

# LONDONDERRY TOWN COUNCIL MEETING MINUTES

January 20, 2020

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

Present: Chairman John Farrell; Councilor Tom Dolan, Jim Butler and Ted Combes; Town Manager Kevin Smith; Assistant Town Manager Lisa Drabik; Executive Assistant Kirby Brown; Absent: Vice Chairman Joe Green

## CALL TO ORDER

Chairman Farrell called the Town Council special meeting to order and led the Pledge of Allegiance. This was followed by a moment of silence for all of those who serve us both here and abroad and for the first responders in Londonderry who take good care of the town.

## PUBLIC COMMENT

Chairman Farrell read a letter into the record from Jack Falvey. See attached letter. Chairman Farrell stated that the Council asked the Town Attorney about this issue that was raised at a previous meeting, as part of the Woodmont Commons PUD Master Plan. Chairman Farrell presented the memorandum and opinion from the Town Attorney. See attached.

Ray Breslin, 3 Gary Drive, stated that this agreement had more to do with the people of Londonderry, apple trees and the apple way. Breslin stated that we have gone to the state and requested an apple way scenic route yet we don't seem to take that into account. Breslin asked what the problem is with them continuing to leave three rows of trees there. Chairman Farrell stated that they have a state requirement and an EPA requirement to mitigate the soil there. They are probably going through the process, Chairman Farrell stated that that would be his guess. Chairman Farrell reminded Breslin that the Town Council does not vote on sub divisions and site plans. The Planning Board does.

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## PUBLIC HEARING

Motion to open public hearing made by Councilor Dolan and second by Councilor Combes. Chair votes 4-0-0.

Finance Director Justin Campo presented the Council with the Warrant, updated tax calculations, as well as the updated operating Budget and Revenue Budget for the General and Sewer Fund. There are two citizen petitions, one is for climate pollution, the other is for Keno games.

The Council went through the Warrant Articles, read them into the record, motioned to move them to the ballot and motioned to support or not.

Article 1: No action required.

Article 2: Councilor gave a 4-0-0 yes vote in support of article. Motioned by Councilor Dolan. Second by Councilor Combes to move to warrant. No public comment.

Article 3: Councilor gave a 4-0-0 yes vote in support of article. Motioned by Councilor Dolan. Second by Councilor Combes to move to warrant. No public comment.

Article 4: Councilor gave a 4-0-0 yes vote in support of article. Motioned by Councilor Dolan. Second by Councilor Combes to move to warrant. No public comment.

Article 5: Councilor gave a 4-0-0 yes vote in support of article. Motioned by Councilor Dolan. Second by Councilor Combes to move to warrant. No public comment.

Article 6: Councilor gave a 4-0-0 yes vote in support of article. Motioned by Councilor Dolan. Second by Councilor Combes to move to warrant. No public comment.

Article 7: Councilor gave a 4-0-0 yes vote in support of article. Motioned as amended (added wording) by Councilor Dolan. Second by Councilor Butler to move to warrant.

Ray Breslin, 3 Gary Drive, stated that the original money that the Town of Londonderry was given, was money that was supposed to be given back to tax payers. Kevin Smith

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72 stated that the monies in this fund have to be used for highway purposes in town. Smith  
73 stated that the wording needs to be general just in case if something goes wrong with the  
74 project. This would save us from having to do another warrant articles in the future.

75  
76 Article 8: Councilor gave a 4-0-0 yes vote in support of article. Motioned by Councilor  
77 Dolan. Second by Councilor Butler to move to warrant. No public comment.

78  
79  
80 Article 9: Councilor gave a 4-0-0 yes vote in support of article. Motioned by Councilor  
81 Dolan. Second by Councilor Butler to move to warrant. Article moved to warrant.

82  
83 Councilor Combes asked if going forward this is going to be enough money for the  
84 buildings and maintenance. Steve Cotton stated that the buildings are getting older but it  
85 will be based on the numbers he worked out for our current needs.

86  
87 Article 10: Councilor gave a 4-0-0 yes vote in support of article. Motioned by Councilor  
88 Dolan. Second by Councilor Butler. Article moved to warrant.

