

LONDONDERRY TOWN COUNCIL MEETING MINUTES

1
2 **January 4, 2016**

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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.

6
7 Present: Chairman John Farrell; Councilors Tom Freda and Tom Dolan; Town Manager Kevin Smith; Executive Assistant
8 Kirby Wade; Absent: Vice Chairman Jim Butler; Councilor Joe Green

9
10 **CALL TO ORDER**

11
12 Chairman Farrell opened the meeting with the Pledge of Allegiance. This was followed by a moment of silence for all the
13 men and women who serve us here and abroad and all first responders and the men and women who serve us here and abroad
14 especially during the holiday season. Chairman Farrell also thanked the Public Works department for all they did helping the
15 Town through the first snow storm.

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17 **PUBLIC COMMENT**

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19 Chairman Farrell welcomed up Claudia Charbonneau of the Londonderry Rotary Club to give out awards to those who
20 helped make Christmas on the Commons happen this year. The Londonderry Rotary Club appreciated all of the help from the
21 Town members, the Police Department and the Fire Department.

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23 There was no other public comment.

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25 **PUBLIC HEARING**

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27 Motion to open Public Hearing made by Councilor Dolan and second by Councilor Freda. Chair votes 3-0-0.

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29 Chairman Farrell introduced the presentation by Steven Lewis relative to the purchase and sale of land at 30 Sanborn Rd for
30 the purpose of constructing affordable senior housing. This is the second Public Hearing on this issue. Chairman Farrell
31 stated where they left off was with a few questions from the Council. These questions were addressed with the attorney
32 regarding the PNS. An agreement has been made. Town Manager Smith presented a red line version of the PNS. Smith
33 addressed the changes made to the PNS [see attached]. Town Manager Smith stated that he needs a consensus from the
34 Council to move forward with the purchase and sale agreement. Councilor Freda made a motion to approve and Councilor
35 Dolan second. The Council votes 3-0-0.

36
37 Motion to close the Public Hearing made by Councilor Dolan and second by Councilor Freda. Chair votes 3-0-0.

38
39 **OLD BUSINESS**

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41 Town Manager Smith stated that there are a few updated for the FY17 budget update. Finance Director Doug Smith
42 presented the Council with an updated budget sheet. Doug Smith stated that this is a summary of where we are today as
43 opposed to where we started with the budget proposed by the Town Manager. It updates the estimated revenue for the
44 operating budget and also the expenditures. Smith went over the changes made. The second page of the handout is the
45 updated tax impact of the operating budget. Town Manager Smith went over the Town Forest budget update. Steve Cotton

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46 discussed the Senior Center improvement budget update.

47
48 Town Manager Smith stated that he needs a consensus from the Council on the solid waste bid. Waste Management came in
49 the lowest on both the solid waste and recycling. With is being over \$100,000.00, we need to Councils approval to move
50 forward with awarding the contract. The Council gave a consensus approval.

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52 There was no further budget discussion.

NEW BUSINESS

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56 Chairman Farrell introduced Order #2016-01, expenditure of Maintenance Trust Fund for various projects. This Order is for
57 wet/dry sprinkler testing at Town Hall and 4' LED lighting at South Fire Station. Motion to approve Order #2016-01 made
58 by

APPROVAL OF MINUTES

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62 Motion to approve the minutes from December 21, 2015 made by Councilor Dolan and second by Councilor Freda. Chair
63 votes 3-0-0. Councilor Dolan motioned to approve Order #2016-01 and second by Councilor Freda. Chair votes 3-0-0.

TOWN MANAGER REPORT

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67 Town Manager Smith stated that anyone who is not registered to vote, you may come to Town Hall on January 19th or
68 January 30th to register. January 30th is the last day before the Primary. Town Manager Smith also stated that if you're
69 thinking about running for office, filing opens up January 20th and will go until January 29th.

