

TOWN OF DERRY

Town Council
Derry Municipal Center

November 18, 2014
Tuesday - 6:30 PM

6:30 PM Call to order

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

Roll Call: Councilors Cardon, Fischer, Fairbanks, Bourdon, Dimmock, Katsakiores and Chairman Osborne.

Consent Agenda

- 14-147 Approve Non-Public Minutes, Session I, October 21, 2014
- 14-148 Approve Non-Public Minutes, Session II, October 21, 2014
- 14-149 Approve Minutes – October 21, 2014
- 14-150 Approve Special Non-Public Session – October 27, 2014
- 14-151 Schedule Public Hearing – December 2, 2014 –
Acceptance of Deer Run Road as a Class V road

Accepted items accepted as written

Chairman's Report –

The Public Hearing on Item #14-138, Poll License was publicized to begin at 7:30PM; however, since the meeting time has changed to 6:30PM, we will work around the agenda in order to begin the hearing at 7:30PM.

On Old Business Item #14-144 Amending Chapter 30-Building Code and Chapter 165-22 – Zoning Building permit; construction requirement maybe discussed during the Public Forum.

Mr. Osborne thanked the Board of Trustees of the Taylor Library as he attended their meeting where they discussed their budget and role in the community for the upcoming holidays.

Town Administrator's Report –

Mr. Stearns has met with business leader and town employees on 2 different dates. The employees have expressed their pride in the town; however, he was disappointed by the low turnout of citizens during his open forums. He is becoming familiar with the departments. So far, Mr. Stearns has met with the Chamber of Commerce, Superintendent of Schools, and the CEO of Parkland Medical Center.

Reminder this Saturday, November 22nd is Hazardous Waste Collection Day in Londonderry.

Public Forum

Open Public Forum 7-0-0

Steve Trefethen, No. Shore Rd. – presented the merchants wish list for the downtown area, regarding painting of the sidewalks and snow removal. He also discussed the tax

rate, proposed school budget and recommended a small business Saturday to promote downtown businesses like Windham does.

Derek Moody, owner of DRAE Restaurant - spoke on the mountains of snow in the downtown area last winter and the removal standpoint. He has read the draft report of the "Property Maintenance Agreement". He does not support it as it does not provide enough consequences for inattentive owners. It needs to have more accountability for noncompliance.

Kelly Martin, Bayberry Lane – Feels the meetings should start at 7:00PM. She echoed the sentiments of Derek Moody that the Property Maintenance Agreement is not firm enough.

Dendra Abdinoor, Chester Rd – Downtown has been a hot button for a long time. She agrees there should be repercussions for non-compliant landlords.

Mr. Dimmock asked if the newly elected State Senator could address the Council. **Move to invite Senator Elect Regina Birdsell to the podium (Councilors Dimmock/Katsakiores) Vote: 7-0-0**

Ms. Regina Birdsell thanked the Derry voters for their support. She spoke in regards to her plans for the district and will look into getting marketing help for the town.

Close the Public Forum 7-0-0

Council Requests / Open Discussion

Councilor Katsakiores – Heritage Commission is buying the POW Chair for the Municipal Center. The Town could ask the VFW and American Legion to buy the flags. Mark Mastromarino is new curator of the museum. The museum is open Sundays and looking for volunteers to expand the hours.

The State Legislature met to elect a speaker of the house and Mr. O'Brien is the new speaker.

Councilor Dimmock asked when the "Leash Law" was being scheduled.

Chairman Osborne replied they will be scheduling a public hearing on it soon.

Councilor Dimmock is opposed to a "Leash Law" as the state law requires owner of dogs to be in control of their dogs at all times. Just because they are on a leash doesn't mean they are in control of their dog.

Councilor Bourdon stated that the drug problem in this state is increasing. Derry is lucky to have two recovery houses in our community.

Councilor Fairbanks asked when the kickoff for FY2016 budget will begin. He had also requested a summary of legal proceedings (Mr. Osborne is working this). The Planning Board is holding its last public hearing on the MHDR on Wednesday, November 19.

