

# LONDONDERRY TOWN COUNCIL MEETING MINUTES

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2 **May 4, 2015**  
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4 The Town Council meeting was held in the Moose Hill Council Chambers, Town Hall, 268B Mammoth  
5 Road, Londonderry, NH.  
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7 Present: Chairman John Farrell; Councilor Tom Dolan; Vice Chairman Jim Butler; Councilors Tom  
8 Freda and Joe Green; Town 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 led by the Boy Scouts, James, Nick,  
13 Jake, Sean and Patrick. This was followed by a moment of silence for all those who serve us here and  
14 abroad in uniform and for all first responders, especially Londonderry's first responders.  
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## 16 **PUBLIC COMMENT**

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18 Chairman Farrell stated that Police Chief Bill Hart would like to say a few words about Nation Police  
19 Week. Chairman Farrell read a Proclamation from the Council. Chief Hart read into the record a letter  
20 **[see attached]**.  
21

22 Chairman Farrell mentioned that the Town Managers Office received a letter from to ask for a rehearing  
23 of the decision granting a rezoning application located on map VI, lots 37 and 38 **[see attached letter]**.  
24 The Council approved the rezoning at their April 6<sup>th</sup>, 2015 meeting. It has been suggested that it should  
25 be addressed. The uniform opinion received from legal council is the applicable statute RSA 677:2 allows  
26 for a party impacted by a Town Council decision in regard to request the rehearing. The Council may  
27 grant a rehearing if in its opinion it's within good reason for a rehearing. Councilor Dolan motioned that  
28 the Council acknowledged the acceptance of the letter and motioned to deny the rehearing. Second by  
29 Vice Chairman Butler. Chair votes 5-0-0.  
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## 31 **PUBLIC HEARING**

32  
33 Chairman Farrell introduced Ordinance #2015-03, an amendment to the Municipal Code, title IV,  
34 chapter V, solid waste recycling. Janusz Czyzowski presented on the Ordinance. Czyzowski stated that  
35 this is to add fees for collection, handling and recycling of limited quantities of mercury containing  
36 lightbulbs originated form small businesses in Londonderry. Disposals of these lightbulbs have been  
37 banned since 2008. They are currently accepted free of charge at the Drop Off Center, but only for  
38 residents. There was a survey provided along 102 and it provided information stating that they are all  
39 using separate companies for the disposals of their bulbs. Motion to approve Ordinance #2015-03 made  
40 by Councilor Dolan and second by Councilor Green. Chair votes 5-0-0.  
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## NEW BUSINESS

Chairman Farrell introduced Order #2015-12, expenditure of Maintenance Trust Funds for various projects. Town Manager Smith stated that this is for winter maintenance for the Town Hall and other town buildings on April 8<sup>th</sup> and April 9<sup>th</sup>. It's also for fire alarm repair at Town Hall as well as AED battery repair at Town Hall. The rear exit fire door had to be replaces and finally a wall repair at the Senior Center. Motion to approve Order #2015-12 made by Councilor Green and second by Councilor Freda. Chair votes 5-0-0.

## APPROVAL OF MINUTES

Motion to approve the Town Council minutes from April 20, 2015 made by Councilor Dolan and second by Vice Chairman Butler. Chair votes 5-0-0.

## ADJOURNMENT

Motion to adjourn made by Councilor Dolan and second by Councilor Green. **Chair votes 5-0-0.**

Notes and Times by:

Kirby Wade

Date: 05/04/2015

Minutes Typed by:

Kirby Wade

Date: 05/06/2015

Approved by:

Town Council

Date: 05/18/2015

# National Law Enforcement Week 2015 Letter

In 1962 President Kennedy proclaimed and Congress established May 15 as National Peace Officers Memorial Day and the week in which it falls as National Police Week. This year it begins this Sunday, May 10, and concludes Saturday, May 16.

Today the headlines, Ferguson, MO, Eric Garner, North Charleston, Baltimore, seem to differentiate police from us as community members. As the police chief here in Londonderry, I felt it important to weigh in.

For fifty three years, since President Kennedy instituted National Police Week we have praised the courage of police men & women who each day step out into a world that surrounds us, but that we as citizens often cannot see. In doing so a police officer, often by herself, stands ready to serve **us** at ultimate cost if necessary.

You will note I said 'us,' not 'you.' The distinction is important to both police & the community we serve, our community, Londonderry.

Police and the community they serve do well to remember: we, the police, are you, the community. Just like you; we bring our kids to the same schools that you do, the same churches, the same soccer games. Our interests as police when we go home are identical to yours, those of the community: to be safe in our homes, and secure in the hope for a good life that each day gives to us as families in this Town, in this State in these States, United.

Policing works best when the interests of the organization and the community it serves are closely aligned.

It works best when we, as police men & women, actualize and live the aspirational values as human beings that ministers & politicians, priests, teachers & counselors talk about.

