

## Town Council May 16, 2012 WS Minutes

TOWN OF NEWMARKET, NEW HAMPSHIRE  
TOWN COUNCIL WORKSHOP

MAY 16, 2012  
7:00 P.M.  
TOWN COUNCIL CHAMBERS

### PRESENT:

Council Chairman Phil Nazzaro

Council Vice Chairman John Bentley

Councilor Mike LaBranche

Councilor Al Zink

Councilor Ed Carmichael

Councilor Dan Wright

Councilor Gary Levy

Town Administrator Ed Wojnowski

Council Chairman Nazzaro called the meeting to order at 7:00 p.m. followed by the Pledge of Allegiance.

Councilor LaBranche moved to seal the minutes of the non-public session under RSD 91-a:3, II(e). Council Vice Chairman Bentley seconded. Motion carried unanimously.

PUBLIC HEARING: RESOLUTION #2011/2012-26, WITHDRAWAL OF \$10,956.42 FROM THE TELECOMMUNICATION CAPITAL RESERVE FUND FOR THE PURCHASE OF 2 IBM X SERIES SERVERS

Council Chairman Nazzaro opened the public hearing at 7:01 p.m. The Council had discussed the purchase at the May 2nd meeting. There was no public comment. The public hearing was closed at 7:02 p.m.

COUNCIL TO CONSIDER ACCEPTANCE OF MINUTES OF  
MAY 2, 2012 BUSINESS MEETING

Council Vice Chairman Bentley moved to accept the minutes of the May 2, 2012 business meeting. Councilor LaBranche seconded. There was no discussion. Town Administrator Wojnowski polled the Council. Motion carried 6 – 0 – 1, with Councilor Zink abstaining as he had not been at the meeting.

TOWN ADMINISTRATOR REPORT

Town Administrator Wojnowski said he had given Council members copies of Coalition correspondence with EPA. The meeting that he and Sean Greig had scheduled with the EPA for last Friday had been cancelled. He hopes to reschedule.

The Memorial Day Parade is scheduled for 6:00 on Wednesday, May 30th.

## 2. REVIEW AND DISCUSSION OF BLACK BEAR DEVELOPMENT AND FINANCING PLAN

Council Chairman Nazzaro said that Town Administrator Wojnowski had contacted Don Jutton from MRA, and he is currently reviewing all the Black Bear TIF materials to determine if it is a legitimate TIF district. The results and his suggestions should be ready for the June 6th meeting, and Mr. Jutton will be asked to attend. This item will be carried forward to that agenda.

## 2. DISCUSSION/RESOLUTION TO THE DOWNTOWN TIF CLOSE OUT

There was a power point presentation to explain what a transfer of equity means. Council Chairman Nazzaro said that after the presentation the Council could discuss a new compromise and hopefully go forward and settle the issue.

The presentation stressed that there was a paper deficit, not a cash deficit. The same amount of money, \$7,508,350, would be available after the vote as this was necessary to correct an accounting/equity issue. An analogy was made to a home budget, in which certain fund "envelopes" are designated for mortgage, gas, water and electricity payments. With the gas envelope empty one month, there is no funding source for the payment and the homeowner pays the bill from another account or source. This needs to be corrected so that the proper "envelope" or equity source is attached to the payment and the books can be balanced.

Two things can happen if the proper equity source is not assigned to the payment: 1. at the end of the fiscal year, June 30th, the books would not be balanced which could affect

Newmarket's bond rating, and 2. by August 30th, the tax rate would not be lowered by \$.18, which represents the captured assessment of the TIF district.

Compromise proposal  
Current Fund Balances

Downtown

TIF	Main Street Project	Water Fund
Fund #9	Fund #48	Fund # 20
\$484K	\$-682K	\$952K

The proposal is to take money out of the Down Town TIF, move that into the Main Street Project to pay for its deficit. This will allow the Council to close the TIF and have its captured assessed value for the taxpayer. The remainder of the money would come from the Water Fund, leaving its balance at \$754K., above the \$500K Sean Greig feels comfortable keeping in the fund.

