

TOWN COUNCIL MEETING

June 06, 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 (7:08PM), 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

Boards/Committees/Commission Updates

Solid Waste Advisory Committee (SWAC) & Beautify Londonderry – Paul Margolin, Chair of the SWAC and Joel Sadler coordinator of the Beautify Londonderry program reported 615 people were involved this year to include a total of 54 groups. They picked up 424 tires and worked on 32 different streets. He outlined the areas which included all 6 schools and 10 town sites. Chairman O’Keefe asked what they do with the refuse, he responded some is recycled by the town and the tires go through shredders. P. Margolin said one goal this year was to expand the program which was done. Stonyfield Farms had their first 5K road race and they donated 10% of their proceeds to Beautify Londonderry. He reviewed the responsibilities of the committee and the different programs they monitored. The repairs being done to the drop-off center have been well received. Trash and recycling are going in the right direction in the first two years of the five year contract. He reviewed their goals for this year. The committee has been around over 20 years, and they recommend Beautify Londonderry become a subcommittee to SWAC. They have had a core of three volunteers, a fourth joined this year and they want to petition the Council to make them a formal sub-committee reporting to SWAC. The Councilors thanked all the volunteers for all their work.

Dottie Grover, a resident of town said she watched a School Board meeting a few weeks ago in which it was mentioned that a student at South School wrote a letter to the principle about the dog excrement found on the school grounds. D. Grover suggested forming a committee to establish a dog park in Londonderry. It would be a service to the community with the amount of dogs in town. Chairman O’Keefe asked if the Council wanted to create a committee. Councilor Farrell asked D. Grover if she wants to head it up. She responded if it is OK for an employee to do it she will. Councilor Farrell asked the Town Manager if that was acceptable and he responded we have in the past. Councilor Dolan pointed out we don’t have a leash law in this time, only the ball fields require dogs to be leashed, is it time to do so? Councilor Green said in Boston you have to pick it up or you get fined. The consensus was to explore the possibility.

PUBLIC HEARING

Councilor Green made a motion to open the public hearing, second Councilor Freda. Council's vote was 5-0-0.

Resolution #2011-08 – Relative to the Discontinuance of a Portion of Kelley Road – Councilor Green made a motion to adopt, second Councilor Freda. Kelly Rd. is a Class VI road subject to gates and bars. Bob Duval from T F Moran and Pat Pinault from PSNH were in attendance. B. Duval explained this is the discontinuance of a portion of Kelly Rd between Shasta and South Mammoth which is about a 250ft. length of road. PSNH does own the land on both sides of the road, there are actually 5 properties along the road and two of them are owned by PSNH. The purpose of the expansion is to move a mobile sub-station transformer into the area. This closure will allow their equipment to be parked directly under the affected lines. Tom Pajak, 333 Mammoth Rd. asked P. Pinault if this would affect the property in the front of his house. P. Pinault said the only affect would be pulling the mobile sub-station in using that road, getting it in the fence. T. Pajak asked why would they go in front of his house and cut trees when they have another access. P. Pinault said the location of the sub-station is closer to Mr. Pajak's house and proceeded to show the site plans to the home owner. He explained the logistics and said the unit is temporary. P. Pinault explained the existing tree line is his buffer to Mammoth Rd and his privacy. Discussion entailed between the homeowner and P. Pinault. Councilor Farrell suggested it would be better to have everyone go out and agree to what is reasonable and settle the issues and then come back to Council. **Councilor Dolan made a motion to continue the hearing to 6/20, second Councilor Farrell Council's vote was 5-0-0.** John Laferriere, 331 Mammoth Rd. recommended that a site plan be established before they come back to Council. There was one done in 2008 which was to be put at the back side of 333 Mammoth Rd. where they had done a lot of site work to put the sub-station in. Now they are talking about a discontinuance of the road without any site plans. Before we give them the discontinuance of the road we should see the site plan, let him work with the abutter and come up with something more reasonable. They have done improvements on the back side where the main power station is but they have never done anything with the temporary set-up.

OLD BUSINESS

Resolution #2011-05 – Relative to the Allocation of Cable Franchise Fees – Councilor Freda read the continued first reading; **Councilor Dolan made a motion to accept the first reading and schedule a public hearing on 6/20/11, second Councilor Farrell. Councils vote 5-0-0 to move it to the public hearing on 6/20/11.**

Order #2011-06 – Relative to the Distribution of Conservation Funds to Purchase a Conservation Easement, 587 Mammoth Road - Chairman O'Keefe said that Council had some legal questions. Town Manager Caron said the issue was if the town purchased the easement instead of outright buying the property would there be the possibility of a Medicare lien on it. Town Attorney Bart Mayer advised that there is an inherit risk on any land transaction if the IRS or Medicare believes there might be a fraudulent sale. The town attorney feels that there is a very remote possibility due to the fact that we secure the services of an independent appraiser for a market value assessment of the property. The town attorney recommends that that issue alone is not reason to reject an easement. Councilor Dolan stated that other communities aren't acquiring property outright, just the easements because it is less money for the taxpayers; easements last into perpetuity, the easement stays with the property. If a political body decides to do something different with it other than what it was originally intended for it

