

**TOWN COUNCIL MEETING**  
**August 17, 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 (7:10 PM); Vice Chairperson, Kathy Wagner; Councilors: Sean O’Keefe, Brian Farmer; Paul DiMarco; Town Manager Dave Caron; Executive Assistant, Margo Lapietro.**

**CALL TO ORDER – PUBLIC SESSION**

**Vice Chairperson Wagner 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 HEARING**

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

**Ordinance #2009-03 – Relative to an Amendment to the Zoning Ordinance Regarding Small Wind Energy Systems. Councilor DiMarco made a motion to adopt the ordinance, seconded by Councilor O’Keefe.** Town Planner Tim Thompson explained the revisions are due to new state statutes that became effective July of this year. It establishes a process whereby local communities cannot unreasonably prohibit or over regulate the provision of small wind energy systems which are small scale wind powered projects, typically residential windmills that generate about 5-10 kilowatts. The Town has more control over larger generating systems. The State Office of Energy and Planning created a new section under 3.15 (Small Wind Energy Systems) specifying the requirements for:

- Construction and use of small wind energy systems.
- Creation of definitions relative to small wind energy systems
- Development of procedures for application, development standards, compliance, enforcement, and removal of abandoned systems.

The only changes made to the state’s model language is making the sections appropriate for our zoning ordinance and changing some of the terminology related to our staff positions in town. The process would be obtaining a building permit through the Building Dept., no Planning Board approval is required unless they go to large power generating system. Councilor O’Keefe asked how tall the structures are. T. Thompson replied he has seen generally between 90 and 100 feet tall, either the propeller style or smaller ones. Councilor Farmer asked for clarification of height and distance from property lines. T. Thompson replied if the building is occupied and has a pool or barn on it, it would have to be located 150’ from the property line. Councilor DiMarco talked about “tweaking” the ordinance when blade size of the windmill comes into question. **Council’s vote 4-0-0.**

**Councilor Farmer made a motion to close the public hearing, seconded by Councilor DiMarco, Council’s vote 4-0-0.**

## **PUBLIC COMMENT**

Reed Page Clark III, Stonehenge Drive said he would like to be able to make public comment on items on the agenda tonight. Discussion ensued about accepting public comment. Ola Lessard, 12 Ashley Drive asked when she should speak about Trailways. She was told she could comment when the item comes up on the agenda. David Wier, Jefferson Drive asked if NH911 was going to be discussed tonight; Councilor Wagner stated it was not on the agenda tonight. Councilor Farmer explained at the last meeting the Council established a taskforce; they will return after the first of the year to discuss their suggestions and recommendations.

## **OLD BUSINESS**

**Economic Development Update** – Andre Garron, Community Development Director gave his monthly update for Economic Development. The draft has been completed for the Small Area Master Plan for North Londonderry. The Planning Board had a public hearing on 7/1/09 which was continued to 9/1/09 for more information, allowing staff to consolidate some of the recommendations that were received. The draft of the Flexible Industrial District regulations within the Pettengill Rd. area has been completed, staff is reviewing it to insure that it is consistent with the input received over the last two years. They are targeting 9/9/09 to share that draft with the Planning Board. He said staff is continuing to work with the consultant to develop the Town's Economic Development website. They are working on integrating the message into the website. They are also working with the Economic Development Taskforce, the Planning Board, the School Board and the ZBA to update everyone. They would like to meet with Town Council on 9/21/09 to present it. The marketing strategy has proceeded, they are refining the context and are currently working on the logo. Page Rd/Rt 28 Intersection plans are in the hands of the NHDOT. Janusz Czyzowski, Public Works Director stated the final plans were submitted. Councilor Wagner asked J. Czyzowski when construction would begin, he responded late fall, finish date would be next September. A. Garron said we were unsuccessful in getting federal funding through Senator Sheehan's office for the Pettingill Road Project. We still have a funding request through Congresswomen Shea-Porter, hopefully that will come through. Staff is still proceeding with putting together the information for the TIF district. The Planning Board held a workshop and received input on revising the draft of the Workforce Housing Ordinance. The latest draft received positive reviews from legal council. The Planning Board will hold another workshop on 9/9/09; the public hearing will then be scheduled with the Town Council. A. Garron stated that they were holding off engaging the services of the Town's Impact Fee Consultant to develop a rules and implementation plan for the impact reimbursement program until they get the results of Stantec's traffic study. The study will include Pettingill Rd. and the other intersections in and around the site. In June staff presented an application to the Department of Resources and Economic Development for an Economic Revitalization Zone (ERZ) in the Pettingill area. The ERZ application was approved, staff will send out notifications to all property owners within that zone so they will know what the zone is about so they can avail themselves of the benefits. Being in the zone does not cost the town or taxpayers anything. If a business were to expand or create new jobs there is a formula within the ERZ zone that will calculate up to a maximum of \$20K against their business profit tax or the enterprise tax. Councilor DiMarco asked was there another means of notifying abutters other than sending them a notification. A. Garron said they will discuss that with the Dept. of Resources and Economic Development to find the best way to notify business owners. Councilor O'Keefe asked if the Planning Board would consider moving the Workforce Housing workshop to a separate hearing due to the large turnout. Art Rugg, Planning Board Chair stated they believe they can accommodate the audience at the regular meeting in Moose Hill.

