

Town Council Minutes January 16, 2013 WS

TOWN OF NEWMARKET, NEW HAMPSHIRE
TOWN COUNCIL WORKSHOP
JANUARY 16, 2013 7:00 P.M.
TOWN COUNCIL CHAMBERS

PRESENT:

Council Chairman Phil Nazzaro

Council Vice Chairman John Bentley

Councilor Mike LaBranche

Councilor Al Zink

Councilor Ed Carmichael

Councilor Dan Wright

Councilor Gary Levy

Town Administrator Steve Fournier

1. CALL TO ORDER

Council Chairman Nazzaro called the meeting to order at 7:07 p.m., followed by the Pledge of Allegiance. Council Vice Chairman Bentley moved to seal the minutes of the non-public session prior to this workshop. Councilor Levy seconded. Discussion: Since this involved legal matters, it was not necessary to add the date at this time. Town Administrator Fournier polled the Council. Motion carried unanimously, 7 – 0.

2. PUBLIC FORUM

Council Chairman Nazzaro opened the Public Forum at 7:09 p.m. As there was no public comment, he closed the Public Forum at 7:09 p.m.

3. TOWN COUNCIL TO CONSIDER ACCEPTANCE OF MINUTES

a. December 19, 2012 Workshop: Councilor LaBranche moved to accept the minutes of the December 19, 2012 minutes as written. Council Vice Chairman Bentley seconded. There was no discussion. Town Administrator Fournier polled the Council. Motion carried 6 – 0 – 1, with Councilor Zink abstaining as he had been absent.

b. January 2, 2013 Business Meeting: Council Vice Chairman Bentley moved to accept the January 2, 2013 business meeting notes as written. Councilor LaBranche seconded. Discussion: Council Chairman Nazzaro asked if Council Vice Chairman Bentley should be allowed to vote on the minutes as he had left the meeting after item 4. on the agenda. Town

Administrator Fournier said that anyone could vote on the minutes as long as he felt that the minutes were a true reflection of what had happened. Town Administrator Fournier polled the Council. Motion carried 6 -0- 1, with Vice Chairman Bentley abstaining as he had missed half the meeting for illness.

c. January 2, 2013 Non-Public Session: Council Vice Chairman Bentley asked that they defer the vote to non-public session as he had a change.

4. DEPARTMENT REPORTS

Town Administrator Fournier said they were on target for the operating budget with expenditures of 50%. The general fund budget was slightly below at 47%. The water budget was significantly over budget, but that was due to a one-time Capital Reserve Fund transfer. The revenue budget was below estimates at this time with 55% left to be received. This was because some revenues are expected to come in later. The town's electronic newsletter was launched on Dec. 29th and comes out weekly to subscribers. He is tracking the number of readers. The town is also on Facebook and Twitter. He encouraged people to subscribe. The town and school will be producing one annual report this year to save on printing costs. The case against the town Attorney Spector and The Town Planner by Mr. Chaney had been dismissed by the court. It was found that the facts even when viewed in the most favorable light of the plaintiff did not support the plaintiff's causes of actions against the defendant's slander for title. Town Administrator Fournier said that Mr. Chaney could appeal the decision to a higher court.

Town Administrator Fournier highlighted ordinances in need of updating. By charter, the purchasing policy has to be part of the town's ordinances. The ordinance has to include the process for proposals, bonding, and set the limits on Department Heads, the Town Administrator and Town Council for making a purchase. The current purchasing policy does not contain limits on the Town Administrator's ceiling for decisions to sign purchasing orders if the funds are budgeted without Town Council approval. The town also needs to update and adopt an investment policy. He said the Treasurer and Finance Director were currently reviewing the policy and should have it for Town Council review shortly. He would be recommending these to the Town Council as part of the updating and codification of ordinances.

He reported on two positive newspaper items. There had been a letter to the editor praising Terry Littlefield, Scott Marsh and the assessing office, and another article in the "Boston Globe" Travel Section describing Newmarket's attributes and encouraging people to consider it a worthwhile day trip destination. Councilor Levy commended the amount of information in the department reports, specifically mentioned the police report. He said he had not known what they were dealing with and was pleased that they were 5% under budget. He said his comments also applied to fire and rescue. Councilor Carmichael asked if the solid waste contract with Bestway would continue on a month-to-month basis until a new contract is approved. It will, and representatives from the 3 communities involved in the contract will meet shortly with the contractor they believe represents the best offer before making recommendations for the 3- year agreement.

Councilor Carmichael asked what kind of fuel was in the 6,000 gallon underground tank at the wastewater facility and how they prepared bids. Town Administrator Fournier thought this was a propane tank, but said he would check. He recommended that bids for fuels be advertised in the late spring for the best price, and hoped to advertise with the school to have a larger pool. Council Vice Chairman Bentley referred to Chief Cyr's report that showed Newmarket had one of the lowest costs per call, attributing this to good leadership. He said he found the service level of dispatch and providers maintained its professionalism despite increased calls. Councilor Zink commended Town Administrator Fournier for having all the reports in the same format and for having them clear, informative and up-to-date. The reports are available to citizens in the Council packets.

