

Town Council Minutes June 6, 2012 BM

TOWN OF NEWMARKET, NEW HAMPSHIRE
TOWN COUNCIL BUSINESS MEETING

JUNE 6, 2012
7:00 P.M.
Council Chambers

Present: Council Chairman Phil Nazzaro

Town Administrator Ed Wojnowski

Council Vice Chairman John Bentley

Councilor Mike LaBranche

Councilor Al Zink

Councilor Ed Carmichael

Councilor Dan Wright

Councilor Gary Levy

Council Chairman Nazzaro called the meeting to order at 7:05 p.m., followed by the Pledge of Allegiance.

Councilor LaBranche moved to seal the minutes of the non-public session under RSD91-a: 3, II (3). Council Vice Chairman Bentley seconded. Motion carried unanimously.

Councilor LaBranche moved to accept the agenda as written. Councilor Zink seconded. Motion carried unanimously.

PUBLIC HEARING: Resolution #2011/2012-29 Hiring of Wright-Pierce Engineering to Review Wastewater Collection System and Develop a Capital Improvement Plan and Withdraw \$37,500 from the Wastewater Capital Reserve Fund

Council Chairman Nazzaro opened the Public Hearing at 7:06 p.m. As there was no public comment, the Public Hearing was closed at 7:06 p.m.

PUBLIC HEARING: Resolution #2011/2012-30 Transfers of (1) \$483,104.57 from the Downtown TIF Fund and (2) \$198,279.52 from the Water Capital Reserve Fund to the

Main Street Enhancement Fund and to Transfer the Captured Assessed TIF Value to the Town General Tax Roll

Council Chairman Nazzaro opened the Public Hearing at 7:07 p.m. Rose-Anne Kwaks had asked for a right to know and received some history of the Downtown TIF, especially regarding purchase of the Riverdale Gas Station and the Eagles. The resolution figures add up to approximately \$682K. Adding up the 369K for the Eagles purchase and the 325K for the Riverdale purchase, and deducting the 11K for legal fees totals the same amount. She found a purchase and sale regarding the Eagles purchase in 2007 with NCDC for 369K. The communication said that NCDC did not have adequate reserve funds to purchase the property. NCDC agreed that any purchaser would be required to purchase the property as an integral part of the mill property, and will pay for the property for no less than 369K. This amount will be paid to the town by NCDC for return to the TIF funds.

The 369K and 325K were not returned to the TIF as was required by RSA 162K10b, but went directly into the General Fund. By statute, once bond and expenses are met, the excess funds may be transferred into the General Fund. She believed that under RSA 35-1, this would require a vote for appropriation. This was not done, and the money did not go back to pay down the Downtown TIF. She felt it strange that the dollar amount requested to close out the Downtown TIF was the same amount as the purchase amount for the two properties that had not been returned to the TIF.

She referred to emails between Auditor Frank Byron and Don Parnell concerning what could be done with the funds after the deeds were signed on June 27th. The total amount paid for the 3 properties was 985K, and she questioned whether TIF money had been used to purchase the third property. She referred to RSA 35-1 concerning how money can be put in the Reserve Fund which was done in 2010 in Article 5. The bond was paid off in 2010, but she did not believe there had been a Council vote in 2011 to declare excess value captured funds and transfer them to the General Fund. She questioned whether there was a vote to transfer the \$975K received into the General Fund rather than the Downtown TIF. She urged the Council to further research the discrepancies in the Downtown TIF and read RSA 162K10 before making a decision.

Amy Thompson, referring to right to know information received at the request of 3 Councilors and residents, read a statement concerning the Resolution. From this, she had calculated that the original budget was \$6,557,119, with state grants of \$1,392,301, the amount of \$4,434,284 paid to Severino and \$48,000 paid by the town to Underwood. The balance remaining of \$682,284.29 matched the unfunded liability number presented by Acting Finance Director Matt Angell. She felt that before the TIF was closed, they needed to know if and how all the budgeted funds were spent. She said the right to know request should have included this information. She stated that Severino had come in approximately \$158,000 under budget. She requested that before the Council takes funds from other allocated sources to pay off the Main Street Phase 2 Project and votes to close the Downtown TIF, the Council and townspeople have a right to know how funds from the Main Street Phase 2 Project were actually spent, not simply how they were budgeted.

Leo Filion questioned the appropriateness of using water revenues for downtown water and sewer construction, and wondered if the same procedure would be proposed for the Black Bear TIF. He said the collected water revenues were not originally intended for this purpose, and was concerned that this resolution might set a precedent. Council Chairman Nazzaro stated that the Councils of 2007 and 2008 had voted that water revenue would go towards the downtown project.

Russ Simon deferred to Rose-Anne Kwaks. She referred to her question as to whether there was a Council vote in 2011. She read from July 5th emails between Frank Byron to Don Parnell and Town Administrator Wojnowski. In an email from Mr. Parnell to Town Administrator Wojnowski, he wrote that Mr. Byron had okayed the recording of the funds received from the sale of the 3 properties to the General Fund directly as the TIF was going to be closed out. He said the alternative would be to record the funds to the TIF and then sweep them out. He asked for advisement. Her concern was with a message from Mr. Byron to Mr. Parnell. Mr. Byron did not seem to have a problem with recording the funds directly to the General Fund. Mr. Parnell wrote that he had not yet seen a town vote to transfer the excess funds. Mr. Byron wrote that it was okay to do this based upon the town vote. Mr. Byron stated that since the town had voted to transfer excess funds from the Downtown TIF to the General Fund, the proceeds from the sale could be recorded to the General Fund. Otherwise it would go in and out of the TIF at the same time. She did not believe there had been such a vote, and felt the present Council should determine this before passing the resolution.

Russ Simon felt the Council should not pass the Resolution at this time while there were so many unanswered questions, and the right to know had not been satisfied. He felt there should first be an explanation of what supported the given numbers.