Chairman Brown clarified that Sen. Shaheen could not get funding through her office; he asked how much was requested. Town Manager Caron stated that Sen. Shaheen submitted an appropriation for about \$6.5M which represents 80% of the road construction costs. Rep. Shea Porter submitted a proposal for \$9.5M which includes 80% of the road and 80% of the sewer, with the request still outstanding. We should know before our budget season if we receive that funding. Councilor Farmer asked about the grant application for the N/W fire station. D. Caron said it was submitted on 7/10/09. Londonderry Fire Chief MacCaffrie added that he received a letter from FEMA requesting detailed information including plans and construction costs. Staff replied within a week. He said they expect to receive a letter by the second week in September notifying them if they received the grant.

Chief Bill Hart – Police Department Staffing – Chairman Brown explained that Council is having a continued discussion with Chief Bill Hart. Councilor Farmer informed the public that he was absent from the original meeting and he said he watched the 8/3/09 rerun twice. He questioned if Derry & Hudson each had 2 captains, Chief Hart confirmed they did. First, the Chief informed the Council that the firing range donated by Continental Paving was open, and officers were sent to training. He stated a 12 x 20 building was being donated to the firing range by Concrete Systems Inc of Londonderry. They will install a pad and put the building on top of it. He reiterated the major concerns of the staffing levels at the LPD are the professional staffing and high quality of service provided by staff. Chairman Brown explained this goes back to the goal setting meeting of the re-organization of the Police Dept. He feels Council should move forward with the re-organization that effects the change in staffing which then became an annual return in the most expensive part of the budget. He stated he did not want to force someone out of a job. He said that the decision should be left to Capt. Hart as to which position in management he wanted to cut. Councilor DiMarco stated that Chief Hart at the prior meeting proposed filling the captain position and not funding the lieutenant position and re-visiting that position during the budget sessions. Chief Hart stated that was correct, the Captain position is a necessity. Councilor DiMarco said we will look at staffing levels again when we review the municipal services impact study. He stated Londonderry is going to grow and we should look to the future. Councilor Farmer said he is looking at taking advantage of a situation that presented itself. He said we should take advantage of the opportunity, it has realized cost savings, it has future cost savings. If we re-organize now this Council is establishing the baseline that we want to go forward with as we grow. Capt. Hart agreed with Council that it was wise to look at staffing levels at its most expensive agency to see if it is managing effectively. In his judgment he said that fairly soon he is looking at growth in the north of Londonderry it will result in expected increased traffic flow. He stated he will be back in the future to request increased staff levels. Councilor Wagner asked for clarification of the current staffing levels. Chief Hart responded normally he has two captains and five lieutenants. They have been operating for the last 10 months with only four lieutenants. He explained the past history of staffing levels. Councilor O’Keefe stated that he supported that Council was requesting the Police Chief to reduce one management position. The Chief asked if Council was asking for a reduction in the police force by one, a reduction in sworn officers by one or alternatively do we have the same authorized number of 69 positions resulting in one less administrator but another officer on the street. Councilor Farmer said his individual thought is that it is a senior staff position. Chairman Brown concurred that was his initial goal as well. Councilor Wagner stated she is comfortable with the reduction but would like the Chief to come back during the budget sessions to see if they really need the lieutenant position filled. Chairman Brown said the consensus is to move forward to reduce a management position. Town Manager Caron said the Chief asked if this was a reduction in management personnel or the number of police employees, sworn officers. Councilor O’Keefe responded it was in management. Chairman Brown asked

