

TOWN COUNCIL MEETING

June 7, 2010

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

PRESENT: Town Council: Chairman, Paul DiMarco; Vice Chairperson, Sean O’Keefe; Councilors: Mike Brown, Tom Dolan, John Farrell; Town Manager Dave Caron; Executive Assistant, Margo Lapietro.

CALL TO ORDER

Chairman DiMarco 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

Chairman DiMarco mentioned a reminder from the Town Clerk that dog licensing was due by the end of May and there is now an additional \$1 late fee. On 6/21 the Council will be presented with a list of owners of unlicensed dogs who will receive a civil forfeiture. Rabies vaccine has to be current and any one can call the Town Clerk’s Office to get information. Civil forfeitures are \$25 for each dog plus the certified letter fee of \$5 and any late fees beyond that. As of now there are 1,200 unlicensed dogs; last year at this time there were 800 not licensed.

Tax bills have been mailed out and if people have not received their bill they should contact the Clerk’s Office.

Carol Bartlett, Beautify Londonderry Participant – Carol Bartlett, 10 Tokanol Drive addressed the continuing litter problem in Londonderry. She was a team leader in picking up garbage. Her team consisted of 15 people who picked up litter at Home Depot on Gilcreast Rd. to the bridge which is 3/10 of a mile. They picked-up over 55 bags of garbage. The South Rd. team leader also experienced similar problems with dumping. She talked about littering in general and asked if “No-Littering” signs could be erected. She quoted research she had completed; out of 50 states, 46 have fines for littering or some kind of penalty. RSA 163 Section B3 –B6 states specific littering criteria. It is a misdemeanor in NH and a person can be fined up to \$2K and/or receive jail time. Londonderry has litter laws and a fine of \$300. She asked that the signs be posted on Gilcreast, South Rd., and Rte 102 and stated there are other areas in town which would benefit from signage. She said that litter devalues the town, it affects property values. As a group they realize the town would take responsibility for paying for signs, installations and enforcement. Their solution is to ask the businesses who customers that contribute to the problem also contribute to the cost of the signs. She quoted prices and provided research on the prices for signs. She said it is tough to enforce the law but if someone knows there is a deterrent they might think twice about littering. Councilor Brown stated that the major roads are mostly state roads and the erection of signs is their responsibility. He acknowledged that the cost of signs and the cost of staff is another consideration; it is a great idea but it has a lot of implications. C. Bartlett said picking up the garbage bags and disposal resulted in a cost to the town. She said it has been her experience in looking at other towns that signage decreased garbage. Councilor Farrell cited a town in NY that makes the private owner responsible for the

litter on their property; they created an atmosphere of no littering. He said C. Bartlett has come up with a plan and we consider her suggestions. Councilor Brown said he believed the Town has a Litter Ordinance and asked the Town Manager to research the Ordinance. Councilor Dolan also asked the Town Manager to check any statistics we have with the Londonderry Police Department for citations and past history. State Rep. Al Baldasaro said he will check with the state to see if they can erect signs on state roads. Chairman DiMarco said we could potentially have a way of privately funding the signs with C. Bartlett's offer to visit local business for donations. He requested the Town Manager find out the cost and see if it could be privately funded. Councilor Dolan said the Beautify Londonderry participants could supply us with targeted litter areas in town. Councilor Farrell asked if there were any restraints from the state that would allow us not to fine more than \$300. Town Manager Caron said there is a state law that limits the amount of money we can fine for violation of municipal codes. Anne Gaffney, 28 Tokanel Rd. suggested having a notation on the sign that the town enforces littering laws; that would send the message more globally. Frank Dromgoole 1 Tokanel Dr. says the state of Conn. has signs for \$347 for littering, make the sign have an odd amount which makes somebody look at the sign because it is not a uniform sign.

