

TOWN OF DERRY

**Town Council
Derry Municipal Center**

**July 9, 2013
Tuesday - 7:30 PM**

7:15 PM Non-Public Session under RSA 91A:3 II (e)

Call to order **7:30 PM**

Pledge of Allegiance, Warning of Fire Exits, Handicap Access, Turn off all Cell Phones

Roll Call: Councilors Cardon, Osborne, Dimmock, Benson, Wetherbee, Katsakiores via phone and Chairman Fairbanks

Consent Agenda

- 13-74** Approve Non-Public Minutes, Session I – June 18, 2013
- 13-75** Approve Non-Public Minutes, Session II – June 18, 2013
- 13-76** Approve Minutes – June 18, 2013
- 13-77** Approve Non-Public Minutes – Special Meeting – June 24, 2013

**Correction on the Non-Public Minutes of 6/24 Special Meeting, Councilor Katsakiores did not vote to go into Non-Public.
Accepted with correction**

Chairman's Report – Michael Fairbanks

In regards to Mr. Flattes' request on the accident on Manchester Road, the Town Council cannot comment due to pending litigation.
The Town Administrator will report on the properties Mr. Trefethen presented.
Mr. Gill's Free Petition will be addressed by Mr. Budreau during the Town Administrator's Report.
Workshop schedule: Town Council & Town Administrators goals, Workshop with State Legislators will be in September, and the collective bargaining workshop slated for October.

Town Administrator's Report – John Anderson

Town Administrator Anderson addressed the list of eleven (11) properties that are to be reviewed for sale this year. The other 130 properties are Town owned by Conservation Commission, Recreation & Parks, and other public buildings.
Mr. Anderson announced that once again the Finance Department received the Certificate of Achievement from the Government Finance Officers Association for financial reporting for 2012.
The Derry Fire Department has received an accreditation from the Commission on Ambulance Services (CAAS) gold standards award for three consecutive years. Derry Fire Department is the only ambulance service in NH to receive this accreditation and is one of ten municipal fire service based EMS agencies in the country to successfully complete the voluntary review process. Mr. Anderson read the staff report on accreditation and highlighted Firefighter Matt Evans for coordinating the accreditation

process along with Chuck Hemeon, EMS Director and Bill Rutherford, Director of the Mechanical Division.

Larry Budreau, HR Director and Assistant TA, addressed Mr. Gill's alcohol and drug testing petition. Regarding the petition, the Council's reaction is discretionary. He recommends no action be taken on this petition. He explained that after, reviewing Chapter 5 of the Derry Administrative Code, and Section 8.9 of the Town Charter, it is within the purview of the of the Town Administrator and Department Heads. He reviewed the current practices for the Council. Mr. Budreau also referenced the Fourth Amendment of the U.S. Constitution, which protects citizens against unreasonable search and seizure by a government entity. Drug testing is considered a search by a government entity of its employees. Mr. Budreau raised the question as to why Mr. Gill brought this forward and what provoked the suggestion. He will work with the senior management team and provide a recommendation to the Town Administrator and with the Town Administrator's approval will provide an update at the August 6th Council meeting. Mr. Budreau ended by stating the Town of Derry does not tolerate employees using drugs or alcohol.

Chairman Fairbanks recommendation is to not take action on the petition. All Councilors were in agreement.

Mr. Anderson provided the Council with a letter received from Yury Kuzin Mayor of Cherepovets, our Russian Sister City, wishing the Town a Happy 4th of July.

Mike Fowler, Public Works Director – gave the Council an update on the meadow dam. The weather has been cooperating and progress has been ongoing. The chemical grouting contractor has been able to complete and fill the void. Work remains on the Chester Road side and additional work to test needs to be completed. Erosion control will begin the first of next week.

Mr. Anderson addressed Mr. Trefethen's prior statements on the Town's legal costs: Mr. Anderson: *The final piece I have for you. We heard several times from Mr. Trefethen, a Windham resident but a Derry business owner, relative to legal costs. I asked our staff to go back and compile for you....*

I've given you a spreadsheet of nine (9) cases since 2005 that Mr. Trefethen has filed or been involved with relative to the Town.

The total costs as of June 1 of this year was \$155,952.85 that it has cost the Town to defend those litigations.

So just in the matter of full disclosure, I wanted everybody to know that these 9 cases have cost almost \$160,000 and there doesn't seem to be an end.....so I wanted that out there for the public to know. So, that's all I have Mr. Chair.

Public Forum –

Hal Schnitzlein, Bayberry Lane – Stated there should be a freeze on overtime, hiring and raises until our taxes get inline with surrounding communities.