Council Chairman Nazzaro closed the Public Hearing at 7:22 p.m.

PUBLIC FORUM: NON-AGENDA ITEMS ONLY

Burt Allen spoke about a DOT plan from 1988 which encouraged the town to re-route traffic to make the main street safer and provide better access for firefighting equipment. Having one way traffic going north would also establish more parking. He proposed that the town institute the DOT suggestion of parking meters for additional revenue that would go directly to the General Fund, referring to the adoption of the 1993 Town Charter.

Buzz Dietterle stated that he had been a member of either the Board of Selectmen or Town Council at that point and that they were not happy with the DOT suggestions. He referred to parking meters in

Portsmouth and

Dover which were justified as revenues collected would be used to build parking garages.

The Public Forum was closed at
7:28 p.m.

TOWN COUNCIL TO CONSIDER ACCEPTANCE OF MINUTES

A.

May 16, 2012 Workshop

Councilor LaBranche moved to approve the minutes of the May 16, 2012 Workshop. Council Vice Chairman Bentley seconded. There was no discussion. Town Administrator Wojnowski polled the Council. Motion passed unanimously.

B.

April 11, 2012, Special Meeting

Councilor LaBranche moved to approve the minutes of the April 11th, 2012 Special Meeting. Councilor Carmichael seconded. There was no discussion. Town Administrator Wojnowski polled the Council. Motion carried 6 – 0 – 1. Councilor Wright abstained as he had not been present at the meeting.

TOWN ADMINISTRATOR'S REPORT

Town Administrator Wojnowski reported that the letters to return impact fees to property owners had been prepared and will sent out in the coming week. The amounts due were calculated on fees collected and interest gained. There will be a form for recipients to complete prior to funds being released so that the town can issue 1099s at the end of the year, as this is considered revenue for the property owners. The town now has a program that will report ahead of time when impact fees will expire. Councilor Wright asked the total of the fees to be returned. Acting Finance Director Matt Angell said it was approximately 166K.

1. DON JUTTON, OVERVIEW OF DEVELOPMENT AND FINANCE PLAN FOR BLACK BEAR TIF

Councilor Zink introduced Mr. Jutton, President of MRI, citing his help with the Efficiency Committee. His work and research on this TIF is a separate project. Mr. Jutton stated that he had personally written a dozen TIFs in

New Hampshire, and that he had read much of the information available on the creation and management of the Black Bear TIF.

He felt that the TIF had been created in a hurry and lacked attention to detail, probably in response to a potential developer. He said that a TIF requires an adequate Development Plan and a Financial Plan, and that the TIF had been adopted without either. He questioned the validity of the TIF in light of state statute; although the town's attorney had pointed out that it was created by vote of Town Council. Also missing from the ordinance that created the TIF is the naming of an undesignated Administrator and Board of Advisors who create the district in compliance with the statute. He felt although it might be legal, it was highly irregular to adopt a TIF ordinance and approve a bond without adequate information as to the purpose of the plan or designation of its funding source. He stated that from what he had read, the Black Bear TIF was a "mess".

He stated that in his opinion he would recommend the Council dissolve the TIF as, fortunately, nothing of consequence had been done. In his view, he felt the half million collected by the TIF had been done so inappropriately, and the tax increment should revert to the General Fund. Mr. Jutton defined a TIF as a financial vehicle which freezes a portion of assessed captured value, and any increased value is captured for the district. It does not affect zoning, grants no authority and doesn't create any revenue. There is no regulatory element, and dissolving it would not dampen economic development in the town. He further stated that the way the Black Bear TIF was created could be a potential problem in attracting developers, as the original bond authorization required a guarantor. He also questioned that any bonds could be underwritten. In his critique, he had looked at the establishment of the TIF and compared it to statutory regulations and to good practice standards, such as cost benefit analysis.

Council Vice Chairman Bentley asked that if the funds were collected improperly, should they be returned to those who paid them. Mr. Jutton explained that these were not additional monies collected, but monies captured. Council Vice Chairman Bentley asked how long this had been done improperly. Mr. Jutton said it was from the beginning, and while the mistakes were not intentional, someone within town management should have realized this and given the Council correct information. Considering its irregularities, he found it difficult to defend the legitimacy of the district as it was not properly established or documented. Once adopted, it began capturing increments and holding money which could have gone to the General Fund. He reiterated that the Council should take the legal steps necessary to dissolve the TIF, and stated that another one could be created, if and when necessary, but be created properly.

Councilor Wright asked for a brief definition of how a TIF should be set up. Mr. Jutton said that a TIF is a financing vehicle for a district, although the

New Hampshire legislature presents it as an economic development tool. In actuality, it is no more than a statement of intent to capture new money for reinvestment within the district's infrastructure to encourage development. To minimize risk, he recommends a dedicated TIF district in which there is definite developer commitment which will not only cover the town's investment, but add revenue to the town. He said that an alternative would be what he calls a TIF savings account in which the town waits for captured value to increase to the point that bonding for improvements can be secured or potential developers can receive assurance that necessary infrastructure improvements will be made.

Councilor Levy commended Mr. Jutton for the thoroughness of his report on this long-standing issue. He cited further consequences of the TIF: money had been diverted away from the General Fund for the past 14 years, and several pieces of property had been purchased with TIF and General Fund monies when real estate values were at their height. He felt that if this money were not diverted, it could have lowered the tax rate. He referred to the answers Mr. Jutton had given Council Chairman Bentley: there was no adequate plan, no time line established and no financial or details of purpose established within the TIF. In addition, General Fund money had been used. He stated that this issue had been brought to the Council over the past few years, but been ignored. Council Chairman Nazzaro stated that had not been done by this Council.

