

# LONDONDERRY TOWN COUNCIL MEETING MINUTES

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2 **March 20, 2014**

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

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7 Present: Chairman John Farrell; Vice Chairman Tom Dolan; Councilors Tom Freda, Jim Butler and Joe Green; Town  
8 Manager Kevin Smith; Executive Assistant Kirby Wade

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10 **CALL TO ORDER**

11  
12 Chairman Farrell opened the meeting with the Pledge of Allegiance let by Councilor Freda. This was followed by a  
13 moment of silence for all those who serve us here and abroad and for all of Londonderry's first responders.

14  
15 **PUBLIC COMMENT**

16  
17 **Pauline Caron, 369 Mammoth Rd.**, stated to the Council that the minutes from the last meeting on March 3<sup>rd</sup>. Caron stated  
18 that one of the things she said was incorrect on the minutes. Caron pointed out the comment on line 107 where she stated 48  
19 and what is written in 40, with reference to the fire department. Chairman Farrell asked Executive Assistant Kirby Wade to  
20 make that correction. Caron stated that she was confused with a couple numbers but Chairman Farrell clarified it during the  
21 conversation, on line 120, in the middle of the line after 'understands', Caron stated that the number could also be 45  
22 firefighters, which should be stated in the minutes. Chairman Farrell stated that the minutes will be amended for approval.

23  
24 Town Manager Kevin Smith introduced Londonderry Building Inspector Richard Canuel. Canuel stated that a couple  
25 milestones have been achieved in the Building Department. Canuel stated that one of them has to do with certification of  
26 department personnel and recognition with the International Code Council and the recent evaluation by the insurance services  
27 office. Canuel stated that a few months back he did a presentation of achievement for the assistant building inspector Dan  
28 Kramer and Libby Canuel. This year the International Code Council in partnership with the Target cooperation is promoting a  
29 campaign they call "Get Everyone Certified Challenge". Canuel stated that with recent verifications of Libby and Dan, that  
30 make the Building Department a 100% International Code Council certified staff. In recognition with this achievement, Canuel  
31 stated that they are eligible to received \$1,100 in credit towards continuing education for members of the Building  
32 Department, which will be award by Target to municipalities in three population categories. Canuel stated that the Building  
33 Department was also recognized on the International Code Council website. Canuel stated that the Londonderry Building  
34 Department is the one and only 100% certified staff department in the State of New Hampshire. Canuel thanked the Council  
35 for their support through everything.

36  
37 Canuel stated that the Insurance Services Office recently visited the Building Department and conducted an evaluation of the  
38 Building Code Effectiveness, how well the Building department enforces the codes in Londonderry. The process involves the  
39 department submitting a comprehensive 22 page questionnaire followed by an in office visit by an ISO representative. ISO  
40 will take the data submitted, compiles it by using their building code effectiveness grading schedule. Canuel explained how  
41 they assigned the department a classification number anywhere from 1-10, 10 being the lowest score. Canuel stated that ISO  
42 developed this program a number of years ago in response to catastrophic losses from natural hazards that left the insurance  
43 industry with billions in claims. They evaluate three different elements. Adoption administration of codes, plan review and  
44 field inspection process. Canuel stated that ISO provides a report to the insurance industry. The building code effectiveness  
45 grading schedule is set on a five year cycle. Canuel stated that the last evaluation was in 2005 but he is unaware of the reason  
46 for the delay. At the conclusion of the Londonderry Building Departments 2005 evaluation, they were assigned a grade score  
47 of 5 across the board. Since the last evaluation, Canuel said some improvements were made in those areas. Canuel stated that  
48 there are some categories that are beyond the control of the department to improve, one being the adoption of codes. Canuel

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49 stated that for the department to stay consistent with the New Hampshire state building codes, they enforce the codes that are  
50 currently referenced in the state code, which is one code cycle behind the current nationally recognized standard. Nationally  
51 it's the 2012 edition of the code but we are currently on the 2009 edition of the code. Canuel stated that more than 50% of the  
52 ISO grading accounts for the latest in codes. Canuel stated that the department is not necessarily penalized because a previous  
53 edition is being enforced; they just won't receive full credit to achieve a higher score in the evaluation. Canuel stated that in  
54 other categories they have received a more favorable score. Canuel stated that because their department is one of the  
55 departments that conduct full plan reviews, full field inspection, all aspects of construction, they have a relatively high  
56 workload to staff ratio. As a result, the department receives an actual reduction in points because of that high workload to staff  
57 ratio. Canuel stated that it doesn't negatively affect the overall score; it just limits the ability to improve and attain a higher  
58 score. Canuel stated that they managed to retain a grade of 5 for residential construction, a step increase from 5 to a grade 4 for  
59 commercial construction.. Chairman Farrell thanks Canuel for his level of detail and all that he does for the Town.

