

**MINUTES
DOVER CITY COUNCIL
CITY COUNCIL CHAMBERS
REGULAR COUNCIL MEETING
OCTOBER 8, 2003
7:00 P.M.**

1. MOMENT OF SILENCE

2. PLEDGE OF ALLEGIANCE

Hindle led the pledge of allegiance.

3. ROLL CALL

Those present: Councilors Mayberry, Trefethen, DeDe, Christenbury, Mayor Pro Tem Dunnington, Councilors Hindle, Keays as well as Mayor Nossiff and Assistant City Manager Mike Joyal. Councilor Quigley was absent.

4. PROCLAMATIONS/AWARDS

The Mayor read a proclamation on Breast Cancer Awareness Month.

5. CITIZEN'S FORUM

The Mayor opened Citizens Forum stating a person could ask a question and receive an answer at this forum but not in the public hearing.

Carolyn Schulten of 18 Center Drive has a question on Center Drive, if the City retains the land on Center Drive, will it be paved in the future. Attorney George Wattendorf says if the discharge is denied by the city council, the road would have to be brought up to city standards by plowing, maintaining and picking up the trash. She is surprised that so many of the Cote Drive neighbors are concerned with this issue; prior to all this only a few people walked down to this area on Center Drive. She continued, this tiny little piece of land is not heavily traveled and there are other walking paths in the area. She is concerned if it becomes a city street and is paved as she likes the green space and would like it maintained by the abutters.

Joyce ElKouarti of 112 Bellamy Woods is here on behalf of the Conservation Commission in support of the resolution on releasing funds for a conservation easement in the amount of \$95,000, they already have the approval for \$85,000; so they really only need \$10,000 more. The property is now valued at \$102,000, they feel this is well worth the money.

Sam Bittner of 354 Dover Point Road has a question for Attorney Wattendorf, if they find for the abutters is there any reason that an easement could not be granted. George says the abutters would become the owners of the road and they could grant an easement. Bittner wonders about the RSA 477 stating if people have used the property as a ROW for so many years. George responds that this is a different situation, the developer dedicated this road to the City and the City neglected to accept this street. Bittner continued there is another issue also as there is another parcel of property on Cote Drive; then those abutters would have the same procedure to go through. George says there is indeed a portion of Cote Drive that has not been accepted; tonight though, the only discharge before the council is Center Drive.

Don Fortin of 2 Center Drive is new to the neighborhood he believes the development was built in 1956, he asked can this road can be legally blocked off. George says you cannot obstruct each other from going on that road; there will be access of right of passage to abutters only.

Alice Briggs of Cote Drive is here to bring attention to a point just made, she says more people have entered Cote Drive from Center Drive because that is where more of the houses are built but one of the people there have constructed a fence. Regardless of what you decide, this is another issue that needs to be addressed, and does this person have the right to block the road. She feels a property owner on Center Drive should have access; right now that access is blocked you are also denying them access to use the closest fire hydrant as well as to the Piscataqua River.

Mary Liz Lancaster of 21 Cote Drive asked do you have to ask the abutters permission to walk on their land. George says if it discharged to the abutters, if they want to give the rights off, they can. If the owners want to give permission, it should be in writing though.

William Colbath is here for the Garrison Road/ Spruce Lane area issue. He understood there would be some sort of resolution on the agenda tonight as Old Garrison Road is blocked off. Mike says they are investigating the class six road status, but they are not a point where they can explain it yet. Mike said he will be in touch with him.

John Curth of 16 Cote Drive stated he wants to point out some things, he put up the fence. If it gets discharged, does he have to grant an easement to the property owners? George says that will have to be decided by the neighbors. He looked into the fire hydrant issue and spoke to Chief Plummer, he explained about the hydrant that they will try to connect to. He said the next hydrant is located near Alice's house.

Steven Schulten of 18 Cote Drive asked if the land is not discharged, will the city be required to plow and maintain the road.

Don Fortin 2 Center Drive, has a question on the right to walk through there, George says you will all have to get together as a group and decide how you want to handle it. The Mayor explained to him that they do not want to give specific legal advice and that they (the neighbors) should hire an attorney and then maybe form an association.

