

1 **TOWN COUNCIL MEETING**

2 **August 19, 2013**

3
4
5
6 The Town Council meeting was held in the Moose Hill Council Chambers, Town
7 Hall, 268B Mammoth Road, Londonderry, NH.

8
9 PRESENT: Chairman John Farrell; Vice Chairman Tom Dolan; Councilors Jim
10 Butler, Joe Green; LPD Chief William R. Hart; Town Manager Kevin Smith;
11 Finance Manager Susan Hickey. Absent: Councilor Tom Freda.

12
13 **CALL TO ORDER**

14
15 Chairman Farrell opened the meeting with the Pledge of Allegiance. This was
16 followed by a moment of silence for the men and women serving our country
17 and for first responders.

18
19 **NON PUBLIC SESSION**

20
21 Chairman Farrell announced that the Councilors would be in non-public session
22 for five to seven minutes to meet with legal counsel. He asked for a roll call
23 vote; the vote was unanimous.

24
25 On motion of Councilor Green, duly seconded by Councilor Dolan, it was
26 unanimously voted to return to public session.

27
28 **PUBLIC COMMENT**

29
30 Mr. C. C. Mitchell of 1 Windsor Blvd stated that we have no separation of church
31 and state. He stated that the Establishment Clause is clear, while the chair of
32 the Old Home Committee claims there is no separation. (Chairman Farrell asked
33 the Town Attorney, Michael Ramsdell, to listen to the comments of Mr.
34 Mitchell.) Mr. Mitchell continued, stating that the Town Council gives taxpayer
35 money to the Old Home Committee, which in turn gives money to the
36 Londonderry Clergy Association. The chair of the Old Home Day Committee gave
37 \$300 to the Association last year and intends to give money this year. The high-
38 level clergy benefit and some government officials as well. Everyone else gets
39 the short end of the stick. Mr. Mitchell suggested that there should be some

40 dialog in the next ten months or so and some mutual understanding. He said it
41 would be lousy to get into a court case over this, that we can be reasonable
42 people.

43
44 Chairman Farrell stated that it is true that the clergy donate to the committee
45 and participate in the event. They used to receive \$10,000 from the town; they
46 now receive \$6,500. The money is primarily for fireworks, which cost \$7,000 this
47 year.

48
49 Attorney Ramsdell claimed that there is no separation issue, using the analogy of
50 municipalities providing bus service for Catholic school students. There is no
51 separation issue because this serves the common good and is not primarily
52 about religion.

53
54
55 Londonderry Police Chief Bill Hart introduced two new Police Department hires:
56 Officer Michael Tufo from the Milford police department and Officer Ryan
57 Bukor, a resident of Londonderry, from the Goffstown police department.

58
59 Town Manager Kevin Smith requested the confirmation of Catherine Blash as the
60 Senior Affairs Director. She comes with years of experience with the elderly
61 citizens of Atkinson, and she has also worked with Rockingham Meals on
62 Wheels. Ms. Blash was confirmed unanimously.

63
64 Chairman Farrell commented on the possibility of changing the date of the
65 Deliberative Session currently scheduled for February 3, 2014 at 7:00 PM. Town
66 Manager Smith stated that by law the session must be held between February 2,
67 2014 and February 8, 2014. The School's Deliberative Session will be held on
68 February 7, 2014. It was decided that more research needs to be done, including
69 a check of the sports schedules.

70
71 Mr. Reed Clark commented that having sessions twice in one week is problem.
72 He welcomed Kevin Clark as the new Town Manager.

73
74 Two representatives of the NH Theater Group, Joel Mercier of 27 Thorndike
75 Street in Concord and Wallace Pineault of 85 Belmont Street in Manchester. Mr.
76 Mercier explained that this is a professional equity theater group pursuing the
77 possibility of making Londonderry its home. NH Theater Factory has three

78 branches: commercial season shows, an education program, and new work
79 development. Councilor Dolan asked if they had made this presentation to the
80 school board. Mr. Mercier stated that they have not, but that they had made on
81 for the Arts Council. Councilor Green asked about size requirements for the
82 facility. Mr. Mercier said it would be 7,000 to 10,000 square feet. Councilor
83 Green also suggested that the theater group contact Tupelo Music Hall and the
84 cable television department.

85
86 Councilor Dolan introduced Mr. Stuart Arnett to make a presentation on behalf
87 of the Conservation Commission regarding the Outdoor Recreation
88 Guide/Management Plan. Mr. Arnett explained that they would use a phase
89 approach and provide regular updates. They have a proactive stewardship plan
90 for open space.