Discussion:

Councilor Wright asked why Fund #48 was now \$682K rather than \$535K. Acting Finance Director Matt Angell said that the \$535 represented the original Town Council vote from the Water Fund. The figure is higher than originally presented in part because the computer system was set up incorrectly. The numbers have remained the same for March 31st and April 30th. By extracting data to his audit software, he now had solid numbers based on good data for Funds 9 and 48. There are only 3 system issues left to correct. The software company is working on correcting the Water Fund as two purchase orders were posted incorrectly. He had spoken with the software company and they were within striking distance of having accurate figures. He said the \$754K was accurate.

Councilor Levy said he had emailed a request that Mr. Angell provide details on what made up the \$682K since it had been \$535 the previous month. Mr. Angell was not told of the request. This was a deficit in the fund balance. Mr. Angell said the Water Fund #20 was the account for all revenue and uses for the water system. Under the first proposal, \$535 was going to come from that fund to the Capital Reserve Fund and then be withdrawn and deposited into Fund 48. The figure of \$394K in the 2008-10 resolution represented the budget not the balance in the account. Councilor Levy said that at the April 4th meeting, the Council was told the figure was \$535,425 and he wanted to see documentation showing why it was now \$682K. Mr. Angell said the \$682 K represented revenues less expenses in all the fiscal years leading up to the present. With the problems in the accounting system there were some balance sheet inaccuracies. Council Chairman Nazzaro clarified that the March resolution was based on the \$535K 2008 Town Council budget. The \$682 is based on actual current figures.

Councilor Wright referred to a paper called Scenario 4 in which closing the Black Bear TIF was included, and asked why it was not a part of the above proposal. Council Chairman Nazzaro said that he had spoken with other Councilors and they agreed that the Black Bear TIF should be kept separate from this discussion as its issues were massive. Councilor Wright said this was also a funding issue and the taxpayers would benefit if it were transferred to the General Fund. Council Chairman Nazzaro said they could have a vote on that. Councilor Levy said he didn't know which Councilors wanted to keep this separate, but he had two issues. Closing Black Bear TIF because of all its inconsistencies is separate from taking its captured revenues. He didn't see a difference in the compromise proposal and previous ones. Council Chairman Nazzaro said that it was very different from taking \$535K from the Water Fund, and he credited Councilor Levy with first suggesting that the money come from the Down Town TIF. The compromise was that the majority of funds would come from the TIF, and less from the Water Fund. Councilor Levy said, and Councilor Carmichael agreed, that he thought all funding issues should be dealt with at the same time.

Councilor Zink said he thought they had moved ahead with the Black Bear TIF by seeking an objective opinion. He had no preference as to whether it stayed open or not. Considering that there was a history of its not being properly maintained, he thought the June 6th report would be helpful. He thought the proposal was a positive resolution as it kept to the intent that water and sewer fund users pay for the improvements. He thought that taking money from the Down Town TIF was a stretch, but that they could put this issue behind them. He said Black Bear TIF was a separate issue, and he didn't know if they would be able to take funds from it. He thought this was a good compromise and he looked forward to having this settled this evening and Black Bear settled at the next meeting.

Council Vice Chairman Bentley stressed that the clock was ticking and a compromise was needed so that the tax payers would not have to pay for this. He had received several letters and emails expressing concern. He said they should trust the information they received and go ahead with the proposal.

