

**TOWN COUNCIL MEETING**  
**August 31, 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: Sean O’Keefe, Brian Farmer; Paul DiMarco; Town Manager Dave Caron; Executive Assistant, Margo Lapietro.**

**CALL TO ORDER – PUBLIC SESSION**

**Chairman Brown 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. Councilor Wagner also asked everyone to remember Firefighter Phillip LeBlanc, who is serving in Iraq.**

**PUBLIC HEARING**

**Councilor O’Keefe made a motion to open the public hearing, seconded by Councilor DiMarco; Council’s vote 5-0-0.**

**Reconsideration of Order 2009-11, Relative to the Use of Conservation Funds to Purchase a Conservation Easement.** Chairman Brown reviewed the background of the conservation easement for land located on Map 10-15 and the Council’s request on 8/17/09 to schedule a second public hearing to receive input on its reconsideration of this issue on Order 2009-11. Councilor O’Keefe questioned Mike Speltz from the Conservation Commission about the price of the lot less the federal grant. Mike Speltz confirmed that the Town was not awarded the grant as of this date. The federal grant with the lot reduction was at \$462,500. Councilor O’Keefe asked M. Speltz how many acres were to be protected; he responded 24 acres. Councilor DiMarco asked if the appraisal was completed assuming 17 buildable lots were on it. M. Speltz said it was appraised with that assumption in mind. The appraisal is completed using two approaches; an assumption on how many building lots could be built on the property and locating other large comparable parcels that have sold and comparing them. Councilor DiMarco said the assumption was made that most of the 24 acres could be developed as is. M. Speltz responded that an appraiser does not go out to hire an engineer to do a full subdivision proposal, but they do look at the soils data and make an assumption based on that information. Councilor Farmer said he supported having the re-hearing because Council could ask for more information and have things clarified. He suggested reviewing it as a process not as a purchase. He said he wants to start a dialogue on the process on the way the Conservation Commission (ConsCom) uses appraisals, etc... to purchase land. He said we would need another meeting because we need a logical standard process to follow to purchase land before it comes to Council. He stated that Andy Mack’s comment at the Cons Com hearing was that he will not sell if the appraisal comes in lower than the \$900K. Councilor Wagner stated that we were all aware of that fact and we should be discussing why we are re-hearing this Order. Councilor Wagner asked if there are repercussions if the vote changes what happens. Town Manager Caron responded that any time the Council rescinds an action there may be questions whether a party to the agreement is being damaged by those actions. Those have to be reviewed individually; there is always the potential

