

## Town Council December 5, 2012 BM Approved Minutes

TOWN OF NEWMARKET, NEW HAMPSHIRE  
TOWN COUNCIL BUSINESS MEETING  
DECEMBER 5, 2012 7:00 P.M.  
COUNCIL CHAMBERS

### PRESENT:

Council Chairman Phil Nazzaro

Council Vice Chairman John Bentley

Councilor Al Zink

Councilor Ed Carmichael

Councilor Dan Wright

Councilor Gary Levy

Town Administrator Steve Fournier

### EXCUSED:

Councilor Mike LaBranche

1. Council Chairman Nazzaro called the meeting to order at 7:06 p.m., followed by the Pledge of

Allegiance.

2. PUBLIC FORUM - Items not on the agenda

Rose-Anne Kwaks had attended the November 27th Planning Board meeting for a discussion of re-zoning 2 parcels of land on Route 108 from B1, strictly business use, to M2, mixed use. She questioned who and why had initiated this change. She stated that for a town the size of Newmarket, the norm for multi-family residences was 15%, whereas in Newmarket it was 50%. As a resident, she was concerned about the impact to the community with increased density. She encouraged the Council to carefully review the ordinance as she did not think it was responsible to add more multi-family housing. This ordinance has not yet reached Council level.

Ed Portyrata spoke about spending by the schools, asking where the money was coming from, especially for bonuses that had been given teachers. Council Chairman Nazzaro told him the Council has no statutory authority over the schools, and suggested he should bring his concerns before the School Board or at the joint deliberative session in March, saying that he understood his concerns. In respect for Mr. Portyrata being a life-long resident, he was given 5 minutes to discuss the schools. He felt that Newmarket should change its structure so that the Council could become more involved with the schools. Later in the meeting, in reference to a proposed warrant article to establish a Charter Commission, he was told that this would be the vehicle that could address the issue. Mr. Portyrata then asked if the tax reduction the residents had received was from the \$480,000 in the unreserved fund balance. Council Chairman Nazzaro said it was, but the Council had not used the entire amount available as it wanted to reserve some for buying down the rate next year. Mr. Portyrata was offended that a town employee had publicly called the Newmarket school a "dump", but he was assured that the Town Administrator was dealing with this. Council Vice Chairman Bentley said that he and many others would agree that Newmarket needs to look at a new form of government that controls both the school and the town.

Bert Allen also spoke about concerns with the school. He told by Chairman Nazzaro that by Charter, the Council has zero authority over the schools: the School Board does as agents of the taxpayers. He next outlined the Council or town as a Chapter 9 Corporation. He then spoke about non-point nitrogen sources and gas reserves in Great Bay.

Bill Arciere encouraged the Council to move forward with a new wastewater facility as there was grant money available through the State Revolving Fund and the Rural Development Fund. He said this issue had to be taken out of the legal arena and talked about to educate the public before March. He referred to the options Water/Wastewater Superintendent Greig presented at a previous meeting, and felt they should start at 8mg/L and work toward 3mg/L and start funding now through the rates. He said the permit did have provisions for non-point source controls, and he felt the more aggressively they approached that the better off they would be. He said the permit would also affect people with septic systems, and it could be more cost effective to replace those than build to a lower level. He thought that there was the potential of an 8mg/L system could reduce nitrogen discharge to 5mg/L, in which case it would be easier to get to the lower 3mg/L level. He felt the level might be reached through controlling non-point sources. He anticipated that this subject would have to be discussed at every Council meeting between now and March.

Joan DeYoreo, speaking as a private citizen, rather than as a Library Trustee, was concerned that there were only 20 public parking spaces behind the library. Her understanding was that the entire parking lot had been sold to Newmarket Mills when it was being developed. She said that merchants park there and few of the 8 spots reserved for the Durham Book Exchange are filled on a daily basis. This results in virtually no parking for library patrons. The Mills is now enforcing parking and will tow vehicles parked in its spots. Mr. Chinburg had indicated he might be willing to give parking stickers to merchants. However, she felt this did not fully address the problem, and encouraged the town to develop downtown municipal parking before more businesses came to the area.

Bert Allen said the price for installing septic systems was between \$15,000 and \$22,000. He said that the potential for downtown parking had been lost when a plan for one-way traffic through downtown was not followed.

Council Vice Chairman Bentley congratulated Council Chairman Nazzaro, who had received his doctorate during the week.

### 3. PUBLIC HEARING – Items before the Town Council for action this evening – these resolutions had

been read into the record at a previous meeting.

