

TOWN COUNCIL MEETING
February 9, 2009

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

PRESENT: Town Council: Chairman Brian Farmer, Vice Chairman Kathy Wagner; Councilors, Paul DiMarco, Mike Brown; Town Manager, Dave Caron; and Margo Lapietro, Executive Assistant.

CALL TO ORDER – PUBLIC SESSION

Chairman Farmer opened the meeting at 7:02 PM with the Pledge of Allegiance. This was followed by a moment of silence for the men and women fighting for our country.

PUBLIC COMMENT

Pauline Caron, 369 Mammoth Road talked about the directives given for the budget to department heads. At the first meeting on 1/5/09 there were no changes made to the preliminary operating town budget. She stated that according to her calculations the preliminary budget was \$14,642,856. Last Thursday on 2/5/09 the final budget hearing was set and the Council stated it wanted to cut an additional \$124,120 to bring the budget to 2% below default. After the Council returned from a Non-Public session they cut the Library budget by \$12K, they would not disclose where the remainder of the \$112, 120 was to be cut citing Non-Public privacy dealing with personnel matters. Under RSA Chapter 32 the definition of appropriations means “an amount of money appropriated for a specified purpose by a legislative body”. In addition RSA 32; 5 II states “all purposes and amounts of appropriations to be included in the budget or a special warrant article shall be disclosed or discussed at the final hearing.” She stated that the appropriations were not all disclosed or discussed at the final public hearing. Just by deducting the amount of \$124,120 in the printed form of the Town Warrant does not make the amount of \$14,518,856 correct or legal. The Council held the sum of \$112,120 in limbo stating it was Non-Public privilege and stating that the Town Manager would make the decision later and return to the Council by 3/2/09 when appropriations were to be changed. No appropriations were made for this amount of \$112,120. No department appropriations were changed so the amount in Article 8 disclosed and discussed for the town operating budget in the final budget hearing is \$14,630,856. RSA 32:5 II further states “that the governing body of budget committee shall not thereafter insert in any budget column or special warrant article an additional amount of purpose of appropriations which was not disclosed or discussed at that hearing without first holding one or more public hearings on supplemental budget requests for town or district expenditures.” No figures for department appropriations can be changed after 2/5/09. Because the requirements of RSA 32 were not adhered to the town operating budget is \$14,630,856. She said the Council has to make hard decisions in the budget season and they have to be made upfront in public and not in secret. The public has the right to know where its money is being spent and to discuss the budget in full. She stated the Council cannot cut an additional \$112,120 from the budget after the fact. The figures disclosed and discussed at the final budget hearing is \$14,630,856, this is set in stone. The Council has to correct the budget figure to \$14,630,856 for Article 8 and adjust the operating budget accordingly. She said she thought in conclusion that this matter should be

reported to the Attorney General's Office. Chairman Farmer responded that she is certainly free to report that information to the Attorney General's Office. He said if P. Caron had a copy of her statement she could give it to the Town Manager, to which P. Caron responded she does not have a copy, it is her own handwriting. He requested that the Town Manager will look into some of the specifics and provide feedback to the Council.

At this point in the meeting Chairman Farmer laid the ground rules for the junkyard licensing. It is listed under New Business, if anyone has specific comments regarding any of the items under New Business including the junkyards they should come forward during Public Comment. Limit your comments to the facts that are specific to the comments that are specific, no personal attacks directed at the Council, members of town staff, neighbors, junkyard owners; keep it civil. He said there is no need to have a long drawn out hearing because everything is repetitive. New Business according to the RSA's does not require hearing public comment, and Council will not receive comments.

