

**TOWN COUNCIL MEETING**  
**August 9, 2007**

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

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

**CALL TO ORDER**

Vice-Chairman Bove opened the meeting at 7:02 PM with the Pledge of Allegiance. This was followed by a moment of silence for the men and women fighting for our country.

**PUBLIC COMMENT**

- A. **Melissa Nemon, Candidate for Position on Planning Board (Alternate)** – Councilors Wagner, Farmer and Bove questioned M. Nemon about her interests for serving on the Board, her past experiences and her educational background. Councilor Wagner stated that Ms. Nemon had attended the past couple of Planning Board Meetings and that Chairman Art Rugg made the statement that “her enthusiastic attitude is welcome on the Board.” **Councilor Farmer made a motion that M. Nemon be appointed as an alternate, with term to expire 12-31-07. Second by Councilor Wagner. Council’s vote 3-0-0**
- B. **Charlie Evans, Freedom Park Associates** – Attorney DiCarolis and Engineer Robert Davison from Hayner-Swanson presented documentation to Council on behalf of developer Charlie Evans about the possibility of the Town assuming ownership of the sewer pumping station which services Harvey Industries. Attorney DiCarolis informed the Councilors that Mr. Evans wants the Town to own the pumping station on Jack’s Bridge Rd. The attorneys for Harvey Industries, who recently built in that area, thought they were on a Town sewer system. R. Davison reviewed the time sequence to develop the area and said the developer was under the impression that the pump station was going to be turned over to the Town. Public Works Director Janusz Czyzowski stated that it was viewed from the onset as a private pumping station and that was how it was presented to the Planning Board. Councilor Farmer asked J. Czyzowski how much it would cost to maintain, he responded it would depend on many things including how many lots are there and how much drainage would be involved. Discussion ensued about size of pipes, rate of pressure, and drainage issues. Councilor Farmer stated cost impacts are not in the current budget. Discussion ensued about impact fees. Councilor Bove stated the sewer system is not a tax cost to Town, it is self-sufficient. The people who use the system pay for it. J. Czyzowski said the Town was working on a TIF District at that location; utilities should be examined at the same time. Councilor Bove requested

this subject be added to the next agenda and requested that Planning & Economic Director, Andre Garron provide his recommendation. Councilor Wagner posed the question that if by chance the TIF District is not approved, what will happen. Councilor Farmer stated he wants recommendations from the Town Manager and the Finance Director as to fiscal impacts of owning the pumping station. Charlie Evans, the developer, reinstated that it was his understanding that it would be public. He asked how many lots will be required to make it public and questioned residential property. Councilor Farmer said there were assumptions on both sides, wants a recommendation as to when it will be accepted for additional users. Councilor Bove asked for more information about other private pumping stations in town.

C. **Paul Margolin- 35 King Arthur Dr.** Paul Margolin, a representative from Beautify Londonderry Committee, presented the final selection of four signs welcoming people to the Town. He was at this meeting for two reasons, requested Town Council to support the project and to offer ideas on how to maintain the signs. He proposed having a fund raiser for the band to go to the Olympics. The signs will be displayed on the Town Common for "Old Home Day." People can place their votes in a bucket and at the same time they will ask for donations for the band. He explained they are hoping that local business will contribute to the price and maintenance of the signs. Cindi Rice Conley asked if companies who donate will get recognized. P. Margolin responded there will be something on the sign. Councilors endorsed the concept.

D. **Claudette Adams Hall Rd.** C. Adams read letter written by her husband who could not attend meeting. He had 4 comments addressing Murray's Auto Recycling operation on Hall Rd. Issues were about hours of operation, crushing operation hours, idling of vehicles, and parking of vehicles. Town Manager Caron addressed each comment. Richard Belinski, Hall Road also complained about the operating hours, the parking of vehicles and the length of the operation of the crusher. Both Adams and Belinski asked the Council to shut the business down due to what they felt were repeated violations. Both parties had an issue with the flatbed trailers that were parked at the business. Mr. Belinski did not agree with an opinion by Town Counsel that a flatbed did not constitute heavy equipment and referenced the description of heavy equipment he obtained from the Town Zoning Ordinances. He stated that the letter from the Town lawyer is incorrect. Councilor Farmer said he reviewed everything, agreements ignored by staff, not getting anywhere. He made **a motion to revoke license for Murray's, schedule non-public with town attorney, have Belinski and Adams provide any legal documents that go back to 12/8/1997 decision. Have Council hold a thorough review and take a hard look at it.** Vice Chairman Bove stated he would not accept the motion because we were missing two Councilors. Councilor Farmer stated he could not refuse the motion. **No second, motion fails.** Town Manager Caron stated that his staff has been unfairly criticized by Adams and Belinski. He explained his staff has no interest in keeping that junkyard open; staff simply enforces the codes uniformly throughout the community. He explained that if the junkyard license is unjustly revoked, Mr. Dudek will most probably file a temporary injunction; the judge will require that the Town post a bond against potential business losses should the Town not prevail in Court. To date, the Town has had one conviction for violation of operating rules this year. If Council saw fit to renew the permit this year with one conviction during the previous year, a judge will most probably not revoke the permit based upon one violation. If Town proceeds at this point