Sam Bittner again asked why the road has not been accepted as yet. The Mayor says it is a financial issue, Christenbury says it would cost \$200,000 to bring this up to city code, and also there are 109 other streets the City would have to address. He says there are 3 parcels on Cote Drive that are abutters; would these people inherit costs for the upkeep of this area. George says if your land abuts Center Drive, then yes.

Paul Barton of 62 Belknap Street stated on the agenda is a resolution to purchase some land from the State of NH and then to transfer it to an abutter. He remembers a few years ago this room was filled with abutters he mentions the easement in the resolution, what kind of an easement is this and is it a parking report, he has several questions on this item he would like these questions answered before the Council adopts this item.

Nick Skaltsis is here for 12B-8, and the final acceptance of three school projects that are now complete. He will speak when the resolution comes up.

6. PUBLIC HEARINGS

- A. Resolution RE: Discharge of Center Drive. Sponsored by Mayor Pro Tem Tom Dunnington, by Request. **(SEE ITEM 11C-1)**

Alice Briggs of 10 Cote Drive again has lived there since 1987. She presented a letter from Mrs. Bittner whose husband passed away this past week. She stopped by the City Clerk's Office this week to check and see if we had the two additional letters she wanted on the agenda. This is not a new issue. She read a prepared statement explaining her position on this parcel that is proposed to be discharged. The first house was built on Center Drive in 1983. George has said the city has not maintained Center Drive

but the Community Services Department did fill some pot holes down there. She has no problem paying taxes for things she does not use such as the ice arena or either of the City pools or the Butterfield Gym. The cost of accepting this road should not be a factor. She has been looking at a lot of roads in Dover, and there are a lot of them that are no wider than Center Drive, as for the future on the widening of the Dover Point Road to the bridge from the Dover tolls as it will be widened sometime. She referred to a plan that explains the widening of the Dover Point Road in that area. She explained this has basically been a very friendly neighborhood, with the neighbors helping each other; she would like this be kept a city road way. As an example, she mentioned the bike path at the Bittner's property. This benefits all people even those that come from way to use the bike path.

Lisha Boucher of 4 Center Drive addressed the issue of having the City fix Center Drive, she mentioned the neighbor on 1 Cote Drive and that Community Services were repairing an area of the street that a fire truck had damaged. Her concern is we need to take into consideration the liability for that portion of the road.

Mr. Peter Rose of 4 Cote Drive is not in favor of discharging Center Drive. For the past 18 years, his family has used this road for access. In fact every kid in the neighborhood uses Center Drive to get to the school bus. Until recently you could drive the length of Center Drive; that was until two years ago when an abutter put a fence up. Now another owner has taken it upon himself to put up a big stockade fence. He continued reading portions of a letter he had written to the City Attorney. These people have no right to issue threats to other neighbors.

Mrs. Schulten again feels they are at a different place here. If the city takes this back as a road, she asks all the neighbors to think this all the way through, traffic could continuously come thru there. She wants them to stop and think about this.

Leu Schulman of 13 Cote Drive in response to this issue stated UPS, Fed X, etc use this road daily; if there is a road that can be used, he feels it is a crime that he has to suffer with all this traffic because these people want a private way. He hopes the city refuses to give them this easement. He added they are all willing to pay taxes on it.

Dennis Boucher of 4 Center Drive stated if the Fed X truck has to turn around that is not good, if the trucks are an issue, for Mr. Rose, but when he bought his house on Cote Drive from the City of Dover, it had a two foot dirt pile in the road. He is here to state the facts, and that is Center Drive has not been used by the general public.

John Curth again of 16 Cote Drive stated he has lived there 22 years, when he first moved there, no one had access because it was all woods and underbrush with no houses on Center Drive. He read a prepared statement explaining his position; he is here tonight to tell the council to rightfully discharge the land to the abutting land owners. Hopefully it will be a first step in restoring peacefulness to the neighborhood.

