

Town Council Minutes November 14, 2012 WS

TOWN OF NEWMARKET, NEW HAMPSHIRE
TOWN COUNCIL WORKSHOP
NOVEMBER 14, 2012 7:00 P.M.
TOWN COUNCIL CHAMBERS

PRESENT:

Council Chairman Phil Nazzaro

Town Administrator Steve Fournier

Council Vice Chairman John Bentley

Councilor Mike LaBranche

Councilor Al Zink

Councilor Ed Carmichael

Councilor Dan Wright

Councilor Gary Levy

1. Council Chairman Nazzaro called the meeting to order at 7:00 p.m., followed by the Pledge of Allegiance.

2. PUBLIC FORUM: Non-Agenda Items Only

Council Chairman Nazzaro opened the public forum at 7:01 p.m. There was no public comment. The public forum was closed at 7:01.

3. TOWN COUNCIL TO CONSIDER ACCEPTANCE OF MINUTES

A. October 31, 2012 Budget Review: Councilor Levy moved to accept the minutes of the October 31, 2012 Budget Review. Council Vice Chairman Bentley seconded. There was no discussion. Town Administrator Fournier polled the Council. Motion passed unanimously, 7-0.

B. November 7, 2012 Non-Public Minutes: Councilor Levy moved to accept the minutes of the November 7, 2012 non-public session. Councilor Zink seconded. There was no discussion. Town Administrator Fournier polled the Council. Motion passed unanimously, 7 – 0.

4. REVIEW OF DEPARTMENT REPORTS

Town Administrator Fournier had 2 updates for the Council. State Representative Adam Schroedter had won the election by 24 votes in a recount. DRA had set the Newmarket tax rate at \$23.67, down \$1.64. The town's share was \$6.07, down from \$7.03. The school and town financial officers, Town Clerk, Assessor and Town Administrator had all checked the DRA report, and signed off on it. The Assessor's clerk had found that 8 properties had been omitted from the MS1 report.

Adding them reduced the tax rate by an additional 4¢. The warrant had been signed and printed, and the tax bills will be sent next week for a due date of Dec. 20th.

The Council had received department reports from Planning, IT, Police and Water. Council Chairman Nazzaro stressed the need for reports to be in a standardized format. He asked that Planning only submit updates and changes from the previous month's report.

A. Planning Department Report Discussion: Council Chairman Nazzaro asked for details on the \$400K increase in cost for the pedestrian bridge. The original cost was \$600K and now is estimated at over one million, which is higher than available funds. Town Administrator Fournier said he would check, but he believed the increase was from rising construction costs. Councilor Levy asked how the difference could be made up. Town Administrator Fournier said they would probably try to get more funding from federal or state grants, probably through the Transportation Enhancement Department, although they have very little money available. He explained that with projects like this, estimates fluctuate over time. His understanding was that this project had been in planning for a number of years, and was subject to increases in construction costs. He said he would try to find out the date of the \$600K estimate. Councilor LaBranche said he believed the Council had a past discussion about increased costs, and according to the original plan, the town was only liable for a certain percentage of the costs, which he thought was 20%. The developer and state shared the remaining percentage. He believed the costs had increased. Council Chairman Nazzaro asked that minutes be checked. He remembered they had approved a portion for engineering costs, which he believed was \$5K. In answer to Councilor Levy's question, Town Administrator Fournier said he would find out who would pay the difference in the increased costs. Council Vice Chairman Bentley thought the original deal was set at around \$5K. Council Chairman Nazzaro said that was for the engineering, and it seemed that after that report was done, the cost came back at one million. Councilor Levy asked if anyone remembered the cost percentage structure of the project. Council Chairman Nazzaro remembered that Chinberg had the largest percentage and Newmarket and the state the smallest. Town Administrator Fournier will check to see if anything else has been added to the estimate.

B. IT Report Discussion: Council Vice Chairman Bentley asked what vendor the Rec. Department had that would require them to use debit cards. Town Administrator Fournier said it would most probably be to pay for programming, like Rec. Track.