Council Chairman Nazzaro asked Mr. Jutton to explain further his comment that a developer would not want to come into a TIF district that was improperly set up. Mr. Jutton explained that the bond requires a guarantor. A developer would ask what the plan was and what he would be expected to guarantee, and what would be in it for him. First and foremost, can it be seen as a legitimate statement of intent, and does it bond the town to capture the value and invest it in improvements. A developer would see this as asking him to pay for the water, sewer and road improvements as well as building an access bridge, as his taxes would theoretically be reinvested to build the improvements. He felt this was not sustainable, and would not encourage a developer. He said the Council should consider doing the TIF again and renaming it. Council Chairman Nazzaro asked if closing the TIF would be better for development, and Mr. Jutton replied it could not be worse.

Councilor LaBranche asked what the process was to return the captured revenue to the General Fund. Mr. Jutton answered that this was a legal issue and that he knew of no precedent within the state. Town Attorney Justin Richardson came forward to speak on Councilor LaBranche's question. He said there were four votes related to a TIF district which could be combined or handled separately. Typically, there is a vote to issue bonds by the legislative body which includes elements of the four separate votes. The four votes, all to be approved by the Town Council were:

1. An ordinance from Town Council to adopt a statute and the provisions of RSA 35K, relating to the sale of town property, which had been done

2.A vote to establish the district, which he said was generally in order

3.A a vote to accept a financing plan, which according to the MRI report, did not specify how the funds were to be collected, whether from a separate account, or if some was to be allocated from the General Fund

4. A vote to establish a development program

The state states that money can only be spent in accordance with the financing plan. He cited the town of

Hooksett's successful TIF projects which seemed to roll the financing and development plans into bonds. The bond vote which is adopted by the legislative body includes a guarantee from the developer and a statement of the capacity to pay it back through tax increments.

Attorney

Richardson said that the problem was that the financing plan lacked many of the details Mr. Jutton would like to see, but that, by statute, the capacity to void the plan and transfer the money out had to have been included in the plan. He said that the Council had to come up with a financing plan that specified how this was going to occur. That would first require a Public Hearing. He stated that

Newmarket had some flexibility as the bond vote, the budgetary part, required a Town Meeting vote, while the development and finance plans would be enacted by Town Council, as the legislative body. The Town Council can also approve transfers of funds and could arrive at a method for implementing this. The Council could either vote to close down the TIF or come up with a proposal wherein a developer would come in. He felt it was not too late to fix the TIF, but the Council had to make that decision. He thought that voiding it would be the wrong step, as the spending would be against statute that states that spending has to be in accordance with the finance plan. This was not included in the original finance plan. He said the Council had to come up with a proposal which articulated this and hold a Public Hearing before implementing the process.

Councilor Levy said he thought what Mr. Jutton was saying was that there was no Black Bear TIF, and because of its being mishandled it was not a legal TIF district. He did not agree with Attorney Richardson, and said in his viewpoint the legislative body was the townspeople. He said the Council might be able to establish a plan, but the townspeople had to vote on the bond. He felt the money should have been returned as there was no activity within the TIF. He thought the TIF would not withstand a legal challenge. He further stated that something with no structure could not be fixed. Council Chairman Nazzaro said that what Attorney Richardson was saying was that there was a process that had to be followed to ensure that the TIF be closed properly in accordance with the original votes.

Councilor Levy stated he felt this was being overcomplicated, and that even without all the issues with the TIF, the money in the TIF, according to 162K, had to be returned as there were no bonds or operations existing. He said this was non-negotiable, according to the statute, and that it was taxpayer money. To Council Vice Chairman Bentley's question about the Town Council votes Attorney Richardson had listed earlier, he replied that each could pass by a simple majority. Attorney

Richardson, responding to Councilor Levy, stated that the focus of what he had said was based on RSA k210, IV. This states that funds be expended only in accordance with a tax increment financing plan. It further states that expenditures only be made to pay off costs and administrative expenses incurred in developing a district. He said the Council needed to develop a plan to overcome this requirement, a plan that would include a method of expenditure and disposal of collected funds. He had not looked at the question of whether the collecting of the funds was illegal. He said that without the establishment of the plan, further questions about expenditures could be raised. Once this plan was in place, the Council could then move forward with what it wanted to do.

Mr. Jutton stated that creating a finance plan would be simple. The essence of the plan would be that there would no longer be a district and the plan would be that the funds revert to the General Fund. He said there could be a Public Hearing before the vote. Councilor Levy read another part of the statute that said that that portion of captured assessed value, not use for paying off bonds or for the purpose of developing or operating the district, be declared excess captured value and be returned to the tax list. He said his issue or goal had been all along that money not being used should be returned to the General Fund and fall into the fund balance to help with

Newmarket's financial issues.

Council Vice Chairman Nazzaro recommended that the Council come to a consensus as to how it wanted to move forward. He asked for consensus that Don Jutton and Attorney Richardson prepare a draft of a financial plan stating the intention of the Council. Rose-Anne Kwaks asked to speak as she was the person who had brought this issue before the Council 4 years ago. She questioned Attorney Richardson's statement that the Council was the legislative body of

Newmarket, referring to RSA162K which stated that the legislative body was the townspeople, and the governing body was the Town Council. Town Administrator Wojnowski said that the question was not that

Newmarket was an SB2 town, but that the town charter established Town Council as the legislative body, and that the only authority given to town meeting was to adopt the budget. Ms. Kwaks asked if they had the authority to be more stringent than state statute 162K, which distinguishes between a legislative and governing body, and the legislative body is the voters as stated in 162K2. She referred to Attorney Richardson's citing of 162K10IV which spoke of expenditures being made in accordance with the tax increment plan, which did not exist. She then referred to K 10 II b which stated that the portion of the captured assets not used for retirement of bonds or for operations and development of the district be declared excess captured value and returned to the general tax base. She felt that needed to be cited in whatever resolution was prepared.

