

1
2
3
4
5
6

<p style="text-align: center;">TOWN COUNCIL MEETING September 9, 2013</p>
--

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

9
10 Present: Chairman John Farrell; Vice Chairman Tom Dolan; Councilors Joe Green, Tom Freda;
11 Town Manager Kevin Smith; Executive Assistant Kirby Wade. Absent: Councilor Jim Butler.

12
13 **CALL TO ORDER**

14
15 Chairman Farrell opened the meeting with the Pledge Of Allegiance. This was followed by a moment
16 of silence for Cpl. Tyler J. Pimpis, age 22, who served overseas in Afghanistan in 2011 and 2012. He
17 was killed in a motor vehicle accident in Texas on Wednesday August 28, 2013.

18
19 **PUBLIC COMMENT**

20 Chairman Farrell announced that they would start the meeting off with public comment. Chairman
21 Farrell starts with the introduction of new clerk Kirby Wade.

22
23 Gerard Adams, 54 Hall Road, Londonderry, wanted information about the business across the street
24 from his home, Murray's Auto Recycling, Inc. In March 2013 Adams was called by Richard Canuel
25 to attend a meeting, which Adams attended. At the meeting Canuel brought up that the owner of
26 Murray's Auto Recycling, across the street, was in violation of Court Order. Specifically the fence
27 and stacking. Adams stated that he was aware of those problems and that they weren't pushing the
28 fence issue because nothing had been done. When Adams and his wife left the last meeting they were
29 under the impression that Canuel was going to aggressively push the issue. Adams feels that Canuel
30 dumped it into his lap and he was put in a position he didn't appreciate. Adams wanted to make sure
31 the Council understood his position.

32
33 Chairman Farrell stated that none of the Council was aware that the meeting took place. Adams stated
34 that Canuel called him when he first took the position prior to last meeting and told Adams that "it's a
35 mess". Adams stated that Canuel said he would meet with the County Attorney and see if he could
36 clarify things. Adams heard nothing back about the issue and felt like he got a shrug of the shoulders.

37
38 Adams mentioned that there were a couple other issues he wanted to bring up to Council:

39 Vice Chairman Dolan asked Mr. Hart and Mr. Canuel to check on the legality of three businesses at
40 one address. He proceeded to ask the council if they received any information regarding this issue.
41 Chairman Farrell stated that he doesn't recall receiving any information. V. Chairman Dolan chimed
42 in saying that they were looking in to see if Murray's Auto Recycling Inc. was actually conducting
43 other business's there other than just having a license or a State Certificate, something more than just
44 paperwork. V. Chairman Dolan recalls in a discussion with Mr. Beilinski that he was asked if he

45 knew anyone that had evidence that additional businesses were being conducted. At the time the
46 answer was no. V. Chairman Dolan said it's his understanding that the other businesses are not
47 permitted under the agreement that he has with the Court to operate his recycling business. Adams
48 asked V. Chairman Dolan if Mr. Canuel got back to him on the issue. V. Chairman Dolan said he has
49 not received any confirmation about additional business being conducted. V. Chairman believes that
50 someone can own several businesses in a home but it's the actual conducting of the business where
51 you have to answer to zoning rules and permits. V. Chairman Dolan stated that you need approval
52 from the ZBA to operate the business. Adams asked if someone could use their home address for a
53 business address. V. Chairman Dolan stated that you would have to register it with the State.
54 Chairman Farrell stepped in and stated that the answer is we don't know. He then asked Londonderry
55 Town Attorney Mike Ramsdell if he knew the answer. V. Chairman asked Ramsdell the question.
56 Councilman Freda stated that he has a Pellet business but the town doesn't have evidence that he has
57 ever run the Pellet business out of his home. Ramsdell stated he was unaware of any law to have a
58 business registered but not operating, claims there's no violation of any Ordinances or State Statue as
59 long as the business is dormant. Adams accepted the answer.

60
61 Adams stated that the owner of Murray's Auto Recycling said he would redo the side of the office
62 building. No time frame was given to the owner so Adams asked the Council if they knew of a time
63 frame. Chairman Farrell stated that the owner agreed to do the siding and agreed to bring the cars
64 down below the fence, which was under the terms of being reasonable about time. There was no date
65 assigned. Adams asked Chairman Farrell for a guess. Chairman Farrell stated sometime before the
66 winter would be a good idea. V. Chairman Dolan stated that he thought there was an agreement
67 drawn up with a date. Adams said yes to the agreement but no date was put. Adams said that the
68 attorneys met but the parties were not in the room.

69
70 Chairman Farrell asked Town Manager Kevin Smith to go out to Murray's Auto Recycling with Mr.
71 Canuel and Police Chief Bill Hart and find out how to handle the issue.

72
73 Adams stated his final item was that he asked the Council to ask the owner of Murray's Auto
74 Recycling if his trucks left after hours. Adams claims that the trucks are still leaving after hours and
75 he would like it to stop. Chairman Farrell told Adams that there is not a whole lot that can be done in
76 regards to this issue. Chairman Farrell told Adams he appreciates what he's saying and that the
77 Council try's hard and try's to stay in the middle. Chairman Farrell reminded Adams that they had a
78 discussion that they did everything they can do and that further remedy is outside the Council room.
79 Adams stated that we should look back over the history; Attorney Surge has mentioned that there
80 were no restrictions put into the business by the Town Council. Adams told Council he didn't want to
81 be put in the position the Mr. Canuel put him in.

