

# Town Council Approved Minutes July 24, 2013 WS

TOWN OF NEWMARKET, NEW HAMPSHIRE  
TOWN COUNCIL WORKSHOP  
JULY 24, 2013 7:00 P.M.  
TOWN COUNCIL CHAMBERS

## PRESENT:

Council Chairman Gary Levy, Council Vice Chairman John Bentley, Councilor Dan Wright, Councilor Phil Nazzaro, Councilor Larry Pickering, Councilor Dale Pike (on speaker phone), Councilor Ed Carmichael

Town Administrator Steve Fournier

Council Chairman Levy opened the meeting at 7:00 p.m., followed by the Pledge of Allegiance.

## PUBLIC FORUM

Martha McNeil, Senior Coordinator of the Sunrise Sunset Center and of Ash Swamp Road came forward to recognize Ethel MacIntosh, a past member of various town boards, committees and organizations, who had passed away on July 9th. A memorial service in her honor was to be held on August 8th from 10:30 to 11:30 at the Senior Center, and Ms. McNeil invited Ms. MacIntosh's friends and the Council to attend. After the service, Meals on Wheels was to host the annual lobster luncheon to which the Council was invited. Those able to attend were asked to call Kim Tilton at 659-3150 by August 1st. The charge for the lobster was \$8.50 and the alternate chicken Waldorf salad was \$3.00 payable before the luncheon. Ms. McNeil commended the Council on the job it was doing, and said she always watched the meetings on television. The Council thanked her.

Leo Filion of Lafayette Road spoke about Resolution #2013/2014-06 Relating to the Withdrawal of \$10,000 from Sewer Impact Fees for Engineering Services to Determine the Needed Increased Capacity and Cost of the Bay Road Force Main. The resolution was to have its second reading at the August 7th business meeting which Mr. Filion would not be able to attend. He handed out excerpts from the January, 2008 sewer evaluation study conducted by Underwood Engineering which he said supported his position that the expenditure was premature at the time. The study showed the amount of infiltration going into the wastewater system from the areas of Packers Falls, Moody Point, Bay Road, New Village and Salmon Street. He said some work had been done on New Village to reduce the number of sump pumps illegally emptying into the system. The study recommended that house inspections be done on Moody Point and Bay Road, but the recommendation had not been carried out. Mr. Filion said that these inspections were legal and recommended that they be carried out to determine how many sump pumps are illegally connected to the sewer system before spending money on another capacity study. He gave statistics that showed how sump pumps could overwhelm the sewer system.

Mr. Filion said that Sewer Superintendent Greig had sent a memo to Town Administrator Fournier outlining his reasons for the proposed engineering study. The memo said that there was a 500 gallon pump permit at Bay Road with a capacity of 720,000 gallons a day and the highest recorded flow was 250,000 gallons per day. He said a redesign study had been done in 1988-89 and it included a cost to build the main and the Bay Road pumping station then. He felt that study could be upgraded, but that nothing should be done until the recommended house inspections were complete all over town and they know how much removing the sump pumps would reduce infiltration. The average sump pump will produce 4,000 gallons per hour. He said that considering how wet the land was in certain areas of town, he expected there could be hundreds of illegally connected sump pumps. He said a pump could empty out a window into the yard. Council Vice Chairman Bentley said he understood and agreed with Mr. Filion, and the Council had discussed this when he first became a member, and he remembered that a number of illegally installed pumps had been found in New Village. He said the Council had questions about procedure and enforcement and the subject had been gradually dropped. Mr. Filion said that in the past, people had been told that their water would be shut off for a period of time if the

inspector was not allowed in. He felt it would not be necessary to enter all the homes, as they could assume that the same percentage of pumps would be found overall as was found in a test sample.

Councilor Wright said his concern was that people would disconnect illegal pumps when they received notice of the inspection and before someone came to their houses. He wondered about on-going enforcement. Mr. Filion said that if they saw water in a hole in the floor, they could assume there had been a sump pump. He said many people in his area empty the water out a window. Town Administrator Fournier said he would get the answers about the legality of entering homes before the vote on the resolution at the next meeting. He will also look for the 1988 plans and work with Mr. Greig to see what can be done. Councilor Pickering asked what had been done with the old water meters, and Mr. Greig said they had gone to the contractor who installed the new ones. Mr. Greig said they had already done a lot of the work Mr. Filion was suggesting. They had gone to Moody Point and installed meters to determine if any high flow was coming from the area, and there was none. They had done house inspections on 108. Mr. Greig said the proposed study was to look into upgrading the 1969 force main under the river from Bay Road. He said there was an engineering study done on capacity in 2010, and the capacity is currently between 700 and 900 per minute. The limiting factor is the force main, and that is the first step to replace. He said the proposed study would help them plan for what is needed and the cost.

Bert Allen of Smith Garrison Road asked Mr. Greig if he had checked all the basements in Moody Point, and was asked to address the Council. He said there was so much hydraulic pressure in the area that it had cracked a house foundation in half. Councilor Wright asked for his definition of Moody Point and if he was talking about the force main. Mr. Allen said that Smith Garrison goes all the way to Moody Point and he was talking about runoff and Cushing Road. He said there were many springs in the area and many sump pumps. He said if capped, the pressure intensifies and that is what broke the foundation across from him. He then asked if the Councilors had received the emails that he had sent in the last 10 days, which they had. One concerned a sewer/water plant in South Carolina that was a 501C e. He said he would be filing a citizens' bill in the legislature about this. He said there was a problem with Newmarket's Charter under section 10.5, Agreements with Other Municipalities: The Council is authorized, as provided by New Hampshire law, to enter into agreements and regional compacts with neighboring cities and towns, state agencies, or private non-profit corporations for the purpose of resolving their common problems for the mutual advantage and benefit of the Town and its neighboring cities and towns. He felt a non-profit was better equipped to run water/sewer systems and go into houses legally.

