

Town Council Approved Minutes June 19, 2013 WS

TOWN OF NEWMARKET, NEW HAMPSHIRE
TOWN COUNCIL WORKSHOP
JUNE 19, 2013 6:00 P.M.
TOWN COUNCIL CHAMBERS

PRESENT: Council Chairman Gary Levy, Councilor Dan Wright, Councilor Phil Nazzaro, Councilor Larry Pickering, Councilor Dale Pike, Councilor Ed Carmichael

Town Administrator Steve Fournier

EXCUSED: Council Vice Chairman John Bentley

Council Chairman Levy called the meeting to order at 6:00 p.m., followed by the Pledge of Allegiance. He read a letter from the Newmarket Gardeners and asked for a moment of silence in honor of Marilyn Benson who had passed away on June 5th. Ms. Benson had been an active member of the Newmarket Gardeners and was responsible for designing and maintaining many of the gardens found on public property in town.

PUBLIC FORUM

Council Chairman Levy suggested that public comment on the agenda items concerning the Macallen Dam and Mayberry study on the M-2 zoning proposal be held until after presentations were complete. James Dreher of Durham Boat Company said he had read the Wright-Pierce Dam Removal Study, and had concerns about lowering the river. He suggested they look into the natural spillway located 2000 meters from Packers Falls. He agreed to complete his comments after Wright Pierce had presented its report. Councilor Pickering, noting that the Council normally meets at 7:00, asked that anyone arriving at that time be allowed to speak. Council Chairman Levy agreed. Public Forum closed at 6:05 p.m.

TOWN COUNCIL TO CONSIDER ACCEPTANCE OF MINUTES

Councilor Nazzaro moved to approve the minutes of the June 5, 2013 business meeting. Councilor Carmichael seconded. There was no discussion. Town Administrator Fournier polled the Council. Motion carried unanimously, 6 – 0.

Councilor Nazzaro moved to approve the minutes of the June 5, 2013 non-public meeting. Councilor Carmichael seconded. There was no discussion. Town Administrator Fournier polled the Council. Motion carried unanimously, 6 – 0.

REVIEW OF DEPARTMENT REPORTS

Town Administrator Fournier said he had some questions from Councilor Pickering concerning overages for gas, diesel fuel and overtime in the Public Works Department. He had conferred with the Finance Director and left a memo in the Councilors' mailboxes stating that these costs were not out of the ordinary. The increases were from the large amount of snow during the winter and increases in fuel costs. Town Administrator Fournier had an additional item to report. The Council had authorized the sale of the old DPW building to Whispering Pines Animal Crematory in 2010. Settlement would take place on Thursday, June 20th and the town would receive a check for \$232,000. Councilor Pickering asked why the amount for contracted services in DPW expenditures was double the original appropriations. Town Administrator Fournier said that large amounts of snow had to be trucked from the downtown area after the blizzard and this required larger trucks. He will find out the name of the contractor.

TOWN COUNCIL TO CONSIDER REPORTS FROM COUNCIL REP COMMITTEES

Planning Board: Councilor Wright said Newmarket Mills had come before the Board with a conceptual plan of 52 units at the Rockingham Golf Course. Their other proposal for a 600 square foot retail space was tabled until the next meeting.

Conservation Commission: Councilor Pike said they had discussed what measures to take in controlling an invasive species found on Ash Swamp Road. They continued their discussion about signage around surface water. They determined that the red pigment had faded and there was no vandalism.

Economic Development Committee: Council Chairman Levy and Councilor Nazzaro both serve on the Committee. The Committee had met with its consultant, and expected part one of the report to be complete by the end of July. This part will cover data that places Newmarket in its surrounding area, and the Committee will meet to discuss the findings after receiving this data. The second part of the proposal is expected to contain findings and suggestions as to how Newmarket can proceed tangibly to meet its goals.

Budget Committee: Councilor Pickering said the Committee discussed the previous meeting and the appointment to fill its one year vacancy. A legal opinion, stating that there was no fault with the appointment procedure, had been received from LGC. The Committee also met with Superintendent of Schools Hayes and School Business Manager Blouin on the school districts expenses and revenues. Chairman Snyder brought up the concern of many for more parity between town and school employee percentage contributions to health insurance. On July 22nd, the Committee will hold a budget training workshop to which the Council, School Board and any other interested parties will be invited.

DISCUSSIONS/ PRESENTATIONS

MACALLEN DAM:

Ryan Wingard from Wright Pierce presented the dam breach analysis and rehabilitation report. Also in attendance was Bill Brown from the firm. Newmarket had received a letter of deficiency from NHDES in 2008. The town was required to update inundation mapping, repair deteriorating concrete and submit a design to increase the current undersized spillway capacity to 2.5 xQ100 or IDF. Wright Pierce had been hired to study dam rehabilitation and address structural deficiencies and spillway capacity. Wright Pierce did a structural investigation in 2009 and prepared a cost estimate for repairs. A dam breach analysis confirmed the design flow and dam hazard classification and updated inundation mapping. They looked at spillway capacity and prepared an analysis of rehabilitation alternatives. They next looked at the amount of water the spillway should be able to handle. In 2008, NHDES determined the flood flow capacity was 8,300 cfs, which was confirmed in May of 2010. In 2013, they settled on an updated split flow model of 10,259 cfs for a 100 year flood, which was approved by DES in March.

From the visual structural investigation of 2009, they recommended repairs and maintenance to the existing structure that should be done in approximately 2 years, and additional modifications to pass the design storm flows. Mr. Wingard said the structural repairs were divided into 2 parts: part 1 would be to repair the gate structure and east retaining wall for about \$234,000; part 2, which could be put off for a while as it could affect spillway capacity, would be to repair the dam structure and west retaining wall for about \$315,000. For the breach analysis, they confirmed the NHDES hazard classification which remains high, as it could involve loss of life as well as structural damage because the dam abutment is an integral part of a building foundation. The inundation mapping had been updated, and there were 2 breach maps shown: one showed the flow upstream and down if the dam were breached on a non-stormy day, and the other the flow if the dam were breached during a 100 year flood.