Councilor Wright was concerned why transferring money from the Black Bear was included in Scenario 4 if it the Council was not able to do it. He said resolving the Down Town TIF would reduce the tax rate by \$.18, but it could be further reduced, potentially by \$.80 if funds were also taken from Black Bear TIF. Acting Finance Director Angell said that even though they transferred funds from the Black Bear, the General Fund still would not have enough to meet the 16% reserve funds policy. There would not be tax relief based on that policy. Council Chairman Nazzaro said that they were less than \$7,000 away from meeting the policy. Mr. Angell said that moving Black Bear into the General Fund would make the balance just shy of the policy. If department heads had appropriations turned back, they might be just over the policy, and that amount could be used to reduce the tax rate. Encumbered funds are restricted and cannot be used to reduce the tax rate.

Councilor LaBranche said they had spent several meetings on this one issue and it was time they went ahead on a majority compromise. He said they were talking about a Down Town TIF project and he was baffled that other TIFs not intended for down town projects be included in the discussion. He said the Council needed to make decisions and move ahead on other issues. He said the current compromise proposal was different from any other and accomplishes, in his understanding, what the taxpayers want the Council to do. He said this does not affect the tax rate, but solves a problem

on paper.

Councilor Levy asked for a clarification of the numbers in Scenario 4. He said the Black Bear TIF was at \$400K and now was at \$489K. He wanted to know where the additional funds came from. He said the Down Town TIF was between \$470 and \$480K and is now \$535K. It was confirmed that this was because the \$55K had been reserved for the

Sky

Bridge. He then added the potential surplus from frozen funds of \$400K to \$489K in the Black Bear and \$538K from the

Down

Town less the \$55K to come up a total of approximately \$1.4 million. Needing \$985K to comply with the 16% reserve policy, he thought there would be another approximately \$350K available to reduce taxes, and lower the rate from \$.18 to about \$.70. In his estimation numbers had been bouncing around, and he would prefer to do this all at once and see what the figures were at the end of the year. He wanted to wait until the next meeting.

Council Chairman Nazzaro said he would carry this to the next meeting if the Council wished, but he emphasized that the Council needed to move ahead on new issues rather than dwelling on the past for the good of the town. Councilor Zink felt the issue was being over complicated. He said in his viewpoint, the improvements to the water system were the responsibility of the users, not the general taxpayers. A TIF is funded by taxpayer money and cannot be used to subsidize water improvements. If this is the intention, then the policy would have to be changed. Council Vice Chairman Bentley said also that Black Bear was a separate issue, and the Council could not continue to drag its feet.

Councilor Levy asked and it was confirmed that it is appropriate to use funds from the

Down

Town for this purpose. Councilor Zink reiterated that it was inappropriate to use general taxpayer money from a TIF outside the down town area for this purpose, as that was not how the town government was set up. Councilor Levy said that they were taking money from the

Down

Town which was legitimate and money from the Water Fund, but he was skeptical about the numbers. Councilor Zink said that some Councilors had recommended that the Black Bear issues be resolved before deciding what to do with it, and that the money in that TIF belonged to the taxpayers, not the water and sewer users. He said that if Councilor Levy wanted to use those funds, it should be brought up as a vote. Councilor Levy said he would make the motion. Council Chairman Nazzaro said he could make the motion, but he thought moving money from the Black Bear to the General Fund to help the taxpayer was a separate issue for another discussion. Councilor Levy said that the Council had an obligation to help the taxpayer by transferring funds from the Black Bear as there were no on-going projects or any bonds associated with it. Council Chairman Nazzaro said he wanted to hear what the expert/consultant had to say at the next Council meeting before making any decision on this as it could be a moot point.

Council Vice Chairman Bentley moved to allocate \$483,681 from the Down Town TIF,

Fund 9, to the Main Street Enhancement Fund, Fund 48, and allocate \$198,279 from the Water Fund, Fund 20, to Water Capital Reserve Fund, and from Water Capital Reserve to the Main Street Enhancement Fund, Fund 48, thus zeroing out the Down Town TIF. Councilor Zink seconded.