with an action, it will expose the town to considerable damages. Councilor Farmer questioned not being able to enforce anything in the agreement. Town Manager Caron stated that every complaint that has been found to be valid was successfully prosecuted in Derry District Court. Councilor Farmer stated that Councilors have found violations and it holds no weight. Town Manager Caron responded every complaint has been followed up by staff. Staff is not defending Mr. Dudek, if he violates the laws and it can be substantiated, then the Town will proceed. Councilor Farmer stated we should come up with some other way to handle the complaints. Mr. Belinski spoke about nuisance law, paved parking lot in front with no site plan. He said we have a problem with enforcement, needs to be taken care off.

Richard Belinski said that the hairdresser on his street was using more space (more than 25%) in her house than permitted in her special exemption. She admitted that the violation had been going on for a year and half. He questioned why hasn't anything been done, she is not following criteria. Other issues were time of operation, how many customers allowed at the same time. Councilor Wagner asked if she has received a summons, Town Manager Caron responded that the Code Officer has met with her to clarify the terms of her Special Exception. Vice Chairman Bove asked the Town Manager if we have a process in place for violators. Town Manager Caron said historically on enforcement issues, once the violation has been found there will be a summons or they are given a certain time to correct violation. If not corrected, a summons is issued. His understanding is that special exceptions go back to ZBA for revocation of special exceptions. His understanding is that action would be initiated by the Code Enforcement Officer, junkyard violations would come directly to Town Council. R. Belinski said it is up to Town Council, he talked to ZBA and they said it is up to Town Council. Vice Chairman Bove said he would like to get it clarified. Town Manager Caron will contact town counsel for guidance.

Tom Freda, 30 Buckingham Dr. spoke about petition article being put on warrant. Discussion ensued about redirecting money back from the Conservation Fund. He referred to Town Charter, challenged the Town Attorney's conclusions and referenced different RSA's. Vice Chairman Bove stated we followed state regulations. Councilor Wagner suggested proceeding to New Business, Section E for Declaratory Judgment.

### **OLD BUSINESS**

None

### **NEW BUSINESS**

- A. **Ordinance 2007-05 Relative to Rezoning Certain Property on Clark Road (Coca-Cola Facility)** Councilor Farmer read the first reading. Second reading scheduled for 9/17/07. **Councilor Bove made a motion to move to 9/17/07. Second by Councilor Wagner.** Councilor Wagner said Art Rugg had this in front of the Planning Board and they were pleased with the presentation. Chris Rice from T. F. Moran was in attendance for questions. Vice Chairman Bove said he could make his presentation at the public hearing. Open for discussion, none. **Council's vote 3-0-0.**
- B. **Old Home Day Proclamation Councilor** Councilor Farmer read the proclamation.

C. **FY09 Budget Guidelines** – Town Manager David Caron reviewed the year-end results of the budget pending auditors report. General Fund Expenses expended to 97.3%, \$681K remaining in Legal, Solid Waste and Police Departments. He reviewed General Fund that has \$580K in excess revenues. FY07 Budget was on target for all departments, no significant legal cases or exposures in 07 and Solid Waste generation was less than forecast. He proceeded to explain in detail the Police Department expenses.

Highlights for FY 09 Budget:

- 1) Fuel Costs
- 2) NH Retirement System
- 3) Health Insurance Costs
- 4) Debt Service
- 5) Wage Adjustments for some employees
- 6) 07 Town Meeting used one-time revenues to fund recurring expenses (Capital Reserve Funds).

