

# LONDONDERRY TOWN COUNCIL MEETING MINUTES

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2 **October 6, 2014**  
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4 The Town Council meeting was held in the Moose Hill Council Chambers, Town Hall, 268B Mammoth Road, Londonderry,  
5 NH.  
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7 Present: Chairman Tom Dolan; Vice Chairman Jim Butler; Councilors Tom Freda and Joe Green; Town Manager Kevin  
8 Smith; Executive Assistant Kirby Wade; Absent: Councilor John Farrell  
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## 10 **CALL TO ORDER**

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12 Chairman Dolan opened the meeting with the Pledge of Allegiance. This was followed by a moment of silence for all those  
13 who serve us here and abroad.  
14

15 Chairman Dolan stated that it is not a full; board tonight. Chairman Dolan stated that with that in mind, there is a matter  
16 under New Business that should be heard by all five councilors so Chairman Dolan asked the Council if they would mind if  
17 the matter was postponed. Chairman Dolan stated that it is the Doyle Easement presentation. Councilors Green and Freda  
18 stated that they do not have a problem with that.  
19

## 20 **PUBLIC COMMENT**

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22 Chairman Dolan opened up the floor to general public comment.  
23

24 Roger Faucher, 39 Kimball Rd, stated that he has been in town for sixty-nine years. Faucher stated that he owns a rental  
25 property at 33 Kimball Rd. Faucher stated that the reason he is here is a rebuttal to an editorial. Faucher read in Article 10 of  
26 the Constitution of New Hampshire, which states, the Government is not for anyone, man, family or class of men. Faucher  
27 stated that in other words, there should be all kinds of housing for all people, not just for the people that can own a house.  
28 Faucher stated that he has owned his rental property for about forty years. Most of his tenants have been kids from  
29 Londonderry. Faucher stated that when his tenants were ready, they would move out and buy their own homes. Faucher  
30 stated that according to the editorial, people are stating that that shouldn't happen. Faucher stated that he wanted to build  
31 more apartments but they were already zoned out. Faucher stated that there needs to be more apartments for rent in  
32 Londonderry. Faucher stated that for a while after apartments were zoned out of Londonderry, you had to go by petition.  
33 Faucher stated that the editorial mentioned Derry. The editorial is from the Londonderry Times. Faucher stated that Derry  
34 doesn't have a problem with apartments because they met the needs. Faucher thanked the Council for their time. Town  
35 Manager Smith stated that after the last Council meeting, he gave an update on the inventory of workforce housing that is  
36 currently already been approved or in the pipeline, and in addition to that, Smith stated that he has asked the Planning staff to  
37 look at reports from the Southern New Hampshire Planning Commission as to what Londonderry's fair share of workforce  
38 housing is in the region. Smith stated that he has asked the Planning staff to give an update to the Planning Board. Smith  
39 stated that Londonderry's current Ordinance provides that seventy-five percent of any development using workforce housing,  
40 seventy-five percent of it needs to be workforce, whereas in surrounding communities, the number is closer to twenty-five  
41 percent. Right now the Ordinance also says you can have sixteen units per building, and if they meet the criteria for a  
42 conditional use permit, they can ask for twenty. Smith stated that the developers have been going to the ZBA asking for  
43 twenty-four because they like to do them in units of twelve. Smith stated that give the fact that so many of them have gone  
44 through to the ZBA, is it the Council's inclination to have the Planning Board review the current Ordinance and see whether  
45 or not it needs any tweaking. The Council agreed to as the Planning Board to take a fresh look at the Ordinance to see if it  
46 needs to be updated.  
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## PUBLIC HEARING