OLD BUSINESS

Order #2010-03 – Relative to the Licensing of a Junkyard Pursuant to RSA 236, Murray's Auto Recycling – Councilor O'Keefe made a **motion to accept, second Councilor Farrell.** Town Manager Caron explained that state law was adjusted last year to change the effective date for junkyard licenses from 4/1 to 7/1. Unless the Council believes that the re-issuance of a license is in jeopardy then no public hearing is required. Back in March we heard from Code Enforcement Officer Richard Canuel who at that time did not express any concerns about the operations of three other junkyards in Town. All were renewed. There were some issues with Murray's and Mr. Canuel recommend deferring action to this meeting. He recommend Council listen to R. Canuel for a current status of the junkyard. R. Canuel said a few issues were left over from the meeting of 3/1/10. One recommendation is to omit one of the conditions on the license; the storage shed for tires was no longer necessary. Mr. Dudek met all the condition requirements from previous site visits, which included reconstruction of the berm, fence repair and state requirements, all conditions are in compliance. The major concern is the issue of hours of operation. Last March there was concern about late deliveries and the decision by the board to see if that was part of the operation of a junkyard. Town attorney said deliveries are considered part of junkyard operations and should be limited to the hours of operation and no deliveries after 5:00 PM. That is part of the condition of the license. As of the March 1st hearing we have received 24 reports of late deliveries by the abutting property owner. After discussion with the town attorney he sent notification to Mr. Dudek regarding the late deliveries and reminded him of impending enforcement action if they continue. Since the March 1st meeting he has received a report of 22 individual incidents. The town attorney's concern is the town taking enforcement action without having substantial evidence regarding those late deliveries rather than a written note from one abutter. He recommended that the complaints should be accompanied by photographic evidence to substantiate and Mr. Dudek has been told this information. With that exception Mr. Dudek has done everything he has been required to do to meet the requirements of his license presently. Al Baldasaro, 41 Hall Rd said he is an abutter and quoted the NH constitution. He says this is out of control; we are taking away Mr. Dudeck's right to have a business and provide for his family. He is proud that Mr Dudek has turned it into a "green yard" He said he does not hear any noise from the trucks and he abuts the property, it is only 2 people on the street complaining and one of them lives at the end of the street. He said if his driver gets back after 5:00 PM he is authorizing the driver to back the truck onto his

property for the night. Attorney Peter McGrath who represents Mr. Dudek explained that Town Council is misinformed. It comes down to the definition of the word "operate" He showed the photos of the sign indicating the hours of operation, they close for business at 5:00, (copy attached). He explained that the word "operate" in the dictionary talks about "to be open for business". They close their business at 5:00 PM so they are in compliance. He is allowed to do personnel business on his own property. He stated that former Code Enforcement Officer Frank Holdsworth, on 5/6/08 discussed this condition of closing at 5:00PM with a witness present and Mr. Dudek agreed to close at 5:00PM with no public business after 5:00PM. Sometimes a truck arrives after 5:00PM to pick-up or deliver that would not be considered a violation. He attempted to contact F. Holdsworth for an affidavit but was unsuccessful. The other witness to the conversation, Dan Dyer was present on 5/6/08; he was involved with the discussion with Dudek and Holdsworth. In his affidavit Dyer said they discussed the questions about the operating hours and F. Holdsworth explained that they could not conduct business after 5PM but they could open the gate after 5:00 PM to bring trucks into the property and that would not be considered operating business because they are not open to the public for business. The complainant does not get this and it might be handled as a civil matter that does not involve the town. He gave Council a copy of the affidavit (copy attached). The 22 complaints received were tainted and there were no violations. Suzanne Bilodeau, 63 Hall Rd. said she has lived there for 17 years. Of all the junkyards Murray's is the cleanest and most presentable. She said she does not hear anything, he has improved the property and this harassment has to stop. Richard Belinski, 89 Hall Rd. said they are not allowed to put anymore signs up if they have they are in non-compliance. They went to court two years ago and the judge found that he was in violation of after hour business. Frank Holdsworth testified on behalf of the Town, Kevin Coyle was the attorney for the town. He asked why are there 5 companies registered at that address, he is in non-compliance. The soil is tainted with oil again per the state per a letter received from the state. R. Belinski said there was concern about one of the monitoring wells not being able to be tested again because it was covered with crushed cars as stated in the letter. Councilor Farrell asked R. Canuel if he knew anything about these items. R. Canuel said there were some concerns regarding the testing of the wells and one of those concerns was from an abutting property owner, the Adams's. The latest report from DES from 1/10 came back negative, the test included their well. Other testing wells were tested, one was not accessible at the time it has been corrected but he has not received the latest paperwork from DES. All other wells have been tested and came back negative. J. Farrell asked if they were soil samples, R. Canuel said they were taking water samples from the monitoring wells. Councilor Farrell asked if the fact that there were 5 purported business there; does that have anything to do with this permit. R. Canuel responded it had no bearing whatsoever on Mr. Dudek's ability to operate a junkyard. If he is actively conducting other business from that site it would require a site plan approval because it is a change of use and he stated he has not seen any evidence of that. There is no sign for any other business on the site. If he is using his office as a phone contact to conduct other business it's no different than someone making a phone call inquiring about auto parts. If he has customers coming to the site and conducting business for those businesses then he is running another business but he has not seen any evidence of other business. Gerard Adams, 54 Hall Road said on 3/1/10 he wanted to know if anyone has any comment from the correspondence received from DES whereby they said there was no documentation of weekly inspections and the fact that significant oil staining was evident throughout the site. R. Canuel said he has a copy of the letter and those issues have been addressed. G. Adams clarified that the 22 complaints they made covered deliveries anywhere from 5:15PM to after 11:00PM at night. Claudette Adams, 54 Hall Rd. said when she returns home from work she passes those tow trucks at 5:15PM on their way out. It is not the case of being stuck on the road. She said what they are just trying do is to make him compliant. She said there is an outstanding court order for the signs. Dina Jenkins 38

