

**TOWN COUNCIL MEETING**  
**July 17, 2006**

The Council Meeting of July 17, 2006 was called to order at 7:08 PM in the Moose Hill Conference Room, 268B Mammoth Road, Londonderry, NH.

**PRESENT: TOWN COUNCIL; Chairman, Brian Farmer; Councilors Mark Oswald, and Tom Dolan; Town Manager David Caron; and Margo Lapietro, Executive Assistant.**

**CALL TO ORDER**

Chairman Farmer opened the meeting at 7:08 P.M. with the Pledge of Allegiance. This was followed by a moment of silence for the men and women in the service and for those who have given their lives for this country.

**Councilor Dolan made a motion to open the Public Hearing. Second by Councilor Oswald. Councils' vote 3-0-0.**

**PUBLIC HEARING**

**Ordinance 2006-07 – Relative to an Amendment to the Municipal Code, Title 5, Chapter 3, Section X, Town Council Liaisons** – Councilor Oswald read the second reading and made **motion to accept the Ordinance. Second by Councilor Dolan.** Open for discussion. Town Manager Caron stated that Section X is a new section. He explained the Councilors serve a variety of roles on Boards, Committees, and Commissions ranging from being a liaison whose function is to exchange ideas to being a voting member as determined by State Law, such as the Planning Board. This section tries to identify the liaison's roles and prioritize. Pauline Caron, Library Trustee questioned if Ordinance changes were reviewed by Counsel prior to the first and second reading. Town Manager Caron responded no. P. Caron then informed the Council that at the July meeting of the Library Trustees they unanimously voted that Article X, Section D of the Ordinance be reviewed with a legal opinion from the Attorney General's (AG) Office. At this point in time they have not received that opinion and would like this Ordinance to be brought back to the August 21 Town Council Meeting. When they receive the ruling back from AG it will be forwarded to Town Council. Chairman Farmer asked if a copy of that letter was sent to either Town Manager or Town Council, P. Caron stated it was not. Chairman Farmer asked Town Manager Caron for guidance on voting on this Ordinance, he responded it is at the Councils' discretion. If Councilors moved ahead today and received an adverse opinion from the AG's Office, we would forward that to our Town Counsel. He would advise us if the Ordinance should be amended or stay as approved by the Council. Chairman Dolan questioned exactly what part of Section 10, item D they objected to and she responded all of section X, specifically D-3 & D-4 whereby she proceeded to read aloud all of Section D from Article X. Those sections pertained to the Councilor's voting ability and participation in

discussions whether as a voting or non-voting member and participation in Non-public meetings as a voting or non-voting member. Chairman Farmer asked what the specific objection was to D-3 & 4. She responded Liaison's should not participate in all discussions and Liaison's should not be part of non-public meetings. Chairman Farmer said it states if the Liaison is a voting member in part 4, the liaison is not a voting member with the Library Trustees and if the Chair does not want the Liaison to participate in non-public he can ask the liaison to leave which has been done historically in the past. She responded in the past they have not had any Liaison's at non-public meetings. Library Trustee member Anne Jacoby joined her at the podium and stated that the Trustees felt that this was a legal issue that would affect other committees, a systems process. As a systems process this came across as heavy handed and arrogant because if you are asking the liaison to participate at the discretion of the Chair what happens if the remaining members of the committee do not want that individual to participate in that capacity. What we simply want to do tonight, Pauline and I and the other members are requesting Chairman Matchie to pursue this with the AG's Office. It was to provide the Council with additional legal information that would be helpful perhaps in revising this document so that you can be in compliance with constitutional statutes. Chairman Farmer stated Council had a first read and we are at the public hearing and only now the Council hears of an objection that rises to the level of involving the AG, and he would like to have information about the source of objection. A. Jacoby responded the source of the objection occurred the last time she appeared in front of a full Council talking about the roles of the Liaison never imagining that this was going to come up. It came up at the end of the Council meeting, Section 10 was not read, not specified, made aware of it via a fax. She stated they wanted to consult with our Board Members before appearing in front of the Council to address their concerns. Section 10 has significant changes to the role of the Liaison, does not agree with the perception some have of a Liaison, respects that disagreement. Want the recommendation of the AG's office to come up with a best written code that will work for the Town of Londonderry. Councilor Dolan asked if they had approached the Town Manager or approached legal council we have on staff with their concerns. That legal opinion would be available in hours. A. Jacoby responded they did not; they had dealt with Terry Knowles before who is the Assist Director of Charitable Trusts in the Attorney General's Office. Dealt with him in the past, the board wanted to be sure that we provided you the best and accurate information regarding legal counsel because if we were wrong or were concerned about these issues, and in fact if they are in compliance with state statute and do pass constitutional muster we wanted to then support this. We do have questions, we are anticipating an answer in the very near future and by next Town Council we will have an answer for you. Councilor Dolan asked what state statute they thought Council was in violation off. P. Caron responded that is for the AG's Office to let us know. The Trustees did not know if Council had passed the Ordinance, if they had a question about it that would be sort of a conflict which is why they contacted Terry Knowles. Councilor Dolan asked if they had any idea what statutes would be in conflict, she responded they will not give legal opinions, they will leave that to the AG's Office, they are not qualified to give those opinions. Councilor Oswald stated he found it ironic to say the least; we are a small town of volunteers. We are dependent on a spirit of volunteerism in Londonderry and it is somewhere beyond ironic in his mind that we would have to resort to contacting the