Council Chairman Nazzaro said he thought everyone could agree on what the ending date should be, but cautioned that in light of all the issues proper legal procedures be followed. He said that the monies used to purchase land were another issue. Councilor Levy asked what the time line was for this, as he hoped this could be done to help the tax rate. Council Chairman Nazzaro asked that a draft of a financial plan be prepared for the next Council meeting. Allowing for time for a Public Hearing would still allow time before the taxes are set in accordance with assessed value on September 1st. Councilor Levy asked if the excess captured value is returned, would it be reflected in next year's taxes. Council Chairman Nazzaro said it would affect 2014. Acting Finance Director Matt Angell said that the Council had a fund balance policy, and that returning the funds would bring the reserves up to the minimum policy level. Any amount beyond that would be used to reduce the tax rate. The assessed value would be used to reduce the tax rate.

2. EFFICIENCY COMMITTEE REGARDING USE OF PROPANE AS FUEL FOR 1 POLICE CRUISER, 1 DPW TRUCK AND MOWER

Bob Coffee, Chairman of the Efficiency Committee, said that they were looking for ways for the town to save operational money. After meetings, they felt Mr. Proulx's suggestion of propane conversion was a good one. He said they were bringing this before the Council to get input, and then, if the Council agreed, develop a more formal proposal.

Jim Proulx, President of Proulx Oil, spoke on the details of using propane, its cost effectiveness and conversion payback expectations. He said Prins Manufacturing had developed a device that could be applied to existing gas engines, introducing propane as the primary fuel. With a dual fuel system, engines start with gas and switch over to propane when the temperature reaches 130 degrees. Auto gas is another term for using propane for vehicles. There would be no interruption in switching back and forth between the two fuels. He said that propane had a higher octane than gasoline, was easier on engines and allowed for longer intervals between oil changes. This is half the cost of dedicated devices that use propane exclusively.

Another application of the device would be for lawn mowers. Funding opportunities for this could be through the National Propane Education Association Council, which would cover \$1,000 for conversion. Other grants from the New England Association are in the development stage. Propane use would also reduce the exhaust emissions, prolong engine life, and eliminate gasoline spillage. Mr. Proulx said that the initial discussion had included converting a police cruiser and a highway department vehicle. After further research, it was determined that the pay back for a highway vehicle would be too long at this time. As police cruisers are used with much greater frequency, it would be much more efficient to consider their conversion. The product and installation cost would be between \$5,600 and \$6,000 for a vehicle, and the device can be removed when a vehicle is retired and placed in a new vehicle. The tank has a 12 year recertification and can be renewed at 5 year intervals after that.

The quickest payback is for those vehicles using at least 3,000 gallons of gasoline a year. Based on gas and propane cost figures and projections, the town could realize a \$1.00 reduction in fuel costs by installing the device. In addition, should the Federal Government re-enact alternate fuel rebates, there could be another \$.50 savings. Converting patrol

cars P3 and P4, once installation costs are met, could save the town \$3,500 to \$6,100 per year per vehicle. The difference would be in whether alternative fuel rebates are re-enacted and the actual future fuel prices. The break even point could be anywhere between 10 to 18 months. The device could be removed from a retired vehicle and then installed into a newly purchased one.

Vehicles could be refueled and fuel tracked at Proulx with 24 hour card-system access. Approximate refueling time is 8 – 9 gallons a minute with total time expended, 2 – 3 minutes. Mr. Proulx next spoke on ways of funding this program. One way would be through operational savings. Another would be through municipal based programs for leasing. The program could be financed internally through Proulx, and the company would offer a hometown discount to

Newmarket. He suggested a fuel contract based on a published benchmark plus differential, with a fuel cost protection clause. He asked if there any questions from the Council.

Councilor Levy asked about the estimated savings on page 66 of the report included in the packet. Mr. Proulx explained that the handout given to the Council before his presentation gave updated and more accurate figures for

Newmarket. Councilor Levy asked that in relation to the estimated 3 year payback of between \$11,000 to \$18,000, how a Federal pay back would affect the number. He also asked about finance options for the conversion. He asked for more details about budget operational savings, rolling cost savings, purchase or lease costs, and total itemized costs of the program. Mr. Proulx said electrician costs of approximately \$1,000 would only come into play if the town decided to change its fueling system rather than refueling at 1 Simon's Lane. He said that the disparity in the payback period was the Federal \$.50 per gallon credit which had not been factored in, as it currently did not exist. Rolling conversion savings is based on savings per month, and can be used to internally justify initial installation costs based on historical data. He said leases are available perhaps for 3 to 5 years, but he did not know their exact terms.

Councilor Wright asked how many gallons used would bring them to the break even point. Mr. Proulx said that the annual 6,000 gallons used by a DPW truck would have a long payback period. A patrol car using 3,000 per month would have a shorter period, and he suggested converting the one that used the most miles, probably the new one ordered. Councilor Wright asked how the savings would be tracked once payback had been attained. Mr. Proulx said the card system made it easy to track savings on a monthly basis. Mr. Proulx said that there were two fueling options: Simon's Lane or Proulx installing a fueling station at the highway department, which Proulx would own.

Councilor LaBranche asked how installing the device would affect vehicle warranties. Mr. Proulx replied that new vehicles would come with an insurance rider. The distributing company that is working with EPA certifications is also working with engine manufacturers to develop warranty language so that the warranties are not waived. That wording would be provided to the town prior to installation. To Councilor LaBranche's question concerning places that ban propane vehicles, Mr. Proulx said the only place he knew was

Boston tunnels, and the law was being changed. Councilor LaBranche asked about the downside to this conversion, and wondered if maintenance was an extra cost. Mr. Proulx said Auto Excellence would become certified in conversion and maintenance. He guessed that the warranty of the device would be one year. He stated that he had converted his vehicle and had about 8,500 miles of active service thus far. The only required maintenance was replacing the filter at 30,000 miles, which he had done at 80,000 miles, and his MPG were the same before and after changing the filter.