60  
61 Chairman John Farrell stated that all candidates, all elected officials running for reelection this election and primary season is  
62 welcome in Londonderry for a tour anytime.

63  
64 Motion to go into Public Hearing made by Councilor Green and second by Councilor Freda. Chair votes 5-0-0.

## PUBLIC HEARING

65  
66  
67 Chairman Farrell introduced Resolution #2013-13, a Resolution relative to the discontinuance and release from public  
68 servitude of the Walking Trail located in the Nevins Cooperative Community and release of easement rights to said trail.  
69 Attorney Morgan Hollis was present to present. Hollis stated that he was present last fall presenting commentary on the  
70 proposed resolution requesting for a discontinuance of a public walking trail. Hollis stated that at the time both the developer  
71 and the association of the Nevins were requesting the town to discontinue and release all rights of public servitude in this  
72 public walking trail. Throughout the Public Hearings a number of issues were raised both by the Town Council and by the  
73 public. Hollis stated that he has been away doing some research and having discussions with the Town's lawyer about the best  
74 way to approach the issues. Hollis stated that three units have encroached in the easement area itself. The easement is  
75 significantly wider than the six foot wide walking trail. The encroachments did not come within the area of the walking trail.  
76 Hollis stated that after talking with the Town Council, it became apparent that there isn't a need or a desire of the town to give  
77 up the easement right. Hollis stated that he is requesting a modification of the current Resolution from the request that the  
78 town discontinue and release all rights from the public Walking Trail. Hollis stated that what he is presenting to the Council as  
79 a proposed agreement, which the Town would keep the easement, there would be no conveyance of the easement itself, but the  
80 town would release its right to build the Walking Trail within the easement. It would also release the developer and the  
81 association from its obligation to build the walking trail. Hollis stated that the easement would remain in the public domain, as  
82 a public easement. The developer offered to pay and that offer remains consistent of \$19,200 for the easement, the amount of  
83 money the town staff calculated, which would be a savings to the developer by not having to build the trail. Hollis stated that  
84 there was an understanding that came about and a proposal to the town that the encroachments need to be dealt with and there  
85 should be some payment consideration for the encroachments. Hollis stated that the request is that it is modified from a  
86 discontinuance and release from public servitude to maintaining the easement but releasing the public's right to build the trail  
87 and releasing the developer and association from an obligation to build it. Hollis also stated consent to the minor  
88 encroachments by three units, 22, 23 and 31, all in consideration for payment of \$35,000.

89  
90  
91 Vice Chairman Dolan asked Town Manager Smith if the payment passes, will the money be fenced off into a special account.  
92 Smith stated that if you look at the final paragraph on the resolution, the last sentence says 'these funds shall be placed in an  
93 account dedicated to the improvement and enhancement of neighborhood trails'. Smith stated that his thought is that the  
94 Planning staff will work with Londonderry Trail Ways to come up with what the best use of those funds to continue to  
95 enhance the trails in the community. These funds will live outside of the operating budget.

96  
97 Councilor Green stated that it was his understanding that the money would be used to create the trails that were supposed to be  
98 at the Nevins, somewhere else. Smith stated that it will happen and what he sees is the Planning staff working with the other  
99 affirmation groups in town to determine where the best place will be to enhance and improve trails. The Council will approve  
100 the disbursement.

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101 **Greg Carson, 19 Tokanel Dr**, stated that there was a lot of discussion last fall and having been one of the residence who  
102 voted for the 2.9 million dollar payment to the original developer, there was some consideration that was a part of that deal and  
103 a part of the consideration was getting the trail developed. Carson stated that the developer put the houses on the lots and in to  
104 the encroachment. Carson stated that the people who bought these homes were deceived. Carson stated that paying the town  
105 \$35,000 in consideration on something that was a part of a very large and expensive deal to the town is unacceptable. Carson  
106 stated that there are other alternatives. Carson stated that his request is that it is taken under advisement and make the  
107 developer come back and look at other possibilities such as acquiring additional lands.

108  
109 Chairman Farrell stated that the Council did have discussions about the 2.9 million that was spent about Elmer Pees and his  
110 development about the special election. Farrell stated that the process is that the aggrieved party of the people who were there  
111 and want to make this change, through their testimony, desired to be able to not go through all the aggravation of being able to  
112 go back at the developer, and as citizens to the community they wanted to move on. Chairman Farrell stated at that point the  
113 Council instructed the Town Attorney to work with Attorney Hollis and work to an agreement that would help everyone,  
114 including the retirement community and something that would be presented to the Council. Chairman Farrell stated he believes  
115 there should be more zeroes at the end of the number amount given. Town Manager Smith stated that the cost of getting it  
116 assessed may be more than what it ends up being assessed at. Smith stated that that was taken into consideration when trying  
117 to figure out what a good value to put on it would be.