Town Manager Caron to explain. Town Manager Caron responded that the Chief asked if Council wanted him to reduce the number of personnel in the LPD by one employee or do you want to reduce management personnel. The difference is if you are not going to fill the lieutenant's position and the position is still there will you be able to fill that position with a patrolman by hiring an additional patrolman. He stated he needs to know what the Council's intent is. Chairman Brown stated he is interested in having this opportunity result in one less position on the police force, take advantage of a retirement and an opening to reduce the staffing in that department. Councilor Farmer said his goal is a senior management position, the time is not right to look at a reduction for a patrol officer. The consensus of Council was to agree to the reduction of one senior management position. Councilor Farmer said the reduction should be in the positions of lieutenant or captain and the choice is up to the Chief. Councilor Wagner agreed, don't move somebody up to a management position, remove an administrative position. Captain Hart explained if there were no changes typically a lieutenant would be promoted to the open captains position, two sergeant's would be promoted to the two open lieutenant's positions, two patrol officers would be promoted to the two open sergeant's positions resulting in two open positions for patrol officers that would have to be eventually filled. Under Councilor Brown's scenario those promotions going forward would reduce by one the number of police we would hire whenever that process goes forward. Under the other process we would still have those two people but they would be hired as patrol officers. Councilor Farmer said he wants to see re-organization effecting the lieutenant's position, the open lieutenant's position is gone. Councilor O'Keefe and Chairman Brown said they were OK with that. Councilor DiMarco said that was OK with him for the remainder of FY10 and it should be re-visited in FY11 to fill the lieutenant's position. Chief Hart said he can do that, he does not agree with the decision but he does agree that it gives him the opportunity to look at things differently and come back with some more ideas and recommendations to the Council.

Londonderry Trailways Initiative – Chuck Piper, 3 W Woodbine Drive represented the Londonderry Trailways group; he explained they are requesting approval from Town Council to apply for a transportation enhancement grant to expand the bike path/walkway in front of Moose Hill Kindergarten down to Wilshire Drive. It is the last 100 feet from the Moose Hill School. He further stated that it will connect 125 homes in the neighborhood. The grant is a 20% match and requires annual maintenance. The capital cost is \$250K; the match will be \$50K. He said he met with Public Works Dir. Janusz Czyzowski and the maintenance figures they received from the school department would result in an approximate cost of \$15K for labor and \$9K for additional equipment. The snow removal would begin in 2010. The application is due on 9/15/09 and the funds will be awarded in January of 2010. Councilor Farmer asked if the \$15K for maintenance is isolated for that piece, or is it for the whole pathway. C. Piper confirmed it is for the whole pathway. J. Czyzowski said it is sufficient to maintain the entire walkway, hire seasonal labor and getting attachments to equipment that is available. Councilor Farmer asked if they would be coming back to Town Meeting in 2010 asking for the matching funds of \$50K as a warrant from undesignated fund balance, Town Manager Caron stated that was correct. He asked what fund the \$9K would be coming from. Town Manager Caron responded from the capital reserve fund. J. Czyzowski said there was still money in the capital reserve fund to purchase the rest of the equipment. He explained we have the final design and have received four estimates. He explained he attended a mandatory workshop to manage this project, and the federal requirements are 100% inspection on the project and year round maintenance is required. Those two items were not required on the previous grant. Councilor DiMarco questioned if the school department will continue to maintain the area from in front of library to Otterson, J. Czyzowski said he would like to see it. Chairman Farmer asked if the first phase grant required the Town to maintain the