Also there were alternative adjustments that could be made to bring the spillway capacity to handle a 100 year flood of 10,259 cfs. This has to be done with one foot of freeboard and no gate operations. Under existing conditions, and with the gates opened, their modeling showed that the dam would be overtopped by 1.7 feet, but the condition would be worse if the gates were closed. Mr. Wingard said the study focused on the area around the dam, and not upstream. In general, they looked at alternative combinations of lowering the crest elevation of the dam from the existing 22.18 feet and increasing the crest length from the present 70 feet. Presently with the gates closed there are -5.84 feet of free board. Lowering the height of the dam is also called partial dam removal. Because of the proximity of buildings to the dam, extending its length to 350 feet to reach necessary spillway capacity would not be feasible. Sometimes a notch can be added to increase length, but this might not be effective in flood conditions. Lowering the crest to 12.59 feet to meet the requirement had potential upstream consequences and would affect the fish ladder. The study looked at combining

length and crest adjustments and raising the west abutment and estimated costs for each with 1 foot of freeboard. Adding a crest gate to the dam might be considered as "with operations" by NHDES and might not be allowed as part of an alternative solution.

Mr. Wingard thought there might be other alternatives, such as overtopping, by allowing water to go around the spillway. This would require armoring the area downstream and would depend on the depth duration and velocity of the flow. This had the potential of affecting nearby residential and commercial structures, and even if this method increased the crest to 140 feet, the dam would still have to be lowered by 3 feet. Another alternative would be to stabilize the existing structure by anchoring it to bedrock, as had been considered for Exeter. There was also the option of an inflatable flash board/gate system which would require a compression building, but it wasn't known for sure if NHDES would approve this or consider it an operating system. Leo Fillion said that there had been 44inch wooden flashboards on the dam for about 50 years and the legislature had passed a law allowing this. Mr. Wingard said that flash boards were designed to break at certain water levels and be swept downstream and would not be considered as operations.

Mr. Wingard summarized by saying that just to repair the structural deficiencies would cost approximately \$234,000. To pass the 100 year flood rate requirement could cost anywhere between \$1.1 and \$4.6 M in part because of site constraints and partial dam removal could be an option. He said it would be important to compare the dam removal study, once complete, with his firm's rehabilitation study. His firm was not making any recommendations at this point, but presenting alternatives. Council Chairman Levy asked if water could be diverted through a culvert under the building shown in the right of the picture. Mr. Wingard said he would be concerned at how this could affect the stability of the structure, and somehow, water would have to be piped back into the river. Councilor Wright asked if a V notch could be put in vertically in the middle of the dam, but Mr. Wingard said that under dry conditions, the water flow would be at the bottom of the V and would not maintain the water source upstream. Also, he did not think this would improve the flow under a 100 year flood condition. Councilor Wright asked if there were any pictures showing what the area would look like in seasons if the dam were lowered. Mr. Wingard said he had pictures taken in November 2009 from when the water was drawn down, and once he knew how far it had been drawn down, he could approximate other levels. He added that he had no pictures past the bridge. Councilor Nazzaro asked more about flashboards and asked if this would be a less expensive alternative. Mr. Wingard said that some of the concrete of the spillway would be removed and replaced with boards whose pins were designed to fail and break, lowering the spillway cap under high water conditions. This would be a less expensive alternative. Mr. Fillion said the steel channels would still be on the dam. In the past, there had been a pond and water was piped to a hydro unit, but this was ended in 1951.

Council Chairman opened the discussion to public comments and questions. Russell Pope suggested the option of buying the building to the west of the spillway and demolishing it to extend the crest of the dam. John Dreher of Cushing Road spoke about the possible impact on recreational and cultural activities on the river and encouraged the town to look at alternatives that would not affect the water level. Jim Dreher owner of Durham Boat Company and a resident of Durham continued with his earlier comments about the natural spillway, referred to in the Wright Pierce study as a flow split, near Packers Falls. He thought that at about a height of 6 feet, the water was diverted to the Oyster River Basin, and Wright Pierce felt there was about a 20% flow reduction at that point. When Route 108 was built, it created the equivalent of a 6 foot high dam by 2800 foot long dam which blocks the natural spillway. He said that DOT has a plan to rebuild the road between Durham and Newmarket by 2014, and raise the road another 6 inches. He said this would increase the flow rate, and suggested that culverts be put under the road which would also keep the road from flooding. Also the flow split would be used to take some load off the dam. He also thought they could consider lowering the road to take more pressure off the dam.

Leo Fillion said that when Newmarket floods, Oyster River and Hamel Brook in Durham do also, and more water would exacerbate the situation. Jim Phelps said he thought the alternatives from Wright Pierce were helpful for the town to understand its options. He said the original NHDES letter had said the flow had to increase by an additional 2.5 cfs, but that condition had been removed, and the current rate accepted by NHDES was 10,259 cfs for a 100 year flood. He had concerns about the people living downstream from the spill, and suggested they be sent a letter informing them why the additional 2.5 cfs safety requirement had been removed. He said the UNH study referred to in the Gomez and Sullivan report set the flow at about 17,000 cfs. He wanted to know if the UNH data was going to be adopted by FEMA and NHDES, because if it was, the work might have to be done again.

Colleen Fuerst of Durham Boat Company and a resident of Durham stated that she is a civil engineer and wanted to report that there were some errors in the UNH study. She said some of the high water marks were from their building and could still be seen, but were reported incorrectly in the study. She said the calibration points for the 2007 and 2010 floods were actually about 12 inches apart, but were recorded in the study at less than an inch apart. The Mothers Day storm in 2006 was not included, but was about 5 inches apart. She had concerns about the study and whether it had been the basis for calculations. She felt any information derived from the study should be looked at and redone, because a little

mistake in calibration only gets larger over time.

