

## Town Council Approved Minutes July 10, 2013 BM

TOWN OF NEWMARKET, NEW HAMPSHIRE  
TOWN COUNCIL BUSINESS MEETING  
JULY 10, 2013  
COUNCIL CHAMBERS

### PRESENT:

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

Town Administrator Steve Fournier

### EXCUSED:

Councilor Phil Nazzaro

Council Chairman Levy opened the meeting at 7:02 p.m., followed by the Pledge of Allegiance.

### PUBLIC FORUM:

Bert Allen of 56 Smith Garrison Road objected to Resolution #2012/2013-63 Contract for the Lamprey River Macallen Dam Removal Feasibility and Impact Analysis on the basis that removing the dam would increase the population of the aggressive and predatory lamprey eel. He was asked to send the supporting information to the Dam Study Committee. He then spoke about the possibility of the town adopting full 501C3 status, and believed this could save money. Currently, if a citizen makes a donation to the town, the amount can be deducted from income tax. Town Administrator Fournier said he did not believe that a government agency could adopt 501C3 status. Interim Finance Director Angell said the state does not allow this, and towns can only adopt partial non-profit status so that contributions to the town may be income tax exempt. Mr. Allen then suggested that the Council look into creating 501C status for the Dam, and having dues-paying members who could finance its maintenance.

Leo Fillion of 3 Lafayette Road read from a statement for the record.

"Three or four years ago when I was Chair of the Capital Improvement Program Committee, my recollection was often not the best, is that the Sewer Department submitted to the CIP Committee in about 2009 a detailed proposal which included the redesign and estimated construction costs of a new Bay Road Sewer pumping station for increased pumping capacity and the replacement costs for the 6" forced sewer main which ran from the Bay Road pumping station across the Lamprey River to the gravity

Sewer main behind Rivermoor Landing.

After a few CIP meetings which the CIP Committee felt showed significant flaws in the proposal, the sewer department withdrew their application for inclusion of this proposal in the Capital Improvement Plan.

There are public records which are available somewhere which shows the results of these meetings and I feel expenditure from sewer department capital reserve funds is necessary at this time until these records are made available to the Council. The report by Underwood Engineers in about 2009 on their extensive study of the Bay Road sewer system and the pumping station and their recommendations on which much of the CIP findings were based

should also be made available.”

Town Administrator Fournier will find the documents and make them available to the Council and public. The Public Forum closed at 7:22 p.m.

## MINUTES OF THE JUNE 19, 2013 COUNCIL WORKSHOP

Council Vice Chairman Bentley moved to approve the minutes of the June 19, 2013 workshop, and Councilor Carmichael seconded. Discussion and corrections: Councilor Pickering asked that the name Russell Polk on page 4 be corrected to Russell pope, and that Hammell Brook be changed to Hamel Brook, also on page 4. Town Administrator Fournier polled the Council. Motion passed 5 – 0 -1, with Council Vice Chairman Bentley abstaining as he had not been at the meeting.

## REPORT OF THE TOWN ADMINISTRATOR

Town Administrator Fournier reported that, in the addition to the \$31,435 that had been budgeted as a contribution holiday for FY2014 from the LGC Health Trust Fund, the town had also been awarded \$85,098. He and the Finance Director will work together on how best to use the additional funds. Council Chairman Levy asked if the threatened litigation between some towns and LGC could forestall Newmarket receiving funds. Town Administrator Fournier explained that the towns that had filed suit were members in 2010, but currently were not members of the Trust. The Supreme Court did not let them intervene. The towns might try another avenue for their suit, which might delay the receipt of \$85,098, but the town can expect to receive the \$31,435.

The revised Personnel Policy also referred to as the Personnel Handbook is currently being reviewed by the Town Attorney, and, when finalized, will be presented to the Council in August.

The Wastewater Review Committee, comprised of Councilors Carmichael and Wright, Council Vice Chairman Bentley, Town Administrator Fournier and Wastewater Superintendent Greig, met with Wastewater Superintendents from Dover and Rochester to review applications from 2 engineering firms. The Town and Administrator and Wastewater Superintendent were meeting frequently with representatives from Rural Development and DES to secure more funding for the sewer plant upgrades. At the next workshop, the Council can expect to receive a list of actions necessary to receive more funding.

The Codification process had started and was expected to be complete in 9 – 12 months. When finalized, the town can expect to have a bound, legal document including all ordinances and policies for a Municipal Code. Work will also involve the Town Attorney, Police Chief, Fire Chief and Town Planner.