89  
90 Councilor Combes asked why we keep putting money into this budget. Smith stated that  
91 it's for the flyover every five years. We do a very detailed flyover of the town.

92  
93 Article 11: Councilor gave a 4-0-0 yes vote in support of article. Motioned by Councilor  
94 Dolan. Second by Councilor Butler. Article moved to warrant. No public comment.

95  
96 Article 12: Councilor gave a 4-0-0 yes vote in support of article. Motioned by Councilor  
97 Dolan. Second by Councilor Butler. Article moved to warrant. There was an amendment  
98 with the wording. Council voted on amendment.

99  
100 Article 13: Councilor gave a 4-0-0 yes vote in support of article. Motioned by Councilor  
101 Dolan. Second by Councilor Butler. Article moved to warrant. No public comment.

102  
103 Article 14: Councilor gave a 4-0-0 yes vote in support of article. Motioned by Councilor  
104 Dolan. Second by Councilor Butler. Article moved to warrant. There was talk about an  
105 amendment to the wording but was decided not to so that the articles don't appear too  
106 long and the money is not restricted to a certain thing.

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107  
108 Article 15: Councilor gave a 4-0-0 yes vote in support of article. Motioned by Councilor  
109 Dolan. Second by Councilor Butler. Article moved to warrant. No public comment.  
110  
111 Jennifer Touma, 102 Fieldstone Drive, asked where the money is coming from from the  
112 prior budget. Smith stated that it comes from the surplus budget. That's where the  
113 additional \$15,000 is coming from. Usually when you see zero tax impact, it's coming  
114 from Undesignated Fund Balance.  
115  
116 Article 16: Councilor gave a 4-0-0 yes vote in support of article. Motioned by Councilor  
117 Dolan. Second by Councilor Butler. Article moved to warrant.  
118  
119 Article 17: Councilor gave a 4-0-0 yes vote in support of article. Motioned by Councilor  
120 Dolan. Second by Councilor Butler. Article moved to warrant.  
121  
122 Janusz Czyzowski, Public Works Director, went over the cost and square footage of the  
123 paving of the Town Hall parking lot.  
124  
125 Ray Breslin, 3 Gary Drive, asked if it includes the police department part as well. Smith  
126 stated no.  
127  
128 Article 18: Councilor gave a 4-0-0 yes vote in support of article. Motioned by Councilor  
129 Dolan. Second by Councilor Butler. Article moved to warrant. No public comment.  
130  
131 Article 19: Councilor gave a 4-0-0 yes vote in support of article. Motioned by Councilor  
132 Dolan. Second by Councilor Butler. Article moved to warrant. No public comment.  
133  
134 Article 20: Councilor gave a 4-0-0 yes vote in support of article. Motioned by Councilor  
135 Dolan. Second by Councilor Butler. Article moved to warrant. No public comment.  
136  
137 Article 21: Councilor gave a 4-0-0 yes vote in support of article. Motioned by Councilor  
138 Dolan. Second by Councilor Butler. Article moved to warrant. No public comment.  
139  
140 Article 22: Councilor gave a 4-0-0 yes vote in support of article. Motioned by Councilor  
141 Dolan. Second by Councilor Butler. Article moved to warrant. No public comment.