Councilor

Carmichael asked if Mr. Proulx was asking for a trial period time. Mr. Proulx said he was before the Council to educate and determine interest. The next step would be to develop an agreement. He said normally the time period would be 3 – 5 years depending on his company's investment in infrastructure. He will get a list of other municipalities using the device.

Council Chairman Nazzaro asked if the town were to get into an agreement where Proulx financed the project, and the town entered into a volume agreement, how this would affect the estimated 14 month payback period. It would be the same. He asked what would be included in the volume agreement. Mr. Proulx said that once he knew the infrastructure costs, he could narrow that down, but he estimated it within a 3 – 5 year range. The cost would be based on published benchmarks, plus an increment and travel costs. This can vary seasonally, and is also based on pipeline tariffs. The finished price would be based on those variables and be locked for the period of time.

Councilor Levy asked for a complete cost/benefit analysis. He asked for a certain percentage mark up over rack rate or bench mark. Mr. Proulx will provide that, and said that is how the procedure is done. Councilor LaBranche said he would

like to discuss this at the next meeting. He questioned why this would be done on an existing vehicle, when the installation cost could be added to the CIP when purchasing a new vehicle. He also wanted more information on how this would affect vehicles with different mileage. Mr. Proulx said the figures were based on annual, rather than aggregate mileage. He recommended that conversion be reserved for vehicles of under 75K aggregate miles, but it really depended upon the length of time the town intended to keep the vehicle. He also said that using propane device could also extend the life of the vehicle.

Councilor Nazzaro asked that Mr. Proulx provide the cost/benefit analysis and list of towns using the device for the next meeting. Larry Pickering of the Efficiency Tactic Committee said that the devices were transferable from one unit to another, which was an added bonus. He said the Committee was not advocating that the units be paid for out of the Police or DPW budgets.

3. JIM HAYES, SCHOOL SUPERINTENDENT TO REVIEW AGREEMENT FOR OPEN SPACE FUNDS

As Mr. Hayes was not in attendance, Town Administrator Wojnowski presented the report and agreement which resulted from meetings between him, Superintendent Hayes, Attorney Richardson and the school's attorney. This was in response to the Council's concerns. The document established that the Town Council would be contributing 28.37% of the total purchase price of the land for school purposes from Open Space Funds. Based on that percentage, should a school not be built and the property be sold for another purpose, the Town Council would be given the option of retaining that percentage of land for public good, or retain that percentage of the selling price. They also considered this within a time frame, and suggested that if a school be built, that the agreement be null and void.

Town Administrator Wojnowski said that Attorney Richardson wanted to add language relating to the sale, lease or use of the land for non-public purposes. Attorney

Richardson said the agreement was close to adequate, but he thought this should be added to the agreement. He also felt there should be a determination of what value the town had received for its investment if nothing happens with the land for an extended period of time, i.e. at what point would the agreement lapse. He said one of the issues would be how as Town Council they could approve the agreement. He said there were two methods: 1. to act under RSA 41A as a Board of Selectmen to buy the property, which requires 2 public hearings held 14 days apart, or 2. to take the agreement before them with a few amendments and have the first reading with an ordinance at the June 20th meeting, with a vote to approve at the July 11th meeting.

Councilor Levy wished to clarify the information. He said that if the negotiations are not successful, and a school not built, the town would be reimbursed for 28.37% of the price if the property were sold. Attorney

Richardson said that was the default figure based on the town's investment. Councilor Levy asked if the money could then be moved back to the Open Space Fund. Attorney

Richardson presumed that this would be subject to a future Town Council vote. Councilor Levy asked why this possible return was based on a percentage, rather than a dollar amount. Attorney

Richardson said there were too many variables and no way of knowing what future real estate prices might be. The percentage represented the town's share.

Councilor LaBranche questioned the timing necessary to come to an agreement if public hearings were necessary. He thought they were to have a public hearing on using the open space bond fund at the June 20th meeting. He had thought that was all that needed to be done. As far as the agreement between the town and the school, he thought the Council could vote on that, and asked if that required a public hearing also. Attorney Richardson said they were contributing to the purchase of property, which required a public hearing. On second thought, he stated that the Council was using Capital Reserve Funds to do this, and as long as the Council was not taking title to the land that might be acceptable. He felt they should be cautious and wrap the agreement into the purchase documents as it would be a recorded part of the purchase. He said the public hearing would require a 5 day notice before the June 20th meeting and the Council vote could take place at the July 11th meeting. The property passing is slated for July 12th. Councilor LaBranche said he thought the Council was looking to close this out by June 30th.

Councilor Zink said the original question was: what would transpire if the property was not used for the school? He expected a document for the future relating the intent of the present Council if that should happen. He said the

agreement had required a month of work and 2 attorneys' fees to come up with something which was beyond what he expected. He had expected a simple letter of intent stating that the Council wanted the land to either go back to the Conservation Committee or not. He felt this was a waste of time and money. Council Chairman Nazzaro agreed. He said the town had voted to give the funds to the school and they had held multiple public hearings on that. He questioned why this was all necessary. Attorney

Richardson said the Council needed a document to protect the town if the school was not built. Council Vice Chairman Bentley said the original question came from townspeople who asked what would happen if the school was not built, and the school decided to do something with the land that townspeople didn't want. The Council and voters had already approved giving the money to the school. He said they had to listen to those who asked the question, but he didn't know why this process had taken so long.

Councilor LaBranche asked that the public hearing be held on the 20th, and perhaps a backup meeting on the 27th to complete this by the 30th. Attorney Richardson thought they might be able to combine this with the public hearing on the bonding. Councilor Levy asked why, if it was the will of the Council, they could not simply vote. He was told a public hearing was required as this was tantamount to purchasing land. Town Administrator Wojnowski said that the Council was allocating funds out of open space and that requires a public hearing. There had not been a public hearing, as there had been no notice to the public. Town Administrator Wojnowski said they could meet the deadline for posting in the newspaper for a June 20th Public Hearing to allocate money out of the Open Space Bond for the school's use to purchase land. Both hearings can be held that night. June 27th would be a back-up date, if necessary. Acceptance by the Council requires a simple majority. A citizen came forth to ask that the Council also to consider what would happen if the school were abandoned.