82
83 Chairman Farrell mentioned that the Town Manager is new and has a clean slate. Farrell asked Town
84 Manager Smith to look into things. Smith asked Adams on the two occasions that the trucks left after
85 hours, approximately what time. Adams stated it was 15 minutes after closing time, before the first
86 meeting, and after the last meeting it was 5 minutes after closing time.

87
88 Chairman Farrell asked the audience if anyone else wanted to address the Council under Public
89 Comment.

91 Kevin Smith, Town Manager, asked the Council if the issue of Board and Committee appointments
92 could be moved to the 'Public Comment' section for tonight's meeting since two of the candidates
93 were present in the audience.

94
95 **Board/Committee Appointments/Reappointments**

96
97 Kevin Smith, Town Manager, addressed the issue of the resignation of James Hooley who as of
98 August 19, 2013 resigned from the ZBA (Zoning Board Association) citing he has moved out of town
99 for work. Chairman Farrell called to motion the resignation, on motion of Councilor Joe Green, duly
00 seconded by Councilor Tom Freda. Chairman Farrell thanks Mr. Hooley for his service.

01
02 Smith called forward Jackie Benard and introduced her. Jackie lives on Ten Spring Road in
03 Londonderry, has her Bachelors in Organizational Leadership from SNHU and expressed interest in
04 serving on the ZBA. Smith mentioned that ZBA's Chairman Jim Smith would be in favor of the
05 appointment.

06
07 Chairman Farrell greeted Jackie and thanked her for stepping forward. Farrell asked Jackie if she is
08 aware of the procedures and functions of the ZBA. Bernard answered with yes; she was given
09 literature to read up on the position, stating that it is quite a task. Chairman Farrell turned the
10 questions over to the Councilmen.

11
12 Joe Green stated that he served on the ZBA for a few years and asked Jackie if she has attended any
13 meetings and proceedings. Bernard has attended a couple and stated that the proceedings are
14 informational and it's about the community and making the right decisions for the town and the
15 people. Green pointed out that it's specific about parts of the Law that you have to make decisions on.
16 Green asked Bernard how she will make the right decisions based on the issue. Bernard stated that
17 it's more about the community overall effect and not so much dollars and cents.

18
19 V. Chairman Dolan asked Bernard if she has any conflict of interest with cases that would come
20 before her. Bernard answered with no. Freda stated the importance of the ZBA and that the Town
21 Council can't override the ZBA. The ZBA deliberate in full view, in public. Councilman Green and
22 Chairman Farrell backed V. Chairman Dolan's advice and discussion. Chairman Farrell stated that if
23 Bernard does not understand an issue, she doesn't need to/shouldn't vote on it. Councilor Green
24 backed what Chairman Farrell stated.

25
26 Chairman Freda made a motion to appoint, seconded by Councilman Green. Council votes
27 affirmative 4-0.

28
29 Town Manager Smith called forward Kellie Walsh, candidate for Conservation Commission. Walsh
30 has attended meetings for the commission before. Graduate of PSU with a Bachelor of Science in
31 Environmental Planning and works for NH Department of Environmental Services. Walsh is a
32 resident of Londonderry. Candidacy has been endorsed by Chairman Levins for an Alternate position.

33
34 Chairman Farrell addressed Walsh about the position. Chairman Farrell turns the questions over to

35 the Council. Green asked Walsh if she thinks Londonderry should have more conservation or less
36 conservation or if Londonderry has a good balance. Walsh stated that she thinks it's balanced. Green
37 continued to ask Walsh about stewardship. Chairman Farrell restated the question as 'maintaining
38 what we have'. Chairman Farrell continued by saying that the town has spent 16 million dollars on
39 open space since 1996. The Council always asks the Conservation Commission what the plan is,
40 work with it and maintain what we have. V. Chairman Dolan asked Walsh if she thinks the
41 Conservation Commission meetings should be televised. Walsh stated that she didn't think it was a
42 bad idea.

43
44 Chairman Farrell stated that he would like to see more young blood involved.

45
46 Councilor Green motioned the council to appoint Kellie Walsh in as a candidate for Conservation
47 Committee. Chairman Farrell asked for a second motion, second V. Chairman Dolan. Council voted
48 4-0-0.

49 Old Business

50
51
52 Deliberative sessions, changing the date. Chairman Farrell asked Town Manager Kevin Smith what
53 he found out. Smith found that our dates are limited because of the use of the cafeteria. During the
54 week it's being used every day. Smith stated options are keeping it Monday evening, February 3,
55 2014 or changing it to Saturday Morning, February 8, 2014, which is following the school
56 deliberative on the evening of February 7, 2014. Smith stated that there is a preference among the
57 people on the school side if the meeting could take place on the 8th because it will be set up from the
58 previous evening.

59
60 Chairman Farrell asked the Council what they would like to do. Councilor Freda was in favor to see
61 how the attendance works out. V. Chairman Dolan stated that he didn't have a strong preference.
62 Dolan said he would like to try to avoid Monday night because of possible sports tryouts. Chairman
63 Farrell motioned the date to be changed to Saturday February 8, 2014 at 9 AM. V. Chairman Dolan
64 second the change in date.

