

**TOWN COUNCIL MEETING**  
**March 21, 2011**

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

**PRESENT: Town Council: Chairman Sean O’Keefe; Vice Chairman Joe Green; Councilors: John Farrell, Tom Dolan, Tom Freda; Town Manager Dave Caron; Executive Assistant Margo Lapietro.**

**CALL TO ORDER**

**Chairman O’Keefe opened the meeting at 7:00 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**

**Marty Srugis, 17 Wimbledon Drive asked if the Council would consider moving the Deliberative Session to April or May due to the possibility of better weather.**

Councilor Freda asked the Town Manager if that would require a Charter Amendment, he responded yes it is an action which the Council can vote to place on the ballot for next year’s Town Meeting. According to statute, the Town needs to schedule its Deliberative Session between 2/4 – 2/11; the School District has already reserved Friday 2/10/12 for its meeting.

**PUBLIC HEARING**

None

**OLD BUSINESS**

None

**NEW BUSINESS**

**Ordinance #2011-02 – Relative to an Amendment to the Zoning Ordinance to Reflect Updated Traffic Impact Fee Methodology/Corridor Study and to Establish New Rates -** Councilor Green read the first reading, Public Hearing and Second Reading scheduled for 04/04/11. **Councilor Green made a motion to adopt, second Councilor Freda to accept and schedule a public hearing for April 4, 2011.** Councilor Freda asked if this is an increase in existing fees or are they new fees. Town Manager Caron responded they are an increase in existing fees and staff will be in attendance on April 4 to explain all the suggested changes. **Council’s vote was 5-0-0.**

**Resolution #2011-03 – Relative to a Renewal Agreement with the New Hampshire Flying Tigers for use of the Auburn Road -** Councilor Farrell made a motion to adopt, second Councilor Dolan. **Council’s vote was 5-0-0.**

**Resolution #2011-04 – Relative to the Discontinuance of a Portion of Scobie Pond Road - Councilor Freda made a motion to schedule a public hearing for 04/04/11, second by Councilor Green.** Councilor Green asked why we do this. Town Manager Caron responded it was requested by a person who hopes to develop the property; state law requires a public hearing and action on the petition. Once a road is discontinued one of the potentials is that may claim damages for no longer having access over that road; the Town has included a provision in the Resolution to assign any liabilities onto the petitioner. This is an old road that was discontinued in 1932 by Town Meeting, subject to gates and bars. Councilor Green asked if we are still responsible for it, Town Manager Caron responded it has not been maintained by the Town since 1932. Councilor Farrell added that the Council is the only body who can discontinue. **Council's vote was 5-0-0.**

**Resolution #2011-05 – Relative to the Allocation of Cable Franchise Fees - Councilor Freda made a motion to adopt, second by Councilor Dolan.** Councilor Farrell said he would like to make an amendment due to the fact that at Town Meeting we went into several funds to fund the Fire Department volunteers and the unknown factor of the state budget. We know we are not going to be able to reduce expenses dramatically so we always look to increase revenues. He would like to propose a two piece proposal. Move to 2.5% this year into the General Fund and 2.5% into the Cable Fund this year and continue to do it in out years; we'd still have three years before we run out of money in the Cable Division. It would gain about \$70K in revenue with the flexibility of being able to move that back into the Cable Division if we desired to. That would give us about \$170K to handle whatever happens with increases from the state. He said he would propose this later but would like to get a feeling from the Council now in regards to the Open Space money that has been given to them over the years for Change of Use. Under our new form of government by a simple vote of the Council we could send that to the ballot. With the future development that is coming a large portion of revenue could come back into the control of the Council from the standpoint of being able to protect ourselves going forward. He asked the Councilors to take that into consideration and opened it up for discussion. Councilor Green asked why continue to dip into the money. He says he understands putting 2.5% into the General Fund and 2.5% into the Cable Special Revenue Fund. That is taking it away from the Cable Special Revenue Fund what effect will that have; it is just less money going into it. Councilor Farrell said we will have about a three year window where we are 100% funded. He said he is just looking to protect us this year, we can change it again next year, we can change it every year. We could take all 5% if we wanted and just fund the Cable Department out of the General Fund not out of our own Operating Budget and control all those dollars. We are not going to find anymore tax revenue, so we need to get as much revenue we can to provide the services that everyone is looking for. Town Manager Caron said it would be about \$70K for every 1% of the franchise fee. Councilor Green said he would like to hear from the public. Councilor O'Keefe said in the last budget season we saved a position in the Cable Studio by using that money. Councilor Farrell said he also wanted their opinion about the Change of Use money going forward. If they don't have an opinion now at least consider it as a Council goal going forward. Councilor Freda asked the Town Manager about the 1% changes? Town Manager Caron responded the Town collects approximately \$350K from the franchise fee which is about \$70K for every 1%. During the budget session there was a concurrence to use \$104K to support General Government however a Resolution should be adopted to reflect the change. The 1.5% that was originally proposed is about \$105K. We knew there would be a deficit in the Cable Division funding this year as the budget is about \$366K and revenues are at about \$350K. With the 1.5% transfer, in FY12 the net income to cable operations will be approximately \$245K, resulting in a draw on the Special Revenue Fund to fund a portion of this year's

