

Planning Board Minutes 11/08/11

NEWMARKET PLANNING BOARD MEETING MINUTES NOVEMBER 8, 2011

Present: John Badger (Chairman), Eric Botterman (Town Council ex officio), Elizabeth Dudley, Janice Rosa, Peter Roy, Diane Hardy (Town Planner), Rick McMenimen (Alternate), Adam Schroadter (Alternate)

Absent: Val Shelton (excused), Justin Normand (excused)

Called to order: 7:02 p.m.

Adjourned: 8:49 p.m.

Agenda Item #1 – Pledge of Allegiance

Agenda Item #2 – Public Comments

Chairman Badger stated Adam Schroadter is appointed to fill in for Justin Normand and Rick McMenimen will be sitting in for Val Shelton.

There were no public comments.

Agenda Item #3 - Review & approval of minutes: 10/11/11

Action

Motion: Peter Roy made a motion to approve the minutes of 10/11/11

Second: Rick McMenimen

Vote: All in favor

Agenda Item #3 – Regular Business

Fairpoint Communications – Public hearing for a Minor Site Plan Review, at 1 Gerry Avenue, Tax Map U5, Lot 186, M2 Zone. The proposal is to install three small concrete pads at the rear of the building. One is a generator pad and the other two are HVAC pads. Also proposed is a sound attenuation fence around the three pads.

Tony Oakman, Fairpoint Communications, represented Fairpoint.

Diane Hardy stated the application was complete. She mentioned notifications had not been made to the Police Chief, Fire Chief, Director of Public Works, and the Building Official. She suggested a condition of approval should be that these departments review the application and make any comments they find necessary, prior to the issuance of any building permits.

Mr. Oakman stated they were going to wait until the spring to start any work there. He would be more than happy to approach those offices and get their approval.

Action

Motion: Eric Botterman made a motion to accept the application

Second: Peter Roy

Action: All in favor

Elizabeth Dudley asked what the expected level of sound generated by this would be and how effective the fencing would be in mitigating the sound level. She asked if it was possible to enclose these facilities, so there is no sound. Mr. Oakman stated the air conditioning units put out approximately 52 decibels of sound. The generator puts out between 65-75 decibels without any enclosure. Normal conversation is 65 decibels. When they do the acoustical fence around the three pads, it should reduce any sound to 50%. He stated the acoustical fence is a product created by a company called Empire. The fence is designed to diminish the sound transmission from the units by a minimum of 50% and usually it is much greater than that. The generator would be the loudest item at 65-75 decibels. That would only run in an emergency, if there was a major power outage in town. They try to test the generator once a month for one hour to make certain it is capable of running in an emergency. The generator, unlike the one that is there now, comes in an enclosure of its own, which further diminishes the sound.

Peter Roy asked what the distance was from the generator to where they measure the decibel levels. Mr. Oakman stated it was usually 15 feet away and 20-25 feet away. The 75 decibels will be measured at 15' away. That would be without any sound attenuation at all. There is no enclosure around the existing generator, which puts out about 80 decibels, maybe a little bit more. Peter Roy stated the proposed generator puts out a lower decibel rate and will be enclosed, as well, in a sound-deadening enclosure. He stated, if it is coming out at 75 decibels in the open, once enclosed, it will be around 40 decibels. Mr. Oakman stated that was correct.

Diane Hardy gave the Board some background. When Verizon owned the building, they came before the Planning Board in 2005. There was a site plan filed at the time, which included an addition to the building on the back, which would have housed an emergency generator. For whatever reasons, that did not happen. The Building Official has received complaints about the emergency generator at the front of the property, which had originally been meant as a temporary solution, and that was how this ended up before the Planning Board again. The other plan was never implemented, so Fairpoint was contacted and asked to come forward with a revised plan.

Adam Schroadter asked if any abutters had expressed concerns. Diane Hardy stated there were abutters with concerns about the generator at the front of the property and they had contacted the Building Official about it. That is what precipitated the revisiting of this application. Mr. Oakman stated the abutters were concerned about the existing generator's noise level and location. That is why they took a hard look on where to position the new one and want to enclose it within a sound attenuation enclosure in the back, which should mitigate any concerns from the neighbors.

Chairman Badger stated Mr. Oakman had said the work would not commence until the spring. The generator that is there now would continue through the winter. Mr. Oakman stated that was correct.

