

LONDONDERRY TOWN COUNCIL MEETING MINUTES

1
2 **June 20, 2016**

3
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; Vice Chairman Tom Freda; Councilors Joe Green and Tom Dolan; Town Manager Kevin
8 Smith; Executive Assistant Kirby Wade; Absent; Councilor Jim Butler

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 here in Londonderry.

14
15 **PUBLIC COMMENT**

16
17 Chairman Farrell opened up the floor to the public. There was no comment from the public.

18
19 Chairman Farrell introduced Police Chief Bill Hart to present the Council with the Londonderry Police Departments five year
20 strategic plan. Chief Hart introduced Captain Chris Gandia who put the plan together. Gandia stated that every organization is
21 complex. Gandia stated that it is good to start putting things down on paper, the Police Departments vision of where they
22 would like to be a three to five years. Captain Gandia stated that part of the strategic plan is to identify some core elements.
23 These core elements are strengths, weaknesses, opportunities and threats. Captain Gandia continued to present the plan. Chief
24 Hart stated that they are presenting this information with the Council so that the Council can make good decisions about what
25 the Police Departments needs are. Chief Hart stated that the Police Department is understaffed today and they hope to discuss
26 it in the budget process going forward. The Council thanked the Police Department for presenting.

27
28 Chief Hart asked the Council for a continuance on Ordinance #2016-03, an amendment to the Municipal Code, Title IV,
29 Chapter XIC, Noise Regulations to July 11th Town Council meeting. Chairman Farrell stated that the Council will continue it.

30
31 Chairman Farrell introduced Attorney Pat Panciocco with who is presenting a packet on S & S Metals Recycling Inc. at 196
32 Rockingham Rd. Panciocco presented the packet of information regarding second hand dealer licenses. Panciocco stated that
33 S & S has been in business in Londonderry for approximately twenty years. Recently they received another letter requesting
34 that the junkyard apply for a second hand dealer license. Panciocco stated that this license allows for the owner to engage in
35 activity that he already has a license to do under RSA 322 which is issued when his junkyard license is approved. Panciocco
36 stated that they feel that the definition of scrap metal as an item listed under the term "property" is misplaced. Panciocco
37 stated that they don't see what benefit this provides to the public and it exposes a huge burden on S & S. [See attached letter].

38
39 Bruce Crawford, 353 Queen Street, Boscawen, stated that he is Executive Director of the Auto and Truck Recyclers
40 Association. Crawford stated that they would rather study and take their time on this subject. Crawford stated that the real
41 problem is things people have an emotional attachment to, like grandmas ring. Crawford stated that the price of scrap has
42 dropped considerably. Chairman Farrell stated that the Council is willing to consider the argument presented and look at it.
43 There will be no decision made tonight but Chairman Farrell stated that he understands their point.

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PUBLIC HEARING

47
48
49 Motion to move into Public Hearing made Councilor Green and second by Vice Chair Freda. Chair votes 4-0-0.

50
51 Chairman Farrell introduced Ordinance #2016-04, an amendment to the Zoning Ordinance relating to rezoning map 16, lots 9-
52 5, 9-6, 9-7, 9-8 and 9-9, #13 thru 21 Wilson Rd. Town Planner Colleen Mailloux presented to the Council. Mailloux stated that
53 these lots were created by a subdivision approved by the Planning Board back in December of 2015. The lots are currently
54 split-zoned. Mailloux stated that once of the conditions that the Planning Board put on the approval was that the property
55 owner file a request for rezoning to have them zoned entirely AR-1. There has been no public feedback. Abutters have been
56 notified. Motion to approve Ordinance #2016-04 made by Vice chairman Freda and second by Councilor Green. Chair votes
57 4-0-0.

58
59 Councilor Dolan motioned to continue Ordinance #2016-03, an amendment to the Municipal Code, Title IV, Chapter XIC,
60 Noise Regulations to July 11th Town Council meeting. Second by Councilor Green. Chair votes 4-0-0.

61
62 Motion to close Public Hearing made by Councilor Green and second by Vice Chairman Freda. Chair votes 5-0-0.

NEW BUSINESS

63
64
65
66 Chairman Farrell introduced Resolution #2016-17, a Resolution relative to the acceptance of unanticipated revenue under RSA
67 31:95-b. Finance Director Doug Smith presented and stated that we would also like to address his comments to Resolution
68 #2016-16, a Resolution relative to acceptance of non-monetary donations under RSA 31:95-e as well. Smith stated that these
69 come in front of the Council annually. Motion to approved Resolution #2016-16 and Resolution #2016-17 made by Councilor
70 Dolan and second by Councilor Green. Chair votes 4-0-0.