Susan Arsenault of 11 Cote Drive is here to say she has walked her dog and rode her bike there for 14 years. One night she was walking and there was a stockade fence, she is one of quite a few people that use that road on a regular basis.

Kim Carlos has resided with Mr. Curth, for the past 6 years, and she has never seen this road used by the prior people that have spoken, she wants it discharged.

John Riley of 338 Dover Point Road owns the house right on the corner and he disputes what they say, he has been there since 1977 and the neighbors have always walked up and down this street. Why did the city permit these houses to be built if the road is not sufficient.

Mary Liz Lancaster of 21 Cote again, would like to continue walking on it again.

Sam Bittner again of 346 Dover Point Road read the letter from his mom of 353 Dover Point Road who has walked thru Center Drive for several years, there has never been a problem until this year, and he wants the road to not be discharged. He has lived there since 1962 where he played on Center Drive as a kid as well as the other two properties at the end of Cote Drive. His son as well as Mr. Curth's son were best of friends. He stated that he is the general public, John and I do use Center Drive.

John Curth again can only recall the children that used Center Drive were his son's friends, as far as non neighbor kids, and Sam's mother he has never seen them on it, he is disputing these facts.

- B. Ordinance #21-09/10/2003 Chapter 68, Building Construction, Section 68.1, Statutory Authority and Section 68-2, Adoption of Standards. Sponsored by Mayor Alex Nossiff, by Request. (**SEE ITEM 11A-1**)

Seeing no one the mayor closed the public hearing.

7. MINUTES

- A. Regular Council Meeting – September 10, 2003

Hindle moved seconded by Mayberry to accept. All were in favor.

8. REPORTS OF SPECIAL AND STANDING COMMITTEES

- A. Transportation Advisory Commission – Councilor Jason Hindle

Hindle explained they will have their first public forum next Wednesday night at 7 pm in the auditorium; it will be open to the public to review and listen to the history as well as provide feedback.

Christenbury wants to move truck traffic up, his wife was rear ended today by a truck and we need to address this issue soon.

- B. Joint Building Committee) – Councilor Jason Hindle

This project is complete.

- C. Planning Board – Councilor Parks Christenbury

No report

- D. Solid Waste Advisory Commission – Councilor Thomas Dunnington

On the 18th of October they are tentatively planning a dedication of the new recycling center. The demolition and debris area is scheduled to close on November 14th. Fall clean up bags will be available on October 20th. They talked about contacting communities around Dover to see if they can make it work better and make it more cost efficient to operate as well to see if there is any interest in their using the facility.

- E. Arena Commission – no report.
- F. Arts Commission – Councilor Matt Mayberry

This past Saturday they had a booth at Apple Harvest Day where they had artisans sign up that are here in the community. The Arts Commission was a contributor to Apple Harvest Day as well as to the film festival that was shown at the Strand Theater. He reminded people that the Arts Commission meets on the first Thursday of each month.

- G. Cable Channel Policy Review Committee – Council Matt Mayberry

We are discussing this issue later.

- H. Strafford Regional Planning Commission – Councilor Kevin Quigley
- I. COAST Bus – Councilor Matt Mayberry

Christenbury moved seconded by Mayberry to accept the reports, all were in favor.

9. MAYOR'S REPORT

The only report he has is the score is 0-0 on the Red Sox game in third inning of the ALCS.

10. CITY MANAGER'S REPORT

Mike Joyal reported as a result of Apple Harvest Day, Henry Law Park is a muddy mess so the Chamber of Commerce has offered to help us bear the cost of restoring the park back to the way it was.

11. UNFINISHED BUSINESS

A. ORDINANCES IN 2ND READING

1. Ordinance #21-09/10/2003 Chapter 68, Building Construction, Section 68.1, Statutory Authority and Section 68-2, Adoption of Standards. Sponsored by Mayor Alex Nossiff, by Request.