91
92 Chairman Farrell commented on the Capital Improvement Plan (CIP) Committee,
93 saying that it acts in an advisory capacity only to the Planning Board regarding
94 projects for such facilities as the Central Fire Station and the Senior Center
95 (\$732,000). He stated that only the Town Council has authority to issue bonds
96 and has had little appetite for bonds in recent times.

97
98 Councilor Dolan mentioned a Boston Globe article about civil discourse which
99 stated that incivility is increasing in local government arenas. Councilor Dolan
100 stated that he is pleased that Londonderry maintains civil discourse at hearing

101
102 **PUBLIC HEARING**

103
104 On motion of Councilor Dolan, duly seconded by Councilor Green, it was voted
105 to go into public hearing. The vote was 4-0.

106
107 Order #2013-23 – Licensing of Junkyard Pursuant to RSA 236 – Licensing of
108 Murray’s Auto Recycling owned by Edward Dudek.

109
110 Mr. Richard Canuel, Building Inspector and Code Enforce Officer, stated that we
111 are beyond the renewal date for this Junkyard License. Negotiations have not
112 been successful. Mr. Canuel has discussed this issue with Matt Serge, Esq., who
113 claims that there are three options in this situation: renew the license as it is,
114 deny the license outright, or renew the license as amended to address the lack
115 of fencing in front of office trailer. Mr. Canuel supports the third option. He

116 suggests that the requirements be clarified so that Mr. Dudek has specific
117 guidance as to his responsibilities and he (Mr. Canuel) has distinct criteria for
118 enforcement. This should not be left with arguable interpretation. There are
119 two conditions to be addressed: stacking of vehicles above the fence and
120 clarification of hours of operation. Councilor Dolan expressed concern about the
121 court case stipulations. Police Chief Hart stated that the parties can agree to
122 change stipulations, and the Town is one of those parties. This is an annual
123 licensing function only. The license can be issued and private parties can work
124 out their differences. Councilor Dolan stated that we don't use the licensing to
125 enforcement the court agreement. He is concerned about making decisions
126 which are illegal. Mr. Canuel summarized that the licensing and the court
127 agreement are separate issues.

128
129 Chairman Farrell stated that he would meet with all parties and resolve the issue
130 this evening.

131
132 Attorney Ramsdell stated that he would be happy to take a look at the license
133 and the agreement.

134
135 Jonathan Boutin, Esq. of Cambridge, MA stated that he has an office in
136 Londonderry and represents the Mr. and Mrs. Adams. He stated that he had
137 prepared the court orders, including the signed agreement between the parties
138 and the 2008 through 2012 license applications and conditions.

139
140 Chairman Farrell said that he would summarize the situation and try to have an
141 agreement. He suggested that everybody gives a little. Maybe the junkyard
142 could be more aesthetically pleasing. He mentioned that if there is bad faith
143 negotiating, nobody can move the ball.

144
145 Attorney Boutin stated that he wanted the Council to hear a few misperceptions
146 from the evening. The first is that Mr. and Mrs. Adams are trying to close the
147 facility or have the license denied. This is not the case. There is a history of
148 noncompliance with the court order and the license conditions. In 2003 the
149 agreement was made part of the licensing conditions; they are not separate
150 things. The idea that Mr. and Mrs. Adams did not show up is also not true. All
151 they are seeking is that the conditions imposed before remain in place – that the
152 stacking of the cars be moved below the fencing level and the hours of operation
153 be 8-5. There is the issue of fencing which code enforcement seems to have

154 dropped. They would accept Mr. Dudek's offer to change the siding.

155
156 Chairman Farrell called for a ten minute recess to allow for discussion between
157 the attorneys.

158
159 New Business

160
161
162 Vice Chairman Dolan stated that the Council would continue with New Business.
163 He called on Chief Hart to present Resolution #2013-11 – To adopt RSA 162-K
164 giving the Town the local option to establish a Municipal Economic Development
165 and Revitalization District and Resolution #2013-12 – TIF Plan – Airport Area.
166 Chief Hart stated that in July there was a presentation re: the possibility of
167 establishing a tax increment finance district located in the north of town
168 surrounding the Airport. To keep the discussion going forward he is bringing to
169 the Council what those things might look like. These resolutions are not
170 technically first readings for action today. They are discussion points hopefully to
171 be brought forward later in September as a formal first reading. There are two
172 pieces: the tax increment financing district is a legislatively-created legal construct
173 which allows for changes in how property taxes collected by the town are
174 allocated. The Town must first adopt the legislation. Then the district is created
175 and guidelines articulated, delineating what portion of the collected taxes will be
176 apportioned to whatever bond may come from that, and what specific needs of
177 the Town might be met, such as transportation. It would mostly be for the
178 Pettengill Road project but not limited to that. Neither of these actions would
179 bind the Town. He stressed that the legislation must be adopted and the
180 guidelines established prior to the beginning of a development project.

