

TOWN COUNCIL MEETING
April 6, 2009

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

PRESENT: Town Council: Chairman Mike Brown; Vice Chairperson, Kathy Wagner; Councilors: Paul DiMarco, Sean O’Keefe; Town Manager Dave Caron; Executive Assistant, Margo Lapietro. Absent: Councilor Brian Farmer.

CALL TO ORDER – PUBLIC SESSION

Chairman Brown opened the meeting at 7:05 PM with the Pledge of Allegiance led by Boy Scout Troop 1910. This was followed by a moment of silence for the recent loss of resident Tom Kennedy.

PUBLIC HEARING

Councilor O’Keefe made a motion to open the public hearing, seconded by Councilor DiMarco; Council’s vote 4-0-0.

ORDINANCE #2009-01 – Relative to Amendments to the Zoning Ordinance Regarding Fences. Councilor DiMarco read and made a motion to accept the Ordinance, seconded by Councilor O’Keefe. Chairman Brown said the Planning Board did vote unanimously to approve this Ordinance. He explained the Ordinance is a creation of a new section that addresses the requirements and installation of new fences and an amendment revising the definition of the fence. Richard Canuel, Senior Building Inspector and Art Rugg, Chair of the Planning Board were in attendance to provide additional information. Councilor DiMarco asked if the amendment was to correct errors, was there a lack of a definition of fences in the past. R. Canuel responded they have had a few incidents in the past where fences have been installed contrary to our ordinances. He said they have had site distance and right-of-way (ROW) issues. The Town attorney recommended the definition of fences be clarified for enforcement. Councilor DiMarco questioned whether “spite fencing” should be referenced in the Ordinance because it is a state statute. R. Canuel said it was purposefully mentioned because it is a civil matter not a town matter and he wanted to direct the property owner to that state law. Councilor O’Keefe asked what exactly defines “spite fencing”, R. Canuel responded it is very difficult to do so. Councilor Brown asked R. Canuel to explain why all private fences are prohibited in the public right of way (ROW), which he did. No input from the public; **Council’s vote 4-0-0.**

PUBLIC COMMENT

Chairman Brown announced that the Knights of Columbus “Tootsie Roll Drive” will be held Friday 5/8/09 from 6:00 PM – 9:00 PM and Saturday, 5/9/09 from 8:00 AM – 4:00 PM at Shaw’s, Market Basket, & Dunkin’ Donuts on Mohawk Dr. & Nashua Rd.

He also announced that we are looking for volunteers for “Beautify Londonderry” Information is located on the Town website.

OLD BUSINESS

NEW BUSINESS

Order #2009-07 – Relative to the Distribution of Conservation Funds to Purchase Property Councilor O’Keefe read and made a motion to accept the Order, seconded by Councilor DiMarco. Chairman Brown stated this is not a public hearing, which already took place before the Conservation Commission. Mike Speltz, Alternate Member of the Conservation Commission, presented a PowerPoint slide presentation. He explained the property consist of a 74 acre conservation easement. It is comprised of three parcels and the request is to spend \$1,028,600.00 for the purchase price. He explained that there were four individuals as well as a business involved in the transaction. He proceeded to show pictures of the property and explained the existence of trails through the property. There are meadows and vernal pools on the property. Windsor Blvd. abuts the property which has Black Brook and Beaver Brook on it that contributes to the flooding issues on Brookview Drive. He explained there are approximately 4-5 acres around the existing saw mill that are excluded from the easement that will allow the Estey’s to continue with their lumber business. He explained that this purchase would allow the Town to connect to the Mack Hill Conservation Area. It will preserve a viewshed on Rt. 102 which is one of the objectives in the Master Plan. He explained that the agreement took so long because of the four families involved and they struggled with what to do with the mill area. It is probably the most valuable part of the property valued at a half million dollars. The Conservation Comm. explored all possibilities with the property and ended up with working it out as an easement acquisition. On March 26, 2008 they wrote a formal letter to the Estey’s and outlined all the possibilities and offered them the easement purchase of \$1,028,600. They then proceeded to work on the easement terms, which went through three drafts. The Conservation Commission held a public hearing on February 24, 2009 and voted to recommend that the Council approve the project. He explained that when the appraisal was completed in early 2007 the family was not prepared to sell the third section located at the northern end of the properties. The January, 2007 appraisal only addressed the first two parcels including the several acres where the saw mill exists that will now be excluded from the easement. The offer was determined by removing the excluded area from the equation and then using the per acre value of the appraisal to determine the addition of the third lot. The offer was no higher than the fair market value of the land which was determined to be \$15K per acre if a developer was to develop the land. He then proceeded to explain how they arrived at the \$1,028,600 price. He said there have not been any large lot sales in Londonderry so there are no current comparable sales. He said if another appraisal was requested three outcomes may occur:

1. Town spends another \$3K to find out the property has gone up in value, thus the acquisition price goes up; not likely with today conditions.
2. Town spends another \$3K and find out the value is roughly unchanged.
3. The land is appraised at less than we offered and the owners will have to decide if they want to go forward with the deal or take it off the market to wait for an increase in value.