C. Police Department Report Discussion: Council Chairman Nazzaro said that if they were getting the report monthly, they needed to have monthly, not weekly stats. He said he liked the fact that the budget was reported correctly, but there was no context provided for where the department actuals stood against the budget. There was no detail on where the department expected to be on overtime. Council Levy said the same was true for the calls: there were no numbers included to compare the calls to the same time the previous year.

D. Water Report Discussion: Councilor Zink referred to a picture of the inside of the North Main Street water line that had been included in the packet. Superintendent Greig said they had replaced the valve last month and taken pictures which show restricted water flow from build-up inside the pipe. He said the pipe needs to be replaced, and this was one of five water projects that had been voted in. He had put out a RPF for engineering which was due on November 21st. People are drinking water from the pipe. Council Chairman Nazzaro said they give Mr. Greig water projects, but he would like to see a 5 year plan for what will be done according to criticality. Mr. Greig said the project of getting the road to the tank was critical, the testing of the MacIntosh well was critical, as was the engineering for the pump station, and North Main Street, which he was trying to get done. He was getting the cost estimates, so they could put them in priority order. After, he would be able to give a 5 year picture for other projects. He was working on it.

Councilor Zink thought the distribution issues should fall behind others, and this water pipe project was perhaps a year or two away. Mr. Greig said he was trying to at least get the engineering done and get estimates. He said the restricted flow from the pipe also restricted development in the area because of decreased fire flow. Councilor LaBranche asked if flushing the pipes would have helped prevent the build-up. Mr. Greig said it would have, but now this pipe was too far gone. Councilor LaBranche concluded that this was the result of not having the capability to flush the mains. Mr. Greig, in response to Councilor Wright's question, said that even if they ran a pig, the inside of the pipe would not be enlarged enough to meet required fire flows.

5. TOWN COUNCIL TO CONSIDER REPORTS FROM COUNCIL REP COMMITTEES

A. Planning Board, Councilor Carmichael: The Board had met on Nov. 13th, and approved the renewal of the Rosas'

excavation of their sand pit. Donald Tucker had transferred 60 acres of his land to the Southeast Land Trust of NH. Acadia Engineers and Russell Servagi presented a plan for the former Joyce's Kitchen. Some spoke for and some against.

B. Highway Safety, Council Chairman Nazzaro: There was no meeting.

C. Conservation Committee, Councilor Wright: The Committee will meet on Nov. 15th.

D. CIP Committee, Councilor LaBranche: The Committee has completed its work.

Efficiency Committee, Councilor LaBranche deferred to Councilor Zink: The Efficiency Committee will speak at the next Budget Committee meeting on Nov. 26th. They will present updates and speak on the future of the Committee in relation to the town and the school.

E. Budget Committee, Councilor Levy: The Committee have its first meeting to vet the town and

School budgets on Nov. 26th. He suggested that all the upcoming Budget Committee meetings

be posted on the web site.

F. Advisory Heritage Commission, Councilor Zink: There was no meeting.

G. Energy Committee, Council Vice Chairman Bentley: There will be a resolution at the next

Business meeting to disband the Committee.

6. DISCUSSIONS/PRESENTATIONS

A. Transferring \$56,878 from the School Impact Fees to the Newmarket School District for the

Purpose of Buying Out the Modular Building Lease: Dr. Jim Hayes, Superintendent of

Schools

Dr. Hayes said that 3 years ago the school had entered into a lease agreement for the modular building behind the elementary school to house two fifth grade classrooms. He would like to purchase the modular classroom for the \$56,787 buyout using impact fees. He said this was a valid use of the fees as an expansion of facilities necessitated by increase in enrollment from development. He added that no one wanted to see modular classrooms as a permanent part of school facilities, but that was their reality for the foreseeable futures. The annual lease payment of \$14,220 could then be eliminated from the school budget. The vendor had negotiated the payments for the lease which runs out next June and forgiven half of the 6 remaining payments at \$1,800 per month. He said the modular was in good shape, and he expected it to last at least 5 to 10 years.

Councilor Levy said he was fine with this, but wanted to make sure that this was a legitimate use of impact fees. He stated that the legal opinion they had received did not mean much to him, and did not know if the impact fees could be used for modular structures. He did not want to find out after the fact that this was not allowed. Dr. Hayes said from his reading this would be allowed as they were paying for the impact from new development. He said enrollment was increasing, and he knew they would not be able to add on to the elementary school for some time. This modular classroom has rest rooms, internet access and fire alarms. The fifth graders have to go to the main building for lunch, phys.

ed., and special classes such as art.