pathway, C. Piper said the first one did not require the Town to maintain it. This new grant does require maintenance. Chairman Farmer asked what happens if the taxpayers deny the match; Town Manager Caron responded the project does not go forward. Councilor Wagner asked if we receive this grant does the whole section have to be maintained. C. Piper responded he asked that question of the state and they said it does not make sense to maintain only the newer section. Chairman DiMarco asked if there is anyway to tie the \$15K into the budget if it is approved at Town Meeting. Councilor Farmer responded if we go with the grant now we have to commit for it in the budget right now. J. Czyzowski said the feds will take back the 80% if it is not maintained. Councilor DiMarco questioned if the state cleans Mammoth Rd repeatedly, the pathway will be constantly filling up, how will it be maintained. J. Czyzowski said it is tough to guess maintenance but he said he estimated plowing for 20 snow events per season. C. Piper said the \$15K will take care of the multiple passes. Chairman Brown asked if we are committing forever annually for \$15K, J. Czyzowski responded that is correct. He said he will also be asking for additional money for maintenance of the equipment for each year. Ola Lessard, 12 Ashley Drive, endorsed the project. She read a letter from Renee Williams, 4 Thornton Rd. who also urged the walkway be installed. Bob & Christine McGirk, 12 Wilshire Dr., Larry Warhall, 9 Berkshire, Arianna Kane a 12 year old middle school student, Mitch Feig, 37 Wilshire Drive all brought up the safety issue of having a sidewalk in the area and spoke about the curve on Pillsbury Road. Bob Napolitano, 14 Currier Dr. asked if there are any plans to extend the sidewalk at other parts of town. C. Piper said the Master Plan does show trails connecting the whole town. B. Napolitano said he is concerned that if we cannot fund this project at this time could J. Czyzowski come up with something now to make the bridge portion more secure. Councilor DiMarco said the land on the north and south of the proposed area are conservation areas, this is a core part of town it is important to continue the sidewalk. Councilor O'Keefe asked if something could be put in the curve area to slow traffic like a crosswalk. J. Czyzowski said reducing the speed would help and a crosswalk could be designed for the area. Councilor Farmer said we are looking at 4 schools, a lot of activities are held at those schools, the \$15K is not a significant detriment to go forward. Chairman Brown said he agrees with Councilor Farmer. **Councilor DiMarco made the motion to authorize the Trailways Committee to submit the application for the project, seconded by Councilor Wagner, Council's vote 5-0-0.**

Charter Revision Discussion – Chairman Brown explained this is an action item brought forward tonight providing a timeframe to change the Town Charter from of government to a SB2. Town Manager Caron said if one of the goals is to allow citizens the option to proceed with considering the SB2 form of government; Council has to decide if they want to proceed or let the public choose to proceed. The last date to put this item on a Warrant for March is the first meeting in January. State law says a petition committee is formed and the petition issued by Town Clerk, the petitioners have 120 days to complete those forms and return them. Through the verification process for the clerk and notice of inefficiencies the time to fix them and review them again, that entire process itself is 69 days. If Council makes a decision today in order to allow for that full 69 day review and appeal process then the petitioners will have 71 days to complete their petitions. Of that 69 day period there is a 20 statutory period for the clerk to review the signatures to verify that there are enough signatures on the petitions and those signatures are registered voters. There is 49 days for appeal and correction time. A decision today would allow that full 120 days. There are about 357 signatures required for a valid petition, which represents 20% of the voters in attendance at the March 2009 meeting. A decision has to be made by Council soon to allow the citizen's time, if not, we run the risk of the Councilors and petitioners doing something as well. Councilor Farmer said he is in favor of going ahead, there is interest in the community for and against it; allow the voters an opportunity to make the decision for a change. Every registered

