

**TOWN OF NEWMARKET, NEW HAMPSHIRE
TOWN COUNCIL REGULAR MEETING**

OCTOBER 21, 2015 7:00 PM

PRESENT: Council Chairman Phil Nazzaro, Council Vice Chairman Gary Levy, Councilor Dale Pike, Councilor Amy Thompson, Councilor Toni Weinstein, Councilor Amy Burns, Councilor Larry Pickering

ALSO PRESENT: Town Administrator Steve Fournier, Water & Wastewater Superintendent Sean Greig, Engineer Nick Ellis of Hazen & Sawyer

AGENDA

Chairman Phil Nazzaro welcomed everyone to the October 21, 2015 Newmarket Town Council Meeting and called the meeting to order at 7:00 pm, followed by the Pledge of Allegiance.

PUBLIC FORUM

Chairman Nazzaro opened the Public Forum at 7:01 pm and asked if anyone from the public wished to speak.

As no one from the public came forward, Chairman Nazzaro closed the Public Forum at 7:01 pm.

PUBLIC HEARING – None

TOWN COUNCIL TO CONSIDER ACCEPTANCE OF MINUTES

Acceptance of the Minutes of the Regular Meeting of October 7, 2015

Councilor Thompson made a motion to accept the minutes of the Regular Meeting of October 7, 2015, and Councilor Burns seconded.

Corrections: In the Report of the Town Administrator, under *Estimated Value for the Town*, a statement regarding the percentage value of the Town alleged to Councilor Pike was corrected to Vice Chair Levy. The first sentence of that same paragraph was rewritten to improve clarity.

Town Administrator Fournier polled the Council and the minutes of October 7, 2015 were approved as amended, by a vote of 6-0, with 1 abstention.

REPORT OF THE TOWN ADMINSTRATOR

Town Administrator Steve Fournier stated that he had submitted his proposal for the **Fiscal Year 2017 Operating Budget** to the Town Council, pursuant to Section 5.2 of the Town Charter. He said that the first Budget Workshop was scheduled for Saturday October 24th at 9:00 am, and that a list of all presenting departments had been provided. He next stated that the Finance Director had completed an

independent **Salary Survey** of Town employees comparing their pay scale to communities of similar size. He said that any positions above or below the maximum would be addressed, and that a copy of the survey was attached. Also, pursuant to Section 6.2 of the Town Charter, he stated that he would be submitting a wage plan for employees as part of the personnel plan, and that the Town Council would have 90 days to act on it after submission.

Town Administrator Fournier next addressed the **Road Management Plan**, stating that he had met on October 4th with the Director of Public Works and representatives from UNH and the Strafford Regional Planning Commission to begin the update of the plan. He said that they had begun data collection by reviewing the conditions and infrastructure of all Town roads. He said that the process should take a few weeks to complete after which UNH would devise a plan, and he would keep the Town Council apprised on the process. He next addressed the **FY16 Budget** saying that after reviewing the revenue and expense report for September, everything was on track with 21% of the operating budget expended after the first quarter. He said that revenues were running higher and that the figures for the budget were being revised as part of the tax rate setting process.

Town Administrator Fournier announced that the New Hampshire Municipal Association's (**NHMA Annual Conference**) would be held in Manchester on Thursday November 19th and Friday November 20th, with 1-hour sessions on a variety of topics. He said this was a great opportunity for training for Councilors and other officials, and that anyone interested should let him know. He said there would also be a Trade Show offering a chance to meet with companies and other municipal services.

Questions/Discussion: Councilor Pike said that he had been hoping for a discussion of the methodology of the Salary Survey, and Town Administrator Fournier replied that the Finance Director would be providing a presentation, probably at the next meeting. Councilor Pike also expressed concern that some of the department reports did not seem to be updated, for example the dates listed on page 58 for the MacIntosh Well and the Water main replacement. Town Administrator Fournier said he would address the issue with department heads to make sure their reviews were updated. Councilor Thompson asked if there was any way to pre-buy fuel or buy it in bulk to take advantage of the drop in fuel costs, and Town Administrator Fournier replied that the Finance Director was currently securing bids. Councilor Weinstein asked if a copy of the previous Road Plan could be provided for comparison. Councilor Weinstein mentioned the Community Forum on the heroin crisis, which was scheduled for 6:30 pm on October 26th at the Recreation Center, to educate the community on the crisis. She said that a great partnership had been provided by the Police Department, the Town, and multiple agencies in Newmarket and she encouraged Councilors and townspeople to attend.