If Town orders another appraisal we would be compromising the “good faith” that the owners place in us. It wouldn’t make much difference or we would be forced to wait and pay more for the easement later on. Councilor O’Keefe asked if we approved this would ATV’s be allowed on the property. M. Speltz said this would not be Town property, it would be owned by the Estey’s. They as property owner have the right to grant permission for ATV’s to use the property. At this point in time they have not granted anyone permission to use ATV’s on their

property. Councilor DiMarco asked what the town easement allows the citizens of Londonderry. M. Speltz said it gives the public the right to non-motorized, pedestrian access. The easement prohibits posting the property against pedestrian and non-motorized access. Councilor DiMarco asked if any other pieces of Open Space have the same conditions at this easement. M. Speltz replied that all of them are very much the same. This easement limits public access to the forested portions of the property to keep people away from the industrial operation of the mill. Councilor DiMarco asked if this easement is in perpetuity so if they sell the property the new owners will be held to the easement, M. Speltz responded yes. Councilor Wagner asked what was the main reason to purchase the property. M. Speltz said he has been working with the Estey's for several years. In 2003 the Conservation Comm. held a town-wide meeting to allow people to nominate land to acquire in Open Space acquisitions. This was one of the highest scoring parcels due to its scenic value. Councilor Wagner questioned if the property is in the Performance Overlay District. Chairman Brown responded the front lot containing the mill is. M. Speltz confirmed it was and the back lots were residential. Councilor Wagner said that the mill piece could be commercially developed. M. Speltz said it could be a possibility. Councilor Wagner asked if purchasing the property would help keep the viewshed. M. Speltz responded the purchase will allow the mill to remain viable and as long as the Estey family is there it will remain a saw mill operation. The Estey's are committed to keeping it a sawmill. Chairman Brown asked how many residential house lots could be erected on the property. M. Speltz said this appraisal took a different approach, it did not complete a build out analysis, but rather included a comparative analysis. M. Speltz estimated that it would roughly support 50-60 houses. Chairman Brown asked if this property is under threat of development. M. Speltz replied in today's economy it is not in eminent danger. According to Harold Estey they have had plenty of inquiries about the property but they don't want it developed. Chairman Brown said that he was struggling with the appraisal being two years and 3 months old. He asked if this was the longest gap with one of their purchases. M. Speltz replied he thought it was, he said it was not clear if there would be a difference. He does not want to jeopardize this purchase, the land will continue to go up in value. Raw land has a fixed supply, only determined by the demand side. Chairman Brown recommended spending the money for an updated appraisal. Councilor O'Keefe said the appraisal was done for the Estey's and asked if the town actually did an appraisal. M. Speltz said the Town cooperated with the Estey's and split the cost. Appraisers have a professional obligation to be objective. Councilor O'Keefe clarified that the third piece was not included in the initial appraisal of the two properties, M. Speltz responded yes. M. Speltz proceeded again to explain how they arrived at the price for the third piece that is the better piece of land. Councilor DiMarco said the easement which is dated 2/19 went from \$1,262,000 down to \$1,028,000. M. Speltz responded the appraiser included the property that they excluded which was the saw mill portion. Chairman Brown opened the meeting up to general comments from the public. Tom Freda, 30 Buckingham Dr. said he was concerned about the appraisal price, the length of time it took for the Estey's to accept the offer and the fact that there was no high intensity soil testing done on the land to see if those lots were developable. He provided the Council with calculations that developers use for the price of raw land. He said the Conservation Commission should look to see if they can purchase the easement for less, which would result in more money remaining in the Conservation Commission funds. He said the Estey's sat on the proposal for six months, nobody sits on a land deal that long. James Laudini, High Range Road said the property is fantastic, people are using it, and the price is worth it. Mark Oswald, 11 Verdi Lane said since 1/07 there have been 69 land parcels that have gone on the market in Londonderry. Only 8 have sold, and they sold for almost 99% of their listed price, the average was \$153K. They ranged in size from 1.1 acres to 2.07 acres for a single family house lot. Tom Estey said the reason it took so long for him was because he, his father and uncle