Hall Rd, offered her driveway if trucks come in after 5:00PM. She said enough is enough the man is trying to run a business, he is in compliance. Ronald Jenkins, 38 Hall Rd. agreed with his wife. Lee Leblanc, 58 Hall Rd lives across from the Adams. He said people turn around in his yard because people pass the junkyard because there is no sign to indicate where it is. He said he thinks he should be allowed to have a sign. R. Canuel said there was a court decision several years ago and one of the conditions was that there will be no additional signage added. The sign that exists is an address sign that says 55 Hall Rd., that is not considered an advertisement sign. He suggested leaving it as is and he is in compliance with this condition. Councilor Dolan said it makes sense that the operating hours sign should be allowed and made a recommendation to move the question. Councilor Brown said he would like to comment before the question is moved. He clarified that junkyards are no longer allowed in residential areas, they are not compatible, and in this case it is grandfathered. We do have a signed agreement for hours of operation. In March we were asked if deliveries after 5PM were to be considered part of a junkyard operation, the answer from our lawyer is yes. Mr. Dudek has done everything we have asked him to do but the hours of operation have to be adhered to. Councilor O'Keefe said he agreed with what Councilor Brown said, the agreement was signed by both parties, and he has to comply with the agreement of hours of operation. He has made every attempt to make the property as non-descript as possible. **Council's vote was 5-0-0.**

NEW BUSINESS

Resolution #2010--16 - Relative to an Agreement for Technology Support Services -. Councilor O'Keefe **made a motion to adopt, second Councilor Dolan.** Town Manager Dave Caron stated that one of the goals of Councilors was to periodically seek proposals for IT services. He said he received a total of 7 bids and proceeded to list the criteria used to determine the successful proposal. Although the Town is quite pleased with the excellent service provided by Eaglevue, there is an opportunity to save \$75K over the next three years by recommending contracting with Spaulding Hill Networks. Councilor Dolan asked if this contract provides offset server hosting for our website. Town Manager Caron responded no, the Town recently contracted with a separate national firm to host our website security just last week. Councilor Brown asked if they provide this service for other municipalities. Town Manager Caron responded they provide a comparable service to the Pelham School District and completed technology studies for the Town of Merrimack and both of those references came back as very strong. Councilor O'Keefe stated Council appreciates Eaglevue's services; this was a chance to save some money over the next three years. Chairman DiMarco asked if we have a plan for the transitional period. Town Manager Caron said the plan is to ask Eaglevue to stay through a transition period. Chairman DiMarco said IT services are important and the savings over the next few years will help. **Council's vote was 5-0-0.**

Order #2010-11 – Relative to Expenditure of Maintenance Trust Funds for Various Projects Councilor Dolan **made a motion to adopt, second Councilor O'Keefe.** Councilor Brown asked are these Orders an on-going thing. Town Manager Caron said although the Town has provided quality facilities, the mechanical systems are getting older and in need of more frequent repairs. The Council was provided information on the nature of the expenditures. Chairman DiMarco questioned the repairs at Leach Library and asked if there is a separate maintenance trust fund for the Library. Town Manager Caron responded no; the Library is allocated a portion of the Expendable Maintenance Trust on an annual basis. **Council's vote was 5-0-0.**