Council Chairman Nazzaro said he liked the format of the reports, and asked where to find the expenditures for snow removal and salt. Town Administrator Fournier said they were under roadways and sidewalks, and as of December 31st, there was 27% left in the salt budget and 18% in the sand budget. He noted that much of the purchasing is done at the beginning of the year and stockpiled. Council Chairman Nazzaro then referred to the revenue section reported in financial highlights. He asked if the 56% reported for ambulance receipts, for example, was a figure for the month or for the amount received thus far during the fiscal year. The percentage represents what has been received of what was budgeted for the year. Anything shown above 50% half way through the year is above estimated revenues. Car registrations are at 53% and ambulance receipts are at 56%. Wastewater shows 75% of budget expenditures, but that reflects the \$300K+ transfer to the Capital Reserve Fund.

Council Levy asked about the remaining figure in the water budget for the year reported at 27% of budget. This was

because of the one-time \$359,900 transfer to the Capital Reserve Fund. Council Chairman Nazzaro said it would be helpful to have this also reported on a monthly basis to know whether or not this was an issue of concern. Town Administrator Fournier said the one-time contribution was on page 49 under budget details. Councilor Zink asked about the rooms and meals tax, saying it seemed that the funds would be withdrawn back to the state, and asked if this was reflected in the town's budgeted revenues. Town Administrator said he had met with house and senate leadership about revenues, and this was mentioned along with the \$156,000 the state currently owes the town. As there is a downward trend in the percentages the town is receiving, originally from 40% to 29% and now 26%, he is budgeting more conservatively for this revenue item. He said he and others were trying to encourage the state to not reduce the percentage further, but to allow it to go back up.

The town does not send much money to the state and a portion of property taxes does not go to the state to be returned to towns. Money does go to the county, but state school funds collected stay in Newmarket as it is a receiver town. Councilor Levy asked about the wastewater revenues on page 65 of the packet that showed they were at 75% of budget. Interim Finance Director Matt Angell said he would be meeting with Wastewater Superintendent Sean Greig the next day to find out whether or not this represented a surplus. He wanted to insure that billings were where they should be and they had not billed in advance during any quarter.

5. TOWN COUNCIL TO CONSIDER REPORTS FROM COUNCIL REP COMMITTEES

a. Planning Board, Councilor Carmichael: The Board had met on January 8th to discuss expanding the mixed-use functions within the downtown. This was on the agenda for presentation and discussion later in the meeting.

b. Highway Safety, Council Chairman Nazzaro: There had been no meeting.

c. Conservation Commission, Councilor Wright: The Commission will host an information forum on the health of the Great Bay, estuaries and non-point sources of pollution and Newmarket's wastewater treatment facility on Tuesday, February 19th from 7:00 – 9:00 p.m. in the town hall auditorium. Peter Wallenberger, Michele Daily, Sean Greig, and perhaps one other person will speak. The forum will be broadcast on Channel 13, and available for re-play on the town's web site. The focus will be on the importance of the Great Bay to the community and of the town voting to approve the new wastewater plant. He cited Ellen Snyder as the person who put the program together.

d. CIP/Efficiency Committees, Councilor LaBranche: The CIP Committee had finished its work, and the Efficiency Committee had not met.

e. Budget Committee, Councilor Levy: The Committee held its public hearings of the school and town budgets and warrant articles on Monday, January 14th. The Committee will meet on Tuesday, January 22nd at 7:00 p.m. to finish voting on its recommendations.

f. Economic Development Committee, Councilor Levy: The Committee held a meeting a few weeks prior. They had discussed Newmarket as a whole, Committee goals and duties, and members expressed what they would like to see in Newmarket's future. He felt they had come to a consensus that it might be worthwhile to bring in a consultant to help formulate an appropriate potential plan. The plan would entail getting a consultant and getting public input. He believed they were going to meet again in February. He said he had spoken to a consultant who would be sending him information which would also be sent to Town Administrator Fournier. Councilor Zink said it might be worthwhile to contact Durham's Town Administrator about the selection process for a consultant. He said the meetings of their Economic Development Committee could be viewed on Channel 22. Councilor Levy said that Newmarket was not unique in looking for additional revenues for the town. Council Chairman Nazzaro said they should insure that Newmarket's EDC meetings were televised as well. He added that Councilor Levy had been voted Chair of the Committee. Jerry O'Connell will be Vice Chair. The Committee is seeking two more members.

g. Advisory Heritage Commission, Councilor Zink: The Commission had not met.

DISCUSSIONS/PRESENTATIONS

a. Restructuring of Impact Fees, Planning Board Chairman Val Shelton – Power Point Presentation

History: The Ordinance to collect impact fees was adopted in February, 2001 by the Town Council after fee schedules set in 2000 determined what amount of each fee collected would go to each of the four categories: school, recreation, water and wastewater. At that time the school impact fee was determined to be \$3,418, recreation, \$276, water, \$737 and wastewater, \$1,226 per single family unit, and the first fees were collected in 2002. Impact fees, paid for by developers, are meant to compensate for the addition impact on services by increased population. In August, 2007, Bruce Mayberry reviewed the ordinance with the Council. According to RSAs, impact fees cannot be used to pay for upgrades or existing needs for the existing population, but only as stated above. The non-appropriated share of the fee must be returned to the owner of record six years after collection with interest. Additionally, the fees may constitute a recoupment of past investments in capacity to service new development used as capital budget for future projects, or on debt service to pay for remaining capacity to serve new development. At that time, Mr. Mayberry wanted the Council to consider whether the capital structure for the fee basis was still the same, as it should be reviewed every five years. He also asked if the collected fees had been appropriated or refunded, and if the expected increase in school capacity had actually occurred. He also asked if the standards and investment objectives for recreation had remained the same over the seven years, and if the water and wastewater uses were consistent with the original basis.