voter in town could show up on Tuesday in March and vote on it. This was done in 96-97 when a new form of government was adopted. Councilor DiMarco asked if it goes forth as a Council initiative it will be voted on Tuesday, if it goes forth as a citizens position will it be presented on Tuesday as well, Town Manager Caron responded yes. Councilor DiMarco said the people of this town choose their form of government in his opinion the people should form a committee of 5 people and get 357 signatures. Councilor Wagner stated she is in agreement with Councilor DiMarco, if 357 people want to see this change then she would support their right to get the petition on the warrant. She said she does not want to move forward with a decision now, wait until January to discuss this again. Town Manager Caron said under state law if the Council decided to move forward tonight he would return with an order for the August 31 meeting. At some point between then and in September the Council would officially establish the voting date. He clarified the action being considered is to ask if the voters want to establish a Charter Commission and elect Charter members. It is not a vote on SB2 at this year's town meeting. Councilor O'Keefe said he is OK with allowing the committee to get together to make a decision to get signatures Councilor DiMarco said the town form of government is a sacred thing for voters in Londonderry it is different then getting a bond for a fire station. Councilor O'Keefe talked about the change in government in 1996 and said look how it worked out. He said there is a lack of interest to come to the Saturday meeting; he stated he is OK with moving forward. Councilor Farmer said he is OK with getting the signatures. He said prior signatures on the petition of 2004 with 567 signatures was not legal. A significant effort went into that and it was ignored because the wording was wrong. The Council could have worked on it then but it was too late for the Council to handle it because the timing ran out. Have a charter commission on a new form of government and have a charter commission elected on the same ballot. He asked the Town Manager if the Council decides not to act on this item and a citizen's petition is presented, it will only establish that we are going to study the issue, it will not elect the charter commission on the same ballot. If the Council acts it does both on the same ballot. Town Manager Caron responded state law in RSA 49b 3, VI makes it clear it should be on the same ballot, either under the petition route or Council directive. Councilor Farmer said if the vote on Tuesday failed then the people who were elected will have nothing to do, Town Manager Caron responded that is correct. Chairman Brown said he was on the Council for the 2004 decision he did not ignore the petition, the information he received at that time was that it was an illegal petition and he followed the advice of the attorney. Councilor Farmer said that they had a message delivered and that message was that people wanted a change. Chairman Brown re-stated that if we went forward with this decision the question on the warrant will be do the people of Londonderry want to form a charter commission to study changing to SB2. Town Manager Caron said it should state that shall a charter commission be established for the sole purpose of establishing an official ballot voting on the current form of government. Chairman Brown said if the warrant article is approved and the charter commission people are elected what is their task after that. Town Manager Caron responded that essentially their task is to make a recommendation as to whether to present the question to the voters at the following year's town meeting. It is a minimum of two years away when the voters have a chance to vote for the change itself. The Commission itself can make the decision to not go forward. Chairman Brown asked if there was any way to move the voting on labor agreements to Tuesday, absent making this kind of change, Town Manager Caron responded no. Chairman Brown said he has been a fan of Town Meeting but he is extremely disappointed at the lack of appearance at the annual town meeting. He said he is hesitant of putting labor contracts in front of so few people when that is the key mechanism that drives the budget every year. If we could move them to Tuesday it would be better. For that reason alone he would prefer to have this decision put on the ballot and have the voters agree to it next March. Councilor DiMarco asked Town Manager Caron if regardless of how it gets on the ballot do people run for the charter

commission positions, Town Manager Caron responded yes. Councilor Wagner said a sitting Town Councilor can run for a position on the charter commission. Town Manager Caron stated it will consist of nine members, any citizens including Councilors can run. The format for the committee is all laid out in RSA's. Open for discussion. Reed Page Clark III, Stonehenge Rd said it was stated that the charter commission has to be for SB2 only. He is of the opinion that the charter members can change the government to anything they want. Bob Napolitano, 14 Currier Dr. stated that the commission could come back with anything. They could come back with the conclusion that we should be a city instead of a town. He said that town meeting does not draw a large crowd because nothing they were voting on had a large impact on the voters. He said he would rather have 200 people who are informed make a decision than 2,000 people who do not have a clue. If they get 357 signatures do it because better informed decisions can be made Councilor Wagner said it is a good point, those 9 people are going to have their say on the charter commission. She said she would like the signatures to prove that this is what people want. People need to understand what this means before we put it on the ballot. Chairman Brown asked Town Manager Caron to explain the wording on the ballot that he previously quoted. What are the options that could be pursued by this commission based on that question and what could they actually bring forward. Town Manager Caron said the question is should the Town adopt SB2. He will re-confirm with town counsel. Chairman Brown said that is what the Council is charging the commission to do and only has the power to do based on the state law if the voters accept the question. Councilor O'Keefe stated it is very clear that the commission can only act on SB2. Town Manager Caron stated that under the SB2 law it gives the commission the authority to delegate budget to a municipal budget act committee, we do not have one in Londonderry, we have an advisory budget committee. Chairman Brown said the question is very strictly interpreted to mean that if this were to be approved, that commission has one job and one job only and that is SB2 or not. Town Manager Caron said if the Council wanted to proceed he will have an Order for the 8/31/09 meeting to formally adopt under the statute and he will have supporting data from counsel. Chairman Brown asked if there is a consensus on the Council to have a public hearing to receive further input at that meeting or at that meeting follow-up with the Order. Councilor Farmer asked the Town Manager if we would be required to have a public hearing for an Order. He responded only Ordinances are required by law to have a public hearing, however you can have a public meeting on any issue the Council desires. Councilor Farmer said he would like a reading on 8/31 of the Order and a second reading and public hearing at the next meeting on 9/21. The consensus was to have an Order with a first reading on 8/31 followed by a public meeting on 9/21. Councilor DiMarco stated that the citizens can still put forth a petition to make changes. Bob Napolitano clarified that they can only talk about SB2. Councilor Farmer said the statute is very specific. It is either an all or a little bit or nothing. If we put the little bit or nothing on the ballot and the voters approve it and the Charter Commission follows the will of the voters and says yes we want to go to SB2 then that is what we do. If the voters don't want to go to that then we don't go to that. If we put the all – open ended thing- they can come in and do the whole charter and if the voters approve it that is what we get. B. Napolitano said if that is the best thing for the Town then it should be done.