Vice Chair Levy felt that the Salary Report was confusing and felt it was easier to understand when the range of salaries was shown in comparison to what their employee was making, but felt a percentile of their rate should also be provided in each range. Chairman Nazzaro said that he agreed with Councilor Pike that some of the departmental reports appeared to be republished from the previous month. He mentioned the Halloween Haunt Parade on Saturday and the Loco Marathon on Sunday and asked about impact on traffic. Town Administrator Fournier said that there would be no road closures for the race, and that the parade would be held from 2:30-5:00 pm with information available on newmarketrec.org. Chairman Nazzaro asked about a police officer who was out on medical leave and

Town Administrator Fournier said that he could not discuss it as it was a personnel matter. Chairman Nazzaro mentioned the high overtime levels for the Police Department for holidays and vacation and said he would like to have a conversation regarding the matter.

Vice Chair Levy stated that he hoped they would be coming up with a Bike Path option that was within the original budget. Town Administrator Fournier replied that they had made it quite clear that the Council would not approve any increased costs associated with the project, and said they were working with the engineers on a plan which he hoped would be approved by the State. Vice Chair Levy asked if the project had been expanded and Town Administrator Fournier replied that the project had been reduced and would only go as far as the Town line and not up to the bridge.

COMMITTEE REPORTS

Councilor Burns reported that she had attended the *Conservation Commission* meeting on October 8th, and they had discussed the Great Bay project called SOAK. She explained that project SOAK had received a grant and funding to help people mitigate storm water from property and address drainage and erosion issues, and they were currently looking for a location to stage the project. She said they had also received notification from DOT regarding the Packers Falls Road culvert replacement and the Osprey Lane Wetlands at Moody Point. She said that the Osprey Lane project had been suspended until it could be proven to no longer be a wetlands, which could take years. She said the committee was also conducting annual easement monitoring. Chairman Nazzaro mentioned the Capital Improvement Plans for storm-water mitigation and suggested the Commission might speak with the Department of Public Works (DPW).

Councilor Pike reported on the *Planning Board* meeting of October 13th, which was mostly for the proposal by Cheney Property Management for 52-54-56 Exeter Road, and said the application had been approved but that the special use permit required additional steps. He said that the economic analysis that was part of the Council deliberations a few years ago needed to come back for that part of the process.

Councilor Pike also reported on the *Dam Committee* saying they had interviewed engineering firms, but that everything with the dam was turning out to be more complicated than expected. He said they had agreed on a number for the 100-year flow and what it would mean if the walls needed to be armored, but that questions about some of the calculations had come up in the Engineering Report and the numbers had to be nailed down before they could proceed to the stability analysis. Vice Chair Levy asked if they had mentioned who would be doing the physical impact study, and Councilor Pike replied that it would be their choosing and not the developer.

Councilor Weinstein reported on the *Capital Improvement Plan (CIP) Committee*, saying that they had toured the Elementary School and the High School and would be meeting again on November 2nd or 3rd. Chairman Nazzaro said that per the Charter the CIP Committee had oversight and input to the Capital Improvements of the Town but not the School. Councilor Weinstein said that the School now needed to participate in the CIP program in order to receive impact fees, but that formerly their plan was not approved by the CIP Committee.

OLD BUSINESS

ORDINANCES AND RESOLUTIONS IN THE 2ND READING

Proclamation: National Make Your Mark Week October 17-25, 2015 – *Linked Together*

Chairman Nazzaro stated that *Linked Together* was unable to be here to present the proclamation, due to being over-scheduled. He read the *Proclamation for National Make Your Mark Week* in full and stated that the “Town of Newmarket does hereby proclaim October 17-25, 2015 as *National Make Your Mark Week* in Newmarket.” Councilor Weinstein expressed thanks to Ree Cooper and the children of *Linked Together*.