He said that Newmarket had to do a lot more with 501Cs, which he said did not want to come into town because of its politics. He felt more services could be handled through 501Cs which would benefit the town and reduce taxes, and that 501Cs could get a lower bond rate. Council Chairman Levy said for clarification, presently the school and town can accept donations, but Mr. Allen was talking about turning services over to 501C3s. Mr. Allen said that people could become members of the 501C organization and vote, while absentee owners are currently taxed but can't vote in town. He felt everyone should read an article about Orange Water Authority in Cabarro/Chapel Hill, North Carolina. Council Chairman Levy said they had received the articles. Mr. Allen wanted an article about a regional dispatch center in Danbury Connecticut read into the record: Danbury and 4 other towns, Bethel, Brookfield, Richfield and Newton agreed to study the idea of a 911 center located in Danbury that would dispatch all fire, police and ambulance services among 5 towns. I understand that the town stands to gain about \$250,000 each or about \$1.250M to regionalize dispatch services. He said the article went on and included figures for savings. He said that regional dispatch services existed in New Hampshire. Council Chairman Levy said they would look into this. Procedurally, he said that anyone wishing to speak about the zoning could speak at the time the ordinance came up. As there was no further public comment, the Public Forum was closed at 7:40.

## TOWN COUNCIL TO CONSIDER ACCEPTANCE OF MINUTES

Council Vice Chairman Bentley moved to approve the July 10, 2013 business meeting minutes. Councilor Carmichael seconded. There was no discussion. Town Administrator Fournier polled the Council. Motion carried 6 – 0 – 1, with Councilor Nazzaro abstaining as he had been excused from the meeting.

## REVIEW OF DEPARTMENT REPORTS

Town Administrator Fournier had received the first review of the Personnel Policy from Town Attorney Ratigan who had recommended some changes to be in compliance with updates of Federal law. Town Administrator Fournier and the Interim Finance Director were reviewing the policy and were going to add some other changes some of which had been suggested by Town Councilors. He expected to have the final copy for the August workshop.

The Interim Finance Director had prepared end of FY2013 estimates. Actual figures will be known after the auditors complete their review. Revenues are expected to be \$496,433 higher than budgeted, mostly from the sale of the old DPW building, about \$236,000 and \$187,761 from the closing of the Parking Capital Reserve Fund. Expenditures are expected to come in \$411,916 under budget, in part from one-time savings from past vacancies in the Police Department and DPW. The total of \$1,770,533 would go to Fund Balance bringing the Fund total to \$2,380,016 or \$579,460 above the 8% goal. The Council had passed an ordinance the previous year stating that excess funds would not go to reduce the autumn tax rate, but could be used to reduce the next year's, FY2015, tax rate by using funds toward one-time capital projects or Capital Reserve Funds. Money from fund balance has to be appropriated during the regular budget process.

Town Administrator Fournier thanked Councilors Wright and Carmichael and Council Vice Chairman Bentley for serving on the committee to interview engineering firms for the MacIntosh Well project. He expected an answer shortly. Council Chairman Levy said he appreciated all the time they spent in research and meetings. Town Administrator Fournier was negotiating cost and scope for the wastewater treatment plant project, and DES was reviewing the findings. He hoped to have a proposal for the Council in August. The well project was in the preliminary stages as the firms had been notified the previous week.

Council Discussion: Councilor Nazzaro asked that some funds be earmarked for an autumn clean-up, a request that he often hears from the public. To Councilor Wright's question, Town Administrator Fournier said that the town had kept some land surrounding the old DPW building to provide access to the wells. Council Vice Chairman Bentley also thought an autumn clean-up was a good idea, but said he thought that not all of the money from the Parking Capital Reserve Fund was to go into the General Fund, but some was to be kept toward potentially purchasing some parking spaces. However, all the money went into Fund Balance. Council Chairman Levy asked if, when the final numbers were verified, the Council could vote to suspend the rules and use some money to reduce the autumn tax rate. Town Administrator Fournier said that since the procedure was an ordinance and a law, he would have to see if there was a provision to override, and if not, they would have to vote to amend it. Fund balance would be about \$2M and reducing it to the 8% goal would allow removing about \$500,000. The ordinance states that between 5 and 10% be retained in Fund Balance, but this can be discussed in October. There is no state law that requires retaining Fund Balance, but it is recommended in case of emergency. Councilor Nazzaro asked that ordinance numbers be included when they are referenced in the report.

Council Chairman Levy asked if Councilors had any questions or comments on the department reports. Councilor Wright said that he and Councilor Pickering had asked about vehicle mileage in the past, and he felt it would be helpful to have that information when making decisions. Town Administrator Fournier said they had the information for the water and sewer departments and he thought that had mileage for some, but not all, of the DPW vehicles. To Council Chairman Levy's question, carpet tiles will be used in town hall. He said that he had multiplied the average price of gas and diesel times the gallons used and come to different totals than those in the public works report. Town Administrator Fournier said he would look into this to see if there were price fluctuations and get back to the Council. Council Chairman Levy commented that the more than \$200,000 uncollected for water and sewer was quite a lot of money to wait for, although it was consistent with the previous year. Council Chairman Nazzaro noted that 5 members of the Fire Department, Captains Doug Hamilton and Bill Barr, Lieutenant Mark Pelczar and Firefighters/EMTs Lenny Dube and Nick Gould, had received letters of merit and lifesaving awards for saving an 8 month old baby on March 27th. He felt it important to mention good news and to point to the efforts of all who contribute as volunteers.