AG's Office when as Councilors Dolan and Farmer suggest that we do have legal counsel available. He stated that his number is in the phone book yet did not receive any calls from any library trustees, not aware there was such a desperate view of opinion. We did have a public hearing last month and another one tonight, appreciate any public member coming forward and sharing their opinions and concerns. Hope that this spirit of cooperation, and communication of which is the intent of this very Ordinance is kept in mind with other Boards and Committees. Councilor Oswald stated that it's disturbing that we would have to go amongst community volunteers and friends to the AG's Office because of a difference of opinion. P. Caron responded we have contacted the AG's Office in the past on different things concerning the Library. She didn't know what they were offhand but that is who we go to when we have questions concerning library policies and items of that sort. A. Jacoby responded the Library is its own entity, quite separate from the Town Council in certain respects and it wasn't going over anyone's head. She appreciates the Council's volunteerism. What this is looking at is the process by which you are informed, I'm still not sure what you think the role of the Liaison is from the Town Council, still not sure what legal counsel specifically recommended and we are trying to provide you the unique perspective from the Library Board of Trustees, from the School District, from the Budget Committee it might be a different perspective. You need to have that information to come to a decision. I listened very carefully to Mark's comments at the meeting as this was discussed and how the Council is choosing to oversight the many committees that are responsible and accountable to you. That is a huge undertaking and task and we appreciate that you are looking at a systems process as well as in terms that this is not just about the Library Board of Trustees, this is about all committees, all boards who either have to appear before you or who are directly accountable to you. Chairman Farmer addressed P. Caron saying he is perplexed by the timing of this along with his fellow Councilors and if the other two Councilors were here they would be equally perplexed. He asked her if they were seeking to prohibit the Liaison from participating in discussions at the Trustees meetings; she responded no but that is up to the Chair who he acknowledges to speak. The Trustees did not get a copy of this Ordinance before the first reading, received it by fax dated 6/28 after the first reading. Chairman Farmer said they were all available to the public upon request and that has been standard. P. Caron responded that the Trustee didn't know it was coming up on the Agenda for the last Council Meeting. Councilor Dolan asked Town Manager Caron if we were aware of any other Boards or Committees that also want to seek clarification from the AG's Office or any other law enforcement agency about this Ordinance. Town Manager Caron responded not that he was aware of. Elizabeth Durkin, 1 Woodhenge Circle stated that she found it perplexing that any board or group in this Town would not welcome the input of any taxpayer in the Town whether it's a Town Councilor or any other member of the public and she thinks that is a real shame. Cindi Rice Conley, Winding Pond Rd. questioned if it was up to the Chairman of the committee as to who could and could not speak does that mean a member of the public could not speak? Cathy Wagner, 7 Fiddlers Ridge, stated there is not a problem for any liaison to speak to the Trustees if they clarify they are speaking to us as a citizen and not as a liaison. Most of your Liaison positions are not sitting up at the table as a voting member, they are not even asked to become a voting member and I think that is what the problem is with D-3, that you are a liaison you are here to report and help us if we have questions