had to give up their rights to the property. They left the five acres out so they could have some property for themselves. The market will pick up and the 75 acres for \$1M will definitely go up. Ken Henault, 10 Preserve Dr. a full member of the Conservation Commission said if we order another appraisal and if the results show a lower value the Estey's may walk away. The property value will come back, we should take it right now. Hank Peterson, 28 Peabody Row expressed his concern about the property being developed resulting in the demand for more town services and the raising taxes for educating students. Councilor Wagner asked H. Peterson when was the last time that someone asked to buy his 22 acres, he responded in March with a blank checkbook. Dan Hicks, 110 Adams Rd, said his family has been taxpayers in town for decades. When you make an offer you have to honor that. Open Space is why people come to Londonderry, you have to take this offer. Reed Clark, Stonehenge Rd. said we should honor the commitment. He questioned if hunting would be allowed on the property. M. Speltz responded the owners would have the option of prohibiting hunting. **Council's vote 4-0-0.**

December, 2008 Ice Storm Debris Removal – Town Manager Caron stated that FEMA will provide funds to clean the Town's ROW. Public Works has estimated the cost at \$100K to remove the trees and limbs from trees which are in the ROW. That area is described as 13 feet either side of the paved area. FEMA will reimburse us for 75% of the clean-up. Public Works will come up with \$25K from their FY09 budget. Chairman Brown asked what is to prevent people from dragging limbs from other parts of their yard and adding to the pile in ROW. Town Manager Caron responded FEMA will pay for debris that fell in the ROW and he hopes that homeowners will honor that requirement. The consensus of Council was to proceed with the project.

Town Council FY10 Goals and Objectives – Chairman Brown said each of the Councilors forwarded what they would like to see for their goals and objectives for the upcoming year to the Town Manager. Due to the fact that Councilor Farmer is not in attendance he said they would like to move this item to the April 20 meeting. Councilor DiMarco noted that there were some common areas to be discussed.

APPROVAL OF MINUTES

Minutes of Council's Public Meetings of March 16. Councilor DiMarco made two minor changes to lines 42 and 43. On 42 "planned" is spelled wrong and on 43 the radio station is WLLO. **Councilor DiMarco made a motion to accept the meeting minutes of 3/16/09 as amended, seconded by Councilor O'Keefe; Council's vote 4-0-0**

OTHER BUSINESS

Liaison Reports – Councilor DiMarco attended the Planning Board meeting where Elliott Phase 4 and 5 were approved. Planning Board Chair Art Rugg said they totaled a 60K sq. ft. facility. Councilor DiMarco said part of the off-site improvements is to put a light at the corner of Buttrick and Mammoth Rd. and that should be brought to the attention of the Traffic Safety Committee. He further said the Planning Board re-appointed the same officers as last year.

Councilor Wagner said the Elder Affairs Committee wants to appear in front of Council regarding affordable housing for the elderly at the first meeting in June. The Library Trustees have moved the locale of their meetings back to the Library meeting room where the meetings will not be televised.

Councilor O’Keefe was not able to attend the Budget Meeting but they had their re-organizational meeting. Mark Oswald is the Chair, VC is Tom Dolan. They talked about issues they want to bring up this year.

Chairman Brown attended the Heritage Commission meeting on March 26. There was a design review of a proposed business on Rockingham and Liberty. It is a gas station/convenience store, the developer stated that there is significant potential for development along that area. He stated he attended the SAU re-organization meeting. Steve Young is the Chair, Ron Campo is VC. He stated they also released their meeting calendar, part of the goals discussion next month is to take a look at the meeting calendar and adjust it accordingly. The school board did say they expect a date to meet with Council and he said they should also discuss meeting with the Budget Committee.

Board/Committee Appointments/Reappointments - Appointment to the Manchester Airport Authority. Chairman Brown said we have had an outstanding response of 13 volunteers for the position. Councilor Wagner recommended doing the interviews at the Council meeting on 5/4/09. Town Manager suggested getting together to review the applications on 4/20/09. Reed Clark brought up the point that Council should interview all 13 people in public. Chairman Brown said they would take that into consideration.

ADJOURNMENT

Councilor O’Keefe made a motion to adjourn at 9:10 PM, seconded by Councilor Wagner; Council’s vote 4-0-0.

Notes and Tapes by: Margo Lapietro **Date:** 04/06/09

Minutes Typed by: Margo Lapietro **Date:** 04/08/09

Approved; Town Council **Date:** 04/20/09