994, and four (4) weeks of FMLA leave beginning December 1, 1994, when the employee requires additional FMLA leave on March 1, 1995, the employee would have available four (4) weeks of FMLA leave as he/she had taken eight (8) weeks in the twelve (12) months prior to March 1, 1995. In other words, the number of weeks which an employee has available upon the beginning of a FMLA leave shall be twelve (12) weeks less the number of FMLA leave weeks taken in the twelve (12) month period immediately preceding prior to the beginning of the current FMLA leave (the "Available Leave Weeks").~~

In the case of leave taken to care for a covered service member with a serious injury or illness, an employee who does not take all twenty-six (26) workweeks of leave to care for the covered service member during the single 12-month period will forfeit any remaining Military Caregiver Leave.

D. —

C. Leave for Birth, Adoption or Foster Care of a Child: A FMLA leave for the birth or placement for adoption or foster care of a child, ~~as described in Types A and B above,~~ must be taken all at once unless otherwise agreed to by the Town Manager (or his/her designee). Pursuant to 29 USC §2612(e), the employee must give thirty (30) days' notice if the birth or adoption is foreseeable or, if not foreseeable, such notice as is practicable.

~~E.D.~~ Leave Due to a Serious Health Condition: ~~A~~ If medically necessary, FMLA leaves due to a serious health condition ~~illness as described in Types C and D above~~ may be taken on an intermittent or reduced leave schedule. To qualify, the employee or family member must have a serious health condition and the intermittent leave or reduced leave schedule must be certified as medically necessary by a health care provider. An employee who takes intermittent leave for planned medical treatment has an obligation to make a reasonable effort to schedule treatment so as not to unduly disrupt the operations of the employee's department's operations and, if leave is for planned medical treatment, to give thirty (30) days' notice or such notice as is practicable. If FMLA leave is requested on an intermittent basis, the Town Manager (or his/her designee) may require the employee to transfer temporarily to an alternative position which better accommodates intermittent periods of absence or a part-time schedule, provided that the position has equivalent pay and benefits (but the position need not have equivalent duties).

- G. _____
- H. ~~Chapter XI FAMILY MEDICAL LEAVES OF ABSENCE POLICY (Cont'd)
SECTION I - GENERAL PROVISIONS (Cont'd)~~
- I. ~~If FMLA leave is requested on this basis, however, the Town Manager may require the employee to transfer temporarily to an alternative position which better accommodates periods of absence or a part time schedule, provided that the position has equivalent pay and benefits.~~
- J. _____
- K. ~~An employee's accrued, unused, vacation and/or personal time will be included as part of the twelve (12) week leave requirement for A, B or C FMLA leaves listed above. For example, an employee with two (2) weeks earned, unused vacation is required to use that time before taking not more than ten (10) additional unpaid weeks. In addition, for type C FMLA leave, an employee will be required to use all accrued sick time. For a type D FMLA leave, employees will be required to use accrued unused vacation, personal and/or sick time.~~
- E. Substitution of Accrued Paid Leave Required: The Town requires the substitution of accrued paid leave for unpaid FMLA leave time (i.e., any time during which the Town does not process any payment to the employee through payroll, hereinafter referred to as "Unpaid FMLA Leave") as follows: Accrued sick (including "family sick" time if applicable) leave, vacation leave (including personal time (if applicable) and/or floating holiday(s) (if applicable)), in that order, will be substituted for unpaid FMLA leave time. Upon the exhaustion of accrued paid leave, the remainder of any FMLA leave will be unpaid. In no case will the combination of paid and unpaid leave used for a FMLA purpose exceed twelve (12) workweeks (twenty-six (26) workweeks for Military Caregiver Leave) in any twelve (12) month period as defined herein.

Note: In the event an employee on FMLA leave is receiving wage replacement through the Town's Short-Term Disability Policy or through workers' compensation, the employee is not required to use accrued time to make up the difference between the wage replacement amount and the employee's base wages; however, the employee may elect to apply accrued time (in the order set forth above) to make up the difference in pay and should consult with Human Resources with regard to his/her pay options. For type A and B FMLA leaves, the employee may at his/her option utilize accrued sick leave to cover any period of otherwise unpaid leave.