- 49
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- 51 Motion to enter Public Hearing made by Councilor Green and second by Councilor Freda. Chair votes 4-0-0.
- 52
- 53 Chairman Dolan stated that the first two items have to do with the discontinuance of a few roads. Chairman Dolan stated that
- 54 discussion will be postponed until October 20th to get greater assurance that all of the appropriate abutters have been notified.
- 55
- 56 Chairman Dolan introduced Ordinance #2014-05, an amendment to the Town's Municipal Code with regard to the possession
- 57 and display of fireworks. Councilor Freda read the Ordinance into the record. Motion to accept the second reading and adopt
- 58 made by Councilor Freda and second by Councilor Green. Chairman Dolan directed Town Manager Smith to discuss the
- 59 changes made to the Ordinance. Smith stated that the main changes come under the definitions. Smith stated that the sensitive
- 60 changes come under section three, under permits, safety regulations and fees. Smith stated under section three letter 'b',
- 61 permits should be issued to the extent authorized under the RSA's included but not limited to number one, any person seeking
- 62 to display consumer permissible fireworks, shall obtain a permit from the Londonderry Fire Department. Smith stated that
- 63 before the Ordinance was that if you were lighting off more than one thousand dollars' worth of fireworks you had to obtain a
- 64 permit. Smith stated now everyone has to obtain a permit. They will be free of charge. Permits shall be capped at a maximum
- 65 of twelve per calendar year, per household. Smith stated that this limits the frequency of which a household can be lighting off
- 66 fireworks. Smith stated that number three, a permit to display consumer permissible fireworks shall not be required on July 4<sup>th</sup>
- 67 and three days before and after that. Smith stated that letter 'c', the following safety regulations shall be follows. Smith stated
- 68 that these regulations existed when a permit was given out by the fire department. Smith stated that they will now be put into
- 69 the Municipal Code so that it will be enforceable by the Police Department. Smith stated that number one; fireworks cannot be
- 70 discharged any closer than seventy-five feet from any combustible structure or no closer than the clearances listed by the
- 71 fireworks manufacturer. Number two, fireworks cannot be discharged any closer than fifty feet from any overhead wiring and
- 72 number three, spectators must be positioned no closer than seventy five feet from the discharged fireworks or no closer than
- 73 the clearances recommended by the manufacturer. Smith stated that the language was clarified under the penalty section, in
- 74 addition to any penalties provided in RSA 160B and 160C, and person who or any entity that violates any of the terms of the
- 75 Ordinance shall be guilty of violation and subject to a fine in the amount of one thousand dollars.
- 76
- 77 Chairman Dolan opened it up to the public.
- 78
- 79 Ann Chiampa, 28 Wedge Wood, asked if there was any timeframe during the day and evening that fireworks are not allowed.
- 80 Smith stated that you cannot light of fireworks between the hours of 10 PM and 8 AM, or it would violate the noise
- 81 Ordinance.
- 82
- 83 No other public comment. Councilor Green proposed an amendment to the Ordinance to add the time you will not be allowed
- 84 to set off fireworks. Smith suggested referencing the noise Ordinance that folks who are going to use fireworks need to
- 85 follow the Town's noise Ordinance. Councilor Green stated that he changes his amendment to referencing the Town's noise
- 86 Ordinance. Chairman Dolan asked Town Manager Smith if they should also limit the number of permits per year for a
- 87 business as well. Smith suggested rephrasing it to say 'per household or any other entity'. Councilor Green motioned to make
- 88 the amendments stated. Smith asked if it can be changed that the fee schedule be under 'b' and put the noise Ordinance under
- 89 'd' just to have more uniform. Councilor Green stated that is ok. Second by Vice-Chairman Butler. Chair votes 4-0-0.
- 90
- 91 Chairman Dolan introduced Order #2014-12, the licensing of a junkyard pursuant to RSA 236 for Murray's Auto Recycling
- 92 Inc. Chairman Dolan stated that the Council is only given the authority that the State has entitled the Council to have.
- 93 Chairman Dolan stated that the Town Attorney, Attorney Ramsdell, is present at the meeting. Councilor Green read in Order
- 94 #2014-12. Vice Chairman Butler stated that in the first paragraph where it says 36 Strafford Lane in Londonderry, Butler
- 95 stated that it needs to be changed to Bedford. Councilor Green motioned to make the amendment. Second by Councilor
- 96 Freda. Chair votes 4-0-0 for the amendment and the Order.
- 97
- 98 Chairman Dolan invited Building Inspector Richard Canuel to bring the Council up to date as to where the Council left off