The town had received some resumes in response to the advertisement for a part-time Finance Director. Councilor Pickering asked while they were discussing a Finance Director in the near future, if they could have current salary and benefit information for the Interim Director. Town Administrator Fournier said that the current Director does not receive benefits, and he will get the salary information.

The Municipal Budget Committee is hosting a Budget Workshop on Monday evening, July 22nd in the town auditorium. The workshop is open to public officials and community members. Those interested in attending need to contact either the Town Administrator or Administrative Assistant.

## OLD BUSINESS: ORDINANCES AND RESOLUTIONS IN THE 2ND READING

Resolution #2012/2013-57 Authorizing the Town Administrator to Enter into an Agreement for Asphalt

Council Vice Chairman Bentley moved to accept Resolution #2012/2013-57 Authorizing the Town Administrator to Enter into an Agreement for Asphalt. Councilor Carmichael seconded.

Discussion: The Resolution states the price at \$67 a ton, but a total figure will not be available until the projects are determined. Councilor Pickering asked DPW Director Malasky what the distance limit was for receiving asphalt. He responded that Portsmouth, Brentwood and Rochester plants were within the distance, but plants in Boston or Concord were too far away to be feasible.

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

#### Resolution #2012/2013-58 Authorizing the Town Administrator to Enter into an Agreement for Granite Curb Stone

Council Vice Chairman Bentley moved to approve Resolution #2012/2013-58 Authorizing the Town Administrator to Enter into an Agreement for Granite Curb Stone. Councilor Carmichael seconded.

Discussion: The amount for curbing is \$24,600. Councilor Pickering asked, since only 2 bids had been received, how many companies had been contacted, and if it would be worthwhile looking further away. Mr. Malasky said both companies were within an 80 mile radius, and they were the only 2 companies he was aware of who could do the type of work needed. The town does small curbing projects in-house. This curbing would be for Packers Falls Road and a section from the rectory to the old fire station.

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

#### Resolution #2012/2013-59 Transferring Funds from the Downtown TIF Capital Reserve Fund

Council Vice Chairman Bentley moved to accept Resolution # 2012/2013-59 Transferring Funds from the Downtown TIF Capital Reserve Fund. Councilor Pickering seconded.

Discussion: The town will pay debt service of \$15,075 and interest of \$92,130 for a total of \$107,250. Councilor Pickering asked if the debt service interest rate could be altered. Interim Finance Director Angell said there was no call date on the loan, and it cannot be paid off early. There are 10 years left on the 20 year loan. Town Meeting had put money aside for debt service for the remaining term of the loan. Previously, the loan had been refinanced to its current rate of 4.25%. A town cannot refinance a loan, only the bonding company. Mr. Angell said that First Southwest reviews the bonding company's portfolio monthly, and looks at rates to see if it is cost-effective to refinance. Councilor Pickering reiterated that the town was halfway to paying off the loan, and even though the funds had been set aside, the loan could not be paid off before the end date. Mr. Angell said this would be an annual request until the loan was paid off.

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

#### Resolution #2012/2013-60 Increase of Sewer Rates

Town Administrator Fournier said that the Council could not vote on this Resolution until after the Public Hearing was held in August.

#### Resolution #2012/2013-63 Contract for the Lamprey River Macallen Dam Removal Feasibility and Impact Analysis

Town Administrator Fournier said there had been a procedural defect in the March, 2011 Warrant Article. The original article had been to raise and appropriate \$85,000, but the amount had been amended at the Deliberative Session by the amount of the \$40,000 grant to \$45,000. The state requires that the town raise and appropriate the total expenditure, which is \$85,000. He said he was in the process of working with the grantee organization to see if it would serve as half the payee of the project and the town the other half. The town cannot enter into a contract for \$85,000 as it is only authorized to spend \$45,000. He recommended that the Resolution be tabled until the issue is clarified.

## Resolution #2012/2013-64 Withdrawal of \$100,000 from the Municipal Transportation Fund for the Purpose of Road Maintenance

Council Vice Chairman Bentley moved to accept Resolution #2012/2013-64 Withdrawal of \$100,000 from the Municipal Transportation Fund for the Purpose of Road Maintenance. Councilor Carmichael seconded.