65 New Business

66
67
68 Woodmont Commons Development Agreement: Chairman Farrell called forward Town Attorney
69 Ramstall and asked him to proceed. Ramstall stated as the Council is aware last October the Planning
70 Board accepted Woodmont Commons PUD application as complete. For the past year there have
71 been public hearings in front of the Planning Board in regards to the plan being approved. On
72 Wednesday September 11, 2013 there is a public hearing where the Planning Board will make a
73 decision on the approval of the final PUD application and plan. As part of the PUD plan there's a
74 development agreement which purpose is to not supplant the need for individual site plan or sub
75 division applications to actually develop any particular area within Woodmont Commons. Ramsdell
76 stated that it does provide the Town of Londonderry and the Master Developer with an agreement,
77 'ground rules', as part of the PUD approval for how development will and can proceed in Woodmont
78 Commons if application is approved.

80 Highlight of the PUD plan it states that Woodmont Commons would be developed pursuant to the
81 PUD master plan as approved by Planning Board. It provides that the Developer will be responsible
82 for mitigation of all thoroughfare development during the build out. It's anticipated that the building
83 of Woodmont Commons would last about 20 years in which the development agreement is
84 coterminous with that.

85
86 Ramsdall discussed the Fiscal Impact Statements that was prepared for Woodmont Commons by their
87 expert and was invented by a third party consultant for the town. It was examined if the likelihood of
88 the development at build out was going to be revenue positive for the town while the 3rd party
89 consultant said that Woodmonts expert may be ambitious in the positive projections. The 3rd party
90 consultant agreed that it would be positive just not as positive as Woodmont Commons expert. To
91 make sure the Town of Londonderry doesn't suffer financial hardship and Woodmont Commons has
92 to pay its own way regarding this development there's a provision in the development agreement that
93 the Development must be on a positive fiscal footing. The accumulative effect of the development
94 annually must be that it remains revenue positive. If in any year Woodmont Commons would come to
95 the end of the term not having produced more revenue than whatever expenses were there Woodmont
96 would have to pay the Town of Londonderry the difference for that.

97
98 V. Chairman Dolan asked Ramsdell if when he said cumulative he meant (for example) if its
99 \$100,000 positive in years 3 & 4 and in year 5 its \$200,000 negative do the years 3&4 cancel out the
00 negative, is it cumulative as you go along or does it have to be positive year by year. Ramsdall stated
01 it's cumulative as you go along. Ramsdall added under Dolans scenario that at the end of year 4 the
02 development was \$100,000 revenue positive but in year 5 there was a \$200,000 shortfall Woodmont
03 Commons/the developer would be obligated to pay the Town of Londonderry \$100,000 because
04 that's the cumulative negative effect. Ramsdell stated that at different times there have been issues
05 raised before the Planning Board where people have said they don't like the development because
06 there's going to be a waiver of the primarily Impact Fee's or the Growth Management Ordinance.
07 Ramstall backed up the question saying there is no waiver of either one of things that is expressly in
08 the Development Agreement and that there isn't going to be a waiver of The Growth Management
09 Ordinance or of the Impact Fees for the town. Ramstall mentioned that there are modifications that
10 are being made, for example with the amount of Impact Fees, Woodmont will pay either the Impact
11 Fees that were being assessed as of March 1, 2013 or if those assessments ever go down they will get
12 the benefit of that.

13
14 Ramsdell stated that there are also contributions, Capital Expenditures that will be made by the
15 developer as development goes along. Those fall into 3 categories. There is an obligation whereas the
16 development proceeds in Woodmont, if it becomes necessary for additional police and fire
17 emergency services and personnel than Woodmont will provide first a temporary and then a
18 permanent facility, a substation for those needs. Woodmont will also provide an ambulance, a police
19 cruiser and motorcycle. Woodmont will donate to the town for cemetery and the area around the
20 cemetery up to 3 acres. Finally, if at some point it becomes necessary for the town to build a new
21 elementary school in the Woodmont area because of additional development, Woodmont has agreed
22 that it will make land available to town to purchase at a below market cost.

23
24 Ramsdell asked the Council if they had any other questions.

26 Chairman Farrell shared with the audience that the Council had received copies of the plan over the
27 last couple of months and the Council has been working with the Town Attorney. Chairman Farrell
28 stated that the Council received final versions of it last week after the Planning Board got their
29 version. He shared that we have another nonpublic under RSA 91A with the Town Attorney. After
30 that the final document went to the website on Wednesday September 4, 2013. Chairman Farrell
31 clarified that it is the same document that is being discussed during this meeting. Attorney Ramsdell
32 answered with yes.

33
34 Chairman Farrell opened up the floor to questions from the Council.

35
36 Councilor Green started by addressing the question more toward Cynthia May, Londonderry town
37 Planner, about the cemetery part of the donation about the concern some of the town people have
38 about behind Pillsbury Cemetery in the area, which in the document it talks about the part adjacent to
39 it, it does not state specifically whether its behind, left or right, but the property right behind it has a
40 lot of water on buildable property and if we are going to expand the cemetery we want to have it so it
41 would be useable for a cemetery. Councilor Green asked May what part of the cemetery is it. May
42 answered stating she is unaware of the dimensions or where that area would be at this point.
43 Councilor Green asked May to take a look into it.