71
72 Chairman Farrell introduced Order #2016-21, an Order relative to expired Impact Fee refunds. Finance Director Doug Smith
73 presented. Smith stated that this is the semi-annual report required under the Impact Fee Ordinance. Smith stated that there has
74 not been any activity. Motion to approve Order #2-16-21 made by Councilor Dolan and second by Vice Chair Freda. Chair
75 votes 4-0-0.

76
77 Chairman Farrell introduced Ordinance #2016-05, an amendment to the Zoning Ordinance relating to transferring parking and
78 loading standards to the site plan regulations. This is the first reading. Town Planner Colleen Mailloux presented. Mailloux
79 stated that this amendment will allow more flexibility for developers and for the Planning Board to grant waivers. Motion to
80 waive the first reading and schedule a public hearing for July 11th made by Councilor Dolan and second by Councilor Green.
81 Chair votes 4-0-0.

82
83 Chairman Farrell stated that the Council is going to continue the discussion of the Town Forest with the Conservation
84 Commission to the next meeting on July 11th due to the fact that Councilor Butler, who requested, is not present at the
85 meeting.

86
87 Town Manager Smith presented the Council with an update on the contract with CHS for the Drug Referral Program which
88 was approved via Warrant Article in March 2016. Smith stated that the warrant article appropriated \$50,000 but they would
89 like to do it for \$8,500 in the first year. Their feeling is that it would be best to take baby steps with this and asses the need of
90 the community first. The Council gave a consensus to go forward.

91
92 Town Manager Smith asked the Council for a consensus to appoint Rick Brideau as the new Town Assessor for the Town of
93 Londonderry. He has an assessing background of over 29 years. The Council gave a consensus to appoint Rick Brideau.

LONDONDERRY TOWN COUNCIL MEETING MINUTES

95 Chairman Farrell introduced Ordinance #2016-06, an amendment to the Municipal Code Title IV, Public Health, Safety and
96 Welfare, Chapter IV, Junkyard Dealers. Town Manager Smith stated that this amendment is to remove a person's SSN from
97 the permit application going forward. Motion to waive the first reading and schedule a public hearing for July 11 made by
98 Councilor Dolan and second by Councilor Green. Chair votes 4-0-0.

99

100 Chairman Farrell introduced Order #2016-22, the expenditure of Reclamation Trust Funds for the Drop-Off Center. Town
101 Manager Smith stated that this is for the new recycling bins in town. Currently 64% of the town has been delivered the new
102 bins. Motion to approve Order #2016-22 made by Councilor Dolan and second by Councilor Green. Chair votes 4-0-0.

103

104

OLD BUSINESS

105

106

~ NONE ~

107

108

APPROVAL OF MINUTES

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110 Approval of the Town Council minutes from June 6, 2016 made by Councilor Green and second by Vice Chairman Freda.
111 Chair votes 4-0-0.

112

113

COMMITTEE APPOINTMENTS/RE-APPOINTMENTS

114

115 Town Council interviews Mike Morin for the open position on the Budget Committee. The other interviews will take place at
116 the next meeting on July 11th.

117

118 The Council interviewed Chris Powers for the open position on the Housing and Redevelopment Authority. Motion to appoint
119 Chris Powers made by Councilor Dolan and second by Councilor Green. Chair votes 4-0-0.

120

121

ADJOURNMENT

122

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

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125

Notes and Tapes by:

Kirby Wade

Date: 06/20/2016

126

Minutes Typed by:

Kirby Wade

Date: 06/24/2016

127

Approved by:

Town Council

Date: 07/11/2016

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June 13, 2016

Chairman John Farrell
Londonderry Town Council
C/O Kevin Smith, Town Manager
268B Mammoth Road
Londonderry, New Hampshire 03053

Re: S&S Metals Recycling, Inc.
Title IV, Chapter XII, Secondhand Dealers & Pawnbroker's License

Dear Chairman Farrell and Members of the Council:

This letter is submitted on behalf of my client, S&S Metals Recycling, Inc. (S&S). My client holds a recently reissued license to buy and sell scrap metal and other junk ("License"). This license, like any other "*license*" issued by a governmental body, allows it to engage in an activity otherwise prohibited by law, provided it meets the qualifications of the regulations. State v. Settle, 127 N.H. 756 (1986). S&S has been buying and selling scrap metal under its License from 196 Rockingham Road for approximately 20 years.