- F. _____
- Designation of FMLA Leave: When an employee requests any leave of absence which qualifies as leave under the FMLA, it is the Town's responsibility and _____ right to designate such leave as FMLA leave. FMLA leave may be designated upon _____
- _____ request by the employee or when the Town has sufficient information concerning the leave status of an employee to presume either that the employee or his/her family member has a qualifying serious health condition as defined under the _____
- _____ FMLA, or that that the leave is due to the birth of the employee's child or the placement with the employee of a child for adoption or foster care. The Town's

Town of Londonderry
Title VI - Town Policy

Resolution 1997-13 - Rev- ~~Proposed 5/20/192~~
~~Adopted 9/22/97~~

Human Resources Department personnel will request and obtain sufficient
information from the employee to determine whether the leave qualifies as FMLA.

~~leave, to include a medical certification from the employee's or family member's health care provider. In addition, the Town's Human Resources Department personnel or a physician authorized by the Town may contact the health care provider for purposes of clarification and authentication of the medical certification (whether initial certification or recertification) after the Town has given the employee an opportunity to cure any deficiencies with the certification as set forth in the FMLA regulations. Once the Town has determined the leave qualifies for FMLA leave, the employee will be notified that the leave has been approved for FMLA leave and will be counted towards the employee's FMLA leave entitlement. The Town Manager may designate such leave as FMLA leave upon written notification to the employee.~~

- ~~G. Leave for Purposes Not Covered Under FMLA: If an employee requests and is granted authorized leave for a purpose that does not qualify as FMLA leave (e.g., leave to care for a parent-in-law, or a blood relative other than a spouse, child or parent), that leave time will not be charged against the 12-week FMLA entitlement. Thus, the amount of FMLA leave eligible to an employee who takes two weeks of authorized vacation leave — to care for a parent-in-law will not be impacted by still have 12 weeks of FMLA leave remaining when he/she returns from the vacation leave.~~

**SECTION II STATUS OF INSURANCEEMPLOYEE BENEFITS WHILE ON
FMLA LEAVE:**

- A. While on FMLA leave, ~~an~~ employees may continue to participate in the Town's group health insurance in the same manner as employees not on FMLA leave. Coverage for Life and Disability Insurance will continue for the duration of the FMLA leave.
- ~~B. In the event of unpaid FMLA leave, an employee's share of any medical insurance premiums once per month in advance on the first day of each month. In the event of paid FMLA leave (during which the employee is either using accrued leave time and/or receiving some form of wage replacement paid through payroll), the employee's share of any medical or dental insurance premiums will continue to be deducted in the same manner as it they would be when the employee is not on FMLA leave.~~
- ~~B.~~
- ~~In the case of Unpaid FMLA Leave, an employee's share of any medical or dental insurance premiums must be paid in advance by the employee on the first day of each month. In the event that the employee elects not to return to work upon completion of a FMLA leave of absence, the Town may recover from the employee the cost of any payments to maintain the employee's medical coverage, unless the employee's failure to return to work was for reasons beyond the employee's control.~~

~~Benefit entitlements based on length of service will be calculated as of the last paid work day prior to the start of the leave of absence; for example, an employee on leave will not accrue vacation or sick time.~~

~~C.~~

~~D.~~

C. Reinstatement: At the end of an authorized FMLA leave, an employee will be reinstated to his or her previous job or to a position with equivalent pay, benefits and substantially equivalent duties. However, there are some limits of reinstatement. Employees returning from an FMLA leave have no greater rights to

reinstatement or other benefits and conditions of employment than if they had not taken FMLA leave. For example, if an employee's position was affected by a lay-off or reorganization or elimination, the employee may not be eligible for reinstatement. An employee who fails to comply with the Town's requirements for reporting and fitness for duty certification may also be denied reinstatement.

SECTION III BASIC REGULATIONS AND CONDITIONS OF LEAVE
original or a comparable position.

~~A. Chapter XI - FAMILY MEDICAL LEAVES OF ABSENCE POLICY - (Cont'd)
SECTION III - BASIC REGULATIONS AND CONDITIONS OF LEAVE:~~

~~B.A. The Town will require medical certification to support a claim for FMLA leave for an employee's own serious health condition or to care for the employee's child, spouse or parent with a serious health condition whenever that leave is expected to extend beyond three (3) calendar days or will involve intermittent or part-time leave. The employee shall have no more than fifteen (15) calendar days to provide the medical certification to the Town, seriously ill child, spouse or parent.~~

1. For the employee's own medical leave, the certification must include a statement that the employee is unable to perform ~~an the~~essential functions of his or her position.
2. For FMLA leave to care for a seriously ill child, spouse or parent, the certification must include an estimate of the amount of time the employee is needed to provide care.