In September, 2010, as required, the Planning Board established a committee to review records, ordinances and RSAs on impact fees and they attended a NHOEP workshop. As impact fees are complex and hard to grasp, Bruce Mayberry was again hired in 2011 to review and report his findings to the Planning Board, who in turn reported its findings and recommendations to Town Council in late 2011. There were questions of tracking fees and appropriateness of their use. There was a discussion in January, 2012, but no follow up by the then Town Administrator.

Chapter IV of the ordinance, based on RSAs, covers impact fees. Section 7:07(B) (9) states that impact fees shall not exceed the costs of providing additional or expanded public capital facilities necessitated by new development in Newmarket, and/or compensate the Town of Newmarket or Newmarket School District for public capital facility capacity that it provided in anticipation of a new development in Newmarket. Section (J) (1) concerns use of funds, stating that funds withdrawn shall be used solely for the purpose of acquiring, constructing, expanding, equipping or improving public capital facilities, to increase their capacity, or to recoup the cost of such capacity improvements. Section (N) states that the methodologies adopted by the Planning Board for impact fee assessment and associated fee schedules shall be reviewed periodically and amended as necessary by the Planning Board. This should be done at least every five years. Any proposed changes should be sent to the Town Council for its review and comment.

In 2004, there were changes in the state statutes on impact fees. RSA 674:21, V stated that changes enacted which would allow clarification and simplification of the ordinance would be updated in compliance with sections in the 2004 statute. RSA 674:39 incorporates specific limitations on the vesting period applicable to impact fees on development within previously approved plots. It goes on to say that there may be instances where construction on lots within some older approved plots are now subject to impact fee assessment. This would affect developments that were done before the impact fee ordinance was enacted.

Ms. Shelton said the 2011 Planning Board report primarily focused on whether or not impact fees were being used for projects which increased capacity to accommodate growth from new development. The report also focused on the cost and time spent in accounting and administering the plan and liability of refunding money that had not been used properly. It looked for better methods to offset the costs of expansion and maintenance, such as system development charges. The Planning Board had come to a conclusion in 2011 that the current ordinance should be repealed after adoption of system development charges (SDC) s for impact to the water and wastewater systems. The advantages would include: no time limit for use; they would not be tied to increased capacity caused by new development as they could be used for maintenance and expansion; and the Planning Board has the authority to negotiate off-site improvements as part of the development review process. This could be revisited at a later time, specifically with a bonded project that increased capacity of existing uses.

Ms. Shelton asked for questions or comments from the Council. Councilor Zink asked how a developer might look at the Planning Board's recommendations. She said that impact fees are a cost for the development, and a developer has to calculate that cost for doing business in Newmarket. That fee structure has not been changed for some time. She said if they rescinded the impact fee for just water and wastewater and replaced it with a system development charge, Mr. Greig and his staff would work on developing the charge structure with a consultant like Mr. Mayberry. The charges could be allocated over more development, rather than only those that presented a need to increase capacity. She said that most municipalities were using system development charges for such things as water and sewer. She added that in the case of the Downtown Project, if the money was coming in from system development charges, there would have been no

discussion as to whether the money was being spent appropriately. The money could be used for expansion, maintenance or improvements.

Council Vice Chairman Bentley said that dollar for dollar, whether they had impact fees of system development charges, it was bringing money into the town. He asked if the amount raised from SDCs would be similar to that from impact fees. Ms. Shelton said she did not know, because the current fees were based on year 2000 data for increased capacity. She felt that Mr. Mayberry would be able to analyze and update the data, as it was beyond the capacity of the Planning Board. Councilor Levy asked about the decision as to whether the school had used some impact fees correctly. This had gone back and forth, but had eventually been deemed appropriate. She said there were 2 issues: using fees to plan for future increased capacity and then realizing the population growth and carrying out actions, such as building. This created a liability and confusion which had eventually been determined to be an appropriate use of fees. Councilor Levy said he would not feel comfortable changing from the current system until he knew if the alternative would bring in less or more money.

He then asked why such a high percentage of impact fees were waived. Town Planner Diane Hardy referred to the RSA that was amended in 2004, part of which stated that impact fees could be charged against grandfathered lots. When the town went forward with the impact fee program in 2001, there was an uproar from several developers in town, who threatened a lawsuit if the fees were imposed on these lots. She had a memo from Attorney Malcolm McLean's office that recommended they grant waivers for the grandfathered lots. They had similar advice from Attorney Richardson. The bulk of the waivers were granted in 2001 and 2002. She said that in 2004 they found out that their legal counsel had been wrong and they could have charged the fees for some of the grandfathered pre-existing lots. She said now it was too late to impose the fees retroactively. Councilor Levy asked, if they had the SDC, would that also be grandfathered. Ms. Hardy said the impact fee comes under the state planning statute and is related to the Planning Board's approval of development as land use control. The SDC comes under a different RSA and does not follow the vesting criteria and the vesting case law that planning decisions do. Ms. Hardy said there were many gray areas in impact fees and a question as to how far they could go without exposing themselves to litigation.

