

TOWN COUNCIL MEETING
July 09, 2012

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

PRESENT: Chairman, John Farrell; Vice Chairman Tom Dolan; Councilors: Tom Freda, Jim Butler; Joe Green; Acting Town Manager, LPD Chief, William R. Hart, Jr.; Assistant Town Manager/Finance Director, Sue Hickey; Executive Assistant Margo Lapietro.

Town Manager Caron was absent due to family medical issues.

Call to Order

Chairman Farrell opened the meeting at 7:03 PM with the Pledge of Allegiance. This was followed by a moment of silence for the men and women fighting for our country and for first responders.

Public Comment

Chairman Farrell announced that the Town Council received Town Manager David Caron's letter of resignation today as Londonderry Town Manager. The resignation is effective July 20, 2012 and he will remain on administrative leave until then.

Impact Fees - Chairman Farrell proceeded to read a prepared statement regarding the impact fees, copy of which is attached.

Acting Town Manager Chief Hart explained the procedures newly initiated are an attempt to assure compliance with state law and statutes; and give some clarity to the administration process of impact fees. This situation won't occur again here in Londonderry. The policy and administration of impact fees will be reviewed on an annual basis; the policy itself will be brought before the Council and discussed openly. Attorney Michael Ramsdell was in attendance. Open for discussion. Al Baldasaro, 41 Hall Rd. asked why a lawyer was in attendance. Chairman Farrell explained that Attorney Ramsdell was the attorney that Council consulted and he completed the investigation and is here to answer questions regarding impact fees. A. Baldasaro stated that over a year ago he brought up the issue with the Town Manager that impact fees were illegal pertaining to the Londonderry Times building. Pauline Caron, 369 Mammoth Rd stated that the statute for impact fees has been in existence for a few years. The town has an Ordinance which states that the Town Treasurer is supposed to keep track of impact fees by the lot number, the owner of record, and how much the fees are. She asked if those records have been kept. M. Ramsdell responded yes. P. Caron said the impact fee schedule is supposed to be reviewed yearly by the Planning Board and Town Council. M. Ramsdell confirmed that. P. Caron said that was where the mistake was made; it was supposed to be reviewed annually. She asked if the funds have been put in separate accounts for each or have the funds been co-mingled. M. Ramsdell said the impact fees have been kept in a single dedicated account, as opposed to an individual account for each category; they have not been co-