He reviewed FY09 Budget Revenues; Overall Issues/Comments and Recommendations

**Councilor Farmer made a motion to ask for a default budget, with 1% reduction below default and offsetting .5% recommendation for strategic investment opportunities above default. Councilor Wagner second for discussion.** Councilor Farmer said he wants to keep staffing levels the same, reduce fuel and heating costs. Have dept. heads look for opportunities to be 1% below default and .5% for different needs for departments. Town Manager Caron said that will result in three different budget scenarios. Councilor Farmer stated he would like to hear presentations list all three lists at the same time. Town Manager Caron clarified that although each department will present a default budget; the 1% reduction and 0.5% adjustment will be constructed from the overall Town operating budget; the Council concurred. **Councils' vote 3-0-0.**

D. **Manpower & Succession Plan** - Town Manager Caron said the plan responds to a Council directive from June. He said it attempts to provide information on how the Town is staffed, the process for examining and staffing vacancies and succession, it can be used as a guide during the budget process. Vice Chairman Bove said if other councilors want it on agenda let the Chairman know. Councilor Wagner asked if this Manpower and Succession Plan is going to govern hiring and re-hiring. Presentation from department head very important. Town Manager Caron responded he has been performing a review of vacant positions for the past 6 yrs to determine the necessity to populate the vacancy, and referred Councilors to page 9 of the plan. Councilor Wagner said she is asking for future positions to be evaluated. Councilor Farmer requested this subject be on the agenda for next meeting. Sean O'Keefe, 163 Mammoth Road thanked Councilors' Wagner and Farmer for reviewing potential staffing levels and said he supported them.

Cindi Rice Conley questioned why did car rental company go out of state. Town Manager Caron responded they decided to register where their maintenance facility is located. She was concerned that they received incentives and was afraid that others might follow.

E. **Request for Declaratory Judgment – Citizen’s Petition** –Councilor Farmer stated as he sees it we have 3 alternatives:

- 1) Refuse to put on ballot – face a lawsuit, criminal charges; incur expenses, disrespectful to voters.
- 2) Seek declaratory judgment from the Court to determine the petition’s legality, at a cost estimated at no more than \$5K, which is already in the budget
- 3) Review by NH Dept. of Revenue Admin.

A lengthy discussion ensued about putting the petition on the ballot with the possibility of it being illegal. It was decided that putting it on the ballot and finding out that it was illegal would be extremely complicated to the voters. The possibility of requesting a judgment by NH Dept. of Revenue Administration was nixed due to the fact that it took too long and the judgment might not be received in time to list on warrant. Also they have a disclaimer that it was not a legal decision. **Councilor Wagner made a motion to seek a declaratory judgment. Second by Councilor Farmer with discussion.** Discussion ensued about bond funds and proceeds. Town Manager Caron stated if money in the Conservation Fund consists of bond funds, then an article on Tuesday would be considered. If it is non-bond funds, then the article would appear at the Saturday Budgetary Meeting. Currently there is \$2.6M in the account. T. Freda said let the voters decide, competition of ideas. Vice Chairman Bove wants to make sure it is legal and we are avoiding any problems. Councilor Farmer said it might defeat other warrant articles. Town Manager Caron explained what we are seeking from the Declaratory Judgment:

1. Is the action proposed authorized under NH state law? If it is legal the voters need to consider it.
- 2 If the petition is not legal, authorize the council to not put it on warrant. He believe that there is nothing to be gained by putting a warrant on the ballot that is judged illegal by a superior court judge.

Councilor Farmer asked how a declaratory judgment is based. Town Manager said Town will file a petition, notify some petitioners, have hearing in front of a judge. Vice Chairman Bove agrees with declaratory judgment. Graham Baker, 19 Buckingham asked for clarification about issue. He asked to go through DRA because didn’t cost taxpayers any money. It was decided to also follow up on the issue with the DRA and Al Baldasaro offered to see if he can put a rush on the DRA decision. Vice Chairman Bove explained that we are going through the courts in addition to the DRA. Councilor Farmer stated without the court ruling it would tie up other appropriations. **Councils vote 3-0-0.**

F. **2008 Budgetary Town Meeting Location** - Reid Paige Clark, III said people expressed concern to him that 500 people could not fit in the present site of Town Meeting located at the LHS Cafeteria. Baby sitting care also would be a good idea. He said the general prospectus of town was more space needed. Councilor Farmer said Council makes decision, wants list of capacities of different school facilities, and bring back baby sitting.