Policing works best when we as police men and women treat everyone, always, fairly, remembering always that before the law, those who we arrest are not guilty.

Policing works best when we remember that almost everyone that we come in contact with has had a bad day or is about to have one.

Policing works best in remembering that we must treat every person that we come in contact with decency, respect & dignity. Always. Every call. Every time.

That is how we earn the trust of the community we serve.

It is not an accident that here in Londonderry I believe we have the trust of our community. It is a trust earned over almost a quarter century. It is a trust re-earned

each day, over and over again. It is a trust that can be broken in an instant, if the foundation of trust built over years is not there to support it.

I do not say that because I believe it is true nor because I am hopeful that it is true, or because I want it to be true.

It is supported by these simple facts: there are sixty-one officers who work for the people of Londonderry; they responded to 25,042 calls for service in 2014 (a call for service is when an officer self-initiated her own activity or was dispatched to a call; this doesn't include walk-ins nor does it include telephone calls into the PD with a request).

Not including those minor matters handled immediately by a supervisor, there were fourteen (14) investigated complaints about officer conduct here in Londonderry last year. Eleven (11) were either categorized as not enough evidence or the officer was fully exonerated. Three (3) times out of 25,042 calls the officer was found to be at fault

So it is clear we do not discourage officer complaints; rather we are hopeful that you, our community, will bring your concerns to us. I am not naïve: some will be defensive responses to our legitimate actions. Others will be a concern to us, and we will address it as appropriate. In all cases, we as your public servants will learn from the complaint made.

This, a community that trusts its police service, and a police department that serves its community, does not happen by accident. It is built on a foundation of excellent hiring procedures that seeks good and decent servants, who have the skill set first to be honorable, mature, thoughtful & kind people, and only then good cops.

The frame built on that foundation is training that starts on your first day as Londonderry police and ends the day you retire. The system that keeps it working is strong, well trained, well coached supervision, always balanced, sometimes firm, and always willing to hear the other side and in the face of the facts, change your mind.

It is supported by you & us who live here, the community, with good pay, good benefits a good place to go to work every day. For that we thank you.

So this Police Week, let us take a moment to remember that police are not different than you or me. They go to work every day to a job that is a job. They are you and me. Kids, mortgages, bosses who are a pain in the butt; it is no different in that way.

Their job is different though: each day we ask them to put on an anti-ballistic vest & a gun, go out and solve problems intractable since the beginning of time: drug abuse, violence, theft among others. It is different too in that they seek each day in how they do their job aspirational values, justice, equality before the law, kindness, fairness, courage that we only have to talk about, but that they police have to live.

The do so with full knowledge that if they fail any day, any call could go south, and you may be the criminal, you may be suspended, fired, killed, permanently injured.

For the most part, certainly here in Londonderry, and likely across our country, the cops do a pretty good, even a very good job. When it comes to humans beings, my experience says, that is an achievement.

Best regards,

William Ryan Hart, Jr.  
Chief of Police  
Londonderry, NH



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Admitted in: MA & NH

April 29, 2015

5/4/15

**BY HAND-DELIVERY**

Londonderry Town Council  
Londonderry Town Hall  
268B Mammoth Road  
Londonderry, NH 03053  
Attn: Mr. John Farrell, Chairman

Re: Motion for Rehearing of Decision Granting Rezoning Application of Property  
Located at Map 6, Lots 37 and 38

Dear Mr. Farrell and Honorable Council Members:

This letter is submitted on behalf of our client, the Kendallwood Townhouse Condominium Association (the "Association"). The Association is the organization of unit owners representing the interests of the Kendallwood Townhouse Condominium (the "Condominium"), an abutter to the properties and 6 and 8 Mohawk Drive (Map 6, Lots 37 and 38) (the "Subject Property") owned by Riverview LLC ("Riverview").

This letter is a motion for rehearing, pursuant to New Hampshire RSA 677:2, of the Londonderry Town Council's decision to grant Riverview's Rezoning Application to change the zoning designation for the Subject Property from a C-IV Zone to a C-I Zone. The Town Council voted to approve Riverview's Rezoning Application at a hearing on April 6, 2015.

The grounds for the Association's motion for rehearing are as follows:

1. The zoning change is unreasonable.

No sound reason exists for the zoning change. Riverview proposes to develop a wine bistro/tapas restaurant at the Subject Property. Riverview could develop this use under a C-IV Zone by applying for and obtaining a Conditional Use Permit from the Londonderry Planning Board. (Zoning Ordinance 2.2.2). It is unreasonable to allow Riverview to develop the Subject Property as a C-I Zone, because the needs of and impacts to the neighborhood were not considered. Evidence was presented to the Town Council at the public hearing that the proposed development is out of character for the neighborhood, not only as to the proposed use, but also as

to the elevation of the proposed building, which is substantially taller than the low profile residential and commercial buildings in the surrounding area. Moreover, evidence was presented at the public hearing that the front of the Condominium building closest in proximity is only approximately 60 feet to the boundary line shared with the Subject Property. It appears that no other residential building in Londonderry is located so close to a commercial zoned property. Given these circumstances, the Subject Property should remain a C-IV Zone so that the developer must apply for a conditional use permit and demonstrate that each of the standards for a conditional use permit are satisfied—for example, without limitation, that the interests and needs of the neighborhood and community are met, and that the use would not have a substantial adverse effect on the rights of the Condominium owners. (Ordinance Sections 1.5.2 and 2.4.4).