## TOWN COUNCIL TO CONSIDER REPORTS FROM COUNCIL REP COMMITTEES

Council Chairman Levy reported that he believed that EDC consultant Peter Kwaas had gotten back to the Town Administrator and the Committee will meet with him in August.

## DISCUSSIONS/PRESENTATIONS

Town Administrator Fournier had recommended that the Council vote to suspend the rules for Resolution #2013/2014-09 and Resolution #2013/2014-10 so that deadlines could be met. Council Chairman Levy asked for a motion to suspend the rules for Resolution #2013/2014-09 and Resolution #2013/2014-10 so the Council could act on them at the meeting. Councilor Nazzaro so moved and Council Vice Chairman Bentley seconded. Town Administrator Fournier polled the Council. Motion carried unanimously, 7 – 0.

## Resolution #2013/2014-09

Council Chairman Levy read Resolution #2013/2014-09 Authorizing the Participation in the USDA Rural Development Program Loan of up to \$10,340,000 for Costs Associated with the Wastewater Treatment Facility Upgrade.

Discussion: Town Administrator Fournier said that he and Water/Wastewater Superintendent Greig had been working with DES for the State Revolving Loan Program and Rural Development to secure the loans. Both had signed off on the process. The town will issue notes for the total amount of \$14,100,000 and first get funds through DES SRF. The principal forgiveness is \$1,762,000 so the town will have to pay back \$12,337,500. The interest rate on the loan will be at 1% until the project is substantially complete, but will go to 2.78% for the remainder of the term. However the loan can be paid off early. The funds from Rural Development will be available when the project is nearly complete. Rural Development had indicated that it would give the town a grant of \$1,966,360, bringing the total amount of its loan payback to \$10,340,000 with an interest rate of 2.75 for 30 years. It is the intent to pay off the first loan with funds from Rural Development and pay it over the 30 year period, as that loan cannot be paid off early. The grants represent approximately 26% of the total cost of the project. Town Administrator Fournier said the only thing to be decided with Rural Development was whether they wanted level payments or level principal. The DES loan operates more like a line of credit, and the town will only borrow and pay interest on what is necessary to complete the project. Council Vice Chairman Bentley commended the Town Administrator and Wastewater Superintendent Greig for their diligence in securing the grants and loans.

Council Chairman Levy read from page 62 of the packet concerning the town's having to deposit \$168,167 into a short-lived asset reserve fund annually for the life of the loan. He asked what determined the amount, and Mr. Greig said it was difficult to explain, but basically the agency looked at the life span of the town's assets and their replacement value, including Fund Balance, and considered this much like loan collateral. Also, the amount had been verified by the Finance Director and the engineering firms. Council Chairman Levy read from the Rural Development loan paper on page 61 that any grant funds unexpended at the conclusion of the project will be cancelled 90 days after completion and applied as an extra payment on loan, unless other work is required by state statute. This should not come into play, as construction costs will be known by the time the town takes the Rural Development loan. The environmental attorneys had reviewed the loan papers along with financial representatives from DES, RD, and the engineering firms. Mr. Greig said the interest rate was locked for the term of the loan, but if rates dropped, the town would get the lower rate.

Council Chairman Levy asked for a motion to approve Resolution #2013/2014-09 Authorizing the Participation in the ESDA Rural Development Program Loan of up to \$10,340,000 for Costs Associated with the Wastewater Treatment Facility Upgrade. Council Vice Chairman Bentley so moved and Councilor Nazzaro seconded. Town Administrator Fournier polled the Council. Motion carried 6 – 0-1, with Councilor Pike abstaining as he had been disconnected during part of the discussion.

## Resolution #2013/2014-10

Council Vice Chairman Bentley moved to approve Resolution 2013/2014-10 Authorizing the Participation in the State of New Hampshire Revolving Fund (DRF) Loan of up to \$14,100,000 for Costs Associated with the Wastewater Treatment Facility Upgrade. Councilor Nazzaro seconded.

Discussion: Questions and discussion were part of the previous discussion.

Town Administrator Fournier polled the Council. Motion carried unanimously, 7 – 0.

## Ordinance 2012/2013-02 Amendments to Sections 1.04 Zoning Map

Council Vice Chairman Bentley moved to take Ordinance 2012/2013-02 off the table, and Councilor Nazzaro seconded. Town Administrator Fournier polled the Council. Motion carried unanimously, 7 – 0.

Council Chairman Levy said the proposed M-2 zoning change for the downtown had originally been brought up in February. He had met with Greg Mikolitas, a civil engineer and former partner at Appledore, now Vice President at T.M.

