

APPROVED

Feb 6, 2013

**TOWN OF NEWMARKET, NEW HAMPSHIRE
TOWN COUNCIL NON-PUBLIC MEETING
RSA 91-A: 3 II; e LEGAL
JANUARY 16, 2013 6:00 P.M.
TOWN COUNCIL CHAMBERS**

PRESENT:

Council Chairman Phil Nazzaro
Council Vice Chairman John Bentley, 6:04 p.m.
Councilor Mike LaBranche
Councilor Al Zink
Councilor Ed Carmichael
Councilor Dan Wright
Councilor Gary Levy, 6:03 p.m.

Town Administrator Steve Fournier
Town Attorney Richardson
Attorney Upton – on speaker phone for the first item

Council Chairman Nazzaro called the meeting to order at 6:00 p.m. Councilor LaBranche moved to enter non-public session under RSA 91-A: 3 II; e Legal. Councilor Carmichael seconded. Town Administrator Fournier polled the Council. Motion carried unanimously, 5 – 0, and the Council entered non-public at 6:01 p.m.

Town Administrator Fournier said he was looking for Council input on the Stevens/Hamm property. The town was holding the deed until access was built. The original agreement from 1988 was that Mr. Stevens would build access to the property in the industrial park, but that was never done. He refused because he said that there was no one using the eastern side of the property and nothing had been built on the west. Attorney Upton said the Council could follow a two-step process: foreclose on the mortgage and then sue him for the difference in the cost of the crossing. Mr. Stevens had filed an injunction against foreclosure using the reasons stated above. When it seemed that there was state money for a bridge on New Road, Mr. Stevens had expressed an interest. He was granted 180 days while this possibility was being researched and discussed. The time period expired in July, 2012, and discussions ended when the Black Bear TIF was closed, even though that was not a condition of the agreement.

Attorney Upton said the town could issue and record a deed in lieu of foreclosure the next day, January 17th. He asked what the Council envisioned happening in the industrial park area in the future. He said the next step would be to sue. They should consider getting the Hamm property back. Council Vice Chairman Bentley said that with the Economic Development Committee just getting started, he felt this could be put in its hands. Attorney Upton said they could record the deed and convey the property back. They could sue for breach of the 1988 agreement as its conditions were not met. The town would have some time with the Economic Development Committee to explore possibilities in the area. There would be a danger if they sued that Mr. Stevens could maintain that the state of limitation had expired, although this would not be subject to that limitation. He said they should issue and record the deed to get the Hamm property back.

Council Chairman Nazzaro asked for a Council consensus on recording the deed. All Council members agreed. He then asked for a Council consensus on the next step of taking legal action for breach of the 1988 contract. Councilor Levy asked what would be the purpose of the suit. The suit would be based on his either building the crossing or the town doing it and then suing Mr. Stevens for the costs. The value of the land is much lower than the cost of constructing the crossing. Attorney Upton said that his breaching

the agreement was only part of the loss; the value of the land was about \$36,000 and the cost of the crossing would be between 1 and 2 million. Council Chairman Nazzaro asked if it was worth suing. Councilor Zink felt they should put some fresh eyes on the issue. He said that the Council had talked about this in July, but had taken no action. He thought that Town Administrator Fournier should look at the issue and then record the deed. After, the Council could make a decision. It was pointed out that Mr. Stevens had no stake in the property. It was also added that if Mr. Stevens had not paid taxes on the property, the Council would have been informed by the Tax Collector. Attorney Upton ended his part in the conversation at 6:17 p.m.

The next item to be discussed was a 2011 tax abatement for Larry Gargiolo also known as Phantom Realty Trust and other like titles. The abatement had been approved earlier and then been reviewed by the new Tax Assessor. He agreed with the assessment. Abatement requests cannot be approved unless taxes have been paid, and the request was that \$27K of the \$75K in taxes be abated. The 27K is in the town's overlay account, and Town Administrator Fournier said that the overall numbers of abatements in Newmarket were lower than in other communities. Mr. Gargiolo apparently buys close-outs and then rents them out, and it was unknown how many condos he owned in 2010 to the present. Assessed value of the condo properties had decreased from about \$3.6M in 2010 to about \$3.2M in 2011. Mr. Gargiolo had argued that the assessment should have been \$2.1 million, and the Council decided to split the difference and settle on \$2.67M. The market values for condos have decreased more and faster than for other types of properties. Councilor Zink said this was a huge issue for Newmarket, and one they had to decide how to address. Councilor Levy said he did not know how condos could decrease in value while rests held steady. Town Administrator said that in New Hampshire, towns could not tax on revenues from properties.