118  
119 **Mike Speltz, 18 Sugar Plum Lane**, stated that the trail easement section of the deed is clearly labeled as a conservation  
120 easement. The Attorney General of New Hampshire has published an opinion that says that conservation easements, even ones  
121 that are paid for, are in the public trust, and as such, an amendment to a conservation easement requires approval by the  
122 Attorney General's office. Speltz stated as well that you cannot diminish the value of a conservation easement. Speltz stated  
123 that he agrees with Carson and Farrell, that the worth is way more than \$35,000. The Resolution also talks about the town  
124 having an interest in continuing its ownership. Speltz stated that is doesn't own that land, it's an easement. We have a right to  
125 enforce the easement terms, we hold the easement but we certainly don't own it. Speltz stated that that part of the Resolution  
126 should be corrected so that it doesn't create a false impression.

127  
128 Town Manager Smith stated that Speltz inquired information on this matter, which was shared with Attorney Ramsdell. Smith  
129 stated that Attorney Ramsdell said that he does not believe the original requirement that Nevins build a walking trail was  
130 created in the form of a conservation easement. There is a statute that pertains to walking trails and their discontinuance that  
131 we looked at previously and the discontinuance of a walking trail does not require Attorney Generals approval. Smith stated  
132 that the documents are ok as is.

133  
134 Mike Speltz stated that the language of the Resolution says 'enhance and improved neighborhood trails'. Speltz stated that it is  
135 a little ambiguous where it would allow us to spend this money only on existing trails or whether we could spend it on new  
136 trails, for example, the Rail Trail. Councilor Freda stated that if we put after the word improvement in the very last sentence,  
137 comma construction, than it would read 'the improvement, construction and enhancement of neighborhood trails'. Chairman  
138 Farrell stated that the Council wants to be able to disburse it for what is good for the community. Councilor Butler stated that  
139 the Resolution should state new trails. Smith stated that after the work 'of' it should say, 'of new or existing neighborhood  
140 trails'. **[See highlighted changes attached]**

141  
142 Mike Speltz asked how the price of \$35,000 was arrived at. Chairman Farrell stated that the cost of the trail was \$19,200 to  
143 have it released and the Council said no. Chairman Farrell stated that the Council sent the Town Attorney back to negotiate  
144 with the developer's attorney and they moved to this number through a number of conversations that the Council was not  
145 involved in. Chairman Farrell stated that the tried to get to a fair market number base on Town Manager Smiths explanation  
146 that it would cost us more for us to get is assessed than to understand what it costs.

147  
148 Speltz stated that the reason he felt that there was a requirement to involve the Attorney General is because the language of the  
149 deed points to the RSA that governs conservation easements, which led him to believe that it must be a conservation easement.  
150 Speltz stated that he respects the fact that the Town Attorney has chosen otherwise and he will seek additional advice on it.

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152 Councilor Green asked Smith how the Town can prevent developers from getting away with things like this in the future.  
153 Green stated that he agrees, \$35,000 is not anywhere near a price to pay for going against everything that the Council laid out.  
154 Green stated that he doesn't want it to be a place that developers don't come and build, but certainly when we lay out an  
155 easement and they disregard it, it is bad practice. Smith stated that he went back and looked at the surveys that were done and  
156 they were all had the stamp of approval that the surveys were done appropriately, they homes were just built in the easements.  
157 Smith stated that one of the things that are not checked is if it was built appropriate to where the surveys are done. It is not  
158 something we do as a town. Smith stated that there are a lot of mechanisms in place to try to make sure that it is done properly.

159  
160 Richard Canuel stated that on a subdivision like the Nevins, especially when it is like a community, where there are no set  
161 property lines between each structure, the location of the structure is looked at in relationship to where they were proposed on  
162 the approved site plan. Canuel stated that it is required that the survey provide a certified foundation plan to show that the  
163 structures are located close to where they were proposed and that they meet the buffer setback requirements of the subdivision.  
164 Canuel stated that the town does not enforce easement provisions; they are not a part of the ordinance. Vice Chairman Dolan  
165 asked if it was a hole in our ordinance, that we don't enforce that. Canuel stated no, that an easement is a private agreement  
166 between two parties that the town is not a part of.