Town Administrator Wojnowski polled the Council:

Aye

Nay

Councilor LaBranche

Councilor Levy

Councilor Zink

Councilor Wright

Council Vice Chairman Bentley

Councilor

Carmichael

Council Chairman Nazzaro

Motion carried 4 – 3.

Councilor Levy made a motion that the Council declare that the monies in the Black Bear TIF are excess captured assessed value, and these monies be immediately transferred to the town's tax list/General Fund to help offset the tax rate. Councilors Carmichael and Wright seconded.

Discussion: Councilor LaBranche stated he could not support the motion as he did not feel comfortable doing anything with the TIF before hearing back from the expert/consultant. Councilor Levy explained his rationale: the TIF has no bond or current projects and the money has been captured for over 14 years. Properties had been bought, and that cannot be undone, and the State RSA says excess money should be remanded to the tax list. Council Vice Chairman Bentley agreed with Councilor LaBranche. Councilor LaBranche said that should the consultant say to close the TIF, he would vote to do it then.

Councilor Levy said that DRA could have provided the information without the cost of a consultant. Council Chairman Nazzaro said that DRA was invited numerous times, and in email conversations he had the sense that they were too busy to come. Steven Hamilton, Director of DRA's Property Appraisal Division came forward. He said this was a local issue, and DRA had no role in approving or denying TIFs within the state. He applauded the Council for hiring a consultant. He said DRA had been invited previously and had received several letters, but DRA had limited authority over TIFs. They do balance assessments and make sure everything is apportioned correctly. Councilor Zink said they previously had a problem with valuation for one of the TIF districts. DRA does not deal with deciding whether valuations are correct, but has to understand what they represent. There had been changes in valuation and boundaries, but there was nothing in the reports that drew adverse attention. The town had asked many questions leading to long conversations with DRA. Councilor Levy said he had questions about boundaries and captured assessed values and the funds used to purchase some of the properties. Mr. Hamilton said he did not have that information. Council Chairman Nazzaro thanked him for coming. He wanted to go on the record as supporting the taxpayers through the Black Bear TIF, but not until hearing from Don Jutton.

Town Administrator Wojnowski polled the Council on Councilor Levy's motion:

Aye

Nay

Councilor Wright

Councilor LaBranche

Councilor Levy

Councilor Zink

Councilor  
Carmichael

Council Vice Chairman Bentley

Council Chairman Nazzaro

Motion failed 3 – 4

### 3. TOWN COUNCIL TO DISCUSS STRATEGIES TO ACHIEVE COUNCIL PRIORITIES

Council Chairman Nazzaro asked the Council members for their ideas on strategies. Councilor Levy said his priorities were economic development and water. Concerning water, he thought a plan should be made to use some money in the water fund. Concerning economic development, he thought they should seek someone who could do an analysis of the

town to determine what would fit and get recommendations on such things as access issues. Councilor Zink suggested that they look at the work

Durham is doing in this regard and have the Town Manager or someone come and speak to them. He mentioned that only one of the priorities of the last Council had been completed, and suggested that 1 – 2 Councilors work on each priority and then report back to the whole Council. Councilor Wright said that the Conservation Committee had an action list and worked with sub-committees. He also said that

Durham has a newsletter that goes out to the public and covers information on town departments. He will obtain copies for the Council.

Council Chairman Nazzaro said that in order to get the basics right, the Council should be briefed once a month on each department's activities and financial standing. He said they needed more detail on how departments are working within their budgets and what their projected expenditures are. Once the basics were under control the Council would be able to focus on other issues. He said the reports would be more helpful if broken down by department on a standard form that would include graphs, etc. showing the budget, what was yet to be expended and what the forecast was for spending. Any department projecting an over budget possibility would have to give an explanation. Councilor Zink agreed. He noted that the Budget Committee wanted the same type of information and thought the citizens would appreciate having this posted on line. Council Vice Chairman Bentley also thought this was a good idea, and suggested the department heads meet with the Council quarterly.