operations. Councilor Freda asked about the LUTC tax, if we do as Councilor Farrell is suggesting by proposing a change to the voters next March between today and next March any LUTC tax goes directly to Conservation; Town Manager Caron responded that is correct. Councilor Freda asked if we had any ideas about when impact fees will be coming out of Woodmont. Town Manager Caron responded at this point we don't know. Councilor Farrell said he does not either; they are presenting conceptual ideas nothing has been formal. Councilor Freda asked if the vote to change that is a simple majority, the Town Manager responded yes. Councilor O'Keefe said Councilor Farrell has a valid point, we need to look at all revenue streams and recognize the impact on the departments that they come from. He said he would be supportive of the LUTC at this point; it would be a large sum of money and is a good option and should come back to the taxpayers. Councilor Freda said the Budget Committee used to do the taxpayer white paper. The Cable Fees do not impact the tax rate per the Finance Dept. and whatever came in should not have affected the tax rate. Town Manager Caron responded under the previous policy that was correct, the Cable Division is self-funding; however the Council now relies upon a portion of that revenue to provide property tax relief. There is no statutory requirement to leave the Cable Franchise Fees in the Cable Fund; it is within the jurisdiction of the governing body to direct its use. Further, there are no requirements in the franchise agreement regarding the use of cable funds. The Town does receive funds for equipment which are to be used for cable equipment per the franchise agreement.

Cable Access Director Dottie Grover said she has a few questions. The \$28K is for equipment only and it was not mentioned in the Resolution. She asked if that \$28K was part of the \$350K, Town Manager Caron responded no. She said she appreciated Council keeping the employee in place during the last budget season. She questioned Article 8 of the Special Revenue Fund; she quoted the last sentence regarding surplus funds not being part of the General Fund and being expended for a specific amount for a specific purpose related to a purpose of the fund or source of revenue. She said it sounds like we could make some changes but it reads to her that the money should not be touched. We don't take money from any other Special Revenue Funds she said she would like that to be considered when they are making their final decision. Past precedent concerns her; this was the 3<sup>rd</sup> year in a row that \$40K was taken from the Cable Revenue Fund and transferred into the General Fund. This year it says annual transfer of \$40K. It was not an annual transfer due to a decision of the Board as far as she knows. The money in that fund has no legal restriction on it; Council can take all that money. People are concerned that it is a tax on a tax. She stated that she is concerned that this not become a standard. She is confused about the new Resolution being proposed, she said she cannot tell if this Resolution stands for one withdrawal on 7/1/11. She said her understanding on a Resolution is that they establish a policy on how you are going to proceed in the future. She asked them to look at it and questioned if we need to do a one year resolution that negates the one we had from 2000 that puts the full 5% into the Cable Fund. Make it clear that it happens on 7/1/11 and goes back into effect after the year. It needs to be clear if it is a one time deal. Town Manager Caron clarified that the Resolution as written will be a Council policy until such time as it is amended. Councilor Green asked how do we make it not a policy, how do we make it for one year only. Town Manager Caron stated you can make it effective 7/1/11 and terminate it on 6/30/12. Councilor O'Keefe said that would not be necessary because the Council could change and this could come up as another Resolution. Councilor Green said he is concerned it will come up every year and does not want to do it which is why he wants it for a year. Councilor Dolan asked D. Grover what her thoughts would be if we put the Cable Studio 100% into the General Operating Fund and make it another budgeted department and what do you think the impact will be. D. Grover responded they are allowed to save up for future large purchases unlike other