Leo Fillion said that FEMA had commissioned a study after the 2007 flood. The study said the 2007 flood was unusual because of the heavy rain and rapid snow melt. The highest flood recorded on the Lamprey River in Newmarket occurred in May, 2006, while the highest flood of the Oyster River occurred in Durham in 2007. He said that UNH had had a gauging station on Packers Falls for over 100 years. He had been responsible for the dam's operation and maintenance for a long time when he worked for Essex, and he knew they had spent practically no money on the dam in 20 years and had chosen not to follow FEMA's recommendations. He continued to be responsible for the dam when Newmarket Development took it over. He said the gates did not work from 1987 to 2003, but the hydraulic system he designed for them in 2003 still worked.

As there were no further comments from the public, the public forum on the Wright Pierce Report was closed at 7:03, and Councilors began with their questions and comments on the report. Councilor Nazzaro thought that there might be a way, when the state was redoing Route 108, to leverage the funds and set conditions so that Newmarket is not put in this position again. Mr. Wingard said Ms. Fuerst had contacted him about her idea to divert some water to the Oyster River Watershed. He said it seemed that if the road was raised, it would put more pressure on the Macallen Dam. He would want to know the impact on those living downstream in Durham if the road was either lowered or had culverts built under it. He felt some water could be diverted, but not enough to correct the problem. He felt it would be worthwhile investigating as they might not have to lower the dam as much. Councilor Pike felt that they should engage Durham in any of their discussions and also consider what a change in 108 might do to study findings. Mr. Wingard said the study would cover cultural and recreational impacts and the affect on property values and would extend to Durham. Council Chairman Levy said the study would touch on this, but not go into any great depth, and asked what it would take to analyze the suggestions made involving 108. Town Administrator Fournier said the study would be an overview to give an estimate of what the impact would be. He added that a town warrant article had been approved for the study and the funds had to be used for that purpose. Any additional studies would cost additional money that had not been budgeted for at this time. Mr. Wingard said they would have to develop another hydraulic flow study similar to what his firm had done on the Lamprey River to determine the impact.

Ms. Fuerst responded to Councilor Wright's reference to a culvert on Long Marsh Road. She had met with Durham's engineer and suggested diverting water from this area of Route 108. She felt it would be helpful if Durham residents who live on the water might help with the cost of the study because it was a regional watershed problem. She felt that DOT should also be involved before beginning its project, so that culverts could be added at the same time. She felt they needed larger culverts or small bridges and perhaps with those and adding the breakaway boards to the dam there might be significant progress in solving the problem. Council Chairman Levy read from the Gomez and Sullivan proposal that it would not cover assessing the costs or impacts of issues in depth. Councilor Carmichael asked the Town Administrator to contact Durham's Town Administrator about this. Councilor Nazzaro said he would like to know the cost of installing flashboards, and asked how this would affect the height of the dam. The dam would have to be lowered by the height of the flashboards, but on a daily basis would remain the same. He said that he agreed with Councilor Carmichael that they should not spend any more money until they knew what DOT was doing on Route 108.

To Council Chairman Levy's question, Mr. Wingard said that even if the dam spillway was doubled in length to 140 feet, the crest would still have to be lowered by about 3 feet, per alternative #6. He said that would be a \$3M fix and added that maintenance of the dam would be an additional cost. Councilor Wright asked if there was any federal money to help and Mr. Wingard said he did not know of any, and DES representatives said there was none. Town Administrator Fournier said the current trend was to remove dams, but Councilor Pike said that most people he had spoken with wanted to keep the dam at its present height. He, along with everyone, was concerned about the regional impact of removing the dam, which would not be covered in the study. Town Administrator Fournier said they only had money for the removal study, but suggested a capital reserve fund with annual appropriations so they could address possible solutions. Council Chairman Levy thought a more in depth study would be more helpful, but that kind of study would cost hundreds of thousands of dollars. He said he wanted to insure that they were spending funds in a productive manner.

Councilor Pickering asked how long Newmarket was given to fix the deficiencies in the dam. Chuck Corliss, a structural engineer from DES, said that Newmarket had addressed some of the issues. The deficiencies had been laid out and some had been deferred until the town decides to repair or remove the dam. The emergency action plan was 70% complete with the maps, but remainder needs to be completed. The left/west side of the wall could be deferred, but the right/east side had to be done more immediately, as determined by the 2009 study. The Gomez and Sullivan study would entail lowering the water level, giving them a better idea of the condition of the right wall. The 2 most crucial items he saw were the completion of the emergency action plan and a better understanding of right wall deterioration. Councilor Pike asked if DES had seen examples of other such problems being handled regionally. Mr. Corliss felt it was key that Newmarket contact DOT before they began work to discuss flow impact to the dam. He did not know of any examples of

regionalization. Mr. Fillion said he saw no more use for the gates as they were meant for repairs to machinery for hydro power which was no longer used, and the spillage length would be increased if they were removed. Mr. Wingard said the additional 20 to 30 feet would help, but not enough, and the gates were needed if repairs had to be made to the dam or to prevent flooding. Councilor Pickering said that in the 2 one- hundred year floods, the side sluiceway had been opened, and asked if this had been done fast enough or if should be done prior to an impending storm. Town Administrator Fournier said that they had opened the gates for Hurricane Sandy well in advance of the storm, and it is monitored when any storm is approaching. Ms. Fuerst said she appreciated their opening the gates in advance as it had minimized the impact.

RESOLUTION #2012/2013-63: Acceptance of a Grant from the Conservation Law Foundation and Authorization of the Town Administrator to Enter into an Engineering Contract for the Lamprey River Macallen Dam Removable Feasibility and Impact Analysis (Action on this item will be held until the next business meeting.)