Bond, to ask questions he had after Mr. Mayberry's report had been given. He read from the amendments that he was suggesting after the meeting with Mr. Mikolitas. The amendments were available for the public. The first amendment was on 1.09, Special Use Permit. He said that currently special exceptions go to the Zoning Board but the proposal would be for special use permits to be handled by the Planning Board. He said Mr. Mikolitas gave him some examples of zoning ordinances from other towns for language. He was proposing three changes: site suitability, external impacts and fiscal impacts. His explanatory notes stated that a "special use permit is typically easier to obtain than a Special Exception from the Zoning Board, so additional language to strengthen the ordinance is recommended to protect the interests of the town, including abutting property owners." He credited Durham, Exeter and Stratham for part of the language. He proposed a minor revision to part 2.02 B, Permitted Uses. He changed the word "may" to "shall" concerning the Fiscal Impact Study and Market Analysis to be completed by a consultant and paid for by the developer for mixed use projects of 3 or more units. The third change was that multi-family residential condominiums should not exceed 1,200 square feet and not contain more than 2 bedrooms, and residential apartments should not exceed 1,000 square feet and not contain more than 2 bedrooms. He based his reason for the proposed changes on information Mr. Mayberry had presented. He had also looked up current rental prices on line. The last amendment was for section 7.02, Mixed Use Development of existing commercial properties: "Existing commercial properties in this zone shall not add (more than 3 residential units, changed to) 3 residential units or more unless it can be shown by completion of a Fiscal Impact Study and Market Analysis that the residential units will not have a negative fiscal impact from current tax revenues." Part of the rationale for this change came from Mr. Mayberry's statement that the commercial portion assessment would have to offset the potential of a residential negative impact. Mr. Mayberry had suggested that one way to offset the negative impact could be to limit the number of bedrooms and unit size. Mr. Nickerson, representing a developer for the area, had said that the limitations were not far off from market forces. The intent of the amendment would be to protect the town from receiving less tax revenue from developing property than it presently received.

#### Public Input on Ordinance 2012/2013-02 and the Suggested Amendments

Council Chairman Levy said that both Greg Mikolitas and Town Attorney Ratigan were present to answer any questions the public might have. Amy Thompson of Lang's Lane said she would be interested in hearing Council input on the suggested amendments. She said she liked the amendments and they made sense. She felt they would protect the interests of the town and not alienate the developers from bringing business to the town. Bert Allen of Smith Garrison Road said he was very much for the M-2 zone up around Spring Street, but hoped that there could be more parking for the library and the Recreation Center. Chris Nickerson, representing the Deckers, said they supported the M-2 zoning change and had no objections to the proposed amendments. He said the first 2 amendments were consistent with other municipalities in the state and he felt the amendments struck the balance between economic development and responsible growth. Council Vice Chairman Bentley asked Mr. Nickerson if the time he had spent working with the proposed development in Newmarket was consistent with other communities in the state. Mr. Nickerson said he would rather have details worked out at the Council level to prevent animosity later. He added that Newmarket benefitted by having a Town Council form of government, because towns that had to wait for an annual Town Meeting vote, could have projects on hold for 2 – 3 years. He did not think a year was unreasonable, and it was pointed out that the Council had received the zoning change in February. Council Vice Chairman Bentley said that Ms. Shelton had been involved in helping the Council get answers. He said they had been accused of foot dragging. However, he felt that if they did not have the answers they needed, later they could be accused of overlooking something important. He added that huge decisions take time, but he felt they were on the right path. He appreciated the Chair getting more information, and said Town Planner Hardy had written some comments that needed to be addressed.

Jerry O'Connell of 26 Grant Road, a member of the Economic Development Committee, stated that he felt the zoning proposal had taken too long. He said the proposal had taken 18 months to prepare and he felt it was quite adequate without any amendments. It was supported by the Planning Board, ZBA, and the Newmarket Business Association. He felt the questions were continuing too long. He encouraged the Council to vote on the Ordinance as it existed, and not spend more time in the process by adding amendments. He addressed the notes at the bottom of the amendment to 1.09, Special Use Permits. "A Special Use Permit is typically easier to obtain than a Special Exception from a Zoning Board", and said that it sounded like there was no trust in the Planning Board. Council Chairman Levy pointed out that the Planning Board had wanted to take this responsibility away from the ZBA, but Mr. O'Connell said the language was fine without an amendment and he didn't think they needed the increase in checks. Town Planner Hardy said they were attempting to stream line the process so that developers would not have to go before both boards. Currently, multi-family housing in the M-2 district is only allowed by special exception from the ZBA. The ZBA has to meet strict legal tests to grant variances, and the Planning Board deals with building dimensions, front yard and side yard setbacks, etc. as part of its review process. She said it wasn't really a question of one process being more difficult than another. Proving hardship is not required for a special use permit, but a proposal would have to meet the criteria outlined in the Ordinance.

Mr. O'Connell said that the required Fiscal Study by a town-appointed consultant but paid for by the developer would add additional time and cost to a project and he did not think this amendment was developer friendly. He said that restricting

the size and number of bedrooms per unit could impact the decision of a developer to build. He said that studies that he had read and Mr. Mayberry's report found it unusual to find multi-family housing with a large number of bedrooms. He said there was no need to restrict this as it restricts itself. He said that if someone wanted a luxury 2-bedroom condo, which would bring more tax dollars to the town, the size restriction would affect that possibility. Mr. O'Connell referred to the mid-range values of residential units in the notes for the amendments that "could potentially result in the negative fiscal impact of \$1,371 per unit or \$4,113 per 3 unit proposal." He wondered how this change would affect existing properties in the current M-2 zone, suggesting that many could become non-conforming with the amendment. He found the largest problem with the amendments was in restricting size and number of bedrooms. He said that Val Shelton had addressed the comments about negative fiscal impact a few meetings ago, and had stated that mixed use properties bring higher taxes. He said that by reducing the size and number of units allowed, less density per lot would draw down the tax base. Council Chairman Levy said that no one was limiting a proposal to 3 units, but Mr. O'Connell felt the studies required would add cost and time to a project. He said that Council Chairman Levy had consulted Mr. Mikolitas and received information for his proposals, and asked how many of the Council were involved in that decision. Council Chairman Levy said he wanted additional information and had made a phone call so that he would be better able to make an informed decision. He said he had forwarded the proposal to the other Council members and shared it with Val Shelton, Eric Botterman, Chairman of the Planning Board, Town Administrator Fournier, so he could share it with other members of the Planning Board and Town Planner Hardy. Bert Allen compared the size of apartments to traffic flow, and said he was in favor with restricting the size. Town Planner Hardy said that the Planning Board does consider traffic flow in looking at proposals. Council Chairman Levy closed Public Comment at 8:47 p.m.