to have litigation but he said he could not further state anymore in public as it may impact the Town's position. Councilor Wagner asked if the Cons Com is treated differently, Town Manager Caron responded that the Cons Com litigation is covered by the town. M. Speltz stated the Town has a signed Purchase & Sales Agreement (P&S) that the Town is bound to adhere to through 2010. Councilor O'Keefe stated that Council was obligated to have a second public meeting because the Cons Com had a second meeting. Chairman Brown corrected him saying that it was not required; we got advice at a meeting from our Town Manager that we did not have to have a second meeting. Councilor Wagner asked why the second hearing was held by the Cons Com. Town Manager Caron responded it was recommended by counsel as the Cons Com transitioned to presenting lot 10-15 exclusively. Chairman Brown asked what an independent appraisal meant. M. Speltz said they are certified by the state of NH, they have professional standards both from their associations and the state, and they represent parties that have opposing interests. They take an objective look at the facts to come up with an appraisal. Chairman Brown said the appraisal was dated 5/7/09 and Council's meeting was held on 7/17/09 so it was a relatively recent appraisal. He asked how the appraiser was chosen. M. Speltz responded that in this case they went to Don Spring who they used before. Chairman Brown said that when this was brought to Council did Cons Com have an agreement with Mr. Mack for the other lot (Grange lot). M. Speltz responded that they had a verbal agreement for only the one lot on 7/17/09. Prior to that they had a verbal agreement for both lots but Mr. Mack changed his mind on the one lot. Chairman Brown clarified that at the 7/17/09 meeting for Council did Cons Com have an agreement with Mr. Mack for the second lot (Grange Lot). M. Speltz responded no, they did not have a willing seller for the Grange lot on 7/17/09. Chairman Brown asked M. Speltz if we have an agreement as of tonight for the Grange lot, he responded we do not. Chairman Brown asked Town Manager Caron if we have a signed P&S is there any financial penalty or obligation if the vote goes differently. Town Manager Caron responded that in order to protect the Town's position, he can't answer that question in public session. Tom Freda, 30 Buckingham Drive said the appraisal is based on 17 buildable lots on the 24 acres. No engineering plans were presented for a subdivision. He questioned why Council is taking the appraisals assumption, there could be fewer lots. Since the price is based on a per lot price we should have documentation for how many exact lots there are. The presentation made by the Cons Com had listed the federal acquisition dollars as \$462,500. The Town applied for the grant based on that number which was calculated on a \$925K dollar evaluation of the appraisal and 50% of that. At the time the presentation was made two lots would be available to be withdrawn by Mr. Mack. The federal government requires an easement grant to be no more than 50% of the fair market value of the property plus a certain percentage of the "bargain sale" that Mr. Mack is giving the Town. That calculation was based on \$925K at \$462,500. The town will have to draw \$110K value out of that and then take 50% of that. The grant will actually be around \$404K. Mr. Freda stated the Town will be responsible for \$58K more if everything stays the same as presented to Council that night. Nobody on Council or Cons Com acknowledged that night that those withdrawal rights will reduce the grant value. He questioned why we are waiting until July of next year for the second appraisal. If the second appraisal stays the same and the price has to be adjusted there seems to be the view that whatever the second appraisal is that is going to be the purchase price. He said the P&S does not say that it says the new price will be renegotiated with Mr. Mack. He said he asked Mr. Mack at the second Cons Com meeting what would happen if the appraisal comes in under \$900K, he clearly stated he is out of the deal. Councilor DiMarco said that according to the meeting minutes he did ask if the numbers in the appraisal were adjusted to 15 lots not 17 and M. Speltz answered yes. It was brought up and he said he left that meeting with the understanding that the value per acre was based on 15 not 17 lots. M. Speltz said when he stated that the appraiser took that into account it was correct. The

appraiser took all the withdrawal lots out of the Grange lot (9-49). Councilor DiMarco clarified that in the original easement that included Maps 9-49 and 10-15, Mr. Mack wanted to withdraw 3 lots and all from 9-49 none were intended to come from 10-15. He said when you read the P&S it states he can take two lots. Councilor Farmer said the P&S does say he can take two house lots out of the Pillsbury lot. The appraisal for the Pillsbury lot does not reflect the withdrawal rights so when it is reappraised near the time of the purchase the appraisal will have to take into account the withdrawal of those two lots. It is \$900K for what is there; the appraisal will most likely drop if everything stays the same. Councilor Wagner said if the land sells for \$54K per acre, it will drop the price. She questioned if Andy Mack will accept less. T. Freda said Andy Mack wants \$900K which includes taking out the two lots. S. O'Keefe said the contract is valid until 7/10, it is too open ended. It doesn't make sense to leave that date out there in hopes that they may or may not get a different appraisal at that time. The appraisal is already less than what Mr. Mack publicly stated he wants. Councilor Wagner said she thought that all of this was presented at the previous Council meeting. Councilor Farmer said he thinks from his perspective that the second public hearing that Cons Com had provided some clarification on some of these points. Those points were not available to the Council and wasn't what they addressed. There were questions being raised, they were cleared up in the second public Cons Com hearing. Councilor O'Keefe asked why wait until 7/10/09? Councilor Farmer said the timeframe allows for any grant cycle. Chairman Brown asked M. Speltz why we are waiting for the second appraisal. M. Speltz responded we are committed to do the second appraisal to a "not later than" date, we have to have it done for Mr. Mack. Chairman Brown said the appraiser clearly stated that the number of lots was hypothetical and that there could be more or less than 17 lots. He asked if this statement is typical in this type of appraisal. M. Speltz responded it is typical; the appraiser is drawing an assumption based upon available information. He proceeded to point out the terminology used in the appraisal that covers assumptions and comparisons. He stated that is typical in the land business to not do engineering because it is too expensive. Chairman Brown reiterated that it is not out of the ordinary for this Council and past Councils to look at land on assumption. Councilor Farmer said that we are looking at raw land, it is bought on speculation. It states in the appraisal that it could be more or less. Chairman Brown asked for clarification of the impact of the second appraisal; who can do what. M. Speltz said there are two scenarios, one appraisal comes in at \$900K or greater in which case he is obligated to sell the easement for \$900K. Second possibility is that the appraisal comes in at less than \$900K, Mr. Mack can walk or we agree on a price that is less than the \$900K. Chairman Brown asked if we calculated the incorrect grant money like Mr. Freda calculated. \$462,500 vs. \$404,000; which would be \$58K short does he have any response to that. M. Speltz stated he respectively disagrees with the analysis. If the property appraises at \$840K based on what we know today, that is a reasonable outcome. The most we will receive from the federal government is their share of \$804K, and then we will not pay \$900K for something that is only worth \$804K. He said he assumes Mr. Mack would not give us the "bargain sale" if it comes in under \$900K. Councilor Wagner asked if we are obligated to walk away if the appraisal comes in at \$804K. Councilor Farmer said we can walk away as well as Andy Mack if we do not agree. Tom Freda said \$462,500 was what the Cons Com calculated for the federal grant. The only way you can get to that number is 50% of \$925K. If you take that value of \$925K you have to subtract as Mike said at the hearing unexercised rights of withdrawal. Nobody said anything about adjusting the grant request number and the only number Council had on the presentation was \$462,500. That \$58K is the difference in grant calculations, it is not represented the way it should be. John Farrell, 4 Hancock Dr. said he took all the paperwork including the appraisal and P&S to a real estate attorney, a land surveyor, an engineer and an appraiser. He said on page 16 of the "Summary Appraisal Report" an assumption was made that there are no hazardous