S&S recently received a letter from the Town with an application for a Secondhand Dealer/Pawnbroker License, advising he must apply for a second license to buy and sell scrap metal. Although it understands the purpose of the Secondhand Dealer/Pawnbroker Ordinance ("Ordinance") requiring S&S to acquire a second license to engage in activities already permitted under its existing junkyard License and comply with other requirements in that Ordinance is an unreasonable burden with no corresponding public benefit. Therefore, S&S is requesting the Ordinance be amended to exclude scrap metal and vehicle parts to bring it in line with the Ordinances from surrounding municipalities.

A. Pawnbrokers, Secondhand Dealers and Junkyards are Very Different.

The Ordinance imposes one size fits all requirements on pawnbrokers, secondhand dealers and scrap metal dealers which are all very different business models. A pawnbroker takes pledges of personal property from individuals for cash, on which the pledgor pays interest when the property is redeemed. Pawnbrokers must strictly abide by the requirements in RSA 398-A and its very specific hold periods which are also agreed to by private contract. A

secondhand dealer buys and sells a broader range of items to the public. Most are purchased but some are taken on consignment and they do not deal in scrap metal or vehicle parts. Neither generally engages in business to business transactions as does S&S.

B. Study Committees formed by the Legislature have found scrap metal is not the problem.

Two Study Committees formed by the New Hampshire Legislature have considered how to update the applicable statutes regulating these very different business groups. The first was formed under HB 343 adopted in 2013. A second committee formed under SB 105 in 2015 has not completed its assigned tasks.

Bruce Crawford, a member of both Committees, represents the Automobile Recyclers Association. Mr. Crawford has prepared the letter enclosed as Exhibit A in which he shares specific conclusions reached by those Committees. His letter explains that, the Legislature concluded on both occasions that the real problem with metal theft was “precious metals” and antique jewelry - not scrap metal purchased for recycling purposes. Mr. Crawford will be attending the Town Council meeting on June 20 to answer questions the Council members may have and to explain further why scrap metal values have recently plummeted, significantly diminishing the frequency of scrap metal theft.

C. Only Manchester and Nashua to Limited Degree Regulate Scrap Metal Sales.

Secondhand dealer/pawnbroker ordinances adopted by surrounding municipalities, with the exception of Manchester and Nashua, do not regulate scrap metal purchases and sales. Exhibit B to this letter includes copies of ordinances from those surrounding municipalities and a colored diagram showing their location in relation to Londonderry. With the exception of Manchester, individuals who sell stolen scrap metal need only travel down the road to the next town to liquidate those items for cash.

The diagram included in Exhibit B shows the patchwork coverage of this activity and further emphasizes the need for Legislative action to establish a uniform approach toward this problem if it needs to be addressed. A broader approach including all towns and cities would insure reporting requirements are evenly imposed and be more effective overall.

D. Title IV, Chapter XII, Secondhand Dealers & Pawnbroker’s Ordinance

The Ordinance raises several questions:

- (a) Who does it apply to?
- (b) What items does it apply to?
- (c) Does it provide a public benefit?

The Ordinance states it is intended to “fairly and impartially” regulate - yet it appears S&S is the only junkyard being ordered to apply for a secondhand dealer/pawnbroker license in

Londonderry and in southern New Hampshire. The Ordinance applies to businesses based upon the items they handle. Regulated items listed include, “scrap metal” and “vehicle parts”. These items should be removed from the Ordinance. Ordinances from surrounding towns, copies of which are included in Exhibit B, with the exception of Manchester and Nashua to a limited degree, do not include scrap metal or used vehicle parts in the list of items regulated.

Murray’s Auto Recycling buys old junk vehicles from consumers and sells salvageable parts to third parties to repair other roadworthy vehicles. When I asked Mr. Dudek if Murray’s was required to apply for a secondhand dealer/pawnbroker license, he explained that representatives of the Londonderry Police Department (“LPD”) met with him some time ago. They advised Murray’s need not apply for a secondhand license because he does not buy and sell scrap metal, despite Murray’s engaging in the sale of used “vehicle parts”.

While it may appear I am turning one client in to the Town in favor of another, Mr. Dudek gave me express permission to share this with the Council as it further illustrates one of many problems with the language in the Ordinance. If the Town is going to enforce the Ordinance, it must be evenly applied and the LPD is not granted authority in the Ordinance to waive compliance.

E. The Majority of the Scrap Metal Purchases Made By S&S Are From Other Businesses.

Within its definition of the term “Property”, the Ordinance states it regulates the “retail buying, selling” of scrap metal. Mr. Solimini has provided the following facts about the business practices of S&S:

Commercial Scrap Metal Purchases:

- More than 75-80% of the scrap metal purchases made by S&S are business to business transactions and with companies S&S regularly does business with;
- S&S supplies certain of its large commercial customers (such as Wal-Mart) with roll-off containers in which they deposit used scrap metal; and
- Approximately 10-15% of its commercial purchases involve out of state contractors working on large jobs within Hampshire.

