

TOWN COUNCIL MEETING
January 04, 2010

The Town Council meeting was held in the Moose Hill Council Chambers, Town Hall, 268B Mammoth Road, Londonderry.

PRESENT: Town Council: Chairman Mike Brown: Vice Chairperson, Kathy Wagner; Councilors: Brian Farmer (7:13PM); Sean O’Keefe (7:54 PM); Paul DiMarco; Town Manager Dave Caron; Susan Hickey, Assistant Town Manager –Finance& Administration; Executive Assistant, Margo Lapietro.

Budget Members: Mark Oswald, Tom Dolan, Don Jorgenson; Jay Hooley, Rick Dillon, Absent: Deb Nowicki and Todd Joncas.

CALL TO ORDER – PUBLIC SESSION

Chairman Brown opened the meeting at 7:07 PM with the Pledge of Allegiance. This was followed by a moment of silence for the men and women fighting for our country.

PUBLIC HEARING

Motion by Councilor Wagner to enter into a public meeting, second Councilor DiMarco. Council’s vote 3-0-0.

FY11 Town Budget – Total Operating Budget of \$25,913,414. Town Manager Caron explained this was the first public hearing for the FY11 budget. There are 4 Warrant Articles that do impact the tax rate and he proceeded to review each one. Council will take input this evening on any of the articles under consideration. February 2 is the deadline for petitioned warrant articles for the budget request. In order for it to be valid it must be submitted by 2/2 to Town Hall with at least 25 registered voters. The final public hearing for the budget to include the entire Warrant, any collective bargaining issues, fact finder reports and petitioned warrant articles will be held on 2/4/10. Chairman Brown explained to the public that the Town Manager was directed to develop a budget with no greater than a 2 % increase in the Town’s portion of the tax rate. With everything included this evening including the Collective Bargaining Agreement with AFSCME 3657, the Town is anticipating a 1.29% increase in the town tax rate. Town Manager Caron stated the 6 cent rate increase is attributed to those reductions the Council approved last year at Town Meeting with their long term planning with Capital Reserve, Expendable Maintenance Trust and funding overlay through surplus. This is the first of a multi-year process to return those budget areas to customary funding levels. The Operating Budget actually has a 3 cent decrease impact on the tax rate for FY11. Chairman Brown said we are showing 2.24% increase in the Operating Budget but it is a 3 cent decrease. Town Manager Caron explained it is a 3 cent decrease because of anticipated increases in Motor Vehicle Permit Fees and highway gas tax revenues from the state which positively impacts the amount to be raised by taxes. Chairman Brown again verified the only factors that would increase the budget would be the 2 fact finder reports and any citizens petitions warrant articles that come prior to 2/2. Town Manager noted that citizens can always increase or decrease the Town budget at Town Meeting. Open for discussion. Pauline Caron, 369 Mammoth Rd questioned if health insurance benefits were included in the Councilor’s stipend. Town Manager Caron responded

that the appropriation reinstates the Councilors' annual stipend of \$2,000 for Councilors and \$2,500 for the Chairman. Chairman Brown stated that Councilors do not receive Town health insurance and taxpayers do not pay for it. Budget Member Tom Dolan, 19 Isabella Drive asked if Councilors discussed bonding for road construction if the bond fails. He stated the community should have an option to vote on some road construction on Saturday, maybe an additional warrant article between \$100-\$200K which would be between 3-6 cents impact on the tax rate. If the bond for the road passes then vote the warrant article down. Councilor Wagner asked Public Works Director Janusz Czyzowski what would \$200K do. He replied minimal improvements, noting the cost of road construction at approximately \$1.5M - \$1.6M. He said if the article fails the budget includes only about \$40K for road construction. In the past they have had approximately \$500K on the warrant article for road construction if the article fails. He said in the past it was dropped down to \$250K and last year it was not proposed. Councilor Farmer questioned if we had an amount to put in the additional warrant article. Councilor Wagner asked what impact an article would be on \$500K on the tax rate. Town Manager Caron responded it would be 16 cents. Councilor Wagner stated she could not support that. Town Manager Caron said the bond is \$1M; the impact would be \$120K with interest the first year which would be about 4 cents. Town Manager Caron said if Council wanted they could make a decision tonight or at the 1/18 meeting. He said he can research information as to what has been proposed historically for an alternate warrant article. Chairman Brown said he would like to discuss it again on the 1/18. Consensus was to come back on the 18th. Councilor Farmer said he agreed but does not want us to shirk our responsibilities for road work. Councilor DiMarco said he wants to stick with the 2% directive that was given to the Town Manager. Chairman Brown said that he thought the companion article had a clause in it that if the bond passed the article is immediately withdrawn. Town Manager Caron stated that no action can bind the voters' action at the Saturday deliberative session, therefore the voters at the meeting would have to vote to remove/approve. Town Manager Caron said the next step in the process is to hold a bond public hearing on the 18th, and if any adjustments to the warrant are made they will be completed at that meeting for posting at the final public meeting.

