

TOWN COUNCIL MEETING
May 16, 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; Assist. Town Manager/Finance Director Sue Hickey; 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 and to public safety officers serving our communities.

PUBLIC COMMENT

Chairman O’Keefe announced the Open Space Taskforce is having a special public meeting on Wednesday, May 25 in the Moose Hill Council Chambers at 7:00PM to receive public input on open space/land preservation in town. He also announced that dog registrations are due by the end of the month as civil forfeiture fines will be levied after 5/31/11.

Chief William Hart – National Police Week – Chief Hart presented the department’s annual awards tonight and proceeded to introduce the award winners to Council. Captains Fulone, Dussault and Michaud were in attendance. Promotions were given to: Lt. Kevin Cavallaro, Lt. Ryan Kearney, Sgt. Brian Allaire, Sgt. Mark Morrison, Chris Olson was promoted to Detective. The Employee of the Year is Officer Andre Uy; Civilian of the Year is Suzanne Hebert. The newest member and the Chaplain of the LPD is Jerry Goncalo.

Boards/Committees/Commission Updates

Environmental Baseline Study Committee – Chairman Bob Malloy outlined when the committee was established and what they were charged with. He reported that they currently are inactive and reviewed the tasks that were accomplished including well water testing, and he reported that the surface water testing in Londonderry is excellent; they also installed an air monitor at the North Fire station that was purchased by the town. The State put an EPA “NCORE” Super Station at the Moose Hill School. He said they were involved in airport noise studies and the I-93 road corridor. Councilor Dolan thanked him for coming in and explained the committee was formed in 2001 to establish a baseline in the environment. Council thanked him for his volunteer work.

Budget Committee – Chairman Todd Joncas explained the committee is made-up of 7 residents and proceeded to explain all the meetings they attended and the process involved in maintaining a stable tax base. They are also involved in the School District budgeting process and are preparing to address any potential funding shortfalls with the state budget. He said his

committee would like to see more community involvement in the budget process. Council thanked him for his volunteer work.

PUBLIC HEARING

Councilor Farrell made a motion to open the Public Hearing, second Councilor Freda. Council's vote was 5-0-0.

Resolution #2011-04 – Relative to the Discontinuance of a Portion of Scobie Pond Road (continued from April 18). – **Councilor Green made a motion to adopt, second Councilor Freda.** Jonathan Ring from Jones & Beach Engineers, Attorney Anne Crotty, Eric Chinberg from Chinberg Builders and Dave Losier were in attendance. J. Ring said as requested they have 2 survey plans which consisted of one plan showing the discontinuance of 445.63 feet. They have the easement plan showing the 20 foot access easement for PSNH. They have submitted support of petition documents from John Weigler and Jennie Schneider of PSNH. They have submitted the deeds of conveyance of the old Class VI road to Waste Management Inc. of NH and to the Lordon Family Trust as well as a draft deed for the 20 foot easement for PSNH. They also have a Resolution for a private sewer utility which will be discussed separately tonight. Charles DeRossi, Old Derry Rd. explained to cut out a 445 foot section and make it into a road with two dead ends does not serve a public purpose. He does not see what the benefits are for the town, the question should be either the whole road goes or none. This arrangement only benefits a private entity, the land owner and developer gain to benefit. He questioned the benefits to give up the 445 foot section. Town Manager Caron responded that the Town has rights to an old road that was discontinued about 80 years ago with gates and bars. It is difficult to identify with a degree of precision what rights the Town maintains with a road being that old, however, Town Counsel suggested the broad language in the Resolution. The original request was to abandon the entire road; based upon testimony received from the abutters the suggestion was to abandon just the small section and leave the rest of the ROW subject to gates and bars. Councilor Freda asked the applicant what is the need for the road. J. Ring said much of the 3000 feet crossed the Lordon land and would provide an encumbrance as they go through Phases III & IV in the future. Councilor Dolan asked if there are any further phases to development on the rest of the road that would involve further discontinuance of the road, J. Ring respond not at this time based on concerns expressed by the public and Council. Councilor Green asked if the road is staying a road. Eric Chinberg explained they are using the word “road” to describe it; it is just an area that is only accessible by 4-wheel drive. He said there were only two people who came forward with concerns, cutting that little piece out is not affecting anybody's ability to access their land. **Council's vote was 3-2-0, with Councilors Farrell and O'Keefe dissenting.**