Discussion: Reconsideration of Order #2009-11 – Town Manager Caron explained that on June 15, 2009 the Council approved authorizing the Conservation Commission not to exceed \$900K for a conservation easement purchase on Map Lot 10-15. It was presented to the Council that the Conservation Commission was looking at one parcel only. Previous to that particular meeting the Conservation Commission had a public hearing that they were considering two parcels. Conservation Commission subsequently had a second public hearing focusing on this parcel only. The Conservation Commission's (Cons. Comm.) actions are in sync with Order #2009-11 adopted

by the Council on 6/15/09. Chairman Brown said the Council did not have to do anything if they didn't want to but a couple of members wanted to have a discussion before the full Council to see if they should maybe have a re-hearing. At this point in the meeting Chairman Brown left the meeting but instructed Vice Chair Wagner to continue the meeting. Councilor Farmer said Councilor O'Keefe brought up the aspect of re-hearing this Order after the second Conservation Commissions public hearing. The second Cons. Comm. meeting was held because they had decided that there was a substantive change in the original agreement of both parcels. Andy Mack withdrew that he wanted to sell an adjacent parcel to the Town. We are now focused on just the one parcel off Gilcreast and Pillsbury. At the second public hearing the Cons Comm recommended the Council continue to move ahead. He said there was just enough confusion between being introduced by two public hearings on the part of the Cons. Comm. in between was the hearing with Council. Confusion exists between what was appraised, what lot withdrawals there were and exactly where we stood. This is a discussion to decide if we want to hear this again. We missed the first round in the grant, we will find out by the end of August if we received the grant in the second round. The Order is contingent on getting the grant. The question is does the Council want to re-hear this to get all the details. Councilor O'Keefe said he still has concerns over some of the issues and he feels that they are unresolved. He would like the Council to consider re-hearing it for a number of reasons. There was a second hearing, if there was nothing wrong then why was another hearing held. He said he would like to look at things and reconsider. Chairman Brown said it was his understanding that the Cons. Comm solicited feed-back from the Town if they should have a second public hearing; they then decided to go forward with it. Chairman Brown asked Councilor O'Keefe what concern he had with them asking the Town should they have a second hearing and they did it, it sounds like they were following the Town's advice. Town Manager Caron said that counsel said the second hearing was not required but as Town Counsel tells the Town often "process is much less expensive than litigation". He advised the Cons Com to have a second hearing focus on that one parcel and close the loop in that particular process. Councilor O'Keefe asked Mike Speltz who is a member of the Cons Com what was the average price we paid for the Mack purchase, M. Speltz responded we are not buying the land just the easement. The purchase price is \$900K half will come from the Natural Resource Conservation Service and half from the Town. He responded it is \$53K an acre. Councilor O'Keefe said he and Councilor Wagner voted no when this Order came before the Council because it was too expensive. The Estey easement was \$15K per acre. Why is Mack's more. M. Speltz said he was not a professional appraiser and would try to answer the question. It comes down to location and developability, it is on two main roads, lots of frontage, no wetlands, no stream crossings, no problem with permits, excellent soil, no drainage problems, the lots will probably be bigger. If you compare that land with the Estey property you come out with that value. Councilor O'Keefe asked if it is possible for Mr. Mack to take two lots from the back of the property. M. Speltz said the agreement calls for them to be located in a location that will be mutually agreed upon. The Cons. Comm would like to have it in a way that minimize any impact to the conservation purposes. Councilor O'Keefe said that legally he could still request it at the back and you would have to follow-through because it is still his land. M. Speltz responded no, because the easement provides for a mutual agreement it would have to be a negotiated outcome. If worse came to worse he could sue us because we would be acting in bad faith but we would work with him to provide a solution that met his needs and met the needs of the conservation easement. Councilor Farmer said the reason for supporting the opportunity to re-hear it is if the entire Council wanted to go through that process then the entire Council decides they want to do that. The question is, is there enough here that we are not certain of the details off that we want to re-hear. It is not all about the comparison of the acreage with the Estey property, if you walk one piece of land and walk the other it becomes clearly evident. Councilor O'Keefe responded he