Gerard Adams, 54 Hall Road, stated he was here every year to voice opposition to the business located across the street from his house. He submitted a complaint on 12/7/08 via the website. That was on a Sunday and he thinks Mr. Dudek was open for business because he sold a car based on the conversation he overheard. He went through the proper channels; he felt the code enforcement response was un-professional. He said the owner will be asking for extended hours. The area is residential, not commercial. Mr. Adams stated that Mr. Dudek's hours are long enough. Richard Bielinski, 89 Hall Rd. said the cars are over the fence, and the new building has brought in more cars. Since the new building has been put up he said he sees the cars consistently over the fence. He said he does not call anymore because he does not get any response. No one responds to the website. He said the site plan for the parking lot was supposed to be done when the new building was built. He stated nothing is ever resolved. He submitted pictures taken that day of the cars over the fence.

OLD BUSINESS

None

NEW BUSINESS

Order #2009-02 – Relative to the Licensing of a Junkyard Pursuant to RSA 236 (Murray's Auto Recycling - Councilor DiMarco read the first reading. **Motion made by Councilor DiMarco to adopt this Order, second by Councilor Wagner with discussion.** Councilor Wagner asked if Council approves this Order tonight will it be adopted or will it go to a second hearing. Chairman Farmer stated the Council can proceed in either of those paths, whatever the Council chooses. Town Manager Caron said the operator was found in violation twice this year, he was fined the first time, the fine was suspended the second time. Code Enforcement Officer, Frank Holdsworth reported that environmentally and aesthetically the property has done very well. He stated he had several complaints received, most were un-substantiated, some were directed to our attorney for interpretation. Two were confirmed, and the appropriate action was taken. Chairman Farmer asked if we received feedback from the town attorney. Town Manager Caron responded every time we believe it is unclear whether a violation occurred, staff relays information to the town attorney for interpretation and opinion. There are no outstanding items as far as he is aware. Mr. Dudek appeared with his Attorney Bill Schubert. Attorney Schubert said they want to extend the hours currently from 8:00 AM -5:00 PM Monday through Saturday

so the business can operate in a proper manner. He said there are certain state licensing requirements for hours and they would like to extend the hours and perform various work during the company's off-hours. He clarified this work as not necessarily dealing with the public but mostly internal in nature, housekeeping per se. At this time Mr. Dudek is not allowed to do that under the licensing he has. Councilor Wagner asked for a clarification of housekeeping, Attorney Schubert said it means taking inventory, making sure the site is functional and operational during business hours. What is happening now is that everything and anything that is done concerning anything with the business is restricted to the 8-5 hours. With many businesses typically you need the time before and after to make sure that everything is in order so that during the hours of operation everything is orderly. Councilor Wagner said that paperwork means just paperwork in his office. Attorney Schubert replied it was not necessarily housekeeping in the office but that it would be an aspect of it but making sure that the grounds are kept up so that when it is open to the public that he is not doing the housekeeping or taking inventory for example during the course of the hours of operation. Ed Dudek says right now he has restrictions that other people in town don't have; it doesn't seem fair. He is held under a microscope all the time and he is just trying to run his business. Sometimes he needs to get there at 7:00 AM in the morning to meet with someone to do something. Sometimes on a Sunday afternoon he wants to get something out of the yard but he is not open for business. The way the license is written right now he has to go to court every time Gerry calls the Town on him. Everybody else in town that own property can show up on their property anytime they want except for him. Attorney Schubert said Mr. Dudek has complied with the 8-5 hours. Councilor Brown said Council's understanding is that the hours of operation which equal 54 hours a week is more that what meets the minimum required by the State. He stated that he does not understand what he is talking about. Attorney Schubert stated that in order to maintain a NH dealers license you have to be open for operation during those hours but if you are doing housekeeping during those hours, then you are not actually open for business. Mr. Dudek would like the ability to take inventory, do office work, maintain the premises so that during the hours of operation he can be in business to make sales. Councilor Brown said that Attorney Schubert's letter says that in order to comply with the State of NH dealer's license Mr. Dudek needs additional hours, he said that is not our understanding. He has 54 hours a week based on our contract, the question is is he not able to comply with the State of NH dealer's license because he needs more than 54 hours a week to be open. Mr. Dudek replied no. Attorney Schubert said in the letter he asked that in order to comply he needs a mandated minimum of hours; he believes the 54 hours does meet the minimum mandated hours for operations. His client would like to open the door at 8:00 to be functionally operational. Councilor Brown stated he wanted to make sure that Council was not breaking any state law or stopping Mr. Dudek from meeting his license requirement within the hours of his contract. Chairman Farmer asked what are the specifics Mr. Dudek wants to do outside of the existing hours? He said housekeeping and in the letter it says inventory and office work. Chairman Farmer said the work he wants to do might involve starting up machinery to move items around that is basically operating the business. He asked for a distinction between what you would like to do after hours. Ed Dudek said he can't get on his property at 7:00 AM and he can't have his vehicles arrive after 5:00 PM when every other business in town can. Councilor DiMarco asked where does it say in the agreement that he can't be on his property before 8:00 AM. Mr. Dudek cited examples for Council. Attorney Schubert told Council that something came up approximately two years ago when Mr. Dudek was literally taking inventory in the yard and there were complaints. There was a request that there be stricter adherence to the 8-5. Councilor Brown said individual homeowners can do things that a business cannot do. He is being treated the same way as other businesses in town in an AR1 zone as allowed by the Zoning Board of Adjustment. Councilor Wagner asked F. Holdsworth if Mr.