Councilor Fischer requested an agenda item to be added to the next meeting to discuss the FY16 budget goals. He would like a summary of number of full-time & part-time employees listed by department. He would like to discuss an anti-nepotism policy. He

questioned the Farmers Market fees. He recently read a newspaper article that stated fees are going up and vendors are dropping out. He feels the town should promote Farmers Market.

Councilor Cardon reminded the Council of the Veterans Credit request and that was to increase another \$50 in next year's budget. He asked if anyone had been to the Salem Farmer's Market - they pay town fees.

Mr. Osborne, thanked election officials for a well-run election. He learned many things from the primary election and the hours they put in.

Old Business –

14-144 Chapter 30 – Building Code

Chairman Osborne, I recommend the Council reconsider the vote of the October 21, 2014 and vote affirmatively on the second motion which is:

Move that the Derry Town Council conduct its first reading of the amendments on December 2, 2014 and schedule a public hearing on December 16, 2014 at 6:30 p.m. to consider "Chapter 30 Town codes 165-22 Zoning, Building, Permitting Construction requirements.", seconded by Councilor Fairbanks.

Vote: 7-0-0

Mr. Budreau addressed the history of the Derry Farmers Market and the Town's involvement and removal from the budget of this venue from Town funded to private. (There was a discussion/debate on licensing fees for this matter)

Public Hearing –

14-138 Amend Pole License

David Gomez explained the petition as all users of a Right of Way (ROW) not just the utility company pole owner are subject to taxation under RSA 231:163. All pole owners must disclose all users so they can be assessed their share of taxes. This makes it clear that owners of the pole must inform the Town of its users. Recommendation is to hold a public hearing and continue the matter to the next meeting. We have received letters from PSNH & NHEC. Pennichuck Water Works and Pennichuck East, and DBA Oxford, a communication network, have contacted the Assessor's Office via telephone.

Mr. Budreau - This petition makes it clear to all users of the ROW and imposes upon the pole owner the requirement to notify the Town of who its tenants are. PSNH, Fairpoint and NHEC own most of the poles in Derry.

Recommendation is take the information from PSNH & NHEC, the public and other shareholders but take no action this evening. (Letters attached)

Open public hearing (Councilors Osborne & Fischer) 7-0-0

No public input

Close public hearing (Councilors Dimmock & Katsakiores) 7-0-0

Discussion:

There were questions on the rate and how it is calculated, the change in the law, how the users will be identified, the language of the new amendment, the letters from PSNH and NHEC regarding their opposition. Also there was discussion on what other Towns

are doing, can pole owners be sent one bill for all users, and how much is current revenue.

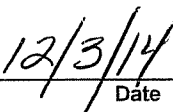
Mr. Gomez explained it is based per foot and that per foot assessment is a smaller dollar amount. The bills would be per user not owner of the pole. He also explained the Pole Licensing process. The DOT also has been notified as they also issue licenses for poles in their ROW (i.e. By-Pass 28 & some on Island Pond Road).

**Councilor Dimmock moved to postpone a final vote until December 2, 2014, seconded by Councilor Katsakiores.
VOTE: 7-0-0**

Adjournment 8:05 p.m.



Town Clerk



Date

Transcription by: Denise E. Neale, Town Clerk
Attachments: PSNH & NHEC letters

*W. Town Council
H. Hears*



**Public Service
of New Hampshire**

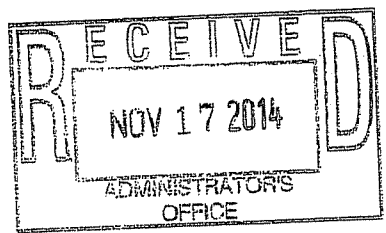
780 N. Commercial Street, Manchester, NH
03101

Public Service Company of New Hampshire
P. O. Box 330
Manchester, NH 03105-0330
(603) 634-2459
Fax (603) 634-2438

Christopher.allwarden@nu.com

The Northeast Utilities System

Christopher J. Allwarden
Senior Counsel



November 14, 2014

Town Council
Town of Derry
Derry Municipal Center
14 Manning Street
Derry, NH 03038

Re: Public Notice – Hearing to Amend Pole Licenses
Hearing Date: November 18, 2014

Dear Town Council Members:

The undersigned is legal counsel to Public Service Company of New Hampshire (“PSNH”). PSNH has received your notice of a public hearing at which the Town of Derry will take up the matter of a petition seeking the amendment of all previously issued, outstanding and future pole licenses in the Town, to require the payment of properly assessed property taxes, and to require licensees to provide information pertaining to “sub-licensees” or other entities making any use or occupation of the Town right of way.