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142  
143 Article 23: Councilor gave a 4-0-0 yes vote in support of article. Motioned by Councilor  
144 Dolan. Second by Councilor Butler. Article moved to warrant. No public comment.  
145  
146 Article 24: Councilor gave a 4-0-0 yes vote in support of article. Motioned by Councilor  
147 Dolan. Second by Councilor Butler. Article moved to warrant. No public comment.  
148  
149 Article 25: Councilor gave a 4-0-0 yes vote in support of article. Motioned by Councilor  
150 Dolan. Second by Councilor Butler . Article moved to warrant. No public comment.  
151  
152 Article 26: Councilor gave a 4-0-0 yes vote in support of article. Motioned by Councilor  
153 Dolan. Second by Councilor Butler. Article moved to warrant. No public comment.  
154  
155 Article 27: Councilor gave a 4-0-0 yes vote in support of article. Motioned by Councilor  
156 Dolan. Second by Councilor Butler. Article moved to warrant. No public comment.  
157  
158 Article 28: There is no vote in support since it is a citizen petition. Motioned by  
159 Councilor Dolan. Second by Councilor Butler. Article moved to warrant. No public  
160 comment  
161  
162 Articles 29: There is no vote in support since it is a citizen petition. Motioned by  
163 Councilor Dolan. Second by Councilor Butler. Article moved to warrant. No public  
164 comment.  
165  
166 Article 30: Councilor gave a 4-0-0 yes vote in support of article. Motioned by Councilor  
167 Dolan. Second by Councilor Butler. Article moved to warrant. No public comment.  
168  
169 Councilor Combes asked where the article was for the Charter Amendment. Smith stated  
170 that we technically can't put it on the ballot until the 45 day window is complete for the  
171 review by the Department of Revenue and the Secretary of State's Office and Attorney  
172 General. It also doesn't have to be moved to the warrant as long as there are no issues.  
173 The 45 day window will be up prior to Deliberative Session, February 2<sup>nd</sup>.  
174  
175 Doug Thomas State Rep, went through the fact that some of the bills up at the State House  
176 coming up will effect people's taxes, income, etc.

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Cherylann Pierce, 23 Mayflower Dr, presented the Council with a flyer regarding the Carbon Divided Act that pertains to the Citizen Petition about pollution. See attached.

Motion to close public hearing made by Councilor Dolan and second by Councilor Combes. Council votes 4-0-0.

### OLD BUSINESS

NONE

### APPOINTMENTS

Motion to appoint Jim Terabassi as the one-year full time on the Zoning Board made by Councilor Dolan and second by Councilor Butler. Chair votes 4-0-0.

Motion to appoint John Mahon as a member of Solid Waste and Environmental Committee made by Councilor Dolan and second by Councilor Comes. Chair votes 4-0-0.

Motion to appoint Brian Battaglia and Suzanne Brunelle as Alternates on Southern New Hampshire Planning Commission made by Councilor Dolan and second by Councilor Butler. Chair votes 4-0-0.

### NEW BUSINESS

Chairman Farrell introduced Order #2020-02, an Order relative to the expenditure of Maintenance Trust Fund for various projects. Steve Cotton presented. The Order is for \$6,043.84. Motion to approve Order #2020-02 made by Councilor Combes and second by Councilor Dolan Chair votes 4-0-0.

Chairman Farrell introduced Resolution #2020-01, a Resolution relative to the elderly exemption policy, and Resolution #2020-02, a Resolution relative to the disabled person's exemption police. Motion to waive the first reading of Resolution #2020-01 and #2020-02 and schedule a public hearing for February 3<sup>rd</sup> made by Councilor Dolan and second by Councilor Combes. Chair votes 4-0-0.

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213

### APPROVAL OF MINUTES

214

215 Motion to approve Town Council minutes from January 6, 2020 made by Councilor  
216 Combes and second by Councilor Dolan. Chair votes 5-0-0.

217

218

### ADJOURNMENT

219

220 Motion to adjourn made by Councilor Dolan and seconded by Councilor Combes. Chair  
221 votes 4-0-0.

222

223 Notes and Tapes by: Kirby Brown Date: 01/20/2020

224 Minutes Typed by: Kirby Brown Date: 01/29/2020

225 Approved by: Town Council Date: 02/03/2020



*replaced with crab apple trees, hence the “staggered” concept (first full paragraph, page three).*

*As sad as I am about the old trees and as sorry as I am to see the orchard land be turned into a housing development (quite like “they paved paradise, they put up and parking lot”) I would do whatever I could to be sure that the developer will leave the old trees that are left, including getting that on the record at the Council meeting, from both sides (Council and developer).*

**Because of no notice from Ramsdell as promised, I have no medical coverage for tonight and cannot attend.**

**If this could be read I will watch for it on TV.**

**“I would like to once again thank the Town Council for looking in to this matter. There is little doubt that this is a legal switch of a hard won PUD element. Abutters notification should be on record and I would respectfully like to request a copy of that notification.**



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The ethics of this switch should be objected to. I would hope the Town Council would go on record as being opposed to the the destruction of the third row of trees as an ethical issue and would vote that request in open session. I would like to request that vote.