4. SEAN GREIG, WATER/SEWER RATE INCREASE

Mr. Greig related the history of water and sewer rate increases since 2003 in his report to the Council. In 2003, water rates increased to \$3.85, with a minimum set of \$38.50 and sewer rates to \$4.12, with a minimum set of \$41.12. A rate study was conducted by Woodcock & Associates in 2008. As a result of the study, minimums were eliminated in 2009 in favor of a \$6.00 quarterly charge for water and sewer system usage. During that year the water rate remained at \$3.85, but the sewer rate was increased to \$5.10 which was below the figure recommended in the 2008 study.

In 2010, the water rates increased to \$4.10, and in 2011 to \$4.25. The 2012 projected water fund balance is \$974,000, and the Water Department's projected revenue for 2013 is \$865,000 against its budget of \$843,230. Mr. Greig is not asking for a water rate increase this year. He did ask that a CIP fund be established to advance the water goals set by the Council as resolutions.

In 2005, the sewer fund balance was approximately \$500,000. An auditor suggested that they look at rates on an annual basis in light of the fund balance. By 2010, with sewer rates increased to \$5.80, the balance was in the negative by \$66,000. The 2011 rate increase to \$6.20 saw the negative fund balance at \$24,000. The projected 2012 fund balance for 2012 is in the positive at approximately \$160,000. The target amount for the fund balance is \$500,000. With no sewer rate increase, Mr. Greig projected 2013 revenues at \$1,060,000 against a budget of \$948,196. He stated that with all the anticipated work to be done with wastewater treatment and work on the collection system, the Capital Improvement Fund was under-funded. He was asking for a \$.50 increase in sewer rates which was projected to increase revenue to \$1,135,000. This would result in a \$27.50 annual increase for the average single-unit user, less for an apartment dweller, or a \$6.88 increase per quarter. He said once the fund balance was where it should be, any other funds could go to a C.I.P.

Councilor LaBranche asked when this would be implemented. Mr. Greig said the increase would be in the bills sent out after August 1st, and that in view of the wastewater treatment facility, there would have to be steady increases every year. Councilor Wright asked what could be expected with a new Wastewater Treatment plant. Mr. Greig said the rates could double, depending upon what funding they could receive, but it was also depended on amount of usage. Council Chairman Nazzaro asked if the increase was in part to offset the affect that would be felt when the wastewater treatment plant begins operating. Mr. Greig said this was the last step before offsetting this issue. Money was needed for the CIP. Adding up the assets of the sewer department and the cost to replace those, means that the fund balance should be about \$400,000.

Councilor Levy asked what the sewer rate was prior to the increase in 2009. Greig said the rate was \$4.12. Councilor Levy estimated this was a 13 – 14% increase. Then there was another 8% increase. Mr. Greig said the problem was that

the fund balance had been spent and not properly funded, and the town needed to put money away for anticipated projects. Councilor Zink asked if the expectations for the future rate impact concerning the wastewater treatment facility and project to increase the water supply had been presented to the average user. Mr. Greig said they had done this for the wastewater project, but not for the water supply project. Councilor Zink said he thought this should be done, with rates projected for 5, 10, even 15 years in the future. Mr. Greig said he wanted to see the sewer department in the same shape as the water department. The water department had put money aside for future projects, and he expected the water rates to remain fairly steady.

Councilor Zink asked that, considering the anticipated projects, numbers for water and sewer rates be made available to understand and evaluate. He said it could be possible that the rates could be unaffordable. Mr. Greig said that was more likely with the sewer project. Councilor Zink felt that they should get user input, and the Council agreed. Mr. Greig said he would put the figures together. Councilor Levy asked how much was currently in the Water CIP. Mr. Greig said there would be \$163K in the Water CIP, after deducting \$198,000 per Council recommendation. Councilor Levy said the Council had voted to remove the \$198,000. Mr. Greig will come to the June 20th meeting with a resolution to start a Water CIP from the fund balance.

5. DISCUSSION ON MASTER PLAN CHAPTER 6: ECONOMIC DEVELOPMENT

Council Chairman Nazzaro said there was no background information on this included in the packet. Planning Board Chairman Valerie Shelton came forward to speak on the importance of the Council working on Chapter 6, which had been adopted on August 20, 2011. She stated that the Council had not taken action on this for a year. She said there were some critical high priority items in the Master Plan at the end of Chapter 6 involving responsible parties and task lists. One priority was the responsibility of the Town Council to, within a 6 month period, move forward with the recommendations from Chapter 6 to establish an economic development entity for

Newmarket. Other priorities would come from this. Councilor Zink confirmed that although this had been listed as a priority last year, the Council had not taken action. However, this was a priority for this year's Council. Ms. Shelton stated this was important to the taxpayers, as it could lead to projections about future tax bills.

Councilor Levy asked if they should consider bringing in a consultant to give direction and help in such areas as traffic flows and how or whether to develop land for this, while maintaining Council goals such as maintaining the character of the town with responsible development. He felt the town should seek the help of a professional. Ms. Shelton said the highest priority in Chapter 6 was to do as Councilor Levy suggested. She said they needed the community wide vision of the town before proceeding. Councilor Levy felt this was the step to be taken before hiring an economic development specialist. Ms. Shelton thought there was talent in the town and perhaps a committee could be set up consisting of Council and Planning Board members, interested townspeople and perhaps some from NCDC or another organization. Councilor LaBranche thought NCDC should be contacted as well and he too felt there was a lot of talent within the community. Councilor Zink agreed, and suggested they look at

Durham. Ms. Shelton felt that

Durham had a different focus, and suggested they look at

Rochester's commercial/retail development plan as well as communities with similar assets to

Newmarket that had success with this. She stressed that they needed to prepare a vision that reflected what the townspeople of

Newmarket want. She also said that any plans made had to be economically feasible.