Councilor Zink said he wanted a definitive opinion as to whether this was an allowable use of impact fees and the legal opinion they received was vague. He suggested they check with DRA or LGC. Council Vice Chairman Bentley felt they should expedite this, and asked if they could approve it pending approval of DRA or another source. Town Administrator Fournier pointed out that Council policy was to hold votes in business sessions, not workshops. In addition, that always put someone in his position in an awkward place, as they might not like the answer they received. He said he preferred certainty, and he read the report the town attorney was referencing. He agreed that the opinion was vague. The report refers to construction due to increased population, but, unfortunately, he said that modular buildings tend not to be temporary anymore. He wanted to confer with LGC or DRA and the state planning division. Dr. Hayes said that December 5th would not be too late for an answer.

Councilor Carmichael said he was upset that they had given their attorney 2 weeks, and he had not prepared a definitive answer. He felt they should be able to take care of the issue that night. Town Administrator Fournier said they could not vote at the workshop, and Councilor LaBranche had asked that this item be put on the agenda for discussion. He asked if the Council had an issue with the attorney's opinion or with staff getting the attorney's opinion. He said if it was staff then it would go to him, but if it was the attorney they would probably be asking for their fees for legals. Councilor Carmichael said the issue was with the lawyer. Councilor LaBranche asked if they should talk to Bruce Mayberry who had written the impact fee report. Town Administrator Fournier said he would talk with him, but sometimes the reports were not the legal answer. He would prefer to talk with DRA and get a couple of opinions, but from his reading it seemed that this could be done. Councilor Levy said he did not want to hold this up. The legal opinion referred to the report and the construction of school improvements, and said this did not have to be the form of buildings but be in capital improvements with a useful life of more than one year. He emphasized that they should not spend a lot on legals for this. LGC opinions are free. Council Chairman Nazzaro said they needed more direct legal information in order to vote at the next business meeting.

Councilor Levy asked Dr. Hayes if the school had used any other impact fees in the past that fit this criterion. Dr. Hayes said they had used the fees in 2005-2006 for construction design costs and had a recent request. Council Chairman Nazzaro said they needed standardized definitions of what they can and cannot do. Town Administrator said he felt part of the problem with the legal opinion was that it sent it back to a policy decision, and that often these cases are not black and white. Council Chairman Nazzaro said that DRA had a habit of coming back, telling them they could not do what they had done. Councilor Levy said they had been told a while ago that they had used impact fees improperly for school development on the golf course, but then the decision was reversed. Council Vice Chairman Bentley said the majority of the Council was in favor, they just had to have the appropriate information. Dr. Hayes said that what he took from the attorney's opinion, was that what they fit the definition of trying to address the impact of increased enrollment from increased development. The solution has to have a degree of permanence, but it can be in renovations, not just in building buildings. He said there are a variety of solutions to the problem, but he felt the state was looking for a permanent solution. He felt that even though the classroom was in a modular building it was the permanent solution for some time to come.

B. Discussion on Waste Water Treatment Facility/NPDES Permit: Sean Greig

Council Chairman Nazzaro said this report had not been included in their packet. Town Administrator Fournier explained that they had spent time removing any information in the report that might be confidential. The presentation contained information about sewer permits and how rates would be affected with different options based on the draft permit that is currently public. Council Chairman Nazzaro said they had had numerous non-public sessions on "that", and this was their first public session about "that". Town Administrator Fournier said it was necessary to make the presentation at this time because they were running out of time to get anything done this year, and the budget process was in process. Mr. Greig said this was an overview listing options on three different scenarios. Town Administrator Fournier assured them that going forward information would be included in the Council packet.