Elizabeth Dudley asked about the appearance of the fence. She asked if any planting or screening would be done. Mr. Oakman stated there is a vacant lot at the back of the building owned by Fairpoint. There are trees right on the corner that need to be taken down, so they can put the acoustical fence in. The inside of the fence is a 1 1/2 inch galvanized

metal panel and, on the outside, their intent is to cover it with cedar 1'x6' planking. They can paint it or leave it natural, whichever the Board would like. They do not want to create anything that is not appealing. The cedar fencing will also help to deaden the sound. Elizabeth Dudley asked if they would consider replacing one of the trees. Mr. Oakman stated the trees that are coming down are off of the corners by 5 or 6 feet. The grade does drop off significantly. They can put a couple of small evergreens or something else back there. Along the south east side of the property, there is scrub brush and a row of trees. Unfortunately, some of the local residents are parking on Fairpoint's lot. The rest is scrub grass that has become overgrown over the years. He would be happy to put plants back there.

Chairman Badger opened the public hearing.

Robert Turcotte, Turcotte Real Estate Holdings, stated he owns the property at 183 Main Street, which abuts the Fairpoint property. He asked if the generator was part of this approval. Chairman Badger stated that was correct. Mr. Turcotte stated this new generator was 100kw. It has not been mentioned what type of fuel this new generator would use. The former application from Verizon involved putting an underground tank on his boundary line. Mr. Oakman stated there would not be an underground tank. They will use diesel fuel. This generator comes with a self-contained tank, with a certain run time they need in case of an emergency. They are regulated by that and they have to make sure they can maintain power to the building; he believes it is for 48-72 hours. The generator, itself, will have enough fuel to meet the regulations required by the State.

Mr. Turcotte asked about the acoustical fence, it appears the fence will be located downslope, not at the top of the slope. He was concerned about what might be a six foot high fence and a five foot generator, and the impact on acoustics. Mr. Oakman stated the intent was not for the acoustical fence to be on the downward slope. It will be full height and at the same grade as the generator. The fence will be at 6 feet and, if they need to go higher, they will.

Tony Chantre, 3 Gerry Avenue, stated the property of concern is not on Gerry Avenue. It is actually 4 Tasker Lane. He stated Fairpoint is talking about combining two parcels to create one commercial zone. They are extending their building into another lot. He stated Verizon was interested in the ability to park their vehicles out back. This will create an issue on Tasker Lane, because it is a narrow road to begin with. He does not know what the future intent is regarding this site, for example, if they plan to go up with the building. He does not know why they are moving the equipment to the ground, where it is already located on the building. It seemed to have been working fine that way. The proposed HVAC and generator are the same sizes as what exists. Verizon wanted to expand upward, extending the roofline up. He did not understand what the purpose of this project is. He asked what their agenda was in moving the equipment to the ground. He stated these three pads are not minor, 40% of the fenced in area will be concrete and equipment. That is considerable. If you look at it now, it is not a commercial zone. They have always tried to maintain the property as something that fits into the residential area. It is not an industrial zone. They are talking about taking down trees. They are opening up a can of worms, because now they have to have access to the back of the property to maintain the property and equipment. He asked about lighting and reinforced the idea that this is a residential area. Mr. Oakman stated, the reason they need to add the air conditioning in the back is they are running out of space inside the building. The other proposal was to do a building addition. Fairpoint decided it was cost prohibitive to do that, so they looked to see what they could do internally with the building. They have had trouble with their air conditioning units on the inside of the building, keeping them operational and cooling the building. They use cooling inside the building 365 days a year. They need to take out the existing air conditioning because it is not working for them and wish to use that floor space for future equipment to provide future services to the residents in town. They are trying to address the concern the Town has with the generator in front of the building, by moving it to the rear. As far as using the back property for parking for Fairpoint vehicles, that is not what Fairpoint plans on doing. Fairpoint would like to fence off that area, so it cannot be used for parking, but there are residents on Tasker Lane currently using that area for parking a trailer and other vehicles. Fairpoint has never said anything about that and they do not plan to, but, if the Town would like, because there is concern about Fairpoint vehicles being parked back there, they would be happy to put up a fence. They can also put signs up to make sure people do not park back there, if that is what the Board would request. They will be looking at reroofing the building, not raising the roof, to make improvements to the building. They are not planning to add any square footage to the building or build an addition.