Councilor Wright asked Ms. Shelton if they could get an example of an impact fee versus a system development charge in relation to the Economic Development Committee. He asked if it was possible to get a break down. She said the SDC would be determined by the water and sewer departments and the Town Council, not the Planning Board. She said the SDC had a fee process similar to determining tie-in fees for water and sewer. It was outside the realm of a Planning Board and could not be waived. She said the Planning Board had waived several impact fees, especially school impact fees in developments that were planned for no or few children. They had waived all the fees for conversions, rather than additions, to single family homes for in-law suites, as they did not increase capacity. Council Chairman Nazzaro asked if the SDC would only be for water and sewer. Ms. Shelton said yes, as these were the systems that Newmarket had. He asked about the analysis for the rates. Ms. Shelton said that when they had hired Mr. Mayberry in 2011 to do this, there was going to be a two-phased approach and their budget was \$20,000: first, analyze the ordinance and compliance with the RSA and conduct a fiscal analysis and come up with recommendation for about \$6,000; second, update the fiscal analysis, bring compliance up to date with the recreation master plan, as well as the goals and objectives of the water and sewer departments and the school for about \$14,000 to \$15,000. However, it made more sense to work on system development charges for water and sewer, and then do an analysis and updating of impact fees for the school and recreation, if the Council wished to continue with the fees for the 2. She said the biggest benefit from the SDC was that it did not have a 6 year constraint. Also, if extending the sewer line benefited 5% new construction and 95% existing, only 5% of the cost could come from impact fees.

Town Administrator Fournier said he would have to talk with Mr. Greig to determine what the system development charge could be and what the difference would be between the two. He said that the use of a structure would determine the amount of the charge. Council Chairman Nazzaro asked if a SDC would broaden what they charged for or would be the same as an impact fee. Ms. Shelton said it was different and would be similar to a water or sewer tie-in fee, and a charge for using the infrastructure of the systems. She said they had waived the water and sewer impact fees for those with septic systems and wells as there was no impact to the existing infrastructure. Ms. Hardy added that impact fees can only be used for development that increases the capacity of the system. SDCs can be used for that purpose, but also for existing deficiencies in a system that can be corrected by maintenance and upgrades. A SDC can be an on-going fee as it does not allow for grandfathered properties. She recommended that they bring in an expert who has worked with this type of system. She said the Town of Plaistow had instituted this system, and felt someone from there might be able to point them in the right direction.

Council Vice Chairman Bentley said he thought, if they placed the water and sewer under SDCs, they would have to continue with impact fees for recreation and the school as a development could be built in an area without water and sewer and still have a great impact on the other two. Ms. Shelton said the recommendation was to place the water and

sewer under the SDC system and keep the school and recreation in the impact fee system. The basis for the impact fees would be updated as they were required to be every 5 years. Council Vice Chairman Bentley said that they needed to see the figures to see how they could affect the town.

To Councilor Levy's question, Ms. Shelton said the Planning Board has the right to waive impact fees, but has nothing to do with a system development charge. He told Town Administrator Fournier that if they were going to do an overview, he thought they should see what had been collected since the program had been started and what had been waived other than what had been grandfathered. He said that if they were looking for development to help reduce the tax rate and if they did research to determine how much had to be done to develop infrastructure, only to waive the fee, he wanted to know how much was waived to get a better idea of possible revenues. Ms. Shelton said that no matter what they were receiving in revenues, they were matching in expenditures. Councilor Levy said this could be looked at another way: anything they were not reimbursed for would affect the tax rate. Ms. Shelton agreed that it was a very complicated subject.

Council Chairman Nazzaro said that whether or not they decided to change to a SDC, they were many years behind in reassessing and updating impact fees. He said that unless anyone had an objection, they should ask the Town Administrator to look into what the cost would be to hire someone which would allow them to vote on it at the next business meeting. He asked that if the amount was to be too high, that a bid be prepared. Councilor Wright said his only concern with a SDC was that in theory it could be an on-going charge. Ms. Hardy said it could be a percentage of the user rates for future development and maintenance costs. In that case, the user, not the developer, would bear the cost. She said she was not all that familiar with how the basis of cost was determined, and suggested that they bring in someone with expertise in that area. Councilor Levy suggested that before they brought in a consultant it might be worthwhile for the Town Administrator to contact other area communities to see what they are doing and why.

b. Proposed Amendment to Town Zoning Ordinance: To expand the mixed-use functions within the downtown village area – Diane Hardy and Val Shelton, Power Point Presentation

Ms. Shelton prefaced her presentation by saying that if any zoning change was to be enacted, it would have to be a partnership between the Planning Board and Town Council. The Planning Board had voted unanimously to recommend expanding Newmarket's urban development for a positive impact to the tax base, residents, visitors and image. She showed a color-coded map detailing the areas which would be changed from B-1 and R-2 zoning districts to M-2. After Chapter 6 of the Master Plan, economic development, was established, the Planning Board looked at areas of town that could be modified to expand the tax base and stimulate business growth. A sub-committee of three was formed originally to focus on the Route 108 corridor, and after several meetings began to focus on the areas adjacent to downtown. They began to move forward with the M-2 concept which would allow multi-family residential of three or more units and mixed-use development by special permit granted by the Planning Board. This would allow residential and business development within the urban area.

Once a draft of the proposal was prepared, they held public comment sessions, and removed the area north of the 108 bridge from the proposal. The remaining proposal would rezone 37 parcels: both sides of Elm Street, currently zoned B-1, the area around the railroad tracks, currently zoned B-1, and the residential in-fill area south of the tracks. Ms. Shelton explained that zoning only works well when it reflects the uses that actually exist within the zones. She said that of the 37 parcels under discussion, 34 are non-conforming under the existing B-1 zoning. The only 3 parcels that are conforming are the business park with the 2 medical centers, Riverdale, which is currently vacant, and Cheney Property Management on 108. She said the other 34 properties consisted of single family houses, duplexes, multi-family housing, multi-use buildings, the library and parking lots. She then showed slides of some of the parcels on Elm Street and the southern end of Route 108 ending at the vacant lot next to Rite-Aid, and described the use of each property.