mingled with any general funds or other dedicated sources. However, they also have not been kept in separate accounts for their own separate entities and that is one of the changes that will be done. P. Caron asked if we have spent impact fees on different projects in town. Chairman Farrell asked for a clarification, he did not understand her question. P. Caron asked if there were projects in town where impact fees have been spent because they were assessed for a certain project. M. Ramsdell responded yes – over the years there are impact fees that were properly kept and properly spent. P. Caron asked if there were impact fees that were assessed on a certain project that were spent that were not all used and if so was it refunded to the owner. M. Ramsdell responded there are monies in the impact fees account right now that have not been spent. P. Caron said the question is if impact fees were spent on a project and not all of the impact fees were used, was the difference refunded to the property owner. R. Ramsdell responded no; that is why the impact fees are now being refunded and that is why there is a process being established to rectify the situation. P. Caron asked if the impact fees are to be used on town roads as well as state roads. M. Ramsdell said they are to be used only on town roads. P. Caron asked if these were impact fees assessed by the Planning Board on projects on state roads, where the project could not get a Certificate of Occupancy, those tax impact fees will be refunded to the owners of record. M. Ramsdell responded if they were collected on state highways they will be refunded with interest. P. Caron asked if all impact fees were going to be refunded with interest and Chairman Farrell responded yes, we are \$200K -\$300K short, and we will be taking it out of the fund balance of the FY12 budget. P. Caron asked when was the last time the impact fees were reviewed to set the amount for the different projects. M. Ramsdell responded he did not know but the fees are variable. P. Caron asked if the impact fees were used for Pettengill Rd. Chairman Farrell responded he did not know what specific impacts were used for what pieces. M. Ramsdell responded yes- a traffic study was done. P. Caron asked if the town was going to publish a list of all the impact fees that were spent on the different projects so that the townspeople know. Acting Town Manager Chief Hart said we could do that; our goal is to be as transparent as possible. He said he will look at that and see if it can be done; if it can be done, they will try to do it, if it can't be done he will say why we can't. P. Caron stated that part of this problem has to do with the Finance Officer for not keeping track of things the way they should be done; she was not doing her job. Dottie Grover, 537 Mammoth Rd. questioned where the interest has been going for the \$1M over the years. Acting Town Manager Chief Hart responded it has been going to the money that was set aside for impact fees. It was not delineated into individual accounts the way it should have been. The \$1M includes the interest fees. Councilor Dolan said this impact fee practice has been in place since the early to mid 90's which predates the Finance Manager and the Town Manager. We are taking steps to fix it we can't fix the past only the future. This is a long standing practice that we believed was being done right; we have now come to the understanding that it was not and we are trying to be transparent and are going forward. Martin Srugis, 17 Wimbledon Drive asked how the impact fees are determined, what is the formula, can he go on the town website to get information. M. Ramsdell responded there is a different formula for each category of impact fees, he was not sure if they are on the town website. There is not a single formula for all impact fees. They are created by a professional who has done impact fee methodology for a lot of NH communities. The methodology for how to assess the impact fees is done by an independent consultant. When that consultant has finished creating the methodology it is given to the town to be reviewed by the town Assessor and Planning Board. Once the methodology is in place the Planning Department does the assessment for the individual development and that is who is responsible for the determination as to what the impact fees are for that particular project. Councilor Green said the form is on the website under Plan Use Regulations, there is a section called

“Londonderry Impact Fee Form”. When it is filled out you calculate what the fees are. Pauline Caron, 369 Mammoth Rd said under the Ordinance it states the name of the individual who does the impact fee assessments and it states that it is supposed to be reviewed annually and she didn’t think we were reviewing it annually. Chairman Farrell responded it hasn’t been reviewed since the 90’s and that we were fixing it tonight; going forward this Council will make sure that it will be fixed. A mistake was made and we are doing the right thing by returning all the money to everybody it is owed to. M. Ramsdell said he got a letter today from Attorney Panciocco. She wasn’t sure she would make the meeting and understood that the questions in the letter might not be answered tonight but wanted to identify the questions themselves. Attached is a copy of the letter which was read into the meeting. M. Ramsdell said after he received the letter he did call Attorney Panciocco and he gave her as best he could at the point some answers. The first question the answer is yes. Two of the questions pertained to corresponding voter appropriations he said they had a difference of opinion about what that means and whether the impact fees were authorized. Question #3 he responded there continues to be debt service to be paid on the schools. Question #5 regarding the North/West Fire Station there are impact fees being refunded. Councilor Dolan said he wanted to re-enforce that the time period we are going back exceeds the statute of limitations where we probably would not have had to refund impact fees. The Council agreed unanimously to return the fees even though the statue of limitations has expired.

Chairman Farrell said he has been in contact with Mr. Caron and his family member is doing well after multiple procedures and we wish him well.

Dot Grover 537 Mammoth Rd. Chair of the Dog Park Committee said she has a volunteer for the vacant position on the committee. Raj Verma has been in town a long time and will be a valuable addition. Executive Assistant Lapietro asked her to provide her with his vital information.