Mr. Chantre asked if there is a site they could use as a reference, where Fairpoint has done this before. It would put into perspective the amount of equipment going in back of the building. Mr. Oakman stated they do this at many sites these days. Mr. Chantre stated the setbacks on the diagram are 10'. He felt 10' was close for commercial equipment next to a residential area. When the existing generator runs, he gets fumes and noise into his house. It is probably 15' away. He did not feel the proposed location behind the building was far enough away from the other residences to make that much of a difference.

Mr. Chantre asked if the new equipment was the same size or larger than the current equipment. Mr. Oakman stated the new equipment was approximately 5-10 tons larger than the current equipment. As far as future growth, Fairpoint estimates there will be 30% growth in the next five years. That is inside the building. The air conditioning they are proposing to install will cover future growth. Chairman Badger asked if the air conditioning was to cool the equipment inside the building. Mr. Oakman stated that was correct, without that air conditioning, they do not have telephone service. They require it 365 days a year.

Mr. Chantre asked if anyone did an analysis of how long this new equipment would keep up with the growth of Newmarket. This is not the first time they have expanded the site, this is the second or third time and each time it has impacted the abutters.

Diane Hardy stated this was an M2 district. There are a variety of uses permitted in this zone. Unfortunately, the zoning ordinance does not identify utility uses. She stated office uses, service uses, retail, wholesale distribution and warehousing, and light manufacturing are some of the permitted uses. Mr. Chantre stated this is not an office, it is a data center. That is the reason Fairpoint purchased the property to the rear of the building. They are expanding into that lot. It was not part of the original approval. He does not know where the Historical Society (Historic District Commission) stands on this. He had received a letter in the past saying they are near a historical district. Diane Hardy stated the Town does not have local historic district zoning. Mr. Chantre stated Fairpoint was talking about extending into 4 Tasker Lane, not Gerry Avenue. They are trying to make the building into a larger data center. Eric Botterman stated the plan shows the site as one lot. He asked if it was one lot. Diane Hardy looked at the tax map. It shows Lot 186 going through from Gerry Avenue to Tasker Lane, as one lot. Mr. Chantre stated it may be zoned for business in the front, but it is not zoned for that on Tasker Lane. Diane Hardy stated the entire lot (and Tasker Lane) fall within the M2 zone, which does allow for mixed use development. This is a permitted use within the district.

Elizabeth Dudley read the M2 section of the zoning ordinance. She stated she was not sure that a data cooling center is an appropriate use. Mr. Oakman clarified the use of the building. This is not a data center, with full staffing. This is a telecommunications building. All that is in this building is switching equipment. It is mainframe, toll equipment, and switch. It is a big computer, basically. Employees are in there if someone has a service call or there is an outage with your phone service or DSL. There is one small desk to access a computer to find out where the trouble is, but there is no one at the site full time. This is what they call an "unmanned site". Elizabeth Dudley stated that was what she meant. In terms of thinking of potential uses for zoning, she was not sure about this. Light manufacturing is allowed, but manufacturing is not. Diane Hardy stated they are not manufacturing anything. Elizabeth Dudley stated this is how one might consider the effects of manufacturing on a location. One might be able to draw a parallel. Eric Botterman stated this was not a new use. This is an existing use. Diane Hardy stated this has always been categorized as a commercial use as a telecommunication facility. When it came in front of the Planning Board before, there was never a question of whether it was a permitted use in that area.

Tony Chantre stated, originally, the HVAC was located between the two buildings. There were complaints about that. The previous zoning did not allow Verizon to do anything else with it. They were forced to put it where it is now. Eric Botterman stated it was not the zoning of the area itself that had affected this; it was affected because of setbacks. Mr. Chantre stated they put it where it is now for a reason. They are now asking to extend the facility. It is a data center/TCO office. They say it is unmanned, but there are people in and out of there and they will have to go through Tasker Lane to maintain the equipment. The Fire Department will have to be able to get down there. Tasker Lane is not wide. The Fire Department cannot access this property from Gerry Avenue. Peter Roy stated the police and fire departments will weigh in, as a condition of the approval.