Council Chairman Nazzaro asked if she was advocating a committee to gather information and act as a liaison between the community and the Council and hire a profession to help with the process. Ms. Shelton said she was, and in order to move forward, the community needed a consultant and the consultant would need community involvement. She suggested a committee be formed to look at and recommend a consultant. Councilor Levy stated that John Connery was a skilled consultant, especially in infrastructure, but whatever was done needed to be done with public input. Ms. Shelton said that whatever committee was appointed should have a broad range of skills. Councilor Zink asked as a practical matter if Ms. Shelton felt they could assemble such a group. His experience had been that it was difficult to schedule. She said that

Newmarket had a core group of volunteers, but that the first step would be to show this as a priority. People would first have to see the importance and purpose, and the Town Council had to take the lead. Council Chairman Nazzaro said that the Town Council had to take the lead in creating a committee as it was one of its priorities also. Councilor Levy said he would be interested in serving on the committee.

6. REVIEW OF TOWN COUNCIL GOALS, PRIORITY #1: DO THE BASICS RIGHT

Town Administrator Wojnowski said he had created a form to be used by department heads/managers to be presented monthly to the Council. This would include a spreadsheet with budget details as to appropriations and up-to-date expenditures, and explanations of any overages or unexpected costs or issues. Details of each project a department was involved with would be provided to show progress and projections. Details necessary beyond the form could be provided by having the department head/manager meet with the Council. Council Vice Chairman Bentley said this was a good start, and he felt department heads should meet with the Council twice a year to answer questions and provide more in depth details.

Council Chairman Nazzaro said he felt this could be done with a visual snapshot. He felt charts or graphs would be easier to read. Town Administrator Wojnowski said he would bring forms filled out showing expenditures through the end of May to the next meeting. He felt incorporating charts or graphs would be a good idea. Councilor Zink said he thought they should have a joint meeting with the Budget Committee, as they should have input as to the helpfulness of the information provided. Town Administrator Wojnowski said that perhaps Acting Finance Director Matt Angell could present this form to the Budget Committee's next meeting. He said that in July, they would provide an annual report. Council Chairman Nazzaro said this should be a permanent item on the Workshop agendas.

7. REPORT ON ROAD AND UTILITY PROJECT FOR MACINTOSH WELL

Town Administrator Wojnowski reported on a conversation he had with Attorney Richardson on constructing the road. Attorney

Richardson had prepared a report stating that they could proceed with the road construction as Town Meeting can only bind funds for its time period. Funds had been frozen for the road, and it was just a matter of time before the work could start. Sean Greig stated that the rain had been a deterrent thus far. Richard Malasky said they would have to get the equipment, and expected the materials in mid-July. One third of the road has to be completed. He estimated that it would take 2 weeks to complete the underground pipes to house the electric line. Water pipes could be installed later to take water from the well to the pumping or blending station. To answer Councilor Levy's question, completing the road was necessary to get the necessary equipment closer to the well and it made sense to lay the pipes as the road was being built. Mr. Greig plans the pilot study to take place in August.

Leo Filion said he felt the electrical work should be completed in which case the town would not have to bear the expense of a generator. He said that after a 30 day pump test, the well should be tested again as elements such as chloride, arsenic, sodium and manganese would be reduced just by pumping. A previous study by Emery and Garrett had determined that these elements had been reduced by 30% in 30 days and continued to be reduced after that. He suggested that the well might not need treatment if the elements leveled off and it might meet standards. He said that 40 households used water from the aquifer and the water tasted fine. He felt they should put in the pump and enclosure first and then test the well. He said the reason this had been voted down by townspeople was that they were not convinced the well need treatment. He wondered what would happen if the town spent 2 million on a treatment plant only to find it wasn't necessary. He felt overall that the road and electric work should be completed; the pump and enclosure installed, and then the water should be tested in that order.

Council Vice Chairman Bentley moved to continue the meeting past 10:00 p.m. Councilor Zink seconded. Motion carried unanimously.

Council Vice Chairman Bentley asked if the Council had the Emery and Garrett report. Mr. Greig said they did. He reported that he had met with the state, and they asked for a corrective action plan, recommending a building moratorium if action was not taken. There could also be an administrative order with municipal fines. He said they had to work quickly to meet the deadlines of the plan, and work had to start by July 1st. A generator was necessary as there was no reason to expect the electric company could lay the cable in time to meet the deadlines. They would pump the aquifer for one week to flush it out and then take samples. For the test, the aquifer would be pumped as it would be used for 8 hours per

day. They will also test the EDR unit. Samples would be taken at the end for comparison. Samples would be blended with water from the system as this would not be a stand alone well. EDR is a stand alone well. They were also looking at the raw water to see what would happen if it were blended into the system. He said the study would involve alternative uses and look at the well as if it were operating.

Mr. Greig's timeline was to have a Warrant Article by January 12th and present it to Town Council by January 23rd. The Deliberative Session and vote would follow. He said the state felt the schedule presented was adequate, but felt the time allotted for design was too long. He said they needed to get the road in and approve the \$146,900 for the Pilot Study. He said he did not believe they could get the electrical work completed in time to meet the deadlines and therefore they were using a generator. Mr. Malasky said they needed 3 phase power which currently ends at Price's Garage. The lines have to be done by PSNH as they would run under and over ground. They had an estimate from PSNH of about \$250,000 to do this, but they have not yet prepared a design. Councilor LaBranche asked Mr. Greig what he needed at this time. Mr. Greig said he needed the \$146,000 approved for the Pilot Study.

Councilor LaBranche moved to authorize the expenditure of \$146,000 from the CIP fund for the Pilot Study of the MacIntosh Well. Council Vice Chairman Bentley seconded.