#### A. Resolution #2012/2013-25 Purchase of New Flooring at the Library, with Funds to be

Transferred from the Library Capital Reserve Fund

Council Chairman Nazzaro opened the Public Hearing at 7:35 p.m. The flooring had already been completed. To Bert Allen's question, the new flooring replaced existing carpeting and tile as specified in the Resolution. Councilor Levy suggested that in the future, the Library Trustees approach the Council for fund transfers before doing work. He asked if an RFP had been prepared for the work. Library Director, Sharon Kidney, said they had used an RFP, and the work was decided upon because the CIP Committee was anxious for them to begin using some of their Capital Reserve funds. This was a necessary project that had been put off for some time and they had not purposely side-stepped the Council. She said that they knew they had the money for the project, but she had then been unaware of the process. She said in the future they would first approach the Council, and that they have a time-line for projects. Since they used carpet tiles, they have extras in case any have to be replaced. She said they were very pleased with the work and encouraged everyone to come see the results. Town Administrator Fournier will make sure all Department Heads know the process. As there were no further public comments, the Public Hearing was closed at 7:41 p.m.

#### B. Resolution #2012/2013-26 Placing a Question to the Voters to Establish a Charter Commission

Council Chairman Nazzaro opened the Public Hearing at 7:41 p.m. Bert Allen felt that establishing a Charter Commission

was a good idea. As there were no further public comments, the Public Hearing was closed at 7:42 p.m.

#### C. Resolution # 2012/2013-28 Acquisition of Channel 13 Web Streaming Equipment

Council Chairman Nazzaro opened the Public Hearing at 7:42 p.m. As there was no public comment, the Public Hearing was closed at 7:42 p.m.

#### D. Resolution #2012/2013-33 Appropriation of Funds from the Dam Capital Reserve Fund to

Wright-Pierce for Engineering Services Associated with the Macallen Dam

Council Chairman Nazzaro opened the Public Hearing at 7:42 p.m. Bert Allen asked if the resolution was to study either keeping or removing the dam. The resolution states that the funds will be expended to study the structural integrity of the dam, and Town Administrator Fournier said they were only in the preliminary stages. Mr. Allen suggested the formation of an association to study the dam including those living on or using the river. He said that Barrington had formed an association that took over maintaining and insuring its dam. Council Chairman Nazzaro said people were free to associate and if abutters came to the Council with such a proposal, it would listen. As there were no further public comments, the Public Hearing was closed at 7:44 p.m.

### 5. REPORT OF THE TOWN ADMINISTRATOR

A. Town Administrator Fournier announced that a joint RFP for trash and recyclable pick had been issued for Newmarket, Newfields and Stratham. Proposals are due later in the month, after which time they will be negotiating a contract.

B. Town Planner Diane Hardy will be present at the January Workshop to update the Council on the Sky Bridge.

C. If the Council has no objections, Town Administrator Fournier has prepared an RFP for legal services as he felt this had not been reviewed for some time. He asked if some Council members would consider sitting on a committee to review proposals. He expected this to take place in January after budget season was over. Councilor Zink said he had read the RFP and had some questions. He said the RFP asks candidates to identify other towns they have worked with. He asked if legal entities that have brought action against the town would qualify for consideration. Town Administrator Fournier said they could review the action and the length of time that had ensued. Councilor Zink asked if legal entities that personally represented town officials would be considered. Town Administrator Fournier said this would have to be disclosed and it would be the Council's prerogative to exclude or include. Councilor Zink asked why labor had not been included in the RFP. Town Administrator Fournier said that they were in the middle of negotiations, but that this could be added later.

D. MRI had started its contract to serve as Newmarket's Town Assessors, and a representative will be in Newmarket every Tuesday during business hours to answer questions from the public. If necessary, townspeople may schedule appointments at other times.

E. Town Administrator Fournier had attended the Given Tree Ceremony.

### 4. TOWN COUNCIL TO CONSIDER ACCEPTANCE OF MINUTES

#### A. Approval of November 7, 2012 Business Meeting

Council Vice Chair Bentley moved to accept the minutes of the November 7, 2012 Business Meeting. Councilor Zink seconded. There was no discussion. Town Administrator Fournier polled the Council. Motion carried unanimously, 6 – 0.

## B. Approval of November 14, 2012 Workshop

Council Vice Chairman Bentley moved to accept the minutes of the November 14, 2012 Workshop. Councilor Levy seconded. There was no discussion. Town Administrator Fournier polled the Council. Motion carried unanimously, 6 – 0.