#### Council Discussion on Ordinance # 2012/2013-02 and Suggested Amendments

Councilor Nazzaro asked Town Administrator Fournier if the reading process of the ordinance would start again if any of the amendments were accepted. Town Administrator Fournier said it would not, but there would have to be another public hearing prior to the final vote, and the earliest the Council could vote would be at the first meeting in August. Councilor Nazzaro said it seemed to him that the first amendment, 1.09, indicated that they didn't trust the Planning Board, as the original proposal stated that the Planning Board could, at its discretion, waive the requirements for a fiscal impact study and market analysis. The amendment removed the word discretion. Council Chairman Levy said the language in the amendment was consistent with other towns. Councilor Nazzaro said he also felt that the section stating "The proposed project shall not impact adjacent properties (traffic, noise, odors, etc)....shall not have an adverse impact on the....surrounding properties", suggested that adding one more unit would cause an adverse affect, and could be very broadly interpreted and was loosely worded. Again, he said that he felt this showed distrust for the Planning Board, which was also an elected board.

Councilor Nazzaro felt that the amendment to section 2.02 limiting size and the number of bedrooms, would affect buildings and their uses within the existing M-2 zone. He asked if the town required a fiscal impact study of limiting size for all residential proposals, and Ms. Hardy said the Planning Board could require one. He said that if the size limit existed as in the amendment, the town would not allow building another Bryant Rock today, and the complex contributes significantly to the town's taxes. He felt they should look at unintended consequences of size and bedroom limitations, and were looking at building projects of lower value which could mean that the projects would not pass a fiscal impact study, and there would be no positive gain for the town. Council Chairman Levy said that Mr. Mayberry had stated that one way to make the commercial part of a project profitable was to limit the size and the bedrooms. He added that the limitations would reduce the draw on town services, which was significantly higher with units of 3 – 4 bedrooms. He said the rents in Newmarket varied from \$920 for 650 square feet to \$1,275 for 1,100 square feet. He said that Bryant Rock and Rivermoor Landing were different from the proposed zone because they were on the water.

Councilor Nazzaro said that the zoning change would affect the entire M-2 zone. Council Chairman Levy said he had asked about that and was told by Mr. Mikolitas that they could differentiate the proposed area from the existing M-2 zone by changing the title, for example to M-2D (for downtown) or create an overlay district. Ms. Hardy said the Council would have to give direction about how the maps should be changed before the public hearing. Council Chairman Levy said that she and the Town Attorney could sort that out, but he had in mind a simple overlay with the idea that the new area might be expanded in the future. Councilor Nazzaro said that section 2.02 seemed to be dictating to the Planning Board by removing the word "waive". Further, he said he did not understand the purpose of the 7.02 amendment, and Ms. Hardy said she didn't either. Council Chairman Levy explained that he did not have any specific property in mind, but cited the discussion of the Mayberry report. He said that if an existing commercial property within the district to be re-zoned added residential units, he wanted to ensure that the resulting tax revenue would not be lower than the present tax revenue from the property. Also, the draw on services would be taken into account. If the Fiscal Impact Study showed the realized revenue to the town was going to be lower, the project would not be approved. Councilor Nazzaro said he could not think of a building within the zone where this would actually occur. Council Chairman Levy said this could come into play if the area is expanded in the future, and he felt this amendment provided a safety net against a possible negative tax impact. Councilor Nazzaro said that unnecessary laws tend to make necessary laws weaker and he was against the proposed

amendments and did not think they should be limiting size.

Councilor Wright said he felt the amendments were overkill and thought the Planning Board was capable of handling these problems. He asked what was meant by the word "appropriate" in Section 1.09, in the phrase "appropriate utilities (water, sewer, storm water)", and the word "adequate" in the phrase "adequate off-street parking." Council Chairman Levy said this was language used by Durham and Exeter, and he felt it was typical. Ms. Hardy said they already do this as part of site plan review, and she wanted to make sure that they were consistent throughout the Ordinance. She said that by state law the Planning Board was authorized to do site plan reviews for projects of 3 units or greater and they were very careful to use the terminology throughout. She said she did not understand the amendment to Section 7.02 and did not feel it was necessary because paragraph 2.02 said that "a mixed-use development with 3 or greater units is allowed by Special Use Permit if there is demonstrated 'positive impact'". She said that multi-family housing, defined by 3 units or greater, and mixed-use development, with residential units of 3 or greater, come under the review process. However, with mixed-use development, they looked at the entire project including the commercial factor, and for either type of development there has to be a positive fiscal impact. She said that multi-family proposals were already reviewed for the criteria mentioned in the amendments, and that the review process was within the purview and authority of the Planning Board. She said this could be found within the Town's site review regulations. Councilor Nazzaro read from the original M-2 zoning amendment, under Section 2.02 B1 that the Planning Board required a fiscal impact statement. However, there was a footnote that stated that the Board could waive this requirement at its discretion if it determined it was not necessary for an informed decision. The amendment removed the element of discretion from the section and made it a requirement.