Diane Hardy read the definition of light manufacturing from the Zoning Ordinance. Chairman Badger stated this was not manufacturing. Elizabeth Dudley stated there was a lot of heavy duty equipment inside of the building. Peter Roy asked how that affects this application. This application isn't changing the use; it has been there right along. Elizabeth Dudley stated the concern is eventually it will be extended to a center in the next five years. Chairman Badger stated, if that occurred, they would have to come back before the Planning Board. He explained one of the things Fairpoint is trying to do is get the emergency generator out of the front of the building and put it in the back. Diane Hardy stated it was an eyesore where it is now. They are trying to put it in the back in an enclosed area where it will have less of an impact. Chairman Badger stated they are going to mitigate the sound in the new location. Elizabeth Dudley stated it is not an ideal location for that business. Chairman Badger stated Fairpoint might agree, but that is where it is.

Aki Lacount, 8 Tasker Lane, stated his wife and her father have owned the 8 Tasker Lane property for 40+ years. He has lived here about 5 years. He wanted to elaborate on what Elizabeth Dudley had said. Looking at Fairpoint's history and how they bought Verizon, he was wondering about their future plans for, perhaps, fiber or anything technologically

advanced. Putting the generator in the back and expanding does not make sense in how the company has been doing business. Last quarter they were losing money and the only way they recouped about 6% of the loss was to jack up the DSL service. Chairman Badger stated those are not issues within the Planning Board's purview.

Mr. Lacount asked what this upgrade was going to do to benefit anyone in the area, especially the neighborhood. He asked if this 6' panel would be absorbent to sound. He stated the noise would go upward if it is not absorbent. A lot of houses in that area have a second and third story. He stated telling him the sound is 65 decibels and saying it's being cut in half isn't telling him anything. Eric Botterman stated, if you cut 65 in half, it's in the thirties. The decibels are cut. Chairman Badger asked if it was preferable to leave the generator sitting there running the way it is now out front. Diane Hardy stated the generator is at the sidewalk now. She fails to see that the plan is not an improvement to the existing situation. Mr. Lacount stated this was an enclosed neighborhood and, if the noise goes upward, it is going to bounce around. Mr. Oakman stated the panels are sound absorption panels and the intent is to absorb sound and not allow it to transmit beyond that point. Sound readings are taken 15-25 feet away from the source of the sound. He explained that part of the reason for doing what they are doing with the AC and the generator is to improve the services to the residents in the town, whether it is DSL or telephone. Fairpoint is working extremely hard to do that expansion within the parameters of the building's footprint, because of the financial constraints. They want to improve service by adding equipment in the building, rather than expand the footprint of the building. Diane Hardy stated there is an approval on the books, approved in 2004, that is still valid for a building expansion. They have the right to go forward with that. Mr. Oakman stated you have to put the sound decibels in perspective. The generator company states, if you are in a conference room, average conversation is at a 65 decibel level. This generator will put out 65-75 decibels of sound. The generator will not be running all the time. It will run when there is an emergency. If the town has lost power, that means that Fairpoint has lost power. To be able to supply emergency 911 services to the townspeople, they have to have that generator. If that generator does not exist, they are unable to provide emergency service to the town. They are mandated by the State and the federal government to provide emergency service to every town they are in as a provider. They are dictated by the government to make sure they are capable of providing emergency power to their buildings to be able to provide police and fire with their emergency services. That is the only time that generator will run, other than once a month to test it. There is a possibility some sound will travel up. As you go up higher, such as 15-20 feet to a second story, that sound will dissipate. Most of that sound will be absorbed by the panels. As you go up vertically, just as you would horizontally, the sound will dissipate. It will probably dissipate even more, as it will have the effect of going up like a mushroom. The vibration should not be an issue, as the equipment is sitting on a concrete pad and it is inside an enclosure of its own and has vibration isolators on it that stand about 4 inches off of the pad. Those isolators prevent any vibration from transmitting through the ground at all or into the concrete slab.

Peter Roy asked if they considered baffles above. Mr. Oakman stated, when you do that, you trap the heat and that can create more of a problem, because ventilation is needed around the generator and the AC units. This generator will only run in case of an emergency and once a month. The exhaust will be pointed in such a way where it will not go toward any residences.

Rick McMenimen asked if the tests will be done during the day. Mr. Oakman stated that was correct.