Discussion: Council Chairman Levy noted that one of the areas to be paved was the parking area across from Bryant Rock, and asked if there were any plans for the lot. Town Administrator Fournier said they could look into leasing spaces or encouraging business owners and employees to park there, freeing up closer spaces for business patrons. DPW Director Malasky said there were 17 potential spaces, which were currently used mostly by area residents, and that the lot was full in the winter. The condition of the pavement made plowing difficult and could damage equipment. Councilor Pickering said that Newmarket owns about 100 parcels of which 24 have buildings, but the lot in question did not contain a building. The lot was acquired from NCDC when the mills were acquired and was in bad shape at that time. He felt the lot was too far from businesses and business owners would not want to park there. He felt they should not be spending the money to hot top the lot at this time, but wait until there was a discussion of all the parcels. Councilor Wright thought that Water/Wastewater Superintendent Greig had mentioned that the lot could be the site of a future pumping station.

Mr. Malasky said that they had first begun plowing the lot in January, but in its present condition, he would not be able to plow it again. Plowing would further deteriorate the surface and damage equipment. Town Administrator Fournier had discovered that PSNH had several access easements on the property which could affect the town's ability to dispose of it. Councilor Pickering said this was one of 2 lots the town had acquired from NCDC, the other being the dam. Considering the costs the town faced with the dam, and the terrible condition of the parking lot, he felt consideration of paving the lot should be put on hold. He also questioned whether the town should be supplying spaces for homes that did not have sufficient parking. Council Vice Chairman Bentley wondered why the town was plowing the lot if it currently had no use for it. He noted that he had been an advocate of looking into unused parcels that the town owns. He felt they should look into leasing the lot, and noted that business owners and employees in other towns walked some distance to their businesses.

The cost for paving, providing drainage and curbing for the lot would total \$15,740 of the \$100,000 requested in the Resolution. Councilor Carmichael asked about easements on the property and said he thought the Resolution should be tabled until more was known. Town Administrator Fournier suggested that the Resolution could be amended and the amount lowered by \$15,740. Council Chairman Levy said that if they were going to amend the Resolution, he thought they should get input on interest in leasing spaces and find out current rates. He thought they should also consider leasing some spaces behind Town Hall, and felt paving the lot would not be a bad investment if spaces could be leased. Town Administrator Fournier said if the lot was not going to be repaired, he felt it should be blocked off for the winter. Council Chairman Levy felt that there could be nearby businesses or residents who might be interested in leasing spaces that they are now using for free. Councilor Wright said the lot is now a liability, and he would not wait until winter to block it off. He thought that at one time, Bryant Rock was looking at the parcel for extra parking. Town Administrator Fournier said that if the 17 spaces were leased for \$400 annually, the town would realize \$6,800 in revenue for a payback period of about 2.5 years, but if the town leased even half the spaces, the payback period would be about 5 years. As it stands now, the lot is a liability and an eyesore.

Mr. Malasky said that if the decision was to not repair the lot, the money in the Resolution could remain the same and be put catching up with road repairs. Council Vice Chairman Bentley said they could amend the Resolution to \$84,206 or keep the amount at \$100,000, which would leave \$10,000 in the account if they decided to repair the lot at a later time. Mr. Malasky said that if the money was kept at \$100,000, they would be able to extend the length of the repairs on Ash Swamp Road by about 2 tenths of a mile, which he felt was safer considering the contours of the road. Repairs entail grinding, grading, compacting and providing 2 foot wide shoulders.

Town Administrator Fournier said they could amend the motion to remove the repairs to the parking lot from the 4th "Whereas" in the Resolution. Council Vice Chairman Bentley so moved and Councilor Carmichael seconded. Town Administrator Fournier polled the Council on the amended Resolution. Motion carried unanimously, 6 – 0. The total amount of the money in the Resolution will remain at \$100,000, all of which will be used for the road repairs. Town Administrator Fournier said he would post signs that the parking lot will soon be closed. Town Administrator Fournier polled the Council on the motion as amended. Motion carried unanimously, 6 – 0.

## Resolution #2012/2013-65 Authorizing Lot Line Adjustment and Access Easements for Heron Point Sanctuary (Wajda Family Trust)

Council Vice Chairman Bentley moved to accept Resolution #2012/2013-65 Authorizing Lot Line Adjustment and Access Easements for Heron Point Sanctuary. Councilor Carmichael seconded.

Discussion: Doucette Surveying, the Conservation Commission, the Town and Trust Attorneys had all walked the property. This would be the final document on the adjustment to come before the Council.