## C. Approval of Non-Public Minutes from November 14, 2012

Council Vice Chairman Bentley moved to accept the minutes of the November 14, 2012 Non-Public Meeting. Councilor Levy seconded. There was no discussion. Town Administrator Fournier polled the Council. Motion carried unanimously, 6 – 0.

## 6. OLD BUSINESS

### A. Ordinances and Resolutions in the 2nd Reading – Items the Council may act upon this evening

#### 1. Vote on Resolution #2012/2013-25 Purchase of New Flooring at the Library, with

Funds to be Transferred from the Library Capital Reserve Fund

Council Chairman read the Resolution by title only. Council Vice Chairman Bentley moved to accept Resolution #2012/2013-25 Purchase of New Flooring at the Library, with Funds to be Transferred from the Library Capital Reserve Fund. Councilor Levy seconded. There was no discussion. Town Administrator Fournier polled the Council. Motion passed unanimously, 6 – 0.

#### 2. Vote on Resolution #2012/2013-26 Placing a Question to the Voters to Establish a

Charter Commission

Council Chairman Nazzaro read the Resolution by title only. Council Vice Chairman Bentley moved to accept Resolution 2012/2013-26 Placing a Question to the Voters to Establish a Charter Commission. Councilor Carmichael seconded.

Discussion: Councilor Levy asked if the Council would discuss all the nuances of the Resolution at some point. Town Administrator Fournier gave a brief outline of the process. With approval by the Council, the question will be on the March Town Meeting ballot. The Charter Commission would consider the governing of the community as a whole and address inconsistencies and omissions in the existing Charter. Within 133 or 160 days after certification of the ballot, a special election will be held to elect 9 members to the Commission. Townspeople would have to file for this elected office. The Commissioners would then have up to 170 days after their election to determine their preliminary findings.

The Charter Commission would be an independent body, and while the Council has to provide for its funding, it has no say in its determinations. The special election would cost about \$1,000 and there would be additional costs for legal review. The Commission must submit its report for review to the Secretary of State, the NH Commissioner of the Department of Revenue Administration and the State Attorney General's office and present the final report to the town after 230 days. The final report would then go to the voters the following March, when any additional changes could be made. Very often a Commission asks for votes on articles that it proposes to change within the Charter. Once approved, the new Charter would become the law of the town within state guidelines. Town Administrator Fournier said he would become involved only if asked by the Commission.

Town Administrator Fournier polled the Council. Motion passed unanimously, 6 – 0.

### 3. Vote on Resolution #2012/2013-28 Acquisition of Channel 13 Web Streaming

#### Equipment

Council Chairman Nazzaro read the Resolution by title only. Councilor Levy moved to accept Resolution #2012/2013-28 Acquisition of Channel 13 Web Streaming Equipment. Council Vice Chairman Bentley seconded. Discussion: This will allow the public to see more live events that are not broadcast from Council Chambers. Town Administrator Fournier polled the Council. Motion carried unanimously, 6 – 0.

### 4. Vote on Resolution #2012/2013-33 Appropriation of Funds from the Dam Capital

#### Reserve Fund to Wright-Pierce for Engineering Services Associated with the

#### Macallen Dam

Council Vice Chairman Bentley moved to adopt Resolution #2012/2013-33 Appropriation of Funds from the Dam Capital Reserve Fund to Wright-Pierce for Engineering Services Associated with the Macallen Dam. Councilor Levy seconded. Discussion: Councilor Levy said that people had asked about the Dam Study Committee minutes, and he asked Town Administrator Fournier if he could either post the minutes on the web site or televise the meetings. He will look into this. There was no further discussion. Town Administrator Fournier polled the Council. Motion passed unanimously, 6 – 0.

### 5. Resolution #2012/2013-29 Transferring \$56,878 from the School Impact Fees to the

#### School District for the Purpose of Buying Out the Modular Building Lease – no Public

#### Hearing required.

Council Vice Chairman Bentley moved to approve Resolution #2012/2013-29 Transferring \$56,878 from the School Impact Fees to the School District for the Purpose of Buying Out the Modular Building Lease. Councilor Levy seconded.

Discussion: Town Administrator Fournier had sought legal opinions on the use of impact fees for modular facilities as the opinion from the town's legal counsel had been rather vague. DRA had suggested that the town contact its attorney. DRA actually has no say in the proper use of impact fees. LGC said this would depend on whether this was considered a capital improvement for the community, but that capital improvement had not been defined in the statute for this situation. It would depend on what was an acceptable useful life and level of expense to the community. Therefore it was a judgment call of the Council as to what the community feels. Bruce Mayberry, the author of the impact fee study, said the buy out of a lease for modular buildings would not be consistent with impact fee use as they were generally considered temporary structures. He said the purpose of impact fees was to recoup or pay for expenses related to additions to school facilities, and the fees were based on "bricks and mortar" replacement. Town Administrator Fournier said it was the Council's judgment as to whether the modules were a permanent solution or a temporary fix.