Mr. Lacount stated there were drainage issues. His driveway, when it rains in the summertime, becomes a pool of mud. He assumes they are going to take care of that. Mr. Oakman stated they were not planning on doing anything that would change the way the lot drains currently. They are extending the facility in the back enough to put the pads in, and, as far as the type of soil or stone they are putting in, it will not do anything to contribute to the problem back there. He thinks what Mr. Lacount is talking about is more of the roadway in the back where the cars are being parked on our lot. That could be contributing to the drainage and causing ponding, because of the vehicles parked back there. He stated they would be more than happy to put a fence up back there and prevent parking there, if that is what they would like. It is not Fairpoint's objective to maintain that road in the back. They are not doing anything to change the drainage and the way it currently drains.

Mr. Lacount stated, when he moved here, there was a no parking sign where the cars are parked now. There was even an orange construction barrier. As the snow built up, someone was plowing the snow and took down the sign. It's been like that since. He has tried to talk to the Town and Fairpoint about who needs to take care of that parking area. The major issue is people leave trash, cars come in and out, and it is becoming dangerous. He feels it should be blocked off. He has seen as many as seven cars squeezed in all the way up to the fire hydrant. He wouldn't have such a problem with it if people took care of their trash, beer bottles and cans. He realized this was probably a completely separate issue. Chairman Badger stated that was good information.

Kim Ricard, owner of 6 & 8 Tasker Lane, stated her property abuts Fairpoint's. She stated this might be at the back of

Fairpoint's property, but this is the front of her property.

Now they are talking about taking the generator from the front of Fairpoint's building, which is very ugly, and putting it in the front of her property. Chairman Badger stated the generator would be behind a fence. Ms. Ricard stated, if this is a sound attenuation fence, unless it goes up to the second floor of her house, it is still going to be loud. If someone is talking in the general vicinity of her property, even 15-20 feet way, it is still loud. It is disruptive. There are people that sleep during the day. This is an issue, as well as diesel fuel, toxic fumes and noise. It does not matter to her that it runs once a month or when there is no power. The fact it is running is disruptive to her household. It will be unsightly even if there is a fence. History sets a precedent for the maintenance of the property. They have not maintained it. They have not mowed and they haven't prevented people from parking there. Nothing is done about it. Her concern is the noise and aesthetics. It would be best for them to find a building that is more suited for the growth of the company than to try to stuff it into this very small building, where they have to put units on the outside, which is "uglifying" their neighborhood.

Bob Turcotte asked if the new air conditioners are taking the place of the three existing ones that hang on the back of the building and run 24/7. Mr. Oakman stated that was correct. Bob Turcotte stated the three existing ones will be gone and will cut down on the sound that is currently going on out there. Mr. Oakman stated the three units on the back of the building now are barred units. Those do create more sound than the proposed units. Once those three units are eliminated, the two new units will be much quieter.

There were no further public comments and Chairman Badger closed the public hearing.

Elizabeth Dudley asked Mr. Oakman if there was a way to capture some of the diesel fumes. She understood the generator would not be running much. Mr. Oakman stated he appreciated the concern. The generator is regulated to specific State requirements Fairpoint has to meet for emission standards. Every one of their generators meets the State emission standards. Chairman Badger stated this is an emergency generator, tested once a month. When the electricity is out and the generator has to come on, they are meeting State requirements to provide 911 emergency services. Probably anyone with Fairpoint service would be happy the generator was running, because they have a telephone that works. He stated they needed to keep that in mind.

Adam Schroadter stated there are probably other houses in the neighborhood using generators when the power is out, as well.

Elizabeth Dudley stated they should think about including some property care for the lot that is being used as parking. Chairman Badger stated they could do that as a condition. He stated it certainly sounded like Fairpoint is prepared to fence that off and stop what he would consider illegal parking and the trash and beer bottles being left. Diane Hardy stated there could be a landscaped buffer, so it would be aesthetically pleasing.

Action

Motion: Eric Botterman made a motion to approve the minor site plan with the condition that the Police Chief, the Fire Chief and Building Official review the plans and accept the location of the equipment and also with the stipulation that the parking lot is fenced off with fencing, working in concert with the Town Planner for a fence and a planting plan.

Second: Rick McMenimen

Bob Turcotte stated the fence is a new discussion. Chairman Badger allowed him to speak. Mr. Turcotte's parking lot abuts Fairpoint's on one side and there is a drop off, so this is not an issue there, but it is an issue on Tasker Lane on the back side. He felt a chain link fence would look terrible. Diane Hardy and Chairman Badger stated they would not approve a chain link fence and will work with the applicant on it.