can change hands. An easement prevents future development. If a town acquires property outright it is the responsibility of the town to maintain it. He said his research points out it makes more sense to acquire easements as opposed to owning it outright. Councilor Freda said he disagrees with purchasing easements; it ties us to a partnership with the owners of the property. Easements can be destructible and we should not have that as a possibility. It is better to buy it outright and offer leasing it to the Merrill family. He attended the Open Space Taskforce meeting where it was brought up that we have 30% protected land. According to the 2006 Taskforce Report the goal was 25%. He said we need to defer until we get the Open Space Report. Councilor Green said he agrees with Councilor Freda, easements are a poor use of taxpayer money. Councilor O'Keefe said he wants to hear from the taxpayers; he said he has a problem with spending the money at this time. Conservation Commission Chair, Deb Lievens said the parcel fits all the criteria, it connects conservation land and it is a good purchase. Councilor Freda asked if this purchase went through what the total connected acreage would be. Mr. Merrill said it would be 52 continuous acres. Councilor Freda brought up the 10/10 requirement; 10 acres within 10 minutes of walking time, it was considered a low priority. D. Lievens responded they are not even considering the 10/10 aspect they are considering its other attributes a lot higher. Councilor Farrell clarified that he heard: easements are not good, we would like to wait for the report, and learn what the public wants. He suggested asking Mr. Merrill if we could wait until we get more information. Councilor Green responded that it is very clear that we don't want an easement, we want to buy. If Mr. Merrill wants to sell the property outright it will be a different question and a different answer. Councilor Freda said with the last two purchases of the proposals we offered to pay between 90% & 95% of the value of the property and all we got was an easement. Councilor Dolan said if the goal is to preserve the property from development and you can accomplish that by spending 90 cents on the dollar as opposed to a dollar on a dollar that to him is a no brainer on what is the smart financial thing to do. Across the state the best minds in terms of planning, land planning, preservation, open space have all agreed with buying easements. Chairman O'Keefe said for years we have heard different spins on why we have bought open space. We bought under the guise it was going to save us money. We don't really know if it is going to save us money, then we were told it was for water protection. For years we have asked all the departments in town to reduce/cut budgets. We have never asked the Conservation Commission to cut costs. We put a taskforce in place to find out where we want to go. We decided we wanted to hold off until we have all the information. Councilor Farrell said we have to send the right message back, he said he was on the original Open Space Taskforce Committee and wrote the formula on how to save money; he was also on the next one who wrote the formula on how it didn't save money. He said he also a few years ago led the charge against easements saying we needed to look at it a different way. We have a long time resident of the community who is looking to make a decision. He said he is trying to understand if we say we are still interested in the piece of property or if we are buying it and the report supports it but we will listen to him. Councilor Freda said there is a clear message that some of us on the Council do not believe easements are appropriate, it does not make sense that it saves money. He said he has spoken against it for a long time; it never made economic sense to buy easements. He said he had no problem with purchasing the land with a long term lease; savings has never materialized with the easements. If we are going to conserve land he wants control. There have been problems with stewardship and inventory control of the land. Most people don't use conservation land because they don't know where they are or what you can do on the lands. He said he disagrees with the legal conclusion, there is an issue with bankruptcies. We should have a plan before we spend taxpayers' money. Councilor Dolan said the original and continuous goals are with open space preservation. He said there is a connection with open space and the declining enrollment in the schools and the slowdown in residential housing.

Open space is passive recreation; taxpayers want open space for large game wildlife corridors. He also said 85% of people in town get water from the groundwater. People like to have open space for a complex set of reasons. Councilor Green said that most people watching tonight would probably state that if you spend \$219K for a piece of paper vs. \$230K for a piece of land and give you the right to do whatever you want to do with that land for \$1.00 that is realistic. We are talking about open space and purchasing open space. He said he believes in open space, it is important for the town to keep its rural aesthetics; this is just a different way of doing it. Councilor Freda said the decrease in school has nothing to do with the conservation efforts. During the time period we have added 1,200 homes. Councilor Farrell asked Council if we are interested in Mr. Merrill coming back and looking at his land again. Councilor Freda said we should survey the taxpayers and find out if they are interested in purchasing an easement, or are they interested in buying. He said he is interested in buying. Councilor Dolan said we should be purchasing easements because boards like this cannot be trusted. He explained when we begin to own property the boards beyond us will be of a different makeup. The board is going to change, if the town owns the property outright they can do anything they want to do to it; they don't have to preserve it. An easement can't be changed into perpetuity. An easement is cheaper and preserves the property the way it was originally intended to preserve. The long term picture is to preserve the community the way it originally was intended to preserve. Councilor Green asked the Town Manager if we were to purchase a lot could we put the language into it that it could only be used for conservation. Town Manager Caron responded any sale negotiated between the buyer and the seller with certain conditions is a possibility. Lisa Whittemore, 40 Griffin Rd. said we have a limited window of putting this land aside for the easement protection for the future generations of Londonderry. This Council is in a position to protect this land for the future generations. She said she is extremely upset that Council is taking a vote on this easement without even reading the Open Space Report. Chairman O'Keefe said the Conservation Commission came to us and wanted a decision right away. If they want to come back after the report is produced that would be OK. Councilor Freda said he does not want to buy the easement with someone who could have possible difficulties in the future. Mary Soares said buying the property takes money off the tax rolls. Councilor Freda said the tax revenues from open space are nominal. John Curran, 6 Faye Lane said the Open Space Taskforce touched on these things and the survey received back was that the majority of people wanted open space. A majority voted that they do not want to spend money on stewardship. He suggested asking the Merrills if they want to withdraw their request at this time because we know what way the vote is going. He said he would like to preserve the ability for the town to still have an opportunity to maintain a farm. The final report hopefully will come out in July. Councilor Farrell asked Mr. Merrill if he would be willing to wait on this vote until after the report comes out instead of voting on it tonight. Mr. Merrill conferred with his lawyer and said he will wait for the report. **Councilor Farrell made a motion to table this Order until 8/15/11 until we have the Open Space Taskforce Report, second Councilor Green. Council's vote was 5-0-0.**