A warrant article had passed to study removing the dam as a part of the larger study on all options. Town Planner Diane Hardy gave an overview of the process of the study. In 2011, a town warrant article for \$45,000 had passed to have a study on the option of dam removal to mitigate flooding. The town also authorized the search for state and federal grants to lessen the cost. It was hoped that the feasibility study would contain enough information for the town to make an informed decision about either repairing the dam or partially or wholly removing it. Shortly after, the Council met with NHDES River Coordinator, Deb Loiselle, to determine the best way to proceed. A Steering Committee was set up to deal with the requirements for proposals, to select an engineering firm and to seek funding. She had recommended that the volunteer committee be made up of citizens at large, representatives from the Conservation Commission and the Lamprey River Watershed Association to work with staff and experts from the state.

The Steering Committee worked within the RFP/RFQ process, interviewed and ranked qualified firms and negotiated costs. Of the 4 proposals received, Gomez and Sullivan was selected for a total cost of \$82,389, and the town received a grant of \$40,000 from the Conservation Law Trust. The scope of services would be to look at priorities through a broad survey of the range of alternatives. The study would include a field survey, hydrological analyses, structural impacts, water and sediment impact, political impacts, recreational and cultural resource analyses as well as other impacts, and provide some preliminary engineering and cost estimates and some visuals. The Committee believes there will be at least 3 – 4 public meetings to go over all the alternatives. Project Manager Gary Lanet and Overseer Mark Wormsley from Gomez and Sullivan were present to answer any questions, along with Conservation Commission Representative Stephanie Koster, Eric Hutchins from NOAA, Kevin Lucey from the costal division of DES and Sherrie Patterson from NH fish and Game. DPW Director Rick Malasky had also been part of the process.

Councilor Nazzaro commented on the amount of work that had been done in the past 18 months and the use of in-kind hours spent against the grant. In-kind hours are kept track of and are part of the report to the funding agency. Ms. Hardy will make the contributed hours available to the Council. Councilor Nazzaro said that the town had appropriated \$45,000 for the project, and every minute spent on the project was using funds in terms of opportunity cost against other projects that could have been worked on. The taxpayers are then paying more for the project than was appropriated, and Councilor Nazzaro said the taxpayers should know the final cost along with what they appropriated. Councilor Pike asked if the scope of the Committee and study involved attempts at regionalization. Ms. Hardy had been in contact with Durham's Town Planner and it was decided that once the consultant firm was on board, they have a joint meeting and also ask Strafford Regional Planning to attend. The Steering Committee will continue working after the firm is approved and help review the study before it is sent to the Council.

Council Chairman Levy asked that the minutes from Steering Committee meetings be posted on the web site. He noted that page 63 of the packet stated that private wells up the river in Durham could be affected by the decision, and was concerned about a legal liability issue. Town Administrator Fournier agreed that Durham was a large part of the consideration and would be invited to contribute to the process. Council Chairman Levy asked if area impact was part of the scope of work for the study. Ms. Hardy said it was, but in a cursory fashion, as there were other important issues to cover. However, she felt this might be the first phase of other studies that might be necessary. Mark Wormsley of Gomez and Sullivan said they could not fully cover area impact at this time, because there had been cost-related cut backs to their original proposal. They would spend 2 hours per task, and regional impact was a large issue. Councilor Wright asked what had been found in past sediment studies. Mr. Wormsley said that first they looked into what historically had been done in the area and then did borings to look for contaminants in the sediment. Having to rid the area of contaminants would add a new dimension to the project and any additional costs would depend upon the types of contaminants found.

Councilor Nazzaro said that if they were looking at changing the landscape by removing the dam, they needed more than

a cursory study to properly do their job. Town Administrator Fournier said there would have to be another study conducted before a final decision. If the decision was to remove the dam, they would have to ensure that the full impact was known. Funding was limited and this initial study would be cursory and present some answers to what-if scenarios. Essentially, this was a starting point, a feasibility study to be conducted with appropriated funds. Councilor Pickering said that the further they went into the project the more it was beginning to cost. He wondered where the money would come from for this project added to the large costs of other pressing projects. He said that adjustments would have to be made elsewhere if these were the priorities. He noted that more and more was being shifted to towns, and he did not know how much more people could afford. Town Administrator Fournier said he agreed and the state budget had also been cut to the bones, although the state was requiring the town to address the issues. He added that most communities had not taken possession of dams when the mills went out because of concerns for future issues, but Newmarket had.

Council Chairman Levy said that in the spirit of the budget, he would like to see the 10% service charge for direct costs, expenses and sub-contractors passed through. The public will be notified of the 6 progress report meetings, at least 3 of which will allow public input meetings as part of the process. Mr. Wormsley said that lowering the water level of the dam would create a huge stir in the town, but from a cost perspective, there were funds to help with full dam removal, although he was not advocating either way. Councilor Pickering thought they should also communicate with Exeter, as the town had many of the same issues. Deb Loiselle of DES agreed, and encouraged the town to coordinate with Exeter, and offered to make contact names available. Exeter and Newmarket are both considering the consequences of either removing or modifying their dams. She encouraged people to attend the Exeter public meeting on Wednesday, June 26th at 6:30 at Exeter High School, to hear the findings of their studies.

Jim Phelps of Newmarket said the warrant article that passed was for an information finding project. He, along with others who had property on the river, was concerned with what would happen and how property values would be affected. Trevor and Leannon and Great Bay Estuaries had provided data to the town a few years ago, that suggested property values could go up. He could not confirm the findings, but thought this should be part of the evaluation process along with other impacts. He said there was data from non-profits that could be obtained to get more information. Eric Hutchins of the National Marine Fisheries in Gloucester, which is partially funding the study, had reviewed the Wright Pierce Report. He said the issue in Newmarket was unique, but emphasized that the proposed feasibility study would help them look at the other alternatives to full dam removal for comparison in making a decision. As an aside to the idea of flashboards, most are 3 feet high, not 10 feet. Jim Phelps suggested that Gomez and Sullivan take freeze photographs at certain level when drawing down the water so townspeople could have an idea of what would be left. Councilor Nazzaro said he understood how state employees time could be in-kind, but it made no rational sense how town employee's time could be considered in-kind. Town Administrator Fournier said he agreed, but that was the rationale between different levels of government. Public input closed at 8:12.

