

TOWN COUNCIL
March 3, 2008

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

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

CALL TO ORDER – PUBLIC SESSION

Chairman Paradis 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.

Councilor Farmer made a motion to open public hearing. Second Councilor Oswald. Council's vote 5-0-0

PUBLIC HEARING

Determination of Breach – Cable Franchise Agreement with Comcast – Dottie Grover & Attorney Peter Epstein were in attendance. Atty. Epstein referenced Section 12.1C of the contract that deals with determination of breach. He made reference to letters sent by Chairman Joe Paradis to Comcast regarding their non compliance dated 9/17/07, 1/10/08, 2/14/08, and 2/25/08. He also noted Comcast's response via letters dated 2/8/08 and 2/21/08. On 2/8/08 Comcast responded they were reviewing provisions, and stated they were not in non-compliance. On 2/14 Chairman Paradis wrote to Comcast stating that the Town was not satisfied with response. On 3/3/08 a notice of public hearing was posted. On 2/21 Comcast responded they wanted to change the meeting to 3/10/08. On 2/25/08 Chairman Paradis responded to Comcast that Council would not change the public hearing scheduled for tonight. Attorney Epstein advised the Council to consider all the information and make a decision. Chairman Paradis stated the requirement was for 6 channels as listed in the franchise agreement. D. Grover stated that she had asked Adelphia in '05 for the 6th channel, and they were in process of granting it; this is not a brand new request. Bryan Christiansen and Jay Lyman represented Comcast. B. Christiansen stated that Comcast has paid the Town approximately \$330,000 annually in franchise fees. During time period of '06 – '07, 30K programs were shown with 96.5% repeats. Most are identical and scheduled to run at the same time. He stated that this was unprecedented and unusually high. He further stated that it was unnecessary to add a 6th PEG channel. Comcast estimates that it would cost about \$86,000 to launch the new channel, costs which would be passed onto subscribers resulting in a one time charge of \$13.90. Councilor Oswald asked for clarification from B. Christiansen that the cost would be passed to consumers, he confirmed that it would. Chairman Paradis asked D. Grover if she had heard of other cable providers charging for this service and she responded no. Councilor Bove questioned why does Comcast want the channel. B. Christenson responded 5 PEG channels are proving sufficient for this town. Dottie said the sixth channel could be placed on the digital tier instead of analog. Chairman Paradis stated that we are here tonight because the Town was supposed to received 6 channels; it is clear in the agreement, now Comcast is saying the subscribers have to pay. B. Christiansen stated that costs can be passed on to customers per federal law. Councilor Farmer

asked P Epstein about the federal law. He said he had never heard a company saying that it would pass on these costs to consumers. Councilor Oswald asked what protection do people have in re-negotiations. The contract has an expiration date of 3/30/08, the Town can agree to extend franchise as one option. Has never seen Comcast turn the system off. He referenced Section 7.13 of the contract; it is out of the ordinary to charge \$86K; the Town does not control rates, rather Comcast sets the rates. Subscribers should complain to Comcast. Comcast should have done due diligence when they took over the system to realize that there was a requirement for 6 channels. Councilor Oswald asked when are we able to get another provider, P. Epstein responded that the contract is non-exclusive so the Town can look for another operator at any time. Drew Caron gave a brief overview of programming, Town has 3 major channels and Town does repeat programming because people request it, but you will find that every network channel like ESPN does that. Town has two government channels, bulletin board channel and LEO 21. Councilor Oswald asked how many channels are live. D. Grover responded live can be on 20, LEO on 21, 22 and 30 can have government meetings. B. Christiansen complimented Dottie on her work, asked council to reconsider non-compliance. Chairman Paradis asked Comcast to admit there is a breach; they do owe us another channel. No response. Open to public. Councilor Bove asked what the next step would be. P. Epstein explained that Section 12.1.C says that after the hearing, Council will close the hearing. Council has 30 days to determine if in non-compliance with Section 7.2. Contractual remedies during that time. Encouraged Council to make determination before 30 days. **Councilor Wagner made a motion to close hearing. Second Councilor Oswald.** Chairman Paradis said the agreement expires 3/30/08 would like to have it settled before that. Suggested rescheduling for 3/17 meeting. Councilor Oswald would like to get an idea of what the rest of the board feels; he believes they are in non-compliance and if everyone is in agreement move forward and get it resolved. P. Epstein recommended due to time restraints important for Council to made a determination ASAP and issue a written determination. Councilor Bove said if we make a determination that they are in breach what is next step? P. Epstein said the franchise authority needs to decide which of one or more remedies it should avail itself of. Discussion ensued as to whether or not the Council should vote on this subject tonight or vote on 3/17/08 when new Council is sitting. Chairman Paradis suggested that we not vote tonight because it would not be fair to new sitting Council on 3/17/08. Councilor Farmer said he is in favor of voting tonight. Councilor Bove said new members will be here; why not make up minds to vote tonight and new councilors carry on. **Councilor Oswald called the question on the motion. Council's vote to close public hearing 5-0-0. Councilor Oswald made a motion to find Comcast Cable not in compliance with Section 7.2A of the current cable TV renewal franchise. Second Councilor Farmer. Council's vote. 5-0-0.** Councilor Farmer requested that the Chairman work with Town Manager Caron to write a letter to Comcast and Town Manager Caron schedule a remedy hearing on 3/15/08 and if parties have worked something out would like to hear that first before going into any kind of remedy situation. J. Layman asked the Chairman if they should continue to work with D. Grover to find a resolution, he responded yes.