BOARD/COMMITTEE APPOINTMENTS & RESIGNATIONS

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73 Chairman Farrell read in a few resignations. Motion to approve the resignations of Ben Parker from the Recreation
74 Commission, Lynn Wiles from the Planning Board and Paul Nickerson from the Conservation Commission. Motion to accept
75 made by Councilor Dolan and Second by Councilor Freda. Chair votes 3-0-0. The Council thanked all those who have
76 served.

77
78 Chairman Farrell stated that the Conservation Commission recommendations will be put off until the next meeting (1/18) due
79 to the fact that there is not a full board.

80
81 Motion to re-appoint Duane Himes as a member of the Solid Waste and Environment Committee made by Councilor Dolan
82 and second by Councilor Freda. Chair votes 3-0-0.

83
84 Motion to re-appoint Deb Nowicki as a member of the Londonderry International Exchange Committee. This was
85 recommended by the Chair Julie Liese. Chairman Farrell asked Art Rugg if Deb still lives in Town. Rugg stated that he will
86 check. Motion made by Councilor Dolan and second by Councilor Freda. Chair votes 3-0-0.

87
88 **NOTE: The Council was informed the next day (1/5) that Deb Nowicki is no longer a resident of Londonderry. The Council**
89 **will withdraw their motion at the next meeting on 1/18. The open position will be posted following the withdrawal.**

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LONDONDERRY TOWN COUNCIL MEETING MINUTES

ADJOURNMENT

Motion to adjourn made by Councilor Dolan and second by Councilor Freda. **Chair votes 5-0-0.**

Notes and Tapes by:	Kirby Wade	Date: 01/04/2016
Minutes Typed by:	Kirby Wade	Date: 01/06/2016
Approved by:	Town Council	Date: 01/18/2016

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PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is made as of the ___ day of ~~January~~ ~~August~~ 2016~~5~~, by and between Steven Lewis, Incorporated, a New Hampshire corporation with a mailing address of P.O. Box 1358, Atkinson, New Hampshire 03811, its successors and assigns ("Buyer") and the Town of Londonderry, a New Hampshire municipal corporation, with a business address of 268B Mammoth Road, Londonderry, New Hampshire 03053 ("Seller").

WHEREAS, Seller wishes to encourage the construction of "affordable Senior Housing," "affordable" as defined by New Hampshire Finance Authority, by selling said property to Buyer and Buyer wishes to purchase the Property from Seller on the terms and conditions hereof.

NOW, THEREFORE, for good and valuable consideration received, the Buyer and Seller enter into this Agreement on the terms and conditions set forth below.

1. AGREEMENT OF PURCHASE AND SALE

1.01 Purchase and Sale. In consideration of the mutual covenants set forth in this Agreement, the Seller agrees to sell and the Buyer agrees to buy, subject to the terms and conditions hereinafter set forth, certain parcels or tracts of land containing 13.67 acres, more or less, located at 30 Sanborn Road in Londonderry, Rockingham County, New Hampshire, also known as Parcel ID 015-083-2, shown on the plan entitled "Boundary Plan – Lots 83, 84 & 85/ Map 15, Sanborn Road, Londonderry, New Hampshire" attached hereto as Exhibit A and incorporated herein by reference together with all rights in adjacent streets or roads, all riparian rights, all assignments of contracts, leases, rents, security deposits, tax abatements (for the period after the Closing (as defined below)), actions, and other property, rights and interests therein, together with all approvals and permits, architectural plans and relevant studies (collectively the "Property").

1.02 Environmental Review. The purchase and sale shall be in accordance with the terms of this Agreement, but shall not occur sooner than a completion of an environmental review pursuant to 24 C.F.R. 58, and subject to the provisions below.

2. PURCHASE PRICE, DEPOSITS, AND MODE OF PAYMENT

2.01 Purchase Price. The purchase price for the Property (the "Purchase Price") shall be Ten Dollars and 00/100 (\$10.00).