needs to back up his reasons with facts. Councilor DiMarco asked if we do proceed with re-hearing it he might vote exactly as before. He further stated that he would like to see something in the agreement that states that the Town is not paying more than \$450K, for that purpose he would like to re-hear it. Councilor Wagner said she will support the Councilors because they want to re-hear it but might not change her vote. It would make sense to re-open the hearing so that everyone will get clarification of all the facts. She asked how long can we hold a property owner to this contract if we continue to get denied for the matching grant. We now have the option to look for grants until 2010, is that fair to Andy Mack. Councilor O'Keefe agreed with her the process needs to be looked at. Chairman Brown said he disagrees, some people are opposed to Open Space and will be against it and there are people who will rally for Open Space. Cons. Comm. on 6/15/09 did have a current appraisal, he will not contradict it, Council was made aware of the lot withdrawals, the money in question was already approved at town meeting; he will go along with the consensus of the Council. M. Speltz said they do have a Purchase & Sales (P&S) agreement with Andy Mack; he said he is not sure what the legal implications will be for a re-hearing. If the purpose of the re-hearing is to get information out on the table then that may be a good thing to do. We are obliged to honor the P&S and it is good to 12/31/2010. He proceeded to quote from the P&S that "if we do not get sufficient funds to purchase the conservation easement or the Cons. Comm. or Town Council does not approve the purchase or the final form of the conservation easement that this P&S will be null and void with no enforcing effect". This agreement will come back to Town Council again per the agreement. Councilor O'Keefe told M. Speltz that it seems Cons Com is trying to tie up this land purposely and he does not know why. Why leave it open to 2010 this has not been done with other easements what is the purpose? M. Speltz responded it gives them another chance to apply to the grant process. Councilor O'Keefe said he does not agree with it. The consensus was affirmed that they want a re-hearing. Bob Napolitano said he in the past has voted against Cons Com. He supported Andy Mack's land many years ago because it was located in the center of town. He said he thought we were buying up land in the center of town. He is in favor of this piece of property; the idea in 97 and 98 was to buy up that land. He suggested the Town buy the property now even without the grant. This is the property we should be getting as well as the land at the Grange, High Range Rd, etc. John Farrell, 4 Hancock Dr., CIP Chair said the CIP Committee has Cons Com coming in for \$1M this year and \$2M the following year in bonds. The history of Open Space is they have \$8M in bonds that have been approved, a \$2.9M bond was approved for behind Home Depot since 2001. There has been \$16.9M allocated to Cons Com. The Estey property has not cleared yet so there is about \$12M-\$13M that has already cleared with some other sales pending. He said it is time to come up with a plan on how to manage all this land. He said he is happy that we are re-hearing it. Jay Hooley, 24 West Yellowstone Dr. said the re-hearing is a good idea. He used Town Manager Caron's phrase that "process is less expensive than litigation". M. Speltz clarified that the Town does not own the Ingersall property we hold an easement on it and the CIP request is for \$1M this year and the subsequent year, there is no \$2M request. Councilor Wagner requested that all documentation from the prior 6/15/09 hearing in addition to Andy Mack's letter be provided to the Councilors at the Aug 31 meeting.

## **NEW BUSINESS**

**Resolution #2009-01a – Relative to the Acceptance of Funds from Tarrytown Real Estate Holdings to Purchase Conservation Land** - Councilor DiMarco read the first reading and **made a motion to accept, seconded by Councilor Wagner.** Mike Speltz said the practical reason is not to have two transactions. He explained instead of having Elliott buy the land from Colby-Litchfield, LLC and pay a transfer tax on it then turn around at the same closing table and transfer the property to the Town. They are giving us the money and we will buy it directly.