PUBLIC COMMENT

Rep. Sherm Packard – Senate Bill 361, sponsored by Sen. Letourneau, made it clear that the bill is not about Exit 4A. Exit 4A was a separate project to be done along with the widening of I-93. State and federal government is running out of money. Councilor Farmer said he is reluctant to support the project, language is open ended and could include Exit 4A. S. Packard said when the bill comes to the House he will propose an amendment to clearly say that it does not include 4A. Councilor Farmer said just going to Exit 3 is not going to fix problems. S. Packard said

bottle neck will just move up to exit 3. Chairman Paradis asked if Sen. Latourneau is in favor of 4A being in this bill, S. Packard responded no he is not in favor of it, testified clearly at the hearing that it had nothing to do with 4A. Councilor Oswald asked what projects will lose out for making I- 93 a priority. S. Parker responded that it is partially funded already.

Meg Seymour TC/TC reminded everyone about elections on 3/11 and 3/15 and absentee ballots. MAAP program is being implemented.

OLD BUSINESS

2008 Town Meeting Warrant Review - Town Moderator Cindi-Rice Conley and the Councilors reviewed the Town Warrant Script and Councilors were assigned their Articles to be read.

Article 7 was discussed. Councilor Farmer said that due to recent information received from NHDOT the price for construction had risen 34% to \$3.173M for construction work estimate given to the Town on 8/07 on the intersection. He proceeded to read an e-mail from the Town Manager outlining the project. Increases due to utility relocations which will take place over two full construction seasons which will result in additional traffic control, engineering and other costs increases. This situation leaves the Council with three different options:

1. Fund article with additional \$360K above amount in article from undesignated fund balance, has to be done at Town Meeting. Town would have available only \$227K available if all other articles proposed to use the surplus are approved at Town Meeting.
2. Fund totally from the highway budget, which would take 66% of PW highway paving, cleaning, maintenance budget. This would severely limit work on town roads for FY09. This amount does not include use of any bonds approved for highway reconstruction.
3. Value judgment needs to be considered for this project. Total local costs now exceed \$1.05M.
4. Halt project all together. Town would be contractually liable for engineering expense and actual acquisitions expenses for a total of \$495K. Town will still have to raise \$195K this year to pay off these expenses

Councilor Wagner clarified that the Town has to raise another \$360K. Warrant will read \$758K. Town Manager Caron said it will have to be amended from the floor at town meeting. Project will start this summer. He said Verizon estimates it will take 54 weeks from start to finish to relocate poles and wires at that intersection. Chairman Paradis asked Town Manager Caron what will happen if the Town does not approve the Article. If not approved, have to default to option #2. Councilor Bove said he intended to made a motion at town meeting to increase this warrant to \$758K. Councilor Wagner said she will second it.

Paul DiMarco asked if weather is a problem where do citizens go to hear if meeting is postponed or delayed. Town Manager Caron said you can tune into WMUR or WZID.

NEW BUSINESS

Order 2008-04 – Relative to the Distribution of Conservation Funds to Purchase property.