Resolution #2011-09 – Relative to an Agreement for Sewer Services to the Lordon Commons Subdivision **Councilor Freda made a motion to adopt, second Councilor Green.** Town Manager Caron stated that under the agreement between the Town and the applicant this development will be serviced by municipal sewer however the system within the property will remain private, to be maintained by either a common sewer company or the developer but not the Town. This agreement parallels a similar agreement for a development off Old Derry Rd. This agreement has been reviewed by Public Works and has been negotiated between Town Counsel and Chinberg's Counsel. Councilor Dolan asked what assurances are in place should the entities cease to exist or go out of business; is there a bond or surety or is it being turned over to the residences. J. Ring said Lordon Commons sewer will be turned over to the homeowners who will have the rights and ownership as time goes forward similar to a condominium association.

Councilor Dolan asked Town Engineer John Trottier if the sewer lines are considered private property, he responded yes. Councilor Dolan then asked him if they are taxable. Town Manager Caron responded that taxation would be similar to a condominium association where the town does not separately assess any common area but the value of the common assets are reflected in the market value of each unit. Councilor Dolan then asked where does the sewerage go, J. Trottier responded it would be pumped to Manchester. They will pay user fees from the town and then they will establish their own fees for their internal sewer utility. Councilor Dolan asked if we have similar agreements in town, J. Trottier responded in the Mill Pond development, which he proceeded to explain. J. Ring said Phase II will have a pump station as well but the pipes after the gravity section have been sized and located adequately to accommodate future phases of the development if they take place. Councilor Freda asked if we have an agreement with Lordon Common Sewer Co. and if some residents don't. pay their sewer bill how do we lien Lordon Common Sewer Co., LLC. Town Manager Caron responded that the Town would not lien; the LLC is required to post a letter of credit per the agreement in the amount of \$9,600K which is essentially 2 quarterly payments to ensure that there is money available to pay the sewer fees. They are asking for Council's approval so they can represent to the PUC that they have the Town's approval to operate the private sewer utility. **Council's vote was 5-0-0.**

Receipt and Expenditure of Unanticipated Funds – Town Manager Caron explained one of the major concerns with the expansion and widening of I-93 was the use of additional salt. To encourage the reduction of salt use within the watershed, the state awarded a grant to the town in the amount of \$200K which is matched 20% by the town, which would assist with the purchase of equipment to reduce the amount of salt applied to our roads. John Trottier said this grant will allow the town to purchase a new 6 wheel dump truck with specialized equipment on it for salt reduction in the Beaver Brook Watershed area. Councilor Green asked how much does the equipment cost. J. Trottier said the grant is \$200K; the Town anticipates spending approximately \$160K. Todd Joncas, Budget Member asked how we identified what the expenditure is and the need for it. J. Trottier responded they did through the Salt Management Plan. **Councilor Farrell made a motion to accept grant funds from the NH Dept. of Transportation chloride reduction in the I-93 watersheds municipal program, second Councilor Freda. Council's vote was 5-0-0.**

Ordinance #2011-03 – Relative to Amendments to the Municipal Code – **Councilor Freda made a motion to adopt, second by Councilor Green.** The Town Manager explained there are 6 Title Sections in the Municipal Code, of which Title I is under review this evening. Town Manager Caron briefly reviewed the revisions listed below:

<i>Recommended Revisions to the Municipal Code – Title I General Code</i>		
<i>Chapter</i>	<i>Title</i>	<i>Recommended Revisions</i>
I	Town Charter	No changes recommended; changes must be approved by the voters at a Town Meeting
II	Ordinances	Aligns with Town Charter by requiring second read and public hearing prior to adoption; eliminates use of Legislative Committee
III	Town Seal	No changes recommended (NCR)
IV	Town Motto/Song	NCR
V	Town Council Meetings	Eliminates specific location of meetings; clarifies process for meetings scheduled on a holiday; requires Council to establish rules for its proceedings; requires petition signatories to be registered voters
VI	Fiscal Year	Aligns with Town Charter by removing procedure that the Town Manager's budget is adopted absent Town Council or Town Meeting action; aligns with Town Charter confirming that the Capital Improvements Program is a Planning Board responsibility.
VII	Public Hearings	Standardizes hearing notice requirement at seven days, with no waiver provision.
VIII	Removal of Municipal Officials	Rewrites Chapter to recognize limited authority to remove municipal officials pursuant to state law.
IX	Execution of Official Documents	NCR
X	Indemnification	Aligns language with RSA 31:105 & 106.
XI	Municipal Tax Liens	Minor textual changes (MTC)
XII	Street Acceptance	Significant changes to align with Subdivision Regulations
XIII	Naming of Streets/Renumbering	Total rewrite as adopted by the Council under Ordinance 2008-08
XIV	...Structures with the Town's Right of Way...	Significant changes recommended by the Department of Public Works
XV	Loitering	NCR
XVI	Littering and Public Cleanliness	Enforcement authority transferred to the Police Department; penalties align with RSA 676:17.
XVII	Driveway Permits/Construction	Review authority transferred from Building Inspector to Department of Public Works; design and construction criteria assigned to DPW; penalties align with RSA 676:17.
XVIII	...Work Conducted within Town Right of Way	Significant re-write; minor changes only.
XIX	Yard Sales	Minor changes and elimination of permit procedure; OR Recommendation to repeal Chapter.
XX	Solicitation/Sale on Public Property	Permission transferred to Town Manager's Office.
XXI	Fireworks	Statutory references, authority and penalties updated.
XXII	Town Common	Clarification that supervision rests with Town Manager with input from elected and appointed committees.
XXIII	Parks/Recreation Areas	MTC and statutory penalties.
XXIV	Cable Television	UNDER REVIEW
XXV	Prepayment of Taxes	NCR
XXVI	Prohibited Activities on Town Property	NCR

Open for discussion. Councilor Dolan asked the Town Manager to watch for Ordinances that target certain segments of the community unfairly. **Council's vote was 5-0-0.**

Councilor Farrell made a motion to close the Public Hearing, second Councilor Dolan. Council's vote was 5-0-0.

OLD BUSINESS

FY12 Goals and Objectives – Town Manager Caron said Staff aligned Council’s goals into 4 specific objectives, of which some have multiple goals and are listed below:

Town Council FY 12 GOALS AND OBJECTIVES

OBJECTIVE #1 – Provide a cost effective government to achieve greatest value at lowest cost.

- Goal #1 - Prepare a FY13 Town Budget in accordance with Town Charter revisions approved at the 2011 Town Meeting.
- Goal #2 - Conduct a review of town office services to determine their appropriateness and cost effectiveness with the assistance of quantitative tools such as benchmarking.
- Goal #3 - Continue the review of all town regulations and policies in accordance with the decennial Charter requirement to re-codify ordinances operations to eliminate unnecessary and outdated policies and laws;
- Goal #3 - Study the feasibility of combining the Library and Cable Divisions to be funded with cable franchise fees and property tax support.
- Goal #4 - Assure that the Town’s public safety budget/staffing levels meet public expectations/needs, including appropriate emergency response analyses.
- Goal #5 - Continue to re-evaluate the feasibility of shared services between the Town and the School District.
- Goal #6 - Review and develop a policy recommendation for voters regarding the use and allocation of Land Use Change Tax revenues.
- Goal #7 - Explore all opportunities to enhance non-property tax revenues.

OBJECTIVE #2 - To accelerate economic development efforts to drive tax revenue, thereby reducing tax burdens while preserving Londonderry’s quality of life.

- Goal #1 - Continue monthly economic development updates with a focus on input received from businesses relocating to Londonderry and “users” of the planning and development processes.
- Goal #2 - Expand the monthly updates to include a status report on the Woodmont Commons project.
- Goal #3 - Develop goal measurements for economic development recruitment efforts.
- Goal #4 - Re-establish the Economic Development Committee for the purpose of supporting economic growth and prosperity in Londonderry.