material, there probably are. On page 18 under the regulation for single family homes the appraiser looked at it as a minimum of 40K sq ft for three or more bedrooms on water and sewer. Water is in the vicinity and sewer is located down the street at quite a distance away. The assumption was made on sewer and water being available. On page 21 the Hovey Rd. lots are 1.3 to 1.7 acres so we would plan on 1.25 acres. In actuality the lots on Hovey Rd. are 1.7 and 2.7 acres. On page 23 they made comparisons to other towns. We need soil testing to determine how good the parcel is. He questioned the need for roads and site distances. He said that Staff informed him that we can model all the lots with the GIS system based on soil studies and the contour of the land. The appraiser deducted \$5K per lot for engineering and permitting, he said the land surveyor and engineer both said the costs are more in Londonderry. The engineer said he usually allows \$10K per lot. The appraised lots are superior to the Hovey piece. The appraiser said the Mack piece is worth \$53K per lot but uses \$58K when he works out the estimate. With 17 lots we would be looking at \$901K taking into account that \$60K has to be deducted in case of an easement. If we use the numbers provided by the appraiser it is 17 lots times \$58 at \$985K minus the two lots equals \$870K. His engineer says the best case scenario would be 15 lots. Staff says it is closer to 11 lots minus the two lots which would bring us down to \$477K. The appraiser looked at four sales on non-producing land. He stated we have the talent in-house to assist the appraiser for this particular piece of land. He said we need to ask more questions about using the same appraiser repeatedly. Councilor Farmer asked J. Farrell if improvement in the process is needed. He advised Council to step back and develop a Master Plan and figure out how to go forward. Anne Chiampa, 28 Wedgwood Dr. asked for clarification on where the two lots were going to be withdrawn by Mr. Mack. M. Speltz said the original signed agreement provides for two lots to be withdrawn on the Pillsbury lot. He said in an earlier discussion with Andy Mack he was talking about withdrawing 3 lots from the (Walker) Grange lot. She asked if the appraisal for \$900K includes the withdrawal of the two lots, M. Speltz replied no. Anne Chiampa said if we don't know exactly where the lots are on the property it could affect the value of the land. Councilor Wagner asked M. Speltz if those lots were in a specified area. He responded no but we have to make sure those withdrawal lots don't compromise the value of the easement. A. Chiampa asked what the frontage is on Pillsbury and asked if Mr. Mack could have frontage on Pillsbury Rd. She asked if it would be possible for him to have two lots on Pillsbury with 300 ft frontage and 150 ft depth which would equal 600 ft. of frontage on Pillsbury. Community Development Director, Andre Garron said Londonderry has a minimum of an acre. Having more frontage on Pillsbury is one alternative but it could be 1.2 or 1.3 acres designed to meet our regulations. She said she was concerned about access to the property. She asked if the July Cons Com meeting minutes were public, Chairman Farmer said they are available to the public. She commented that it would be nice to have more room for their meetings and asked if they could they be televised. She said she supported Open Space. She said that Andy Mack in a letter said he wanted to work with the Town on the Walker lot (Grange). Councilor DiMarco said he feels he cannot change his vote. He asked if we can go into a non-public session to hear what the Town Manager cannot share regarding rescission of the Order. **Councilor Farmer made a motion to adjourn to a non-public meeting, seconded by Councilor O'Keefe at 8:20 PM; Council's vote 5-0-0.** The Council returned at 8:41PM Councilor Wagner stated she would like to see if Cons Com could try to use a larger room and have their meetings televised. **Councilor Farmer made a motion that the Council reconsiders its vote on Order 2009-11.** Councilor O'Keefe questioned if the motion has to come from the Councilors who voted in the affirmative. Councilor Farmer responded yes. Councilor Wagner confirmed that the votes have to come from the Councilors who originally voted in the affirmative. **No second, motion fails ,the previous vote stands for Order 2009-11.**