Mr. Greig said he was going to speak about the NPDES permit and show them some options. NPDES stands for National Pollutant Elimination Discharge System and was part of the Clean Water Act of 1972. Permits are granted for 5 years, and any facility that discharges pollutants from point source into surface water in the United States is required to have a permit. The new collection system requirements state that the town must develop a collection system operation and maintenance plan. There are certain deadlines that must be met. Within 6 months of the effective date of a permit, the town must submit to the NHDES and EPA a description of the collection system management goals, staffing information and legal authorities. Also, the town must submit a description of the overall condition of the collection system including a list of recent studies and construction activities along with a schedule for the implementation of a full collection system and maintenance plan.

The full collection system operation and maintenance (O&M) plan must be submitted and implemented to NHDES and the EPA within 24 months from the effective date of the permit. The plan would have to include updates on current information pertaining to the 6 month submittal, a preventative maintenance plan for the collection system, evidence of sufficient staffing to properly operate and maintain the sanitary sewer collection system and sufficient funding and source of funding to implement the system. They also had to identify the sources and causes of known and suspected overflows and backups, including combined manholes, and present a plan for addressing these that was consistent with the requirements of the permit. The town has to provide a description of the program for preventing infiltration and inflow related influent violations and all unauthorized discharges of wastewater, including overflows and by-passes and the on-going program to identify and remove its sources. The town has to develop a public outreach program on infiltration and inflow, especially on private inflow. Within 30 months of the date of the permit, the town is required to prepare a map of the sewer collection system. The map has to be on a street map, and provide enough detail and be of a scale that is easy to interpret. The collection system information shown on the map has to be based on current conditions and has to be kept up to date for review by federal, state and local agencies. Annually, the town has to submit a report of activities related to the implementation of the collection system O&M plan during the year. None of the above requirements were in previous permits.

New wastewater treatment plant would require some bacteriological testing and have a nitrogen discharge limit set at 3 mg/L. Newmarket's present trickling filter facility discharges an average of 30 mg/L and does not have the capacity to reduce total nitrogen discharge to low levels. Therefore, the wastewater treatment facility needs to be upgraded. The cost in 2015 dollars to construct a new wastewater facility to meet discharge limits of 8 mg/L would be \$14.1 million dollars. In addition, annual operating and maintenance costs would be \$345K in 2015 dollars. The cost to make additions to the plant, reducing the discharge to 3 mg/L, would be \$3.9 million dollars and incur an additional \$35K annually for operation and maintenance. Newmarket is number one on the state's revolving loan list for funding. This would qualify the town for a 20 year loan with a 2.72% rate and a forgiveness of \$250K with a maximum loan amount of \$3.66 million. Loan forgiveness is decreasing every year, and last year the town would have had \$1.3 million. This is the last year that Newmarket will qualify for a rural development loan based on population. This funding would require a positive bond vote this year. With a request of \$5 million, the grant received would be between 10 and 30% or between \$500K and \$1.5 million.

With a positive bond vote in March of 2013, the town would have 1 year to develop a wastewater treatment facility design. Approvals from NHDES and bidding would take another 9 months and construction another 2 years. With this schedule, the first bond payment would be in the budget year 2017 – 2018. Mr. Greig had created 3 different construction scenarios and graphs showing how each would affect rates. Rates are calculated on 100 cubic feet and the average use is 5,700 cubic feet or 43,000 gallons per year for an annual cost of \$406.

Option 1 showed the impact of building a 3 mg/L facility and having a one-time rate increase when the first bond payment was due in 2012 – 2018. Under this option, (green), showing no gradual increases, the rate would be \$18.55 in 2017/2018 and forward.

Option 2 showed the impact of first building an 8 mg/L facility and in 2026/2027 building additions to bring it down to 3 mg/L. The Coalition had identified the 8 mg/L facility as the first step to be taken. Under this option, there would be a rate increase in budget year 2017/2018 and another one in 2027/2028. . Under this option, (red), showing no gradual rate increases, the rate would be \$16.26 in 2017/2018 and \$18.73 in 2027/2028 when the second phase is built. In 2017/2018 the average user would pay \$951 and \$1,081 in 2027/2028. The 2017/2018 rates are calculated on the 8 mg/L facility cost of \$14.1 million and the state interest rate of 2.72%.