44
45 Chairman Farrell went on to say that it's his understanding that its land adjacent to the current
46 cemetery, Ramsdell confirmed. Chairman Farrell also stated that it's his understanding that we
47 wouldn't be using cemetery land and that Woodmont wouldn't donate us land that we would be
48 unable to dig lots in. Ramsdell answered Farrell saying that he 'could not answer that question'.
49 Chairman Farrell asked Ramsdell if by Wednesday they could have an answer. Farrell discussed how
50 we are going to operate in this development agreement that it's going to be useable land. Ramsdell
51 shared that he does not know the quality of the land because he doesn't know the lands configuration.

52
53 Chairman Farrell asked the Council if there are any other issues they wanted to address on the
54 cemetery. Councilor Green informed the people that there is a lot of wording and conversation about
55 waste water and water in the agreement and how it would come in and go out. He shared that people
56 are concerned that in the agreement it says the Town of Londonderry will help provide water sources
57 and the waste water connections but it doesn't mean we are paying for it. He cleared up that those are
58 all paid for by the people who will be using it and the user fee will be applied.

59
60 Ramsdell stated that in the agreement the Woodmont Commons Development should not cost any of
61 the other tax payers in the Town of Londonderry any money. Councilor Green pointed out that there's
62 a stipulation on page 18 that it expressly says it has to stay tax positive.

63
64 V. Chairman Dolan said that he is very pleased to see GMO is in effect. V. Chairman Dolan
65 addressed that in the transition from Bill to Kevin, that they don't lose the initiative to reenact the
66 GMO which sunsets a year from this coming December. The planning department needs to begin
67 working on the process because it will take a while to bring forth. If it expires we will lose the ability
68 to enforce the GMO. V. Chairman Dolan stated that he did not want that to slip through the cracks.
69 One of the goals for this year should be to get the new GMO in place.

71 V. Chairman Dolan shared that one of the issues that he has is that in the agreement reads that the
72 applicant can apply to the Planning Board for a waiver to the GMO going forward. V. Chairman
73 Dolan believes that they ought to have the right to request it to be waived. The right venue for this is
74 through the ZBA dues to our zoning ordinances. Ramsdell answered by saying the way that the PUD
75 Ordinance and the State Statue is set up is that because it's a larger development, it involves its own
76 zoning rules and all of the plans have to go to the Planning Board, it's more effective and makes more
77 sense to allow the Planning Board to consider the various considerations that will come in front of it
78 based on the development. Ramsdall stated that he believes it is a more effect way to control the
79 growth.

80
81 V. Chairman Dolan shared that he doesn't agree. He stated that in the greater understanding and
82 approval of this, is it Ramsdalls understanding that we are required to have that as a Planning Board
83 authority or could we, in understanding of Ramsdall's recommendation, could we change the
84 language to make it that the request go to the ZBA instead of the Planning Board. V. Chairman asked
85 Ramsdell if that was something we could legally do. Ramsdall said he hasn't researched that issue
86 specifically because it is the Planning Board that administers the PUD. Due to the request being in
87 front of the Planning Board as part of the PUD development, Ramsdall stated that he has his doubts
88 as to whether the ZBA would be the proper authority anyways.

89
90 V. Chairman Dolan talked about one of the larger issues that has been 'kicked around' the past couple
91 of years is what precedence we set in the community with the first PUD. Its V. Chairman Dolan's
92 thoughts that we will have more PUD's proposed and this current PUD is the first one they're
93 working/learning with. V. Chairman Dolan shared that his precedent would be to not rule out the
94 ZBA and that it's a big change to go the route without them. Ramsdall stated that he thinks it is a
95 precedent that should be set for this reason, one of the tenants of a PUD is that it is in effect the
96 zoning for that area and the body that is administering the PUD and passing it in effect does become
97 the Zoning Board for that specific area and that is one of the purpose of the State Statue and the
98 mechanism being the way it is. The towns own ordinance on PUD's would indicate the same thing.

99
00 V. Chairman Dolan asked Ramsdall if we would expect the Planning Board would adopt the same
01 procedure, those are the five points of law, to approve a request like that. Ramsdall answered with no.
02 Chairman Farrell addressed saying part of what V. Chairman Dolan is forgetting is that the original
03 ordinance that start it all was called "The Flexible Industrial District" for the reason being that it
04 needed to be flexible. Chairman Farrell recalls when the PUD was written it was written to have
05 multiple zones inside of it controlled by the site plans. Farrell continues to state that if they want
06 to come in and build houses and/or a hospital, it's allowed inside the PUD. There are close to 80 things
07 allowed inside the PUD because it is a flexible zone. Chairman Farrell stated that the original zoning
08 of the land sits on top of that. If you want to change the original zoning of that land underneath, you
09 have to go to the ZBA. The zone that sits on top is the Planning Boards control. For example: If the
10 zone underneath is AR1 and you want to change it to commercial you would have to go to the
11 Council.