and it's not for the Town Council to dictate to a total different governing body in this community how to do its business. The Trustees through State Statutes are in control of the Library and do want and need public input in order to get the right things done. I think it would be healthier if a Liaison with any Board was a Liaison but when they want to become a citizen in question they just let us know that they are coming up to the front to speak as a citizen and not Liaison. That kind of made everyone a little nervous as a Liaison you are supposed to be a reporter basically, you are not here to have an effect on policy if it's not written in the law. Chairman Farmer replied that this clarifies what the Liaison role is, and it's not to just sit quietly, listen, fill out a report and come back to the Council to report. It's also an existing pipeline for us to offer the perspective of the Council into any Committee setting to where we have a Liaison role. I've experienced it myself in the past in Committee work where Liaisons' were non-existent or in fact just sat there and provided no leadership, direction or advice and as a result of that we have committees in Town that have struggled, forgot to follow certain guidelines that are there as part of State Law or there as part of the acting Charter. Granted in the case of the Trustees you are not a Chartered or Charged Committee you are one that exists because public funds are raised for the purposes of having a public library. K. Wagner responded that basically what you are trying to do in D section 3 is to allow the School Board Liaison to the Planning Board the ability to have discussion with the Planning Board in regard to any project coming up. Chairman Farmer stated in the two years he was on the Planning Board the School Board Liaison to the Planning Board has always had the opportunity to come to the microphone and introduce himself as the School Board Liaison. This Ordinance does not discuss the School Board Liaison it discusses the Council's Liaison out to the many different various committees that we also serve on. K. Wagner responded that this has no effect on the School Board, then it would have no effect on the Library. Chairman Farmer responded this has absolutely no effect on what the School Board Liaison roles are or how they are defined, managed or appointed. K. Wagner responded that they are basically only for committees that fall under Council jurisdiction. Chairman Farmer responded it is only for Liaisons under Town government. K. Wagner stated the Library is a separate entity how can a Liaison from the Town have authority because technically we are a different branch. Chairman Farmer responded he doesn't have authority, this does not establish any authoritarian relationship with any of those Boards and Committees. The Trustees to the Library do not have a Liaison to the Town Council so we are expected to attend their meetings to get information and to offer feedback. It goes along the same lines with all the other Committees we serve and the respect that we are afforded when we go to those Committees and Boards like School, Budget and Planning Boards is the same respect all those Committees get from us. Still puzzled because look at this as an attempt to block somebody from offering the opinion of the Town. K. Wagner asked if in all of the Liaison appointments does any other Committee have as large a roll in taxpayer funds as does the Library. He responded no outside of the School. Chairman Dolan stated the Library does have the fourth largest Department budget in the community. He gave an example of why it is important for Town Council Liaisons to contribute without being stifled by the Board or Chairman of whatever they are the Liaison to. Councilor Dolan explained that at the first meeting of the Library Trustees he attended they were discussing the performance review and salary raises of a Town employee in public session. It was clear to him that this was not an item