Al Baldasaro, 41 Hall Rd, talked about the town census which is 24,129 people as of the 2010 census. He said we used to be the 9th largest community we are now the 10th largest. The town of Hudson passed us by 24,467. The reason he brought it up is because we are quite often compared to Hudson. He provided statistics to the Councilors because of the request to increase safety personnel. He stated the town has not grown that much to warrant additional safety personnel. Councilor Dolan commented that a decade ago several elements in the town achieved the alignment that we wanted; a slow residential growth due to the pressure it was putting on our infrastructure. Those steps did help to slow the growth to allow our infrastructure to catch up. Marty Srugis, 17 Wimbledon Dr. asked why we didn’t follow the town succession plan, why Sue Hickey didn’t become the Town Manager. Chairman Farrell said the Council made a decision based on what everyone needed to accomplish over the next several weeks period. In the best interest of the town Council felt that S. Hickey as the Finance Manager was focused on refunding the \$1.3M in impact fees, closing books for the fiscal year, also at that time our Controller was out. We made what we thought was the best administrative decision at that time for the town to name Chief Hart because it would be the least amount of interruption to the town process.

Public Hearing

None

Old Business

None

New Business

Public Works – Public Works Director Janusz Czyzowski was in attendance. He is reconstructing portions of Litchfield Rd. and today got the results of a bid for the installation of drainage improvements for that road. The winning bid for was won by Continental Paving and he requested Council's approval to sign the contract. There were a total of 3 bids submitted. He explained that this is just part of the job; it is not the entire cost of the reconstruction. Chairman Farrell asked what is the entire cost. J. Czyzowski responded it would probably be double what the bid is. He said a lot of the units on this contract are estimates it could go up particularly due to the ledge work. Councilor Butler asked if he has an estimate on the ledge; Janusz said he has no estimate on the ledge so the price can go up. Councilor Green said he wants to see a firm number before voting on this contract. Janusz explained you can't get a fixed number until you get into the project because ledge is an unknown item. Chairman Farrell said based on what was heard so far he is up to \$635K. What is the not to exceed number. Janusz said for the total project he can get that number but this contract is only for the drainage system. Chairman Farrell asked him if he was going to be spending more than \$750K in the reconstruction – he responded no. Councilor Freda asked where is the money coming from – Janusz replied from the road re-construction bond. Councilor Dolan said if we are passing a motion the equivalent of an order for a certain amount of money then that is what we are going to approve. If the cost exceeds that for the reasons enumerated he would expect that we would be asked for incremental funding authorization to move forward. If we approve this bid it has to come back to Council for additional funding approval. Councilor Dolan said since this is already approved in the budget is this a "courtesy visit". Acting Town Manager Chief Hart said he views it as a courtesy visit since the legislative body has already approved this money. He said he felt it was important to be transparent so everyone knows what we are doing. Councilor Dolan said if a department head says they want to spend \$250K and Council OK's it but later they look at the accounting and find out that \$450K was spent; that creates some questions that either we should not have gone down the path in the first place or we need a second order for the additional monies. Acting Town Manager Chief Hart said we should look at it as a courtesy visit. What any Council going forward needs to know is are we doing these things timely, appropriately and in a fiscally responsible manner. Councilor Dolan said if we approved this tonight we should ask for another courtesy visit. The consensus was to sign the contract.

Order 2012-13 – Relative to the Expenditure of Maintenance Trust Funds for Various projects Councilor Freda read the Order and made a motion to accept, second Councilor Green. Open for discussion. Council's vote 5-0-0.

SAFER Grant Presentation – Londonderry Fire Chief Kevin MacCaffrie was in attendance. Councilor Butler asked if he anticipated anymore problems with the freezer repairs at the North Fire Station. Chief MacCaffrie said the equipment was designed by a mechanical engineer, he said he can't tell if there will be anymore. Most of the cost has been born by warranty items and us, they went back to the mechanical contractor with complaints.