Councilor Wright asked why the units were restricted to 2 bedrooms in Section 2.02. Council Chairman Levy said he had based the amendment on Mr. Mayberry's report and the statistics that showed there was less demand on town services with fewer bedrooms. He read some of the data from the report. Councilor Wright felt this was too restrictive. Council Chairman Levy said there was nothing he had found in his research to support the comments made at the last discussion that 1,200 sq. foot, 2 bedroom apartments would bring low rents. (He had given the actual rents per unit size advertised earlier in the meeting: 650 to 1,100 sq.feet, ranging from \$875 to \$1,300 for the Cheney apartments with 2 bedrooms.) He said his suggestions were based on Tables 2 and 3 of the Mayberry report, and that Mr. Nickerson had stated that 2 bedroom apartments were not inconsistent with the area. Councilor Wright was concerned that the apartment size was being restricted and asked how many apartments in Newmarket were actually 650 versus 1,200 sq. feet. He felt there were more of the latter, and said that the larger apartments brought more rent and more tax-based dollars. He said he had found the average rent in Newmarket was \$1,200. Council Chairman Levy said he used 2 figures, rents in Rockingham County, averaging \$1,300 and rents in Newmarket for the size apartments he was suggesting. Councilor Wright said he felt this was too restrictive and he would not support any of the amendments.

Council Vice Chairman Bentley said to him it was not a question of not trusting the Planning Board, but a matter of making the same rules apply to every proposal. He said he did not like "shall" or "can be waived" or "could" and referring to past accusations and problems the town had experienced, he felt they had to be more specific and consistent to prevent problems. Councilor Carmichael said he agreed with that statement. He said he agreed with enough of the language in the amendments to vote, and hoped they could vote on the whole proposal at the next meeting. He thanked Mr. Nickerson and Mr. Decker for their patience, saying, from his time on the Planning Board, he thought the process would be faster. Councilor Pike said it was difficult to hear all the comments, but he was in favor of limiting the size of the units, and thought they had reached a middle ground. He was concerned by the statement in the Master Plan that the town had a lot of multi-family housing, and that made the tax situation more difficult. He felt they had to maximize the value of the downtown while limiting the risk and demand on town services and the schools. He felt that was what most townspeople wanted. Council Vice Chairman Bentley said the numbers had changed from the time they had spoken about worst-case scenario about the number of lots and units. He was concerned with the expenses for water, sewer and the schools, and the possible development at Rockingham Golf Course, and the impact on town services. He did not feel it was unreasonable to limit size and bedrooms, and felt the amendments were a good compromise. He said the proposal had not scared away the developer who was present at the meeting, and he didn't think other credible developers would be scared away. He hoped they could work with developers to be more creative with parking, and said he would support the amendments as he felt they were best for the overall good of the town.

Councilor Pickering said he felt many of Newmarket's problems had started before zoning was enacted. He said he did not see an adverse effect from what was being proposed. He said he also agreed with Mr. O'Connell that this could have been done earlier as part of the planning proposal. He felt that projects needed to be dealt with on a case-by-case basis, but he was ready to vote. Town Administrator Fournier said they could vote on the amendments during the meeting. Council Chairman Levy said if they were to vote during the meeting, he would defer to Counsel or the Town Administrator as to whether they would do this as an overlay district. Ms. Hardy said they had to be specific as to the exact lots included in the new zoning and the map included with the original zoning proposal would have to be re-done to determine the boundaries. She said typically these were Planning Board decisions, but if the map was going to be

redone, it had to be available 10 days prior to the Public Hearing. Council Chairman Levy said he was hoping to apply the amendments to the specific area that was proposed for re-zoning, and Ms. Hardy said also to the area that includes an additional area of 20 acres, to which he agreed. He said if the area was expanded he hoped to have it consistent, whether by an overlay district or re-titling of the M-2 downtown area. Attorney Ratigan said he did not feel they needed an overlay district, and Ms. Hardy said the Planning Board had struggled with this. Attorney Ratigan said if the Council were to adopt the amendments, they would apply to the entire M-2 area underlining the original proposal and the map that had been provided to describe them. If they wanted to target a specific area, they would have to identify the specific lots affected, probably by distinguishing them by using a different color and have the map made part of the record. Ms. Hardy said she had the original map that showed the current M-2 zone in orange and the proposed area in blue. Attorney Ratigan said that if it was the Council's intention to apply the amendments to the area in blue then that should be referenced during the meeting as applying only to that specific area. He said at that point it would not be called the M-2 zone, but something like the M-2-1 zone.

Ms. Hardy said they could change the text of the proposal to reflect that it would affect the 36 parcel "expansion". She said that could be done by creating a whole new district called the M-2a zone. Council Chairman Levy asked if, in the future there was a desire to expand the district, the same zoning would apply. Ms. Hardy said it could be rolled into this zone, but it would require an amendment to the zoning map as a part of the whole amendment process required for any zoning change. Town Administrator Fournier said he would suggest that first they create the M-2a zone so that any amendments would only affect the lots provided by the map. The amendments, if accepted, would still mean that the entire proposal could be voted on at the next meeting. Councilor Nazzaro commented that he understood why the fiscal impact was important, but he thought it important to note that the break-even point for a house was between \$300,000 and \$325,000. He felt by the logic of the amendments, they would be telling anyone proposing to build a house of lesser value that they would be turned down. He said that if the Council was going to accept the amendments the one that was the most restrictive was 2.02(6) limiting size and number of bedrooms as a fiscal impact study was already required by another amendment. He said it was possible that a project would qualify on all but size of units, and then they would have to go through the length of time required to amend the zoning again. He felt this was an unnecessary restriction, as the fiscal impact study would give them the necessary information without tying their hands, and data could change in the future. Councilor Pike said he did not see this as a negative layer, but adding language to clarify the intent and expectations to not over-burden the town. He said he felt they were going for the middle ground and the Master Plan said they had a lot of multi-family housing and expressed a concern with the tax impact. Council Vice Chairman Bentley said at the original presentation, Val Shelton had said it took the Planning Board 18 months to prepare the proposal, and he had said that they couldn't expect the Council to deal with it in 1.8 weeks, and he thought the 5 months they had spent on this was within reason.