Jack Falvey 22 Cortland Street as in  
**apples** Londonderry NH.”

Regards,  
Jack Falvey  
World Headquarters 603 432 5715  
[www.MakingTheNumbers.com](http://www.MakingTheNumbers.com)  
22 Cortland Street  
Londonderry, New Hampshire 03053  
USA

**From:** Kevin Smith  
**Sent:** Monday, January 20, 2020 1:36 PM  
**To:** Jack Falvey  
**Subject:** RE: Memorandum Regarding Woodmont Trees

That's fine. Thanks Jack.

## **MEMORANDUM**

To: Londonderry Town Council  
From: Michael D. Ramsdell, Town Attorney  
CC: Town Manager Kevin Smith; Town Planner Colleen Mailloux  
Date: January 20, 2020  
Re: Removal of Apple Trees on Gilcreast Road

### **Summary of Opinion**

You requested that I review relevant documents and meeting minutes regarding the recent removal of apple trees on Gilcreast Road and opine whether the decision to allow such removal and replacing removed apple trees with crabapple trees<sup>1</sup> was reached improperly. In short, no laws, rules, regulations, or ordinances were violated during the process that resulted in the decision to remove certain apple trees and to replace them with crabapple trees. The developer filed a proper subdivision application, Town Staff made a discretionary recommendation to the Planning Board, and the Planning Board did not exceed its authority in approving the subdivision in accordance with the Woodmont PUD Master Plan ("Master Plan").<sup>2</sup> Moreover, the issues currently under consideration are untimely. The issues either were not raised before the Planning Board while the subdivision plan was pending for approval or were raised and decided by the Planning Board as part of the approval. The Planning Board's approval could have been challenged only within thirty days of its decision. Since no challenge was timely raised, the issues were waived.

### **Basis for Opinion**

On August 1, 2018, the Planning Board accepted as complete a subdivision plan to create twenty-eight residential lots in Woodmont Commons, sub-areas WC-4 and WC-5, on Pillsbury and Gilcreast Roads. As part of the subdivision plan, the developer requested two waivers from the Town's subdivision regulations. The approved Planning Board minutes<sup>3</sup> provide that the developer advised the Planning Board that: (1) the 50-foot buffer around the PUD would not be disturbed; and (2) two rows of apple trees would be preserved, with a third row added as required by the PUD. The developer also stated that the Planning Board would be provided with the

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<sup>1</sup> The literature I have reviewed leads me to believe that there may be a relatively small distinction between a "crabapple tree" and a "crab apple" tree. In most instances, it is unclear to me whether the parties involved referred to one or the other. Because the distinction appears immaterial for purposes of this memorandum, I have not precisely discerned the distinction. Suffice it to say that there is no significant dispute that crab apple trees and crabapple trees are of the same genus as apple trees, *Malus*, and are part of the wild species of the apple tree.

<sup>2</sup> The Master Plan may be found at <https://www.londonderrynh.org/planning-board/pages/woodmont-commons-pud-master-plan-page>. The subdivision plan, Woodmont Commons Planned Unit Development Subarea WC-4 & WC-5, dated November 21, 2018, may be found at <https://www.dropbox.com/s/avemvnnny1v2es36/10-41%2C%2052%2C%2054-1%2C%20Woodmont%20WC-4%20%26%20WC-5%2C%20Signed%20Plans%20D-41870%2C%20PB%20signed%2011.20.19.pdf?dl=0> (section 2.3.5 PUD perimeter buffers).

<sup>3</sup> All Planning Board minutes cited herein are available through the Town's website.



1/2 inch caliper crabapple tree[s] that would be six to eight feet tall when planted and grow to 25 feet at full height.”

Town Planner Colleen Mailloux advised the Planning Board that the developer’s proposal would not require an amendment to the Woodmont Commons PUD, but would be “a modification specific to this subdivision plan.” Town Planner Mailloux additionally advised the Planning Board that it “would be voting on whether or not to approve replacing all the trees at one time rather than in a staggered fashion.” The Town Planner noted that the term “staggered fashion” was not precisely defined in the Woodmont Commons PUD Master Plan.