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99 and what is before the Council tonight. Canuel stated that there isn't anything new that hasn't been previously discussed.  
100 Canuel stated that during his yearend visit to the property doing an inspection, he observed that there were two flatbed tow  
101 trucks parked in that front lot, again that was an issue of dispute and it is part of what the Council will address tonight.  
102 Canuel addressed some of the issues that have been addressed over the past few meetings. Canuel stated that his office has  
103 taken enforcement action on a couple different instances. Canuel stated that at the present time it is borderline whether he is  
104 in compliance or not. Canuel presented photo's to the Council showing different views of the junkyard showing that parts of  
105 the junkyard have been cleaned up. Chairman Dolan asked Attorney Ramsdell if he could help advise the Council as to what  
106 consideration they can give to those matters DES has presented as it contributes to the licensing of the Junkyard. Attorney  
107 Ramsdell stated that the Statute regarding junkyards does not expressly give the Town any authority to consider whether  
108 there are environmental permits that are in violation or are missing. Attorney Ramsdell stated that that's not to say that if  
109 there was evidence that there was environmental contamination that was creating a health or safety issue for the Town, that  
110 the Town Council could not consider that under its general health and welfare enforcement authority. Attorney Ramsdell  
111 stated that is not the same as saying that the junkyard statute itself provides that express authority to the Town. Attorney  
112 Ramsdell stated that in practical terms, DES needs to get out there if there is a violation of a Federal or State permit. It is  
113 really a matter of the Environmental Services Bureau to take up and not the Town itself.

114 Attorney Pat Panciocco introduced herself and stated that she is here on behalf of Ed Dudek. Panciocco thanked the Council  
115 for the extra time they provided her so that she could study the files in the Code Enforcement Office. Panciocco stated that  
116 this property has been a junkyard for fifty plus years. Panciocco presented exhibits to the Council to give them an overview  
117 of the property. Panciocco stated that the junkyard is a preexisting nonconforming use. Panciocco introduced Peter Frank  
118 from GO Insite who is here to answer any questions about contamination. Panciocco continued to discuss some of the other  
119 issues. Panciocco stated that there is nothing in the Court Order that talks about hours of operation. Panciocco discussed  
120 some of the specifics of the Court Order. Panciocco stated that the lot was used as a junkyard before there were lots across  
121 the street. Panciocco stated that as far as she can tell from reviewing the Court Orders, in the 1997 Order it says business  
122 operations take place behind the fence, no disabled vehicles in the front lot and no signs on the property. Panciocco stated  
123 most of the other conditions imposed by the Court over time have been remedied by her client or enforcement. Panciocco  
124 discussed the changes Ed Dudek has made to the property since purchasing it. Panciocco stated that Dudek has added  
125 additional fencing and there has been a gate added to the front. Panciocco stated that a nonconforming use is not something  
126 that allows additional regulation because it is no longer allowed as a new use in that particular district. Councilor Freda asked  
127 why Dudek is violating his conditions. Panciocco stated that last year Dudek never signed the conditions but his license still  
128 issues. Panciocco stated that in previous years he did sign off on the conditions but last year he did not. Panciocco stated that  
129 the reason Dudek objects is not because he wants to be open longer, he objects because it gives a basis for people to complain  
130 to the Town about him. Councilor Green asked if the trucks that the junkyard uses commercially plated. Panciocco stated that  
131 they have junk plates on them.  
132