Ms. Shelton's next slides addressed the question of why this area was being recommended for re-zoning. There has been little commercial development in the current B-1 zone. Although several conceptual designs had been presented, most would require variances because of current zoning regulations. The Zoning Board of Adjustment, (ZBA), has commented on constraints in granting variances on projects which have come before them and which could potentially benefit the town. The ZBA has recommended zoning ordinances be reviewed and modified accordingly, as it is under constraints from RSAs in granting variances, even though they might be beneficial to the town. Chapter 6 of the Master Plan identifies the responsibilities of the Planning Board to "examine and update the Table of Permitted Uses in the Zoning Ordinance and consider providing more flexibility in the determination of permitted uses". It also identifies its responsibility to "assess the development review process and assure that it provides flexibility, fosters a "business-friendly" atmosphere, while encouraging quality development and to modify development regulations, as appropriate, to streamline the permitting process." Ms. Shelton said the Planning Board was looking for a basis of understanding that the

Town Council members would support zoning changes that would grant the Planning Board flexibility to move ahead with projects that would have a positive fiscal impact to the town.

Town Planner Diane Hardy related specifics of the seven areas within the zoning ordinances for proposed changes: the zoning map; Section 1.09, Special Use Permits; Section 2.02, M-2 District Standards; Table of Permitted Uses; Table of Dimensional Controls; Section 5.08, Downtown Commercial Overlay, and Section 7.02, Mixed Use Development. Changes in the zoning map involve 4 areas: the north side of Elm Street, along Washington Street and Lincoln Street to Spring Street; the south side of Elm Street and east of Spring Street behind the library; south of Route 152, east of Railroad Ave. along the railroad right-of-way, and south from New Road along Route 108 to the Police Station and Rite Aid. Within the proposed zoning, there is recommendation to the section pertaining to mixed use permits be amended to allow for multi-family uses in excess of 3 units by special permit of the Planning Board. Also there would be a provision for allowing mixed-use development by special permit including multi-family residences of 3 or greater units.

Ms. Hardy said the revisions they were asking for were contained in the M-2 district in Section 202 of the zoning ordinance. There are proposals to change the Table of Permitted Uses. The key changes would be to the multi-family residential area and mixed use developments of 3 or more units. Currently, mixed-use and multi-family use are permitted in the M-2 district under the purview of the ZBA, but the proposal asks to shift that authority to the Planning Board. The Planning Board would have to determine that proposed projects would have a positive fiscal impact on the town, that proposed multi-family residences would be feasible based on a market analysis provided by the developer, and that there would be at least 2 parking spaces provided per unit. The multi-family buildings could not have more than 4 residential units, and any buildings with residential units on Main Street, South Main Street, or Exeter Road could not have housing on the first floor.

Changes to the Table of Permitted uses would delete the category of student housing in its entirety from the M-2 district. They were recommending that research/development uses be permitted in the M-2 district, along with automotive uses, fraternal organizations and office complexes along with mixed-use development. They intended to insure that the uses in the M-2 district would be consistent with the uses in the B-1 district so that current property owners would not be adversely affected by the change. They included commercial amusement and civic uses along with fraternal organizations and office complexes in the B-1 district. Section 202 includes design standards, but the Planning Board had decided to recommend that for flexibility, this be moved to the Site Review Ordinance, which is under the purview of the Planning Board. The Planning Board is also recommending removing current restrictions on drive-through facilities in the M-2 district, feeling that it could be better regulated through the site-review process.

The Dimensions Table would reduce the maximum height restriction from 50' to 35'. The Planning Board would be able to waive road setbacks, side and rear setbacks and height restrictions in the M-2 district by a Special Use Permit if determined to be consistent with the district, compatible with the character of the area and not adversely affect the surrounding area. They were recommending that the current overlay area be removed from the Ordinance and placed in the M-2 district, as all the language had been incorporated into that district. Density limits would be limited to 6 units per acre with approval of a site plan review. Ms. Shelton said they were trying to make it less burdensome for a property owner or developer to come before the town. To receive a special use permit and applicant would have to demonstrate that the proposed project would have a positive fiscal impact on the town, be suitable to the location, be consistent with the district, and not cause any significant adverse environmental or traffic impact. This would eliminate the requirement for a developer to appear before the ZBA before going to the Planning Board to seek a site plan review.

Ms. Shelton said that one of the Planning Board members had asked what the impact would be of additional multi-family units if the district changes were made. Six units would be allowed per acre for the 37 parcels. Considering the number of lots and their acreage, the total number of units allowed would be 109, and 47 already exist, 18 of which are grandfathered in under non-conforming use. She said at least one lot was too small to support even one residential unit, and in other cases set-backs, wetlands and topography issues would prevent this type of development. A lot currently used as a parking lot for the Mill and a lot including the railroad tracks would not be developed. She said that very often when a multi-use building is developed it includes condominiums, and the Planning Board and municipality cannot regulate apartments versus condos as it is a deed/ownership issue. She said there was a financial incentive for a developer to prefer condos as their sales can help finance a project.