## PUBLIC COMMENT

**Elder Affairs** – Stacy Thrall, Chairperson of the Elder Affairs Committee was in attendance. She said the committee interviewed three developers; one for-profit and two non-profit and selected Southern New Hampshire Services, Inc. (SNHSI). They are a HUD-approved contractor with a high level of knowledge and expertise specializing in low income housing. They have completed over 22 projects in several towns in NH. Several committee members visited their Nashua developments and overall were pleased with what they saw. The committee thanked Dick Agnost and Neighborhood Works for their time and willingness to share their expertise. The development will consist of three individual buildings that will be up to three stories high, containing one bedroom units. She also stated that the Elder Affairs Committee would like to relocate the Senior Center to the site if the Town approves. They have begun discussion with the developers on how to build the Center without impacting the tax base. It has been recommended that the committee requesting approval to submit a CDBG grant for the extension of the utilities. Currently the site has sewer and water within 300 feet and gas within 100 feet. Councilor Farmer stated that he was surprised that they are moving the senior center; he said that we need to a real hard look at the cost considerations. He asked if the grants include funding for the development of the Senior Center. S. Thrall said HUD won't fund it but she asked Community Development Director A. Garron to explain it. He said he had conversations with the developers on how they can work in the Senior Center as part of the project. The funding they are looking at will not cover the Senior Center. The financing could be structured into such a way that the Senior Center could be built into the project. If everything is mobilized while the equipment is there it could be worked in. The existing site of the Senior Center is being outgrown. Chairman Brown asked for further information about the CDBG grant. A. Garron said there was another development before the board for an affordable housing grant under the CDBG. The Council voted to support it if it comes through. The town can support any grant that it wants but can only receive one application per year with a maximum amount of \$500K. Whichever project is ready when the grant money is available will be the one to receive funding. Chairman Brown noted that the Town supported a prior grant and questioned if Council can support this additional grant application. Town Manager Caron responded Council can also support this grant and application. The difficult scenario for the Council is that we have competing grant applications: one from this group and the DiCarolis application which was the original application. Part of the ranking on these grants is the progress made on previous grants. You have to determine which grant application is better developed and feasible to move forward. He advised the Council to make sure they support the proposal most ready to go forward. The Town could submit the application for the other grant during future fiscal years. Councilor Wagner verified that we can only submit one grant per year; Town Manager Caron confirmed that was correct. Councilor Wagner asked if Joe DiCarolis has his grant yet. Town Manager Caron responded that part of the requirements for Mr. DiCarolis was that he has to come back to the council to get the grant; he has not done that yet. If the Council agrees to authorize with this application both groups would have to appear before Council again to obtain the Council's permission on the actual submission of the grant application. Councilor Brown asked if they are here tonight for authorization to support the grant, Town Manager Caron responded yes. Councilor Brown asked what the town's role is on moving the Senior Center building; who makes the decision? Town Manager Caron said it is a town building and the Elder Affairs is a town department. If the seniors decide to meet at another location we do not have any control over that decision but we do have control over that facility. S. Thrall clarified that they are looking for a new facility and are not planning on moving the old building. It will be a separate senior center, separate from the elderly housing. She said they are talking about "aging in place" which is why they want it part of the new development. Chairman Brown said the CIP project is