that should be discussed in public session; it is a violation of an individual's privacy. Of course a public employee's salary is public information, that has to be published but the discussion of their performance, the individual raise that they may receive as connected to that performance is supposed to be done typically in non-public session. That is one of the primary reasons why RSA 91-A has to do with non-public sessions. It is written around that particular item to allow the privacy to be maintained. By conducting those reviews in public session it unnecessarily exposes all the taxpayers in Town to litigation by the employee, the grievances by the union and it was important, I felt, as a fiduciary responsibility I have on behalf of the Town and taxpayers to point out immediately to the Trustees that this discussion at that point ought to be moved into non-public. I believe that the Trustees went into non-public and discussed that and made some policy decision not to continue that activity. But, I have never seen them come out and state that they made that decision and their policy has changed. This is a good reason why a member of Town Council serving as a Liaison who has the second best knowledge of the RSA 91-A beside the Town Attorney to be able to immediately express that to protect all the rest of the taxpayers from lawsuits that could arise from inappropriate behavior. The Trustee Chair was upset with me that I pointed it out to him but I'm sorry if he was embarrassed but that had to be done, I felt, to protect taxpayers. I believe that a Town Council Liaison as it also states in this municipal code, has a fiduciary responsibility to protect the larger interests of the Town in case one of the Boards or Committees deviate from proper behavior. That was the case at my very first meeting that I witnessed and intervened in and I think if this objection I'm hearing tonight is an act to try to prevent that from happening in the future, I can tell you there is no state statute that governs Town Council liaison. You are not going to get the AG's Office to find some unknown state statute about Town Council Liaisons. If this was an attempt to keep the Town Council Liaison from speaking up when they speak on behalf of the taxpayers to make sure that the taxpayers are protected from inappropriate behavior, then I don't think that is well thought out. If this was a "turf issue" it is a little silly, we are all in this together and we all pay the same tax bills, we are all paying for the litigation that people bring to the Town, if you think this is the trampling of somebody's turf, then we need to get past that. We are all going to have to pay that bill when that lawyer's judgement is made. Because someone's feelings are hurt because someone speaks up, then that is too bad, get past that, get over it. Councilor Oswald stated he was first elected in 1999 to Council, the Liaison roll was poorly ill defined and in 2001 there was a marked decision where a process was defined and established. It encouraged those who were running for this office or holding this office to be pro-active, to demonstrate their leadership and their ability to listen and participate cooperatively with all the Boards and Committees. That is what brought us to this defining moment tonight. We have worked on this Ordinance to better define more specifically the roles and responsibilities that we all gladly accept when we run and hold this office. **Councilor Oswald made motion to move the question. Second by Councilor Dolan. Councils' vote 3-0-0.**

**Councilor Dolan made a motion to close the Public Hearing. Second by Councilor Oswald. Councils' vote 3-0-0.**

## **PUBLIC COMMENT**

**Old Home Day** - Cathy Wagner gave an update on Old Home Day (OHD). All 69 booths have been sold. Hank Peterson is the Parade Marshall. Councilor Dolan read a proclamation declaring August 13 as the beginning of Old Home Day celebrations.

**Donation to Londonderry Police Department** - Truda Bloom made a presentation to the Londonderry Police Dept (LPD) of a dozen bike helmets. HB118 was passed in January of this year stipulating that children under the age of 16 riding bicycles had to wear helmets. She cited recent surveys of injured bicyclists. Capt. Scott Saunders accepted the helmets on behalf of the LPD. He read the house bill and stated the fine for not complying with the law is \$35 and LPD officers are currently being trained about the law. He stated the police would rather give the helmets to children rather than fining them so that they will be better educated about the law. He also mentioned the bike rodeos being offered by LPD and the YMCA.

**Parrish Hills** - Bill Lynch from the Parrish Hills Elderly Community spoke about the shortfalls that were imposed on the residents by developer Silvestri. They have failed septic systems, unfinished roads, driveways, sewer and clubhouse. They sued Silvestri successfully but found not enough bond money to finish the work. They are personally paying to fix their own driveways but do not have enough to fix the failing septic. They are putting in sewer lines, which is a more economical avenue for the retirees in the community. They are requesting the Town waive the hook-up fee and delay the usage fee for a period of three years. Discussion ensued about the unscrupulous developer and the passage of State law licensing contractors. Councilors asked Mr. Lynch to put something in writing regarding the request for waiver.

Councilor Dolan encouraged the community to keep a sense of humor and try to make the library situation work.

## **OLD BUSINESS**

**Accessibility Issues at Town Hall** – Town Manager Caron gave an update on items brought up at the last Town Council Meeting by Elizabeth Durkin. He stated that the Town Hall as it stands complies fully with all ADA requirements, but the following improvements would make the building more accessible.