FY12 Goals and Objectives – Objective Councilor Farrell asked if we can move this discussion to the end of the meeting or to the next meeting on 6/20. The consensus was to move this item to the 6/20/11 meeting.

NEW BUSINESS

Order 2011-08 – Relative to the Licensing of a Junkyard pursuant to RSA-236 (Murray’s Auto Recycling) Councilor Freda made a motion to adopt, second Councilor Green.

Richard Canuel, Sr. Building Inspector made a presentation of the four licenses being discussed tonight. Murray’s Auto Recycling has again had an issue with hours of operations this year as in the past. Late deliveries were a concern for complaints from the one abutting homeowner. Last year Town Counsel was contacted for a legal opinion which at that time said late deliveries with junk vehicles after 5:00PM were considered part of the operation and would be considered a violation. R. Canuel said he monitored the site for the past year and discussed with Counsel and their concurred opinions have changed. If an employee delivers a vehicle after hours, driving the vehicle behind the gate, closing the gate and leaving in his personal vehicle; the Town Attorney agrees that cannot be considered an operation of the junkyard. It does not pose a public nuisance as listed in the statute. R. Canuel said aside from that issue there are no outstanding violations or issues with that particular junkyard. All junkyards have made strides in meeting the Best Management Practices that are established by the State Dept. of Environmental Services. He recommended renewal for all those licenses. Councilor Green said the abutters should not have to deal with business being conducted after hours. Richard Belinski, 89 Hall Rd. said this has been going on for years; deliveries after 5PM, cars above the fence, cars are parked outside the fence; trucks are parked on the side of the road. He also said there are multiple businesses listed with the state with that address which is against the grandfathering clause. It is only a salvage business. Mr. Belinski said the Code Enforcement Officer cited Mr. Dudek once this year for off loading equipment in the front parking area. He said he does not agree with the legal opinion that delivering salvage vehicles after hours was not part of business when it is a salvage operation. He handed Council a picture of a vehicle parked on the side of the road on 6/1/11. He said the parking lot has never been approved and never had a site plan done. Councilor Freda asked if he or Mr. Adams made a complaint this year, Mr. Belinski responded no, the violations can’t be verified they are done after hours. Councilor Green said we ask citizens to report violations because that is the only way we can do enforcement. We should take these violations seriously. Chairman O’Keefe asked the Town Manager if he received feedback from our lawyer regarding a question he had sent to him. Town Manager Caron said he confirmed with R. Canuel that it is the attorney’s position that if an employee opens the gate after hours, drives a vehicle in behind the gate and starts unloading the vehicle it is part of operations. Chairman O’Keefe said he had a problem with vehicles being delivered after hours. He told Mr. Belinski he understood his frustrations but told him to follow-up with taking pictures of violations. Mr. Belinski responded for many years he has provided pictures, and explained the next Council says they don’t want pictures, the next Council instructs him to put it in writing. Councilor Green asked the Town Manager if we had a signed site plan for the parking lot to which the Town Manager responded we do not have an approved site plan for the paving of that parking lot. Councilor Green then asked how that violation would be handled. R. Canuel responded those issues have no bearing on Mr. Dudek’s ability to operate a junkyard under the licensing statute. If it is a matter of a site plan being required that is an enforcement matter. If it is an issue of him operating other business there other than a junkyard that is an enforcement matter. Those issues have no bearing whatsoever on whether he should be licensed to operate a junkyard. Chairman O’Keefe responded that Councilor Green specifically asked why action wasn’t taken place for the parking lot. R. Canuel said he will take a look at it. R. Belinski said if he is not in compliance with zoning and he has more than one business running in a grandfathered use that is a violation of zoning. He may be in compliance with the RSA 236 but not with our zoning. Councilor Freda asked Mr. Belinski if he was saying the multiple business being run from 55