The SAFR Grant application opens 7/16 and closes 8/10/12. The 2011 grant is still in process and has not been awarded yet. The 2012 grant that he would like to apply for is the same as last

years for 4 personnel positions. This grant could be a 2 or 3 year program, he won't know until the grant comes out. If it is a 2 year grant it will be fully funded if it is a 3 program we will have to pick up the third year. Based on 4 personnel and their benefits our cost will be equipping them and training them for those 2 years. Councilor Dolan asked what the expected award date for the grant is. Chief MacCaffrie responded that the last grant was expected to be awarded in July. This one is expected in October hopefully before budget season. Councilor Dolan said timing is everything particularly with us making decisions for the budget season. Chairman Farrell said if we win the award we can return it. Councilor Butler asked if it was mandatory to apply for 4. The Chief responded he can apply for as many as he wants. Councilor Butler asked if he could apply for just 2. The Chief answered the chances of getting the grant for 2 was 0-2%. The chances with 4 are 40-50%; the higher you ask for the better chances you can get the grant. Chairman Farrell said according to a prior presentation by the Chief we will cut overtime drastically by adding 4 firefighters. Councilor Freda said if we put just 2 on it would almost balance out. The Chief reminded Council that they are in the hole for \$150K in overtime; so those two people would cover the hole. Councilor Freda said that was based on the condition that they worked different shifts. Councilor Freda asked if we received the grant how long we have to keep the additional personnel. Chief MacCaffrie responded if it is the 2 year plan at the end of 2 years if Council decides to reduce it by 2 personnel they can. During the grant period you cannot reduce the force. The consensus was to go for the grant.

APPROVAL OF MINUTES

Council meeting minutes of 6/18/12 – Councilor Freda made a motion to accept the minutes, second Councilor Dolan. Council's vote 5-0-0.

OTHER BUSINESS

Liaison Reports – Councilor Butler attended the HAZMAT meeting. He reported that there are 14 communities in the SNH Hazmat district, it consists of 50 members, they have 3 trucks, and 4 trailers. They received 16 grants since 2008, total grant awarded is \$16,017.96; the proposed budget is \$98K. Every town has a base of \$5K and it is .156 per capita, our share is \$8,500.00. The Traffic Safety Committee had a meeting tonight and people from Royal Ave who were concerned about speeding issues were in attendance. The LPD Chief will have staff talk to the residents.

Councilor Dolan stated he will be attending a Conservation Committee meeting tomorrow night.

Councilor Green want to the Master Plan Steering Committee, they are moving forward with information received from the Planapalooza, our consultant is putting together a draft which will be reviewed next week. He will be attending the library trustees meeting on Wednesday.

Chairman Farrell went to the Conservation Commission workshop that was attended by 30 people. It was about people donating land and a plan is in progress. The airport meeting was rescheduled to September.

Town Manager Report - Acting Town Manager LPD Chief Hart said they are changing the travel re-imbusement policy to tighten it up. It eliminates some things; tightens up the daily reimbursement costs from 65-50. We won't pay for certain family members.

Board/Committee Appointments/Reappointments

None

ADJOURNMENT

Councilor Freda made a motion to adjourn at 8:02 PM, second by Councilor Green.
Council's vote was 5-0-0.

Notes and Tapes by: Margo Lapietro Date: 07/09/12

Minutes Typed by: Margo Lapietro Date: 07/11/12

Approved by: Town Council Date: 08/20/12

Today, the Town Council received David Caron's letter of resignation as Londonderry Town Manager. The resignation is effective July 20, 2012. Mr. Caron will remain on administrative leave until that time, a week from Friday.

As some of you know, Mr. Caron has been attending to a family emergency for a few weeks. During that time, it has become apparent to Mr. Caron and the Council that the combination of the Caron family emergency and the Town's pressing business, including the impact fees situation that I will address in a minute, has rendered it advisable for Mr. Caron and the Town to sever their relationship. The Town Council wishes Mr. Caron and his family the best of luck.

The Town will immediately commence a search for a new Town Manager.

As for the impact fees situation, the Town has collected impact fees from developers and property owners since the mid-1990s. Londonderry, like many other New Hampshire municipalities, imposes impact fees to defray the additional costs of municipal capital improvements deemed necessary as a result of the development. In May 2011, it was brought to the attention of Town officials that Londonderry may have improperly collected impact fees for improvements to state highways, and also may have failed to return impact fees that were deemed "expired." Since that time, we have consulted attorneys and investigated whether impact fees refunds are due to people.