- Exterior Door Access – installation of automatic doors at both entrances to Town Hall. He estimated the cost for both doors would be about \$6,900 and funds could be obtained from the Expendable Maintenance Trust Fund.
- Van Parking at East Parking Lot – there is van accessible parking in front of the Police Facility and adjacent to the School District entrance. There is another area at the bottom of the ramp at the southeast corner of the Town Hall which is not van accessible. If that was dedicated to van access it would have to be increased to eight feet wide which would result in the loss of one of the eight regular parking spaces to the building.

- Council Chamber Doors – configuration of chairs in the Moose Hill Conference Room achieved the effect of easy access to the room rather than switching door handles.
- Ramp to Council Desk – space is available to construct a ramp to the right of the Council desk but it would interfere with the table located on the main level of the Chambers. Discussion ensued and it was decided to have Staff sketch a proposal. The tables on the main level were erected for overflow and for walking disabled.

**Councilor Oswald make a motion to authorize the Town Manager to purchase and install automatic doors and re-configure an existing parking space in the east parking lot to accommodate a Handicapped Van Access space. Second by Councilor Dolan. Councils' vote 3-0-0.** Elizabeth Durkin asked for clarification and stated she did not agree that the ramp to Council Desk was not needed.

**Use of Auburn Road Property by Flying Tigers** – Rich Bono the president of the Flying Tigers stated that he has met with the Planning Board, and the Recreation Dept. regarding their use of the facility to fly model airplanes. After discussions about noise and the distance of the nearest abutters it was decided to have a public informational meeting on 8/7/06. Abutters will be mailed a notice about the meeting and invited to attend and ask questions of the group. The Flying Tigers will then be invited back to a Council meeting scheduled for 8/21/06.

**FY07 Goals and Objections** – Town Manager Caron outlined the Town Council Goals and Objectives for FY07:

**Goals**

- Customer Service
- Planning and Management of Various Projects
- Tax Policy – Financial and Human Resource Planning
- Initiatives
- Communications

**Implementation**

- Community Services Grant
- Expendable Building Maintenance Fund
- Implement Revised Capital Improvements Program Process
- Maintain and Update Financial Management Plan; Continue CAFR Recognition; Review and Improve the Budgeting Process
- Provide Greater Influence for Londonderry in State Government Matters
- Planned Updates/Meetings with Strategic Office Holders, Property Owner, Other Boards, Commissions and Agencies
- Continue to Expand Communication Opportunities with Town Newsletters and other Media Opportunities

It was decided to wait until next meeting to discuss this matter, and to group the goals into four or five distinct categories.

**Mosquito Control** – Town Manager provided a list of sites treated with larvicide. He stated this information is posted on the website. Discussion ensued about additional spraying and the private use of the services of Dragon Mosquito in the Town. The Councilors agreed that if additional spraying is required it should be done and suggested a caution be put on the Town website reminding townspeople to wear appropriate clothing.

### **NEW BUSINESS**

**Ordinance 2006-08 – An Amendment to the Municipal Code, Title VI, Chapter XIX, Relating to Approval of Affiliate Recreation Groups** – Councilor Dolan read the first reading, **motion for second reading and public hearing scheduled for 8/21/06. Second by Councilor Oswald.** No discussion. **Councils' vote 3-0-0.**

**Ordinance 2006-09 – An Amendment to the Municipal Code Relating to the Traffic Safety Ordinance** – Councilor Oswald read the first reading, **motion for second reading and public hearing scheduled for 8/21/06. Second by Councilor Dolan.** Open for discussion. Town Manager Caron stated that the Traffic Safety Committee invited all abutters to a public meeting to discuss their concerns about safety issues on Wilson Road. Lance Avenue property owners will be notified of the upcoming public hearing. **Councils' vote 3-0-0.**

### **APPROVAL OF MINUTES**

**Councilor Dolan made a motion to accept the public meeting minutes of 06/19/06. Second by Councilor Oswald. Council's vote 3-0-0.**

### **OTHER BUSINESS**

#### **Liaison Appointments/Reports:**

Councilor Oswald stated he met with Conservation Commission and they discussed the entrance points to Musquash Conservation Area. Motorized vehicle use is prohibited in the area and it has been noticed that there has been increased ATV traffic on the property. LPD has been asked to increase patrols in that area. Leadership Londonderry has 14 applications to date and they are still taking applications. Manchester Airport Authority will meet on 8/28/06. South Station Fire Dept. construction is underway, on time and on budget.

