

## TOWN OF DERRY

Town Council  
Derry Municipal Center

July 7, 2015  
Tuesday - 7:30 PM

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6:45 PM Non-Public Session RSA 91A:3 II (a)

7:30 PM Call to order

Pledge of Allegiance, warning of fire exits, handicap access, & turn off all cell phones

**Roll Call: Councilors Tripp, Fischer, Osborne, Katsakiores, Dimmock, Bourdon and Chairman Cardon**

### Consent Agenda –

- 15-82 Approve Non-Public Minutes – **minutes sealed** - June 16, 2015
- 15-83 Approve Minutes – June 16, 2015
- 15-84 Approve Minutes Special Meeting – June 22, 2015
- 15-85 Schedule Public Hearing – August 4, 2015 – Acquire a conservation easement on approximately 110 acres of land, tax map 4, lot 67 and tax map 6, lot 37, at 189 and 194 Island Pond Road and along Gulf Road and Ballard Pond
- 15-86 Schedule Public Hearing – August 4, 2015 – Amend Zoning Ordinance Article VI, District Provisions, Section 165-44.B.2.e, Multi-Family Residential District and Section 165-45.B.2.e, Medium High Density Residential District

### Chairman's Report – Tom Cardon

Thanked Mr. Stearns for speaking with the Arts Council regarding Derryfest. Derryfest will be held in 2015.

Chairman Cardon has received complaints concerning fireworks and at some point he would like a discussion on fireworks to include Chief Garone in a future meeting.

Council has received a letter from the Rockingham County Commissioners they will be holding a meeting on 7/16/15 regarding dispatch services and other county services that are offered and recommended. Chairman Cardon will be attending this meeting.

In regards to the 8 referendum petitions, the attorney that was hired has responded to the Council. It has been determined that the final determination of sufficiency date for these petitions is July 1<sup>st</sup>. This leaves the Council with 30 days to accept or schedule a special election. Chairman Cardon would like to seek more clarification on the attorney's response. There are some inconsistencies that were brought up in the report and other Councilors also have questions, so we will be meeting with the attorney.

One of his questions after looking at Section 3.1a Free Petition, in the Town Charter, is if someone could come back with a free petition to request the Council to cut back the budget by \$2.00 after the vote is taken.

### Town Administrator's Report – Galen Stearns

Mike Fowler has reported a negotiating a heating oil price for FY2016 @ \$1.9944 fixed for 12 months. The FY2016 budget projection was for \$2.50 a gallon, that's a \$.55 savings of approximately \$13,000 in the FY16 budget.

On Friday Fox 25 Zip Trip is scheduled set-up at Macgregor Park.

In regards to Mr. Gill's Petition: 1) Derryfest transferred its assets to the Greater Derry Arts Council and they are currently gathering the formal paperwork for reporting; 2) To ask the Greater Derry Arts Council to reach an agreement with Parks & Recreation for assistance. The Arts Council has voted to continue Derryfest and; 3) To look at withdrawing funds from the Macgregor Trust for Derryfest. That is not needed.

\*\*\*\*\* Financial Report

Mr. Stearns stated Ms. Mobsby and Ms. Hickey were there to answer questions on the report provided to Council. Council had no questions

\*\*\*\*\* Substance Misuse Prevention

Not taken up as presenter was unavailable.

\*\*\*\*\* Solar Up Presentation

Jeff Moulton presented a PowerPoint - This program is being sponsored by Southern NH Planning in cooperation with Smart Power, NH Sustainable Energy Association & NH Local Energy Work Group. The program has been previously rolled-out in Connecticut and Northern NH. Derry & Chester were selected as a pilot community by SNHP in April. Derry has selected Revision Energy a NH based solar installation company as our partner. The goal is for the average resident of Derry to take this program. The official launch will be on 8/31/15 and completed by November 2015. This will enhance Derry's image in Southern NH as a green community. For more information on rebates available and resources, you can check out their websites at [www.puc.nh.gov](http://www.puc.nh.gov)  
[www.nrel.gov/docs/fy11osti/4869.pdf](http://www.nrel.gov/docs/fy11osti/4869.pdf),  
[www.Cesa.org/assets/2015-Files/Homeowners-Guide-to-Solar-Financing.pdf](http://www.Cesa.org/assets/2015-Files/Homeowners-Guide-to-Solar-Financing.pdf)

Councilors asked various questions regarding the process, the vendor and rebates.

