

TOWN COUNCIL PUBLIC MEETING
March 17, 2008

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

PRESENT: TOWN COUNCIL; Chairman Marty Bove; Vice Chairman, Brian Farmer; Councilors Kathy Wagner, Paul DiMarco and Mike Brown; Assistant Town Manager/Finance Dir. Sue Hickey and Margo Lapietro, Executive Assistant.

Chairman Bove thanked the Council for appointing him Chairman of the Council for this term.

CALL TO ORDER – PUBLIC SESSION

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

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

PUBLIC HEARING

Ordinance #2008-03 – Relative to the Rezoning of Map 7, Lot 132-28 from C-IV to AR-I

Councilor Farmer read the Ordinance, made a motion. Second by Councilor DiMarco. Councilor Wagner said this rezoning was approved unanimously by the Planning Board (PB). Open for discussion. Art Rugg, PB Chair said the PB is in support of the rezoning, he proceeded to describe the history of the property. Patricia Panciocco, owner of the property, explained she is trying to use the property as residential to build what is already there in that neighborhood. Councilor Brown asked her if she is aware of the potential for commercial development around the area, she responded she is aware. **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 second reading. **Motion by Councilor Farmer. Second Councilor Brown.** Open for discussion. Code Enforcement Officer Frank Holdsworth spoke about past problems; Mr. Dudek worked late at night and received a summons and was sanctioned by the court for working past 5:00 PM. DES had hired someone to remove loam from facility some confusion as to use of backhoe and inappropriate leaving of a backhoe. F. Holdsworth spoke to the backhoe operator, left it out for the rental company to pick up, was not picked up in a timely manner so Mr. Dudek put it behind his gate. Another incident was the removal of some vehicles to make room for a crusher, and then vehicles were removed back inside the gate. Talked to Town Manager and decided to ask Capt Hart from LPD about the situation to see if Mr. Dudek could be prosecuted. Capt Hart who is an attorney recommended that charges not be pursued. Councilor Brown asked F. Holdsworth if he was saying that he got only three complaints last year. F. Holdsworth said he is not saying that at all. Councilor Brown asked how much activity was involved in call-ins and how much time investigating complaints. F. Holdsworth responded he has spent numerous hours investigating some complaints, most come from across the street. He responds to each and every one of them, most are rectified prior to his arrival and/or there was nothing there to tell him a violation was occurring. Councilor Farmer asked why the warning was on the bottom of letter, F. Holdsworth said its part of a form

letter that goes with each letter sent out from his office all the time. If read in its context it simply says court can impose fines and acknowledges that he is here to assist the person with compliance. Councilor Wagner asked if the site plans in front of PB have any bearing on this licensing. F. Holdsworth responded they did not. Chairman Bove asked F. Holdsworth if only one complaint was worth citing on all the complaints; he responded that was correct. Councilor Wagner asked for clarification regarding responsibility for the front end loader, F. Holdsworth responded it was used by a contractor in conjunction with the NHDES project. Contractor for state acknowledged he was supposed to remove the front end loader that day. A. Baldasaro, Hall Road said there are about 10-11 families on the street they do not have a problem with the business. Over the years Dudek has greatly improved the property. The same two people complain every year. He asked the Council to respect the business owners in the town. He is using best management policies to improve the property. R. Bielinski, Hall Rd. said he is in non-compliance. He has a letter from Gerard Adams and read it into the record which referred to a list of conditions Dudek had to comply with. He proceeded to show pictures taken this weekend of alleged violations. He referenced the court order and Councilor Bove said what he is talking about has nothing to do with what we are here for tonight which is the licensing of the business. One of the violations is the flatbed and wrecker being parked out front. Assist. Town Manager/Dir. of Finance stated the flatbed and wrecker are not considered equipment per counsel. David Kilroy, 22 Hall Rd. said his family has lived there since the 70's, area has been cleaned up, in support of getting license. Jim Bilodeau, 63 Hall Rd. said Mr. Dudek has cleaned up the area, doing his business, grant license. Adena Jenkins, 38 Hall Rd., said the man has a family, has responsibilities, has a business, should get his license, we need to move on. Ronald Jenkins, 38 Hall Rd. has no problem with getting license. Jim Henson, 61 Hall Rd. said Mr. Dudek offers a service to the community, doing everything he can do to make it better. Everyone else in the neighborhood has no problem with it. None of the other junkyards in Town are under a microscope like he is. Chuck Langevin 37 Hall Rd. said the property doesn't look like a junkyard, he is under microscope. Hall Rd. is a shortcut to MHT who is doing more business. Traffic flow has increased has nothing to do with Mr. Dudek. Whole process is ludicrous, if they don't like living there they can move. Lee LeBlanc 58 Hall Rd. has been there 28 years and said Mr. Dudek has been improving property, should grant license. Councilor DiMarco asked if he will get the same conditions this year, Chairman Bove said up to Council. Councilor DiMarco spoke about the view. Councilor Framer questioned if F. Holdsworth has the same agreement for last year as he does for this year, F. Holdsworth responded yes. Councilor Farmer said Council could go back and change the agreement; any changes would have to go back to Mr. Dudek. Councilor Bove said we should go back and change it because some items are old. Councilor Wagner said she is fine with what we have on the agreement. If we hold one business in the community to that standard we should hold every business to the same standard. Chairman Bove asked F. Holdsworth if he has a signed agreement with those terms. F. Holdsworth said the current agreement is signed. The coming year is not signed until after Council signs it. Chairman Bove then said that Council has time to make some relatively minor changes if Mr. Dudek agrees. Jim Bilodeau, 63 Hall Rd. said fence issue could be solved by vegetation being planted in the area but beaver keeps removing it. Jim Henson, 61 Hall Rd. said at some time junkyard will be surrounded by water when state floods area. Will be able to see whole place, don't want to be looking at a fence. Councilor Brown said we should take court order into account. Conditions were set by Council; he asked how are there no violations in the court order and our conditions. He said it is clear that applicant has violated conditions asked other Councilors to clarify. Councilor Farmer thinks we have violations; we don't enforce what is in the agreement. We find reasons and excuses to not enforce the agreement. That is part of what makes the problem. The agreement is black and white we are not doing enough. No point in