133 Ed Dudek, 36 Strafford Lane, Bedford, stated that they are dealer plates but they are gas engines. Dudek stated that they  
134 come into the yard, open the gate, and drive into the yard and close the gate and then they leave. Councilor Green clarified  
135 that dealer plates mean they are a part of a business. Dudek stated yes but bringing the trucks back and parking them is not a  
136 part of business operations. Councilor Green stated that he is just trying to establish if it is a business. Attorney Ramsdell  
137 stated that Dudek was found guilty in Derry District Court due to the fact that one of his employees, after the truck returned,  
138 the employee was loading it up for the next day. Chairman Dolan asked that if a truck came back inside the fence after hours  
139 and they started unloading a vehicle that would be operations? Attorney Ramsdell stated yes. Attorney Ramsdell stated that if  
140 you look at the existing license, it has the hours of operation in there and it states that the hours of operation shall be limited  
141 to Monday through Friday. Eight to five and Saturday eight to five. The junkyard can only perform operations during this  
142 time and there have not been violations. There were some violations and they were withdrawn. Councilor Green asked that as  
143 vehicles that have dealer plates on them are parked in front of the fencing is that allowed by the Court Orders and by the State  
144 Statutes. Attorney Ramsdell stated that his opinion, the Courts Order should have been read to say that those vehicles could  
145 not be parked there. There was a motion for reconsideration that was filed. The Court reconsidered its option and Attorney  
146 Ramsdell stated based on the Court Orders that are out there now that as long as those vehicles are operable and there are  
147 plates on them, they can be parked there.  
148

149 Peter Frank, Senior Hydra-geologist GO Insite, stated that he was hired by Murray's Auto to make sure that they comply with  
150 all environmental regulations that have been put upon him under the groundwater management permit that he has through the  
151 State. Frank stated that Dudek does have a current Groundwater Management Permit, which is set by the State. Frank stated  
152 that he monitors water within that zone as well as outside of it. Frank stated that he samples all of Dudek's supply wells as

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153 well. Frank stated that his wells have tested clean. Frank stated that Mr. Dudek's supply well for the traileed is located  
154 between the most contaminated of the groundwater and the Adams property across the street. Frank stated that groundwater  
155 doesn't flow in that direction anyway. There is no evidence to suggest that the contaminated groundwater from historical  
156 practices, is posing a threat moving in that direction. Councilor Freda asked if DES has any authority regarding revoking the  
157 five year permit. Frank stated that there would be no purpose to revoke a permit ever. Groundwater is owned by the people  
158 of New Hampshire, not by the landowner. Any water under your property is owned by all of us. The permit protects the  
159 groundwater supply and it must meet a certain drinking water standard. All water in New Hampshire does. Frank stated that  
160 sample Murray's twice a year. Frank stated for a property this side, there are numerous monitoring points, wells, service  
161 water location and they have recommended continuing monitoring those points. Vice Chairman Butler asked with the most  
162 current permit expires. Frank stated it will expire shortly. The next permit issued will be issued for a period of five years.  
163 Vice Chairman Butler asked Frank if he feels comfortable that there will be another permit. Frank stated that he is very  
164 confident another permit will be issued.

165  
166 Richard Innie, 72 Hall Rd, stated that under RSA 91, he would like to know what the Town has spent for a lawyer on fighting  
167 the junkyard. Chairman Dolan stated that it will be referred to the Town Manager. Town Manager Smith stated that in the last  
168 six months the Town has spent approximately \$20,000 in legal bills, a little over ten percent of the legal budget on this one  
169 issue.