Councilor Levy spoke about CIPs. He questioned the need for so many, and said their funds should be used on a need basis, and not just because they were there. He compared this to his business which operates primarily with one contingency fund, and wondered why the town could not operate with one overall CIP which would cover everything except water and sewer. He felt this might encourage more forethought in spending. He questioned the system of funding the CIPs every year. Town Administrator Wojnowski said the town had reduced the number of CIPs over the last few years, and they now numbered about 20.

Councilor LaBranche said that CIPs followed specific guidelines and had to be based on plans, so that the town could save for a need over time. The voters determine the total of funds that go into the CIPs. The Council does ask about using CIP funds. If there are sufficient funds in a CIP for a need, additional funds may not be added. He said having one general CIP could run into regulatory problems as CIPs have to be more specific. Councilor Levy asked for verification as to whether the town could have a less specific CIP. He then wanted to know if something is not funded during a year, even though the money is in the CIP, does the Budget Committee or Town Council not add earmarked funds. Councilor LaBranche gave an example: should a department need a \$60,000 vehicle with a life expectancy of 10 years, \$6,000 would be put in the CIP annually for 10 years. If it were found that the vehicle could last another year, the \$6,000 would not be added for the eleventh year. Town Administrator Wojnowski added that DRA would not allow a community fund, as Capital Reserve Funds have to be for specific expenditures, and are considered to be a sign of good planning practices. Councilor Levy asked if there could be a CIP for all vehicles, rather than by department. Council Chairman Nazzaro said there still needed to be a plan. Council Vice Chairman Bentley pointed out that the Council had said no to 3 items which departments wanted to fund from CIPs.

Council Chairman Nazzaro asked for the Council's views on Councilor Zink's sub-committee proposal. Council Vice Chairman Bentley liked the idea on face value, but felt a group of 2 could be a problem. Councilor Levy agreed with Council Vice Chairman Bentley, but thought it might work out for some issues less critical than economic development. Councilor LaBranche said he would support the proposal, but would like the Chairman to make the appointments. Councilor Zink thought he would withdraw the proposal, but his idea was based on the previous year. He said that the previous year there were 4 objectives of which one was accomplished and one discussed. They did get the school and town together for deliberative session. The second goal was to group some town and school functions together for efficiency. The third was the sale of some town owned properties and the fourth was to develop an economic strategy. He said that ¾ of the year had been spent on items that were not objectives, and he was looking for a way to create that focus.

Council Chairman Nazzaro said he felt the Council all agreed they needed a certain level of information from the Town Administrator and Department Heads. He asked that they set the structure for the next meeting, and the Council could be more specific as to its needs. He felt the priorities of economic health for the community and the management of town facilities would require more in depth discussion. Councilor Levy said the last goal was to bring in enough money to cover expenses so that the budget would coordinate with the budget. He said one of his goals was to get the tax rate down, and they had to focus on the next budget. Council Chairman Nazzaro said there were 2 parts to putting the town on a track of long-term economic health:

1, enacting responsibilities outlined in chapter 6 of the Master Plan, and 2, ensuring that the town lives within its means. Councilor Levy said that chapter 6 had some suggestions, but he would like the town to have help in analyzing their practicality. Council Chairman Nazzaro said that one priority would be covered at each of the next three meetings, and said that when they discuss town facilities, they have those directly involved attend that meeting. He emphasized the need for a concrete plan of strategies for each goal.

#### 4. TOWN COUNCIL VOTE ON DISCONTINUANCE OF PORTIONS OF WATER STREET

The Public Hearing for discontinuance was held on April 4, 2012. The next step is the Council's formal vote. Town Administrator Wojnowski said he had included a report for Doucette to produce a plan for the abutters to prepare deeds for the town to quit claim the land to them. There charge would be \$4,700 divided 5 ways. Council Vice Chairman Bentley did not agree that the non-profit

##### Community

Church or the town, which was giving land, should have to pay. Town Administrator Wojnowski said that he agreed that the town should not pay, but there needed to be a plan in place before deeds were prepared. Until this is cleared up, the abutters are not eligible for loans. At this point the town is liable for anything that should happen in the right of way. The town is not giving land away, but taking care of land that was erroneously built on.