Action

Motion: Eric Botterman amended the motion to approve the minor site plan with the conditions that the Police Chief, the Fire Chief and the Building Inspector review and approve the location of the equipment and also with the stipulation the applicant provide a wooden fence to be approved by the Town Planner with appropriate landscaping on three sides on the back to help alleviate the concerns of the abutters.

Second: Rick McMenimen

Chairman Badger stated this was to remove the emergency generator from the front of the building. Once the work is complete, the old emergency generator will be removed, as soon as possible.

Peter Roy asked if there needs to be some sort of entrance from the back to service the generator and equipment at the new location. Mr. Oakman stated it would be a good idea to

have some sort of a gate access on the back. If they are going to fence it in, they will need to access the area to do some regular maintenance to the property, as well.

Vote: All in favor

Agenda Item #5 – New/Old Business

Impact Fees

Peter Roy, Chairman of the Impact Fee Subcommittee, updated the Board. He stated the committee was made up of Val Shelton, Rick McMenimen and himself. They met several times. The last time they met with Bruce Mayberry, who is well-known and well-versed in impact fees and served as advisor for the Committee's discussions. The economic situation has been such there has not been a large amount of development lately. The impact fee was based primarily on the expectation of development occurring and the impact on Town services. The problem has been that it has been set up where impact fees were collected based on calculations done long ago, but were done in such a way as to reflect what the impact of new development would be on schools, recreation, water and sewer service. A great number of fees did not come in, because waivers were granted for lots that were considered "grandfathered". In most cases, his observation was people did not get charged for water and sewer, because they were not in water and sewer districts. Recently, the Town has not collected large dollar amounts of impact fees because growth has not been as significant as projected. In some instances, school impact fees were waived because there were no children expected to live there, for example, in the case of a one-bedroom or accessory apartment situation. There were other factors also that affected the Planning Board's decision to waive impact fees.

What it comes down to, monies are collected under four categories of impact fees. Some of these monies were spent, some very judiciously and in accordance with the way the regulation stipulate. With others, there seemed to be a misunderstanding, at the time, on how the money should and could be spent. To the Committee's way of thinking, this has put the Town at risk of possibly having to raise general funds though the imposition of taxes to reimburse the impact fee account. For example, impact fees were used to partially fund engineering and architectural studies for the proposed new high school, when it was proposed to be located at the golf course a few years ago. Unfortunately, that is not the best way of spending the impact fees. As he understands it, there is no problem if the project is architecturally designed and then built, then the impact fees can legitimately be directed to those studies. However, this was not the case. The bond issue for construction of the school at that location did not pass. The committee feels there may be an obligation for the school district to pay back to the Town at some point in the future. This is something that needs to be looked into further.

Peter explained that it is a very difficult formula to follow to the letter of the law and it requires a great number of people to be knowledgeable of how to spend funding from the account properly. The intention has been terrific and Bruce Mayberry told us the Town has handled it very well. It has not been mishandled in terms of administration. However, concerns remain. The benefit to the Town from the impact fees program has been minimal as far as the actual monies

collected, which he thought was about \$536,000. We are not getting the growth that we expected to get. If you expect a 1% growth rate, you collect money from the people who are developing covering that 1% increase. Then a project comes along that needs to be done in town. 99% of the funding for that project has to come from general fund (local taxes) and you can only use impact fees to pay for only 1% of the cost. There are; however, suitable alternatives. For example, for water and sewer, we can go with System Development Charges. We can also require exactions, under RSA 674:21, based on the particular needs of an individual development for improvements necessitated by that development. We can add highway and drainage improvements to the list of off-site improvements that would be eligible for financing under this option. Our committee decided that was a better choice. As far as school and recreation, he would like to make a motion and then have everyone's input as part of the discussion regarding that motion. Chairman Badger stated that would be appropriate. Peter Roy stated he had two motions for the Planning Board to consider. He wanted the Board to keep in mind these are recommendations to the Town Council regarding the current impact fee system:

Motion: Peter Roy made a motion that: 1) the Town rescind the impact fee ordinance for water and sewer, (When he says rescind, "rescind" means "cancel"), and in their place, adopt System Development Charges for water (under RSA 38.27) and sewer (under RSA 149-1), and/or exactions (under RSA 674:21 V (j)) for water, sewer, and highway and stormwater upgrades necessitated by each individual development, and

2) that the Town suspend, (by suspend I mean interrupt, not necessarily wipe it off the books, because there might be a reason in the future to resurrect it and the less work we have to do to resurrect it and the less time it takes to do so, the better) or rescind the fee schedule, one or the other, for schools and recreation. The impact fees could be then be reinstated at a time when significant economic growth returns to Newmarket. (In the meantime, they would not serve as a disincentive to individual and other small-scale development within Newmarket).