REVIEW MAYBERRY REPORT ON M-2 ZONING PROPOSAL

The report focused on the M-2 zoning proposal in the downtown area from approximately Elm Street to Rite Aid and was in response to questions that had arisen during the February Public Hearing. Council Chairman Levy asked that public comments be deferred until after the report was given.

Bruce Mayberry of BCM Planning, LLC cited his over 30 years experience in analyzing housing demographics and fiscal impacts. He said this report had a rather narrow view on the fiscal impacts of multi-family housing. The scope of the review was in answer to Council questions on the M-2 potential with a maximum of 47 possible units on 37 scattered sites and the need for their ties to commercial components in order to go forward. The impact of multi-family housing would be analyzed in terms of population, school enrollment, public safety demand, relative fiscal impact and multi-family share of housing stock. He felt that most of the report would be based on local data. Multi-family housing stock is defined as 3+ unit structures or attached townhouses. Newmarket has about 2,180 such units, representing about 52.7% of its housing. Rental properties represent about 45.6% of its total households. Newmarket has a relatively small geographic area to support approximately 9,000 residents and is considered densely populated, more like a small city than a rural area. He felt that Newmarket performs well in providing fair share housing. There also is a demand for housing from UNH, as there is in Dover.

Mr. Mayberry next showed a multi-family housing comparison of Newmarket with other area towns. Newmarket was pretty much on top in the ratio of multi-family units to single family homes, and would be closest to Portsmouth, Durham and Dover. Next, he showed a chart of municipalities with rental percentages over 40% rentals, some of which are college or university town or service towns. Many have a higher commercial base than Newmarket. In the 2010 census, Newmarket's share was 46%. The net gain in Newmarket's home ownership rate had risen by 45% in 1980 – 1990, by 59% in 1990 – 2000 and by 67% from 2000 -2010. This statistic represents the trend of growth in home ownership during the

period, not the ratio of rentals to owned residences. Mr. Mayberry put these comparisons in context. Newmarket is a highly densely populated area with a relatively small geographic space, and thus has many urban district characteristics. It has a high proportion of multi-family stock, and a water and sewer infrastructure to support it. Most of the multi-family development in the area has occurred in Portsmouth, Dover, Somersworth and Newmarket. Newmarket has a low ratio of jobs to population within its boundaries, which tends to reduce the tax contribution from the commercial sector in relation to that of home owners. Although Newmarket has a 46% rental rate, there has been a 30 year trend in the increase of home ownership. The role of multi-family housing is in building and maintaining the local labor supply, sustaining local businesses and jobs, and providing diversity in housing choice.

Mr. Mayberry presented statistics showing the impact on services from 47 single- family versus 47 multi-family housing units. All cases showed a lower impact on services from 47 multifamily units with 1 – 2 bedrooms than from 47 single family homes. A comparison of statewide school enrollment impact done in 2000 was based on the number of bedrooms per household, and showed higher enrollments as the number of bedrooms increase. A multi-family unit with 3 bedrooms could have the same number of school children as a single family home with 3 bedrooms. However, multi-family units tend to have fewer bedrooms. The next chart showed home owned housing versus rental units by household size in Newmarket in 2000 and in 2010 and supported the downward trend in overall household size for both types of housing. The household size for multi-family was the lower of the two. The largest overall gain in households in Newmarket over the last decade has been in households with 1 – 2 residents. Mr. Mayberry had worked on an impact fees as part of a study in Newmarket in 2000. He took the school enrollment by address and matched it to the assessment data. This was done to determine how many students Newmarket had in different types of housing. The average single family had .51 students, the average townhouse, .346, 2 – 4 unit structures, .218, and the large structures with multiple units, .137. He felt the population had decreased since then. The larger the number of units per structure, the lower the figures for school enrollment are likely to be. He had looked at the total school population in Newmarket over the last 30 year, and other than one decade, school enrollment did not increase proportionally with increased housing units. Presently there is an average of .3 students in all types of housing units. He added that affluent towns with new school buildings tend to see the highest enrollments. Also in the 2000 Newmarket study, they found that the 48% of single family homes contained 67% of the school population, and that the 44% of multi-family housing contained 24%, the remainder being in duplex units.

For the fiscal analysis, Mr. Mayberry had based his figures on the amount in property taxes raised to offset services, and not added in any additional fees the town might collect. On the school side, the average per pupil cost was determined to be \$11,559, and the amount raised per resident for town services was \$505. For town services, it could be assumed that some safety services would be consumed by non-residents, so he had reduced the town amount by 80% to \$404. He then compared school enrollment versus the type of housing, the range representing a time span: single family, (.41 to .51); duplex, (.22 to .38), and multi-family, (.13 to .22). This was compared to the school taxes needed per unit: single family, (\$4,739 to \$5,895); duplex, (\$2,540 to \$4,390) and multi-family, (\$1,503 to \$2,543). In general, the break even tax value for the school would result in per unit assessments of: \$268,000 to \$323,000 for single family homes, \$160,000 to \$252,000 for duplexes and \$106,000 to \$156,000 for multi-family units. The multi-family units have a lower threshold to meet the break- even point, but whether or not a building meets the threshold can depend on its type and condition.