If the Council decides not to use the impact fees for this purpose, they will remain in the account until such time as another use can be found or until they expire and have to be returned to property owners. If the fees are not used for this purpose, it would be the school's decision as to how it would pay for the lease buyout. School Finance Director Christine Blouin said they would have to raise the money through taxation and add the amount back in to their current budget proposal. That amount of \$14,022 would be in future budgets for 4 years as they did not have a more permanent solution for building at the elementary level. The leaser had granted the school a 50% reduction on the remaining payments for this year if they were to pay off the lease in full this month. She said that "permanent" was relative, and they had had a modular facility for 22 years. She said they needed this modular building as it houses 2 fifth grade classrooms.

Councilor Levy asked Ms. Blouin why the school did not consider using Capital Reserve funds for the lease buyout rather than adding to taxation. She said that they had to keep those funds for any life/safety or other problems that might arise

with the current Junior Senior High School. She said the impact fee guidelines stated that these funds could be used for expansion, and whether that meant “bricks and mortar” was up for discussion. She referenced sporting equipment that had been purchased with impact fees as an example of items that could not be considered permanent, but said that ultimately this would depend on the Council’s interpretation and judgment.

Councilor Wright said he has no problem in using the impact fees, as this was for a classroom. Council Vice Chairman Bentley said he agreed, and he did not want to be in the position of having to return impact fees again when they could be put to good use. Councilor Carmichael agreed with Council Vice Chairman Bentley. Council Chairman Nazzaro said they could argue about the definition of permanent, but the Superintendent of Schools had said this would be a permanent solution right now. He said he understood Councilor Levy’s point about using Capital Reserve funds, but the only decision the Council could make would be on the use of impact fees. He said he would support the Resolution as he thought this would be the right use of the fees for the taxpayer and to support facilities for the students.

Councilor Zink said he could not support the Resolution as Bruce Mayberry had advised that this use was inconsistent with the intent of impact fees. He said he wanted to use impact fees, but historically the Council had ignored the advice of experts and done what it had wanted. Later, these decisions were proven wrong. Councilor Levy said he agreed with Councilor Zink, but he was going to support the Resolution because he wanted to use the impact fees. He felt this was a stretch as to appropriateness and they might be opening themselves to a challenge. However, relating this to the challenge on using fees for engineering at the golf course, they had eventually been cleared as it was clear the alternative would have created a tax burden. Councilor Wright pointed to the word “generally” that Bruce Mayberry had used in relation to the use of modular facilities as permanent solutions.

Town Administrator Fournier polled the Council. Motion passed 5 – 1, with Councilor Zink voting against.

## 6. Resolution #2012/2013-27 Fiscal Year 2013 Budget Transfers

Council Chairman Nazzaro said the Resolution showed funds that were being transferred to over-expended items from under-expended items. In the past, transfers were done on the books, but now the Council and the public would be aware of over and under expended items. This is a house keeping resolution and an example of good financial practice.

Council Vice Chairman Bentley moved to adopt Resolution #2012/2013-27 Fiscal Year 2013 Budget transfers. Councilor Carmichael seconded.

Discussion: Town Administrator Fournier reiterated Council Chairman’s point, and said the Council should vote on any such transfers to show actual expenditures. This is the first of many such resolutions. The 3 transfers totaling \$30,444 come from over-budgeting in healthcare costs. The amount of \$11,920 is for the Town Administrator’s salary including any earned bonuses, \$13,867 will be for Medicare shortfalls and \$4,657 for Channel 13 miscellaneous equipment and operating expenses. Mr. Angell said that in the future Channel 13 equipment and operational expenses would be separated for clarification. Councilor Zink said he thought this was a wonderful approach to more accurate information.

Town Administrator Fournier polled the Council. Motion passed unanimously, 6 – 0.

## B. Ordinances and Resolutions in the 3rd Reading – none

## 7. NEW BUSINESS/CORRESPONDENCE

### A. Town Council to Consider Nominations, Appointments and Elections

#### 1. Cemetery Committee – Victoria Bram, Term Expires March 2013

Council Vice Chairman Bentley moved to nominate Victoria Bram to the Cemetery Committee, term to expire March

2013. Councilor Zink seconded. Ms. Bram was invited to speak. She spoke enthusiastically about Newmarket and said she was looking forward to helping out the town. The Council thanked her for her interest. Town Administrator Fournier polled the Council. Motion carried unanimously, 6 – 0. Procedurally, after the Town Clerk swears her in, she will be sent notice of the next meeting.