181
182 Attorney Ramsdell stated that there is a common misconception about TIF
183 districts in that adopting the enabling legislation automatically creates a bond.
184 That is not true. Only the voters can vote for a bond.

185
186 In response to a question, Chief Hart stated that the TIF is not for developers – it is
187 the town. Responding to another concern, Chief Hart stated that establishing a TIF
188 project in one area does not require doing it in another. It does not open the
189 floodgates. He stated that the Town can avoid litigation by going step by step.

190
191 Attorney Ramsdell added that there is a limitation in terms of acreage and the

192 percentage of assessed value that may be part of a created TIF district.

193
194 Vice Chairman Dolan stated that this is only casual discussion. There will be a first
195 reading in the future and then a public hearing. The councilors will also be
196 meeting with the County Commissioners and school board members.

197
198 Chairman Farrell stated that the Town Manager will approach the superintendent
199 because he had questions about the change in size of the TIF.

200
201 Resolution #2013-13 – Walking Trail Easement. Chief Hart stated that this is a first
202 reading and the Council can either waive a second reading or put it on the
203 agenda for a public hearing on September 9th. It releases from public servitude
204 the walking trail located in the Nevins Coop Community. Removing the mandate
205 on the land has the agreement of all parties. Attorney Ramsdell stated that even
206 though a public hearing is not required it would be good to have one. It was voted
207 to waive first reading.

208
209 Chairman Farrell stated that this would be the second reading. We paid a
210 significant amount of money for an open space lot next to this property. We
211 should go back and look at what was demonstrated to the voters; the adjacent
212 property was to have certain things. We should get that information for public
213 hearing.

214
215 Mr. Phil Marino of 41 Morrison Drive, a Nevins director, stated that they had had
216 three meetings regarding this issue, and 100% of the residents did not want the
217 walking trail.

218
219 Chairman Farrell stated that by special election spent over \$2 million to buy some
220 adjacent land. Did we put any conditions that certain things were going to
221 happen?

222
223 Councilor Butler stated that he knows of the concern that the trail is too close to
224 the homes. He is concerned to make sure this doesn't happen again.

225
226 Ms. Ann Chabot, 28 Woodford Rd, asked if there would be any difference in taxes
227 on the property if that is removed. This was referred to Town Manager Smith who
228 will check with Assessing.

229

230 The Council continued its deliberation on Resolution #2013-23

231

232 Mr. Canuel stated that the parties had an accord, specifically regarding the
233 stacking of cars above the fence.

234

235 In response to questions of Chairman Farrell, Mr. Dudek agreed that when the
236 current pile of cars is reduced, he will not stack them above the fence. He agreed
237 that his hours of operation would be 8:00 to 5:00, Monday through Saturday, but
238 he has no control if vehicles are left outside of business hours. Also, his drivers
239 sometimes return after 5:00. Because cars are his hobby, he sometimes enters his
240 place of business outside of business hours. He will replace siding on the trailer as
241 a concession.

242

243 Attorney Boutin stated that if Mr. Dudek is entering the junkyard at any time he is
244 conducting business.

245

246 Chairman Farrell stated we will have police check for non-compliance on
247 weekends and called for a stop of the feud!!

248

249 Mr. Lee Leblanc, 58 Hall Road, stated that he has lived there for 35 years. He said
250 that this is ludicrous. Mr. Dudek is trying to make a living.

251

252 Mr. Richard Innie, 72 Hall Road, stated that he has never seen anything
253 unreasonable at Mr. Dudek's place of business. He said that Mr. and Mrs. Adams
254 have nothing better to do than to grind an ax against Mr. Dudek.

255

256 Attorney Boutin asked that this not be made personal.

257

258 Chairman Farrell stated that Mr. Dudek will limit exceptions and be a good
259 neighbor. Mr. and Mrs. Adams agreed they could work with this plan.

260

261 Attorney Boutin stated his concern that the discussion was comprised of loose
262 language and Mr. Dudek continues to say he will be operating outside of the
263 business hours.

264

265 Councilor Butler stated that Mr. Dudek has operated for at least five years under
266 with 8:00 to 5:00 hours

267

268 Mr. Dudek stated that he has no control over the world. He can't control when his
269 trucks come back and can't agree to the stipulations. He will go to court if he has
270 to. There is a minimum number of hours he must be open in order to have a
271 dealers license with the state.