12
13 V. Chairman Dolan shared that this issue has given people pause about the community embracing
14 PUD's. Some of the basic way our government runs becomes supplanted by some of the new rules
15 and regulations that cause us to lose some of the normal controls that we have to administer what the
16 town looks and feels like. Dolan mentioned that he was not in favor of taking that
17 authority/opportunity away from any applicant. Dolan stated that he would be more comfortable if it

18 rests with who it has always rested with, the ZBA. Chairman Farrell replied to Dolan saying that it's
19 gone and it was gone two years ago when the PUD passed. Dolan understood from what Ramsdall
20 stated that it's a choice the Council can make. Ramsdall answered saying that it's not what he said
21 and that he hasn't researched it and he doesn't have a definitive answer. His inclination is that
22 because the PUD, the Master Plan, creates the zoning for it, he's believes the answer to the question
23 would be that it's more appropriate and more exclusively a function of the Planning Board. Ramsdall
24 shared with Dolan that he didn't want to mislead him and that it was just his inclination. Ramsdall
25 shared his opinion, that it is the better way to do it and it's the whole purpose of the State Statue and
26 the Town Ordinance. As Chairman Farrell stated, that is the way it's supposed to function.

27
28 V. Chairman Dolan asked Ramsdall to come back with additional research and a more definitive
29 answer. Dolan asked the Council if the issue needed to be voted on tonight, September 9, 2013.
30 Chairman Farrell answered yes. V. Chairman Dolan asked if the waivers that are put in front of the
31 Planning Board are assumed to be good for 20 years or is there a time limit that the waiver would
32 expire on/ have to be renewed. Chairman Farrell answered with the fact that it would operate the
33 same way under the subdivision and site plan rules. You would have to approve the plan but if a year
34 later they still haven't built anything, they have to come back and it has to be renewed by the board,
35 which is the normal process. The PUD only overlays the Zoning. They still have to do everything else
36 the Planning board says to do.

37
38 V. Chairman Dolan stated that it still wasn't clear to him. He asked that if they apply for a waiver
39 with the GMO and four years from now we hit a period of unsustainable growth and the GMO is
40 triggered, is the GMO waived. Ramsdall clarified that they can't apply for a waiver of the GMO just
41 to go forever or for 20 years. The only waiver they can apply for has to be applicable to a specific
42 plan.

43
44 Chairman Farrell said that the other thing to remember is that there's 3 points to the GMO. For
45 example if one of them is that the town doesn't have enough school capacity and they say fine let's
46 build a school, the GMO is lifted because they have to remain tax positive. The GMO is to protect the
47 town from tax negative. Chairman Farrell stated that he does believe there is a balance.

48
49 V. Chairman Dolan shared that the waivers he is referring to is the GMO because that's what's
50 addressed in the development agreement, which is before the Council tonight. Farrell stated that
51 what's before the Planning Board in a couple of days is the Master Plan. It contains 6-7 waivers built
52 into it, starting around page 45. One of them is Residential Phasing. Dolan asked if there was a way
53 to pull it into the development agreement stating that he would not be in favor of Residential Phasing.
54 Ramsdall stated that you control it because of the obligation to remain fiscally and revenue positive.

55
56 Councilor Freda stated that by them filing a waiver to build more houses, economically it's only
57 going to work for them if they're still tax positive. Ramsdall stated that they have to be. That's what
58 distinguishes it and the development agreement from other developments. You usually don't have the
59 same obligation with other developments that you have here.

60
61 V. Chairman Dolan replied with the fact that he doesn't have a warm feeling about it. He understands
62 the revenue positive side of it but there are other elements of over development that could go beyond
63 just tax revenues. Ramsdall answered with the fact that it's a function of site plan and subdivision

64 control when those individual plans come before the Planning Board. V. Chairman Dolan stated that
65 when the Planning Board looks at the Master Plan, for example if they approve the waivers that are
66 requested in it, if those also site plan specific. Ramsdall clarified that most of what Dolan is referring
67 to as waivers are modifications. More importantly the Master Plan itself does not allow Woodmont
68 Commons to build anything. They still must come before the Planning Board with each and every site
69 plan and subdivision application and they must satisfy the Planning Board with respect to each
70 application just like any other development.

71
72 Chairman Farrell stated that one of the things we need to be reminded of is in the PUD Ordinance
73 there's no requirement for developers agreement. Ramsdall answered that was correct and that it's a
74 benefit to the town.

75
76 V. Chairman Dolan shared that he is very pleased that we have a stop gap on being fiscally positive.
77 Dolan shared that he was very nervous about letting go of the hallmark controls we have had in the
78 community and have served us so well. Ramsdall added that there is no exemption from the GMO in
79 the Development Agreement. V. Chairman Dolan stated that he is in preference of them preserving
80 their right to ask for it, but that he doesn't like who they're asking it from. In terms of the phasing he
81 prefers that the Planning Board doesn't go down that path and that he would like to see it taken out of
82 the Master Plan and put in the Development Agreement instead.

83
84 Councilor Freda stated that he would prefer the Planning Board handle it because of the sheer number
85 of them versus convincing 3 people on the Zoning Board to waive something versus 5 people on the
86 Planning Board. V. Chairman Dolan shared that he doesn't disagree with the numbers but the Zoning
87 Board has a much more strict 5 points of law and it's not how you feel one night or your own
88 opinion. Ramsdall told Dolan that he should give more credit to the Planning Board.

