

**TOWN OF NEWMARKET, NEW HAMPSHIRE  
TOWN COUNCIL REGULAR MEETING**

**September 2, 2015      7:00 PM**

PRESENT: Council Chairman Phil Nazzaro, Council Vice Chairman Gary Levy, Councilor Dale Pike, Councilor Amy Thompson, Councilor Toni Weinstein, Councilor Amy Burns, Councilor Larry Pickering

ALSO PRESENT: Town Administrator Steve Fournier, Interim Finance Director Matt Angell, Water & Wastewater Superintendent Sean Greig, School Board Chairman Nathan Lunney, Town Attorney John Ratigan

**AGENDA**

Chairman Nazzaro welcomed everyone to the September 2, 2015 Newmarket Town Council Meeting and called the meeting to order at 7:01 pm, followed by the Pledge of Allegiance.

**PUBLIC FORUM**

Chairman Nazzaro opened the Public Forum at 7:02 pm and asked if anyone from the public wished to speak.

As no one came forward, Chairman Nazzaro closed the Public Forum at 7:02 pm.

**PUBLIC HEARING** – None

**TOWN COUNCIL TO CONSIDER ACCEPTANCE OF MINUTES**

**Acceptance of the Minutes of the Regular Meeting of August 19, 2015**

Councilor Weinstein made a motion to accept the minutes of the regular meeting of August 19, 2015, and Councilor Thompson seconded.

As there were no corrections requested, Town Administrator Fournier polled the Council and the minutes of the regular meeting of August 19, 2015 were approved by a vote of 5-0, with 2 abstentions.

**REPORT OF THE TOWN ADMINSTRATOR**

Town Administrator Steve Fournier first addressed **Online Meeting Streaming**, announcing that they had moved away from PEG Central to Town Hall Streams for online streaming of minutes.

He stated that the new service would allow for immediate playback, rewinding of minutes in progress, and would be less expensive for the Town. He next addressed **Engineering Services**, stressing the need for the availability of more structured engineering services for the Town. He said that department heads had been doing things a town engineer should be doing, and that the Town had consulted a variety of different engineering firms. He said that other municipalities had an engineering firm of record that provided services to the community. Town Administrator Fournier said that funding for engineering services was already available in the current operating budget, and that he would be issuing a Request for Proposal (RFP) shortly. He added that any agreement would need Town Council approval.

Town Administrator Fournier next announced that the preparation of the **FY2017 Budget** had begun with Department Heads submitting their proposals to the Town Administrator in September. He said that by law he must present his budget to the Town Council by October 15<sup>th</sup>, and that the Town Council in return must present a budget to the Municipal Budget Committee by November 15, 2015. He said that one Saturday Town Council Workshop was traditionally held, and he recommended either October 24<sup>th</sup> or 31<sup>st</sup> as possible dates for the work session. Town Administrator Fournier then stated he and the Finance Director were finalizing a **Wage Plan** for Town employees, which would assign minimum and maximum compensation for various positions in Town. He said they were also reviewing current employee placement and would be making adjustments in the FY17 budget. He stressed that a Wage Plan was not based on the person in the position, but rather the position itself.

Discussion: Councilor Weinstein asked what the current commitments of the Town were as far as engineering services. Town Administrator Fournier replied that they had budgeted approximately \$60,000 across the board including Water & Wastewater, and that they were trying to establish a more definitive firm for the Town to go to. Councilor Weinstein also requested that the date for the Saturday Town Council Workshop be determined as soon as possible. Councilor Pike recommended setting the date of September 24, 2015 for the workshop with the 31<sup>st</sup> as backup, and all Councilors agreed. Vice Chair Levy asked if having an engineer on a retainer like the attorney was being considered, and Town Administrator Fournier replied that they were just at step one. Vice Chair Levy felt engineering firms were more specific and specialized, and Town Administrator Fournier said they would just be a general council as with the Town Attorney. Vice Chair Levy said he would prefer to first determine how much general engineering had been done, and not just hand out a retainer.