having an agreement that nobody follows or enforces. The Town is not doing their job. He addressed Mr. Dudek and said if he thought these conditions were somehow hampering his business he would have fought for other conditions. You would have wanted changes so you could do your business. Mr. Dudek responded he was never asked. Councilor Farmer said he would have to question why Mr. Dudek was never asked. Mr. Dudek said this license was held at ransom last year if he didn't sign the agreement. If he didn't get his plates he can't sell cars. He said he had no choice had to agree to the agreement. Mr. Dudek said he was told he had to comply with the restrictions imposed and asked what other business in Town had all these restrictions on them besides him. Councilor Farmer said the court order gives the Town the authority to impose the restrictions. A junkyard has special conditions per State law, not in the same situation as peers in Town. Mr. Dudek said if Richard Bielinski moved to Litchfield Rd. instead of Hall Rd. many years ago, would he be complaining about Hills junkyard instead of Murray's. Mr. Dudek said year after year he has to listen to Bielinski no matter what he does to improve property. Councilor Farmer stated that he does not see the point of agreements if they are not going to be adhered to. Councilor Wagner said one violation does not constitute taking away a man's livelihood. She said if she saw two or three she would say this is a constant issue. He was the only junkyard to be put under these conditions, he was under ransom. He has done his best to adhere to conditions. If we start going on this route we have to apply the rules, values, conditions, restrictions for every business in town. Can't justify closing down a business because Richard Bielinski moved next to it. Front end loader was not his equipment, it was state issue. Councilor Brown said he wanted advice from Counsel if they were viewing court order the way he was viewing it. Councilor Wagner said violations going down, progress is going up. Councilor DiMarco said he agrees with Councilor Wagner. Mr. Dudek has a right to own his business, needs to be held accountable to meet court order, does not agree with cloth fencing. He further stated he does not want to start his first meeting shutting down a business owner. Chairman Bove said that the fence issue was agreed to by prior Councils. Councilor Farmer said he is not taking the position to revoke his license, meet the terms, and if not, code enforcement officer will do his job. Councilor Brown re-stated the problem he has. Based on Councilors Wagner, DiMarco and Farmer's statements he said we do not have flexibility in our own agreement. Nothing in our agreement says we will try to get him to comply and if that doesn't work we will go to court. It simply says if you don't do one of these things it is the basis for revocation. These conditions don't give us any flexibility. Councilor DiMarco said the wording says "it shall be the basis for revocation" it doesn't say the license should be revoked. Discussion ensued about granting the license. F. Holdsworth said license could be granted tonight contingent upon rewording the agreement. Councilor Farmer said we could also have another public meeting and re-work the agreement. Councilor DiMarco reminded everyone that the existing license expires the end of March, don't have much time. Councilor Bove said this is his 9th year dealing with junkyards, have seen a number of agreements. Mr. Dudek has done a lot of things, he said he has been frustrated by some of the things Mr. Dudek has or has not done, will not interpret the court order. Has applied to numerous agreements going forward. We are complying with its intent. Deal with enforcement of all ordinances, give people opportunity to come into compliance. **Move the question. Council's vote 5-0-0.** Councilor Farmer requested that Town Manager Caron, F. Holdsworth and Mr. Dudek look at the agreement again to bring it into line with the state. Councilor DiMarco requested it be on a future agenda. F. Holdsworth encouraged all councilors to look at his files and ride with him someday to see how complaints are handled. Councilor DiMarco said he would like to be included in the discussion with Mr. Dudek. Discussion ensued on how to handle future inquiries for junkyards. Councilor Brown suggested having a workshop with the Town Manager and Enforcement Officer to get direction. Councilor DiMarco said he would like to participate particularly with Murray's Junkyard.