departments. She also mentioned at some point in time there could be no cable fee source, we would not be able to take the funds from them. Councilor Dolan said over the last budget season we were committed to \$104K he asked the Town Manager what he thought about taking all the funds and putting them into the General Fund. Town Manager Caron said Dottie made a good point; a Special Revenue Fund allows the Town to fund equipment replacements with surplus fees from previous years. Councilor Dolan asked if that could come out of the Maintenance Trust Funds. Town Manager Caron responded that is for physical structures like buildings and grounds. We do not fund equipment from the Expendable Maintenance Trust Funds. Councilor Dolan asked if we could set up a Cable Maintenance Trust Fund, the Town Manager responded yes. Town Manager Caron said by having a Special Revenue Fund it allows us to segregate those funds; if included in the General Fund any surplus revenue for the last several years would be available to reduce the tax rate by funding town projects, or the entire revenue stream would be budgeted which would reduce the property tax support for operational costs. Mary Soares, 2 Gail Rd. said there was a lot of opposition to the cable fees going someplace else. The people paying the cable fees felt that they were willing to pay the tax that they already pay in the town; they were willing to not have it reduced by whatever amount it would be reduced by removing the monies from the Cable Fund. They don't want their fees to offset the taxes of others. Don't create this as part of the General Fund Budget because you are opening it to more possible reductions where there isn't a value on it. There is a specific reason it was set up to give us the opportunity to create television that we can't create anywhere else. She asked if a decision will be made tonight. Chairman O'Keefe responded it is a Resolution that the Council can adopt tonight. She asked if Councilor Farrell's amendment was seconded. Chairman O'Keefe responded there was no second it was offered up to discussion. Councilor Dolan said the 100% is just for discussion and he would like to hear more from the public. Marty Srugis, 17 Wimbledon Dr. said he thought the funds were supposed to be directed to the studio. If they are not why are we calling it a cable fee? He suggested reducing the fee to cover the cost of the cable franchise and put money aside for equipment. We need to look at the long term purpose of the Cable Studio. He would rather have it pay for the cost of the cable; he would like to keep it at that. Councilor Dolan said the franchise fee is a negotiated part of the contract. It is not a fee that is established each year, it will be re-negotiated with the next cable provider. Councilor Farrell explained it is a "pass through" fee that we pay. M. Srugis said he heard that it was unfair because some people are paying an extra tax for the town. He said he would like to direct that money to the cable studio so it doesn't go to the town. Mary Soares said should the cable fees be brought into the town, if the cable funds go away the tax payers would be paying because that is part of the General Fund. Councilor Farrell stated that he is bringing this up as a one year thing. This year go to the 2.5% to give us the flexibility if we get bad news from Concord. If no bad news from Concord we can give it back. Councilor Dolan asked the Town Manager if there is language to capture what John Farrell is saying? Town Manager Caron responded we should know by 7/1/11 about the state budget. The Council can adopt the Resolution this evening. If they need to amend this to re-direct more of the franchise fees coming in you can do that by June. Currently the Town budget anticipates \$105K so action is needed by 7/1/11. Councilor Dolan suggested to the Council that they table this Resolution to our second meeting in the month of June when we will have more information on what the state is going to do. Councilor Dolan said we should invite the public to think about it and discuss their feelings about the proposed changes if we want to move the whole thing into the General Fund. Pat Vitali, 75 Mammoth Rd. said the franchise fee is not a tax. 80% of the people in Londonderry have cable, they are paying for their taxes and the money from the franchise fees is going into the taxes. He suggested taking the money out of the sewer and the police overtime fund. Town Manger Caron responded the sewer fund pays the General Fund about \$325K a year. The police funds pay for

the expense of the officer and cruiser, and a portion is retained for equipment like installing computers in the cruisers. P. Vitali said RSA31:95-c says once a Special Reserve Fund is established the money that is in that fund can only be used for the reason that fund was set-up for unless you have change by a legislative vote. He said the last three years there has not been a legislative vote. Town Manager Caron said when the Town Meeting adopts the annual budget it made a policy decision in the last two years to move \$40K over to the General Fund. The proposed Resolution redirects 1.5% of the 5% fee to the General Fund, with the balance deposited into the Special Revenue Fund. **Councilor Dolan made a motion to table Resolution 2011-03 to our second meeting in June, second by Councilor Farrell.** Councilor Green said he would like to have a public hearing on it, Councilor Dolan stated if he wants to make it a public hearing then we can move the Resolution to the first meeting in June and announce a second public hearing the second meeting in June. **Councilor Dolan amended his motion to make the Resolution to be tabled until the first meeting in June with a public hearing for the second meeting in June, Councilor Farrell seconded the amendment. Council's vote was 5-0-0.**