Town Administrator Fournier said, procedurally, they should take a vote on each of the amendments and creating the new zone so they could have a Public Hearing on the entire proposal before the final vote on the proposal as amended at the first meeting in August. He had consulted with legal counsel on the correct wording. He said first they would have to vote to amend Section 1.04 zoning maps (see attached maps: Amend 2a Zone classification as follows: Council Vice Chairman Bentley so moved and Councilor Carmichael seconded. Town Administrator Fournier polled the Council on amending Section 1.04 Zoning Maps. Motion passed 5 – 2, with Councilors Pickering, Pike, Carmichael, Council Vice Chairman Bentley in favor and Councilors Nazzaro and Wright against.

Council Vice Chairman Bentley moved to accept the amended Section 1.09 Special Use Permits, and Councilor Carmichael seconded. Town Administrator Fournier polled the Council. Motion passed 5 – 2, with Councilors Pickering, Pike, Carmichael, Council Vice Chairman Bentley and Council Chairman Levy in favor and Councilors Nazzaro and Wright against.

Text of amendment:

Amend 1.09 Special Use Permits

Add (B): A Special Use Permit shall be granted only if the Planning Board determines that the proposal conforms to all of the following Special Use Criteria.

- Site suitability:

- Site shall have appropriate utilities (water, sewer, stormwater) available to service the project and shall not

have a negative impact on environmental resources (wetlands, flood plain).

- Adequate off-street parking and loading is provided and ingress/egress is so designed as to cause minimum interference with traffic on abutting streets.

- External Impacts:

- The proposed project shall not impact adjacent properties (traffic, noise, odors, vibrations, lighting, hours of operation); shall not have an adverse impact on the appropriate and orderly development of the surrounding properties; and buildings (new or existing to be modified) shall be compatible with the established character of surrounding properties; and will not cause a significant decline in property values of adjacent properties.

- Fiscal Impacts:

- The proposed project will not have a negative fiscal impact or market impact on the Town as shown in the Fiscal Impact and Market Studies required to be completed as described in 2.02 (2)[1], [2].

Council Vice Chairman Bentley moved to accept the amended Section 2.02 M-2 District, and Councilor Carmichael seconded. Town Administrator Fournier polled the Council. Motion passed 5 – 2, with Councilors Pickering, Pike, Carmichael, Council Vice Chairman Bentley and Council Chairman Levy in favor and Councilors Nazzaro and Wright against.

Text of amendment:

Amend 2.02 M-2 District

(B) Permitted Uses

Revise: (2)[1] The Planning Board shall require a Fiscal Impact Study be completed by a consultant selected by the town, paid for by the applicant, that shows the mixed use project with 3 units or more will not have a negative fiscal impact on the town.

Revise: (2)[2] The Planning Board shall require a Market Analysis be completed by a consultant selected by the town, paid for by the applicant, that demonstrates the mixed use project with 3 units or more will not have a negative impact on the town's housing market.

Add: (2)[6] Multi-family residential condominium unit in this zone shall not exceed 1,200 sf and not have more than 2 bedrooms. Residential apartments in this zone shall not exceed 1,000 sf and not have more than 2 bedrooms.

Council Vice Chairman Bentley moved to accept the amended Section 7.02 Mixed Use Development, and Councilor Carmichael seconded.

Discussion: Council Vice Chairman Bentley asked Ms. Hardy to explain her comments in her memo on this amendment. "This recommendation is inconsistent with what it says in paragraph Section 2.02 M-2 (B) (2) which states that a mixed-use development with three or greater units is allowed by Special Use Permit if there is demonstrated 'positive impact.' I am not sure what the purpose or intent of this amendment is. Did the author mean 'shall not add two or greater units' (which would be consistent)? Or, as written 'more than three residential units (which would make 2 sections inconsistent). If the author meant shall not add two or greater units, then I am not sure the addition is needed as it is already covered in Section 2.02 M-2 Zoning District (B)-2." She said the structure of the Ordinance was that multi-family projects with 3 or more units and mixed-use projects with 3 or more residential units have to show a positive fiscal impact, and she felt this was redundant. She said the statute speaks of site plan review for 3 units or greater, which is covered in Section 202.B Permitted Uses, and the proposed language could mean 2 units or greater. The proposed amendment had changed from the initial one she received and now said "3 residential units or more" so it is consistent. The proposed amendment read: "Existing commercial properties in this zone shall not ass 3 residential units or more unless it can be shown by completion

of a Fiscal Impact Study and Market Analysis that the residential units will not have a negative fiscal impact from current tax revenues.” Ms. Hardy said this was already covered under Section

202-B Permitted Uses. Council Chairman Levy said, hypothetically, if an existing building brings the town \$5,000 in taxes and someone wants to put 3 apartments above, and they have a negative impact of \$1,300 total for each unit, it would still bring in tax revenue of \$1,100. He said this could still be interpreted as bringing in positive tax revenue. Ms. Hardy said that positive tax revenue meant looking at tax revenue less the cost of providing municipal services to the development plus the additional revenue.