Steve Trefethen- *I own a home on 13 North Shore Rd, business man in Derry and also has an apartment in Derry and I spend about 16 hours a day in Derry, sometime I'm in Windham, sometimes I'm in North Shore. I am allowed to live in a few different places and I do pay the taxes in two different places, so as to the Town Manager's statement that I am only a businessman here that's not even close to correct. But whatever.... As far as his legal statement he made on legal fees, some of these cases are still in litigation between different companies I manage. I do represent many residents in Derry, so when the Town does a dirty act on the residents in Derry I am asked to come here and represent them. They have the right to be represented just because they are poor and Mr. Anderson would like to use the deep pockets of the Town to defend the Town's actions, I have to also defend the residents here who ask for representation. So those are some different cases in some different properties under different companies that I manage. As far as his statement to \$160,000 in legal fees, he made a statement two months ago that he got them all the way down to \$250,000. They were up maybe as high as \$500,000. This is a town that sued its own Fire Department. I think it has sued almost everybody in this town. This Town was found guilty of civil conspiracy. I asked Mr. Benson to explain that when he was the chairman he said he would get back to me, he never did. Our members of the Planning Board and Zoning Board were found to commit civil conspiracy warranted and reckless, and malicious*

Mr. Anderson: *Mr. Chairman that's not correct. I am not going to sit here and listen to him make statements about court cases that are wrong.*

Mr. Trefethen: *Well, I'm sorry that is correct. So let me just carry on since you made a blank open statement that's not so true. Okay in the meantime there is some other litigation going on that is still pending and things have been sent back to the boards of this Town because they didn't do it right. And there is more coming back because they didn't do it right. So there's a lot of action going on there and I don't want the Town Manager to misrepresent what's going on and I am not here open it's not what I came here for. So I would like to go on with what I came here for.*

Mr. Trefethen continued with remarks regarding the Town's investment policy. He does not believe that the purchases (or proposed purchases) of real estate conform to the policy.

Motion to Close the Public Forum Wetherbee/Dimmock 7-0-0

Councilor Benson would like to address those comments because the Investment Policy is different from acquisition of property. This goes on and on. This whole thing about residence needs to get cleared up and this needs to end at some point in time. This is just ridiculous because that Investment policy does not have to do with the acquisition of land it has to do with the investment of our funds out side of that. We will let Frank address that. This is ridiculous. Chairman Fairbanks will respond to those comments made at the next meeting after meeting with Frank Childs, CFO.

Public Hearings –

13-68 Approve and fund Round #3 of Chloride Reduction I-93 Watersheds Municipal Program Grant

Mike Fowler gave an overview of the prior year including Round #1 and #2 of this grant program. Three trucks have been received through this grant program and in Round #3 two trucks would be purchased.

Open Public Hearing Councilors Wetherbee/ Osborne 7-0-0

John O'Connor, Arrowhead Lane – He is in support of approving this grant. He had submitted a bill for private contractors to follow this Chloride Reduction HB533 which was signed by Governor Hassan last week. Mr. O'Connor thanked Alan Cote for his assistance with this bill.

Close public hearing – Councilors Wetherbee/Benson 7-0-0

The Derry Town Council moves to enter into a grant agreement with the State of New Hampshire Department of Transportation to receive funds for the purchase of two one ton trucks, authorizing the Town Administrator to apply for, accept and expend such funds derived from the NHDOT Round #3 Implementation-Chloride Reduction I-93 Watersheds Municipal Program grant.

Discussion:

Councilors asked questions regarding the timeline that salt reduction will take effect, cost of trucks, salt savings, what would happen if trucks were not purchased through this grant and the condition of trucks being replaced.

Councilor Dimmock has looked at the present fleet and agrees we are better off obtaining them through the grant rather than purchase at full price later.

**Motion by Councilor Wetherbee, seconded by Councilor Benson
Vote: 6-1-0 (Osborne)**

13-69 Authorize the Town Administrator to accept 2013 Justice Assistance Grant (JAG)

Chief Garone – reviewed the grant and stated the quality of the recordings from the new cameras will create the ability for new technology.

Open public hearing Councilors Wetherbee/Benson 7-0-0

No public input

Close public hearing Councilors Wetherbee/Benson 7-0-0

Move to grant authority to Town Administrator John Anderson to accept, on behalf of the Town, grant funds associated with the 2013 Justice Assistance Grant program.

Discussion:

Councilors asked if they were secured, what the benefit and cost were in the chief's opinion, and how long a period it would take to have all new cameras in the cruisers. Chief Garone stated he will look at federal grants or money from within the Police budget. It could take possibly a year.

Motion by Councilor Wetherbee, seconded by Councilor Benson

Vote: 7-0-0

Old Business -

13-61 Release of Public Servitude – Lawrence Street
(Paper Street)

Mr. Anderson stated the 180' by 40' is best option for the neighborhood. He recommends the Town Council approve the release of 180' x 40'. It has been indicated there is agreement from all abutters. Councilors Dimmock and Osborne have viewed this road.

Mike Fowler explained the Town Council may release any portion as they see fit. The statute allows this.

Councilor Dimmock disagrees with a section of road being released instead of the entire paper road. He is thinking about it from the town's point of view. He has spoken to both parties.

The Derry Town Council moves to release a portion of Lawrence Street between pole number 75/4 southerly to its intersection with Sargent Street right-of-way from public servitude pursuant to RSA 231:52. The underlying land shall be released to the abutting property owners with the property owners responsible for all survey and legal costs required to prepare the required deeds to be recorded. Motion by Councilor Osborne, seconded by Councilor Cardon
Motion withdrawn upon further discussion.