Planning Board Request - Town Manager Caron said at the 6//2/10 Planning Board meeting a motion passed to request that the Council investigate the why and how that Crowell's Corner, LLC (Nutfield Publishing) was allowed to occupy and operate for 4 yrs at 2 Litchfield Road without a Certificate of Occupancy (COA). He proceeded to quote Section 3.14 from the Town Charter that allows the Council by a majority vote to require any appointed Town Staff or Board or Commission Member to appear before it and give such information as it may require in relation to this office, its functions and performance. From staff's perspective code compliance at 2 Litchfield Road did meet the Planning Board goal of equal treatment for all applicants. There is a significant time difference in this particular process. The Town's goal has always been to encourage compliance and proceed to enforcement only when it becomes apparent that the relationship between the town and the property owner is not producing a timely response. Town Code Enforcement Officers have maintained a very successful record of achieving code compliance and maintained a high conviction rate. He reviewed the conviction rate of the Code Enforcement Officers and the method used. The town was not satisfied with the pace of compliance of the owner; it was brought to court and the court approved an agreement which established standards with respect to achieving site plan approval which was the ultimate resolution of this matter. The entire process culminated in site plan approval by the Planning Board on 6/10/09. The property owners are required to meet site plan conditions within one year or seek an extension from the Planning Board. The Planning Board recently denied the extension request; consequently the site plan expires on 6/10/10. The Code Officer will then establish a path to compliance to cease the current use of the property. He compared the timeframe between the Planning Board versus the ZBA site plan review process whereby the Planning Board process is much lengthier. This is the first incident that we have seen, and he asked for Council's guidance for enforcement. Councilor Farrell who is the liaison to the Planning Board was unable to attend that meeting. He spoke to the Chair and their point of view is that enforcement should have been on-going; even during the site plan process they would not have allowed another business to occupy the premises during the site plan process. Their view is they operated illegally; no CO and the enforcement should have begun on day one. They are looking for some transparency to the process so it doesn't get repeated. This project was the exception, most previous cases involved new construction when CO's were denied. Councilor Brown pointed out that there are technically people operating businesses out of their homes illegally all over town. The applicants are directed to go to the ZBA for a permit and while that is occurring they are still doing what they are doing and it takes 30-60 days. The site plan process takes longer for approval. He said this topic should have come up at the Planning Board over the past years particularly with Councilors as liaison. Why is the Planning Board coming to this conclusion now? Councilor Farrell said it is a commercial property; it came about because of all the happenings in the past two months. Mary Wing Soares, Vice Chair of the Planning Board said it has come up several times over the past four years at a Planning Board Meeting. That is why the site plan was moved forward originally, why the compliance officer went originally, why we were willing to give the first extension to have the first site plan come forward. We've worked with them for a long time. From day one there should not have been anyone occupying that building until the CO was given and that is the question. Councilor Brown said the Planning Board and the Council Liaison knew the business was in there all this time. M. Soares said that question has been brought up many times. Councilor O'Keefe asked if we are going to have the Town Manager launch an investigation into why it operated for four years without a CO we need to ask what is going to be the result of the investigation. If the Town Manager finds out someone did not do their job are there going to be consequences to the person. Over a year ago the Planning Board granted an extension to Crowell's Corner for completion of its work. Is this investigation going to look into why the Planning Board did not only consider but granted an extension with no CO existing, why didn't they ask the status of the