Council Chairman Levy asked if condos were included in multi-family housing, which they are; the taxes needed and the break- even tax value for assessments are per unit, and found by taking the total assessed value of the building and dividing it by the number of units. Some complexes or units could be assessed higher or lower than the average, as multi-family refers to a wide range of housing units. In summation, Mr. Mayberry said that persons and pupils decline as density increases and the multi-family impact is lower than single family. There was less tax revenue from multi-families per unit, but the break-even valuation required to meet revenue was lower, especially for condos. M-2 zoned units accompanied by commercial uses will raise the tax yield of properties. Impact studies look at properties on a case by case basis to determine what revenues they can be expected to generate to meet their use of services and proposals have to be reviewed for accuracy.

Council Chairman Levy asked for public comments. Chris Nickerson, representing the Deckers, owners of the property on the corner of Elm Street and 108, said that they support the zoning proposal. He said this plan seemed to support economic development to make the downtown a more vibrant area. Previously, he had shown a plan that would convert the old Mill Owners House to commercial office space and develop the area on the water to town house-style condos. He thought the increase in revenue to the town could help with some of the large capital costs the town was facing. In addition, upon site review, the owners were willing to make a contribution to the town in the form of some parking spaces, open space or a park. They intended to restrict future commercial use to the original building facing 108, and develop the rest of the property for housing to suit the residential area.

Rose-Anne Kwaks of Wadleigh Falls Road said she had read the report and the ordinance. She didn't think they should

ignore Chapter 5 on preferred housing in the Master Plan, even though the plan was old. She did not feel Newmarket needed any more infill in the downtown area or any other area in town to support economic development. She said Newmarket had more density in multi-family housing than Dover with fewer square miles, and the town did not need more to support economic development. She had concerns with the ordinance because it said the fiscal statement and market analysis could be waived by the Planning Board, and she felt the Board was taking authority away from the ZBA. She also thought there was no sure way to determine if buildings would continue to have enough income to sustain them or if the landlord would sustain them. She was concerned that some of the smaller lots in question could be combined and increase the number of housing units. She felt the change should be put off until the codification of ordinances was complete. She said that Mr. Mayberry's report had been based on the Planning Board's determination of a maximum of 47 units but the Planning Board had originally given a higher number. She felt they should limit the number of bedrooms allowed to 1 or 2, and limit the square footage of units, adding that the town would get more revenue from condos than from rentals. She felt the multi-family figures were skewed as they included higher priced condos in with less valuable rentals. She was concerned that the architectural review board for properties on 108 was an advisory board only, and felt there was nothing to prevent any type of building coming in. For the above reasons, she did not see how the zoning change would help Newmarket.

Chris Nichols responded to Ms. Kwaks remarks, referring to the footnote under chart 5, which stated that by encouraging infill, the overall tax yield per acre would increase and give the town to opportunity to improve its tax base. He added that it would not be unreasonable to add the number of bedrooms to the ordinance, and 2 bedrooms would probably be appropriate for the area. He felt that limiting the square footage might not do anything except limiting someone from building a nicer unit.

Val Shelton of the Planning Board brought up the condition of the old housing stock in the area they were proposing for M-2 zoning. She said it is very clear that any property with mixed-use is taxed higher, and the change would increase the tax base. The abutters to the Decker's Elm Street property did not want commercial development on the side street and that part of the property will be residential. She said the unintended consequence of reducing density from 6 units to 4 per acre, would be to encourage the development of units with more bedrooms. Council Chairman asked if they could require the size of the units to be smaller, and Ms. Shelton said that was a legal question. In reference to Ms. Kwaks point, Councilor Wright asked if there was a possibility to assemble smaller lots into a larger one and how that would affect the reported maximum of 47 units. Ms. Shelton said she would have to look at the lots individually, because she would have to calculate the acreage and divide by the density. She said that Cheney had come before them with a proposal to combine 2 or 3 residential lots into one mixed use one. Along 108 the ordinance states that multi-family structures must have commercial space on the first level. Elm Street is currently zoned M-2, so this change would have no effect. Councilor Carmichael asked if the ordinance did not pass, would it mean the Deckers could not build the condos. Ms. Shelton said they could not because currently the property is zoned strictly commercial which makes no sense for the area. The former gas station on Spring Street where Mr. Chinburg is proposing retail space and a restaurant had been zoned B-1 some time back, but the rest of the street is M-2 and has the same density as in the proposal.

Town Planner Hardy said that the town does have aesthetics and architectural standards on the books and these are reviewed as part of the site review process. These can be reviewed by the Planning Board for any properties on 108. In addition, when the Board has aesthetic concerns about a property fitting into the historic character of an area, the plan is sent to the Advisory Heritage Committee for its review and recommendations. The Committee now has written standards and guidelines. The Committee can make recommendations to the Planning Board, and the Board has the authority under site plan review to require changes in a plan.

Rose-Anne Kwaks said that Ms. Shelton had stated that Marcel's property had been grandfathered in as B-1 for his garage to remain after the zoning was changed. With the surrounding area still residential, she asked why this property could not also be zoned residential and she felt the Planning Board should put their efforts into doing that. Ms. Hardy refuted her point that the Planning Board was forcing commercial development on the lot. Ms. Kwaks then wanted to know where the lots were that Mr. Cheney was proposing to assemble, the size of the lots and whether they were in the proposed M – 2 district. Ms. Hardy said Mr. Cheney proposed this 3 years ago, and the lots are currently B-1 where residences are not allowed. Public input was closed at 9:15.