89
90 V. Chairman Dolan's concern is that the people that now sit on the Planning Board, as good as they
91 are, will be gone in 20 years. Dolan stated that he's looking to lock down the town's future a little
92 more clearly. Chairman Farrell told Dolan that the way he sees it is that V. Chairman Dolan wants to
93 keep things the same and the PUD changed everything. Chairman Farrell reminded Dolan that the
94 process is and will stay the same. The PUD took the authority right away from the town council and
95 went to the Planning Board. V. Chairman Dolan stated that he just wants to retain the authority the
96 ZBA already has. Chairman Farrell answered with the fact that the ZBA already retains its authority
97 of the underlining zoning and it does not have authority of the overlay. This is the same as every
98 other overlay district we put in in this town.

99
00 Town Attorney Ramsdall stated that he doesn't want to lock them into any particular formula and we
01 don't know how the law is going to change over the course of 20 years. Ramsdall will be meeting
02 Wednesday night, September 11th with the Planning Board before the Public Hearing and he will
03 convey V. Chairman Dolan's desires to them. Ramsdall suggested to V. Chairman Dolan that giving
04 the Zoning Board authority over waivers is apathetical to the State Statue and the purpose of the
05 Towns own ordinance. He continued to state that it's not what the PUD Statue or the Ordinance is
06 designed to do. Its hallmark is flexibility and that there's going to be a relationship between the
07 developer and the planning board.

08
09 V. Chairman Dolan stated that his definition of inflexibility is that you would never be allowed

10 except through the GMO or Phasing. V. Chairman Dolan's definition of flexibility is that if you want
11 a waiver on those subject areas go to who we have traditionally charged to grant those waivers.
12 Ramsdall stated that that is not consistent with the whole notion of a PUD. The whole notion of a
13 PUD is that you've removed the zoning function and put it into the Planning Board, it is a zoning
14 provision. Chairman Farrell stated that the PUD is now the Zone, its Zone 7. Ramsdall shared that it
15 makes no sense to ask people who have had no experience with the PUD (the ZBA) itself and what
16 went into the creation of the plan and administering it to make decisions. Ramsdall reminded V.
17 Chairman Dolan that even 10 years from now when we have replaced every member of the Planning
18 Board there will be a certain amount of continuity and members get replaced one and two at a time
19 and so there is always institutional knowledge that continues.

20
21 V. Chairman Dolan stated that there were three choices the ordinance could have given the final
22 decision to; the Town Council, the Planning Board or the ZBA and we chose the Planning Board.
23 Ramsdall answered stating that it's a Planning Board function. Chairman Farrell stated that's how he
24 remembers it as well. V. Chairman Dolan recalls some talk earlier on about amending that. Councilor
25 Green agreed stating that he had brought it up. V. Chairman Dolan asked the Council if we are passed
26 the opportunity to amend that. Ramsdall stated for this development we are. Chairman Farrell stated
27 that once it's posted, that's what they have to follow. The Planning Board passed it and the Council
28 passed it. V. Chairman Dolan stated the way he sees it that we have an unapproved Development
29 Agreement and an unapproved Master Plan. Chairman Farrell stated that its operating under the
30 ordinances that are on the books and posted. Ramsdall stated that the Master Plan has been accepted
31 as complete and we can't change the rules now. V. Chairman Dolan stated that it hasn't been
32 approved. Chairman Farrell clarified that once it's been accepted as complete, you can't introduce
33 new rules.

34
35 Ramsdall stated that the Planning Board doesn't have to vote to approve it. V. Chairman Dolan asked
36 Ramsdall what the Planning Boards choices are. Ramsdall stated that they can deny it, they can
37 approve it or they can approve it with conditions. Ramsdall stated that they can't deny it for some
38 unlawful reason and an unlawful reason would be that the Town Council wants to change the
39 Ordinance to say who gets to approve waivers after a plan has already be accepted as complete. V.
40 Chairman Dolan stated that he does not want to give away our Zoning Boards authority. Ramsdall
41 answered stating that that's done in the Ordinance and the State Statue. V. Chairman Dolan stated
42 that he is not satisfied with that answer. He stated that he doesn't think Ramsdall is sure and that he
43 would like to be sure. Chairman Farrell asked someone from the audience to pull up the Ordinance
44 for the town. Chairman Farrell stated that the issue was going to be fixed now and he gets to decide.

45
46 The Ordinance was pulled up by section, and the piece in which the authorities are granted. Chairman
47 Farrell stated that if it is present in the Ordinance, we can't change it. Chairman Farrell stated that
48 when the Ordinance went through it gave the overlay zoning to the planning board and that's the part
49 that was looked for in the Ordinance pulled up. V. Chairman Dolan stated that we have done
50 performance overlays in Londonderry in many occasions but we never gave up the ZBA's authority
51 to grant variances.

52
53 A lady from the audience stated that when the PUD was created the Council changed the zone. She
54 stated that if you come in today with a PUD than whatever was told it could be built in there,
55 commercial or industrial, that's what can be built. The variance is already granted by creating the
56 PUD. Chairman Farrell stated that the zoning was overlaid even in the PUD's and the ZBA had no

57 authority on the PUD. V. Chairman Dolan stated that they still had authority on the underlining zone.
58 Chairman Farrell clarified that they also have authority in the underlining zone on the PUD as well.
59 V. Chairman Dolan asked if the difference was that the GMO has authority in the overlay zone.
60 Ramsdall stated that it was correct. The GMO does not apply to any underlining sites specific.