In addition to avoiding a Special Use Permit, the zoning change relieves Riverview of the 30-foot height limitation under a C-IV Zone. (Zoning Ordinance Section 2.4.4). Riverview represented to the Town Council at public hearing that it wanted the zoning change to construct a 35 foot-high building. Riverview, however, presented no information suggesting that its desire to have a taller building is a reasonable basis upon which to grant a zoning change. If a compelling reason exists for a taller building, Riverview could simply seek a height variance from the Londonderry Zoning Board of Adjustment (“ZBA”) without a zoning change. If Riverview were to apply for a height variance, then the ZBA would necessarily require Riverview to demonstrate that the additional building height would not be contrary to the public interest and would satisfy the additional requirements for a variance. RSA 674:33. In the proceeding before the Town Council, however, Riverview was excused from making any showing in this regard, and the Town Council failed to examine or consider the light and privacy interests of the Condominium.

Granting the zoning change to C-I allows Riverview, by right, to construct a building up to 50 feet in height pursuant to Ordinance Section 2.4.2, with no consideration whatsoever to the light and privacy interests of the Condominium. Evidence was presented at the public hearing that the abutting Condominium property is ten feet lower in elevation than the Subject Property and that the proposed location of Riverview’s building will cast an afternoon shadow on the nearest Condominium building, thereby preventing adequate light to the building. Evidence was also presented that the additional building height allowed by the zoning change will substantially interfere with the Condominium resident’s privacy interests, as restaurant patrons will have a line of sight directly into the second story bedroom windows of certain Condominium units. It is unreasonable for the Town Council to grant the zoning change without consideration of the rights and interests of the Condominium, and a rehearing is warranted.

2. The zoning change is unlawful.

The zoning change is unlawful because it is spot zoning. The New Hampshire Supreme Court has defined spot zoning as an area that “is singled out for treatment different from that of similar surrounding land which cannot be justified on the bases of health, safety, morals or general welfare of the community and which is not in accordance with a comprehensive plan.”

Munger v. Town of Exeter, 128 N.H. 196, 198 (1986). Granting the request of a single owner to zone a small area is spot zoning unless it is demonstrated that “there is a public need for it or a compelling reason for it.” Id. Rivierview’s application for a zoning change is a request of a single owner to zone a small area. At the public hearing, Rivierview stated that the main reasons it applied for the zoning change was to make its property more flexible for other uses and more valuable for sale in the event it is unable to develop a wine bistro/tapas restaurant. These reasons, in the absence of any public need or compelling reason, make the zoning change unlawful spot zoning.

At the public hearing, there was no inquiry or discussion by the Town Council concerning a public need, compelling reason, or whether the change is in accordance with a comprehensive plan. Members of the Town Council indicated that they did not believe that changing the Subject Property back to its prior C-I Zone designation could constitute spot zoning, and that the Condominium unit owners had no reasonable expectation of a C-IV Zone because many of them purchased their units when the Subject Property was designated as a C-I Zone. But the law does not recognize any such exceptions to spot zoning. The prior zoning of the Subject Property is irrelevant in the absence of a finding of a public need, compelling reason, and that the change is in accordance with a comprehensive plan.

Moreover, the rezoning of the Subject Property is inconsistent with the surrounding land. When the Town Council changed the Subject Property zoning from C-I to C-IV in 2013, it found that the “rezoning will make [6 and 8 Mohawk Drive] consistent with the zoning of the surrounding parcels.” The zoning of the surrounding parcels is no different today than it was in 2013, and therefore the rezoning of the Subject Property back to a C-I Zone necessarily means that the rezoning is inconsistent with the surrounding parcels. The Town Council made the correct decision in 2013 to change the zoning of the Subject Property to C-IV. The C-IV Zone allows for residential and light commercial use, and the Subject Property is surrounded by both commercial and residential uses. The C-IV Zone provides the right balance and transition between these uses, whereas changing the zoning for the Subject Property to C-I ignores the surrounding parcels that are zoned exclusively for residential use.


For all the reasons stated above, the Association respectfully moves for a rehearing on Rivierview’s application for a zoning change and the Town Council’s decision to grant the application.



Respectfully submitted,  
KENDALLWOOD TOWNHOUSE  
CONDOMINIUM ASSOCIATION,

By its attorneys,

MARCUS, ERRICO, EMMER  
& BROOKS, P.C.

  
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cc: Kendallwood Townhouse Condominium Association  
Andrew A. Prolman, Esq.