## 2. NCDC – Phil LePage, Term Expires December 2015

Council Vice Chairman Bentley moved to nominate Phil LePage to the NCDC, term to expire December, 2015. Councilor Zink seconded. There was no discussion. Town Administrator Fournier polled the Council. Motion carried unanimously, 6 – 0. The Council thanked Mr. LePage.

## 3. COAST Representative – Town Administrator Stephen Fournier

Council Vice Chairman Bentley moved to nominate Town Administrator Fournier to the Board of Directors of COAST. Councilor Zink seconded. Town Administrator Fournier polled the Council. Motion passed unanimously, 6 – 0.

## B. Ordinances and Resolutions in the 1st Reading – Items will be held over for a Public Hearing

and vote at the next regular business meeting. Council Chairman Nazzaro asked that back-up

information on resolutions be included in the packets.

### 1. Resolution #2012/2013-35 Authorizing the Town Administrator to Enter into an

Agreement with Wright-Pierce for Engineering Services Related to the Replacement

of the Waterline at North Main Street

Council Chairman Nazzaro read the Resolution in full. The approval date will be changed to December 19, 2012.

### 2. Resolution #2012/2013-37 Small Claims Action Lamprey Aerie (Eagles) \$1000

Council Vice Chairman Bentley read the Resolution in full. The word “nterim” will be changed to “interim”, and the approval date to December 19, 2012.

### 3. Resolution #2012/2013-38 Small Claims Action Scott Hogan, Esquire \$100

Council Chairman Nazzaro read the Resolution in full. The title “Esquire” will be added to the last line of the Resolution; the approval paragraph and date of December 19, 2012 will be added at the end.

### 4. Resolution \$2012/2013-39 Dissolve the Energy Committee

Council Vice Chairman Bentley read the Resolution in full. The approval date will be changed to December 19, 2012.

### 5. Resolution #2012/2013-40 Veterans Memorial Trust Committee Withdrawal of Engineering Services for Construction

\$7

of the Veterans Memorial

Council Chairman Nazzaro, Vice Chairman of the Veterans Memorial Trust Committee, was assured by Town Administrator Fournier that he did not have to recuse himself from this decision because he had no pecuniary interest above anyone else. He read the Resolution in full. The approval date will be changed to December 19, 2012.

6. Approval of Holiday Schedule 2013

The holiday schedule includes all federal holidays with the addition of the day after Thanksgiving and the day after Christmas as outlined in the personnel policy. This item does not require Council approval.

7. Approval of Town Council Schedule 2013

Council Vice Chairman Bentley moved to approve the 2013 Town Council schedule as written. Councilor Carmichael seconded. The schedule lists regular meetings on the 1st and 3rd of every month and an organizational and installation meeting on March 18, 2013. Town Administrator Fournier polled the Council. Motion passed unanimously, 6 -0.

C. Correspondence to the Town Council - none

D. Closing Comments by Town Councilors

Councilor Zink said they had discussed the two Moderators getting together to discuss procedures at the first ever joint Deliberative Session in March. He thought there should be some input from the Council and School Board. Town Administrator Fournier said that by law the Moderators govern Town Meeting and it would be their decision to ask for input. He had spoken with a colleague who had recent experience with a joint Deliberative Session and had run into some problems with DRA. He will be forwarding information as to how he circumvented the problems. The Moderators had set up a discussion time with the Council and School Board Chairs. Council Chairman Nazzaro believed the meeting was scheduled for Monday of the third week in December.

Councilor Levy said the Budget Committee met on Monday, December 3rd and discussed CIP, Police, Town Clerk/Tax Collector, Planning, Town Council, Town Administrator, Finance, Human Resources, Code Enforcement, Welfare, Assessor, and Legal budgets. The next meeting of December 10th will cover the Recreation and DPW, budgets along with others.

The Economic Development Committee has been trying to schedule its first meeting. Because of scheduling issues, the meeting will most probably be held in early January.

9. ADJOURNMENT – NEXT MEETING, WORKSHOP, TO BE HELD ON DECEMBER 19 AT 7:00.

Councilor Levy moved to adjourn. Council Vice Chairman Bentley seconded. Motion carried unanimously, and the meeting was adjourned at 8:37 p.m.

Respectfully submitted,

Ellen Adlington, Recording Secretary