**Public Forum - \*30 Minutes\***

**Open Public Forum – all agreed**

Michael Layon, Lee Circle – has seen a lot of grants being handed out. This grant is being used to buy more body armor & rifles. He would like to see a list of weapons the Police already has before more weapons are purchased.

Charles Foote, Drew Rd – feels the citizens of Derry have been jeopardized and Council has not listened to the constituents. He's dissatisfied with Council's actions on the budget.

Marc Flattes, Linlew Dr – asked if Mr. Stearns had looked into the firefighters code of ethics as he had previously requested. Mr. Flattes handed out a picture he obtained from the internet. He believes further investigation is necessary. He would like to ask the voters to take over the schools.

Sheldon Wolfe, Rockingham Rd – asked about the zoning change being addressed this evening and thanked everyone on boards. He is a realtor and thinks the solar idea is wonderful. He addressed technology and it's rapidly changing future. .

Brian Chirichiello, Rollins St – asked if the letter from attorney would be made public. Mr. Chirichiello commended an employee Marlene Bishop, Animal Control Officer, for her handling of a horse and other animals that were affected on a property he was handling. Marlene came in and took care of the animals and is in the process of finding them new homes on her own time.

Steve Trefethen, Windham, NH – felt comments heard tonight were insulting. Thanked Council for forming the Economic Development Committee. He has concerns regarding the provisions

in the Town Charter. He had questions regarding the free petition and if it can be overturned by the will of the voters. If so, will Council direct the Town Administrator to cut other items out of the budget at no cost to the taxpayers?

He handed out a picture of a property which has a site plan before the Planning Board. He wanted to make the Council aware of some current issues with this lot.

Jenna Paradise, Hubbard Hill Rd - was concerned for the safety of the cross walk at Cumberland Farms to the karate center. *She was advised to request Highway Safety Committee to look into.*

Charles Foote Drew Rd – acknowledged the budget is a tedious task but cutting safety is not the way to go. Being fiscally responsible isn't just counting dollars.

Councilor Osborne stated it's fair for reasonable people to disagree. He disagrees with the Mr. Foote's accusations made and feels it was disrespectful.

Mr. Foote replied he respects Mr. Osborne statements but he truly feels there was an alignment.

**Close Public Forum – all agreed**

**Public Hearings –**

**15-76** Accept 2015 Justice Assistance Grant

Chief Garone – detailed the four purchases that would be used with these grant funds as follows:

39 vests with enhanced ballistic capabilities, \$2925.00

4 semi-automatic rifles mounted with tactical illumination \$3900.00

Rack shelving for property storage building in evidence room. \$3811.00

An internet evidence finder system for forensic hardware to be utilized by detectives  
\$5485.00

Total \$14,051.00

**Open public hearing Councilors Cardon & Osborne - all agreed**

Sheldon Wolfe questioned if a regional trade school or Pinkerton Academy could build the shelves.

Chief Garone explained these are metal shelves.

**Close public hearing Councilors Cardon and Dimmock-all agreed**

**Move to grant authority to Town Administrator Galen Stearns to accept and expend without further Town Council action, on behalf of the Town, grant funds associated with the 2015 Justice Assistance Grant Program.**

**Motion by Chairman Cardon, seconded by Councilor Katsakiores**

**Vote: 7-0-0**

15-77 Amend Zoning Ordinance, Article II, Section 165-5, Definitions to amend Article IV, Districts, Section 165-29, Enumeration of Districts to add a new district, General Commercial IV (GC IV), to amend Article V, Zoning Map and District Boundaries, Section 165-30, Zoning Map, to amend the date of the map and rezone three parcels in the Office Medical Business District to General Commercial IV and to remove seventy-seven parcels from the General Commercial District and place them in the General Commercial IV District, to amend Article VI, District Provisions, Section 165-32, Section 165-33, Section 165-45, Section 165-49, permitted uses and to add a new section, Section 165-32.3 General Commercial IV and to establish the list of permitted uses for that zone

**Elizabeth Robidoux and David Granese**

As part of the town's wide range plan to expand its commercial tax base with extension of Town water and sewer to Rte. 28 Rockingham Road and the Webster's Corner area; the purpose of these amendments, at Council request, were to increase the number of commercially zoned parcels, create a new commercial zone with expanded uses, and to add new definitions with the intent to encourage development along one of the town's main arterial roads. The Planning Board worked hard to amend this ordinance; it held many workshops, meeting and public hearings.