CO at the time of approval. Are there going to be consequences to the Planning Board members for the decision of not asking the questions? Were the members who voted to extend which was unanimous; are they going to be asked to resign? What are the consequences, what are we asking to do here. He said if the Planning Board wanted an answer they could have asked the Town Manager to answer the question without having to go public. It was not handled the right way. It is a unique circumstance, you can't change what happened, staff is doing what they are told to do. Politics are the reason we are here now, the Planning Board said no, the Council said yes to rezoning this parcel. He said he has no idea why they went in before the CO was given. We should be presenting an image to encourage business to come to town, this is bad press for the town, there is a lot of ways to fix this and he does not agree with the way we are doing it. Councilor Dolan said in the Planning Board meeting minutes of 6/2 Laura El Azem said she was glad that the motion was on the table and that she was sorry that the Pauls were caught up in this. She hopes we can reach a point where this will not happen again. Councilor Dolan said we should find out what happened and make sure it does not happen again. It is a complex issue over four years. It is two things, if everything did happen the way it should have happened our process is such that it takes four years to get to this point; the second possibility is that our process was subverted somehow and was unnecessarily extended. If the first part happened then he suggested we have a broken process. We should never have a situation that extends out over four years, it is too long. If it is the second part then we need to see what happened and try to prevent it from happening again. If we made mistakes along the way we should own up to them and move forward. If we have a broken process then we should fix it and make it a better process. We have a good summary of what happened from the Town Manager. He would ask the Town Manager to do a more detailed review over the four years as to what happened to whom along the way and make some recommendations back to Council. If we have a broken process what are his recommendations. If he finds we made mistakes let's acknowledge them, agree not to make the same mistakes any more and move forward. Pauline Caron 369 Mammoth Rd. said she has an issue with the vote of the Planning Board on 6/2/10. She states it is illegal. The subject matter was not on the Planning Board Agenda. The subject matter of the motion is not permitted for a Non-Public Session under RSA 91a. The members of the Planning Board arrived at a decision amongst themselves not in public session but either by in person, telephone or electronic media. The decision was made in secret behind closed doors and was illegal. Further evidence was that Mary Soares read the motion into the record from a prepared statement. In addition Chairman Rugg read into the record an e-mail from Lynn Wiles approving the motion. Mr. Wiles was not at the Planning Board meeting but he knew of the motion before hand evidencing a conspiracy of a secret behind the closed doors action of the Planning Board which is not legal. The Town Council discussing this matter which was brought forward by the Planning Board compounds the illegal actions of town officials. Adrianna Komst, 5 Manasquan Circle said the Council should consider that a business is at risk and their name is in jeopardy because of the appearance in the media and discussions in the town. Using their name as an example could be hurtful to this business and operation. You are using the name the Nutfield Publishing very often, the owner of the building is Crowell's Corner which is not mentioned. Nutfield Publishing, LLC is the renter and you should not generate negative media towards this company or the landlord of this building during this investigation. Chris Paul, 118 Hardy Rd is the owner of the building and said he did not think it would take this long for the process. They agreed that they would move out. He said he does not understand why they are still being singled out. It seems like there is some ax to grind. The Planning Board gave them the ability to be there to begin with. Why are they going to the Council at this point they knew who did it. Deb Paul, 118 Hardy Rd. the publisher and owner of Nutfield Publishing said she is the renter and rents the property from her husband. She said this is a personal and political attack on her business. Chairman DiMarco reminded the public that the

