

TOWN COUNCIL MEETING
December 21, 2009

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

PRESENT: Town Council: Chairman Mike Brown: Vice Chairperson, Kathy Wagner; Councilors: Brian Farmer (7:08PM); Sean O’Keefe; Paul DiMarco; Town Manager Dave Caron; Executive Assistant, Margo Lapietro.

CALL TO ORDER – PUBLIC SESSION

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

PUBLIC HEARING

Councilor DiMarco made a motion to open the public hearing, second Councilor O’Keefe. Council’s vote 4-0-0.

Resolution #2009-20 – Relative to Renaming Portions of Dan Hill Road and Nelson Road - Jim Bilodeau, 911 Coordinator and John Vogl, GIS Manager were in attendance. **Councilor DiMarco made a motion to accept, second by Councilor O’Keefe.** Chairman Brown asked if they had a public meeting with the abutters and was there any input. J. Bilodeau responded they did have a public meeting but no one showed up. J. Vogl said he communicated with the Public Works Dept. and they suggested the name “Recovery Way” and LAFA said they were in agreement. **Council’s vote 5-0-0.**

Resolution #2009-21 – Relative to Naming the Private Access to 49A Seasons Lane. **Councilor O’Keefe and made a motion to accept, second Councilor Farmer.** Councilor DiMarco asked why the Lane has to be renamed if it is a “private access driveway”. J. Vogl said the driveway is a class VI road, they are proposing to add a name to the driveway per the property owner’s request. J. Vogl suggested amending the Resolution to change the word “private” to a class VI road which would provide access to the homeowner’s property. Linda German, 8 Summer Dr. said her property abuts Cote Lane. No part of Cote Lane is a driveway it is a road used as an access from one house 1,700’ in from Seasons Lane to Seasons Lane. The abutters do not want it listed in public records as a private road. She stated she wants the town to correct the wording it is not a private road or a driveway; it is a class VI road. Dave Rossi, 49A Seasons Lane said his main concern is the response time for emergency vehicles; it is difficult to find the house. Councilor Farmer asked who maintains the road. J. Vogl responded that because it is a class VI road the town does not maintain it, the property owner does. Councilor Wagner asked if this change will put any liability on the property owner. Town Manager Caron responded it will clarify the current legal status of the road; it is a public road that is not maintained by the town. **Councilor DiMarco made a motion to amend the Resolution to read “Class VI Road” instead of “private driveway access”, second Councilor O’Keefe. Council’s vote on the amendment 5-0-0. Council’s vote to approve the resolution as amended 5-0-0.**