61
62 Cynthia May stated that it's not the same as a traditional overlay zone. Once the PUD gets approved
63 it is the zone for that particular area. The underlining remains in place if that ever goes away. The
64 area is no longer affected by what goes on underneath. Some of what was underneath did get
65 incorporated into the PUD but not necessarily everything. May stated that the town of Bedford has a
66 performance zone which is very much like this where the Planning Board has jurisdiction over
67 everything. This is what Londonderry's performance zones are based on but they adopted them as
68 overlays so that we still had the underlining zone coming through. May stated that that is the
69 difference.

70
71 Chairman Farrell asked if there were any other questions from the Council.

72
73 Councilor Freda stated that he had read the Ordinance quickly and that he didn't find any reference to
74 the Zoning Board in the entire PUD Ordinance. There is a section on waivers on streets and off street
75 parking. The Planning Board may grant waivers for parking if the Board finds that waivers will be
76 compatible to design the purpose of the PUD.

77
78 V. Chairman Dolan stated that he has been following this issue closely and that he is caught off guard
79 and surprised that the Zoning Board is basically neutered in this development process. V. Chairman
80 Dolan stated the he doesn't know how reflective his surprise is in the community. V. Chairman Dolan
81 said that he would like to hear Ramsdall and the Councils further analysis whether or not this is truly
82 the case.

83
84 Chairman Farrell asked the Council again if there were any further questions. Chairman Farrell stated
85 that this is not a Public Hearing. He shared that if anyone from the public that would like to make a
86 statement he would entertain it. That had to be clarified.

87
88 Ari Pollack with Gallagher Callahan and Gartrell, Attorney for Pillsbury Realty, the master developer
89 for the PUD application, commented on two points that were made during the discussion. He stated
90 that the Master Plan is working with the Planning Board to regulate items of impact to the
91 community. It was established that way based on the Ordinance. One of the primary ways are site
92 plan and sub division levels where the developer may propose an application that carry's impacts to
93 the community. Those impacts could be traffic, sewer, or water. Pollack stated that there was a
94 comment earlier on that these types of stop gaps are being removed by this process. He states that
95 that's not the case. He stated that the Planning Board vests substantial authority to evaluate the
96 appropriateness of mitigation measures as development applications come forward.

97
98 Pollack stated that the Council approves members of the Planning Board, the same as it does the
99 Zoning Board. Pollack stated that his second point is on the subject of the cemetery donation. There
00 has been correspondence back and forth between the cemetery trustee and the developers. Pollack
01 shared that there is an area in mind but it needs to go through the sub division process to be separated

02 from other land that is controlled by the council. The commitment to make the donation has been
03 made but it requires approval by Planning Board. There were questions to what's going on the land
04 and whether it is suitable. Pollack stated that the sub division approval will be the check and balance
05 on whether or not it is useable land. Chairman Farrell addressed Pollack stating that if he is working
06 with the cemetery trustees we can rest assure that they will do what they think is best.

07
08 Kevin Smith stated that he received correspondence from Steve Cotton who oversees the cemeteries
09 and he stated that they are looking to the land at the left of the existing Pillsbury Cemetery not behind
10 it.

11
12 Chairman Farrell asked the Council if there were any further questions.

13
14 V. Chairman Dolan stated that he isn't sure if this applies to Zoning but the uses listed in the PUD
15 column of the Permitted Use Table may be proposed for inclusion in a PUD, however no use is
16 permitted in a PUD unless specifically approved by the Planning Board as part of the PUD Master
17 Plan. Chairman Farrell stated that as he recalls there was a very long list of everything that could and
18 couldn't be done inside a PUD. Chairman Farrell stated that if they wanted to make a change to what
19 they are building that would be done under site plans and sub divisions. V. Councilor Freda stated
20 that unless he's missed it there is no reference to the Town Council or the Zoning Board in the PUD
21 Ordinance.

22
23 V. Chairman Dolan stated that he would like to hear from Attorney Ramsdall's further consideration
24 of his question. Dolan stated that he has faith in the Planning Board and they have a lot of expertise
25 and site plan approvals but they don't have a lot of experience in approving variance request to
26 zoning issues and we have a board that the town empowers with a certain amount of expertise. V.
27 Chairman Dolan discussed that we usually send the Zoning Board members to Concord to get special
28 training that the Planning Board doesn't get. They are two separate boards asked to do two different
29 things. V. Chairman Dolan stated that's the overall concern he has.

30
31 V. Chairman Dolan requested that the issue be tabled for one meeting. Attorney Ramsdall stated that
32 he doesn't know if he will ever be able to satisfy Councilor Dolan. Ramsdall asked Council if they
33 would like him to take a minute to look at the State Statue and the Ordinance and give them a 100%.
34 Ramsdall shared that he is correct; there is no provision in the Ordinance for the Zoning Board.

35
36 Chairman Farrell addressed V. Chairman Dolan and asked him what variances he is uncomfortable
37 with not being able to approve, specifically what needs to go to the Zoning Board. V. Chairman
38 Dolans stated the GMO. Councilor Freda asked the Council if he could make a suggestion for the
39 Council to meet with Attorney Ramsdall for a few minutes to discuss legally his opinion.

40
41
42 Chairman Farrell set the motion to go nonpublic under RSA 91A section B part 2. Councilor Joe
43 Green seconds the motion. Councilor Tom Freda seconds the motion as well.

44
45 Council went into private discussion.