Resolution #2015/2016-18 Sale of Tax Deeded Property

Councilor Weinstein made a motion to approve *Resolution #2015/2016-18 Sale of Tax Deeded Property*, which was seconded by Councilor Thompson.

Town Administrator Fournier stated that the purpose of the resolution was to allow the Town to secure the services of a realtor to sell the property at 41 Exeter Street which had been taken in tax deeding. He said their options were to either go to auction or sell through a realtor, and that in their experience a higher price could be obtained through a realtor. He explained that they were now engaged in the eviction process with the current tenants, who had also hired an attorney to argue the case. He said they preferred not to have a tenant when the property was sold, and that after the Town received their taxes the remainder would go back to the original owner. He said they had gotten copies of their certificates of insurance and that the Town Attorney was making sure everything needed was there

Town Administrator Fournier polled the Council and *Resolution #2015/2016-18 Sale of Tax Deeded Property was approved unanimously, 7-0*

Resolution #2015/2016-19 Contract for Waterline to Install a Well, a Waterline, a Blending Facility, and all Necessary Equipment for the MacIntosh Well Project

Councilor Burns made a motion to approve *Resolution #2015/2016-19 Contract for Waterline to Install a Well, a Waterline, a Blending Facility, and all Necessary Equipment for the MacIntosh Well Project*, which was seconded by Councilor Weinstein

Water & Wastewater Superintendent Sean Greig stated that they had been working on the project for the MacIntosh well for several years and that the project had gone out to bid. He said they had received five (5) bids which were all pretty close with the lowest at approximately \$2.1 million and the highest at \$2.5 million. He said the project was to install the pump house, install a waterline to connect the pump house to the blending facility, and to construct the blending facility. He said that the blending facility would then be connected to the Bennett and Sewall wells and the water would go back into the system.

Discussion: Councilor Thompson asked for a quick follow-up with regard to pursuing the Town's options and what had been submitted to their insurance company in the case of the miscalculations of the original MacIntosh Well engineering firm. Town Administrator Fournier replied that the Town Attorney was currently working on the matter. Chairman Nazzaro asked if it would be possible to see the project as a unified picture rather than piece-by-piece so that they could compare where they were now against the budget for the project. He felt a unified picture was needed to show what had been budgeted for this line item.

Town Administrator Fournier polled the Council and *Resolution #2015/2016-19 Contract for Waterline to Install a Well, a Waterline, a Blending Facility, and all Necessary Equipment for the MacIntosh Well Project* was approved unanimously by a vote of 7-0

Resolution #2015/2016-20 Engineering Contract for Construction Administration and Oversight for the MacIntosh Well Project

Councilor Thompson made a motion to approve *Resolution #2015/2016-20 Engineering Contract for Construction Administration and Oversight for the MacIntosh Well Project*, which was seconded by Vice Chair Levy.

Water & Wastewater Superintendent Sean Greig explained that they were required to have an engineering firm for Construction Administration and Oversight as the loan was from a State Revolving Fund (SRF), and that they had negotiated a contract with Hazen & Sawyer. He said it looked like a 9-month to year-long project, and that Engineer Nick Ellis of Hazen & Sawyer was present to answer questions regarding the contract.

Discussion: Vice Chair Levy asked a question under *Article 12.2* of the contract regarding the dispute resolution procedure. He said that it stated that the owner and the engineer were waiving their right to a trial by jury or litigation, and Town Administrator Fournier replied that it was typically arbitration with a trial by judge. Vice Chair Levy next referred to *Article 13.2* under *Insurance* with regard to liability. He said it listed an employer liability of \$500,000, with \$1 million for both general liability and professional liability, and asked if they were all independent, in theory, up to those number. Town Administrator Fournier replied that they were. Vice Chair Levy then referred to *Article 15.6* under *Performance Standards*, regarding the statement that the engineer would not be responsible for any acts of omission by the contractor, sub-contractor or any other person other than their own employees, agents, and consultants. He asked why the Town was paying them to oversee the project if they had no liability. Town Administrator Fournier explained that they were saying that if there was any negligence by the engineering firm, i.e. purposely omitting something, yes they would be found liable. On the other hand, if they were not aware of any issues, and construction changed or omitted something and did not follow proper procedures to meet the specifications of Hazen & Sawyer, the construction company would be liable.