Councilor Dolan met with the Historic Property Task Force, they reviewed tax records on properties in Town built prior to 1719. Town Manager said Rick Brideau from the Assessors Office reviewed the records and there were two properties that were improperly marked, corrections made. Next meeting will be this Wednesday.



Councilor Bove attended the Recreation Commission meeting on his behalf, did not attend the Trustees of the Library meeting. He will review the meeting minutes.

Councilor Farmer stated the Old Home Day Committee is moving along as described by Kathy Wagner this evening. They are working on having meeting minutes transcribed. Londonderry Arts Council does not meet in the summer. Concerts on the Common every Monday night are quite popular.

### **Town Manager's Report**

Flood repairs are almost done. Industrial Drive will be completed in 7-10 days... Small bridge being replaced on Coteville Road. Adams Road culvert repaired. FEMA will be in Town later this week. Some roads have been shimmed and overlaid. Not notified yet if Town will be reimbursed by state at 12 ½%. Flood damage could be in \$500 – 750K range. Security at Manchester/Boston Regional headed by Capt. Dussault began 7/1/06. Hiring 30 officers this year, 25 for new details, 3 for grant approved at Town Meeting a year and a half ago and a couple of retirements. To date hired 11 new officers, 8 certified. Extending offers to 11-14 individuals involving more testing. Confident that the 07 target date will be met... Two vacant positions in Londonderry Fire Dept. due to retirements. One vacant engineering position in Public Works. First half year tax bills were due on 7/3, collected over 75% that were due. Fiscal year ended on 6/30/06, revenues are fine, interest on investments increased, resulting in additional income going to general fund. Agenda item on 8/21 will talk about guidelines for FY08 budget. State retirement system has significant challenges before it, now only about 65% funded. He estimates at least a 20% increase in retirement rates for next year. The Town is responsible for 100% of its municipal employees and the State pays for 35% of employers share for teachers, police and fireman. Cell tower site reports continue to come in from the FAA, anticipate receiving all of them by the end of the month. Might require adjustment of land use regulations to site a cell tower; will have to be considered by Planning Board and Town Council.

### **Board/Committee Appointments/Reappointments/Resignations:**

The Greater Derry-Salem Cooperative Alliance for Regional Transportation (CART) has requested two representatives from Londonderry to the Board of Directors. Art Rugg has expressed interest. Discussion ensued about assigning this to a liaison role with a volunteer that would stay on in that position. Councilor Dolan suggested someone from the Traffic Safety Committee and Councilor Oswald agreed it would be a good idea. **Councilor Dolan made a motion to appoint Art Rugg and a designee from the Traffic Safety Commission as the Londonderry representative to the CART Board of Directors. Second by Councilor Oswald. Councils' vote 3-0-0.**

**Councilor Dolan made a motion to appoint John Wissler as a full member of the Solid Waste Advisory Committee, term to expire 12/31/09. Second by Councilor Oswald. Councils' vote 3-0-0.**

**NEXT MEETING**

August 21, 2006 at 7:00 PM, Town Hall, Moose Hill Conference Room  
September 18, 2006 at 7:00 PM, Town Hall, Moose Hill Conference Room

**ADJOURNMENT**

**Councilor Dolan made a motion to adjourn at 9:50 PM. Second by Councilor Dolan. Councils' vote 3-0-0.**

**Notes and Tapes by:           Margo Lapietro                           Date: 07/17/06**

**Minutes Typed by:           Margo Lapietro                           Date: 07/19/06**

**Approved:                       Town Council                           Date: 08/21/06**