Ordinance #2009-06 – Relative to the Creation of the Planned Unit Development Process

Councilor Wagner recused herself because of the nature of her private business. Chairman Brown stated this was a continuation of the 12/21/09 public meeting. Council requested changes to the Ordinance and he proceeded to explain them. The Gateway Business District was approved by the Town Council. There were two concerns with the Planned Unit Development (PUD) proposal: Additional clarification was added to the "Purpose" statement. The wording would allow the Planning Board to make reference to the 2004 Small Area Master Plan and other long range planning documents in the land use area. They would basically be the templates from which they make their decision. The second item is the wording in the Permitted Use Table, item 2.8.6.2 which was removed. That section authorized the Planning Board to consider uses not currently included in the Chart of Uses. Councilor DiMarco said he would like to see section 2.8.2.2 refer specifically to the 2004 Town of Londonderry Master Plan. Town Manager Caron said they can add the wording to read "2004 Town of Londonderry Master Plan" in those sections. Councilor DiMarco asked if the 2009 Town of Londonderry Small Area Master Plan could be listed, A. Garron said he will add that. Councilor Farmer questioned adding language to list future dates in this Ordinance; would it have to come back for a public hearing. A. Garron responded you could add wording "as amended". Town Manager Caron stated it is how the Council wants to handle it. We could include language such as the 2004 Town of Londonderry Master Plan and/or successor plans and that would cover it and not require further approval. If it is not stated then the ordinance needs to be amended when those documents are updated.

Councilor Farmer stated that this Ordinance significantly changes zoning in town. Art Rugg, Chair of the Planning Board said the Board believed the Town was encumbered by our zoning ordinances and regulations; and this proposal provides more flexibility. Councilor Farmer questioned if a developer has less than 100 acres could they put together adjoining lots to meet that minimum. A. Garron responded we do not have a lot of 100 acre parcels; the Town does however have more 50 acre parcels that abut each other and could be combined. Councilor Farmer questioned if someone comes before the Planning Board with less than 100 acres can the Planning Board have the ability to waive that parcel size portion. Both A. Rugg and A. Garron responded no. Councilor Farmer asked if this Ordinance can be used to override the POD, A. Rugg responded the POD is not designed for large parcels. Councilor Farmer asked if the underlying zoning is POD restricted. A. Garron responded it could as long as it is in the spirit of the Ordinance. He stated there is only one POD parcel in Town that can fall under 2.8.5.2.1. The POD encourages a campus style development; the PUD encourages a mixed-use development. Councilor DiMarco said the difference lies in the fact that the land was already developed under the POD and land around it that with that developed land could make a continuance 100 acre parcel. They could develop it including the pre-existing development as long as it met the spirit of the PUD. Pauline Caron, 369 Mammoth Rd. asked the name of the parcels of land that currently qualify under the PUD. Councilor DiMarco responded there is currently one parcel but with the combination of parcels there would be an infinite number of parcels. P. Caron asked if a person with a 50 acre parcel in a commercial zone acquires abutting lots that are in residential can it go under the PUD. Does the agricultural/residential change to commercial? A. Rugg responded the underlying zoning stays the same. If it is a PUD it is a mixture of commercial and residential. A. Garron said with the amendment just made to the regulations if anybody proposes a zoning change other than what is permitted by the underlying district they will have to go back to the Planning Board and it is ultimately up to the Town Council for a zoning change. A. Garron said there are about 9 parcels in Town that are over 100 acres and quite a few that are 50 acres that abut each other. Chairman Brown said one important point is that one of the other requirements of the POD is that the land has to be serviced by public water and public sewer. A. Garron stated at this point in time only less than 10 lots will qualify. Jay Hooley, 24 West Yellowstone Rd questioned if you had 100 acres in an AR-1 zone something other than houses could go in there under this Ordinance. A. Garron responded no the underlying zoning prevails. Councilor Farmer said the property owner can have the property rezoned before doing a 100 acre PUD project. Councilor DiMarco said he is confused because section 2.8.5.1 reads that we can propose a PUD in any zoning district and the things that are allowed in a PUD are listed in the permitted use chart. What will the underlying zoning have to do with it if you are proposing a PUD in residential or commercial or industrial? A. Garron again referred to the need of water and sewer availability and the underlying zoning. Discussion ensued about the underlying zoning district and the Permitted Use Table. A. Garron said the confusion is about the Use Table it does not correspond with the changes that were just made and the text of the Ordinance. We removed the ability to allow uses that are not in the underlying district. If a developer wanted to use an underlying district they would have to come back to the Planning Board and subsequently the Council. The way the table reads is that basically all the uses if it is a P4 or P5 are listed. Those uses allowed in the "Gateway District" and those uses are allowed as part of a PUD Master Plan. John Michels, 11 Nutfield Dr. offered that you can do whatever is permitted in an AR-1 or commercial-1. When you go in for a PUD it has a chart of 44 uses that are permitted with the approval of the Planning Board which is different than an underlying permitted use. The only things the land owner as a matter of right can do are what are in the underlying zone. Councilor Farmer said the underlying zone is there but the Planning Board can look at that table of uses and let them do something on an AR-1 piece that would not