Ms. Shelton said this proposal was an example of good urban planning and a plan to help reduce urban sprawl. The proposal follows national trends, and by moving people closer to the urban center of the town this would reduce the impact on infrastructure expansion in addition to helping local businesses. Impact studies would be required for any structures having more than 3 residential units or any multi-family units. There would be no residential units allowed on the first floor in structures built along Route 108. She said a significant number of the 37 properties would have to have

mixed use if they were to be developed. Ms. Shelton closed by reiterating that they were there to partner with the Council to expand Newmarket's urban development for a positive impact to the tax base, residents, visitors and image. She showed slides of properties in Newmarket that it was thought could be improved with the proposed transition to M-2 zoning.

Discussion: Council Chairman Nazzaro said there would be at least 2 Public Hearings before the Council could vote on any zoning changes. He asked for questions from Council members. Councilor Wright asked if a building with commercial business on the first floor and residences on the second would have 2 parking spots reserved for each of the residences. This was the plan, but the parking for the commercial space would be determined by M-2 zoning, unlike that in the B-1 zone. Ms. Hardy explained that in the B-1 district a certain number of parking spots were determined by, among other things, square footage of the building and number of tables. Under M-2 zoning, requirements for parking were flexible and the developer could provide the opportunities for shared parking with adjacent property owners or for municipal leases. They also provided the opportunity for the developer to put together a plan based on the nationally accepted standards of the US Institute of Traffic Engineers. She said considering the small lots, they had to maximize the space they had for parking. She said there was a built-in incentive for developers to work on plans for parking. Councilor Wright said he was concerned with available parking. Ms. Shelton said the buildings with reduced height, would be smaller, and the Planning Board had the same concerns so each plan would be site specific.

Ms. Shelton said the developers had some of the same concerns, and that was the reason the Board would look at the smaller non-conforming lots individually. Council Vice Chairman Bentley asked about waiving the height of a structure. Ms. Shelton said that would only be done if it was consistent with the surrounding area. He said that he had several messages from constituents, and had seen in the presentation that the Planning Board was concerned with positive fiscal impact from projects. He wondered specifically about the vacant lot next to Rite Aid, and asked if conceivably someone could build a structure with a business on the bottom and 3 residences above as could happen with other buildings in the area. He said the people who contacted him were concerned that increasing residences in these areas could tax the services of the town, while not providing sufficient tax revenue to offset the impact. Ms. Hardy answered that a developer would be required to prepare a report of the fiscal impact to the town for increased services along with the revenue the town could expect to receive. If the Planning Board found the project would have a negative impact, it would not be approved. She emphasized that each plan would be considered on a case-by-case basis.

Council Vice Chairman Bentley said he then questioned how a development could have a positive fiscal impact. Ms. Shelton gave the example of Bryant Rock, which she believed generated about a quarter of a million dollars, and the Mill. The Planning Board had asked the Tax Assessor what would be the most profitable development is for communities, and been told that they had conserved all their high taxable land. Waterfront, high-end residential properties would bring in the most revenue, but that was not an option for Newmarket. She said she believed that the projects that cost the most money were tract developments on the outskirts of town. Councilor Zink said what he had heard that evening and from residents concerned the dilemma with apartment buildings and children, etc., and what could be done to curb that expense. He said that what he didn't understand until the presentation that evening was that the town could, based on a negative financial impact of residential units, disapprove them. Ms. Shelton added that the developer would be required to produce a fiscal impact report, but if the Planning Board questioned the findings, it had the right to hire its own consultant and pass the charge along to the developer.

Councilor Zink asked if it would be possible to build residential units in the M-2 zone if it was shown there would not be a positive impact. Ms. Hardy said the fiscal impact study would be a requirement for units of 3 or more residences in the M-2 zone, whereas, in other parts of town that were zoned for multi-family residences, this was not required. Councilor Levy asked how a negative impact found through the site plan review would be determined on Route 108 and how subjective the review process would be. Ms. Hardy said the site review process for multiple housing unit development required a traffic impact study that would be reviewed by a traffic engineer. Also, the Planning Board can hire a consultant to represent its interests and review the data for accuracy. In addition, if it is determined that a project will have major traffic impact, the Board can negotiate for off-site improvements to accommodate the increased impact. Ms. Hardy said the same process would be in effect for environmental impacts, such as noise levels, and the Board could limit the decibel level so that it did not adversely impact adjacent properties, such as they had done for the Mill air conditioning units. She said the data from all the studies was critical for the Board to come to decisions on plans with the developers.

Councilor Levy said he had heard questions from citizens about water and wastewater capacity. He said that they now had an Economic Development Committee that would also be considering the downtown, although he personally felt it should be considering the whole town. He said there were 2 Warrant Articles that addressed water and sewer capacity, and he thought that the zoning change should not be considered until they knew if they had passed. He questioned the capacity if it was possible to have 6 residential units per acre, or 4 per structure with 2 businesses included. The town is not under a building moratorium, although it has been threatened. Ms. Hardy said they did a build-out analysis for the

potential of 80 new units within the area, but that study assumed that all the land was suitable for that type of development. She estimated that 20% of the land would not be suitable and 20 units would not exceed the water and sewer capacity. She felt it was an over-reaction to suggest they wait for the vote because at any time they could have a proposal for another zoning area that would add 20 units. Ms. Shelton added that water and sewer capacity is part of the review process even for a business project and all the department heads including the Water and Wastewater Superintendent have to review and provide input on any proposal that comes before the Planning Board.