Hall Rd. are in violation of his junkyard license. R. Belinski responded it is a violation of zoning which is one of the things he has to meet because it's a grandfathered use which can only continue in its current use, it cannot be changed to anything else; and the license must not lapse for more than a year, otherwise the grandfathering goes away. Councilor Freda said you can create a corporation with a legal name with a mailing address and not be operating a business. Councilor Freda asked R. Canuel if having multiple business at that address is a violation, R. Canuel responded it is not a violation just for listing that as his business address. He would have to actually conduct business at that site other than his junkyard business. Councilor Freda asked if a third party picks up a truck and arrives after hours is that Mr. Dudek's problem or is it the third parties problem. R. Canuel responded that in discussing that with the Town Attorney he does not feel that is a violation whether it is Mr. Dudek's or someone else's. R. Belinski said Mr. Dudek was found in violation of the town hours of operation by a judge by opening the gate after hours to do business in Derry District Court. Councilor Freda suggested Mr. Belinski provide Council with a copy of the court order. Chairman O'Keefe asked the Town Manager to get a copy of it. Town Manager Caron said he could get a copy of all the violations that were found and the court orders/decisions. R. Canuel clarified that based on the court order these conditions were established as part of his licensing. If there were any other issues from that court order they would have been listed as part of those conditions. As long as Mr. Dudek is meeting these conditions and we have opinion from our Town Attorney that he is, then there is no reason to deny his license. Councilor Dolan asked if anybody observed other business being operated on the premises, if they are not operating there than that is not an issue. If they have been observed running another business from the premises then it would be a violation of a zoning ordinance. Councilor Green referenced one of the conditions for Mr. Dudek's business hours anything after 5:00 PM is business. It is simply stated. Gerard and Collette Adams from 54 Hall Rd. said the Town Manager talked to the town attorney last year and he said that deliveries after 5:00PM were considered business and asked if that has changed? R. Canuel responded the opinion has changed because he has been monitoring the site for the past year a little more closely. It was the town attorney's understanding at last year's renewal that those deliveries involved actual unloading/loading of vehicles and not just necessarily just simply driving the company truck inside the gate. Discussing that with our attorney and with more detail explaining of what the actual operation was and what was occurring there his opinion is that if all the driver is doing is simply bringing the company vehicle into the gate, closing the gate and leaving in his personnel vehicle that is not part of the junkyard operations. G. Adams asked R. Canuel when he received that opinion, he responded 5/16/11. Councilor Farrell clarified that Mr. Dudek came here last year with his attorney. If his truck is stuck in traffic and cannot be there by 5:00 PM some of Mr. Dudek's neighbors have offered to let him park his truck in their driveway. He wanted an exception to the policy, not a regular policy. Under extenuating circumstances a truck arrives, pull it in behind the gate, deal with it the next morning. Is that what our attorney is saying that it is the exception rule, R. Canuel responded exactly. Councilor Farrell asked Mr. Dudek if what he just described what he was intending. Mr. Dudek explained his trucks come back after the end of the day, they open the gate; drive the trucks in, close the gate and leave. This takes all of a minute. They don't unload; they shut the truck off, lock the gate and go home. Councilor Farrell asked if this happens every day that they come in late. Mr. Dudek responded a lot, yes. Councilor Farrell directed his next question to R. Canuel saying that Mr. Dudek says it is a regular operation that is going to happen every day; you are saying it is a rule of exception. Mr. Dudek said when he went to court the judge asked the then prosecutor about the trucks coming in after 5:00PM. The prosecutor told the judge that he didn't care what time the trucks get in after 5:00PM, he said the Adams' and Belinski were in the courtroom and heard it. He said he also has a recording of the hearing. R. Canuel said it is not a matter of how often it occurs but what

occurs. If a driver is simply driving the truck into the gate, closing the gate and leaving then that is not part of Mr. Dudek's operation. Councilor Farrell clarified that he is interpreting the advice that it is OK if it happens every day. R. Canuel responded he did not give any specifics on whether it happens on occasion or daily. It is not when it happens it is what happens. G. Adams informed Council that they have complained a number of times about this problem and it involves more than a minute and they have observed the gate being opened as late as 10:00 PM. Mr. Dudek said he never recalled any of his employees arriving that late. Councilor Farrell asked Mr. Dudek what is the latest his employees come back on average, he responded 7:00 PM the latest but they do come back earlier. Councilor Farrell said he asked the Town Manager earlier today if any of the other junkyards in town have the same hours of operations and he responded they don't. The Hall junkyard is located in a residential area and is now for sale. Councilor Farrell said we don't hold any other business in town to the same standard we are requiring of Mr. Dudek. He suggested gathering all the information and making a decision. Councilor Dolan read an excerpt from the attorney's letter where he says "he does not believe that just the mere appearance of a company vehicle with or without cargo constitutes operating after hours. The act of returning the work vehicle to the job site would probably not be seen as operating the business since the employee must return the work vehicle and return his/her's own personal vehicle". He talked about last year when the employee was not only returning the work vehicle but also unloading the cargo and that is the distinction our attorney made. If the vehicles are returned after hours it is not considered running the business unless you do something to the vehicle like unloading and processing. Gerard and Collette Adams said the vehicle coming in after hours is business hours. Councilor Green said we should define in the conditions that "no one should be returning after a delivery after 7:00PM" or something to that effect. We could address some of the concerns of the residents tonight. Mr. Dudek compared his employees returning to the yard to someone returning home from work and parking their car, it is only a minute and it a gas engine. Town Manager Caron said Counsel does not consider driving a vehicle through a gate, closing the gate and leaving as part of operations. He said he is not sure if his opinion would change if the hour is changed but he would check with Counsel. C. Adams said if you are going to change the hours of operation how are you going to enforce it when you can't enforce the hours of operation now, it has been a problem for years. Councilor Green said we are addressing the Adam's concerns by changing the hours of operation by stating that return deliveries cannot be done after 7:00PM. If we put it into the exceptions then we can enforce that part. Right now we don't have anything that is defined that way. The hours of operation have not been defined as opening the gates; the trucks coming in have not been defined. Councilor Freda said we have a legal opinion that the inspector has to follow. He suggested the abutters go to court and ask the judge to interpret his own ruling or you could work out something with Mr. Dudek. Councilor Dolan said we have to operate within the legal framework established for us by the courts and our legal representation to the courts. He talked about the code enforcement position being created and one of the reasons to add that position was based on the junkyard complaints. He said there have been dramatic changes in operations for the past 10 years. Junkyards and residential areas do not mix which is why we currently do not allow them to be put together. Al Baldasaro, 41 Hall Rd an abutter thanked the Code Enforcement Officer, Council and Mr. Dudek for doing a good job. He said he and his neighbors have appeared before Council in prior years and have said they have no problems with Mr. Dudek and his junkyard. He said the junkyard was there before any of the houses were built. He said it is not right to go to Mr. Dudek and tell him he does not belong there. Do the right thing and give the man his license. He said he has offered him use of his property to park his trucks and emphasized Mr. Dudek has done a lot for the community.