Second: Eric Botterman

Chairman Badger clarified that Peter Roy was not suggesting to the Town Council that they repeal the entire impact fee ordinance. Peter Roy stated the word "repeal" could be used as a synonym for "rescind" only in the case of water and sewer. We go from using impact fees for water and sewer to using the System Development Charge method of recouping costs. Chairman Badger asked if the ordinance would be still be kept on the books. Peter Roy stated it would be kept on the books, but only for school and recreation.

Chairman Badger stated, so everyone understands, these are recommendations the Board makes to the Town Council.

Eric Botterman asked, if the Town did this, does the Town have to refund the money that is in the accounts already. Diane Hardy did not believe so, but she recommended the Board obtain a legal opinion on that subject.

Eric Botterman also asked if the funds were first in/first out. For example, if there is \$200,000 in the recreation fund that was put in by ten developers giving \$20,000 each over ten years and the Town spends \$100,000 of it, then the Town stops impact fees and has to give the money back, ten developers will each be looking for \$20,000 and the Town only has \$100,000 to give them. Diane Hardy suggested legal counsel look at that, also. Eric Botterman stated that it appears we took the money and accounted for it properly, we just haven't used it properly. To use it in the way it is intended is difficult. Peter Roy stated that is because you can only assess the impact fee in the relation to the percentage of new people who caused that improvement to be made (or generated by that development).

Eric Botterman asked if the Town would be able to roll impact fees that have been collected for water and sewer into the new System Development Charge account. This would be another question for the Town Attorney.

Peter Roy stated, if the building permits have never been issued for the grandfathered lots that originally received waivers, Bruce Mayberry had alluded to the fact there had been amendments to the enabling legislation that said you could go back and assess fees on any new building permits if a five (5) year period had gone by from the time of the development had been approved. Diane Hardy stated that was only if the Town kept the impact fee system in place. Diane Hardy stated it was her understanding you could not rescind the impact fee program and then go and back and collect the fees, the Town could have collected, due to the change in "grandfathering" state legislation in 2004. Peter Roy thought a legal clarification on that was needed.

Chairman Badger opened a public comment period.

Leo Filion, 3 Lafayette Avenue, stated he was on the Planning Board in 1997, 1998, and 1999 when they implemented the impact fee ordinance. It was a long process. The reason the Planning Board granted waivers to a lot of the large developments at the time was the statute said you almost had to. There were several other reasons why the waivers were granted. The Planning Board knew if they did not grant the waivers, the developers were going to sue the Town and stop us from putting the impact fee program into effect. He asked if one Planning Board could reverse waivers granted by a previous Planning Board. Eric Botterman stated, according to Mr. Mayberry, it sounded like you could. Leo Filion stated Mr. Mayberry said for development that was not charged impact fees in the past, once they went beyond the four (now five) years, they became subject to the fees.

Leo Filion stated he felt the reason why the impact fee ordinance has not really been challenged is there was no large group that put a lot of money in. Right now, if a person paid \$5,000 into impact fees, then they see this money was not properly spent, so they look at hiring a lawyer at \$10,000 to get their money back, it would not make sense for them to do that. There have been a lot of different issues that were raised at the time. For example,

when you spend money collected from people on Grant Road on a project on Exeter Road, it becomes questionable whether you should do that. It is really not helping the people on Grant Road. There were a lot of issues like that.

The impact fees survived, because we gave waivers to a lot of people who were going to put \$150,000-\$200,000 into it. These people are the ones who would come back and sue the Town, if money was not properly spent. The average person is not going to spend \$15,000 or \$20,000 to try to recoup \$5,000.