Councilor Thompson questioned the timeframe for the Saturday workshop, and whether it could be held in the afternoon rather than the morning. Town Administrator Fournier replied that it was usually held from 8 am to 1 pm, and that it had never gone on to a second Saturday. Chairman Nazzaro felt that an afternoon session might increase the risk of having to meet again the following weekend. Councilor Pike stated that he supported the idea of a town engineer and said it would be a good idea to be able to talk to a firm without first having to put out a request for proposal. He said it would have made the dam discussions easier and would be a useful thing for the Town to have.

**COMMITTEE REPORTS - None**

**OLD BUSINESS**

**ORDINANCES AND RESOLUTIONS IN THE 2<sup>ND</sup> READING**

**Resolution #2015/2016-06 Municipal Trash Bags**

Councilor Thompson made a motion to approve *Resolution #2015/2016-06 Municipal Trash Bags*, which was seconded by Councilor Weinstein.

Discussion: Vice Chair Levy questioned why the cost for the 15-gallon trash bags was 3 times higher than the price of the larger bags, and Councilor Thompson said that it related to quantity requested as well. Interim Finance Director Matt Angell said that he had no specific answer as to prices, but had simply solicited proposals and reviewed each one. Vice Chair Levy asked if they could just purchase the 15-gallon bags to save money, and Town Administrator Fournier said residents would complain. Councilor Thompson explained that there were 50,000 of the 33-gallon for \$11,000 and 20,000 of the 15-gallon for \$33,000. Town Administrator Fournier agreed that it was the volume of the bags ordered, and Chairman Nazzaro further explained that the cost goes down as the number of bags ordered goes up.

Town Administrator Fournier polled the council and *Resolution #2015/2016-06* was approved unanimously by a vote of 7-0.

**Resolution #2015/2016-07 Emergency Expenditure of Funds for the MacIntosh Well Project for \$832,000 per RSA 32:11**

Councilor Thompson made a motion to approve *Resolution #2015/2016-07 Emergency Expenditure of Funds for the MacIntosh Well Project for \$832,000 per RSA 32:11*, which was seconded by Councilor Weinstein.

Town Administrator Fournier stated that for administrative purposes he recommended that the Council first amend the amount of the resolution from \$832,000 to **\$795,000**.

Councilor Thompson made a motion to amend *Resolution #2015/2016-07* to read: *Emergency Expenditure of Funds for the MacIntosh Well Project for \$795,000 per RSA 32:11*. The motion was seconded by Councilor Weinstein and passed the Council unanimously by a vote of 7-0.

Town Administrator Fournier stated that the information was the same as provided the prior week. He said the original engineering firm had stated costs of approximately \$2.5 million. He said that they had then submitted proposals to a new engineering firm for the actual design work, and it was determined at that time that costs would be higher than the \$2.5 million. He said they

had then decided to go out to bid to determine actual construction costs, which came in \$795,000 higher than the bonding authority. He said that the Town was reviewing its options with the first firm and discussing the issue with their insurance company. He said that Town Attorney John Ratigan and Water & Wastewater Superintendent Sean Greig were both present to answer questions. He stated that process-wise, if approved by the Town Council, the resolution would also need to be approved by the Municipal Budget Committee.

Discussion: Vice Chair Levy apologized for not being at the last meeting and asked for a brief timeline of the project. Town Administrator Fournier stated that in December 2012 the Council approved that the bond be issued for \$2.5 million, and that it passed at a March 2013 meeting. He said that a new firm, Hazen & Sawyer, began design work in the fall of 2013. Water & Wastewater Superintendent Greig said that the design had been held up due to the land purchase, and that the design was finished after they secured the property. Town Administrator Fournier said that at that time they were told the figures could be off, and they went out to bid for construction costs. Water & Wastewater Superintendent Greig stated that the bids were received in June of this year. Vice Chair Levy asked how they only found out in the last month if the land issue was settled in May. Town Administrator Fournier replied that based on the engineering estimates they knew they did not have enough bonding authority, and had sent out bids for construction costs to determine the final additional costs needed before coming to the Council with a request. Vice Chair Levy said he was concerned about the amount of increased funding needed.