170  
171 Claudet Adams, 54 Hall Rd, asked if the August report GO Insite submitted, was it supplied to the Town or does the Town  
172 have to go after it. Town Manager Smith stated that they are supplied to the Town. Frank stated that every report that is  
173 prepared and submitted to DES is public record and is available on the One Stop Database. Adams addressed contamination  
174 levels and how high they are. Frank stated that if you could have a place, surrounded by a wetland is probably one of the best  
175 places where you can have contamination. Frank stated that his phone number that he can be reached at if anyone has any  
176 questions is 603-314-0820. Chairman Dolan stated that contamination is not a matter the Council can consider as part of  
177 issuing license. Adams addressed the fencing issue. Adams stated that the fencing needs to be restored in front of the office  
178 trailer. Adams also discussed the parking of vehicles in front of the fence. Adams stated that if you look at the Court  
179 Stipulation, paragraph three specifically says the front lot will be used only for the parking of motor vehicles of the  
180 defendants and the employees. It doesn't say anything about parking his trucks. Attorney Ramsdell stated that when you have  
181 a building that is at least as high as the fence is, that building serves as the fence. Adams stated that the laws need to be  
182 followed and if the trailer had been moved where it should have been they wouldn't be here. For some reason, the fence that  
183 use to be in front of the trailer back in 2000 was taken down. Adams stated that at the June 16<sup>th</sup> hearing, Attorney  
184 Panciocco's request for the sixty day extension was granted provided the junkyard owner complies with all conditions.  
185 Adams stated that it is a violation of condition five. Adams stated that it is also stated on the renewal application under  
186 section 'b'. Adams stated that there are trucks bringing in inventory that come back with a vehicle on the flatbed, that's  
187 inventory and they are coming back after hours. Chairman Dolan stated that it the Council were to revoke the applicants  
188 license for returning a vehicle at 6 PM, not doing any work on it but just opening the gate and driving it and leaving it, the  
189 Council has been advised that that action would not be defendable in Superior Court. Chairman Dolan stated to consider  
190 noncompliance's from years ago to be applied to this year's license renewal is noteworthy but it is not as relevant as  
191 noncompliance's if they had happened in 2014. The Council cannot regulate hours of operation. Adams asked the Council  
192 what the deadline for appealing is. Councilor Freda stated that he believes it starts whenever the Council issues the license.

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194 Richard Belinski, 89 Hall Rd, stated that the fencing has to go back in front of the office. It is in the Court Order. The Court  
195 Order specifically says access to the office shall be through a thirty-six inch opening in the fence. Belinski stated that the  
196 trucks returning is junkyard operations and that he spent many years as a general motors parts manager and part of his  
197 operation was the flatbeds. Belinski stated that the driver is also being paid so if he is working, he is doing operation.  
198 Belinski stated that it should not be left up to the citizens of the Town to watch and make ure the Court Orders and Order get  
199 enforced.

200  
201 Keith Gugne, 84 Hall Rd, stated that he has been sitting in the back listening to everything. Gagne stated that he remembers  
202 hearing attorney Ramsdell state that if a truck shows up five minutes past five that the Court will laugh trying to enforce the  
203 hours. Chairman Dolans stated that the difference is whether or not it is considered junkyard operations. If they start doing  
204 work inside the fence after hours it is considered operations but if they just drop off a vehicle it is not considered operations.  
205 Chairman Dolan stated that it would be a waste of taxpayers' money to go to Court.

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206 Chairman Dolan stated that he would like to hear the stipulations the Council would like to see placed on the license. Vice  
207 Chairman Butler stated that the fence should be put back in front of the trailer like the Court Order says; it needs to be a  
208 stipulation. Chairman Dolan asked about fencing along the side and Vice-Chairman Butler stated that it can't be determined  
209 until the leaves fall. Town Manager Smith went through the proposed stipulations. Chairman Dolan stated that no later than  
210 the end of November, install an additional one hundred feet of six foot tall stockade fence along the westerly boundary of the  
211 property and attach the same double fabric layer across the top of that fence to increase the length and height of the screening  
212 along the boundary. Chairman Dolan stated that one of the stipulations that talks about operation, one could be that  
213 operations shall include the applicant and his employees conducting business with the public, or the applicant and his  
214 employee's engaging in physical activity or labor inside the fence. Operations shall not include the applicator his employees  
215 working before or after the applicants hours of operation behind the fence or in the office providing that such work does not  
216 create loud noise or a breach of the peace pursuant to the RSA or the departure or arrival of the applicants motor vehicles at  
217 the property before or after the applicants hour of operation without further activity, provided that such work does not create  
218 sufficient noise to create a breach of peace as mentioned before. Chairman Dolan stated that the applicants motor vehicles  
219 shall not be allowed to return to the facility after 8 PM. Councilor Green state that it should be added that the applicant  
220 continue to work with properly licensed engineers to meet all State of New Hampshire Department of Environmental  
221 Services for water safety. Councilor Green stated that it should also be added that the applicant's hours of operation shall be  
222 limited to Monday to Friday 8 AM to 5 Pm and Saturday 8 AM to 5 PM. Chairman Dolan stated that the stipulations he just  
223 mentioned were in addition to the current stipulations already in place. Councilor Green stated that he would like it to be  
224 clear that the Council will be giving him notice and it will clearly be stated in his new licensing that he needs to follow all  
225 stipulations. If he does not meet the requirements the Council can shut down his license. Chairman Dolan stated that he is not  
226 in favor of putting additional fencing in front of the trailer. It would not serve any purpose and would make the junkyard look  
227 worse. Councilor Green stated that he agrees. Town Manager smith stated that there is one more issue should read adding  
228 four feet to the top of the existing fence to increase its height immediately to the right.  
229