Order 2011-09 – Relative to the Licensing of a Junkyard pursuant to RSA 236 (S&S Metals) –

Order 2011-10 – Relative to the Licensing of a Junkyard pursuant to RSA 236 (Londonderry Salvage) –

Order 2011-11 – Relative to the Licensing of a Junkyard pursuant to RSA 236 (Hill's Salvage Facility) –

Councilor Farrell made a motion to cover all the junkyards and referred to Orders 2011-08, -09, 10 and 11 to be adopted and approved, second Councilor Dolan. Council's vote was 5-0-0.

Order 2011-12 – Relative to Expenditures from the Reclamation Trust Fund for Drop-Off Center Improvements – Councilor Farrell made a motion to accept, second Councilor Dolan. Council's vote was 5-0-0.

Order 2011-13 – Relative to the Expenditure of Maintenance Trust Funds for Various Projects – Councilor Farrell proceeded to read the Order but Councilor Dolan make a point of order and recommended suspending reading of the order and note the total expenditure of \$32,607.88. Councilor Farrell made a motion to approve the total expenditure of \$32,607.88, second Councilor Dolan. Council's vote was 5-0-0.

Ordinance 2011-04 – Relative to Amendments to the Municipal Code, Adoption of Title VI, Chapter VI-A, Purchasing Policy, Minority/Women Business Enterprises – Councilor Dolan asked the Town Manager if there was a requirement for a public hearing on this Ordinance. Town Manager Caron said the Ordinance recommends that a public hearing be held on 6/20/11. Councilor Farrell made a motion that the first hearing is tonight and public hearing is for 6/20/11, waive the reading, second Councilor Freda. Council's vote was 5-0-0.

Ordinance 2011-05 – Relative to an Amendment to the Zoning Ordinance regarding the Planned Unit Development Process (PUD) - Town Manager Caron said that Town Planner Tim Thompson reminded him that pursuant to the zoning ordinance any proposed amendments generated outside of the Planning Board process are transmitted to the Planning Board for their public hearing and recommendation. If Council approves the first read tonight it will be sent to the Planning Board and they will return it with their recommendations to the Council. Councilor Farrell said in the legal packet from counsel it was strongly recommended that we don't go down this path, it may suggest a different path in light of the fact that it has to go back to the Planning Board. Maybe what we could do is we know this is not going to affect the Woodmont project, we could do what we did with the Performance Overlay District a few years ago. We asked the Planning Board to work through their process with regards to the Woodmont project, work with staff, and find what worked and didn't, what may or may not to be adjusted & have them make a recommendation or have a joint meeting with Council to come back and say this is what we learned, this is what we think might need to be changed and do this in a thorough sort of way. The Planning Board is very busy right now and they might not have enough time to send something back to us that is well thought out and has gone through the processes. Councilor Dolan said he has been on this board for a number of years and this is probably the strongest legal wording of advice received from an attorney about not going down this path. We should