Councilor Thompson asked if impact fees could be used for this and Town Administrator Fournier replied that there were no impact fees available for water at this time. Water & Wastewater Superintendent Greig said that \$50,000 to \$60,000 in impact fees had been used for the North Main Street water project. Councilor Thompson pointed out that the report of the Finance Director listed \$27,000 in impact fees available for water and \$151,000 for wastewater. She also felt they needed to look at whether all the work planned was needed, and asked if there would be some reduction of scope to be gained to cut costs. Town Administrator Fournier replied that the scope was already reduced when the Council voted to go with blending rather than treatment of the well water. Water & Wastewater Superintendent Greig said that the Council had decided to go with the blending option and had added an extra \$100,000 for a Blending Facility. He said that DES had recommended treatment versus blending to reduce secondary elements below the required limits. Councilor Thompson said she understood that there was no possible further reduction in the scope of the project, and Town Administrator Fournier said they were at the base, and if the resolution was not approved they would not open the MacIntosh Well.

Vice Chair Levy asked whether originally running the well longer might have further reduced unsuitable elements, and asked how long it had been run. Water & Wastewater Superintendent Greig said it was run for 40-45 days, 24/7 at 300 gallons/minute. He said that when they had run the well again for the pilot, the old levels came back after several days to the same prior level, and that Hazen & Sawyer felt that was where they would stay. He also stressed that the well would not be operated in the same way and would only be run 3 hours and then cycled off for 5

hours. Vice Chair Levy asked if it would have been worth running the well 60-90 days instead before expending the water funds, and Water & Wastewater Superintendent Greig said that the well had leveled out pretty quickly and it had not been a steady decline. He stated that his concern now was current water levels with no rain in sight. Vice Chair Levy asked when the well would be online if the resolution passed tonight, and Water & Wastewater Superintendent Greig replied at about this time next year. Water & Wastewater Superintendent Greig said that if they were to run the well again for 90 days, they would first need a State discharge permit to pump the water onto the ground. He said they would then run the pump for 90 days which would take them into winter, and then they would have to go out for re-bid which would take them to the spring.

Councilor Pickering said that a possible 4<sup>th</sup> well had been discussed not long ago, and asked if the MacIntosh Well could take on an additional facility upstream. Water & Wastewater Superintendent Greig said that was the plan. Chairman Nazzaro recalled that at the time of the Town Council vote, blending had been a compromise solution between treating and not treating. Vice Chair Levy said he would support the resolution but that in future the Council needed to be notified sooner with this kind of increase. Chairman Nazzaro asked Town Administrator Fournier to reiterate what systems were being put in place to avoid this situation in the future. Town Administrator Fournier replied that one was trying to get a town engineer who would be able to check the numbers and confirm their accuracy. Vice Chair Levy had a question on page 4 of the report regarding DBU Company saying the directional drill would have been 25% less if done 2 years prior. Water & Wastewater Superintendent Greig explained that 2 years ago the company was bidding jobs at 25% less due to lack of work, and that now costs were higher due to an increased amount of work available. Councilor Thompson asked for a follow-up with Interim Finance Director Matt Angell regarding impact fees. He stated that they did have \$24,000 in impact fees for water but that he did not recommend deviating from the current course just to use these funds, and felt they should only use unreserved fund balance. He added that Water & Wastewater Superintendent Greig had until 2018 to start obligating those funds.

Town Administrator Fournier polled the council and *Resolution #2015/2016-07 Emergency Expenditure of Funds for the MacIntosh Well Project for \$795,000 per RSA 32:11* was approved as amended by a vote of 7-0.

### **Resolution #2015/2016-08 Withdrawal of School Impact Fees – Carpenter Property**

Councilor Weinstein made a motion to approve *Resolution #2015/2016-08 Withdrawal of School Impact Fees – Carpenter Property*, which was seconded by Councilor Burns.

Nathan Lunney, Chairman of the School Board, addressed the Council saying he appreciated the Town Council touring the site and said he was there to answer any questions they might have.