Councilor Levy said the document stated that the Planning Board may waive certain restrictions, such as for road setbacks, side and rear setbacks and height. Ms. Shelton said that any residential units on Route 108 would have to have a business on the first floor and a height restriction of 35 feet. There may be no more than 4 residential units in a building, and no more than 6 units per acre on the lot. He referred to page 99 that stated the Planning Board, rather than the ZBA would be responsible for fiscal impact studies. He also read a statement that said the Planning Board could waive this study if it felt it was not necessary. He felt this was giving a lot of leeway to a Board and he did not feel comfortable with it. Council Chairman Nazzaro questioned that a developer could do a feasibility study, and if the Board did not agree with the findings it could hire its own consultant and charge the developer. Ms. Shelton said they had done this before, and it was a practice consistent with other towns. He said he did not think this was right. He asked if they had done a worst-case scenario for this zoning as to what the figures would be for a project with the largest draw on services producing the smallest revenue. Ms. Shelton said they could hire 5 different consultants and get 5 different answers. He said that there had to be such a scenario out there for zoning changes.

Council Chairman Nazzaro said they had mentioned conceptual designs that the Board was not able to approve under current zoning. He asked for examples and for an idea of any projects that might be approved with the zoning change. There were developers in the audience, and with no Council objections, Walter Cheney came forward. He said he had a proposal for mixed-use development in a B-1 zone that was not approved because that type of development was not allowed. He said it was not economically feasible to develop the property without a residential aspect, and the banks would not give him a loan. The combined lots were too small to build a business structure large enough to generate sufficient income and also provide for set back and parking requirements. He said that second story office space was not desirable, but that second story residential space was. He said that renting the house on one of the lots as an office would not generate any additional revenue for the town. He said that within the B-1 zone it would be necessary to acquire multiple lots to make a commercial building large enough to support a business. In addition, existing structures would have to be demolished, which would make the project too costly. His proposal was for 6 residential units, where now there are 3 in a separate house, and about 7,000 square feet of retail space. Under the M-2 zoning, he would only be able to have 4 residential units because the 2 lots combined would be less than an acre.

Currently there are 3 units on the site, with a single family house and a duplex, and Mr. Cheney runs his office out of one of the units and rents the other 2. Councilor Levy asked what the difference would be between the current revenue to the town and that which would be generated by the mixed-use development proposed by the zoning change. He also asked about adequate parking for retail/office space and residential units. The 2 lots combined are .91 acres. Mr. Cheney said his proposal had met the parking restrictions for one space for so many square feet of the building space and two spaces for each residential unit. The first variance heard was for building residential units in a B-1 zone, and it was denied. The second variance would have been to have the dumpster in the side set back, but they never got to that point. He said that building and then renting 3 units of office space would not bring him close to the revenue he gets now by renting 2 residences and using the other as his office. This was because of the costs associated with developing the property, and even though he owned the 2 lots, he would have to add those costs in. He said in Newmarket, he could not get enough rent per square foot for commercial space to make the cost of building economically feasible.

Council Wright asked Mr. Cheney if he could provide a conceptual drawing of the building he had proposed. Mr. Cheney said he would get that for them. Councilor Zink said that as a developer he understood why the project would only work economically with residential units attached. He added that commercial space with residential units on top would have higher assessments and generate more tax revenue for the town. Councilor Levy said he did not have enough information yet, but at this point he thought the densities might be too rich. Councilor Wright said he was always looking for something positive for the town, but asked what the unintended consequences could be with the zoning change. Ms. Shelton pointed to the parking lot and the construction site that was not supporting the mill redevelopment, and said it was not a good spot for urban in-fill. She said it was ideal for mixed use as a transition from down town to Spring Street which is all residential. She said it was easy to conceptualize a 35' high building there with mixed use. The property does not front on 108, so there would be a chance that it would become all residential. If the units were large enough, they could bring in larger families with more associated costs. She could not say that this was an unintended consequence, but it was not the best use for the property.

Ms. Shelton said they had lost the urban feel of the old days, when there were structures with retail space on the bottom

floor and residences above. She said they were trying to grow the M-2 area, because it was a very successful area for the town. She said the better question to ask the Assessor would be: Do the existing properties in the M-2 zone cost the town money, or does the town make money from the properties? Council Chairman Nazzaro asked if Town Administrator Fournier could get them those figures. Councilor Levy said he would like to see a break out of where various sections of the code were moved. Ms. Hardy said that design standards had been moved from zoning to Planning Board site plan regulations as they were allowed to do by RSAs. Ms. Shelton said that this at the request of the Zoning Board, as it is constrained by the fine-print area. They could not grant variances in many cases, and without that ability it was difficult to get business development. Also, the process was a burden on the developer, who would now only have to meet with one Board. She said it was up to the Council to decide what the function of each Board should be.

Council Chairman Nazzaro asked if the Council had to accept all or part of the changes. Town Administrator Fournier said they could amend them. He asked Town Administrator Fournier to provide financial data to prove or disprove the thought that apartments draw on more services from the town and generate less tax income to the town than other properties. Ms. Shelton said they should look at non-single family units. Town Administrator Fournier said if the ordinance was to be introduced, the first reading would be February 6th, and further discussion could be at the February workshop. The required Public Hearing would be at the March 6th business meeting which could be followed by a second reading and a Council vote. If there was a lot of public input, the ordinance could be held over until the April business meeting for a third reading and vote. Councilor Zink pointed out that there could be new Council members in April. Town Administrator Fournier said one thing that was missing from Council rules was an expiration date for ordinances, which would allow ordinances to expire and then be re-introduced from the beginning. He said they would probably have to educate new Councilors. Councilor Carmichael, as the Council Rep to the Planning Board commended Ms. Shelton, Ms. Hardy, the sub-committee and the entire Planning Board for all the work they do and the number of hours they spend. He said this was a complex issue and he expected there would be more questions.