48 **Ordinance #2009-05 – Relative to the Creation of a new Gateway Business District –**
49 **Councilor O’Keefe made a motion to accept, second by Councilor Wagner.** Community
50 Development Director Andre Garron explained that this Ordinance started in 2005 it was
51 originally called the Flexible Industrial District in 08, they just re-named it to the Gateway
52 Business District. The development is a mixed-use development; there is no residential district
53 planned. He reviewed the Small Area Master Plan survey completed by UNH whereby a campus
54 type-setting was preferred. He summarized the proposed amendments and reviewed the lots.
55 The summary of the proposed amendments included amending Section 2.11; 2.2; 2.5.2.5; create a
56 new Section 2.7, and amend the Zoning Map to rezone certain lots. He reviewed the “Use
57 Table” that broke down the various sized lots planned for the area. He noted the area has a
58 potential of up to 4M sq. ft so they have a conditional use permit to work with the Planning
59 Board so it doesn’t preclude further development in the area. They want to provide various
60 services in the area and not let the larger uses dominate the area. He reviewed the proposed
61 ordinance language and explained it ratifies what we currently do. He explained the Gateway
62 Business District works like a normal district and proceeded to list the general standards. He
63 reviewed the sign standards allowed by conditional use permits for directional signs. He also
64 reviewed the conditional use permit and criteria. Councilor DiMarco questioned if the Planning
65 Board has the power to make sure the signs are consistent, Andre responded yes they do.
66 Councilor O’Keefe asked how much is the existing zoning different from what is being
67 proposed. A. Garron said the ancillary uses are the biggest difference, some of the proposed uses
68 are not currently allowed in that area. Separation of sizes is also another difference. Chairman
69 Brown asked if there was any Heritage Commission input on the signs in the district he said it
70 seems to be mostly a Planning Board decision. A. Garron said it does fall to the Planning Board
71 to make the decision on off-premise directory signs. They can refer to the Historic Commission
72 for input. The regular signage will still go through the normal channel of being reviewed by the
73 Heritage Commission. Chairman Brown asked if the flexible industrial zone was approved by
74 Town Council, A. Garron responded no, it was not approved. A. Garron replied that the term
75 “Flexible Industrial” seemed to be limiting in its wording; “Gateway Business District” is more
76 welcoming. Chairman Brown asked if the conditional use permit did not list something that
77 someone wanted can they propose having that use permitted. A. Garron responded they can get
78 a conditional use permit for only those entities shown on the plan. Councilor Wagner stated the
79 change in name limited us to Industrial Business, re-wording to Gateway Business District will
80 help move the land better. Neil Dunn, 21 Sherwood Rd. asked if a Conditional Use Permit
81 (CUP) is asked for from the Planning Board and denied by the Planning Board would the
82 applicant then go to ZBA under normal procedures. Chairman Brown responded it would be an
83 appeal of an administrative decision to the Planning Board, not a variance. Councilor DiMarco
84 said the CUP is actually used in other zones. A. Garron said the applicant does have the ability to
85 work with the Planning Board on the administrative decision and it can be appealed to the ZBA.

86 **Council’s vote 5-0-0.**

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89 **Ordinance #2009-06 – Relative to the Creation of the Planned Unit Development Process –**
90 Councilor Wagner recused herself because she owns a public relations firm that promotes this
91 concept. **Councilor DiMarco made a motion to accept, second Councilor Farmer.** Chairman
92 Brown questioned how this Ordinance is related to the prior. A. Garron responded there is some
93 overlap within this area. It is another tool that will take place within the Gateway Business
94 District and will be administered with the absence of the residential component. It will be applied
95 to other areas in Londonderry and not restricted to just the Gateway Business District. A. Garron
96 explained it allows for a parcel or group of parcels to propose a “master plan” for the