table it permanently as this is not something we should do and let the Planning Board once they have gained more experience with the PUD itself to come back and recommend any changes/additions/subtractions/re-wording to the Council. This is not a considered piece of legislation we ought to put forth at this point. Councilor Green said he did not interpret the legal advice to mean that. We are mixing up the Ordinance and the Woodmont project. This is an Ordinance we are trying to adjust to do a couple of things. Getting this board more involved is one of the objects of this Ordinance; not having that in our purview doesn't make sense to a lot of people. The zoning has always been a part of Council's authority as well as Master Plan. Councilor Farrell said the Master Plan is a Planning Board document it is not part of the Council's authority. Councilor Green said oversight is an important piece to look at, he is trying to install those measurements into this ordinance. Councilor Freda said he is not in favor of tabling it, he wants to hear what the Planning Board has to say. He said back in July of last year there was a one acre zoning change that required Council approval. He is just not sure why we need one acre approved by Council and a potential 600 acre project is not approved by the elected/governing body. It deserves consideration. The statute designated three possible boards to make the final decision, Planning, Zoning and the Board of Selectman/Town Council. The legislature clearly outlined something that is being contemplated here whether it isn't a good thing or not, he didn't know but said he is willing to hear what the Planning Board thinks so he does not agree with tabling it. Chairman O'Keefe said he is torn on this. Councilor Farrell said there are two different things going on here. Our attorney told us we can't affect the Woodmont project. It will go under the Ordinance as written. Chairman O'Keefe said this has nothing to do with Woodmont, the PUD is an obviously big plan, there is a lot to it, it has a lot of unknowns to it. He said as one person on this board when we passed this thing he didn't understand why we would give up an approval process at the end of it. He thought a checks and balance system was set in place and was surprised that basically we gave it up. He is interested in hearing what the Planning Board has to say and more people from the public. He stated that was what he thought this was all about. He knows it has nothing to do with Woodmont and he has never come out one way or the other for or against. He said in all actuality he is for it because it has a lot of good things it is going to bring to the Town. He said he feels the Council is the elected body and should have some input into it. Councilor Dolan said he respectfully disagrees. It has everything to do with Woodmont and the only reason this is before us is because of Woodmont and because of some of the political pressure that is now being brought to bear. It would be a wild coincidence that we would be bringing up a dramatic change that our lawyers are telling us to be very careful with it because it is fraught with danger. We wouldn't be even considering this if it wasn't for what is going on with Woodmont right now. Chairman O'Keefe asked if he is being naïve in saying that this is. Councilor Dolan responded we need to recognize that the political issues that are beginning to arise from the Woodmont project are what's driving this initiative. The Woodmont "horse is out of the barn" and this cannot affect Woodmont. If there is some thought that this is the political remedy for what is going at Woodmont, it won't change anything, it can't impact it. He said he is not sure why we would take this action in the face of the Woodmont activity going with the Planning Board and the developers. There is a lot of emotion around this issue and for us to enact a law based on that emotion that really can't affect the outcome of that issue that is creating that emotion is puzzling to him. The impact of what this will really do is to introduce a political process into something that should be an apolitical as possible. One of the reasons we have the Planning Board and the way it is created and the way we run it is that they are not elected people, they are somewhat pulled back from the elective process and therefore should be making decisions based on what they think are the right thing, not what they think is the politically expedient thing which is what political bodies will do from time to time. We want to keep the planning process free from politics as our lawyer recommends

we do because we know whenever we have a process like this there are going to be aggrieved parties on either side of every issue. He said we should try to stand back and let the process continue on its way, stay connected with the Planning Board, get lessons learned and see what we have to do down the road. At this point it is premature and introduces that political process. Councilor Green said he introduced this Ordinance and it has nothing to do with Woodmont. He said there are nine other parcels of land that can qualify for a PUD; he is asking the consideration of the Council to adjust the PUD to again bring the pervue of zoning back into the arena it has always been for many, many years and put an essence of oversight. He said that is all he is trying to accomplish. Councilor Farrell said with all due respect our attorney has told us we have not given up anything, we acted appropriately. He also writes to us to tell us there are hidden dangers lurking in the procedures sent forth in the proposed Ordinance. What he is suggesting is the same thing we did with the PUD which turned out the way we wanted it to turn out in the long run; to do the work and make a decision. The Planning Board has that responsibility. Councilor Green said the attorney is the one who wrote that update, is that correct? Councilor Farrell responded he is reading the legal advice. Chairman O'Keefe asked for clarification on who wrote the amendment to the Ordinance. Town Manager Caron responded staff wrote it. Councilor Farrell said the argument being made is that we face Woodmont, which is what brought this about. From an economic development standpoint we need to try to be smart about this. We don't want to throw another roadblock up. Maybe we should change it back to Town Council but we have a process going on, let's get educated. They spent months doing it and brought it to us and we are going to make a decision in one night and they have all the information, let's get educated. Councilor Freda said he is in agreement with that. Some of us have different views. The legislature gave three bodies the potential to make the final decision, Planning Board, Zoning Board and Board of Selectman/Town Council. Many towns have Planning Boards that can be elected he said he is not aware of Zoning Boards being elected. He said there is a political process in lots of those scenarios. Let's send it to the Planning Board and follow procedure. He has been the one on the Planning Board encouraging them to get moving on Woodmont, get some definitive proposals so people can see that; let's hear people's comments and let's start going on it. Councilor Farrell said we have been down this path before with the Performance Overlay District (POD), we know what the blueprint is. Councilor Freda brought up the one acre parcel again and said if we are going to look into it logically you can't say we can have the Planning Board decide on the 600 acre thing and bring the one acre to the Town Council, it doesn't make a lot of sense. Councilor Farrell said the legislative body at that time voted the way they did. He said he agreed with Councilor Freda they should send it back to the Planning Board and let's move from there. Councilor Green stated he does not know why Woodmont is being brought up in this Ordinance. Chairman O'Keefe said we are a board and should be doing the best we can. Councilor Dolan's point is that in his eyes it seems that it was politically motivated. Councilor Green responded he clarified it. Chairman O'Keefe said that Councilor Dolan is worried that it might take on a persona of its own by passing this now, if we did that, there might be factions taking up sides and that is what he is worried about what would happen. Councilor Dolan stated that what is before us is bad legislation, bad law and we should not entertain it. We shouldn't delay it and entertain it later. If we have some concerns as a body that the PUD needs adjustments then we ask the Planning Board to consider that. They are novices with this and as they gain more experience they will help us understand what needs to be changed, we will turn that into good legislation and we will pass it. To take what is before us is not good law, as the attorney says there are hidden dangers lurking in this procedure. That in and of itself means take it off the table and go write different legislation. We have a very experienced board that is in the process of gaining that experience and is accumulating that knowledge, it is premature. He said this does not reflect on staff; they were doing what they