Councilor Farmer motion to approve the Order and come out of public hearing. Second Councilor DiMarco. Council's vote 5-0-0.

PUBLIC COMMENT

Peter Stamnas-NHDOT – Peter Stamnas, NHDOT I-93 Project Manager and Dan Primo with Highway Design Group met with the Council. Construction update for I-93, part of public outreach program for I-93. Mentioned the hand-outs they have and directed everyone to the website (www.rebuildingI93.com) for more information. The ramps project is being advertised 4/22 of this year. Ongoing current projects are park and ride at exit 5, north of park and ride off Symes Dr. is a full service bus maintenance facility and provides overflow for park and ride. That project will be completed this fall. Starting this summer will reconstruct Exit 5 on/off ramps. Includes two bridges, precursor of future improvements of bridges. Ramp work will begin this summer and be completed by summer of 2009. He spoke about “Smart Work Zone” being used during the ramp projects. They are electronic signs providing information to motorists notifying them ahead of the construction zones of the existing construction conditions. They will have cameras in use on their website so the public can look at conditions before traveling into the construction zones. Due to difficulty with the laptop his slide show presentation was not working properly. Discussion ensued about rail and bus service between Manchester and Boston. Councilor Brown questioned if Rockingham Rd. was going to have any work done. P. Stamnas said there would be some interim upgrades to the road completed as part of the park & ride project. Will be squeezing another lane out of Rt 28 under existing bridges. Future plans for Rte 93 is the proposal to construct 6 lane section, can accommodate 8 lanes section with modifications. Councilor Brown said it might be cost effective to only have 6 lanes. P. Stamnas said in Phase II they are looking at adding two lanes under the future bridge to make it an 8 lane section and to also providing additional lanes on the ramps to handle more traffic. Councilor Bove expressed concern that if they don't do 10 lanes now won't be able to do it in the future. P. Stamnas said that would require bridges to be lengthened we would undermine the environmental process done for I-93 and could jeopardize their permit. Public Works Dir. Janusz Czyzowski said 8 lanes should be a must now; costs will be much higher in 2012 at Exit 5. Their analysis says that 6 lanes will be inadequate. The Town should request that the State build 8 lanes. A. Garron said these projects are not being done for just Londonderry; it will also benefit MHT and other Towns. P. Stamnas said 8 lanes are programmed in there; costs to do it now will be considerably higher than money allocated by the State at this time. Councilor Farmer advised everyone to contact state reps. and ask them to consider 8 lanes now. P. Stamnas stated they do have a traffic analysis and it show that we have a very good level of service for future years. Councilor Farmer asked for a copy of it.

OLD BUSINESS

Determination of Breach – Cable Franchise Agreement with Comcast-Penalty Phase

S. Hickey said that on 3/3 Council voted that Comcast is in breach of franchise agreement according to Section 7.2a for providing 6 channels. Access Center Dir. Dottie Grover said she heard from Comcast today, they will provide 6th channel allowing it to start on the digital starter tier. Attorney, Town Manager and Dottie are suggesting as follow up to their breach tonight determine what the penalty phase would be for that breach. Recommending that you look at \$250.00/per diem fine and defer collection until after next meeting; will provide information of when the 6th channel will be placed. Councilor Brown clarified that Town Staff is asking Council to make determination of breach tonight, defer collection date till next meeting. She responded that is what she is looking for tonight. Councilor DiMarco clarified that we can

impose or not impose fine based on information received by 4/7/08. General consensus was if they followed through with their proposal we would not fine them. Councilor DiMarco made a motion to assess liquidation damages per section 12.2 of \$250.00 per day as set forth in section 12.2:4. Second Councilor Wagner. Council's vote 5-0-0.

NEW BUSINESS

Resolution #2008-04 – Relative to a Financial Management Plan for CDBG Projects

Councilor Farmer read the first reading, second reading waived. **Councilor Bove made a motion to accept. Second Councilor DiMarco.** Open for discussion. S. Hickey explained that the Community Development Finance Authority requires that the Council adopt a plan which reflects the process used for invoices for CDBG projects. Similar form used for past CDBG projects. Councilor Farmer said it gives Town control of invoices related to the Wagon Wheel project. S. Hickey said we get invoices from project manager; we pay them and get revenue from state. Councilor DiMarco asked what is the project at Wagon Wheel. Chairman Bove said it was for the failure of septic system and a problem with water and this addresses the water. Council's vote 5-0-0.