Council Chairman Levy said he had added the phrase “fiscal impact from current tax revenues.” Ms. Hardy said they did not look at existing tax revenue, but looked at projected tax revenue. Town Administrator Fournier said that an existing building could be worth “x”, while adding more units would be worth “y”. Ms. Hardy said she was looking at costs to the town versus benefits from revenue received. Councilor Nazzaro said that what Council Chairman Levy was trying to convey was that if there was a less positive than it is today, it shouldn’t be approved. He had added “current tax revenues” because he that was one of the unintended consequences he was trying to cover. He wanted to make sure that the net positive impact was not less than the current amount received. Ms. Hardy said she understood the intent, but wasn’t sure if the language was explicit enough as it was not clear to her and others who were reviewing it. She felt they should look at other language to get at the issue, and suggested “over previous tax revenues.” She thought that legal counsel could work with them to get the language to a point that it could be voted at the meeting. Councilor Nazzaro said they were telling a private developer that presents a project to the town with a positive fiscal impact that if that impact is not more positive than it had been with the previous building the project cannot be done. Council Chairman Levy said that was absolutely correct. Councilor Nazzaro said that private business does not exist for the town, it exists for itself.

Council Chairman Levy said that if they were changing the zoning and they wound up with the example he gave, why the town would want to wind up with less revenue. Councilor Nazzaro said a private individual owned the property and should be able to develop it as he wanted as long as it did not show a negative impact and not a negative impact from how it exists. Council Chairman Levy said they were allowing people to add something they currently could not under the current zoning. Councilor Nazzaro said he felt the language was dictatorial, and they were putting the town above everything, especially private ownership. Councilor Levy said he thought dictatorial was a bit strong, and he felt the whole goal of the zoning change was to have a positive tax benefit. He said Mr. Mayberry spoke about having a Fiscal Impact Study, limiting the size, and limiting the number of bedrooms, all of which were on the table and were credible issues. He said if Councilors did not agree with trying to prevent a project from going upside down in taxes, they shouldn’t vote for the amendment. He said he could not understand why they would pass zoning that would ultimately bring less revenue to the town. Councilor Nazzaro said that if the change in total brought a positive impact, but one project did not bring a more positive impact, he felt they were dealing too much in hypotheticals. He said an owner could make some changes which would bring him more revenue, but if the town did not also receive more revenue, even with a positive impact, they would deny the project. Council Chairman Levy said had also included the amendment to cover any possible zone expansion. He said he wanted to protect the town as much as he could, and to his understanding, the amendments did not affect any projects currently on the table. Councilor Nazzaro said he understood they wanted a positive fiscal impact, but to tell a private developer that the town had to realize more money was over the top. He said that even though the owner was gaining more revenue from renovations, the project could be disproved if it gave a positive revenue balance to the town, if that positive balance was not higher than the current one, and he emphasized that this was on private property. Council Vice Chairman Bentley said he was concerned about the worst case scenario that Council Chairman Levy had cited. Chairman Levy felt this was reasonable for anyone wanting to add more units.

Town Administrator Fournier, Town Attorney Ratigan and Town Planner had left the room to work on the language of the amendment, and Town Administrator read the suggested following rewording:

#### Amend 7.02 Mixed Use Development

Add: (C) Existing commercial properties in this zone shall not add more than 3 residential units 3 residential units or more unless it can be shown by completion of a Fiscal Impact Study and Market Analysis that the entire development will have a positive fiscal impact compared to current tax revenues.

Council Vice Chairman Bentley said they were talking about re-doing buildings, but asked Ms. Hardy if a new person coming into town with a new proposal also had to show a positive tax gain for the town. Ms. Hardy said the Planning Board can require that if an issue is raised, but the town still does collect impact fees. With the amendment, a special use permit would require an analysis showing that the tax benefit would be greater than the previous one for existing

properties. Council Chairman Levy said that when he had brought this up before, he was told that his concern was being addressed in the original language, but he didn't see it which was why he added the amendment. Ms. Hardy said the language the Town Administrator more explicitly addressed the concern that there had to be a more positive benefit to the town for approval.

Council Vice Chairman Bentley so moved (to approve the amendment 7.02 Mixed Use Development), and Councilor Carmichael seconded. Town Administrator Fournier polled the Council. Motion passed 5 – 2, with Councilors Pickering, Pike Carmichael, Council Vice Chairman Bentley and Council Chairman Levy voting in favor and Councilors Nazzaro and Wright voting against.

Councilor Nazzaro said that Ms. Hardy in her notes had mentioned RSA 356B concerning treating condominiums differently from other forms of multi-family housing. Attorney Ratigan said that what they could not do was treat condos disadvantageously, and the only differentiation in the amendment gives a higher square footage to condos than apartments. He said they were not violating state law by treating them differently. Council Chairman Levy said one of the reasons he had given more square footage to condos was that they would give a higher tax return. Councilor Nazzaro pointed out that the fiscal analysis would be on the entire development, not just the residential units.

#### New Business

Town Administrator Fournier said there would be fireworks the evening of August 9th behind the Community Center before Old Home Day/Oyster Fest on August 10th.

Council Chairman Levy said that despite differences, he felt the Council worked well together. However, he asked that members refrain from using phrases such as "socialistic" etc. because he did not feel they were helpful.

Council Vice Chairman Bentley moved to adjourn and Councilor Carmichael seconded. Motion carried unanimously, and the meeting adjourned at 10:00 p.m.

Respectfully submitted,

Ellen Adlington, Recording Secretary