This information is important because 100% of this business is not monitored in any other municipality, except in Manchester. The City of Nashua exempts business to business transactions. Subjecting S&S to the burdensome documentation found in Section VI of the Ordinance singles out one junkyard, imposes a costly competitive disadvantage upon S&S, will cause it to lose customers due to loss of precious time and deliver no corresponding public benefit.

Individual Scrap Metal Purchases.

- S&S reports spending an average of \$200-\$300 on individual scrap metal purchases each week;
- Individual purchases range from \$2.00 to \$100;
- Approximately 50% are less than \$100; and
- Only 1-2% of these transactions are with people Vito Solimini does not know. In those cases, Mr. Solimini has the individual provide a driver's license to confirm their identity. Other individuals are regular customers.

As required by RSA 322:6-a, S&S keeps a copy of the Seller's driver's license, phone number and a short description of the item purchased in its records. All purchases are also made by company check. S&S maintains those records for inspection at any time. However, Mr. Solimini reports he has only been contacted by the LPD once about scrap metal theft approximately three years ago¹. During the 20 years S&S has operated, Mr. Solimini has received many calls from Nashua and a few from Manchester.

In addition to the requirements of RSA 322:6-a, the Ordinance requires S&S to take the seller's photo, address, a copy of their driver's license, a copy of their vehicle's registration and one or more photographs of the items purchased. Scrap metal is often bulky and difficult to photograph in addition to not being easily distinguishable from other scrap metal. Once gathered, this information, whether a small purchase from a regular customer or a larger purchase from a business, S&S must upload that documentation to a designated website. Collectively, S&S estimates this effort will take approximately 20-25 minutes, which presumes the seller is prepared with that information in hand. However, the likelihood of that is small because the general public remains largely unaware of scrap metal theft and surrounding towns do not require this information to be reported.

In addition to the above, S&S can often have 2 or 3 people waiting in line to be helped. Those waiting may be a regular or a business customer, who if these requirements must be met, could have to wait up to 40 minutes to be helped. This is a serious concern for S&S because most of its customers are regulars and time lost doing this paperwork, will likely cause them to conduct their business in other towns where they can complete the same task much quicker. By imposing this requirement upon only S&S, not imposed on others who purchase scrap metals within Londonderry [yes there are others] and within southern New Hampshire, except in Manchester, is a heavy burden. There is also the cost of payroll, payroll taxes and insurance S&S will be paying to the person handling the transaction as well as the fees charged by the web host, which it collectively estimates will cost approximately \$25-\$30 per transaction.

¹ This inquiry was about a young man traveling on foot who tried to sell \$3.50 in copper to S&S.

RSA 263:12(X) states it is a misdemeanor to transmit a copy of someone's driver's license or other personal information listed in RSA 260:14 electronically without their consent. Copies of both statutes are enclosed as Exhibit C. It is very unlikely sellers will consent to the sharing of this personal information.

F. The Ordinance As Applied to S&S Provides No Public Benefit.

It remains unclear how the unreasonable burden imposed upon S&S, causing it to risk being charged with a misdemeanor provides any public benefit when scrap metal theft has become almost nonexistent. In fact, when a letter requesting copies of complaints filed with the LPD relative to scrap metal for 2015, the LPD could only find two (2), one of which was filed by S&S. Exhibit D.

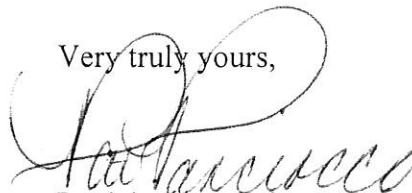
G. The Penalties Described in Section VIII Are Unenforceable.

RSA 676:17 applies only to land use violations. Further reference can be had in the penalty provisions of the Ordinances from other Towns within Exhibit B. The Ordinance is a "by-law" of the governing body and the penalty to be imposed appears in RSA 322:13, the statute cited by the Ordinance as the source of its authority.

Although we recognize the Ordinance was not ill intended, this letter requests the Town Council review the enclosed information and consider: (a) if there is any present public benefit associated with including scrap metal or vehicle parts in the Ordinance definition of "Property"; (b) does the burden of compliance by S&S outweigh that public benefit the Ordinance provides; and (c) does a one size fits all approach work for a junkyard that buys and sells scrap metal for recycling purposes when grouped with pawnbrokers and secondhand shops.

I thank you for the time taken to review this letter and its attached materials and look forward to your comments on June 20.

Very truly yours,



Patricia M. Panciocco

Enclosures

Cc: Client; Bruce Crawford; and
Michael Ramsdell, Esq.