Order #2008-09 – Relative to the Expenditure of Maintenance Trust Funds for recreation

Purposes Councilor Brown read first reading second waived. **Councilor Brown make a motion to adopt. Second Councilor Farmer.** Art Psaledas, Recreation Director said we have one at LAFA, need one at Continental Park due to distance the Town Center. Councilor DiMarco asked where does it ring. A. Psaledas says it goes to police, fire and ambulance in town, will not use 911. S. Hickey towns share will be from expendable maintenance trust fund. Council's vote 5-0-0.

Resolution #2008-05 – Relative to the Award of a Contract for Sewer Services –

Councilor DiMarco read the first reading, second reading waived. **Councilor DiMarco made a motion to adopt. Second Councilor Wagner.** Open for discussion. S. Hickey said staff recommended awarding a contract to Weston and Samson for the replacement of the Action Boulevard Pump Station. **Council's vote 5-0-0.**

Councilor Brown asked if Council can spend additional time to talk about goal setting. Proposed smaller number of goals but ones that are very important. Collaborative working session with Town Manager and Councilors. Councilor Bove agreed. Councilor Farmer said past goals not very good goal statements, there has been a problem achieving them. Recommended changing the process of how we set goals, prefer workshop format could be a public meeting. Discussion ensued and it was agreed to try a new format. Two member team concept discussed. Chairman Bove asked Asst. Town Manager Hickey to ask Town Manager Caron to schedule a workshop on goals.

Councilor Brown said we should consider discussing with Town Manager Caron and Assist. Town Manager Hickey the options of filling the position of Building Inspector. S. Hickey said at this point in time the Town Manager is making an interim appointment, will review all other options, such as consolidation of departments; contracted employee; or not filling position. Part time temp will be hired to assist Richard Canuel in the department due to busy spring season. Councilor Wagner asked if opened up the temp part-time position if she had someone in mind for the position. S. Hickey responded building inspectors in other Towns might be interested or we can contract an agency. Chairman Bove said Councilors want to be part of process. Councilor

DiMarco said function of building inspector important to town, will have to delve into it more. Councilor Wagner asked if we are under obligation by the state to have a health officer. S. Hickey said every town has to have one, has to be staff usually Building Inspector and Health Officer go hand in hand because of the cross training they have. Councilor Farmer asked is we had anybody on staff now that has the proper certification; S. Hickey said she would have to check. She said she will present analysis in April. Councilor Farmer said to do goals workshop on 3/31 with Town Manager Caron discussing the building/health inspector position. Councilor Farmer recommended agenda just say it was a workshop.

APPROVAL OF MINUTES

Minutes of the Council's March 3, 2008 Public Meetings. Councilor Farmer made a motion to accept the meeting minutes of 3/3/08. Councilor Wagner second. Council's vote 3-0-2.

OTHER BUSINESS

Liaison Reports – Councilor Wagner encouraged a positive vote on new development waiver for POD restrictions. Needs commercial C3 level following site work. Planning Board voted unanimously to grant the waiver, will go to Town Council for rezoning, will bring sewer and road development to the area. Most abutters comfortable with waiver, encourage Council to vote positive. Councilor Wagner said the storage container issue will be on the 4/9/08 Planning Board agenda.

Councilor Farmer attended the Londonderry Arts Council have discrepancies with expenditures. Planning for summer concerts. Art in Action, this year they will use Grange 44 on Pillsbury Rd. Plans for Nutfield Sessions in process for Sundays. September Arts on the Common in planning stages.

Town Manager's Report

Board/Committee Appointments/Reappointments/Resignations

Resignation of Paul DiMarco from Planning Board, term was to end 12/31/09

Resignation of Mike Brown from ZBA, term was to end 12/31/09.

Appointment of Yves Steger as a Full Member on the ZBA, term to expire 12/31/09.

Councilor Brown made motion to appoint Yves to a full membership. Second by Councilor DiMarco, Vote 5-0-0

Liaison Appointments – Chairman Bove said all Boards/Committees/Commissions should have liaisons or a point of contact, does not believe that it is necessary for Councilors to attend all those meetings. If Chair requires you attendance then attend the meeting. Alternates should be chosen if primary Councilor is not available. School Board is important but do not have to attend every meeting unless Chair requires it. Some have to attend. It was decided to assign appointments tonight. Councilor Farmer suggested scheduling 4 meetings with School Board. Would like the Chair to talk to the Chair of the School Board, Councilor Bove said he will talk to them. Councilor Wagner and Councilor Brown said it would be difficult.

ADJOURNMENT

Councilor DiMarco made a motion to adjourn at 10:36 PM. Second Councilor Wagner. Council's vote 5-0-0.

Notes and Tapes by: Margo Lapietro Date: 03/17/08

Minutes Typed by: Margo Lapietro Date: 03/25/08

Approved: Town Council Date: 04/07/08