OBJECTIVE #3 - Enhance communications with the community.

- Goal #1 - Work with the Planning Board to insure that a system is in place to maximize communications and participation in the multi-year planning and development of Woodmont Commons.
- Goal #2 - Frequently update the web pages of all Committees, Commissions and Board to insure that the public has current information on services, activities, offerings and responsibilities.

OBJECTIVE #4 - Develop policy guidance for the Conservation Commission regarding acquisition of conservation land in order to meet the Council's expectations when acquisition proposals are presented to the Council in accordance with RSA 36-A:4.

Councilor Dolan asked that the suggestion received recently by e-mail from Mr. Douglas be added to Objective #3, Goal #2 for the "RSS feed". Andre Garron, Community Development Director suggested under Objective #2, Goal #3 be expanded to read "Develop goal measurements for economic development business retention and expansion and recruitment efforts". He said if we are successful in retaining our business and getting them to expand it is just as important as trying to recruit new business. Councilor Farrell posed the question of possibly eliminating anything on the Goals and Objectives. He suggested eliminating the school and town working together since it has not been able to be done for the past 5 years. Councilor Green said he would like to explore it. Councilor Farrell responded as the School Board Liaison they are not interested. Chairman O'Keefe suggested having a joint meeting with the Budget Committee and Council. The consensus is to get back to the Town Manager with comments and concerns and review again at the next meeting for adoption.

NEW BUSINESS

Resolution #2011-06 – Relative to the Distribution of Conservation Funds to Purchase a Conservation Easement, 587 Mammoth Road. – Councilor Green made a motion to adopt, second by Councilor Dolan. Mike Speltz, a Londonderry Conservation Commission member was in attendance and explained this property is an addition to an existing conservation easement, and has unique characteristics. It is the exact same easement as the existing conservation easement on the property adjoining it with the federal language removed. He showed topographical maps of the area and indicated where the Appalachian Oak Pine habitat is located in NH much of which is located in Londonderry. The heavily wooded area consists of a sloping area of approximately 20 +/- acres. He explained this piece of land is a key to providing a link to include two large blocks of conservation habitat together. The land is rocky and dry, there has been no cutting in there for at least 80 years and most trees are oak providing good valuable lumber on the property. He pointed out the old stage coach road that goes through the property bounded on both sides by stone walls. The approximately 22 acres were appraised by Kevin McManus an experienced conservation appraiser; there is an existing house on 2 acres abutting the property. The total value was evaluated at \$505K, the restricted value is \$286K, the easement value is \$219K which is what the Conservation Commission is compensating the owners. The appraiser assumed 3 house lots could be built on the property with no interior roads required using the existing road as frontage. M. Speltz explained it is not economical to spend money to create a road for additional house lots in this market. The appraisal was based in comparison to other lots that were sold. The Merrills want to go forward with this easement.