Councilor Oswald read first reading, second reading waived. **Councilor Oswald made a motion to approve. Second Councilor Wagner.** Councilor Wagner asked if anyone on the Council was planning to table this discussion to talk about it up front. Councilor Farmer said that there has been a great deal of speculation that members of the Council intended to vote no and kill this because of the pending court appeal for the Conservation Commission. warrant. He discussed all the e-mail that he received. There was a rumor that Council voted via e-mail to support this Order in advance of the public hearing. Councilor Farmer expressed his concern that if there are e-mails going around among Councilors supporting this it is wrong. At that point all the Councilors stated they had not received the e-mail. Councilor Wagner stated that she answered some questions about how she felt about this Order. Councilor Farmer said it should be done in public; should have public input. Mike Speltz, Conservation Commission member spoke about the Cooper property. Links up to Musquash has a great aquifer. Area is most suited to grow white pine, good network of woods, roads will support recreation trails. One acre of wetlands included in area. The 34 acres cost \$1.015M. Property was ready to go to the Planning Board for final approval, engineering expenses incurred. Councilor Farmer said the project has been in front of the Planning Board, brook and wetlands permit caused delays. Have subdivision plans in place, waiting for approval. Councilor Wagner said there could have been 14 homes in the subdivision and said she is in support of this acquisition for Open Space. Councilor Oswald stated the Conservation Commission repeatedly protects aquifers, threat of development also another reason they protect it. Councilor Farmer stated that Council had a briefing on 10 targeted areas; this property was not on that list held at meeting about 6 months ago. M. Speltz responded they were not approached by the developer until after that meeting. Open to Public. Anthony Hubert, 19 Teton Dr., in favor of the purchase, he said the Town will pay that amount of money if area is developed by services the Town would have to supply the sub-division Tom Freda, 30 Buckingham Dr. asked S. Hickey to show the assessment card on the projection screen. He asked if the Council reviewed the appraisal of \$1.3M for the property. Council responded they did not look at it. T. Freda asked M. Speltz if it was based on comparable sales, he replied it was appraised at \$1.3M based on a build out of comparable sales and estimate of work involved in getting it sub-divided. Councilor Farmer said it was not unusual that Council does not review appraisal. The appraisal is reviewed by the competent people on the Conservation Commission and the appraiser is an independent appraiser who used fair market value at that time. T. Freda stated that we are in a down market, suggested putting off buying the property. Councilor Bove said land has been enhanced by going through the Planning Board process. T. Freda stated that we are buying swampland. Councilor Farmer said land was purchased in 02 for \$750K; don't know if it was at fair market value at that time. Owner is not far away from site plan approval, price will escalate. Councilor Wagner stated she supported Open Space to purchase home lands. Chairman Paradis asked M. Speltz if owner has told him if Council does not approve this today, they will stop negotiations with Cons. Comm and go to the PB. He responded they have not said that to him nor have they said they wouldn't proceed. Tom Estey, 9 Old Nashua Rd. asked how much would it cost to put a bridge in on that property. Art Rugg responded about \$100K not a deal breaker. Don Moskowitz, 7 Tokanol Drive, said we have to trust Cons. Comm. People in Londonderry want to preserve open space and people in Cons. Comm have done a great job. People in Londonderry want to preserve landscape, has a positive impact on climate change. Dan Hicks, 127 High Range Rd is in favor of the purchase, it is a priority parcel. Joe Tomaswick 16 King Charles Dr. said it ties together a larger part of conservation area. Voters voted for the bond, it should be spent on what was voted on. Paul

DiMarco, Holstein Ave. spoke in favor of purchase, ground water is the biggest concern, and that open space is disappearing. Pam McFarland, Buckingham Dr. in favor, preserve what open space there is left. Councilor Farmer said if Council went out to get a bond now, would not vote for this. Time to take a break from appropriating more bonding for open space. We are talking about spending money already approved by the townspeople, in favor of it. Councilor Bove said now is the time. **Councilor Farmer called the question. Council's vote 5-0-0.**

Town Forest – Selective Harvesting – Councilor Oswald explained the location and size of the Town Forest. It was deeded by the Mack family in the 70's to the Town. Need additional space on the common so it was decided to do selective harvesting. Art Rugg said town forest lies within the historic district of Town, therefore have to have a public meeting. Councilor Oswald said the Fire Dept. has requested using the cut as a training exercise for the department. Deb Lievens said Charles Moreno has been the town forester for many years. Moderate income will be seen from sale of timber when light thinning of woods is done. This will cover cost of stump removal, grading, and seeding for the expanded picnic area. Extension of recreational path behind bandstand discussed.

Ordinance 2008-03 – Relative to the Rezoning of Map 7, Lot 132-28 from C-IV to AR-I – Councilor Farmer read the first reading, second reading scheduled for 3/17. **Councilor Farmer made a motion to move to 3/17/08 for a public meeting. Second Councilor Wagner. Council's vote 5-0-0**

Order 2008-05 – Relative to the Licensing of a Junkyard Pursuant to RSA 236 (Murray's Auto Recycling) Councilor Farmer read the first reading. Chairman Paradis stated that since there were objections to the reading we would re-schedule the second reading and public hearing to 3/17/08. **Councilor Farmer made a motion to bring to a public hearing. Second Councilor Bove. Council's vote 5-0-0**