~~C.B. In its discretion,~~ the Town may require a second medical opinion and periodic recertification at its own expense. If the first and second opinions differ, the Town, at its own expense, may require the binding opinion of a third health care provider, approved jointly by the Town and the employee.

SECTION IV NOTIFICATION AND REPORTING REQUIREMENTS:

- A. ~~As set forth above, w~~When the need for FMLA leave is foreseeable, such as the birth or adoption of a child, or planned medical treatment, the employee must provide reasonable prior notice, and make efforts to schedule leave so as not to disrupt Town operations.
- B. In cases of ~~a FMLA leaves due to a serious health conditions, illness,~~ the employee will be required to report periodically on his or her FMLA leave status and intention to return to work.
- C. At the expiration of any FMLA leave due to the employee's own ~~serious health condition illness,~~ the employee must present medical certification of fitness for duty before returning to work. The Town will require this certification to address whether the employee can perform the essential functions of his/her position. a written authorization from his/her doctor stating that the employee is ready to return to work.

~~SECTION V - PROCEDURES~~

~~A Request for Family and Medical Leave of Absence Memo must be originated in duplicate by the employee. This memo should be completed with full details, signed by the employee and then submitted to the employee's Department Head for proper approvals. If possible, the memo should be submitted thirty (30) days in advance of the effective date of the FMLA leave.~~

~~Chapter XI - FAMILY MEDICAL LEAVES OF ABSENCE POLICY - (Cont'd) SECTION V - PROCEDURES (Cont'd)~~

~~All requests for FMLA leaves of absence due to illness will include the following information attached to a completed Request for Family and Medical Leave of Absence Memo:~~

~~Sufficient medical certification stating:~~

~~the date on which the serious health condition commenced;
the probable duration of the condition; and
the appropriate medical facts within the knowledge of the health care provider regarding the condition.~~

~~In addition, for purposes of FMLA leave to care for a child, spouse, or parent, the certificate should give an estimate of the amount of time that the employee is needed to provide such care.~~

~~For purposes of FMLA leave for an employee's illness, the certificate must state that the employee is unable to perform the functions of his or her position.~~

~~In the case of certification for intermittent FMLA leave or FMLA leave on a reduced leave schedule for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment must be stated.~~

SECTION VI COORDINATION WITH MATERNITY LEAVE:

A. The Town provides female employees with a leave of absence for the period of temporary physical disability resulting from pregnancy, childbirth and related medical conditions ("Maternity Leave"). Although they may run concurrently as set forth below, Maternity Leave is separate from FMLA leave. An employee is eligible for Maternity Leave even if she has worked for the Town for less than twelve (12) months or less than twelve hundred and fifty (1,250) hours in the prior twelve (12) months. A Maternity Leave begins when an employee is medically determined to be disabled and ends when the said employee is medically determined to be able to return to work, and is paid in accordance with the provisions of the Town's Short-Term Disability Policy. If an employee is also eligible for FMLA leave, the employee's FMLA leave and Maternity Leave will run concurrently. Maternity Leave is not limited by any measure other than the period of disability.

B. Once an employee has exhausted her paid Maternity Leave, she may take additional FMLA leave to care for the child, assuming she has Available Leave Weeks remaining. However, in no event shall the total FMLA leave for the birth of a child (including the period of Maternity Leave) exceed 12-weeks total in the applicable 12-month period.

**SECTION VI COORDINATION WITH OTHER TOWN POLICIES;
REFERENCE TO FMLA AND FEDERAL REGULATIONS**

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- A. In the event of any conflict between this policy and other Town policies, the provisions of this policy shall govern; however, if any provision of a Collective Bargaining Agreement exceeds the benefits offered herein, the Collective Bargaining Agreement shall control for those covered employees.
- B. The FMLA and the FMLA federal regulations issued by the U.S. Department of Labor (the "Federal Authorities") contain many limitations and qualifications for entitlement and governance of FMLA leave not stated herein.
- C. Unless this Policy plainly states evidence of an unambiguous intention to afford more generous benefits to the employee than the Federal Authorities, the terms of the FMLA and the FMLA federal regulations are incorporated herein and will be applied in all instances of requested or designated FMLA leave. If there is an ambiguity in this Policy, the ambiguity shall be resolved in favor of the construction most consistent with the Federal Authorities.