Option 3 also showed the impact of building an 8 mg/L facility with additions to reduce it to 3 mg/L in 2026/2027. Under this option, the town would create a wastewater construction fund with level yearly increases beginning in July, 2013. Under this option, (blue), with level increases of \$1.04 for the first 8 years which would gradually taper off, the rate would be \$11.90 when the first bond payment is due and \$16.27 for the second phase. In 2017/2018, when the first bond payment is due, the average user would pay \$702 per year. Again, the 2017/2018 rates are calculated on the 8 mg/L facility cost of \$14.1 million and the state interest rate of 2.72%.

The sinking fund under option 3 shows an increase until the first bond payment is due and then as the payments decline, there would be an increase to prepare for the second bond payment after which there would be another decline. Mr. Greig's next chart showed a comparison of Newmarket and surrounding towns of current sewer rates and the cost of improvements. The figures for Newmarket upgrades are in 2015 dollars, while the others are in current dollars.

Portsmouth has the highest rate of \$9.54, and the projected cost estimate to bring them to an 8 mg/L facility is \$55 million. Newmarket has a rate of \$6.70 with a quarterly surcharge of \$6. The estimate for Newmarket to build an 8 mg/L facility was \$14.1 million. Rochester's construction costs are estimated at \$21 million, and Durham, currently at 5 mg/L is looking at \$6.5 million to further reduce levels. He also depicted costs for Somersworth, Dover and Exeter. A graph depicting comparisons of water rates showed Newmarket at \$4.25 with a quarterly system charge of \$6.00, which is among the lowest in the area. Mr. Greig said he had not calculated the rate costs for the surrounding towns after upgrades to their systems. Newmarket's rates would depend upon which of the 3 options they chose. Councilor Zink asked if the future burden on Newmarket's water and sewer users would be comparable to that of other towns. Mr. Greig said he would have to confer with the surrounding towns and have them project their rates according to the number of users they have.

Councilor Levy asked for a comparison of nitrogen discharge levels and current rates with surrounding towns. Portsmouth is not lower than Newmarket and is paying \$9.54 compared to Newmarket at \$6.70. He thought their rate would increase commensurate with Newmarket's. Mr. Greig said Portsmouth projected its rate at about \$20. Rochester also has a lot of work to do, and its rate is currently \$6.24. Durham and Somersworth currently are at about an 8 mg/L level and have the least amount of work to do. Councilor Levy said if they extrapolated from these figures, except Somersworth and Durham, the other towns were in a similar position to Newmarket and their costs of construction to get to 8 mg/L would be similar for the upgrade proportional to their population and users. Mr. Greig said he could not pin point exactly where other towns would be, but knew they would all have high sewer rates. He said that when all the towns had systems for 8 mg/L, he felt that Portsmouth, Exeter and probably Rochester would be on the higher end. Durham and Somersworth, who put in the system years ago, currently have rates that are about \$1.00 less than Newmarket, but their rates went up earlier. Council Chairman Nazzaro noted that the average user would pay \$888 in 2021, and asked what the average annual cost was for a septic user. Mr. Greig said there were many variables, and while he felt they were less expensive, they could be very costly if they failed.

Town Administrator Fournier apologized for not having the report included in the packet, but said changes were still being made that day. He said that in the future, if a report is not included, a presentation will not be made. He said that the town was running out of time for this year, and a bonding warrant for March had to be prepared in January for the municipal budget committee and for public hearings. Council Chairman Nazzaro said he had questions that could not be answered in a public session. Town Administrator Fournier said he would schedule a meeting between the Council and legal counsel as soon as possible. Councilor Levy asked when the Council would have to prepare a warrant article and if they would have to first decide which of the 3 options they wanted to include. Town Administrator Fournier said he would prefer they make that decision so they could explain how they intended to fund the bond, even though they would only be asking for the authority to bond. Councilor Levy said the Council and public have to have a thorough vetting of the costs of the scenarios to get public support.