DeDe moved seconded by Christenbury to adopt. DeDe spoke with a builder today and the actual title should say "international code council". DeDe moved seconded by Christenbury to amend after the word "amended" by adding "by the International Code Council". DeDe continued also after the last paragraph he would like to add "the Building Inspector is to use judgment and discretion in the renovation of older homes". Christenbury wants it clarified what is meant by an older home. Mike says on that specific issue there is discretion allowed to the enforcing authority. DeDe will now withdraw the second part of his amendment. Dunnington says he knows from experience there is a lot of flexibility built into it as he has worked with the building inspector on several issues. Mike says this wording is following the recommended language in the code. What DeDe is suggesting may not be enforceable. DeDe says that is his point. Mike says his recommendation is that the city needs to review it again before updating it. Christenbury agrees with DeDe. Trefethen also agrees but says historically we have been behind by a couple of years. Dunnington wants to hear from Tom Clark, Christenbury seconds the motion to table it until next month. All were in favor.

B. ORDINANCES IN 3RD READING

C. RESOLUTIONS

1. Resolution RE: Discharge of Center Drive. Sponsored by Mayor Pro Tem Tom Dunnington, by Request.

Christenbury moved seconded by Hindle to suspend the rules to bring the resolution forward, motion passed on a roll call vote of 8-0. Christenbury moved seconded by Hindle to adopt. Christenbury feels we cannot legislate a neighborhood; we have very specific zoning ordinances. When you build on a private road, you accept responsibility for your trash and plowing. We do not have an option; we cannot say we are not going to give this to the abutters. The Mayor will abstain because of a conflict of living in the neighborhood. We must dictate to the needs of the city and we do not have \$200,000 to bring this road up to code. This is an issue where the City has researched the law, he is in hopes the neighborhood can work this out. We are obligated to discharge this road. Dunnington agrees with Christenbury but this is an unfortunate circumstance. We must remember people have come to the City and ask that it be brought up to City Code. The original developer is the one really responsible. He does not feel we, the City can put this kind of money into this to bring this up to code. Mayberry thanked the Bittner family for maintaining the bike path, he lives in the neighborhood, and about 5 years ago he took a walk and learned by a neighbor that he was trespassing. He understands this would come at a cost., he does not feel we can hold the developer responsible for something that occurred 40 years ago. He did see the DOT plan where you would take a left onto Center Drive and that is a viable plan of the DOT. If we give this back to the abutters, we may end up buying it back from the abutters. DeDe has gone down and looked at the area, the characterization of general public use is inappropriate here. The City does not now nor has ever owned the land, the argument of Christenbury and Dunnington is correct. Unfortunately we cannot give into the larger number of people that are opposed to it. Keys has been listening, if the contractors that owned that land gave that right of way to the City in 1956, why did the City take so long to try to develop it. He feels there was a disservice done to these people down there, the City has been lapse, and we owe it to these people to put a road thru there as it should have

been done 30 or 40 years ago. Christenbury feels the City gets blamed for a lot of things, the City didn't do anything wrong on this.

Trefethen agrees with Christenbury, he sympathizes with the neighborhood, but there are only two options here discharge the road or not. Motion passed on a roll call vote of 5-2 to discharge. Mayberry and Keays opposed.

Christenbury asked for a 5 minute break.

12. NEW BUSINESS

A. CONSENT CALENDAR

1. Parade Permit – Dover Chamber of Commerce - Holiday Parade
2. Raffle Permit - Dover Main Street Program
3. Raffle Permit – First Parish Church
4. Raffle Permit – Community Services Department, Recreation Division
6. Resolution RE: Closing a Portion of Central Avenue for the Annual Holiday Parade. Sponsored by Mayor Alex Nossiff, by Request.

Hindle moved seconded by Trefethen to grant. All in favor.

B. RESOLUTIONS

1. Resolution RE: Award of Bid #B04012 for #2 Heating Oil and Diesel Fuel. Sponsored by Mayor Alexander G. Nossiff, by Request.

Mayberry moved seconded by Keays to adopt. Motion passed on a roll call vote of 7-0.

2. Resolution RE: Award of Request for Proposal (RFP) #B04009 for Water Supply Development and Water Treatment Engineering Services. Sponsored by Mayor Alexander G. Nossiff, by Request.

Mayberry moved seconded by Hindle to adopt. Motion passed on a roll call vote of 7-0.