Planning Board has asked Council to investigate why this business at Crowell's Corner, LLC was allowed to occupy and conduct business at 2 Litchfield Rd. for four years without a CO. Pam McFarland, 4 Buckingham Drive said she wants to know why as well. She questioned the size of the parking lot required and said it is no wonder we are not able to attract business to come to town because they are treated poorly. Councilor Farrell read the meeting minutes of 6/2/10 and they talked about a letter being read but no motion was made by a letter and they are not in the draft minutes. Brian Farmer 106 Chase Rd said the comment was not about the letter, the person in the audience was saying there was something wrong about the timeline. There was no item on the agenda that spoke specifically about the project yet there was an e-mail from a Planning Board member supporting a motion that had not been made in public. Councilor Farrell said according to the minutes, there is no letter there for him to read what the letter says; he will have to wait for the formal minutes. B. Farmer said if the Council is doing an in depth look into it, it would involve all aspects of it and should be done in public. The issue at first had to do with historic preservation of the property. Spot zoning was another issue. He said there is a whole lot of process issues and to look at the time line. There were conditional approvals at the zoning changes. He said the work "investigate" is a term reserved for an implication of wrong doing. He said he would like to know who thinks somebody has done something wrong and everybody who thinks that to come forward. He said if anybody is accused everyone should have an opportunity to answer their accusers. It is a waste of time to investigate if we don't do it all. Councilor Farrell said this Council shouldn't be doing the investigation; it should be done by somebody independent because everyone on the Council is involved. Councilor Farrell said he can't do anything about yesterday and he would be happy to take responsibility for it. Glen Douglas, 6 Overlook Drive said he read the minutes and watched the tape several times. When something comes up that is not on the agenda, and someone reads a motion and a minute and thirteen seconds later an e-mail is read stating the same motion and that person agreed with the motion it appears darn clear that this was discussed outside the meeting. He said he sees this over and over, he attends meetings that are over before they start; he says this is not the first time it happened. It is obvious this was discussed before, it is about the process. It was about saving a building and it is about politics. John Curran, 6 Faye Lane said don't spend time and money fixing blame and doing investigations. The issue going forward is if they can come into compliance or is a court action necessary. There is enough blame going around. Keith Gagne, 84 Hall Rd said somebody let this business operate for 4 years that shouldn't have. What happens now? Town Manager Caron said the ultimate resolution of the situation was to obtain site plan approval and implement conditions of the site plan. Since the deadline to achieve that expires in 4 days the Code Officer will meet with the property owner to make sure that the property's use is allowed under the zoning ordinance, which he believes is residential by special exception or commercial with an completed site plan. K. Gagne asked if they will have to stop doing business, Town Manager Caron responded that was correct. K. Gagne said there have been a lot of mistakes; look at the procedures to fix the system. Mary Wing Soares said the Planning Board is looking at it as a compliance issue, from a legal point of view. We have allowed something for four years in this town that other business can come to us and say you allowed them to do that why can't we do that. The Planning Board does not want to set a precedent any further than they have. They need to find out why this was allowed, why our town has the policy of saying as long as you work with us we'll let you stay there. We have done this in other situations as well and the Planning Board is concerned that Council will set themselves up for trouble down the road. Councilor Farrell asked Town Manager Caron if he made a motion along the lines that we understand that there were probably some procedures that we did not follow, we need to scrutinize more closely going into the future and we give you some direction to look at those and fix them in the future as well as take some responsibility that there were probably some mistakes made and that there were probably some people that got involved in some areas that

they should not have gotten involved in. Would something along those lines give you enough direction on what to do? He responded the middle part would have to be more specific. Councilor Farrell told Council he was looking for suggestions on the wording of the motion. Councilor O'Keefe said he is not looking to assess blame on anybody and does not want staff to waste time on it; it ends today with the Council. The Town Manager can look at the process to see if it is broken but that is the extent of what he wants done. Chairman DiMarco said the Town Manager is looking for guidance from us going forward on how we are going to address these types of situations. Councilor O'Keefe asked the Town Manager if his statement gives him enough to determine that this is the process now. The Town Manger responded we can tighten the time frame very easily, no extensions for submission of plans or continuances for Planning Board Meeting; that will shorten the timeline considerably. That sort of blanket process is adverse in his opinion to attracting businesses to town. He is suggesting the timeframe on this situation was more of an anomaly to what customarily occurs. Whatever direction Council gives him he will follow, however, the direction should be specific so as to avoid varying interpretations. Councilor Dolan said if we have a broken process, it needs to be fixed and if it is not fixed now we are dooming other Councils to make the same mistake. What we did needs to be better, go forward and fix it. Councilor Brown said this is the first time this has happened, accept that and start the review process. It is not typical and due to specific circumstances, it is very unusual. He won't support trying to investigate how it happened. He said he is okay with having the Town Manager review it as an action item. Chairman DiMarco explained the Planning Board can ask the Town Council to do anything, it doesn't mean they have to act on it. He said we should acknowledge that if the Town Council should accept the blame for it he is willing to participate in that. He said he is not in support of an investigation; he does support finding out what could be done differently making sure the mistakes do not happen again. Councilor O'Keefe said he likes the idea of it being an action item for the Town Manager and to look at the process and procedures to review it and this does not need a motion. Councilor Farrell disagreed he said he thinks it needs a motion that we take responsibility and move on, the "buck stops here". **Councilor Farrell made a motion that this Council takes responsibility for the unfortunate happenings of Crowell's Corner and that we will direct the Town Manager to look into the procedure and the process over the last four years; make recommendations on how to improve our processes and also provide us with direction so that this no longer further happens in the future, second Councilor Dolan for discussion.** Councilor O'Keefe said he is not comfortable with this motion. Councilor Farrell explained when the Council re-zoned it in 06 or 07 that was the last time the Council had it. Councilor O'Keefe clarified that Councilor Farrell's motion is to accept the blame for what the Council did in 06 for the rezoning. Councilor Dolan said the issue is not the rezoning. Three members of the Council in 06 made a motion to rezone that property and they did it under advice of legal counsel. That had to do with the historic nature of the property. Now the issue is once that was resolved we went through a period of quasi code enforcement activity over a four year period and site plan activity. He said the question is do we want this process to continue that takes this long or do we want to say our process should be streamlined. The issue is how to fix it. Councilor Farrell is saying whatever went wrong from the time it was rezoned to the present that we are accepting responsibility for it. Councilor Farrell is saying he is not assessing blame for what happened on anybody; just stop it and we will take responsibility. Councilor Brown said he is not comfortable with the beginning of the motion either. Chairman DiMarco said we are assuming responsibility because the policies that were followed were established by the policy making board which is the Town Council. Councilor Dolan stated that we are ultimately responsible there is no higher authority in the town. Chairman DiMarco said what he would like to say is that the Town Council takes responsibility for the processes that led up to this point and the remainder of the motion. Councilors O'Keefe and Brown restated they are not comfortable