2.02 Purchase Price Payment. The Purchase Price shall be payable at Closing.

3. CLOSING

3.01 Closing. If not otherwise terminated hereby, the closing for purchasing the Property pursuant to Section 1 hereof shall occur no later than ~~July~~ ~~December~~ 31, 2016~~5~~ (the "Closing").

4. OBLIGATIONS OF THE PARTIES AT CLOSING

4.01 Seller's Obligations. At Closing, Seller shall deliver to Buyer:

(i) a Warranty Deed (the "Deed") of its interest in the Property in statutory form, conveying clear, record and marketable title in fee simple absolute, such as will be fully insurable with a title insurance company selected by Buyer's lender(s) and qualified to do business in the state where the Property is located, free and clear of all encumbrances, mortgages, liens, easements, agreements, developers agreements, rights, encroachments and restrictions which cannot be released, cleared or discharged at the time of Closing (except those not objected to pursuant to Section 6.05).

(ii) mechanics lien and parties in possession affidavits by Seller, and other forms and affidavits as reasonably and customarily required by Buyer's lender or title insurance company for transactions of this type and nature.

(iii) real estate transfer documents, transfer tax declarations, non-foreign status affidavits and other documents, affidavits, and forms customarily required when transferring property in the state where the Property is located or as reasonably requested by Buyer or its title insurance company.

4.02 Buyer's Obligations. At Closing, Buyer shall deliver to Seller:

(i) the Purchase Price.

(ii) a copy of Buyer's, or its assignee's, vote(s) authorizing resolutions or similar evidence, authorizing the purchase of the Property.

(iii) Buyer to place a 99 year land use restriction on said real estate to require the construction and to guarantee the maintenance of "affordable" age restricted housing. Buyer to provide all necessary documents for real estate transfer and other forms and affidavits customarily required when transferring property in the state where the Property is located or as reasonably requested by Seller.

4.03 Condition at Closing. At Closing (i) the Property will be conveyed in the same condition as the date hereof, reasonable wear and tear excepted; (ii) the title to the Property will be in the same condition as of the date of Buyer's title examination.

5. PRORATIONS; TRANSFER TAX

5.01 Prorations. As of the day of closing,

5.02 Transfer Tax. Buyer shall be responsible for payment of any transfer or similar taxes.

6. DUE DILIGENCE AND CONDITIONS TO CLOSING

6.01 Due Diligence Period. Buyer shall have until 5:00 p.m. of the ninetieth (90th) calendar day after date hereof (the "Due Diligence Period") to undertake at its sole cost and expense: (i) engineering studies and inspections as it deems appropriate; (ii) a soils investigation and inspection as it deems appropriate; (iii) a zoning and use review; (iv) a review of the environmental condition of the Property, and (v) a review of any and all matters, conditions, information and documentation relating to or concerning the Property. If Buyer shall discover or determine prior to the expiration of the Due Diligence Period that it is not satisfied in any way with the status of the Property or the results of any of its due diligence or inspections, Buyer shall have right to terminate this Agreement, and all the parties shall thereafter be released from any further obligations hereunder.

6.02 Permitting. This Agreement is expressly conditioned upon Buyer receiving, obtaining and procuring the issuance of any federal, state or local approvals, licenses, permits, variances, special exceptions, leases, agreements or consents (the "Approvals") necessary from any federal, state or local official, regulatory authority, homeowners or other association having jurisdiction over the Property to operate and maintain elderly affordable housing on the Property (the "Project"). The Buyer shall use commercially reasonable efforts to obtain the Approvals. If Buyer shall discover or determine that it is not able to obtain the Approvals, the Buyer shall have the right to terminate this Agreement and all the parties shall thereafter be released from any further obligations hereunder.