3. Resolution RE: Authorization to Apply for Bureau of Justice Assistance Block Grant to Purchase Equipment for the Police Department. Sponsored by Mayor Alexander G. Nossiff, by Request.

Mayberry moved seconded by Keays to adopt. Motion passed on a roll call vote of 7-0.

4. Resolution RE: Acceptance of U.S. Geological Survey (USGS) Grant for Metadata Creation and Implementation. Sponsored by Mayor Alexander G. Nossiff, by Request.

Mayberry moved seconded by Hindle to adopt. Motion passed on a roll call vote of 7-0.

5. Resolution RE: Award of Bid #B04014 for a Dump Body, Sander and Snow Plow Equipment. Sponsored by Mayor Alexander G. Nossiff, by Request.

Mayberry moved seconded by DeDe to adopt. Motion passed on a roll call vote of 7-0.

DeDe asked when the council approves a request for a vehicle, is there an inventory of vehicles, DeDe continued is there is an accident report on these vehicles. Also Keays wants to know exactly what piece of equipment they need. Pete explained they have a truck with a bent frame because of all the ice we had last winter, and all of this equipment will be put on this one truck. Motion passed on a roll call vote of 7-0.

6. Resolution RE: Award of Purchase Order for the Acquisition of Food Concession Equipment at the Dover Ice Arena. Sponsored by Mayor Alexander G. Nossiff, by Request.

Christenbury has a problem with this resolution. How many people will we need to hire to do this as this was a private operation. Mike Joyal says staff will be running the kitchen again, Christenbury is opposed to this move. Mayberry asked what prompted this, Mike explained the old arena had a kitchen

facility that was run by staff. When the new one was built, there were no kitchen facilities and Dustons had been handling this area. Since that time, one of the study results is that is really a cash cow and the arena needs to rely on these funds from the kitchen.

Dustons was not going to renew their contract as it was not benefiting them as they have an 8% sales tax, we do not have that. We have not had a food stand open at the arena since July 1st. Just the first weekend the vending machines were open they made \$500 from one machine. Mayberry asked if these would be full or part time employees. Mike says this facility would make \$30,000 per year and these people would be part time, non union employees, DeDe asked who is going to run it. Mike Joyal says he and Gary are currently overseeing the operation. DeDe asked does any part of your salary get paid by the arena. Joyal says no. DeDe cannot support this resolution as he has not seen the plan, he needs more information. Joyal says again we do have experience in running the kitchen as we did it before. The staff are the same people that were involved in the Dustons operation. He cannot emphasize enough that this is a critical component of this operation. DeDe wants to see more detail in order to convince him this is the way to go and he would like to see vending machines instead. Keays asked if we have to buy all the equipment to operate the concession stand. So they would have to spend a little bit of money to make some. Christenbury is confused, which is it; the kitchen/concession works then we don't add a kitchen to the new facility and have a private vendor, then the vendor does not want to do this any more. He would like to table this. As this is a huge commitment to add City employees to the arena. Dunnington wants to know if we have looked at leasing the equipment, he wants us to look at the blueprint for the arena. Joyal asked that they authorize them to rent the equipment, Hindle moved with that caveat, Mayberry seconded the motion, that the City will lease the use of the equipment from Duston's until such time as we resolve this. Joyal added he was agreeable to ***deleted from** the purchase price. The Mayor says we will authorize a one month lease and table this until the November meeting. Christenbury moved to table, seconded by Mayberry with the lease caveat. Motion passed on a roll call vote of 7-0. (**amended 11-12-03*)

7. Resolution RE: Acceptance of New Hampshire Department of Environmental Services 2003 Coastal Illicit Discharge Elimination Grant. Sponsored by Mayor Alexander G. Nossiff, by Request.

Mayberry moved seconded by Christenbury to adopt.

Dunnington has a concern if this is really a problem here in this City; Mike says we still find wooden pipes in the ground that leak, etc. Motion to adopt passed on a roll call vote of 7-0.