Dudek is working in his office past 5:00 PM is he in violation. F. Holdsworth said he is not in violation if he is in his office before or after hours doing office work. Chairman Farmer said the whole thing comes down to noise. Councilor Wagner said if someone comes before the ZBA to put a commercial business in a residential area they have limitations on hours, noise, etc. Chairman Farmer asked F. Holdsworth how long the hours listed have been part of Mr. Dudek's agreement. He responded since 2002. F. Holdsworth said he was allowed to open once every six weeks or so at 7:00 AM for crushing operations, with that a deal was struck that he would not open Saturday until 9:00 AM. It got re-negotiated he thinks last year and the hours went back to 8:00 AM all the time. The once a month at 7:00 AM was taken out and the Saturday went back to 8:00AM. Councilor Wagner asked if Mr. Dudek is on the property all by himself even if he goes behind the fence is that a violation. F. Holdsworth responded it is not a violation. F. Holdsworth explained a violation is if Mr. Dudek chose to do a certain operation at 7:00 AM that would disturb a neighbor. The neighbor made the appropriate call, it was found to be credible, and the appropriate action was taken. Mr. Dudek responded that other people in town can start up equipment at 7:00 AM, it was not fair. Councilor Brown said there is a noise ordinance in town; individual homeowners can call the police to handle those complaints. Town Manager Caron cautioned the more you allow different uses to take place outside of the normal hours the more difficult it is to enforce the regulations. Currently the rules are very clear: 8-5 Monday through Saturday the applicant is allowed to transact business and perform junkyard operations only during this time. If you liberalize or condition the hours it makes code compliance that much more difficult to enforce. **Councilor Wagner made a motion to amend the motion to read adoption 2/9/09, second reading waived. Second by Councilor Brown. Councils vote to amend the motion to read adoption 2/9/09, second reading waived is 4-0-0. Councilors voted to adopt the Order as it is written leaving the hours as they are. Council's vote 4-0-0.**

Order 2009-03 – Relative to the Licensing of a Junkyard Pursuant to RSA 236 (S&S Metals) Councilor DiMarco read the first reading, second reading/public hearing waived. **Councilor DiMarco made a motion to adopt this Order on 2/9/09, seconded by Councilor Wagner.** Open for discussion. F. Holdsworth said there were no compliance issues and no complaints. **Council's vote 4-0-0.**

Order 2009-04 Relative to the Licensing of a Junkyard Pursuant to RSA 236 (Londonderry Salvage) Councilor DiMarco read the first reading, second/public hearing waived. **Councilor DiMarco made a motion to adopt this Order 2/9/09, seconded by Councilor Wagner.** Open for discussion. F. Holdsworth said there were no compliance issues and no complaints. **Council's vote 4-0-0.**