This is to advise that, to the extent the proposed amendments seek to make further language changes to the pole licenses of PSNH consistent with RSA 72:23, and the rulings of the New Hampshire Supreme Court in N.E. Tel. & Tel. Co. v. City of Rochester, 144 N.H. 118 (1999) and Verizon New England v. City of Rochester, 151 N.H. 263 (2004), PSNH does not intend to raise a legal objection to the amendments. However, this should not be construed as a waiver of PSNH’s rights to protest, seek an abatement of, or otherwise legally challenge as excessive or disproportionate the assessment by the Town of Derry of any incremental property tax upon PSNH’s use or occupancy of the public right of ways in Derry, and PSNH fully reserves all such rights. Furthermore, under no circumstances shall PSNH be responsible for the payment or non-payment of taxes assessed and imposed upon any other users or occupiers of the Town’s right of way.

PSNH respectfully objects to the proposed amendments to include the new requirement or condition that the licensee (1) notify the Town “promptly” upon the commencement of any “use or occupation of the right of way by any sub-licensee or

other entity”, (2) include in the notice information including the identity, address and phone number of the sub-licensee or other entity, and certain other affirmations and information, and (3) provide to the Town Clerk annually on April 1st an update of the information. These requirements are not revisions required under RSA 72:23, or the New Hampshire Supreme Court cases interpreting that statute, in order to legally assess and tax either the facilities or equipment of the named licensee, or the use and occupancy of the public right of way by the named licensee. Furthermore, such other so-called “sub-licensees”, to the extent they may exist, are required to license or permit their facilities located within the public rights of way with the Town of Derry pursuant to RSA 231:159, et seq., just as PSNH is. Consequently, the identity of others using and occupying the public rights of way, whether by attachment to existing utility poles or otherwise, should be obtainable from Derry’s own public highway licensing records. PSNH is not aware of any statute or other provision of law in New Hampshire which authorizes the Town of Derry to compel PSNH to provide this information as a requirement or condition of a pole license.

We also bring to your attention that, in accordance with the requirements of RSA 374:34-a, public utilities such as PSNH must provide non-discriminatory access to their distribution poles to certain third parties seeking to use them for attachment of their own lines, cables and appurtenances. Under existing regulations of the New Hampshire Public Utilities Commission (Puc 1303.08), such third parties are required to clearly label their attachments with owner identification. This affords another means by which the Town may obtain its own information pertaining to entities utilizing the public rights of way.

Under the above circumstances, PSNH maintains it is neither legally necessary, nor fair or reasonable, to require a licensee to provide or report to the Town information about others using the licensee’s poles licensed in the public right of way. Such a license amendment is not required in the public good.

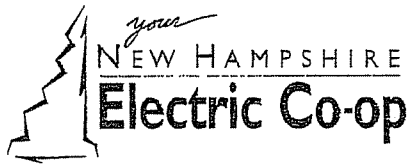
As PSNH is unable to send a representative to your hearing, PSNH respectfully requests that this letter be included in and made a part of the record of the minutes of the hearing of this matter on November 18, 2014. Thank you.

Very truly yours



Christopher J. Allwarden
Senior Counsel, Legal Department

cc: Lindsay Evans, PSNH
Paula Vincent, PSNH
David N. Gomez, Town Assessor



579 Tenney Mountain Highway
Plymouth, NH 03264-3154
www.nhec.coop
603-536-1800 / 800-698-2007

October 27, 2014

Town of Derry
Town Council
14 Manning Street
Derry, New Hampshire 03038

RE: Public Hearing pursuant to proposed changes to RSA 72:23

To the Town Council,

The New Hampshire Electric Cooperative, (NHEC) recently received the notification of the Town's plan to amend and create a new "Petition for License" Form. NHEC respectfully requests that you consider the attached as an acceptable alternative "Petition for License" form. This has been reviewed by our Attorney as meeting the requirements of the RSA's involved and protects the rights of the town.