He stated he fully supports the recommendations of the committee to rescind (for water and sewer) and suspend the impact schedule (for recreation and schools) at this time. Exactions are much better than impact fees. He stated, if unspent money is to be given back, the people who paid the impact fees are not necessarily going to be the ones getting it back. The money will go to the present owners of the property, who are not always the ones who paid it.

Elizabeth Dudley stated she would like to go through the memo from the consultant. Particularly, she did not find anything that did not make sense to her. One of the more important points made is that there is potential for the Town to recoup the \$159,420 fee for the architectural services for the proposed school that was not approved. Mr. Mayberry suggests not rescinding the entire ordinance. Peter Roy stated the suggestion was not to rescind the part for the school and recreation, it was to suspend it. Elizabeth Dudley asked why not just keep the school and recreation item in place. Peter Roy stated it is a liability to the Town. There was a major issue with it already, the architectural services that have not been resolved, which he would like to see resolved, as a taxpayer. Diane Hardy stated Mr. Mayberry had said in his memo, at this point the funds have been expended for the school's architectural services. Some of the architectural costs were related to general planning purposes, population projections, demographics, how large the school could be, etc. She said Mr. Mayberry stated, if the Town, in the next year, goes forward with a concrete proposal and gets the bond and the newly proposed school is built, that takes away that question of doubt of whether or not some if not all the funds were spent appropriately. Peter Roy asked if she thought the architectural drawings and those studies are going to be pertinent to the new school. Diane Hardy stated it is not just the architectural plans, but the studies as far as site selection and their suitability and determining the capacity of new school facilities. Eric Botterman stated he is on the Facilities Committee for the school. They have had all new demographic studies done. Anything that was done for the old school proposal is not valid. Chairman Badger asked if anyone has told the School Board that they might have done this wrong. Eric Botterman stated he did not think so, as this is the first time he has heard of it. He asked what the recourse was. He would imagine that someone who paid those fees would have to sue the Town to recover them. He did not think the Town was going to say to raise the taxes and appropriate \$159,000 to pay that back, from a practical standpoint.

Elizabeth Dudley asked about growth. Eric Botterman stated there has been incremental growth in town, with a few houses built every year and the Town will not see major impact fees from them. If someone came in six months from now with a 200 lot subdivision, there is no reason why the Town Council could not reinstitute the impact fees before that is approved.

Peter Roy stated Bruce Mayberry is the “guru”, he is a consultant on impact fees and a very good one. The burden the Town has to carry in order to keep impact fees on the books at this time is far greater than the benefit to be gained. He explained the impact fee process.

Leo Filion stated when the Town got into impact fees, we were told, when impact fees are collected, they are kept individually. Each time money is taken out for a purpose, each account got reduced by a proportionate amount. If, at the end of six years, there is any money left, the people who paid these do not have to sue to get the remainder back. The Town is supposed to automatically send it back to them. Each time there is a withdrawal for a Capital improvement project, the oldest fees are supposed to be used to try to beat the six year clock. That is a tremendous bookkeeping task to decide how much money from each account will be taken out and, when six years are up, refunding the money.

Eric Botterman stated he had no problems with the recommendations, but, as a Town Councilor, he would like to get answers about what happens to the existing money. At this level, he thought it was fine to pass it on to the Town Council.

Peter Roy restated his motions:

Action

Motion: Peter Roy made a motion that the Town rescind or cancel the impact fees for water and sewer and, in their place, adopt system development charges and/or exaction for off-site improvements for water, sewer, highway or stormwater necessitated by each individual development in its location.

Second: Rick McMenimen

Chairman Badger reiterated that this was a recommendation the Planning Board is making to the Town Council.

Vote: All in favor

Action

Motion: Peter Roy made a motion that the Town suspend the impact fee for schools and recreation. These fees can be reinstated at a time when significant economic growth returns to Newmarket. In the meantime, they would not serve as a disincentive to individual and other small-scale development within Newmarket.

Second: Rick McMenimen

Vote: All in favor

Chairman Badger asked Diane Hardy to put this together and send it off to the Town Council. Eric Botterman asked Diane Hardy to get together with Ed Wojnowski and get permission to talk to Town Counsel to get legal opinions on the subjects discussed tonight to anticipate the Town Council's questions.

Action

Motion: Janice Rosa made a motion to adjourn at 8:49 p.m.

Second: Eric Botterman

Vote: All in favor