Councilor Farrell asked why not wait for the Open Space Taskforce report before buying additional land. M. Speltz responded that consideration of this property began before the Taskforce began their work and the Committee has preliminarily identified this green infrastructure. Councilor Farrell said we should wait for the Taskforce Report and do an assessment before spending \$219K. Councilor Farrell said Council had put a stop to purchasing Open Space until the Open Space Taskforce Report tells us what to buy. What is the reason we should buy right now. M. Speltz responded they are concluding the process that started a long time ago; they are completing a Purchase & Sale agreement (P&S) that was negotiated with them completely independent of the Open Space Taskforce. M. Speltz said this land is going to be recommended for protection, the family has made it available now and we should go forward with this. Councilor Dolan said he would like to hear from the Merrills. Ken Merrill said he is representing his aunt and uncle Everett & Charlotte Merrill. He told the Council that changes in his elderly uncle and aunt's status prompted him to come to the Conservation Commission. They needed to settle questions for estate purposes and estate planning due to their health status. Councilor Dolan asked what you think the property would support in a better environment. Ken Merrill said he was told as many as 6 houses. He explained they acquired the property because of the threat of the destruction of the southwest corner which is called "Merrill's Hill" and they wanted to preserve it. They want to preserve the crest of the hill. Councilor Dolan asked if the town does not move forward with the easement what is the family planning as an alternative to settle the estate. K. Merrill said it is hard to tell with elderly relatives but they would like to keep it and preserve it, he said he is uncertain with what the future will bring. Councilor Dolan asked if the town purchases the easement what would the continued use be. K. Merrill said he would bring in a forester to look at it; 5-9 acres have the potential for farm land. The old stage coach road will be preserved. Councilor Dolan asked if the town owns the easement would the property be allowed for passive recreation. K. Merrill said currently they allow hunters to use the property; you could develop recreational trail roads. He said his family is committed to conservation use. Councilor Dolan asked M. Speltz if he has contacted the Trailways about the possible recreational use of the property. He responded no, but the proposed easement does require the Merrills to not post against pedestrian access, we are buying public access to the property. Councilor Dolan said the Trailways might be interested in the area, we should encourage them to get involved especially with the old Mammoth Rd. section. Councilor Green asked if the easement does not go through would the Merrills be interested in an outright purchase of the land. K. Merrill responded they possibly would if they received assurances that the land will be preserved. Councilor Freda asked if the any portion of the land is currently being farmed or do you have interest in farming the land. K. Merrill said his aunt and uncle acquired the property a little more than a year ago but it has been in the family for many years, they have been assessing the use and decided it could be used for farming but it has not been part of the farm. They want to preserve it and possibly use it for farming which would be a long term project. Due to the oak pine habitat that was recently brought to their attention they would have to now reconsider their ideas of using it for farmland; they would like to preserve it. Councilor Freda confirmed that the elder Merrills would retain their interest in the property if the easement went through, K. Merrill responded yes. Councilor Freda said his concern is with the purchase of an easement versus the outright purchase of the land. His concern is it ties us with the fortunes of the remaining owners and what happens to them; whatever actions befall the Merrill family now intertwines with the towns. He suggested purchasing the property and leasing it to the Merrills. K. Merrill explained the history of the property within his family and subdividing the house lot. Councilor Freda expressed concerns with liens from Medicaid. M. Speltz said if we purchase the land it is off the tax rolls. If he farms it, it is going up in value. The assessment

is binding on the owners, heirs, successors and assigned so if it is attached by a nursing home that will be a lien on the property. Discussion ensued about purchasing the easement and liens against the property and outright purchase of the land. Councilor Dolan said it is his understanding that when we purchase an easement we don't own the property we are compensating the property owner for creating an easement that is favorable to what we want. When that property is liquidated that easement goes with the new ownership. M. Speltz said that is correct, the easement travels with the land. K. Merrill said the easement has the wording that the easement stays with the property for ever. The only way it can be broken is by eminent domain by a government entity and then you recoup your money because they have to pay for the property and the easement. Councilor Freda suggested that could also occur if the federal government enforced a lien against the property or the bankruptcy court took the property. The town will receive compensation but the land will be sold to creditors. Councilor Farrell asked the Town Manager to confer with counsel for legal opinion. Bob Merrill, 569 Mammoth Rd. said in NH law there is a provision when a conservation easement is executed the development rights are extinguished for all time. M. Speltz said it is for that reason that you cannot put an easement on a piece of land that has a prior mortgage. K. Merrill said there is no mortgage on the land and said if you put conservation easement on the land before a lien takes place the easement takes precedence. Councilor Dolan suggested having the points of law reviewed by our lawyer. If the town offered a purchase what value would you accept for the land. K. Merrill said the family would prefer to go with the easement and the value of the land would be considerably more than \$219K. Councilor Dolan suggested we table this for at least 1 meeting so our attorney can review it and have the Merrills consider the option to buy the property and confer with the Conservation Commission. Chairman O'Keefe said he is hoping to have the report back from the Open Space Taskforce before we make any decisions on any properties and that was Council's intent. Councilor Dolan said he agrees with that but we received a special sense of urgency from the Merrill family tonight. He asked M. Speltz if it is reasonable to go to the Open Space Taskforce and see if they are interested in fast tracking this piece of land to see if it would meet the criteria and would it be one of the recommended purchases. M. Speltz responded it meets the criteria he does not know where it falls in the priority list. He could seek an advisory opinion they are in the process of developing a priority list at the June meeting but probably won't be finalized until the July meeting. He said this is the only project we have right now. Councilor Farrell said we should get some public feedback and get additional information before we vote. Deb Lievens, Conservation Commission Chair, 105 Gilcreast Rd. said she did not get the message to stop projects until the report was in. Chairman O'Keefe said Council made the decision when the taskforce was formed we wanted to know where we were going in the future, find the opinion of people before we make more purchases. When the last Open Space bond came up people voted against it. Chairman O'Keefe asked for verification of questions to ask counsel. Town Manager Caron said they were the impact of any kind of federal or Medicare liens on property on which we hold an easement interest and does that in anyway eliminate our easement rights on the property. Councilor Dolan said as a second option to an outright option do we need to talk to the appraiser for a recommended purchase price? M. Speltz said the full value of the 22 acres unencumbered is \$505K, the house lot which will have to be subdivided off is \$275K the difference is \$235K. The appraiser might be able to give us a faster appraisal because he had already done most of the work. Councilor Dolan asked if 2 weeks was enough time to get the answers. M. Speltz suggested another idea by entering into a P&S agreement now that is contingent on the property being in the Open Space Plan, this could delay the closing until September. Chairman O'Keefe said there is a time period that Medicaid can come back on you. Councilor Dolan said the P&S solves the problem about a taskforce recommendation; the