In trying to meet the changes that many of the towns are implementing to the respective licensing forms, NHEC has created a standard form that utilizes the RSA taxation wording that each town is trying to employ with their unique forms.

Please understand that it would be impossible for NHEC administer having one uniquely worded Petition form for each of the 115 towns we serve. Each of these submitted Petitions would also have either a detailed "Pole Location Plan" or "Petition Plan For Buried Cable" form associated with it (also attached), depending on the required type of construction requested by our members in Derry.

Thank you for your consideration and understanding in this matter. Please call me for any questions at 536-8603.

Sincerely,

Dean Benton
Plant Administrator
New Hampshire Electric Cooperative, Inc.

PETITION AND POLE LICENSE

No. _____

PETITION

Plymouth, New Hampshire

, 20

To the Board of Selectmen for the Town of _____ New Hampshire, New Hampshire Electric Cooperative, Inc. and Northern New England Telephone Operations LLC Request(s) a license to install and d/b/a FairPoint Communications-NNE maintain poles and structures with wires, cables conduits and devices thereon, together with sustaining, strengthening and protecting fixtures along, across and under the following public ways:

FairPoint Communications
100 Gay Street
Manchester, NH 03103

New Hampshire Electric Cooperative, Inc.
579 Tenney Mountain Highway
Plymouth, NH 03264

By: _____

By: _____

TELEPHONE COMPANY

POLE LICENSE

Upon the foregoing petition and it appearing that the public good so requires, it is hereby

ORDERED

_____ 20 _____

That the N.H. ELECTRIC COOPERATIVE, INC. and FairPoint Communications

be and hereby are/is granted a license to erect and maintain poles and structures, with wires, cables, conduits and devices thereon, together with sustaining, strengthening and protecting fixtures in the public ways or ways covered by said petition. All of said wires except such as are vertically attached to poles and structures shall be placed in accordance with the National Safety Code in effect at the time of petition and/or license is granted.

In accordance with the requirement of RSA 72:23, I(b), this license is granted to the licensee(s) subject to the conditions that the licensee(s) and any other entity using or occupying property of the municipality pursuant to this license shall be responsible for the payment of, and shall pay all properly assessed real and personal property taxes no later than the due date. Failure of the owner/operator to pay its duly assessed personal and real taxes when due shall be cause to terminate this license.

In accordance with the requirements of RSA 72:23, I(b), the licensee (s) hereunder and any other entity using or occupying the property of the municipality pursuant to this license shall be responsible for the payment of, and shall pay, both current and real and personal property taxes when due. Furthermore, in accordance with the requirements of RSA 72:23, I(b), the licensee(s) and any other entity using and/or occupying property of the municipality pursuant to this license shall be obligated to pay real and personal property taxes on structures or improvements added by the licensee(s) or any other entity using or occupying the property of the licensor pursuant to this license.

Where applicable, this License is granted to the licensee(s) subject to the condition that the licensee(s) and any other entity now or hereafter using or occupying municipal property pursuant to this License shall be responsible for such notice and reporting requirements as have been duly and lawfully adopted by the Town as conditions to its pole licenses.

The approximate location of the poles or structures and designated or defined as shown upon pole location plan marked NEW HAMPSHIRE ELECTRIC COOPERATIVE, INC., No. _____ Dated _____ attached to and made a part hereof.

Approved By:

Selectman

Selectman

Selectman

Selectmen of _____

Received and entered in the records of the city/town of _____

Book _____ Page _____ Date _____

Attest _____ City/Town Clerk

PETITION PLAN FOR BURIED CABLE

Coop No. _____

New Hampshire Electric Cooperative, Inc.