were asked to do. Councilor Dolan asked the Chairman to poll the Councilors if this was going to move forward for a vote. He said if it is he was going to object under the Charter. Councilor Farrell said he is willing to give it to the Planning Board. Chairman O'Keefe said the lawyer does not indicate what the hidden dangers are. He said he gets what everyone is saying but for years he has always heard we put up "roadblocks" in Londonderry and he has concerns that we might be doing that. We are the elected body and we should have some say. Councilor Farrell said that Council by consensus should direct the Chairman of the Planning Board to investigate the PUD and bring it back to us what they are learning as they do this and what they would do differently. Councilor Freda asked what would the problem be if we sent this to them because they could amend every word of it. Councilor Farrell said it starts a 90 day clock and they don't have the time right now with Woodmont. Councilor Green said he is having a hard time with the attorney's opinion because he thinks he is looking at it with the thought process of Woodmont. Chairman O'Keefe said his opinion is that nobody is saying it is affecting Woodmont. What we are saying right now is this the right time to be saddling the Planning Board with something else that is not going to affect Woodmont. We have no other big plans right now in the works maybe we can buy some time. Councilor Dolan said does the Planning Board have enough experience with a PUD now to review that legislation and make recommendations for changes/re-writes. Do they need to get more experience; we don't have enough experience to change the law. Councilor Green said he is not trying to push this forward. Maybe some of the issues we are having with the current PUD is that the developer has been asking for direction. We have a board who is dealing with something they have never dealt with before. Chairman O'Keefe stated we are not a land use board. Councilor Green said if we combine the efforts of an elected body with people that know a lot about land use we could come up with the right mix of changes to zoning. Councilor Farrell said he can understand that but our attorney told us specifically not to get involved. Councilor Green said that is not what he heard. Councilor Freda asked if it is tabled tonight and 6 months from now can we re-introduce it or not. Town Manager Caron replied that he thinks you can now because currently Council does not have any rules of procedure. Everything is by consensus and determinations are made by the chair and the entire Council can overrule the Chair similar to a Moderator at Town Meeting. Councilor Green asked if we could have a second reading on 6/20/11 to put it off a little further to get people to talk about it. Town Manager Caron responded that would have to be a consensus of the Council to do that. Councilor Green asked what is the purpose of putting it off, having more people talk and think about it? Councilor Freda replied one of the things is to have some input from the Planning Board. Councilor Green responded that is why he thought we were sending it to the Planning Board. Chairman O'Keefe said that we are not really sending it to the Planning Board because this document is asking for us to approve it as written on the 20th, that is not what we are sending to the Planning Board. Councilor Freda asked to put it off until the first meeting in October and if the Planning Department gets a chance they can look at it. Councilor Farrell said the Master Plan will be done by then and we will know what we are doing. Chairman O'Keefe said we have a big project in front of us now; we are not doing anything right now by changing anything in this Ordinance. All we are doing is changing the process going forward we should let it play out and see how it goes. We have a Planning Board and a Zoning Board who are doing their job. Councilor Dolan asked Community Development Director Andre Garron if any of the large tracts of land are under consideration for a second PUD. He responded no, not as of today. Councilor Dolan then said if there is no imminent threat than what is the hurry. Councilor Green then suggested the second reading on 8/15/11 because September is too far out. By that time we might have a presentation by Woodmont and any changes made by Mike Kettenbach will be presented. Councilor Dolan said he didn't think we could legally do that. He said he believes the requirement is to consider this legislation it has to go to the Planning Board for a minimum of

90 days and that takes us to September. Town Manager Caron suggested if they want to discuss it again you would continue your first read to that date understanding that the first time it's adopted by the Council on the first read then it goes to the Planning Board for their legal process, then it comes back with their recommendation for the public hearing. Town Manager Caron stressed that we can't have a public hearing until you receive recommendations back from the Planning Board. The clock will start with the 2nd read and the 2nd reading is the public reading. Councilor Dolan suggested that since we have staff from the Planning Board in attendance tonight give them direction as to what we want to happen. Look at the PUD in the current form and at some point in time come back to Council with suggestions for modifications. We give those modifications to staff and turn it into a piece of legislation that is more acceptable from a legal standpoint. Councilor Freda said he had no problem with that approach but said maybe we should ask Bart Mayer, maybe he has the suggestions and we can short circuit the process. Councilor Dolan said that Bart does not have the PUD experience, the wealth of knowledge is accumulating in the Planning Board. Councilor Green said it was his understanding that legal counsel advised them that the final Master Plan would be signed off by Town Council. The process was the problem not the signing. Town Manager Caron clarified that the process will be that the Planning Board will complete its process with the PUD; then make a recommendation to Council based on their recommendation to adopt the PUD. During the initial process of the PUD as proposed under this Ordinance the Planning Board will still be an independent body making its own recommendations and actions on any applications and that finished product will be as recommended by the Planning Board to come to the Town Council. Town Manager Caron said the process is explained in the Ordinance under 2.8.34 & 2.8.35 and proceeded to read the sections. Councilor Farrell said the part we are missing is that Attorney Mayer said the Town Council creates zoning, the Town Council created a PUD zone. When we create zoning we give the authority to the Planning Board to manage that zone. We did nothing different than we have done before according to the attorney. When he says the things he says in his letter that is what he explained to us. We gave up nothing; we gave the authority to the Planning Board as we do under every zone. Councilor Farrell said he would ask the Chair of the Planning Board to come here on October 3 with some sort of point of view from the Planning Board and educate us so we know we have an action item. Councilor Green said if there was another PUD area in town once the PUD process starts from conceptualization, how do we handle it, does the legality of it start? Town Manager Caron responded if Council continues this Ordinance discussion until October 3, 2011 then essentially the current PUD will rule as far as the process and the regulations for that application. He said he thinks that is what counsel will tell him but he will confirm. Councilor Farrell said something that big will be known months before any action would be taken. **Councilor Freda made a motion to continue this to a first read on 10/3/11 second Councilor Dolan. Council's vote was 5-0-0.**