**Open Public Hearing Councilors Cardon & Katsakiores – all agreed**

Sheldon Wolfe – Questioned when is water and sewer going to get down there to the GCIV area. He would like to see solar energy placed into this area. He asked the meaning of office professional space and would like to see the word professional taken out. Also there are no clinics allowed in this area aka medical marijuana. These facilities give land owners more opportunities for sale of space. Do something for the land owners. Put as much up there to encourage other types of businesses for the area.

Brian Chirichiello thought car lots are were not allowed; however, they are. He knows zoning can be changed once enacted.

Rebecca Polk is in opposition to proposed zoning change. Her family owns land in this area.

Marge Palmer, Warner Hill Rd. - Her husband's family owns land on Rockingham, Kilrea, Stark and Mill Roads. The proposed change and her testimony have little hope until such time as water and sewer is brought to this area. She is requesting the vote be postponed until water and sewer reach the Windham line.

Wil Palmer – is not selling his land and has instructed his children not to sell it if something happens to him. His family has owned this land since the 1800's. He gave a history of his family and these parcels. His daughter would like to build on what was his grandparents lot someday; however, with this change it will not be allowed.

Russell Wolfe – Asked that these changes be held off.

**Close public hearing Councilor Cardon and Katsakiores – all agreed**

**To amend Article II, Section 165-5, Definitions to amend Article IV, Districts, Section 165-29, Enumeration of Districts to add a new district, General Commercial IV (CG IV), to amend Article V, Zoning Map and District Boundaries, Section 165-30, Zoning Map, to amend the date of the map and rezone three (3) parcels in the Office Medical Business District to General Commercial IV and to remove seventy-seven (77) parcels from the General Commercial District and place them in the General Commercial IV District, to amend Article VI, District Provisions, Section 165-32, Section 165-33, Section 165-45, Section 165-49, permitted uses and to add a new section, Section 165-32.3, General Commercial IV and to establish the list of permitted uses for that zone.**

**Motion by: Councilor Osborne seconded Councilor Bourdon.**

Council Discussion:

Councilor Tripp – asked where Webster's Corner was? Questioned why somethings were taken off the list of approved uses, one of them would be a clinic

Ms. Robidoux replied at Clam Haven/Grandview Flea Market/Rockingham Road aka Webster's Corner. The further expansion of water and sewer is not in the current CIP that she knows of.

Mr. Carrier would have more information on this. She gave definitions of Clinic and Professional,

Medical Office. David Granese stated there are actually more uses in the GCIV as opposed to General Commercial.

Councilor Fischer – asked what the advantages/disadvantages of postponing these changes would do.

Ms. Robidoux - if postponed for residents, it stays status quo. The advantage to Town is the board looked at comparison use and it made sense to preplan for the future of this area.

Councilor Osborne – the board has done well this and it has had due process. Zoning is appropriate for this area. The motion is consistent with direction of Town Council. He believes that zoning must be in place before any funds are allocated for infrastructure.

Councilor Katsakiores - asked how much land Mr. Palmer has. Since Stark Road is residential, why is there a problem?

Mr. Granese answered - currently now residential it is not allowed in the commercial area.

Ms. Robidoux stated they could go to the Zoning Board and request a variance to build on this property.

Councilor Dimmock – believes Zoning would approve the variance since this ordinance was put in place against his will.

Councilor Bourdon – questioned car lots in this area. He is frustrated seeing them still in there. He questioned if a hockey rink could be added. He also asked what the process was after being denied a variance.

Mr. Granese stated that a hockey rink would be allowed. Ms. Robidoux explained the process.

Chairman Cardon is sympathetic to the Palmers.

Mr. Granese would speak on behalf of the Palmers if they go for a variance.

Councilor Dimmock would also support the Palmers.

Mr. Granese replied the reason this land is affected is because it has frontage on both Stark Road and Rockingham Road.

**Vote: 7-0-0**

**Councilor Osborne stated the Council is not directing the Zoning Board to do anything.**

**Old Business –**

#### **14-162 Town Council Conflicts Of Interest**

Councilor Tripp – this came about because of a change to Council Rules back in January which speaks to “Conflict of Interest”. This question was given to the Town’s Attorney. Councilor Tripp would like to have a “Conflict of Interest” policy provide a definition, establish a challenge procedure for officials, officers and employees and have an appeal process; then establish and enforcement process. He has looked at Freemont & Windham and theirs are both basic but establish procedure. Londonderry has more types of “Conflicts of Interests”. Keene uses a board process. He recommends pursuing drafting an ordinance and removing the “Conflict of Interest” from the Council Rules.

Councilor Trip would like to meet to discuss looking at Council Rules to remove pieces that are not enforceable.