Order 2008-06 - Relative to the Licensing of a Junkyard Pursuant to RSA 236 (S&SMetals) Councilor Farmer read the first reading. No public input. **Councilor Bove made a motion to waive the second reading and public hearing and adopt the Order. Councilor Oswald second. Councils' vote 5-0-0.**

Order 2008-07 - Relative to the Licensing of a Junkyard Pursuant to RSA 236 (Londonderry Salvage) – Councilor Farmer read first reading. No public input. **Councilor Bove made a motion to waive the second reading and public hearing and adopt the Order tonight. Second by Councilor Oswald. Council's vote 5-0-0.**

Order 2008-08 - Relative to the Licensing of a Junkyard Pursuant to RSA 236 (Hill's Salvage Facility) Councilor Farmer read the first reading. No public input. **Councilor Farmer made a motion to waive the second reading and public hearing adopt the Order tonight. Second by Councilor Bove.** Councilor Oswald asked if a fence between salvage yard and cemetery has been erected. Frank Holdsworth, Code Enforcement Officer said it has been done. Councilor Farmer asked about what work was in the process of being compliant. F. Holdsworth said work being done on new pad, in process of resurfacing it. **Council's vote 5-0-0.**

Energy Efficiency Task Force – Chairman Paradis explained that the Environmental Baseline Study Commission (EBSC) is looking for volunteers interested in participating in an Energy Efficiency Task Force. This committee is a follow-up to the Resolution 2007-06 supporting the NH Climate Change. The people who signed the petition for that Resolution will be contacted to see if they are interested. Councilor Farmer asked Town Manager Caron to work on a charge and have language before the meeting in April.

APPROVAL OF MINUTES

Minutes of the Council’s February 7, 2008 Public Meetings. **Councilor Oswald made a motion to accept the meeting minutes of 2/7/08 with the following edits: line 114, typo on the word “loose” should be “lose”, line 431, typo error “Paradise” should be “Paradis”. Councilor Wagner seconded with changes. Council’s vote with changes 5-0-0.**

Councilor Oswald made a motion to accept the meeting minutes of 2/11/08 with the following edits: line 110 typo on “grass” should be “brass”. Councilor Wagner seconded with changes. Council’s vote 4-0-1, with Councilor Farmer abstaining.

OTHER BUSINESS

Liaison Reports – Councilor Farmer said he had no liaison reports because none of the committees he is on have met.

Councilor Bove met with Housing Taskforce. They reviewed data, updated to current numbers. The report will be ready by the end of the month.

Councilor Wagner attended the Planning Board meeting where they talked about POD’s, will have another hearing. Reviewed conceptual design plans for a potential retail structure on 102 at Olde Londonderry Site. Old Home Day looking for Grand Marshall, lots of suggestions, no theme yet.

Councilor Oswald attended Conservation Commission, talked about presentation made tonight by Mike Speltz, reviewed Open Space Plan. He took this opportunity to thank the voters of Londonderry for allowing him the privilege of serving them for the last nine years.

Chairman Paradis met with Londonderry International Exchange Commission, talked about whether or not they should establish another sister city other than Voladga, Russia, decided it would be too much. He thanked Art Rugg and his wife for working so hard to get the project going. He also thanked everyone for their support for the past three years.

Councilor Bove thanked both Councilors for their volunteer services provided to the Town: Councilor Oswald for this 9 years and Chairman Paradis for this three years on the Town Council.

Town Manager’s Report – Town Manager Caron informed the Council that we have exceeded appropriation for winter maintenance. Despite the financial shortfall, the Town has not changed the winter maintenance policy; under current policy it takes a truck 3-4 hours to complete their routes. He will reallocate funds from other areas of the budget to cover those over-expenditures.

PB will be reviewing application for antenna on tower at Nelson Field; plans are to start construction of cell tower in spring. Council has been invited to “Business after Hours” on 3/27 at Elliott Medical Facility from 5:30 – 7:30 PM and a lunch on 3/10/08. Town Meeting Scripts will be available at the polls on Tuesday. The consensus of opinion was to have a re-organizational meeting at end of Town meeting on 3/15/08.

Board/Committee Appointments/Reappointments/Resignations

Resignation of Jim Herrick from Solid Waste Advisory Committee, term to expire 12/31/08. **Councilor Bove made a motion to accept. Councilor Wagner second. Council’s vote 5-0-0.**

ADJOURNMENT

Councilor Oswald made a motion to adjourn at 10:13 PM. Second Councilor Wagner. Council’s vote 5-0-0.

Notes and Tapes by: Margo Lapietro Date: 03/03/08

Minutes Typed by: Margo Lapietro Date: 03//06/08

Approved: Town Council Date: 03/17/08