Significant discussion followed about whether apple trees needed to be replaced with apple trees or could be changed to crabapple trees. Additional discussion involved a potential mixture of apple trees and crabapple trees. Ultimately, the Town Planner refocused the discussion by reminding everyone that additional input regarding the species of trees could be provided at a later date, “but the question tonight is on removing all the trees at one time with a replacement in full versus staying with the staggering requirement of the PUD.”

Town Planner Mailloux was correct in advising the Planning Board that the question of tree removal was not timely. The only tree removal under discussion had been approved by the Planning Board through its conditional approval of the subdivision plan, which included the landscape plan, in August 2018. After further discussion, primarily about soil, the Planning Board adjourned the meeting via motion.

It is my understanding that the current issues raised regarding the removal and replacement of trees along Gilcreast and Pillsbury Roads followed the Planning Board meeting in October 2019, and the developer’s subsequent removal of trees identified on the landscape plan. I also understand that today, following the removal of some apple trees, two rows of apple trees remain in most areas, although there is only one row of apple trees in spots because previously there were only two rows. There does not appear to be any dispute that the developer intends to plant spring snow crabapple trees where the third row of apple trees was removed and where the second and third rows of apple trees previously did not exist. For the reasons stated above, I cannot find, and no one has presented to me, evidence that the developer has acted in any manner inconsistent with approval received from the Planning Board after public hearing on the plan during which any issues with the plan could have been raised.

However well-intentioned, the issues recently raised are untimely.<sup>8</sup> Once the Planning Board approved the subdivision plan and the approval was not challenged within 30 days, issues that were not raised during the approval process or challenged post-approval are deemed waived. Again, however, it is my opinion that no laws, rules, regulations, or ordinances were violated during the process. Instead, the developer filed a proper subdivision application, Town Staff made a discretionary recommendation to the Planning Board, and the Planning Board did not

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<sup>8</sup> This includes the recent claim that the trees that were removed were healthy and not diseased as represented by the developer. The condition of the apple trees was not contested before the Planning Board. The only evidence before the Planning Board was that the apple trees were diseased.

# Energy Innovation AND Carbon Dividend Act

## THE BIPARTISAN CLIMATE SOLUTION

H.R. 763

This bill will drive down America's carbon pollution and bring climate change under control. It is:

EFFECTIVE



GOOD FOR PEOPLE



GOOD FOR THE ECONOMY



REVENUE NEUTRAL



### Republicans and Democrats agree



Charge a fee on fossil fuels at the source (mine, refinery, or first pipeline)



Return 100% of net revenue to households as a dividend

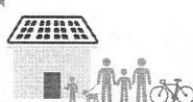
### This benefits people, the economy, and the environment

#### FAMILIES GET PAID

TODAY  
\$0  
paid to households in carbon dividends



THE FUTURE  
**\$3,456**  
annual dividend for a family of 4



**\$500**  
average extra pocket money per person each year

The money goes back to households as a monthly carbon dividend.

You choose how to spend it.

Which means...



**2.1 million**  
**LOCAL JOBS**  
across America

With this policy, most people receive more in carbon dividends than they pay in increased costs for fuel or other products. They will have more money in their wallets to spend in their communities, generating new jobs.

Meanwhile, energy companies and leading industries are motivated to pollute less and save money.

Which means...

#### JOBS ARE CREATED

TODAY  
\$240 billion  
in annual costs from environmental and health harms of fossil fuels



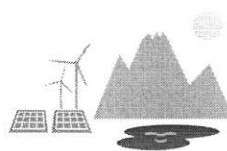
THE FUTURE  
**2.1 million**  
jobs created over 10 years in local communities



#### A HEALTHIER ENVIRONMENT



TODAY  
**114,000** lives lost  
each year due to air pollution



THE FUTURE  
**295,000** lives saved  
through 2030 because of better air quality

**40%**

**less carbon emissions over the next 12 years**

A carbon fee and dividend will create cleaner air and a stable climate for you and your family.

Sources for statistics available at: <https://energyinnovationact.org/data-sources>