97 development. Once it is adopted everything submitted in that adopted Planned Unit
98 Development “PUD” will show up in the form of a site plan. Every site plan submitted should
99 be part of that MP. It is a true collaborative effort with the applicant and the Planning Board. He
100 explained the process subsequent to PUD Master Plan approval. Chairman Farmer questioned
101 the time frame for active and substantial development and asked if there is no substantial action
102 can the process be extinguished by the Town. A. Garron explained after 4 years it is
103 extinguished the developer has to come back to Planning Board again. He reviewed the PUD
104 Master Plan and the basic requirements that include a minimum lot size of 100 acres. Chairman
105 Brown asked if the uses are already defined in our C-1 zoning are they allowed to have a use that
106 is outside of our C-1. A. Garron responded they could if the Planning Board comes upon a use
107 that is not specified but is consistent with the goals and objectives of our PUD then the Board
108 can consider it. Chairman asked if it would come in the form of a zoning change, A. Garron
109 responded no it would not be a zoning change, that is what the Master Plan is all about.
110 Discussion ensued about the use of the different zoning districts and their compatibility. A
111 Garron stated this tool has a mixed-use concept. Art Rugg, Planning Board Chair said the
112 Planning Board is looking at getting away from the strict lines of different zoning. The rigidity
113 is giving us the sprawl problem they are looking for a campus type of atmosphere. Councilor
114 Farmer said he likes the idea of a mixed-use village type of environment. Chairman Brown asked
115 if this development was done anywhere else. A. Garron responded Barrington, NH does have it
116 and it was done in about 30 other states. A. Garron proceeded to review the Permitted Uses,
117 Standards of Development, Criteria for Review of PUD Proposals and listed the key proposals.
118 He reviewed the Submission Requirements; Interpretation/Application of PUD Master Plan and
119 Fees. Councilor DiMarco clarified that the PUD is a mini Master Plan so the developers come
120 forth and the Planning Board can either approve or deny it. A. Garron responded it is the same
121 process already in place with site plans proposed and comparing the plans to the Master Plan.
122 Councilor DiMarco stated it can be a lengthy process to get through the PUD process.
123 Councilor Farmer discussed Section 2.8.6.2 dealing with the section reading “.....compliance
124 with the purpose and intent of this Section....” dealing with the Table of Uses. A. Garron
125 responded the Planning Board has the ultimate approval of the types of uses in the PUD. They
126 use the Master Plan’s and the Mini Master Plan’s interpretation of any site plan to see if the use
127 is consistent with the PUD plans. Councilor Farmer stated the way Section 2.8.6.2 is listed
128 gaming and casinos could be considered recreational uses. A. Garron responded if gaming is
129 illegal in NH it is illegal in Londonderry. Councilor Farmer said the potential is there. A. Garron
130 said none of our long range documents have targeted gaming use in Londonderry. He stated that
131 in all the workshops they have had some ideas have been brought up that not all would agree
132 with. One person suggested the idea of a casino but none of the long range documents listed
133 casinos as something desired by Londonderry. Art Rugg, Planning Board Chair said the action is
134 not unilateral by the Planning Board; it was a very public process. What goes in the Master Plan
135 has been put together in public by input from the hearing, the Planning Board and the developer.
136 That Master Plan will govern what the zoning is going to be. Chairman Brown said it appears
137 to be a significant change. Right now if someone wants to do something in a zone that is not
138 allowed the Planning Board can’t just approve it. They have to hear a zoning request then it is
139 acted upon then it comes before the ZBA. That process would be eliminated in the PUD. There
140 is no zoning board impact here it is one body making the entire decision with no checks or
141 balance after that. That is different than what we do now. A. Rugg stated it is all part of the
142 Master Plan and is consistent. Discussion ensued about the checks and balances and the final
143 decision making process. Neil Dunn, 21 Sherwood Rd. said it made sense to him to have another
144 board give their final approval of the permitted use. John Michaels, 11 Nutfield Dr. said one of
145 the reasons for a PUD from the Town point of view is when you get something locked in that is

146 what you have to do. The Master Plan has called for a mix-use community. Right now it is
147 illegal to have this in the Town. One issue is if the Planning Board has the discretion to deal
148 with the items on the list. If it is not on the list then the developer should come back and get it
149 on the list. To accomplish what the Master Plan wants list exactly what you want to see in the
150 area. A. Garron clarified what J. Michaels said. He suggested that if a use is not listed in the
151 table the developer should come back to the Council through the normal procedure to consider
152 adding that particular use to the table. Councilor DiMarco asked if we should eliminate that
153 section. J. Michaels said if it is not currently allowed in Londonderry then they have to come
154 back to the Planning Board to see it was meeting the underlying requirements. Councilor Farmer
155 said there will be no appeal process when they come back to the Planning Board. A. Garron
156 stated he can work with re-wording the tables. After additional discussion the consensus was to
157 eliminate Sec. 2.8.6.2. A. Garron said he wants to review the entire Ordinance completely to see
158 if there is any other language that is related to that section. Councilor DiMarco mentioned that
159 we should also put in the "Purpose" section the wording of "Town of Londonderry Master Plan".
160 Councilor Farmer said he would also like to see a definition of some of the topics in the "Use
161 Table". Town Manager Caron suggested continuing the hearing to January 4. Staff will return
162 with the proposed language and Council can take action on Ordinances 09-06 & 07. The
163 Council is clear if it is not currently in the ordinance as a permitted use it comes back to the
164 Council to amend or not amend the permitted use table to either expand or maintain the current
165 list of permitted uses. **Councilor Farmer made a motion to continue the public hearing on
166 Ordinance 2009-06 until January 4, 2010 to allow the Planning Staff to eliminate section
167 2.8.6.2, and to make other relevant changes, second Councilor O'Keefe. Vote 4-0-0.**
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169 **Ordinance #2009-07 – Relative to Amendments to the Zoning Ordinance Associated with**
170 **the Gateway Business District and the Planned Unit Development Process. Councilor**
171 **O'Keefe made a motion to continue the hearing to 1/4/10, second Councilor Wagner.**
172 **Council's vote 5-0-0.** Councilor O'Keefe congratulated A. Garron and his staff for a job well
173 done.
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175 **PUBLIC COMMENT**