Council discussion: Councilor Pickering asked how long it would take for the codification of ordinances to be complete. Town Administrator Fournier said the process would take about a year, and as changes were made, they would be added as part of the process. The planning and zoning ordinances had already been codified. Councilor Nazzaro said he didn't think they could wait a year to change any of the town's ordinances. Although he understood some of Ms. Kwaks concerns, there was a need to increase employment in the community. They knew from developers that the only way to bring viable businesses into town was to have commercial space on the first floor and residences above. He felt the

zoning change would bring new jobs, help with the tax rate and expand the tax base and he supported the ordinance as written. Councilor Pike said he was still wondering about their ability to impact the size and density of units. He said that one of the variables that had been mentioned was that with more rentals and larger units with more bedrooms, there could be a shift in the economy from an increase in school enrollment. He said the break-even point was currently about 130 in Newmarket, and according to Mr. Mayberry, the school enrollment per unit was among the lowest in the state. He said if they were not careful with their housing stock and if they had a more attractive schooling situation, the break-even point could change. He referred to the comparison between 47 new units and 47 single family homes in the Mayberry report, but it seemed that they were already going to have 52 new single family homes in town. He was concerned about adding 47 new units, and if careful analysis was not done, the break-even point could change and they would not meet their objective.

Council Chairman Levy requested clarification of some of the inconsistencies he found in the February 20th packet. He said the chart on page 60 listed the number of new units as 80 and the number of existing units as 47, and the allowed unit by size was 109. He said he took the total acreage of 2.79, rounded to 20, and found the maximum potential was 120 units. Ms. Hardy said that the initial figure of 80 was simply from a duplication error in counting and that was why the number of potential new units had been revised and corrected to 47. He said the chart went from 80 to 47 units and the potential new units from 109 to 73 under M-2 zoning and the existing units from 47 to 42. Ms. Shelton said there had been duplication on some of the lines. Council Chairman Levy said he was not averse to the zoning change in general, but personally thought it was a bit aggressive and would like to see some adjustments. He said if the numbers were correct, they were looking at doubling the number of multi-families in the area. His second point was he felt that some of Mr. Mayberry's figures were skewed up by the inclusion of Rivermoor and Bryant Rock in the multi-family group. He felt that the units to be built would not be on the water and wouldn't be as valuable. He said he would like to see commercial development with some limitation. He said he had asked Mr. Mayberry to analyze the zoning change and suggest any improvements to the ordinance, and one of his comments was that his scope of work would be reviewing the demographics and doing comparisons. The comments were from Town Administrator Fournier, rather than from Mr. Mayberry. Council Chairman Levy said he had spoken to Mr. Mayberry before the meeting about limiting the density and size of properties to help control impact to town and school services.

Councilor Nazzaro said he understood Council Chairman Levy's point about limiting size, but also understood Ms. Shelton's comments about unintended consequences of density restrictions. This could result in larger units with more bedrooms which would impact school enrollment. He said Council Chairman Levy had emphasized that the proposal would double the number of multi-family units in the area, but it would actually have an impact of less than 1% of the population of Newmarket, adding between 80 – 90 people versus 126 with single family housing. He said the break-even point was important, but in looking at table 3, multifamily structures would need to have between 2 to 2.5 units to generate enough tax revenue to meet the break-even point. He added that in the study, they did not see the additional tax value from the businesses on the first floor. Councilor Pike said they should take some caution to insure that the zoning would widen the tax base because even small changes to the population could affect school enrollment. Council Chairman Levy said again that he would only like to see some adjustments to the ordinance.

Councilor Wright asked Mr. Mayberry if the number of rentals in Newmarket was related to the town having public water and sewer and its proximity to UNH. Mr. Mayberry said this allowed the town to have a higher density. The percentage of home ownership had gradually increased since 1980 from about 49% to 54%, although some of that could be from multi-family condos. Councilor Wright stated that some people are averse to change, as had been shown when past proposals had been aired. He liked Mr. Mayberry's statement that the commercial units would add to the tax base of the property. Mr. Mayberry pointed out that some older rental properties had depreciated in the tax assessment system, but the condos had not depreciated as much. He said that if the person proposing a plan had to show a positive fiscal impact on rental housing units, it would be necessary to have the commercial component to break even in the long run. He added that limiting the number of bedrooms was possible. He said that the typical townhouse was between 1,200 to 1,400 square feet and had little impact on services, but added to the revenue side. Councilor Pike asked if the methodology differentiated between condos that were owner occupied or rented. Mr. Mayberry said all were taxed as condos.

Council Chairman Levy said one of the answers he had received in relation to the maximum number of persons who could live in a unit, was that Newmarket does not regulate the number of persons per unit. Durham regulates the maximum number of unrelated persons per unit, and he felt that this should be considered for Newmarket. He asked why the number of existing buildings had dropped. Ms. Shelton said the number had dropped because some buildings, such as the library or the medical building were simply not going to be demolished. They were shown in the original number of 80, but when they analyzed each parcel, they looked at the reality of demolishing certain buildings to build housing units. They looked at the feasibility of whether potential units that could be built there actually would be. Council Chairman Levy referred to the lot analysis, and said some lot sizes had been rounded down. Ms. Shelton said that for buildings, parcel sizes could never be rounded up. He said it seemed that there was the possibility of combining lots which could add to the potential build out. Ms. Shelton said this could be positive because to have mixed use, there could be a significantly

larger commercial building. He said he only wanted to point out that the report might not reflect the potential build out. Councilor Pickering expanded on what Councilor Nazzaro had said earlier about jobs and businesses. He wanted to know how many potential businesses the town could have on the Route 108 stretch. Ms. Hardy would have to look at the buildings.

Councilor Carmichael said he could support limiting the size of the units, and also wanted to know more about the commercial potential. Ms. Hardy asked if they wanted to know about retail, as they also would have to consider marketability. She said there were other requirements to consider, such as set-back, side-yard distance, suitability, access, existing ledge, etc. She pointed out that 47 units was the worst case scenario if they had a total rebuild, but that was not going to happen. Councilor Wright said they had to look at the future and what was proposed. He said that Mr. Cheney was willing to make a \$1.7M investment in the town with his Depot building, and he looked at the M-2 as expanding the downtown and increasing the tax revenue. Town Administrator Fournier pointed out some procedural issues. He said if the Council favored changes in unit size, he would recommend the ordinance be referred back to the Planning Board for study. He said there would be no action on the ordinance at the meeting unless 2/3s voted to suspend the rules. The ordinance would be on the table for the July business meeting, and action could be taken only if there was a vote to remove it from the table. If amendments were made during the current meeting, the ordinance would have to go through the public hearing process again. Council Chairman Levy said he felt they should have a full Council when voting, and Council Vice Chairman Bentley should be given the opportunity to weigh in.