### APPROVAL OF MINUTES

**Councilor Farrell made a motion to approve the Public Meeting Minutes of 03/07/11, second by Councilor Green. Council's vote was 5-0-0.**

### OTHER BUSINESS

**Liaison Reports** – No reports.

Discussion ensued about liaison appointments, specifically Alternate positions; Town Manager Caron pointed out the Alternate position on the Planning Board has to be designated by the entire Council. Councilor Dolan explained that the Planning Board is different because you are a full member of the Board not just the Liaison. The Liaison just observes and provided input if requested, they participate nominally. With the Planning Board you are a voting ex-officio member. Councilor Farrell said being on this board gives you a lot of visibility of what is going on in the Town and usually the freshmen Councilor is appointed to that board. Councilor Dolan said it is an opportunity to learn land use rules and regulations. The logical choice should be Councilor Green for the Planning Board and use Councilor Freda's expertise as an attorney for the ZBA. Chairman O'Keefe asked Councilor Green if he wanted to reconsider and he responded no; he was on the ZBA for the past couple of years and he would like to stay there; his schedule is currently full. Councilor O'Keefe volunteered to be the Planning Board Alternate. After further discussion Councilor Green was appointed the Alternate to the Planning Board. **Councilor Dolan made a motion to accept the Liaison Assignments as provided to the Secretary, second Councilor Freda. Council's vote was 5-0-0.**

**Town Manager Report** – Town Manager Caron said the revised language for the Charter as developed by Town Counsel was included in the packet for tonight, and will be incorporated into the Town Charter. Also enclosed is a draft of the FY13 budget calendar. The Council last year had a discussion about meeting with all the Chairs of Boards/Committees/Commissions per the Charter, which could begin in April. The consensus was to start scheduling a few at each meeting. Town Manager Caron said Council should start establishing their goals and objectives for FY12. The Fire Department will have an open house 4/16/11 at the new North Fire Station. The re-naming of streets at Whispering Pines has been delayed due to the zip code issue with the

post office. The new street numbers will become effective 4/20/11 per Karen Marchant, Town Assessor. Councilor Farrell asked about the survey that the post office sent out to those residents. K. Marchant explained the post office sent out a survey because they wanted all the mailing addresses to be from Londonderry for 911 purposes. Of the approximately 258 units only 71 sent back the survey, 40 something wanted it to remain Derry so it will stay a Derry address. She said they filed an appeal through Sen. Sheehan's office but they have to get the address out there with an actual street address and not Lane 1, Lane 2, etc. as they are currently listed. Chairman O'Keefe asked if they pay taxes to Derry, K. Marchant said no they paid Londonderry. She said there are 37 units in Derry and 221 in Londonderry and all have a Derry zip code in the mailing address; that is controlled by the Federal Government. K. Marchant explained the confusion between their actual residence and their post office boxes, etc. It is very confusing to rescue responders so they have assigned them street address. Town Manager Caron related they had a similar case on Rte 102 and it took 3 years to resolve the issue. Councilor Freda asked when someone calls 911 what shows up at the dispatcher center. Town Manager Caron said it should show the address but the confusion comes when the caller says they live in Derry. When this happens both towns will be dispatched. Councilor Green asked who can clear this up. Councilor Farrell said they have to contact the Postmaster General in DC. K. Marchant said we have contacted them but it didn't favor us. Town Manager Caron will provide information on 911 response protocol for this area.

Councilor Dolan said he has received a lot of positive feedback about the presentation made from Chief Hart about home invasions. He wondered if we can ask the Cable station to run that presentation. Councilor Dolan also brought up the fact that the LGC is offering workshops for new Councilors. He recommended the new Councilors attend the seminars.

**Board/Committee Appointments/Reappointments** – Resignation of Joe Green from the ZBA. Councilor Freda made a motion to accept, second by Councilor Farrell. Council's vote 4-0-1, with Councilor Green abstaining.

### **ADJOURNMENT**

**Councilor Farrell made a motion to adjourn at 8:30 PM, second, Councilor Dolan. Council's vote was 5-0-0.**

**Notes and Tapes by: Margo Lapietro Date: 03/21/11**

**Minutes Typed by: Margo Lapietro Date: 03/23/11**

**Approved; Town Council Date: 04/04/11**