46
47 Chairman Farrell recalled coming back into public session. Councilor Joe Green second the motion
48 followed by Councilor Tom Freda and V. Chairman Tom Dolan. Chairman Farrell stated that the
49 Council was back in public session. Chairman Farrell asked if the Council had any further questions
50 in regards to the development agreement. Chairman Farrell stated that it wasn't a public hearing but
51 the Council will take questions from the public.

52
53 Attorney Ramsdall addressed the room and stated that he had the opportunity to review the State
54 Statue and the Zoning Ordinance for the Town of Londonderry regarding PUD's. Ramsdall stated
55 that it's his option that the Zoning Board is not the proper authority to consider any waivers once a
56 PUD is approved; it is in fact the Planning Board that should be making that determination.

57
58 Chairman Farrell asked the Council if there were any questions for Attorney Ramsdall. Chairman
59 Farrell stated that he would like to suggest that the agreement get approved pending the approval of
60 the Master Plan. Ramsdall shared that if the Master Plan is not approved by the Planning Board than
61 the development agreement there is no purpose to it. If you approve the development agreement
62 contingent on the Planning Boards approval on the Master Plan on Wednesday night September 11th,
63 than the Town Council can sign the Development Agreement, however if the Planning Board doesn't
64 approve Master Plan than there's no reason for the Council to sign the Development Agreement.

65
66 Councilor Farrell stated to the Council that he is looking for a motion to approve the Development
67 Agreement as present this evening contingent on the Planning Board approving the Master Plan.
68 Councilor Green motioned. Councilor Freda Second the motion. Chairman Farrel stated it passes 4-0
69 contingent on the Planning Board meeting on September 11, 2013.

70 Ramsdall stated that he would report that to the Planning Board on Wednesday.

71
72 Next order in business is Order #2013-29, Expenditure of Maintenance Trust Fun for Various
73 Projects totaling \$5,333.35. Chairman Farrell stated the Town Council for the Town of Londonderry
74 town orders the treasure hereby order to expend \$5,333.35 from the Expendable Maintenance Trust
75 Fund for the mentioned repairs and improvements.

76 Town Manager Kevin Smith stated that there are four items on the list:

- 77 1.) Fuel Farm located behind Central Fire Station that had a defective diesel nozzle and monitor
78 alarms. The request is for the replacement of diesel nozzle in the amount of \$531.85.
- 79 2.) Sewer line behind the Senior Center. There were backups in the kitchen sinks. Request is for the
80 snacking of the sewer line and a camera to pin point the cause of the blockage. There were two
81 issues, the flushing of handy whips and stones remaining in the line from previous sewer line
82 breakage. At this point the blockage has been cleared in the amount of \$1,335.00.
- 83 3.) North Fire Station the electrical for a mini split AC unit circuit was needed to support the mini
84 split AC until. Request was for parts and labor to install the \$932.00
- 85 4.) North Fire Station needed a hot water pump motor replacement. Station 1 reported no hot water
86 in the building. Pump is not a stock item it had to be manufactured to meet. The request is for
87 trouble shooting and parts and labor to replace the defective hot water pump and motor in the
88 amount of \$2,534.50.

89 Chairman Farrell asked for a motion to adopt. V. Chairman Dolan motioned to adopt, second
90 Councilor Green. Chair votes affirmative 4-0-0.

91
92
93 **Approval of Minutes**
94

95 Chairman Farrell stated a motion is needed to approve the minutes for April 19, 2013. Councilor
96 Green motioned to approve the minutes. V. Chairman Dolan second the motion. Councilor Freda
97 abstained from the motion because he was not present at the meeting. Chair votes 3-0.
98

99 **Other Business**

00 Chairman Farrell asked the Council if they had anything for Liaison Reports. Councilor Green
01 reported that he has a question on the senior affairs committee. There were some questions about the
02 property that they want to have a senior housing on. There were some items that were identified as
03 being a problem for that site. Janusz Czyzowski, Director of Public Works and Engineering was
04 going to look into it and as of right now we should have more information as to how much it costs.
05

06 Councilor Freda stated that the Planning Board discussed the CIP which will have a second hearing
07 in October and also the Woodmont Development Agreement which they supported and
08 recommended that the Council approve.
09

10 Chairman Farrell announced the Town Manager report. Kevin Smith, Town Manager, stated that the
11 Council had asked him to look into the possibility of dividing the Town Clerk/Tax Collectors
12 position into 2 separate positions. After reviewing the State Statue along with consulting with
13 Londonderry Town Attorney that can be done if the Council decides to go in that direction. It would
14 have to be done via ballot question at town meeting time to separate out those two positions. The
15 Town Clerks position has to be an elected position and it is unclear whether the Town Tax Collectors
16 position also has to be an elected position. Smith stated that Attorney Ramsdall is looking into that
17 position.
18

19 Smith stated this coming Thursday is the Governor's Advisory Commission on Intermodal
20 Transportation hearing, GAC Hearings, on the 10 year transportation plan.
21

22 Adjournment

23
24 Councilor Freda made a motioned to adjourn at 9:41 PM, second Councilor Green. Councils vote 4-
25 0-0
26
27

28 **Notes and Tapes by:** Kirby Wade **Date:** 09/09/13
29 **Minutes Typed by:** Kirby Wade **Date:** 09/15/13
30 **Approved by:** Town Council **Date:**
31
32
33

34
35
36
37