Date: _____

Highway Division No: _____

Town: _____

License No: _____

Street/Road _____

Page _____

Division: _____

WO# _____

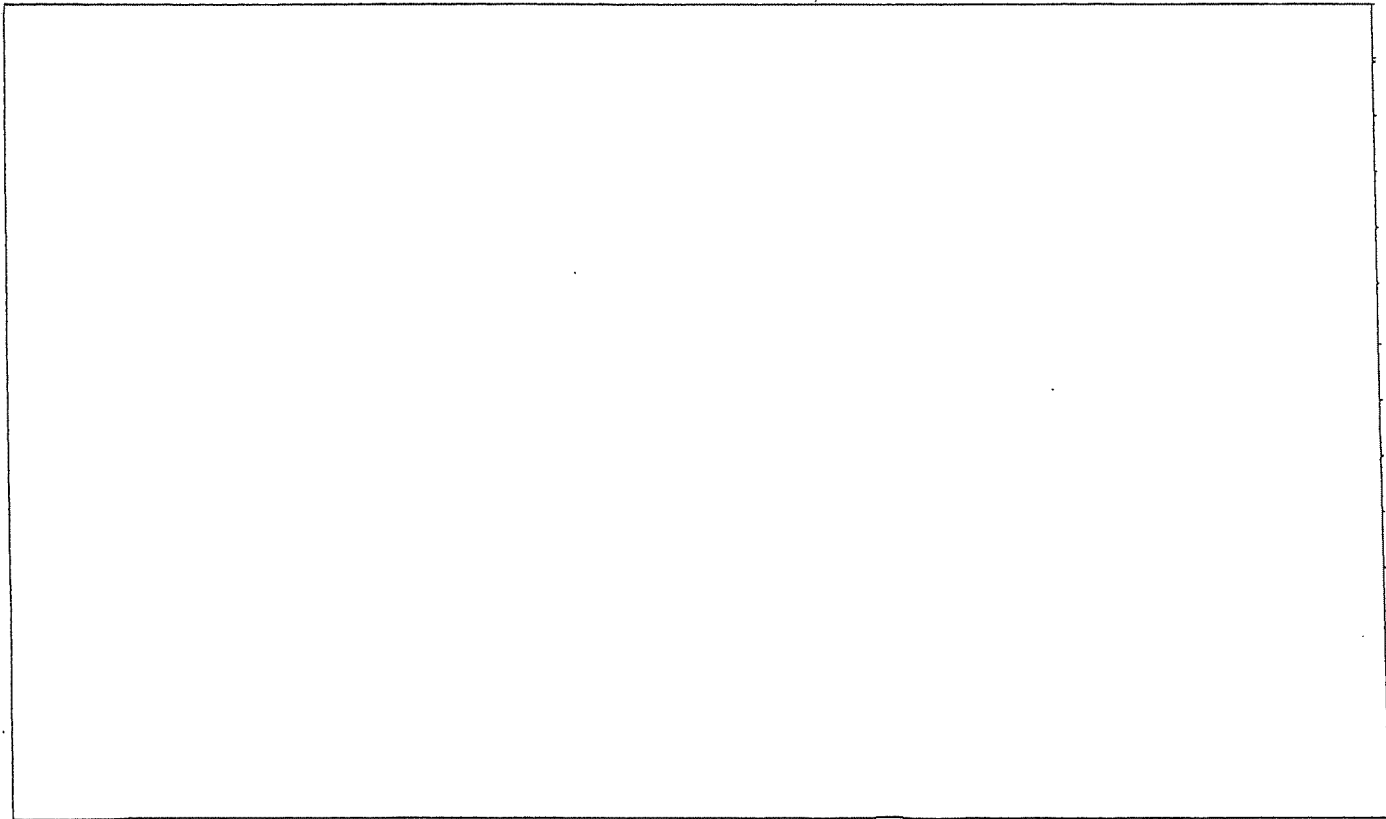
This Area for Engineers Remarks

Town/State Approved By:

Signature: _____

Title: _____

Date: _____



- Pole Location
- ⊗ Tel Pole Loc.
- P— Primary Underground Cable
- S— Secondary Underground Cable
- Cable in Conduit (type & size)

- T Transformer
- S Sectionalizing Cabinet
- P Pad Mount Enclosure
- Vault
- △ Secondary Connection Pedestal

DRAWN BY: _____

DATE _____