Councilor Nazzaro said that if they were a for-profit business and had the Planning Board work on this for a year, and then worked with a consultant for 5 months, they would be put of business. Councilor Nazzaro made a motion to suspend the rules and vote on Ordinance 2012/2013-63 tonight. Councilor Wright seconded.

Discussion: Councilor Pike said his understanding was that it was better to change the Master Plan before changing the zoning, because someone not liking a zoning change could challenge it in court. He asked if changing the language in the Master Plan was a cumbersome process. Ms. Hardy said the Planning Board worked on one chapter a year because of budgetary and staffing constraints. She said the zoning change was consistent with the recently updated economic development chapter. The chapter on housing preferences had not been updated since 2001, but Mr. Mayberry used more current information, which she thought could be used to show that the Planning Board had made the proposal after some statistical analysis. She added that a complete update of the Master Plan would be very costly, and Merrimack had spent \$150,000 redoing their entire plan. Councilor Wright said the Master Plan was a guide, and Ms. Hardy added that it was a tool for the Planning Board to use. Councilor Pickering suggested that since they were in voting mode, they release Mr. Mayberry. It was pointed out that he was on the clock. Council Chairman Levy said that he wanted it known that Mr. Mayberry used numbers that had been given to him, and referred to a clause at the beginning of the report that said results could be determined by the data used. He wasn't saying that the numbers were good or bad, but he would not hang his hat on the report. He said he would vote against suspending the rules as Council Vice Chairman Bentley was not present.

Town Administrator Fournier polled the Council. Motion failed 3 – 3, with Councilors Wright, Pickering and Nazzaro in favor and Councilors Pike and Carmichael and Council Chairman Levy against.

The Council, by a vote to remove the ordinance from the table, can vote at the next meeting. Councilor Nazzaro stated he would be away on business for the next meeting, and Council Chairman Levy suggested he try to call in for the vote. Town Administrator Fournier said there would be no action on the item unless someone moved to remove it from the table. Council Chairman Levy asked if they could have answers to some of the questions asked before the next meeting. He asked for a legal opinion on the Master Plan question, and also a legal opinion on whether they had the authority to regulate the size of units. Ms. Hardy asked if by size he meant square footage, number of bedrooms or number of unrelated occupants. Town Administrator Fournier said the number of unrelated occupants was not a Planning Board issue, but was determined by the Council. This was not necessarily related to the other 2 limitations. Council Chairman Levy said that he wanted to know about limiting the square footage and unit size.

Councilor Wright asked if this would be for the entire M-2 zone, or just for the current proposed zoning change. This would affect the entire M-2 zone, and Mr. Mayberry had suggested that they might want to establish a housing code in town. Town Administrator Fournier pointed out that what the ordinance purported to do was increase the size of the M-2 zone, not change it, as this would affect existing building use. Council Chairman Levy assumed that any existing property not in compliance with an amendment to the zoning would be grandfathered. If a property was grandfathered, an owner would not be allowed to duplicate the use within the zone unless a variance was approved by the ZBA. Councilor Wright said that once they started limiting size, they were also limiting potential rents. He said the average rent in New Hampshire is \$990, while the average in Newmarket is \$1,040. He said if there was a business on the first floor and

smaller rental units above, the rental income would be lower and the figures would not work. He said this would defeat the intention of the zoning change as they would not be able to get top dollar for rents. He added that 47% of the renters in town were paying between \$1,100 and \$1,200 a month. Councilor Nazzaro said they would wind up doing the opposite of what they were trying to do, and it would not be fiscally possible for a developer to make a profit, and they would be encouraging low rental property. He asked if Mr. Mayberry was being paid to attend the meeting, but he was using a credit from a previous project and there were no additional funds spent. Mr. Mayberry had stated earlier that condo units that were rented were taxed as condos. Town Administrator Fournier asked if there were any more questions for the Town Attorney. Councilor Carmichael suggested that they agree to move the ordinance ahead so that the full Council could be present.

Councilor Wright moved to continue the meeting beyond 10:00, and Councilor Pike seconded. Town Administrator Fournier polled the Council. Motion carried 5 – 1, with Councilor Nazzaro casting the dissenting vote.

Town Administrator Fournier said that any amendments to the ordinance would restart the public hearing process. The ordinance cannot be put on the next agenda without a vote to remove it from the table. If it is not amended it can be voted on. Council Chairman Levy added that he would also like to know how Newmarket compared to other communities with the 6 units per acre proposal. He asked that the Councilors receive answers to the questions before the next meeting. Councilor Nazzaro said he would try to participate in the meeting by phone.

CLOSING COMMENTS BY COUNCILORS:

Councilor Pickering referred to a request from Ernie Clark that the Post Office entrance be changed, even though it is not town-owned property. Town Administrator Fournier said he had spoken with Mr. Clark and would be looking into the possibility. Councilor Pickering thought that the Highway and Safety Commission might get involved.

Councilor Nazzaro said he understood that some people still had questions, but people will always have questions, and questions tend to lead to more questions. He said there is a difference between due diligence and dragging heels, and he felt they were doing the latter rather than the former. Councilor Carmichael said he felt they had been doing a great job for the last year and a half and had accomplished a lot.

Councilor Pike moved to adjourn and Councilor Pickering seconded. Motion carried unanimously, and the meeting adjourned at 10:04 p.m.

Respectfully submitted,

Ellen Adlington, Recording Secretary