Chairman Cardon said he would put it on a future meeting.

## **New Business –**

- 15-87** Municipal Agreement between NH DOT and Town of Derry – Installation of dry standpipes

Mike Gagnon Fire Chief – NH DOT is widening Rte. 93. In a discussion with the NH DOT, the Fire Department asked for dry standpipes under the overpasses for use on the Rte. 93. These will be used for fire suppression needs or hazardous incidents. This reduces the amount of apparatus on road. NH DOT will pay for the cost of pipes and installation. Future wear and tear repairs will belong to the Town. The two bridges will be Fordway Extension and Kendall Pond Road.

**Move that the Town Council authorize the Town Administrator to enter into a Municipal Agreement with the New Hampshire Department of Transportation for the purpose of installing dry standpipes at Fordway Extension and Kendall Pond Rd overpass locations during the I-93 reconstruction project.**

**Motion by Councilor Dimmock, seconded by Councilor Katsakiores**

**Vote: 7-0-0**

- 15-88** Survey Development Committee Appointments

**Chairman Cardon moved to appoint Owen Provencher, Michael Layon & Matt Cullen to the Survey Development Committee, seconded by Councilor Bourdon**

**Vote: 7-0-0**

Councilor Fischer asked what town employees would be on this board?

Mr. Stearns replied, Doug Rathburn, Elizabeth Robidoux and himself.

- 15-89** Planning Board Appointment

**Chairman Cardon moved to appoint Mirjam ITjstma to the Planning Board for a term to expire March 31, 2017, seconded by Councilor Katsakiores**

**Vote: 6-1-0 (Councilor Dimmock)**

- 15-90** Derry Website

Councilors Cardon, Tripp & Bourdon commented on the types of revisions needed on the Town's website. Other towns have much better information for economic development.

Councilor Bourdon has spoken with other companies who have had their websites updated and the cost is around \$65,000.

Mr. Stearns will look into the updating costs and report back to the Council.

## **Council Requests / Open Discussion**

Councilor Tripp - in regards to the opinion of Devine-Millett & Branch on the referendum petitions, he does not feel it is necessary to delay them because of the chair's concerns over a free petition. He doesn't believe it's warranted. Under section 5.9 of the Town Charter he is requesting to hold a Special Meeting on July 14<sup>th</sup> for the purpose of acting on the referendum petition under Section 3.3 of the Town Charter.

Councilor Fischer stated he would not be available that evening.

Councilor Osborne – has had some concerns voiced from business owners and citizens in regards to the Pet Store Building coming down. The concerns are regarding asbestos in the building and other hazardous materials.

Mr. Stearns stated there will be an inspection done prior to demolition.

Councilor Osborne - some residents and pedestrians are dismayed by the Shepard plot of land as the grass is so high.

Chairman Cardon stated he will speak to the Conservation Commission as he knows there are some birds nesting there.

Councilor Katsakiores was wondering if the Highway Safety Committee could look into the bike path crossing on Kendall Pond Road. There is no signage there to show the bike crossing.

Councilor Dimmock – in regards to Mr. Tripp's request, he would not be able to attend either and feels the entire Council should be there for that meeting.

Councilor Bordon - In regards to the LED lighting he feels funding it right away will give the Town a quicker turn on the investment.

Mr. Stearns stated that Mike Fowler was moving forward with quotes and they should have something in September for the Council.

Councilor Bourdon - regarding the walkways – in some downtown in cities you can press a button and there is lighting along roadway. We could look into the costs.

Councilor Bourdon has been speaking with business owners about having a Business Block Party on Manning St. for pedestrians to visit businesses downtown. This could be held on a Saturday or Sunday.

Mr. Stearns replied there would be minimum impact we would need detour signs and sawhorses and there would be a minimum labor cost for the Town.

Councilor Bourdon asked about the release of the Attorney's opinion and making it available to the public. The Council is obligated to follow the Code and Charter as currently written.

Chairman Cardon replied it will be released at the next available meeting.

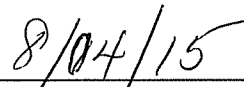
Councilor Osborne wants more time to review the opinion and ask the attorney questions.

**Councilor Fischer moved to return to Non-Public Session with no action to be taken, seconded by Councilor Dimmock**

**Vote: 7-0-0**

**Public Adjournment 10:01 p.m.**

  
\_\_\_\_\_  
Town Clerk

  
\_\_\_\_\_  
Date

Recording & Transcription by: Denise E Neale, Town Clerk