6.03 Title. Buyer shall have until the end of the Due Diligence Period to undertake such title examinations as it deems appropriate, and if it determines that there is any objection to Seller's title rendering it uninsurable or unmarketable, it shall so notify Seller in writing. If Seller is unable to remedy title within a thirty (30) day cure period, then Buyer may either: (i) terminate this Agreement, and both parties shall be discharged from any further liability under this Agreement, or (ii) Buyer may elect to accept such title as Seller can deliver.

6.04 Finding of No Significant Action. The parties acknowledge and understand further that prior to Buyer exercising its rights pursuant to this Agreement and purchasing the Property, that an environmental review must be performed pursuant to 24 C.F.R. 58 or otherwise and Buyer must be granted a Finding of No Significant Impact ("FONSI") or similar clearance from the U.S. Department of Housing and Urban Affairs ("HUD"). The Buyer shall use commercially reasonable efforts to receive the HUD approval(s) specified in this Section. In the event that the Buyer does not receive the FONSI [or similar clearance] by the expiration of the Phase 2 Due Diligence Period, the Buyer may terminate this Agreement and all parties shall thereafter be released from any further obligations hereunder. Buyer agrees that if the Closing does not occur it shall keep all environmental test result information confidential, unless the Buyer is legally required to disclose the same.

7. ACCESS TO PROPERTY/RECORDS/RENTING

7.01 Access. Between the date hereof and the date of Closing, Buyer and Buyer's representatives shall be permitted: (i) access to the Property at reasonable times in order to conduct any due diligence or inspections it desires as contemplated herein, and (ii) access to Seller's files and records pertaining to the Property. In the course of making such inspections, Buyer shall not unreasonably interfere with Seller's use of the Property or interfere with Seller's records and files. In the event the Closing does not take place as provided herein, Buyer shall at its sole cost and expense restore the Property as nearly as possible to its condition existing prior to the time of said examinations. All engineers and other representatives of Buyer performing such tests and examinations upon the Property shall be adequately insured for public liability and workman's compensation claims.

7.02 Indemnification. Buyer further agrees to indemnify and hold harmless Seller, its agents, officers, employees and affiliates, from any liability, loss, cost or expense for personal injury or property damage resulting directly from, or occurring during, its inspections or other activities on the Property by Buyer or Buyer's designees.

8. TOWN'S POST-CLOSING OPTION

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8.01 Option. If Buyer has not completed substantial construction of the Project within twenty-four (24) months of the Closing Date, Seller shall have the option of purchasing the Property from Buyer at the Ten Dollar (\$10.00) Purchase Price.

9. REAL ESTATE COMMISSION

9.01 Commission. The parties stipulate that no broker or real estate agent is entitled to a commission from this transaction. Each party agrees to indemnify and hold the other harmless from all loss, cost, damage or expense arising out of or as a consequence of claims for brokerage commissions asserted by third parties whose claim derives from the party required to make indemnification.

10. NOTICES

10.01 Notices. All notices, requests, demands or other communications required by or otherwise with respect to this Purchase and Sale shall be in writing and shall be deemed to have been duly given to any party on the date delivered when delivered personally (by courier service or otherwise), when delivered by facsimile, with a confirming copy sent by overnight mail, or on the date receipt is acknowledged if sent by first-class registered or certified mail, postage prepaid and return receipt requested, in each case to the applicable addresses set forth below; provided that delivery shall be deemed complete when delivered to the address designated below and shall not require actual receipt by the individual to whom the communication's attention has been marked:

If to Seller:

Town of Londonderry
c/o Town Manager Kevin Smith

268B Mammoth Road
Londonderry, New Hampshire 03053

If to Buyer:

Steven W. Lewis
P.O. Box 1538
Atkinson, New Hampshire 03053

IN WITNESS WHEREOF, the parties hereto have set their hands to the written instrument as of the date first above written.

BUYER:

STEVEN LEWIS INCORPORATED

Witness _____

By: _____
Name:
Title:

SELLER:

TOWN OF LONDONDERRY

Witness _____

By: _____
Name:
Title:

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