Discussion:

Council Vice Chairman Bentley asked Mr. Greig what exactly the Pilot Study would do. Mr. Greig said the pilot would look at the EDR technology, the raw water, the quality of the water during an 8 hour day, and the blending of the water with that in the system. Councilor Levy asked if there was enough money in the CIP to do this. Mr. Greig said there was \$163,000. Councilor Levy asked if they followed Mr. Filion's suggestions how would that reduce the numbers. Mr. Greig stated that they could not meet the DES time frame to be ready in time for a bond vote. Councilor Levy asked how the suggestion would change the numbers. Mr. Greig said they had to size the pump and look at the system pressures along with other things. He felt the suggestion would not reduce, but enlarge the numbers at this time as the electrical installation was estimated at \$250,000 and the pump would cost between \$50,000 to \$75,000. It would not reduce the \$146,900 for the study.

Councilor Wright asked about the water samples. Mr. Greig said that they would first flush out the system for a week before taking a sample. Council Chairman Nazzaro said that where he agreed with Mr. Filion that they had to build a road and put in electric later, but their hands were tied with DES threatening to place a building moratorium on

Newmarket. He said they could not depend on when PSNH would put in the lines. Councilor Zink said they had talked earlier about going to DES and saying it was impractical financially for the town to do this now and ask for a year. Town Administrator Wojnowski said they had discussed this with DES and their response was that the town had voted down the 3 opportunities it had to enlarge its water supply, even when funding and grants had been offered. They said if the town did not work toward this, the building moratorium would be instituted. Mr. Greig said DES had wanted

Newmarket to have a special town meeting, but had accepted the plan instead.

Mr. Greig recommended they move ahead using a generator, as the only difference in the cost of the study was for the generator and fuel. Councilor Levy asked if the Council took Mr. Filion's suggestion and put the electricity in, would it take an extra year to install a pump and have it run. Mr. Greig said 3 phase power had to be run from Price's Garage, and PSNH would have to run under and over ground wires. Councilor Levy said that Mr. Filion wanted to run a 30 day test, but Mr. Greig had pointed out earlier that the well needed to be tested as it would be used for an 8 hour day. Town Administrator Wojnowski said the study would determine whether the water needed to be treated and the best method of treatment, either an EDR system or blending. Running a 30 day test would flood the tanks. Councilor Levy said he thought Mr. Filion was advocating a 30 day flush period. Mr. Greig said it was important to test the well as it would be used, as the test results would give a better picture of the water quality the well would actually produce. He said an independent firm had also said that the water would have to be treated to be a stand alone well.

Council Vice Chairman Bentley asked about the parts of the test. Mr. Greig said there were 3 parts to the test: blending with other wells, pumping straight into the system (which is what Mr. Filion advocated), or using EDR technology. He said they had to test what was going into and out of the unit. He said the blending was an extra step they didn't have to do, but felt was advisable to do. Council Vice Chairman Bentley said he could understand Mr. Filion's concern as he and other families used water from the aquifer. He asked how they could convince the townspeople the importance of the extra step. He stated that this did not mean they were going ahead with spending over 2 million dollars on a treatment plant.

Mr. Greig said the report covering all 3 parts of the study would be brought to the Council. Councilor LaBranche said this is the first step and has to be done. He said they could go no further with the well until the test was done.

He said that the Council needed to make a decision on something that absolutely had to be done. He asked to move the question. Council Vice Chairman Bentley seconded. Town Administrator Wojnowski polled the Council. Motion carried unanimously, 7 – 0.

There was a Council consensus to move ahead in finishing the road.

8. PRESENTATION OF PETITIONS AND RESOLUTIONS AND DISPOSAL THEREOF BY REFERENCE, OR OTHERWISE: RESOLUTION #2011/2012-28 RELATING TO THE ACCEPTANCE OF THE TRANSPORTATION ENHANCEMENT GRANT AND DESIGN ENGINEERING PHASE FOR THE NH STATE ROAD 108, ELEVATOR AND PEDESTRIAN SKY BRIDGE PROJECT

Councilor Levy questioned whether the 12% less originally included for administration and expenses had been removed from the proposal. Town Administrator Wojnowski said that they had been removed, and the cost had dropped from \$55,000 to \$51,510.

Councilor LaBranche moved to approve Resolution #2011/2012-28 relating to the acceptance of the transportation enhancement grant and design engineering phase for the NH State Route 108, Pedestrian Sky Bridge Project, the amount of \$5,151 coming from the Downtown TIF. Councilor Zink seconded. Town Administrator Wojnowski polled the Council. Motion carried unanimously.

9. OLD/NEW BUSINESS

A. Application of Mary Ellen Mahoney for Library Trustee vacancy with a term to expire in March, 2014

Council Vice Chairman Bentley moved to appoint Mary Ellen Mahoney as a Library Trustee, with a term to expire in March of 2014. Councilor Zink seconded. Town Administrator Wojnowski polled the Council. Motion carried unanimously.

B. Councilor Zink reported on the Efficiency Committee. He encouraged Town Council, the School Board, and townspeople to attend the next meeting. He said the Committee is looking for input and support.

C. Resolution #2011/2012 – 29

Council Vice Chairman Bentley moved to approve Resolution #2011/2012-29 Hiring of Wright-Pierce Engineering to Review Wastewater Collection System and Develop a

Capital Improvement Plan and Withdraw \$37,500 from the Wastewater Capital Reserve Fund. Councilor LaBranche seconded. Town Administrator Wojnowski polled the Council. Motion carried unanimously.

10. APPROVAL OF NON-PUBLIC MINUTES

This item was carried into the non-public session following the Business Meeting.

Councilor LaBranche moved to enter non-public session under RSD91-a: 3, II(3) at 10:32 p.m. Councilor Zink seconded. Town Administrator Wojnowski polled the Council. Motion carried unanimously.

The next meeting will be the
June 20, 2012 Workshop.

Respectfully submitted,

Ellen Adlington, Recording Secretary