272
273 Councilor Green asked him how often trucks return after 5:00. He says that in his
274 own business he has to abide by the hours of operation.

275
276 Councilor Dolan stated that Councilor Green is correct. The question is whether or
277 not returning a vehicle after hours is conducting business. He thinks it is not. He is
278 disappointed that the current agreement seems tentative.

279
280 Councilor Dolan moved to issue the license. The motion was seconded by
281 Councilor Green. The motion passed, 4-0.

282
283 On motion of Councilor Dolan, duly seconded by Councilor Green, it was voted
284 unanimously to close the public hearing.

285

286 Other Business

287

288

289 Chairman Farrell asked to take up the Impact fee review and status. Attorney
290 Ramsdell stated that last July the Council filed a bill of interpleader action with the
291 Rockingham County Superior Court after discovering issues with the impact fee
292 program administration. The Court ordered an audit of the collection and
293 expenditures of impact fees. That took a lot of time because it covered an 18-year
294 period. The audit report is on the Town website. Most of the matters have been
295 resolved. There is a group of parties who have expressed similar concerns and
296 interests. Their attorney has a copy of the audit report. The parties will sit down
297 between September 3rd and September 13th to resolve last issues. State of art
298 amendments have been drafted for the impact fee ordinances. Attorney Ramsdell
299 reviewed the ordinances of several communities to aid in the revision process.

300

301 Chief Hart has included the proposed impact fee ordinance drafted by Counselor
302 Ramsdell , not as part of the agenda, but for information.

303

304 Attorney Pat Panciocco, representing the parties who will be meeting with
305 Attorney Ramsdell, stated that she has a copy of the audit and plans to work with

306 Attorney Ramsdell to resolve the outstanding issues. She asked the Council to
307 consider how some of the issues will be addressed to tie up loose ends.

308

309 Chairman Farrell stated that the Council has not seen the audit.

310

311 Attorney Panciocco asked the Council to consider how some of the issues from the
312 audit will be addressed, how the errors that were made will be handled and what
313 will be done about some of the fundamental flaws on which some of the
314 assessments have been made. Her main point is that all of the work has not been
315 done.

316

317 Chairman Farrell said that the Council has left no stone unturned and is taking this
318 very seriously.

319

320 Attorney Panciocco stated that Londonderry is looked to as a leader and she looks
321 forward to making things right.

322

323 Chairman Farrell addressed Order #2013-28 – Expenditure of Reclamation Trust
324 Funds for a fence installation at the Drop Off Center. \$730. The Council voted
325 unanimously to expend these funds.

326

327 Chairman Farrell asked to return to Order #2013-27 under New Business and
328 apologized for taking items out of order. This is an Expenditure of the
329 Maintenance Trust Funds for Access Center – Server Room Branch Circuits of
330 \$752.17 and Leach Library – HVAC #2 Replacement of \$17,530.

331

332 On motion of Councilor Dolan, duly seconded by Councilor Green, it was voted
333 unanimously to expend these funds.

334

335

336

337

Approval Of Minutes

338 On motion of Councilor Dolan, duly seconded by Councilor Butler, it was voted to
339 approve the minutes of the meetings of July 15, 2013 and August 1, 2013.

340

341 Councilor Dolan stated that the Conservation Commission had a fruitful session.
342 They had a non-public session on the joint negotiating committee. There has been
343 discussion about eradicating some of the bittersweet, the vines that grow up and
344 choke off trees. Residents from Tanager Way testified about some nuisance

345 problems with use of the trail network and the Musquash and people parking on
346 neighbors' lawns, for lack of a better term 'lurkers' who are there long after hours,
347 making the residents uncomfortable.

348
349 Chairman Farrell stated that this issue is in the Traffic Safety Committee. It's taped
350 off where they want to put the parking lot.

351
352 Councilor Dolan stated that the issue of a parking area did come up. The problem
353 is that when the parking lot is full, people spill into the streets and onto people's
354 lawns. It was quite an emotional issue for some of the folks because they don't
355 feel safe or that their kids can play there. It seems to fit the definition of loitering.

356
357 Chairman Farrell stated three or four years ago we removed the trails from that
358 neighborhood because they weren't comfortable with people walking through
359 there, yet the developer donated the land to connect the Musquash. And this is in
360 their deeds.

361
362 Chief Hart stated that his department would do a special intention in that area in
363 the next few days.

364
365 Councilor Butler raised the issue of the Hardy/Stonewenge traffic sign. They paved
366 their road and lined it. They have put out the STOP signs and some language on
367 the roadway about yielding to STOP signs.