Town Administrator Fournier asked to first review a legal caveat, stating he had received a number of questions from Councilors regarding the project. He said there was concern regarding

what could and could not be done and the liability of the Councilors' actions this evening, and that Town Attorney John Ratigan had been asked to look at the proposal. Town Administrator Fournier read the letter from Town Attorney Ratigan which cited that enrollment at the High School was declining, and said according to RSA 674:21,V: "Upgrading of existing facilities and infrastructures, the need for which is not created by new development, shall not be paid for by impact fees." This raised the question of whether or not the School could use impact fees for this project. It was the opinion of Town Attorney Ratigan that the Town Council is the *custodian* of Town impact fees, including those held for the School Board, but does not have the authority to make policy and expenditure choices for the School. If the School Board asked for release of the impact fees, the Town Council should take action to do so, and that it was up to the School Board, as a separate governing body, to determine whether the proposed expenditure of impact fees was lawful and authorized. Town Administrator Fournier said that if the expenditure of the funds was later found to be inappropriate, it would not come back to the Council as their only decision involved the *release* of the funds. He stated that the governing body was the School Board and that they were the overseers.

Discussion: Councilor Weinstein said that she just wanted to comment that she had met with School Superintendent Dr. Mike Martin for a walk-through of the site and felt this was something that needed to happen, but had at first felt using the impact fees for this project did not fit the definition. She said she was also confused as to why the SAU would use impact fees for this project and not for the Kindergarten expansion or the move of the art room to the Perkins Building. She felt it was a travesty for students crossing the street to encounter that site, and felt it was a failure of leadership and SAU Administration and a disservice to the community. She said she was relieved to hear Attorney Ratigan's opinion on the matter, and that as the responsibility rested with the SAU and the School Board, she would vote in favor of the resolution. She asked Town Administrator Fournier if the Town needed to be the distributor of the funds, and he replied that State Law required that the Town Council, as municipal governing body, needed to hold and disperse the funds. Since the Town Council would be releasing the money, Vice Chair Levy asked Attorney Ratigan who would have to return the money in the event of a successful court challenge. Attorney Ratigan replied that the Town held the money in a "treasury" capacity, and they could not return money that they never received in their budget. He said that the School, as the budgetary entity, would be returning funds they received, and that a recipient was necessary in order for something to be returned. He said that the School set the impact fees and that the Town did not have a hand in it. Vice Chair Levy asked if the School Attorney had deemed this an appropriate use of the impact fees.

School Board Chairman Lunney replied that the School had consulted their legal team. In response to the comments of Councilor Weinstein, he agreed that it did seem more consistent to use the impact fees as she suggested. He said that in response to the concerns of Vice Chair Levy, should there be any question of the appropriateness of the request, the risk belonged to the School Board. He said that he had heard more public comment at this meeting than the School Board had previously, and explained that the project quickly became a timely issue. He said that over the last two (2) years school enrollment had increased 15.2%. He said that with any request

for release of impact fees, it must be documented that funds have been expectant. He said that assuming a positive vote tonight, he hoped the conversation could continue at the School Board meeting the following evening, giving the School Board a chance to consider the feedback presented. School Board Chairman Lunney said this was an effort to promote cooperation between the Town and the School and do so with the least possible impact on taxpayers. Town Administrator Fournier stated that this resolution authorized the Town Council to release the impact fees. Chairman Nazzaro felt it seemed ridiculous that they were required to release funds without determining whether the right use was being made of them, and said they had basically spent this time discussing something they had to say “yes” to.

Councilor Weinstein said she had gone back to 2012 and looked at some past conversations around portables and a land purchase regarding School impact fees, and that similar arguments had been made. She said she felt that the nature of the relationship, with the Town Council in charge of releasing funds, just created divisiveness between the Town and the School, which was unfortunate. Councilor Pike said he thought the School site visit had gone well and he felt the relationship between the Town and the School Board had been good and productive this past year. Vice Chair Levy said that the Town Council did not have an issue with the School over the portables, but just wanted to make sure they met the criteria of the statute. Councilor Thompson said she agreed with Councilors Pike and Levy, and felt that rather than being divisive, this represented a good working relationship between the two (2) boards.