Attorney Richardson said the sales prices were less than the assessed values that the town had set. Council Chairman Nazzaro asked what would happen if they did not accept the settlement. Councilor Carmichael asked how many such units there were in Newmarket. When the abatement is made public, there would be a possibility that other condo owners would ask for property tax adjustments. Town Administrator Fournier said that each development is different, but they should be prepared in case this happened. He said they could not deny an abatement if it was deemed to be correct for the property. The Assessor had reviewed the value of the properties in relation to similar properties. Councilor Zink felt they should get another appraisal, and Town Administrator Fournier said that could cost half as much as the money they owed.

Attorney Richardson said that the assessed values were higher than the sales. Councilor Zink thought values by realtors would be more accurate. Town Administrator Fournier said that was a different type of focus, and an Assessor did arm's length analyses for appraisals. Attorney Richardson said the assessment from 2011 had been locked in for 2012, and Town Administrator Fournier suggested that they try to lock it in until the statistical revaluation in 2015. Council Vice Chairman Bentley thought that they could spend \$20,000 in legal fees to fight this and felt they should settle on the amount then, and then look at the time frame as part of the settlement. Councilor Levy felt they should seek another appraisal to see if it was different from that of the Assessor by looking at the different types of condos in question.

Council Chairman Nazzaro asked for feedback as to whether they should trust the Assessors assessment or seek a second opinion. Councilor Zink said it was not an issue of trust, but realtors could provide trends in the marketplace. Town Administrator Fournier said that there were many properties involved and Council Chairman Nazzaro asked if they all had about the same assessments. Attorney Richardson said the town had not had an Assessor at the time, and the present Consultant had reviewed the assessments and agreed that they should be lowered. Town Administrator Fournier said he had worked with the Consultant before and would trust his values. In addition this values are reviewed by his supervisor and he receives input from other Assessors. Council Chairman Nazzaro asked how many types of condos were involved. There probably were 2 – 3, and Town Administrator Fournier estimated that an appraisal by type could cost between \$2 to \$3 thousand dollars. Mr. Gargiolo has filed a petition in Superior Court.

Council Chairman Nazzaro asked if members wanted to spend \$2 to \$3 thousand for other numbers and for each type of condo, or settle on the \$27K amount. Councilor Levy felt there were larger ramifications that could affect the tax rate and asked if it was reasonable to seek appraisals. Councilor LaBranche wanted to

know the price of appraisals. Attorney Richardson said the actual sales were lower than the agreed upon amount determined by the town's assessments. He said they could hire an appraisal as part of litigation. Councilor LaBranche asked how long they could string this out. He replied that the case would come up at the beginning of February, and they had until then to either file or pay. Councilor LaBranche said he felt they should settle partly because of the time issue, but also because of adding to the cost. Councilor Zink wanted to seek another opinion as he did not believe assessments should be derived through settlement. Councilor Carmichael wanted another appraisal as he feared the abatement could come back to haunt them. Council Vice Chairman Bentley agreed with Councilor LaBranche as to the time issue and the cost, saying that they could spend more on this and still have to pay the \$27K.

Attorney Richardson pointed out that a new appraisal might set the numbers lower. Council Chairman Nazzaro said that if that happened they could go ahead with the negotiated abatement amount. Councilor Levy said that if the appraisal was consistent with what they had he would feel better. He felt they should not share the appraisal. Councilor Zink did not want to reach a conclusion with the information they had. Attorney Richardson said that if the Council decided to litigate then they could ask for appraisals to defend the Town Council's position. At that point the appraisals would have to be shown. Mr. Gargiolo could also seek other appraisals. Councilor Levy suggested that it be said that the Council was close to a decision, but just needed some more information. Council Chairman Nazzaro said he felt they needed another pair of eyes. Councilor Zink asked if they could direct Attorney Richardson to negotiate a lower settlement figure on their behalf. He said he could not approve anything without Town Council decisions. Councilor Wright also wanted to get another opinion and thought they might be able to negotiate a lower figure. By a 4 -3 consensus the Council decided to seek another appraisal, with Councilor LaBranche, Council Vice Chairman Bentley and Council Chairman Nazzaro not in agreement.

Council Chairman Nazzaro said that the Moody Point Association wanted to be involved in any Cheney conversations. Attorney Richardson said this could be done as Cheney had filed a lawsuit against the town. He felt it would be helpful if the two groups coordinated their efforts.

No taxes or rent had been paid on the Grenier property by Sandy Allen. Town Administrator Fournier asked if he should start foreclosure proceedings. Councilor LaBranche said that he thought he should, since they had discussed this at great length, and the Council should not have any more conversation about this. No one objected, and Town Administrator Fournier will start the procedure. The procedures will be on the agenda for the Council's next meeting with the Town Attorney.

Council Vice Chairman Bentley moved to leave non-public session at 7:02 p.m., and Councilor LaBranche seconded. The Council ended non-public session.

Respectfully submitted,

Ellen Adlington,
Recording Secretary