in place and he is not comfortable with this project going ahead of other projects. A. Garron said they would like to factor it into the project if possible. Councilor Wagner asked if the developer builds it can we move the Senior Affairs Dir. Sara Landry there, Town Manager Caron said he would work something out. Councilor Farmer said there is the potential to leverage a lot of things with HUD. The Elder Committee is very sensitive to the tax burdens to the town. Bill Hart from SNHSI gave a packet to the Councilors listing properties they developed. He proceeded to explain what types of living facilities they provide for independent living people. He said HUD allows money for land acquisition \$10K – \$12K per unit. They could roll it into building the senior center by giving the money to the town who in turn will build the facility. Councilor DiMarco asked him for a rough estimate on the units, B. Hart responded the project would involve about 96 units; it will be done in three phases, three years in a row. Councilor DiMarco asked about the competition in NH for HUD monies, B. Hart said Londonderry is located in the metro area; there is less competition for grant monies. He said he has dealt with HUD before and was familiar with the program. Chairman Brown asked when federal money is involved how do you handle Londonderry residents getting into the units? B. Hart responded it is federal money and they cannot restrict it to Londonderry residents only, however many Londonderry people know about the project and get on the waiting list first; typically 80% come from the local area, based upon the projects they have completed. Chairman Brown asked if there is a property manager on site, B. Hart responded yes and it is the property manager's responsibility to make sure that HUD guidelines are followed. Chairman Brown asked B. Hart how the local community can determine what the project looks like. B. Hart responded he meets with the Elder Affairs Committee and with the Town Manager to work through the process to have them as part of the design. In prior projects they have met with the ZBA, Planning Board and abutters at several meetings and received input as to how the building will look. Councilor Wagner asked how much was waived for Joe DiCarolis' project. Did they have to go through the Heritage Commission? Councilor Farmer said the Heritage Commission supported the project but Mr. DiCarolis had to go through all the standard reviews. Councilor Wagner said we need a motion tonight to move forward and support the grant and but asked how quickly will it go in. Bill said the first application will be submitted by 7/10. She asked when will they hear if they received the grant; B. Hart responded Nov. or Dec. She asked him if he needed a letter from the Town that they approved the site plan for the project and he responded no. He will eventually need a letter of support from the town showing there is permissible zoning and he will also need an option agreement with the town. He said in addition to that his company will have to provide various supporting documentation for the HUD grant. The town is only responsible for the CDBG grant the HUD grant will be handled by SNHSI. The HUD grant does not pay for any offsite costs; they will not allow them to bring sewer to the site. Councilor DiMarco said he is looking at the Town Council meeting minutes of 4/20/09; we did conditionally approve the CDBG grant for the DiCarolis project with conditions. **He said he would like to make a motion to conditionally approve this grant with the same conditions:**

- 1. The Town Council will have final approval on the application before it was submitted.**
- 2. Council authorization should not be considered an endorsement of the project, nor does it bind the Town's land use boards to approve any subsequent applications placed before those Boards.**

**Councilor Wagner seconded that motion; Council's vote 5-0-0.**

Councilor Paul DiMarco announced that one of the ALERT members is serving overseas; John Andrioli is serving in Iraq. He asked the townspeople to keep him in their thoughts and prayers that he returns safely.

Town Manager Caron said that the Town Health Officer was notified that there is a potential for EEE in the area and confirmed over the weekend that mosquitoes carrying that disease were found in Derry. All the athletic fields at the schools and the town common will be sprayed this Wednesday evening from 5-9:30PM. No one should be on those properties at that time. This notice is on the website and posted at all the fields. He proceeded to list the precautionary measures people should take to avoid being bitten by mosquitoes.