normally be allowed. A. Garron said if you look at the Use Table they are labeled P5, or P4. The P4's are only allowed in uses for the Gateway District. Those labeled P5's are permitted uses in PUD District not associated with the Gateway uses. He continued to review all the items listed in the Permitted Use Chart. **Councilor O'Keefe moved the question as amended. Council's vote 4-0-0.** Councilor Wagner re-joined the Council.

Ordinance #2009-07 – Relative to Amendments to the Zoning Ordinance associated with the Gateway Business District and the Planned Unit Development Process. Chairman Brown stated that this Ordinance was related to Ordinance 2009-06 Section 2.2 and the new Section 2.2.2 which is the Use Table. Hearing no public input, **Councilor DiMarco made a motion to adopt the Ordinance, second Councilor Wagner, Council's vote 5-0-0.**

Councilor DiMarco made motion to come out of public, second Councilor Wagner, Council's vote 5-0-0.

PUBLIC COMMENT

State Representative Al Baldasaro, 41 Hall Road thanked the Town Manager for his help with understanding the petition process which he was presenting tonight. He stated that he thought he was supposed to be listed in the agenda but was not. He appeared tonight under RSA Chapter 39:3 to move a petition he has signed by 28 local residents who want to vote on defining marriage between a man and a woman in the state of NH. The petition is not whether or not Council supports gay marriage it is only to move the petition forward to go on the Londonderry Town ballot as a non binding resolution so they have the opportunity to vote whether they support marriage between a man and a women or they don't support it. He said he wanted to present the petition tonight in accordance with the RSA and the Town Charter. He said the Town has an opportunity to vote tonight to move forward with the petition or to say he could go back and get 5% of voters' signatures. He said he was hoping the Council will save him a lot of time and energy because of the holidays and according to the RSA he would have until Monday within the 60 day period to get the signatures. Chairman Brown verified with the Town Manager that citizens can present petitioned warrant articles to the Town as part of the budget public hearing and the deadline for submitting those petitions is 2/2/10. If the issue is not a budgetary matter which this isn't then the Town Charter designates the Council as the legislative body to act on the matter. Upon receipt of the petition the proper process is to transfer the petition to the Supervisors of the Checklist to validate that those 28 signatures are registered Londonderry voters. Town Manager Caron confirmed that was correct. Chairman Brown said based on that Council would not decide on the matter tonight but at the 1/18/10 meeting after the Supervisors have verified the signatures. Town Manager clarified to Mr. Baldasaro that the Council does not have an option to pose this to the voters with 28 signatures. He said his request to move the submitted petition to the voters is beyond the Council's authority. The Town Charter which was approved by the voters is very clear: if there is a referendum petition to be presented to the voters the petitioners have to submit an initiative petition to the Council with at least 1% of the registered voters, which is about 170 voters. If the Council takes action that you are not comfortable with and you want to proceed or move the petition to town meeting you have to submit a referendum petition with 5% of the voters or about 850 signatures. With this current petition, after confirmation with the Supervisors that there are at least 25 registered voters, it will come back to the Council for action. At that point the Council can either approve, table or deny it. That petition process is then completed. If you want the question to be presented to the voters, you need to submit the initiative petition knowing that if the initiative petition is submitted and