Vice Chair Levy felt that as they were paying Hazen & Sawyer \$350,000 to manage the project, they should be responsible to make sure the work was done properly. Engineer Nick Ellis explained that if the project was designed incorrectly, they would be liable for any errors or omissions in the design or any

negligence on their part, and that they were insured for that under Professional Liability. Vice Chair Levy also raised a question from *Schedule A–Scope of Services* under *Subtask 1.4* with regard to work inspections and tests. He asked if the engineering firm would be liable if an error made during construction was missed, as he felt that was part of their obligation as overseers. Engineer Nick Ellis replied he thought they would be liable, but that in designing and building the project they had been very conservative with structural items. He stated that a Resident Engineer would be on-site fulltime watching Construction build the project, and if they saw anything they were obligated to inform Hazen & Sawyer and to tell construction to fix the error. He explained that though they did not have any real legal authority over Construction, they could tell them they needed to conform to specifications and could also tell them to stop working. He added that at the same time they would keep the Town informed and higher-ups in their firm as well.

Town Administrator Fournier polled the Council and *Resolution #2015/2016-20 Engineering Contract for Construction Administration and Oversight for the MacIntosh Well Project* was approved unanimously, 7-0

ITEMS LAID ON THE TABLE - None

NEW BUSINESS/CORRESPONDENCE

TOWN COUNCIL TO CONSIDER NOMINATIONS, APPOINTMENTS AND ELECTIONS

ORDINANCES AND RESOLUTIONS IN THE 1ST READING

Resolution #2015-2016 Setting Polling Hours for all 2016 Elections

Chairman Nazzaro read *Resolution #2015-2016 Setting Polling Hours for all 2016 Elections*, in full

Resolution #2015-2016 Disbanding the Advisory Heritage Commission

Chairman Nazzaro read *Resolution #2015-2016 Disbanding the Advisory Heritage Commission*, in full.

CORRESPONDENCE/CLOSING COMMENTS

Councilor Thompson asked when Trick or Treat was being held, and Town Administrator Fournier replied it would be held Friday October 30th from 5:00-8:00 pm. Vice Chair Levy said he had received a call from a member of the Economic Development Committee (EDC) asking about a meeting. He said he responded that he had spoken to Town Administrator Fournier and that hopefully Mr. John Connery and Town Planner Diane Hardy could get some language together and then decide whether to have a joint meeting between the Planning Board and the EDC. He felt it was something to get started as the developer was not currently moving forward on elderly housing, although they had all agreed unanimously on changing the zoning. Town Administrator Fournier said that the Planning Board representative to the EDC and the Town Planner had discussed the matter and the Planning Board was the body to write and review the ordinance and propose it to the Town Council, at which time the

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consultant would be involved. Councilor Pickering questioned whether the Town had an easement on the property for the new water line from Gray Hill to Route 108. Town Administrator Fournier replied that they did and it was the same easement for the electrical lines. Chairman Nazzaro said he had a resident bring up the Water Line project, and Town Administrator Fournier said that everything was on track and they would not need to shut the road down as they were drilling underneath.

Chairman Nazzaro reminded the Council of the Budget Review Worksession scheduled for Saturday at 9:00 am, and asked all Councilors to come prepared with questions. Councilor Weinstein asked if there was a schedule of the departments making presentations and Town Administrator Fournier said one would be provided. He also reminded the Council that the budget process was not an adversarial time and was not personal, and that they were there to review the departmental needs according to what the Town could afford.

ADJOURNMENT

Vice Chair Levy made a motion to adjourn the meeting, which was seconded by Councilor Weinstein. The meeting was adjourned at approximately 8:00 pm.

Respectfully submitted,

Patricia Denmark, Recording Secretary