### **OLD BUSINESS**

None

### **NEW BUSINESS**

**Order #2009-13 – Relative to the Distribution of Cable Special Revenue Funds to the Londonderry School District** Councilor DiMarco read the Order and made a motion to adopt, seconded by Councilor Farmer; Council’s vote 5-0-0.

**Order 2009-14 – Relative to Establishing a Charter Commission to Establish Official Ballot Voting** - Councilor O’Keefe read the first reading, and scheduled the public hearing for 9/21/09, seconded by Councilor Wagner; Council’s vote 5-0-0.

### **APPROVAL OF MINUTES**

**Minutes of Councils Public Meeting of 8/17/09.** Councilor Wagner questioned the Council’s vote on Resolution 2009-1A regarding the Elliott Hospital’s donation when Chairman Brown recused himself. Town Manager Caron responded the vote is correct at 4-0-0 because he stepped away from the board and did not vote; he explained when you abstain you are still participating in the voting process. **Councilor DiMarco made a motion to accept the meeting minutes of 8/17/09, seconded by Councilor O’Keefe; Council’s vote 5-0-0.**

### **OTHER BUSINESS**

**Liaison Reports** – Councilor Brown said he attended the School Board meeting on 8/25; they talked about filling the Planning Board alternate position. There is interest and George Herrmann volunteered to be the appointee. He said they did discuss the LGC proposed Article 28 lawsuit. Town Manager Caron confirmed that the Town has already joined that suit. The School Board did not decide to sign on at that meeting but will discuss it later after they receive more information. Councilor Wagner said the potential loss of revenue is great on the school side if they join. Chairman Farmer questioned if our vote is a separate issue from the School District; he responded the vote to join deals with the retirement system issues, the Town is committed to \$6K, as the Town is looking at potential additional costs in FY11 of \$160K. Councilor Wagner asked how many towns have signed on, Town Manager Caron responded a majority. Councilor Brown announced that there is a Special Heritage Commission meeting this Wednesday at 6:30PM to meet with a developer for a site plan.

**Town Manager Reports** – Town Manager Caron reminded everyone that the next meeting is 9/21. He continues to receive requests from FEMA for specific information regarding for the design of the North West Fire Station; the Londonderry Fire Chief believes Homeland Security will make their determination in mid September. Councilor O’Keefe asked if the regional combination of departments was still being considered. Town Manager Caron responded the fire chiefs are still looking at regional consolidation, as well as enhancing mutual aid. Town Manager Caron said there are 100 projects in the country being funded and he has heard that there are 150 projects being considered. Our project is shovel-ready, we have the land which weighs in our favor. He said that environmental issues have increased the project costs, but are included in the grant. Councilor Wagner questioned the increases in inspection costs; the Town Manager advised that closer construction supervision is preferable with a competitive bid process. Councilor Farmer said he has received calls about an ongoing construction project on Pillsbury near Holton Circle. Contractor has “For Sale” signs on some of the equipment making it look like a used construction vehicle lot. Town Manager Caron said he has received information just before this meeting from the Building Inspector. Unless there were specific restrictions on that development we cannot control the timing of the development at that location. He said if there are no restrictions on the location of equipment the town will request it be moved to the back of property. Councilor Farmer asked if the developer does not comply do we have any recourse, he responded we do. Chairman Brown asked the Town Manager to follow up on it at the next meeting.

**Board/Committee Appointments/Reappointments -**

**Planning Board Alternate Position** – Councilor Wagner made a motion to appoint School Board Member George Herrmann to an Alternate position on the Planning Board term to expire 9/31/09, seconded by Councilor DiMarco. Councilor Farmer said he still feels that we should strive to include more members of the community on boards, he will not object to George Herrmann, as he is a valued member of the community but he will abstain from the vote. Council’s vote is 4-0-1, with Councilor Farmer abstaining.

**ADJOURNMENT**

Councilor Wagner made a motion to adjourn at 9:45 PM, seconded by Councilor O’Keefe; Council’s vote 5-0-0.

Notes and Tapes by: Margo Lapietro Date: 08/31/09

Minutes Typed by: Margo Lapietro Date: 09/03/09

Approved; Town Council Date: 09/21/09