the Council essentially approves the request it stops there as well because there is no need to go to referendum unless you disagree with the Council's action. It is a little bit different under our form of government than under the traditional town meeting form of government. A. Baldasaro asked if the 5% has different rules because the RSA states on the 5% with 10K voters or more it should match up with our Charter. Town Manager Caron responded no, it is an entirely different process. The RSA presumes that there is not a Town Council form of government and you are operating under a traditional town meeting form of government which means town meeting votes on the budget, resolutions, votes on ordinances, and votes to purchase and sell land. In our form of government everything except the budget is governed by the Council. Councilor DiMarco said if he wanted to put it on the ballot technically he would have to convince a Councilor to present it as a resolution tonight. Councilor Farmer confirmed that what A. Baldasaro is trying to accomplish tonight is to get one of the Councilors to say that they want to put it on the ballot for a Tuesday vote and have a consensus go along with that. Town Manager Caron said he does not believe that is a possibility, it would be a violation of our Charter. Councilor Farmer then asked the Town Manager that the Council could not put a non-binding vote on the Tuesday ballot; Town Manager Caron said that is the advice he has been given but he will re-affirm it tomorrow. Councilor Wagner brought up the issue with AES. Councilor Wagner asked the Town Manager for verification. He responded that to put it on the ballot as a referendum petition it needs first an initiative petition with 1% of the voters and if the petitioners agree with the action they come back with a referendum petition which is 5% of the voters and that automatically goes on the ballot. Councilor Wagner asked if A. Baldasaro comes in with 854 signatures does that mean that Council can't stop it and it goes on the ballot. Town Manager Caron stated if a referendum petition is submitted in accordance with Section 7.2 of the Town Charter with 5% of the voters signing the petition, that petition proceeds to the voters at town meeting. If A. Baldasaro submits a petition under Section 7.1 of the Charter it is his understanding that it cannot be put on the ballot and Council will have to take action on the petition received tonight. A. Baldasaro stated that in the RSA and the Town Charter does it say you can't do it because it has already been done in this town. Town Manager Caron stated that NH is not a home rule state, the only authority the Council has is what is set in state law. A home rule state says you can do anything you want except what is prohibited under state law. A. Baldasaro said this petition is happening in every town through out the state. Councilor Wagner questioned the timeframe; Town Manager Caron said it is not a typical deadline like a budgetary petition. If Council does not approve this and A. Baldasaro submits an imitative petition of 1% and that is not approved then comes back with a 5% then there are time lines in the Charter that you have to schedule a special election. A. Baldasaro said according to the RSA he has a 60 day window, if he got all the signatures and brought it into the Town Manager on Monday there would be a 60 day window. Town Manager Caron replied for purposes of process, if it is a budgetary item refer to state law if it is not budgetary ignore state law and follow the provisions in the charter. Councilor Farmer said if it is a budgetary item it could be submitted as petition and the Council could vote either up or down according to RSA 39.3 it would be decided at town meeting. Town Manager Caron responded that is correct. Councilor Wagner asked for a recap that if A. Baldasaro walks in with 850 signatures what happens. Town Manager Caron said that is step 1 with at least 1%. If Council does not agree with the action being requested the 2nd step according to Section 7.2 is to submit a referendum petition with signatures from at least 5% of the voters, which is then placed on the ballot for voter consideration. Councilor DiMarco said if we miss the window for the traditional town meeting it will have to be a special town meeting. A. Baldasaro said he wants the people to vote on the ballot at town meeting. Marty Bove, 3 Tinkham Lane, talked about Al's initiative. He said people have the right to vote on the definition of marriage. He said Council should support the petition. The people's opinion is