Town Administrator Fournier polled the Council and the motion to approve *Resolution #2015/2016-08* passed unanimously by a vote of 7-0.

**ITEMS LAID ON THE TABLE - None**

**NEW BUSINESS/CORRESPONDENCE**

**TOWN COUNCIL TO CONSIDER NOMINATIONS, APPOINTMENTS AND ELECTIONS**

**Conservation Commission**

**Candidate:** *Marianne Hannagan – Term Expires March 2017*

Councilor Pickering made a motion to approve the nomination of *Marianne Hannagan*, Term to Expire March 2017, as a member of the *Conservation Commission*, which was seconded by Councilor Pike.

Town Administrator Fournier polled the Council and the motion to approve the appointment of *Marianne Hannagan* as a member of the *Conservation Committee* passed unanimously by a vote of 7-0.

**ORDINANCES AND RESOLUTIONS IN THE 1<sup>ST</sup> READING**

**Resolution #2015/2016-09 Creation of a Weather/Emergency Expendable Trust Fund**

Chairman Nazzaro read *Resolution #2015/2016-09 Creation of a Weather/Emergency Expendable Trust Fund*, in full

**Resolution #2015/2016-10 Authorizing the Town Administrator to Enter into an Agreement for Granite Curbstone on Bennett Way**

Chairman Nazzaro read *Resolution #2015/2016-10 Authorizing the Town Administrator to Enter into an Agreement for Granite Curbstone on Bennett Way*, in full

**Resolution #2015/2016-11 Authorizing the Town Administrator to Enter into an Agreement with Bell & Flynn of Stratham, NH for Paving Ash Swamp Road**

Chairman Nazzaro read *Resolution #2015/2016-11 Authorizing the Town Administrator to Enter into an Agreement with Bell & Flynn of Stratham, NH for Paving Ash Swamp Road*, in full.

**Resolution #2015/2016-12 Replacing the Backstop at Beaulieu Little League Field**

Chairman Nazzaro read *Resolution #2015/2016-12 Replacing the Backstop at Beaulieu Little League Field*, in full.

**Resolution #2015/2016-13 Replacing the Infield Dirt at Beaulieu Little League Field**

Chairman Nazzaro read *Resolution #2015/2016-13 Replacing the Infield Dirt at Beaulieu Little League Field*, in full.

**Resolution #2015/2016-14 Replacing the Infield Dirt at Beanie Howcraft Memorial “D-Field”**

Chairman Nazzaro read *Resolution #2015/2016-14 Replacing the Infield Dirt at Beanie Howcraft Memorial “D-Field”*, in full.

**CORRESPONDENCE/CLOSING COMMENTS**

Councilor Weinstein brought up the Substance Abuse Coalition, which had been set up by a group of people in Town to address heroin problems in Newmarket. She said attendance at the last meeting had been highly representative of the community, and a lot of work had already been done. She said they were planning a Community Forum to be held on October 26<sup>th</sup> in the Town Hall Auditorium. She then provided some statistics for Newmarket, stating that since January there had been 40 heroin-related calls for service, 18 heroin or opiate overdoses, 7

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needles found downtown, and 1 fatal overdose. She encouraged anyone interested to attend the next meeting on Tuesday at 1 pm and the Community Church.

Chairman Nazzaro expressed a thank you to the Fire Department for their response to smoke in the basement of Building D at Bryant Park. He said they had been professional, courteous, and had quickly resolved the situation.

### **Next Meeting**

Chairman Nazzaro stated that the next meeting would be held on September 16, 2015 at 7:00 pm.

### **ADJOURNMENT**

Vice Chair Levy made a motion to adjourn the meeting, which was seconded by Councilor Pike. The meeting was adjourned at approximately 8:19 pm.

Respectfully submitted,

Patricia Denmark, Recording Secretary