368
369 Councilor Green stated that he went to the Library Trustees meeting and got a
370 glimpse of the budget. Hopefully we will have a smooth effort like we did last
371 year. They actually did give some money back, as they did last year.

372
373 Chairman Farrell stated Town Manager: \$732,000 for Senior Center. If it's okay
374 with everyone, let's figure out if we can get write any grants. That is a lot of
375 money and it was unexpected. He suggested that the Public Works Director and
376 Fire Chief get together with Steve Cotton. The timbers of the roof under
377 discussion are charred and we have to shovel it. Maybe we can figure out if there
378 is something we can do with what we have before we have to get three quarters
379 of a million dollars. At the CIP meeting they said we can't fix the roof till we add
380 on to the building.

381
382 Town Manager Smith yielded to the former town manager, Chief Hart, who

383 passed down the Sewer rent levy which is the quarterly authorization which
384 requires Council signatures, so that the Town Clerk/Tax Collector can levy and
385 collect the fees. Secondly, I did include the proposed impact fee ordinance. The
386 intention is for the staff to place that on the Planning Board agenda. He raised the
387 issue of what to do with the position of Town Clerk/Tax Collector. Currently it is a
388 unified Town Clerk/Tax Collector. The total allocation of funds to that position is
389 approximately \$130,000 compensation and benefits included. Last year it was one
390 of the goals of the Council to look for savings. As currently constructed the
391 position is relatively new to Londonderry. It has been a separated position. If it is
392 separated, the Town Clerk position, which is an elected position in NH, can be
393 statutory in nature. The Tax Collector position could be unified as a Motor Vehicle
394 agent and simply be part of the staff.

395
396 Chairman Farrell stated that there has been discussion over time of moving to a
397 statutory-required Town Clerk only, which would be a part time position, which
398 would be a stipend position.

399
400 Councilor Dolan stated that this is an important office in terms of customer
401 service.

402
403 Town Manager Smith stated that Finance Manager Sue Hickey has been working
404 to cross train the staff of that office so that they are each knowledgeable and able
405 to do one another's functions so that people don't have to stand in multiple lines.
406 They can get everything done in one stop.

407
408 Chairman Farrell stated let's keep in mind that we collect one hundred million
409 dollars, so we have to be highly professional.

410
411 Councilor Green stated it is a service oriented business , unlike some of the other
412 things we do, and to limit the hours is a negative. We can take a look at the hours
413 as well.

414
415 Chairman Farrell explained the hours are stated in the collective bargaining
416 agreement. In order to change, we must work within the confines of that
417 agreement.

418
419 Chief Hart stated that we have hired two part time people to help us out in that
420 office. One is a consultant who comes in on Fridays. Diane Demers is the Town

421 Clerk/Tax Collector in Allenstown. The other is Dawn Nadin, who has had
422 extensive experience in motor vehicle registrations and organizational aspects of
423 Town Clerk/Tax Collector offices. One of the ideas they are looking at is how to
424 provide a more friendly and usable service, beyond what we have already done –
425 going on line, paying your bills from home or from a mobile device. This is a goal
426 shared by Susan and Kevin.

427
428 Councilor Green stated that we are a bedroom community and everyone rushes
429 here from work to do the things they need to do.

430
431 Councilor Dolan stated that we could consider other communities who have taken
432 this approach and maybe work out a partnership where we could share employee
433 resources.

434
435 Chief Hart thanked everyone for their support. He thanked the staff who put in
436 hours beyond what they are paid for. He expressed appreciation for what the
437 Town stands for, noting that many things couldn't have been done without this
438 dedication. He thanked them and also to the people who live here. Most of all, he
439 thanked the Councilors, the gentlemen who represent our community so ably.
440 Finally, he congratulated Kevin Smith, with whom he is excited to work. He looks
441 forward to helping in any way he needs. "With that I will hobble off into the
442 sunset."

443
444 Town Manger Smith stated that he wants to thank the Council, the staff here in
445 Londonderry, and the people of the community who have been immensely
446 supportive in my first few days, and especially Chief Hart who has been great to
447 work with in the transition process.

448
449 Chairman Farrell stated that the next meeting would be September 9, 2013.

450
451 A roll call vote was conducted and the members of the Council entered non-public
452 session.

453
454

ADJOURNMENT

Notes and Tapes by:	<u>Susan Hickey</u>	Date: <u>08/19/13</u>
Minutes Typed by:	<u>Kathleen Donnelly</u>	Date: <u>08/23/13</u>
Approved by:	<u>Town Council</u>	Date: <u>XX / XX / XX</u>

455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487

DRAFT