167  
168 Vice Chairman Dolan asked, if it is ok with the Council, that they ask the Town Manager to look at if there is a reasonable  
169 adjustment to the town ordinances that might encourage us to have to have some assurance or proper placement of buildings  
170 when the public owns it.

171  
172 Chairman Farrell stated what the Council is trying to satisfy here and the question before the Council is, we have 135 homes,  
173 300 or so people who want to have this removed front their community. There is an agreement in front of the Council that  
174 Attorney Ramsdell has told the Council is valid. Chairman Farrell stated that this can be tabled and do more investigation or  
175 the Council can move forward with a vote.

176  
177 Carson stated that there are some unanswered questions and tabling it to the next meeting might be the most appropriate thing.

178  
179 Councilor Butler stated that he would like to table it. Vice Chairman Dolan recommended that the public hearing be continued  
180 to next meeting. Chairman Farrell stated that no motion to continue it is needed. Chairman Farrell stated hopefully the Council  
181 will have a vote on April 7<sup>th</sup>.

182  
183 Councilor Butler clarified that the Council did not create this problem and that the builder did. Diligence needs to be done and  
184 find out about the conservation easement question.

185  
186 Motion to close the Public Hearing made by Vice Chairman Dolan and second by Councilor Butler.

187  
188 **OLD BUSINESS**

189  
190 **None**

191  
192 **NEW BUSINESS**

193  
194 Councilor Green read **Order #2014-06**, an Order relative to expenditure of Maintenance Trust Fund for Various Projects.  
195 Motion to approve Order #2014-06 made by Councilor Green and second by Councilor Freda. **Chair votes 5-0-0.**

196  
197 Chairman Farrell introduced the first reading of Ordinance #2014-01, an Amendment to the Zoning Ordinance Relating to  
198 Rezoning Map 15, Lot 239 at 562 Mammoth Rd. Motion to wave the first reading and move to the second reading and public  
199 Hearing at the next Council meeting made by Vice Chairman Dolan and second by Councilor Butler. **Chair votes 5-0-0.**

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## APPROVAL OF MINUTES

Motion to approve minutes as amended from earlier in the evening from March 3, 2014 made by Councilor Green and second by Councilor Freda. **Chair votes 5-0-0.**

## LIAISON REPORT

Chairman Farrell stated that Councilor Butler will be moving to Planning Board. The rest of the Liaisons will be figured out at another meeting.

## TOWN MANAGER REPORT

Town Manager Smith stated that right now the Lions Hall's floor where the events take place has been deemed unsafe by the town's Code Enforcement Officer. Smith stated that a structural engineer came to the Hall and looked at the issues were. Smith stated that the engineer will be getting back to him to let him know what needs to be done in order to make the floor structurally sound again. Smith stated at this point the entire floor has to be ripped up. Smith stated that Steve Cotton looked at three bids and it went to the lowest bidder. Smith stated that a little over \$2,000 from the Expendable Maintenance Trust Fund will be used to begin ripping up the floor next week. Steve Cotton stated that the engineer said that a lot of the timbers can be saved so that's the goal.

Smith stated that as an update on the budget, there is currently a spending freeze in place, and as of the middle of March the good news is the gap is closing in terms of where we should be at this time of the year and where we were at this time last year, Smith stated that we are still over so the spending freeze will still be in place, but the number will be reviewed again at the end of March to see where we are at.

Smith made an announcement for the Rotary Club who will be having their Spring Fling with Tony Pace, an evening of energy, music and comedy on Friday, April 18<sup>th</sup> at 8 PM at the Yard Restaurant.

## BOARD & COMMITTEE APPOINTMENTS

Motion to appoint Jim Tirabassi to the Zoning Board of Adjustments made by Councilor Green and second by Councilor Freda. **Chair votes 5-0-0.**

Chairman Farrell stated that he would like to entertain a motion for Chairman for the next year. Councilor Green nominated Tom Dolan as Chairman. Second by Councilor Butler. **Chair votes 4-0-1.** Dolan abstained from the vote. Dolan thanked Farrell for leading the Council for the last two years.

Chairman Dolan entertained a motion for a Vice Chairman. Councilor Farrell motioned Councilor Butler for Vice Chairman. Second by Councilor Green. **Chair votes 4-0-1.** Butler abstained from the vote.

## ADJOURNMENT

Motion to adjourn made by Councilor Farrell and second by Councilor Freda. Chair votes 5-0-0.

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Notes and Tapes by:	Kirby Wade	Date: 03/20/14
Minutes Typed by:	Kirby Wade	Date: 03/27/14
Approved by:	Town Council	Date: 04/xx/14