8. Resolution RE: Final Acceptance of School Construction. Sponsored by Councilor Jason Hindle.

Christenbury moved seconded by Mayberry to suspend the rules to bring this item forward. Motion passed on a roll call vote of 7-0. Hindle moved seconded by Christenbury to adopt.

Nick explained the resolution. Saying all the projects came in on time and under budget. The projects are now complete. Christenbury commended the committee, he went down there and it looks so much better than it ever has, it does not match, but for the money we saved, it looks beautiful to him. The Mayor says he can't imagine the millions of dollars Nick has saved the City. Motion passed unanimously.

9. Resolution RE: Authorization to Purchase Railroad Right-of-Way from the State of New Hampshire and for Conveyance of a Portion of Said Railroad Right-of-Way to Abutter. Sponsored by Mayor Alexander G. Nossiff, by Request.

Mayberry moved seconded by Christenbury to adopt. The Mayor stated he has a conflict with this resolution, so he will be abstaining on this one. Dunnington also has a conflict. Christenbury made a motion seconded by Mayberry to refer this item to a workshop in November.

10. Resolution RE: Authorizing Release of Funds from the Conservation Fund for a Conservation Easement by the Dover Conservation Commission. Sponsored by Councilor Parks Christenbury.

Christenbury moved seconded by Mayberry to suspend the rules to bring this item forward, motion passed on a roll call vote of 7-0. Christenbury moved seconded by Hindle to adopt. Motion passed on

a roll call vote of 7-0.

11. Resolution RE: Adoption of Programming Policy for Dovertel TV and Channel 22. Sponsored by Councilor Matt Mayberry.

Mayberry moved seconded by DeDe to adopt. Mayberry moved seconded by Christenbury to amend his own resolution...DeDe handed out a typed list of his own amendments. Dunnington wants to know how you define educational; Mayberry says it has to be brought forth by the school department. DeDe explained his objectives. Christenbury moved seconded by Mayberry to table this item until November. Mayberry stated he will work with DeDe on this. All were in favor.

12. Resolution RE: Wireless Communication Tower Partnership Agreement. Sponsored by Councilor Parks Christenbury.

Christenbury moved seconded by Hindle to adopt. Motion passed on a roll call vote of 7-0.

13. RESOLUTION RE: The Plowing of Willow Street (currently a Private Road within the City of Dover)

Dunnington moved seconded by Mayberry to suspend the rules to introduce this item. Motion passed on a roll call vote of 7-0. Mayberry moved seconded by Christenbury to refer to a public hearing in November. Christenbury added he would like to see a legal opinion on this issue. All were in favor.

C. ORDINANCES IN 1ST READING

D. COUNCIL CORRESPONDENCE

1. Letter – Diana Carroll Regarding Farmers Market

Dunnington moved seconded by Christenbury to accept and place on file, all were in favor.

14. COUNCIL MATTERS OF INTEREST

Christenbury thanked the two new members for the level of decorum they have displayed at the last two meetings; he appreciates them. Keays commented on the trucks coming down Sixth Street, these roads are not built for these trucks. They are even using Grove Street and we just completed doing these streets. They should be using the turnpike. We have some problems with traffic on Chestnut and Sixth Street, it's a raceway. He wants to discuss truck routes sometime.

Hindle reiterated how important it is to come to the TAC meeting with the ongoing Traffic Study. next Wednesday evening.

The Mayor says in the November or December meeting he still wants to know what is the life of the pit and #2 have we not prejudiced our City well, how much have we collected from the trucking company and how much have we spent on ball fields and are they in compliance with the contract could we re-negotiate it.

Also, as a matter of fiscal fairness, he asked Joyal about his duties; are the scope of his duties changing and should we allocate his salary to the ice arena to save the books. And then finally although he is not anticipating, he does not know what Paul Beecher's contract says about vacation and sick time and what kind of accredited benefit will he take with him and how much vacation and sick time is being accrued; he just wants to avoid what golden parachute would be there, what cost to the City is there in the event of his departure. He wants Attorney Wattendorf to study this issue. We don't want some huge bombshell dropped on us.

14. ADJOURNMENT

Nossiff moved seconded by Christenbury to adjourn; all were in favor at 10:10 pm.