176 **Interview of Land Use Board Members –**

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179 The Council interviewed:

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181 Neal Dunn – who is being re-appointed to the ZBA as a Full Member tem to expire 12/12
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183 Mann Neuman who is requesting movement from an Alternate position to a Full Member
184 position on the ZBA, term to expire 12/12
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186 Mike Considine – who is being re-appointed to the Conservation Commission as a Full Member
187 term to expire 12/12
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189 Councilor DiMarco thanked all the volunteers. The volunteers were queried by the Councilors
190 about what interesting cases they had been involved in, what areas they were focusing on for
191 their next term and their attendance at the meetings.
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193 Chairman Brown listed the open positions on the ballot this March. The filing period for open
194 positions is from 1/20/10 through 1/29/10. You must be a registered voter by or on 1/19/10. The
195 hours in the Town Clerk's Office are from M-F from 8:30 AM – 5:00PM.

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OLD BUSINESS

199 **Resolution #2009-22 – Relative to the Posting of the Administrative Support Specialist**
200 **position.** Councilor O'Keefe recused himself because he has a family member who has
201 expressed an interest in the position. Chairman Brown explained that the Town Manager was
202 asked to come back to Council with a detailed report and a continuation of the analysis of the
203 position. Town Manager Caron explained the position was created in 2004 where it was
204 downgraded from a management position to a support position. He explained all the duties of
205 the position, the hours involved, and identified 11 major tasks. He prioritized the responsibilities
206 if the hours were reduced to part-time. He stated that responsibilities will increase with grants
207 that are becoming available, as there is multiple paperwork involved in obtaining grants. He
208 stated that his report documents needing a full-time person and lists the consequences of moving
209 forward on a part-time basis. Chairman Brown said right now the position is a union position
210 and carries a salary of \$43,902 - \$59,207 the total amount budgeted in FY11 budget is \$84,832
211 including all benefits and Social Security. Option 1 is to maintain a full-time position at \$74.9K
212 and Option 2 would be to reduce the hours to part-time and to revisit the position in the fall in
213 2010. That option would reduce the hours to 32 hrs a week and responsibilities such as Beautify
214 Londonderry and budget analysis and fleet management would be off loaded. Beautify
215 Londonderry will go to the Solid Waste Advisory Committee (SWAC), the budget analysis
216 would not be done and fleet management may be transferred to the police department. Chairman
217 Brown said this option would cost approximately \$40K and he questioned if the position had any
218 benefits. Town Manager Caron responded the only benefits would be mandatory like social
219 security and workmen's comp and other benefits such as pro-rated sick and vacation time. He
220 explained that when the economy improves, it may prove more difficult keeping a person in that
221 position if it is part-time with no benefits. The consensus was to fill the position on a part-time
222 basis and if the economy picks-up then re-assess. Rick Brideau, 19 Severance Dr. asked if it is
223 part-time does it remain in the union, Town Manager Caron responded if it is under 35 hours it
224 does not. **Councilor Wagner made a motion to amend the resolution to read "position will
225 not exceed 32 hours per week". Second by Councilor DiMarco. Council's vote for the
226 amendment 4-0-0. Council's vote to approve the amended Resolution 4-0-0.**

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NEW BUSINESS

230 **Order #2009-17 Relative to the Expenditure of Maintenance Trust Funds for Various**
231 **Projects.** – Town Manager Caron explained the Order is to pay invoices for the paving of the
232 Highway Garage driveway and repair parking lot lights at the Town Offices. **Councilor**
233 **DiMarco made a motion to adopt, second Councilor O'Keefe. Council's vote 5-0-0.**