with this. Councilor Dolan stated the motion says we are taking responsibility. It eliminates some kind of witch hunt and takes that off the table. It allows the Town Manager to look at the process to find where the problems were. Councilor O'Keefe said he is not accepting blame for the Planning Board actions, the past Councils actions. He said he is sitting here as a leader but he is not accepting blame for what happened. Councilor Dolan said that from time to time we have to stand up take our lumps and admit that something was done wrong. We are not going to spend a lot of time and money investigating what happened, just accept it and move on. Reed Clark, 79 Stonehenge Rd said if you all don't accept responsibility for all the other boards you will have finger pointing all the years after. If you don't accept the motion then ask the Town Manager to look into it, there is no acceptance of responsibility by doing that. **Council's vote was 2-3-0.**

Chairman DiMarco suggested we separate the two items in the motion and vote on them separately.

Councilor O'Keefe make a motion to instruct the Town Manager to look at the processes and procedures we currently have from the Planning Board and find out where the issues are that allowed the loopholes in the amount of extensions and the amount of time that it took to where we are today. A few of the Councilors stated they do not understand the motion. Adrianna Komst, 5 Manasquan Circle recommended that the Town Manager develop a time line or a process flow of the events that occurred over the past four years and to dissect each of those pieces to see where the timeline could have been cut or where changes could have been made to shorten it or to see whether that was actually the proper amount of time that should have been taken for this procedure. Councilor Farrell said the time line is done it is 88 pages long.

Chairman DiMarco made a suggestion that someone make a motion that instructs the Town Manager to find out what has transpired to get us to this point and identify places where improvements could be made. **Councilor Farrell made the motion, second by Councilor O'Keefe.** Councilor Dolan said he would support the motion but was disappointed that we did not accept responsibility for the mistakes made on Boards/Commissions/Committees and it was an opportunity missed. Chairman DiMarco said the motion on the floor is to provide direction to the Town Manager. **Council's vote was 5-0-0.**

Councilor Dolan said he would make a motion that the Council accepts responsibility for anything that did not happen that should have with regard to this particular case and that no further review be conducted, second Councilor Farrell. Council's vote 3-2-0.

Brian Farmer, 106 Chase Road said Councilor Farrell referred to an 88 page report that summarizes this matter. B. Farmer asked if it is a publicly released document, Councilor Farrell replied it has been publicly released multiple times. Town Manager Caron explained the first three pages summarize the time line and the rest of it is supporting documentation, design review meeting minutes, minutes of Planning Board meetings, minutes of Town Council meetings. B. Farmer asked if it was available on the website, the Town Manager responded not but he would send him a copy. B. Farmer said he would like to read it.

APPROVAL OF MINUTES

Minutes of Council's Public Meetings of 05/17/10. Councilor Farrell made a motion to accept, second Councilor Brown. Council's vote was 4-0-0, with Councilor O'Keefe absent.

OTHER BUSINESS

Liaison Reports - Councilor Dolan said he has a draft from the Conservation Commission for a new committee charge for a Taskforce. He said he shared it with the Town Manager and would recommend they initiate it for an agenda item for an upcoming meeting. A member of the Conservation Commission will attend the meeting to review the proposed document. He suggested coordinating with Mike Speltz for a mutually agreed meeting date.