230 Chairman Dolan invited the applicant to come forward with his Attorney. Chairman Dolan asked Dudek if he would agree to  
231 the stipulations. Chairman Dolan stated that the Council will take a violation seriously when it comes time for the 2015  
232 license renewal. Dudek stated that he is glad there are stipulations and he will follow them. Councilor Green asked if the  
233 stipulations have to be read into the record or can they just be submitted. Chairman Dolan stated that it has been captured so  
234 they do not need to be read in. Chair votes 4-0-0 and the license is renewed.

235

236 Motion to exit public hearing made by Councilor Green and second by Councilor Freda. Chair votes 4-0-0.

237

## 238 NEW BUSINESS

239

240 Chairman Dolan introduced Order #2014-22, an expendable maintenance trust fund for various projects. Motion to waive the  
241 reading and approve the Order made by Councilor Green and second by Councilor Freda. Town Manager smith stated two  
242 items are included. One is a Town Hall edition of lighting in the attic. The second is the dry system pipe replacement at Town  
243 Hall. Chair votes 4-0-0.

244

## 245 APPROVAL OF MINUTES

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247 Motion to approve minutes from September 22, 2014 made by Councilor Green and second by Councilor Freda.

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## 249 LIAISON REPORTS

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251 NONE

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# LONDONDERRY TOWN COUNCIL MEETING MINUTES

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## BOARD COMMITTEE APPOINTMENTS/REAPPOINTMENTS

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Motion to appoint Karen Boone as an Alternate Member to the Elder Affairs Committee made by Councilor Freda and second by Councilor Green. Chair votes 4-0-0.

Chairman Dolan invited up the candidate to be interviewed for the Zoning Board of Adjustment. William Beradino, 3 First Street, stated that he has lived in Londonderry for eight years. He works for the T in Boston as a bus driver and he is a Union official for Boston Carmen Union, Local 589. Beradino stated that he has an issue with the Zoning Board now that having that issue he is learning a lot of rules and regulations about the Town. Chairman Dolan asked Beradino what his current concern with the ZBA is. Beradino stated that there is a gentleman running a business behind him in a residential area. Beradino stated that it will not create a problem for him and he would excuse himself when the issue comes up. Beradino stated that he has been to ZBA for the past three months. Chairman Dolan asked Beradino if he has any conflicts of interest and Beradino stated beside his issue now, no.

## ADJOURNMENT

Vice Chairman Butler stated that at Kendall Pond there has been camping and there has been another complaint about a homeless person camping there. Vice Chairman Butler stated that he was pleased with the performance of the Police Officer who responded. Butler stated that he looked at the new recreation guide and there seems to be some discrepancy on the guide. It says prohibited uses in Kendall Pond is camping and then you look at the guide and it says camping, Kendall Pond, permit only. Butler asked which one it is. Butler stated that it is also not posted at Kendall Pond. Town Manager Smith stated that he has been speaking to someone on the Conservation Commission and there are a number of rules that need to be codify into the Municipal Code. Smith stated that once he has received all of the rules he will be bringing them forward to do it one time.

Motion to adjourn made by Councilor Freda and second by Vice Chairman Butler. **Chair votes 4-0-0.**

Notes and Tapes by:	Kirby Wade	Date: 10/06/14
Minutes Typed by:	Kirby Wade	Date: 10/10/14
Approved by:	Town Council	Date: 10/20/14