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Resolution 2009-24 – Relative to Economic Development – **Councilor O'Keefe made a
motion to adopt, second Councilor Farmer.** Chairman Brown said he is the person who
brought this forward because it is of concern to him. He explained that at the presentations by
the marketing firm hired by the Town the marketing representative did bring up gaming and
casinos. He prefers not having this associated with economic development for the town.
Council should take a leadership position in the economic development for this town. Reed
Clark 79 Stonehenge Rd. made a point of order by saying that the governor has not signed a bill

242 that allows gambling. If no bill has been presented then there is no law. If the gaming bill is
243 passed then we should have a public hearing to see how the people in Londonderry feel about it.
244 He stated it is not appropriate to discuss something that has not been passed by the state and not
245 had a public hearing on the issue. Chairman Brown said it has been included in presentations in
246 public, he said it is about not encouraging this element in the economic development for this
247 town. Planning Board Vice Chair John Farrell, 4 Hancock Drive stated it is not included in any
248 of our strategies, it was mentioned twice both in workshops and it was suggested by a citizen, it
249 is not part of Town ordinances, it is currently not allowed. It is not part of our strategy nor it is
250 part of a presentation that Gary O'Neal gave; it is what was said at a workshop by a citizen. He
251 reported what a citizen said. Councilor O'Keefe asked J. Farrell if the document that the
252 Economic Development Taskforce is giving to the Council does it mention that as an
253 opportunity. J. Farrell read an e-mail from Don Moskowitz where he stated in the e-mail that
254 there was no thought about having a casino or other gaming activity in Londonderry. The e-mail
255 went on to say that the expanded gaming in other parts of the state could have an economic
256 impact on our town potentially good and bad. He stated that the e-mails requested they take out
257 the part of gaming from the document from the workshop. Consensus was to put in an opposing
258 view, say that we are against gaming, clarify the statement. Councilor Wagner asked if the
259 meeting was open to the public. He confirmed it was open to the public. Councilor Farmer asked
260 if we can take it out of a document what document is he referring to. He said it was the SWOT
261 analysis worksheet; which is part of an analysis from the Southern NH Planning Commission
262 (SNHPC) document. Chairman Brown again stated that he brought this Resolution forward
263 because he does not want the marketing firm in public presentations encouraging or including
264 gaming in the presentations on behalf of the Town's Economic Development Strategy. This is a
265 Council policy decision. J. Farrell stated that Council, Town Manager or staff could just tell
266 Gary O'Neil not to bring that up in his presentations any more. J. Farrell stated all the Council
267 had to do was ask the Planning Board to eliminate gambling; there is no need of a Resolution. R.
268 Clark said again that Council was not allowing voters to vote on it the 5 Councilors are doing the
269 voting. J. Farrell said to have a non-binding referendum at town meeting and let the people vote
270 on it. Councilor DiMarco said it is currently illegal to expand gaming in NH; it is pointless for
271 us to mention it until that changes. Passing the resolution will not do anything, if the state
272 changes its mind in the future it will become undone. Councilor O'Keefe said Chairman Brown
273 has the right to do it and he understands why he did it. Gambling does not bring a lot of good
274 things to the community. It was established that the document has not been submitted to the
275 SNHPC yet. J. Farrell stated that Chairman Brown's e-mail should be submitted along with the
276 report to SNHPC. Don Moskowitz, 7 Tokanol Dr. said he attended the So NH Taskforce
277 workshop and he is the one who brought up the gaming issue. The SWOT analysis was
278 submitted to the Town Council for input. He said in the analysis under opportunities the last
279 items were gaming and casinos, they received no votes to move it forward. The discussion
280 related to gambling and gaming, in other parts of the state. If it is approved there might be
281 expanded gambling in Salem or Hudson. He said there was never any discussion about
282 establishing a casino or gaming activity in Londonderry. He said he only brought it up because
283 it could be an impact on Londonderry from Salem or Hudson because it could bring in people to
284 use our services on their way to those towns. What is written is not what the intention was.
285 Chairman Brown said the marketing firm has brought this subject forward and he said he would
286 like not having it in any marketing strategy. The Resolution is a formal policy statement saying
287 that is not the direction we want our Economic Development Strategy to go. J. Farrell asked the
288 Town Manager if the Council votes for this Resolution to remove that wording of gaming then it
289 would also remove it from the SWOT analysis so that Resolution will change that report, Town
290 Manager Caron responded that is correct. J. Farrell said it does have something to do with the