c. Electric Rate Presentation – Interim Finance Director Matt Angell

Currently the town has a contract with NextEra to provide electricity which the town pays PSNH to transmit. The town has 35 accounts with NextEra and 2 with PSNH, although all the billing comes through the latter. The average usage for the town is 124,000 kilowatt hours a month. The Town Administrator entered into the first contract with NextEra for the largest accounts on Sept. 28, 2011 at a rate of \$.07445 per kWh. The 12 month contract began on Dec. 1, 2011 and included street lights, well pump stations, the police station, library, Town Hall, fire station, DPW garage and the treatment plant. The Town Administrator entered into the next contract on January 25, 2012 for an additional 21 accounts at a cost of \$.07207 per kWh. That contract began in February, 2012 for a 10 month period, and included storage sheds, the Wadleigh Falls water pumping station, the dam gates and other medium to small accounts. The Town Administrator entered into a third contract with NextEra to renew all of the accounts on May 24, 2012 to take effect in December, 2012 for 12 months at a rate of \$.07075 per kWh.

Mr. Angell selected a 10 month period when analyzing the figures, and found the town had saved \$9,776 from December, 2011 to September, 2012 when comparing NextEra rates with those of PSNH. However, Mr. Angell had been approached by the School District about combining their electric rate bids. The school's agreement runs month-to-month with variable rates, which would make it feasible to combine bids. Mr. Angell had contacted the school's provider and been told it would have charged the town the same rates as the school for the 10 month period. The company also questioned the higher rate for street lights, saying it would have been charged at the lower night rate differential for off-peak usage. If the town had used the same provider as the school over the 10 month period, it would have saved an additional \$16,993 without any discounts for street lights.

Mr. Angell's spread sheet highlighted those accounts that were at the higher rate. Also he had a letter from PSNH that allows them to charge \$.0954 per kWh as of Jan. 1, 2013, and the town's current rate is \$.07075 per kWh. The school is paying just over 6¢ per kWh. At the next meeting, Mr. Angell will ask the Council for permission for the Town Administrator to renegotiate the rate with the town's current provider, or the authority to break the contract and go out to bid with the School District for electric rates. He said the current contract might fit the town's needs, but based on the past, the town could have saved money by bidding with the school. He said anything he and the Town Administrator would be reaffirmed by the Council.

Councilor Levy asked what the electric contracts had not come before the Council in the past. Town Administrator Fournier said he was reviewing the current purchasing policy and could not find confirmation that the 2009 policy had been adopted by the Council. However, there was nothing in the policy that limited the Town Administrator's ability to expend funds. If a large expenditure was in the budget, after receiving bids, the Town Administrator could sign the purchase order without going back to the Council. He said that was not what they currently do, with the assumption that

he felt there should be some authority limits imposed. The Council had never put in a ceiling for Council review in its policy. He said he would also be looking into multi-year agreements, although in this case it did not appear that this was done. He said that multi-year agreements should also be approved by the Council. He said the current policy has an exemption for utilities, which is not unusual. However, he thought that anytime there was something new or out of the ordinary it should come before the Council for review.

Councilor Zink said that he would support the attempt to get a better rate, as the Council would be informed if this was possible and if there would be any penalties involved. To Councilor Wright's question, Mr. Angell will try to find out if the town and school together could get a better rate with a bulk purchase. Council Chairman Nazzaro asked why the town had 37 separate accounts. Mr. Angell said he thought that was dictated by PSNH and related to the separate meters on each of the buildings. Council Chairman said he supported going with the school to get the lowest rate possible. He added that he would like to see the purchasing policy loophole closed that allowed the Town Administrator to approve multi-year and high dollar amount contracts. Town Administrator Fournier agreed that it was improper. He added that it made perfect sense for the town and school to work together on fuel and electricity purchases because bulk purchases brought better rates. Council Chairman Nazzaro said that they also should incorporate night rates into the package. Town Administrator Fournier will try to renegotiate the contract first, and investigate breaking the contract, assessing any penalties, and try to determine the savings in bidding with the school.

7. NEW BUSINESS –Closing Comments by Town Councilors:

Councilor Carmichael said he had seen someone almost get hit by a car again at the crossing near Poppers at the bottom of the hill. The driver told him he could not see the pedestrian. He asked if there was anything that could be done to improve the visibility, citing lights that Dover had installed. He suggested that the developer might help with any cost. Town Administrator Fournier said he was not sure about asking the developer, but he would get a cost estimate for the type of flashing lights that Dover and Durham had installed to call attention to pedestrian crossings. Councilor Zink said there was a similar visibility problem heading south by the Bean.

8. ADJOURNMENT

The Council had to enter non-public session to discuss the non-public minutes of January 2, 2013. Council Vice Chairman Bentley moved to enter non-public session, and Councilor Levy seconded. Town Administrator Fournier polled the Council. Motion carried unanimously, 7 – 0, and the Council entered non-public session at 9:57 p.m.

Councilor Levy moved to adjourn and Council Vice Chairman Bentley seconded. Motion carried unanimously, and the meeting adjourned at 9:59 p.m.

Next meeting: February 2, 2013, Business Meeting.

Respectfully submitted,

Ellen Adlington,

Recording Secretary