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

**NEW BUSINESS: ORDINANCES/RESOLUTIONS IN THE 1ST READING:** These items are normally held over for discussion and voting at the next Business Meeting after the second reading. However, Councilors may ask that an item be placed on the Workshop agenda or vote to suspend the rules and discuss and vote on a Resolution after the first reading if an issue is urgent.

There was a discussion of back up material being presented to supplement the first reading. The Council will try having this material available only with the agenda for the second reading. Two readings were initially decided upon to allow time for public comment. Town Administrator Fournier suggested that they have a discussion to abolish the workshops in favor of 2 business meetings per month, which would allow the Council to act more quickly. The Council would have to have a resolution to amend the rules.

Resolution #2013/2014-01 Small Claims Unpaid Police Detail Fees \$200: Council Chairman Levy read the Resolution in full. Councilor Carmichael suggested that, especially with those requesting police detail for the first time, that the town require payment up front.

Resolution #2013/2014-02 Repair and Maintenance on George Stevens Tower Clock: Council Chairman Levy read the Resolution in full.

Resolution # 2013/2014-03 Establishing a Recreation Revolving Fund: Council Chairman Levy read the Resolution in full.

Resolution # 2013/2014-04 Authorizing the Withdrawal of \$99,000 from the Public Works Capital Reserve Fund to Purchase a Trackless Sidewalk Plow/Trackless: Council Chairman Levy read the Resolution in full.

Resolution #2013/2014-05 Authorizing the Town Administrator to Enter into a Two-Year Agreement with Municipal Resources Inc. for Assessing Services: Council Chairman Levy read the Resolution on full.

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: Council Vice Chairman Bentley read the Resolution in full.

Resolution #2013/2014-07 Authorizing the Town Administrator to Enter into an 18-Month Agreement with ENH as the Town's Electrical Provider: Council Vice Chairman Bentley read the Resolution in full.

Town Administrator Fournier asked for a vote to suspend the rules and a vote on the Resolution, so that the town would not miss the 30 window to retain the proposed price. Council Vice Chairman Bentley moved to suspend the rules and Councilor Carmichael seconded. Town Administrator Fournier polled the Council. Motion to suspend carried unanimously, 6 – 0.

Discussion: Interim Finance Director Angell said there had been 3 responses to the 60 RFPs he had sent out. ENH, which is located in New Hampshire, was the lowest bidder at a fixed rate of .07212 per kilowatt hour, which is \$75 more per year than the town is paying now, but \$26,000 lower per year than estimated cost from PSNH. A one-year extension

to the contract with Nextera had been signed by the previous Town Administrator, but it will end in December. Mr. Angell said that contracts should end with the fiscal year, and he and Town Administrator Fournier are working on having all contracts line up with the fiscal year. The charge from ENH is in addition to the line charge.

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

Resolution # 2013/2014-08 Relating to the Releasing of \$14,148 of Comcast Franchise Fee: Council Vice Chairman Bentley read the Resolution in full.

#### CLOSING COMMENTS BY TOWN COUNCILORS

Councilor Pickering asked if he and the other new Councilor could have a copy of Town Administrator Fournier's contract. This was on the CD given to the new Councilors. The annual goals should also have been included. Council Chairman Levy asked Town Administrator Fournier to provide copies in all the Councilors' mailboxes. To Councilor Pickering's question, DPW Director Malasky said that he, along with other public works employees could open the dam gates.

Council Chairman Levy said it seemed that the M-2 zoning change ordinance would be on the next meeting's (Workshop) agenda, when they had a full Council. First the item would have to be taken off the table, and there would have to be a vote passed to suspend the rules. If no amendments were made to the ordinance, a vote could be taken. If there were amendments, there would have to be a Public Hearing and action on the ordinance at the first meeting in August. He said that if anyone in the audience had a public comment pertinent to the M-2 zoning change, he would entertain it at this point. Bert Allen said he understood that if Mr. Decker's plan went forward for the M-2 zone, he intended to give the town his 26 plus spots for municipal parking. Town Administrator Fournier said he would look into this as no one recalled the statement, but this was under the purview of the Planning Board, not the Council.

ADJOURNMENT: Council Vice Chairman Bentley moved to adjourn and Councilor Pickering seconded. Motion carried unanimously, 6 – 0, and the meeting adjourned at 8:28 p.m.

Respectfully submitted, Ellen Adlington, Recording Secretary