Councilor Bove agreed. Councilor Wagner read statistics she obtained for the past 5 years of attendees at Town Meeting; average was 235 in attendance per year. She questioned Dottie Grover, Dir. of Access Center, if the location was changed would we need Malloy Sound. She responded yes. Malloy estimated \$6K would cover both school and town meetings. Councilor Wagner contacted Chuck Zappala at the SAU said custodial set-up in the gym would cost \$200 versus \$72 in the cafeteria. The break-down in the gym would be \$180 vs. \$72 in cafeteria. The current set-up in the cafeteria can hold 400-450, 200 in Rm. 201 and another 250 in the band room. Discussion ensued about no cameras in the other rooms. Councilor Wagner also clarified a mis-quote in the newspaper, 500 voters are needed for the school vote, do not need a quorum for Town Meeting. Councilor Bove said it is the decision of the School Board whether to move their meeting. Sean O'Keefe said \$7K is short money to encourage people to vote in the gym. Discussion ensued about getting more people, having a pot luck breakfast, putting cameras in the gym. Audio would be very expensive per D. Grover, she will get a quote. Al Baldasaro suggested trying it out, see if it works. D. Grover also said that Drew Caron is working on a video documentary that will help to get more attendance because people don't understand the voting process. Pat Vitale, 75 Mammoth Rd. suggested working with organizations in town so they don't schedule events at the same time as Town Meeting so both parents can come. Councilor Bove stated it is out of our control. Another option was to move town meeting to another time of the year. Councilor Farmer said Tuesday is set, second meeting is optional. It was decided that council will wait until provided with cost of audio in the gym and capacity information for other school locations.

- G. **Ordinance #2007-06 – Relative to Speed Limit on Buttrick Road; Report of the Traffic Safety Committee** Councilor Wagner read first reading, second reading scheduled for 9/17/07. **Councilor Wagner moved the Ordinance. Second Councilor Farmer. Vote 3-0-0.** Town Manager said the Traffic Safety Committee (TSA) recommended and Town Council approved lowering speed limits from 35 to 30 MPH on residential streets. Next step was to review collector roads. Police Department studies recommended that speed limits on collector roads remain at 35 MPH. TSA will not be bringing a recommendation forward for collector roads. Fog stripes on roads was an issue with some residents. Janusz Czyzowski said it would cost @ \$30K to stripe Town roads like Shasta. It was decided to discuss this matter further at next meeting because the gentlemen presenting this idea had to leave the meeting.

### **APPROVAL OF MINUTES**

- A. **Approval of Minutes of the Council's July 12, 2007 Public Meeting** was delayed until next meeting when full Council will be in attendance. Draft meeting minutes will be posted to Town website.

### **OTHER BUSINESS**

#### **A. Liaison Reports**

Councilor Wagner report Old Home Day going well. She attended the Budget Committee meeting in July.

Vice Chairman Bove said Paul Margolin reported for the Solid Waste Committee that he attended.

**B. Town Manager's Report**

Town Manager Caron reported that spraying against EEE starts Sunday evening through Wednesday. Town Common will be completed by Tuesday. The spraying includes all athletic fields, parks and town common. Moving "Concerts on Common" indoors on Monday night.

Exit 4A public hearing being held on 9/12 at Derry Municipal Center at 7:00 PM. All abutters have been notified. Reviewing final draft, will take input and comments and submit to agencies.

Erection of 9/11 Memorial on Town Common – Permission and date range for memorial discussed. Councilor Wagner said Historic Society does not encourage anything of this nature, suggested no more than a week. Town Manager suggested that Council not approve more than a week, will set precedent. Councilor Farmer suggested using this as a trial basis and see how the community reacts then come back and set up formal policy. Erect on 9/10-9/16 at sunset, to the left of canon

**C. Board/Committee Appointments/Reappointments/Resignations**

**1. Deborah Shimkonis Nowicki, Full Member to the Londonderry International Exchange Committee, term to expire 12/31/08**

**Councilor Farmer made a motion to appoint Deborah Shimkonis Nowicki as a full member to the Londonderry International Exchange Committee. Second Councilor Wagner. Vote 3-0-0.**

**ADJOURNMENT**

**Councilor Bove made a motion to adjourn at 11:10 PM. Second Councilor Wagner. Council's vote 3-0-0.**

**Notes and Tapes by: Margo Lapietro Date: 8/09/07**

**Minutes Typed by: Margo Lapietro Date: 8/15/07**

**Approved: Town Council Date: 9/17/07**

**MEETING SCHEDULE**

**Town Council, September 17, 2007 @ 7:00 P.M., Moose Hill Council Chambers  
Town Council, October 1, 2007 @ 7:00 P.M., Moose Hill Council Chambers**

**Town Council, October 15, 2007 @ 7:00 P.M., Moose Hill Council Chambers**