Discussion ensued and the above motion was withdrawn as partial consensus was that it should be the entire paper road. The maps and property lines were discussed. Councilor Osborne agreed with Councilor Dimmock that the town should fully release this paper road. He continued to find the wording to make a new motion. Chairman Fairbanks has the prior motion. Councilor Osborne then felt the original motion brought forth should be the motion or at least from the Trow's property line.

Councilor Osborne amended the motion. The Derry Town Council moves to release a portion of Lawrence Street between a point of 70 feet south of center sewer manhole no. 9-49 to its intersection with the Sargent Street right-of-way from public servitude pursuant to RSA 231:52. The underlying land shall be released to the abutting property owners with the owners responsible for all survey and legal costs required to prepare the required deeds to be recorded. Motion by Councilor Osborne, seconded by Councilor Cardon - *Motion withdrawn*

Discussion continued and there appeared to be some confusion of how many feet of paper road from the Trow's property line. The Council was looking for clarification on exactly where to draw the line on the abutting Trow property of the paper road.

Mr. Anderson suggested to retable this item to the next meeting in August in order for Mike Fowler to provide the exact placement of the release as suggested by Town Council.

The above motion was withdrawn and it was decided that Mr. Fowler will come back to the Council with exact lines and maps of the distance on the paper road that should be released and from what point. Then questions arose over exactly how many abutters

there were. Mike Fowler stated the abutters were all notified in the beginning. (Trow, Robichaud and Brady)

Polled the board to square off at the Trow property line to Sargent St.

Vote: 6-1-0 (Dimmock)

New Business –

13-78 Zoning Board of Adjustment Appointment 7-0-0

Move to appoint Tyler Whitehorn as an alternate member of the Zoning Board.

Motion by Councilor Fairbanks, seconded by Councilor Dimmock

Vote: 7-0-0

13-79 Intermunicipal Agreements to provide transport
Ambulance services to the Towns of Auburn & Chester

Fire Chief Klauber and EMS Director, Chuck Hemeon- Renewal ambulance contracts for the Towns of Auburn & Chester. The biggest change in contract is the increase of fees to be received.

Move that the Town Council authorize the Town Administrator to enter into agreements with both the Town of Auburn and Town of Chester to provide ambulance transport services as outlined in the agreements.

Discussion revolved around saving taxpayer money, if the other towns were paying enough and if this contract is not signed what would be the repercussion.

Chief Klauber stated even if this revenue did not come to fruition that he would not close a fire station and there would be no layoffs.

Motion by Councilor Wetherbee, seconded by Councilor Benson

Vote: 5-2-0 (Osborne, Dimmock)

Council Requests / Open Discussion

Councilor Osborne - Rockingham County Sheriff said he is willing to see to it that any town who asks can receive dispatch services for free. The Town's budget is \$741,530 for dispatch services. Councilor Osborne suggested the Town Administrator look into this to see for validity.

Councilor Osborne then went on to speak about the public forum and that it is appropriate to monitor the time and as well as the tone. He feels that it doesn't give the Council the right to interfere with a message being conveyed. Mark suggested that going forward he would like to be able to agree or disagree and respond to what is being said while someone is at the podium.

Councilor Wetherbee stated that the members of this board set the policy. He personally doesn't feel any productivity is coming from the public forum.

Councilor Osborne stated that there are two court cases regarding public speaking on which you can interfere with content and another stating you can't. He doesn't want to end up in a situation where the Council needs to be defended in court.

Councilor Benson replied that these meetings are the business meetings of the Town. Town Council can choose to have public forum or not to. His experience in the past six years is that the same few residents speak and that going back and forth with a speaker doesn't work well as most of the time the Council doesn't have the answer or have all the information on what is being brought forth. His issue is with people speaking on what they interpret to be the truth whether it is right or wrong and outsiders believe what is said here. The Public Forum is a chance for people to bring issues to the Council that need to be addressed.

Councilor Dimmock disagreed stating that this is a public meeting and people have a right to speak. Discussion is by majority.

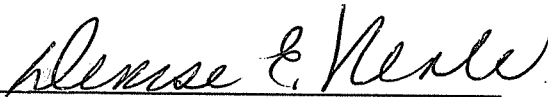
A debate began to escalate on this issue and became loud and unprofessional. Words were spoken with disregard of personal opinions between two Councilors.

Motion to adjourn by Councilor Benson and seconded by Councilor Wetherbee at which time statements continued. Councilors Benson and Wetherbee left the room.

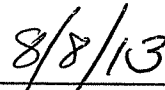
After a few moments Councilor Osborne made a formal motion to adjourn, seconded by Councilor Cardon.

Vote: 5-0-0

9:50 pm Adjournment



Town Clerk



Date

Recorded & Transcribed by: Denise E Neale, Town Clerk 7/11/2013 updated 7/23/13
Reviewed and corrections by: Larry Budreau, Acting Town Administrator