291 analysis it is not part of our marketing strategy. Glen Douglas, 6 Overlook Ave said the public
292 didn't have anything to say at the SWOT meeting because it wasn't posted. He prefers to have
293 public input. J. Farrell said the meeting was posted and e-mails were sent to staff. Councilor
294 Wagner said she was not happy with the resolution she is voting tonight because citizens have a
295 right to their opinion. She said she does not like using the authority of the Council to shoot down
296 someone because they have an opinion. She said we should have our comments go into the
297 SWOT analysis, don't change the minutes but put Chairman Brown's concerns on it. As soon as
298 it is addressed on the state level then bring the resolution back, why open it up now. Chairman
299 Brown said he is not pleased with the way this item has been presented on behalf of the town.
300 He said he strongly believes in it, he wants it passed in advance of any law. Councilor Farmer
301 said it is within the rights of any Councilor to do something like this, there is no need to send it
302 back to the Planning Board, it doesn't have to wait for a vote of the Town, any Councilor can
303 bring a resolution to Council on anything. Councilor DiMarco said if we pass it and gambling
304 gets passed by the state future council or a non-binding resolution can be discussed when it is
305 legal. Councilor O'Keefe said the resolution is not speaking about allowing gambling we are
306 adhering to what we already have in place. **Council's vote 4-1-0, with Councilor Wagner
307 dissenting.**

APPROVAL OF MINUTES

Minutes of Councils Public Meetings of 11/30/09 and 12/07/09 and Council/Budget Workshop of 12/14/09.

314 **Councilor DiMarco made a motion to accept the minutes of 11/30/09, second Councilor
315 Wagner. Council's vote 5-0-0**

316 **Councilor DiMarco made a motion to accept the minutes of 12/7/09, second Councilor
317 Wagner. Council's vote 5-0-0.**

318 **Councilor DiMarco made a motion to accept the minutes of 12/14, second Councilor
319 Wagner. Vote 3-0-2, with Councilors Farmer and O'Keefe abstaining.**

OTHER BUSINESS

323 **Liaison Reports** – Chairman Brown attended the SWAC meeting the topic was about the
324 possibility of taking over the Beautify Londonderry project. They did an update of the program
325 and will give follow-up presentation to the Council in a public forum.

327 **Town Manager Reports** – Town Manager Caron reminded the public the Town Offices are
328 closing at noon on 12/24 & and all day 12/ 25 and again at noon on 12/31 and all day on 1/1/10.
329 Councilor DiMarco said trash pick-up will be delayed a day.

Board/Committee Appointments/Reappointments -

334 Re-appoint Mike Considine to the Conservation Commission as a Full Member, three year term
335 to expire 12/31/12

337 Re-appoint Neil Dunn to the ZBA as a Full Member, three year term to expire 12/31/12

339 Appointment of Matt Neuman from an Alternate to a Full Member on the ZBA, three year term
340 to expire 12/31/12.

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342 Appointment of Flo Silver from an Alternate to a Full Member on the Senior Affairs, term to
343 expire 12/31/09.

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345 Appointment of Daniel Lekas to an Alternate Member on the Senior Affairs, term to expire
346 12/31/12.

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349 **Councilor Farmer made a motion to appoint all of the above, second Councilor Wagner.**
350 **Council's vote 5-0-0.**

351 **ADJOURNMENT**

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353 **Councilor DiMarco made a motion to adjourn at 10:43 PM, second, Councilor O'Keefe.**
354 **Council's vote 5-0-0.**

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357 **Notes and Tapes by: Margo Lapietro Date: 12/21/09**

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359 **Minutes Typed by: Margo Lapietro Date: 12/28/09**

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361 **Approved; Town Council Date:**