being denied by the legislature. Councilor Farmer said he has read 7.1 in the Charter where it says “The registered voters of the Town shall have the power to propose ordinances to the Council” this is not an ordinance. Town Manager said he raised that issue with the town attorney and Counsel believes the intent is that ordinances should be interchangeable with resolutions and petitions. Chairman Brown said he asked the exact same question before tonight’s meeting. Councilor Farmer requested a written opinion. Councilor Wagner said we did it in the past and put it on the ballot as a non-binding referendum. Councilor Farmer said that the School put a petition request on the school warrant. Councilor Wagner said she is concerned that a precedent has been set with the SB2 issue. Councilor Farmer said it has been done on both the school and town side, why are we now being told no we can’t do it. Town Manager Caron cautioned the Councilors not to mix this issue with the Charter provision. The Charter provision is very specific; if the Council is powerless to do this to put this on a Tuesday vote then that needs to be corrected at the state level. A. Baldasaro said there are 7 towns with Charters like ours that take away the right of the people on freedom of speech. The Council has more authority than the people due to the Charter. Councilor Farmer asked if Council can amend the Charter. Councilor Wagner questioned if it is the state or Charter that is preventing Council from allowing the non-binding resolution. Town Manager Caron said he does know of any state law which prohibits that type of charter amendment. Councilor Wagner stated that it is our Charter the way it is written is the problem. Council Farmer asked if Council can have a Council sponsored amendment, Town Manager said he would review the process with Town Counsel. Chairman Brown said they received advice from legal counsel and should accept it. Councilor Farmer asked what body in town is vested with the authority to interpret the Charter? Councilor Wagner said if they come in with 171 signatures and Council says no then come back with 5% at which point do we accept it no matter what. Town Manager Caron responded it goes to a vote of the people. Councilor DiMarco said that apparently a precedent has been set with how the non-binding referendum vote went for AES. He said he was curious to see what process was followed, but this is past history he is interested in following what the Charter says today. We have to follow the Charter. Town Manager Caron said the voters have decided that Council is the legislative body with exception of the budget. The Charter has an escape clause that says you can bring non-budget items to the voters it is through section 7.1 & 7.2. The framers of the Charter specified 1% for the 1st step and 5% for the 2nd; Council can change those percentages through the Charter member process at any town meeting. M. Bove clarified if we get 171 votes and Council says put it on the ballot do they still have to get the 858. Town Manager Caron said the way the Charter is written is if they receive a petition with 1% which is about 170 people, and the Council says yes we support the petition, it ends there. That is the sense of the community. M. Bove said if the Council does not support the petition then if we come back with 850 it goes to the voters. He asked Council to give the voters the opportunity to express their opinion; it is not binding and does not cost anything. A. Baldasaro thanked the Councilors for their time. Councilor Farmer asked the Town Manager to ask Counsel about 7.4. Art Rugg, 11 Pine Hollow Dr. said 7.4 was used as a non-binding referendum for AES.

OLD BUSINESS

FY11 Budget – \$1.0M Highway Reconstruction Bond - Town Manager Caron said this item needs a separate public hearing; consensus was to schedule a hearing for 1/18/10.

NEW BUSINESS

Resolution #2010-01 – Relative to Renaming East and West Elgin Boulevard. –

Resolution 2010-02 – Relative to Renaming East and West Woodbine Drive -

Resolution #2010-03 – Relative to Renaming East and West Yellowstone Drive –

Councilor Wagner made a motion to move all of the above to a public hearing on 1/18, Second by Councilor DiMarco, Council's vote 5-0-0.

Resolution #2010-04 – Relative to Awarding a Contract to Reconstruct the Rte. 28/Page Road Intersection – Councilor O'Keefe made a motion to adopt, second by Councilor Wagner. Councilor DiMarco clarified that \$1.75M was approved at town meeting last year. Was the money bonded at that time? Town Manager Caron explained it was not proposed to bond the project since 2/3 was funded by the State. The Town portion of 1/3 came from a combination of undesignated fund balance and Rte 28W impact fees. Councilor O'Keefe questioned if Continental Paving was the lowest bidder. Town Manager said they got 9 bids and the lowest was Continental, it was a competitive bid process. The bid came in at a great price and reduced the town share from \$643K to about \$150K. The ARRA grant coupled with the reduced cost of the project resulted in a substantial savings. All bid results were in the packet for the Councilors. Chairman Brown asked what happens to the \$492K we are getting back. Town Manager Caron said it does not get expended; it is a combination of surplus money not being spent it will stay in the towns resources. The Rte 28W impact fees will stay in that account for other improvement projects along Rte 28 and the general area. Councilor Farmer said it does not have a specific tax benefit up or down. **Council's vote 5-0-0.**

APPROVAL OF MINUTES

Minutes of Councils Public Meetings of 12/21/09. Councilor Wagner made a motion to adopt, second Councilor DiMarco, Council's vote 5-0-0.

OTHER BUSINESS

Liaison Reports – Councilor DiMarco said there is a Planning Board meeting this Wednesday and there is a meeting before for Town Council regarding Workforce Housing. It will be a non-meeting meeting with counsel from 7-8 then the Planning Board starts at 8PM.

Town Manager Reports – Nothing further to report

Board/Committee Appointments/Reappointments - None

ADJOURNMENT

Councilor Wagner made a motion to adjourn at 9:11 PM, second, Councilor O'Keefe, Council's vote 5-0-0.

Notes and Tapes by:

Margo Lapietro

Date: 01/04/20

Minutes Typed by:

Margo Lapietro

Date: 01/06/20

Approved;

Town Council

Date: 01/18/20