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November 12, 2013

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Stephen Fournier, Town Administrator
Town of Newmarket
186 Main Street
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Re: Petition Warrant Article Received by Petitioners

Dear Steve:

You have asked me to examine the 157 signature Petition that was recently received by the Town Clerk that requests the Petition be placed on the next Town Meeting warrant.

As you know, Newmarket's charter form of government only authorizes two types of Petitions: Section 8.2 Initiative Petitions and Section 8.3 Referendum Petitions. This Petition is neither, as it proposes an action (to put a warrant article on the 2014 Town Meeting ballot) which is not authorized by a Petition. The Petition does not request of the Town Council "for passage or repeal of a particular measure set forth in the Petition." Charter Section 8.2. A.

The Petition as presented may not be lawfully passed by the Council. The Charter at Section 8.2. B requires that, "if the measure may not be lawfully passed by the Council, it shall be returned to the Petitioners with an explanation." I suggest the explanation state that the Council has no authority under the Charter to accept a petition with 157 signatures to present an issue to Town Meeting. There is no authority under the charter form of government to accept what, in effect, is a Petition Warrant Article. The nearest equivalent is the Charter section 8.3 Referendum Petition, which requires the signatures of 400 registered Newmarket voters and must be submitted within 30 days after an action by the Council on any measure or part thereof sought to be reconsidered.

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Of course, Charter section 8.4 allows the Council, on its own motion, to submit any measure or proposition for repeal or amendment of a measure to the voters at any regular or special town meeting.

As to the two questions you asked:

1. Can the Town Council amend the Petition to make sure the proper intent was there or do they have to vote on the merits of the Petition as presented?

Reply: The Council may not amend the Petition; and, the Petition as presented is not a matter which the Council may lawfully pass. We do not know if the signatories to the Petition would have signed it if it was written in any way other than as presented.

2. If the Council adopts the Petition and a study goes forward, what are the legal ramifications of the outcome of the study? To put it another way, if the study says that we must do X, Y, or Z, does the Council have to accept the outcome of the study?

Reply: I assume the Council will not proceed to adopt the Petition, but assuming the Council on its own initiative seeks to proceed with a study, in such an instance, the Council is not bound by any action recommended by the study. Such matters are policy choices, ones which the Council in its discretion is empowered to adopt or not.

Should you have any questions about this matter, please do not hesitate to contact me.

Very truly yours,

DONAHUE, TUCKER & CIANDELLA, PLLC



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