Resolution 2011-10 – Relative to the Adoption of Town Council Rules of Order – Councilor Farrell read the first reading and made a motion to adopt today, second Councilor Freda. Town Manager Caron explained he looked at procedures mostly from the Town of Salem and also a lot of this document is from the Town Charter. One of the proposed sections to this is any amendments will be presented and then considered at the next meeting. He asked everyone to look at it and have comments ready at the next meeting where it hopefully will be adopted. It is a blueprint on how meetings will be conducted; the Council currently doesn't have any rules of procedure. A public hearing is not required. **Councilor Farrell amended his motion to have the adoption of the Resolution on 6/20/11, second Councilor Freda. Council's vote was 5-0-0.**

Discussion Regarding the Use of Conservation Commission Funds for Debt Service Payments – Councilor Dolan made a motion to move this item out to a future meeting as scheduled by the Chair, second Councilor Green. Council’s vote was 5-0-0.

Discussion Regarding Workforce Housing at Woodmont Commons Councilor Farrell said he thought Mike Kettenbeck withdrew this proposal. Councilor Freda said he is proposing 10% of the 1,300 homes as Workforce Housing. He would consider Senior Housing being part of that 10% provided it didn’t interfere with his 1,300 units in the proposed development. Councilor Green stated they have not been approved for 1,300 so that is not a valid figure. He said due to the economy it has created enough workforce housing. Mike Kettenbach wanted a definition of it; it is a question of density. Councilor Farrell said he spoke to the Planning Board Chair about workforce housing. He explained it was made mandatory by the state. The community was strong about how they felt about workforce housing and we worked through a long complex Ordinance. He said maybe we should lean on it. Councilor Green asked Community Development Director Andre Garron for input. Councilor Green said he thought we had enough housing. A. Garron said when they worked on the workforce housing Ordinance a few years ago they found at the time that our inventory of housing units that would meet the affordable level was high, greater than 50% met the threshold. Councilor Green said if we don’t have to have any there then don’t do it. Made a decision and if we have enough inventory then move forward and give the answer to Kettenbach that we have enough. He said he would like to see senior affordable housing. Councilor Freda said if you have an Ordinance doesn’t he have to comply with it. If he is not required to do it under the Ordinance why is he talking about it? A. Garron said anybody at anytime if they propose a residential development can include affordable housing in there. The current Ordinance is based on state law that the Town of Londonderry has to make available the opportunity. **Councilor Dolan made a motion that the Town Council does not request inclusion of the Workforce Housing component in the Woodmont Commons Master Plan, second Councilor Freda. Council’s vote was 5-0-0.** Chairman O’Keefe thanked the Planning Board for attending tonight’s meeting.

APPROVAL OF MINUTES

Councilor Dolan made a motion to approve the Public Meeting Minutes of 05/16/11, second Councilor Freda. Council’s vote was 5-0-0.

OTHER BUSINESS

Liaison Reports – Councilor Farrell attended the School Board meeting. The consensus of the board in relation to combining resources with them and the Town is if the Superintendent and the Town Manager can find something they are willing to talk about it.

Town Manager Report - Town Manager Caron reported that the elderly housing proposed on town owned land had a review by the HUD Environmental Review Officer and they are leery of any properties that they perceive to have environmental issues. The Town’s development partner is looking at another piece of property in North Londonderry and they are negotiating with the buyers. The Town received 5-6 bids to replace the Library roof, ranging from \$42K – \$84K and they should have a decision by the end of this month on the lowest responsible bidder. Councilor Green asked how they used inferior products that we didn’t approve and he stated he

would go after the installer. Town Manager said he would be willing to take legal questions in non-public session, that subject could not be talked about in public.

Board/Committee Appointments/Reappointments – Council Representative on Master Plan Steering Committee - Consensus was Councilor Green would be the Council Representative.

Reed Clark suggested eliminating on the agenda that the meetings will adjourn by 10:00PM since Council is unable to adhere to that time. Councilor Dolan said he observed another Council had a pre-determined adjournment time and if it was going past that time the Board had to vote to extend the meeting 15 minutes to a maximum of 2 extensions. If the board voted “no” then the meeting ended and any further agenda items were postponed to the next meeting. He said this could be part of the rules we would adopt.

Councilor Farrell made a motion to adjourn at 10:45 P.M., second Councilor Green. Council’s vote was 5-0-0.

Notes and Tapes by: Margo Lapietro **Date:** 06/06/11

Minutes Typed by: Margo Lapietro **Date:** 06/09/11

Approved; Town Council **Date:** 06/20/11