They have a Purchase & Sales (P&S) agreement they will sign the agreement to us which puts us in control of the property. We take their money and buy the property and the result is the same. Councilor O’Keefe said instead of doing an easement basically Elliot is donating the land to us. M. Speltz responded no, instead of them donating it to us they are going to give us the money and we are going to buy it. There was never an easement involved in this one although the deed to us has easement-like restrictions in it. DES asked that they be put in it so we cannot build on it. Councilor DiMarco asked if the area in question borders the Musquash on the southern side. M. Speltz responded it does. He questioned if any trails go through it, M. Speltz responded yes but there is some wetlands on the property. Councilor Brown recused himself due to a family member working for the Elliot and passed the gavel to Vice Chair Wagner. J. Hooley clarified that Elliot is putting in a new facility and they are going to increase the tax base to the Town, which will add 36 acres to Open Space at no cost to the taxpayers. M. Speltz said that was correct J. Hooley asked if we had more of these deals in town Councilor Farmer said we do have more of these; I-93 wetland mitigation; Exit 4A wetland mitigation impacts. **Council’s vote 4-0-0.** Chairman Brown returned at 10:40PM

**Municipal Services Impact Study - Outline.** - Town Manager Caron explained the outline that will be used for the study. It has timeframes, assumptions and data to develop benchmarks and the process to try and identify the impact of anticipated development through out time. The study focuses on labor intensive services such as Police, Fire and Public Works. He proceeded to review the outline. The study will be presented to Council along with the submission of the FY11 budget in November Councilor DiMarco asked if he was focusing on equipment as well, he responded yes.

### **APPROVAL OF MINUTES**

**Minutes of Council’s Public Meeting of 8/03/09.** Councilor Wagner made a motion to accept the meeting minutes of 8/03/09, seconded by Councilor Farmer. Councilor DiMarco said he was not in attendance at that meeting and will not vote. **Council’s vote 4-0-1.**

### **OTHER BUSINESS**

**Liaison Reports** – Councilor Farmer attended Londonderry Arts Council meeting. The “Nutfield Sessions” will continue indoors for the fall and winter sessions. “Art on the Common” is coming up in September. “Art in Action” is scheduled for the fall. He said he missed the last ConsCom meeting but we just heard tonight what they discussed.

No other Councilors had reports.

**Town Manager Reports** – None

### **Board/Committee Appointments/Reappointments -**

The Planning Board appointment has not been finalized yet. Chairman Brown said he will have the results by the 8/31/09 meeting; the School Board is interested in the position. ZBA had two applicants, Joe Green and Dana Coons. Consensus is to make the appointment to the ZBA tonight. Councilor DiMarco said both candidates are very qualified. **Councilor DiMarco made a motion to appoint Dana Coons to the alternate position on the ZBA. Councilor Wagner**

**seconded the motion for discussion.** Chairman Brown said he served on the ZBA for a long time and he would like to see a new person with new ideas on the ZBA. He said he would like to nominate Joe Green. Councilor O'Keefe said both candidates are highly qualified and he is OK with either one. Councilor Farmer said he is looking at widening the participant pool and agrees that Joe Green would be a good volunteer. He expressed his dismay that it was taking too long to fill the Planning Board position. **Councilor DiMarco withdrew his motion to appoint Dana Coons to the alternate position on the ZBA. The withdrawn motion was seconded by Councilor Wagner. Councilor DiMarco made a motion to appoint Joe Green to the alternate position on the ZBA, seconded by Councilor Farmer.** Councilor Wagner said we should have opened the Planning Board position to the School Board many years ago to widen the participant pool. Councilor Farmer stated that many years ago that idea had come up but the Council rejected it. **Council's vote 5-0-0.** Councilor DiMarco thanked Dana Coons for his many years of service to the Town.

### **ADJOURNMENT**

**Councilor DiMarco made a motion to adjourn at 10:58 P. M, seconded by Councilor Wagner, Council's vote 5-0-0.**

<b>Notes and Tapes by:</b>	<b><u>Margo Lapietro</u></b>	<b>Date: <u>08/17/09</u></b>
<b>Minutes Typed by:</b>	<b><u>Margo Lapietro</u></b>	<b>Date: <u>08/20/09</u></b>
<b>Approved;</b>	<b><u>Town Council</u></b>	<b>Date: <u>08/31/09</u></b>