Council Chairman Nazzaro said the whole conversation was on a precipice as to what they could not discuss in public. It was decided to hold a non-public meeting to further discuss this after the workshop. Council Vice Chairman Bentley said they had to emphasize that whatever option they chose, it would only affect rates for sewer users. He said they had discussed creating a water district in the past so that only the users would be able to vote. He was concerned that a lot of people would vote against the warrant because they would not understand they were not affected. He cited past votes on water improvements. Councilor Zink said it was difficult for townspeople to make decisions in light of priorities when they could not speak publicly about all the details involved with a project. He said as a resident, he would be bewildered about whether they were going to repair the water main on North Main Street, buy the portable classroom or build a new school, when there was no central forum to weigh and compare these priorities. The Efficiency Committee had been working for a year and a half to prepare a cohesive forecast of the issues, but had been unable to accomplish this. He said as a citizen before he approved anything, he would like to know the other priorities. Newmarket's form of government did not allow a strategic format that presented all the priorities for the town and the school, their expenses and the trade-offs. He felt this was the only way that residents would have the opportunity to make choices.

Town Administrator Fournier agreed, and said this could be hammered out as part of the CIP process, but in Newmarket the town and school submit their requests to separate groups. He said in many municipalities, CIP requests are submitted together, which makes it easier to prioritize and schedule large projects. He said with the discussion about the wastewater facility, they had a choice of bringing up incomplete information, or waiting and springing a large project on the residents with last minute notice. He felt they should start the conversation and begin laying the ground work, and the presentation was the Superintendent's opinion of what they needed to do at this point. Council Chairman Nazzaro said his point was that any incomplete conversation, because of litigation and other reasons, did a disservice to the residents as it tended to be confusing. He was concerned that opinions would be made which might not be accurate because they did not have all the details or background.

Councilor Levy said, in the spirit of getting out as much information as possible, that getting the nitrogen discharge to and 8 and spending \$14.1 million was public knowledge as it had been in the newspapers. He felt Mr. Greig had presented 3 scenarios to deal with this, but he wasn't sure if the reduction to 3 was part of public knowledge. He said they could have someone run the numbers for water upgrades and present those to the Council. He thought the water and sewer projects were the 2 most pressing for the town. Council Chairman Nazzaro said that they needed a water district so that those not affected would have no say in these projects.

C. Road Construction Bond

Town Administrator Fournier had been asked to look into bond rates in the amount of \$500K for 10, 15 or 20 years for road construction. The least expensive bond was for 10 years at 3.5% interest would incur \$97,562 in interest with a 1¢ impact on the tax rate in year one and a high of 9¢ in the second year after which it would decrease. The Council consensus was to not bond for road construction because of the amount that would be paid in interest. Councilor LaBranche said that based on a 10 year plan, he would rather take the money from the Municipal Transportation Fund to supplement the budget for the work.

7. NEW BUSINESS, CLOSING COMMENTS BY TOWN COUNCILORS

Councilor Bentley said he had received emails concerning school issues, even though they Council had pointed out many times that it has no control over the school. Council Chairman Nazzaro wanted no confusion about the evening's discussion on impact fees for the school. The Council controls impact fees and the school has to request their release from the Council. He then corrected some erroneous information that had been printed in the newspaper: One article referred to a 47¢ tax "cut", which actually was a structural reduction in the tax rate because they bought the tax rate down for this year only. He said that some people were confused about the \$204,948 coming from the Water Capital Reserve Fund. The Downtown TIF, from general taxpayer funds, had paid for water improvements for that exact amount to the downtown. Water improvements should be paid by water users, not by the whole town. Therefore, that amount had been moved to the General Fund to correctly account for the expenditure of funds. Nothing more could be moved from the Water Fund.

Councilor LaBranche said that Jeremy was serving a free Thanksgiving dinner the following Thursday at the Rec. Center, he believed from 1 – 4 p.m. There are sign-up sheets available around town. Councilor Levy noted that the tax rate had dropped \$1.67, and Newmarket was not the highest or lowest in the area, but they were chipping away at the rate. Council Chairman Nazzaro said they were not down to where they were in 2010, but they were lower than in 2003.

Councilor Levy moved to enter non-public session under RSA91 A: 3IIc, claims of litigation that have been filed against a public body or a subdivision thereof. Council Vice Chairman Bentley seconded. Town Administrator Fournier polled the Council. Motion carried unanimously, 7 – 0. The Council entered non-public session at 8:25 p.m.

Respectfully submitted,

Ellen Adlington,

Recording Secretary