Order 2009-05 Relative to the Licensing of a Junkyard Pursuant to RSA 236 (Hill's Salvage Facility) – Councilor DiMarco read the first reading, second/public hearing waived. **Councilor DiMarco made a motion to adopt this Order 2/9/09, seconded by Councilor Wagner.** Open for discussion. Councilor Brown said this business is in an AR1 zone and it has two conditions: One requiring additional fencing at the N/W side and the second is removing units from the N/E property line He stated he wants a time frame to have these two items completed. Councilor DiMarco said he agrees. F. Holdsworth discussed it with Mr. Hill who was in attendance and July was established as the time line. F. Holdsworth said the cars are located in a wet area near a brook. Weather conditions could limit getting into the area. Councilor Wagner said if it is an unusually wet season, Council will extend the time frame if F. Holdsworth lets us know. **Council's vote 4-0-0.**

Resolution 2009-02 – Relative to an Agreement to Provide Law Enforcement Services at Manchester-Boston Regional Airport – Councilor Wagner read the first reading. **Councilor Wagner made a motion to adopt the Resolution on 2/9/09, seconded by Councilor DiMarco.** Open for discussion. Councilor DiMarco asked for clarification on what the changes are. Town Manager Caron said the change in dates and the personnel originally requested by MHT was 25 and has been reduced to 23 personnel. Councilor Brown asked what happened to the two policemen, Town Manager Caron responded that there has been turnover at the Police Department (LPD). The LPD will not be filling those positions. He said Capt. Dussault was in attendance if there were any questions. Councilor Brown asked if this extension was part of the original agreement. He asked if the original agreement gave us that contract and the ability to do this, Town Manager Caron responded it did. Councilor Brown said two years go by fast, at what point to do we talk to MHT about renewing the contract, Interim Chief Bill Hart said they will talk to them a year before the contract ends. He said they did a survey about 8 months ago, and received outstanding reviews. Town Manager Caron said the airport director have been very complimentary of Capt. Dussault and his leadership. Councilor DiMarco said the past contract rotated personnel, he asked if that is still being done. Interim Chief Bill Hart responded yes, it is important for the officers to get well rounded training. **Council’s vote 4-0-0.**

APPROVAL OF MINUTES

None

OTHER BUSINESS

Liaison Reports - None

Town Manager’s Report – Town Manager said the Legislature in reviewing their budget has asked the NH Municipal Association on its position on revenue enhancement measures. The Association is putting together a lot of information; hopefully we can dedicate some time on 2/23/09 to discuss it. He stated he needs direction from council, NHMA has a meeting scheduled for 3/2/09 and he stated he wants to represent the Council’s position on those issues at that time.

Senator Shaheen was in Manchester today. He along with Councilor Wagner and Economic Development Director Andre Garron were there to represent the Town. They spoke to her about the airport access road and Pettengill Road. The got a lot of good information from the Airport Director and the Transportation Commissioner about the economic development tie-in at Pettingell Road. He said that they have also been encouraged by the Senator and Congresswomen Shea Porter’s office to submit requests for appropriation for the airport access road which is outside of the stimulus process. They recommend following both paths, so staff would like to submit an application that is due 2/23/09. The application would encompass all the information which the Council has seen in our presentation to date as far as cost, scope and job creations. If the Council concurs with that direction staff will prepare the application; the Council agreed to go forward.

Chairman Farmer said the next meeting will be on 2/23/09 for a Public Hearing on the Town Common Special Revenue Fund followed by a Town Council meeting on 3/2/09. Councilor DiMarco said the week of 2/23/09 is school vacation week and he will be out of town.

Board/Committee Appointments/Reappointments/Resignations - None

ADJOURNMENT

Councilor Wagner made a motion to adjourn at 8:05 PM Second, Councilor DiMarco. Council's vote 4-0-0.

Notes and Tapes by: **Margo Lapietro** Date: **02/09/09**

Minutes Typed by: **Margo Lapietro** Date: **02/13/09**

Approved; **Town Council** Date: **03/02/09**