~~End of Chapter~~

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ORDER #2019-14

An Order Relative to

EXPENDITURE OF

MAINTENANCE TRUST FUNDS FOR VARIOUS PROJECTS

Reading: 06/03/2019

Adopted: 06/03/2019

WHEREAS voters since 2003 have approved funding for the maintenance and repair of public buildings and grounds in the town; and

WHEREAS by the Town Council of the Town of Londonderry that the Town Treasurer is hereby ordered to expend \$3,899.00 from the Expendable Maintenance Trust Fund for the aforementioned repairs and improvements.

NOW THEREFORE BE IT ORDERED by the Town Council of the Town of Londonderry that the Town Treasurer is hereby ordered to expend \$3,899.00, from the Expendable Maintenance Trust Fund for the aforementioned repairs and improvements.

John Farrell, Chairman
Town Council

Sharon Farrell
Town Clerk

A TRUE COPY ATTEST:
06/03/2019

Expendable Maintenance Trust TC Order Request
for Town Council Meeting "6/03/19"

Description	Vendor	Amount
<p>HVAC Condenser HVAC unit #4 - Town Hall The exterior HVAC condenser unit #4 developed a leak that requires the condenser to be replaced. This EMTF request is for the material and labor costs to replaced the condenser and assure the unit is working properly. The condenser unit was installed in 2005, the varranty has expired.</p>		<p>\$ 3,899.00 \$ 3,899.00</p>
<i>Total Town Council EMTF Order</i>		<p>\$ 3,899.00</p>

ORDER #2019-15

An order relative to

The Distribution of Cemetery Acquisitions, Maintenance & Repairs Capital Reserve Fund

First Reading: 06/03/2019

Second Reading: Waived

Adopted: 06/03/2019

WHEREAS the Town of Londonderry, by adoption of Article No. 12 at the March 12, 1996 Town Meeting, approved funding for the Cemetery Acquisitions, Maintenance and Repairs; and,

WHEREAS the Administrative Support Coordinator/Cemetery Sexton have reviewed the three existing entrances to Pleasantview Cemetery and recommend the repavement of these three entrances located on Mammoth Road prior to Litchfield/Stonehenge intersection; and,

WHEREAS the Administrative Support Coordinator/Cemetery Sexton further recommends that \$14,548.00 be withdrawn from the Capital Reserve Fund for Cemetery Acquisitions, Maintenance and Repairs;

NOW THEREFORE BE IT ORDERED by the Londonderry Town Council that the Town Treasurer is hereby directed and authorized to expend from the Cemetery Acquisitions, Maintenance and Repairs Reserve Fund the sum \$14,548.00.

John Farrell - Chairman
Town Council

(TOWN SEAL)

Sharon Farrell - Town Clerk

A TRUE COPY ATTEST:

06/03/2019

ORDER 2019-16

An order relative to *Withdrawal from the Fire Truck Capital Reserve*

First Reading: 06/03/19
Second Reading: Waived
Adopted: 06/03/19

WHEREAS the Town of Londonderry, by passage of warrant article #11 at its 1995 Town Meeting, established the Fire Truck Capital Reserve and authorized the Londonderry Town Council as agents to expend; and

WHEREAS the Londonderry Fire Department has complied with the provisions of the Town of Londonderry Municipal Code, Title VI, Purchasing Policy; and,

WHEREAS the Londonderry Fire Department has selected James R. Rosencrantz & sons for the purchase of a John Deer XUV865M HVAC for the cost of \$24,375.00; and,

WHEREAS the Londonderry Fire Department has selected Kimtek Corporation for a Fire/Rescue skid unit on the above referenced vehicle at a cost of \$ 8050.00; and,

WHEREAS the Londonderry Fire Department has selected Central New Hampshire Trailers for an aluminum 7'x14' Utility trailer to carry the above referenced vehicle at a cost of \$3924.00; and,

WHEREAS there are sufficient funds are available in the Fire Truck Capital Reserve for this purchase of vehicle and associated equipment;

NOW THEREFORE BE IT ORDERED by the Londonderry Town Council that the Finance Department is hereby directed to disburse \$36,349.00 from the Fire Truck Capital Reserve.

John Farrell - Chairman
Town Council

(TOWN SEAL)

Sharon Farrell - Town Clerk

A TRUE COPY ATTEST:
06/03/2019