Councilor Brown is working with the Chair of the Solid Waste Advisory Committee to line up a potential agenda item for the 6/21 meeting to recognize the volunteers that ran the Beautify Londonderry program.

Councilor Farrell attended the Elder Affairs meeting and they are planning to attend the Planning Board meeting about multi-family housing. They have a number of questions about the Auburn Rd site. They want 20 units not the 16. Counsel will offer advice. Chairman DiMarco stated he got a question from a citizen if the senior housing project for Sanborn Rd. has ever been submitted or is it just a conceptual or has it been grandfathered. Councilor Farrell responded it is a 96 unit apartment complex that has been on the books for about 5-6 years. He does not recall how many units were in each building and it has had multiple extensions as multi-family.

Councilor O'Keefe said he had a Traffic Safety Committee tonight and they met with a citizen who was concerned about switching a sign from a yield sign to a stop sign which will remain the same. The issue of the speed posting on High Range Road will be on the October agenda to discuss because they ran out of time.

Chairman DiMarco said he has the SNH Hazemat next week; he was not able to meet with the Leach Library Trustees this past week. He attended the Manchester Airport Authority meeting and they have a new board member, Dan O'Shaughnessy. Airport Director Mark Brewer gave insight to vision goal of becoming the premier aviation gateway to the region. Parking going up from \$2-\$3 and hour and the cell phone lot remains free. Their revenue is down 12% but their expenses are down 16%. Air service traffic is down 17% but cargo is up 2.8%.

Town Manager Reports - The Town Manager said the N/W Fire Station has commenced; they have one change order during excavation they discovered a dug well. Completion is targeted for the first of November.

Board/Committee Appointments/Reappointments -

Resignation of Larry Casey from the Londonderry Arts Council – Ad Hoc Position. Councilor Dolan made a motion to accept the letter of resignation and asked the Town Manager to issue a letter for appreciation of his work, second Councilor O'Keefe. Council's vote was 5-0-0.

Appointment of Elaine Farmer and Barbara Scott to the Londonderry Arts Council – Ad Hoc Position. Councilor O'Keefe made a motion to appoint Elaine Farmer and Barbara Scott to the Ad Hoc positions on the Londonderry Arts Council, second Councilor Dolan. Council's vote was 5-0-0.

Councilor Dolan made a motion to go into a non-public meeting according to RSA 91A -3-II-b at 9:50 PM, second Councilor Farrell.

Aye John Farrell, Aye Paul DiMarco, Aye Sean O’Keefe, Aye Tom Dolan, Aye Michael Brown.

ADJOURNMENT

Notes and Tapes by:	<u>Margo Lapietro</u>	Date: <u>06/7/10</u>
Minutes Typed by:	<u>Margo Lapietro</u>	Date: <u>06/9/10</u>
Approved;	<u>Town Council</u>	Date: <u>06/21/10</u>

AFFIDAVIT OF DAN DYER

DAN DYER, being duly sworn, deposes and says:

1. I am over the age of 18 and am familiar with the facts and circumstances set forth herein.
2. I offer these statements as the truth under penalty of perjury.
3. I was present on approximately May 6, 2008, at Murray's Auto Recycling on Hall Road in Londonderry, NH.
4. With us discussing the auto recycling operation was Ed Dudek from Murray's Auto Recycling and Frank Holdsworth from the Town office.
5. We discussed the questions we had about operation. Frank from the Town explained that we could not "operate" business after 5:00 p.m. Frank explained that we could open the gate after 5:00 p.m. and return trucks onto the facility and that would not be considered "operation". I remember we discussed this because at the time it was important and we had a neighbor that was complaining frequently about us. I remember this conversation because Ed and I discussed it afterward. Some years afterward we received a complaint from the Town of Londonderry whereby they suggested that we were "operating" after 5:00 p.m. We do not operate after 5:00 p.m. Sometimes a truck may go out in the afternoon for a delivery and not return to the facility until after 5:00 p.m. and the truck may go on to the property, get locked up and left there and the employee may then drive home. We are not operating after 5:00 p.m.
6. If called to testify, I would testify as to the statements present in this affidavit.