While there has been considerable confusion over the issue, we now are aware that state law does not allow the imposition of impact fees for improvements exclusively to state highways. Additionally, if any portion of collected impact fees is not spent or otherwise bound to the project for which it was collected within six years, state law and the Town's ordinance require that the unexpended or uncommitted funds are to be returned to the person who paid the impact fee or the current property owner. The Town already has begun processing refunds for those properties where the payor of the impact fees remains the current property owner. These individuals should receive refunds within the next ten days.

Where the payor of the impact fees is not the current property owner of record, the Town is in the process of identifying all of the parties. The Town has identified 25 properties in which the refund amount is greater than \$5,000. No later than a week from today, by July 16, 2012, the Town will file a Bill of Interpleader with the Rockingham County Superior Court. The sole purpose of the action is to allow the respective payors and property owners where the amount at issue is greater than \$5,000 to determine who should properly receive the refunds. The state statute is sufficiently vague that the Town cannot be certain.

There are more than 400 hundred properties where the refund amount is less than \$5,000. Most often, the amount is less than \$1,000. The Town will post a list of the properties, the payors, the current property owners of record and the amount

involved to reach property on its website and at the Town offices. In these instances, we are hopeful that the payors and the current property owners of record will reach an accord that will result in the matter not being added to the superior court action. The funds related to these matters will be placed in an interest bearing escrow account. If the Town is presented with an agreement between the respective parties, the Town will issue refunds consistent with the agreement. If the parties are unable to reach an agreement, the Town will hold the money until a determination is made in the superior court action identifying the proper party to receive the refund.

The total amount of impact fees to be refunded is between \$1,200,000 and \$1,300,000, including interest. The Town currently is holding more than \$1,000,000 of the funds in its impact fees bank account. The remaining money to be refunded will be derived from funds budgeted, but not spent, during the fiscal year ending June 30, 2012.

Finally, Acting Town Manager William Hart already has instituted changes to the Town's record-keeping, accounting and notification practices regarding impact fees to ensure that the errors do not reoccur.

Baroff Professional Association
Attorneys

10 Commerce Park North ■ Suite 13B ■ Bedford ■ New Hampshire 03110
Phone: 603.647.4200 ■ Fax: 603.647.4664
www.baroffpa.com

Patricia M. Panciocco, Esq.

Direct Dial: 603.518.5370
ppanciocco@baroffpa.com

July 9, 2011

VIA E-MAIL ONLY

Michael Ramsdell
Ramsdell Law Firm
69 Bay Street
Manchester, NH 03104

RE: Impact Fees – Town of Londonderry – July 9 Town Council Meeting

Dear Attorney Ramsdell:

As I explained when we spoke, I do plan to attend the public meeting referred to above. However, due to a previous commitment, I may not arrive right away. In the event this matter is discussed by the Council prior to my arrival, I would like to request these questions be entered into the record for consideration, although I realize no immediate response may be forthcoming:

1. Will impact fees held for more than six years, other than those imposed for State roads, also be returned?
2. Will impact fees for which there has been no corresponding voter appropriation be returned to fee payers?
3. Will school impact fees continue to be collected although the schools now have excess capacity?
4. Will impact fees expended without Town Council authorization, or which lack a corresponding voter appropriation, be returned?
5. Will impact fees collected for the northwest fire station since 1994, to which a \$1.6 million dollar federal grant applied and which was not constructed until 2010, be recalibrated to reflect the application of that grant, or otherwise refunded?

Although this list of questions is not complete and which I reserve the right to amend, responses to these questions would be very helpful. In the event I do not arrive before the public hearing is closed, I would very much appreciate these questions being read into the record.

Thank you and I look forward to meeting you in person.

Very truly yours,



Patricia M. Panciocco