P&S does not help with the outright purchase option. The consensus was to get the legal questions asked, and the Merrills can talk with the Conservation Commission and they will vote on it at the next Council meeting. Councilor Farrell asked who will be the steward on the easement. M. Speltz responded the Rockingham County Conservation District holds the easement; it is a perpetual liability to monitor – the Town would have an executory interest. **Councilor Dolan exercised his Council objection to delay action on this agenda item until the 6/6/11 meeting.** Bob Merrill said this easement has historically been used in the Mack Merrill, and Hicks, families.

Staffing Levels – Senior Affairs and Finance & Administration Department - Town Manager Caron explained the vacancy in the Director’s position for Senior Affairs. It is a 34 hour per week position with no benefits and is the only town employee in that department. He will meet with Elder Affairs Committee representatives to review the resumes. The consensus was to accept the Town Manager’s recommendation.

Town Controller - Town Manager Caron submitted a report to the Councilors and if this position is replaced it will result in 3.8 full time employees (FTE) for the Finance and Administration Department, which is below the mean and average for comparable towns. He reviewed the responsibilities in the entire department and reviewed the changes accomplished in that department. He recommended that the position be reauthorized at its full-time level, but expected the Town to reach agreement with the person who is currently temporarily placed in the position to be hired without benefits with a schedule of not more than 32 hours per week. The consensus was to accept the Town Manager’s recommendation.

Resolution #2011-08 – Relative to the Discontinuance of a Portion of Kelly Road –
Councilor Freda made a motion to schedule a public hearing on Resolution #2011-08 for June 6, 2011, second by Councilor Green. Council’s vote was 5-0-0.

APPROVAL OF MINUTES

Councilor Farrell made a motion to approve the Public Meeting Minutes of 05/02/11, second by Councilor Freda. Council’s vote was 5-0-0.

OTHER BUSINESS

Liaison Reports – Councilor Dolan mentioned that there will be a Memorial Day weekend classic car show sponsored by the Rotary Club.

Councilor Freda attended the Planning Board meeting at which Mr. Kettenbach presented plans/discussion pertaining to the Woodmont development. It was about the outlined section of the PUD and what they are proposing to do. Some changes were suggested by the public and the Planning Board.

Town Manager Report - No additional information was reported

Board/Committee Appointments/Reappointments – No Council action required.

Councilor Farrell made a motion to adjourn at 9:45 P.M., second by Councilor Freda. Council's vote was 5-0-0.

Notes and Tapes by: Margo Lapietro Date: 05/16/11

Minutes Typed by: Margo Lapietro Date: 05/18/11

Approved; Town Council Date: 06/06/11