Councilor Levy agreed with Council Vice Chairman Bentley. There is a liability to the town, but since the land was built on erroneously, they should pay for the plan and any legal fees. He felt the

Water Street project had changed and expanded from its original proposal. Councilor LaBranche said he was pro-business, but in the original discussion he stated that the town should not incur costs for this. He felt those developing the building should pay the whole cost as it affects them directly. Councilor Zink did not think it was the Town Council's responsibility to comment on the development. He said the land was a problem the town and church were aware of, and he felt the Council should go to those affected and ask them to work out the costs. Councilor Wright said his understanding was that the town would not pay for this.

Town Administrator Wojnowski said he did not want this to cost the town, but they are abutters. His thought was that the developer or abutters bear most of the cost of this as they would derive the most benefit. Council Chairman Nazzaro suggested the costs be divided by the amount of land absorbed which would remove the town from cost sharing. Councilor Levy said the town was doing a favor so the developer could move ahead with his project. He did not think the costs should be distributed, but be borne by the developer. Council Chairman Nazzaro said that they had been ignorant of the problem before, but now that they are aware they needed to move forward as the town bore some of the responsibility.

Councilor LaBranche moved to instruct the Town Administrator to notify those involved with the project that at this time the town does feel obligated to bear any costs associated with it. Councilor Zink seconded.

Councilor Levy made a friendly amendment, that the entity the town was doing this for pay. Council Vice Chairman Bentley agreed with the amendment.

Councilor LaBranche rephrased his motion to read that Mr. Servigy would bear the costs.

Council Chairman Nazzaro stated he would not support the motion. He felt that because someone points out an error on another's property does not mean they have to pay for it. He thought they should all come to a solution together.

Town Administrator Wojnowski polled the Council.

Aye

Nay

Councilor Wright

Councilor Zink

Councilor Levy

Council Chairman Nazzaro

Councilor LaBranche

Councilor  
Carmichael

Council Vice Chairman Bentley

Motion carried 5 – 2.

5. SEAN GREIG, REVIEW OF DISCUSSIONS WITH RICHARD SKARINKA, DES ON 2011 SANITARY SURVEY, CORRESPONDENCE DATED MAY 7, 2012

Mr. Greig and Town Administrator Wojnowski had met with DES concerning the town's two water deficiencies in supply and storage. DES said they did want a building moratorium because they had concerns about the ability of town's aquifer to produce a day's supply of water. Neither Mr. Greig nor Town Administrator Wojnowski was aware of a letter from 2005 that had recommended a building moratorium. The previous Town Administrator had sent a corrective action plan saying the town intended to purchase other wells, recharge the wells owned and work on the sand beds for the waste water treatment plan.

The revitalization of the sand beds could not be done, vote on wells fell through and the recharge was voted down. A bond vote for \$6,000,000 to increase supply failed. Mr. Greig recommended to DES that they not recommend a moratorium because after July 1st the town can move ahead immediately with an action plan to do a Pilot study of the MacIntosh Well. The study should be complete in December, leaving some time to prepare for a bond vote in March. He said the state seemed in agreement with this. He said normally deficiencies have to be corrected in 30 days, but in this case the project is too large. Mr. Greig has to submit his corrective action plan by June 6th.

He will ask that \$150,000 be taken from Capital Reserves for the Pilot study. He will have to have an engineering contract next month and sign for the equipment from GE a month in advance of the project. Once the plan is completed it goes to the state for approval. He needs to work with an engineer to develop the plans for the Pilot. If the town does not follow through and meet the milestones in the plan there will be a moratorium and fines.

Councilor Levy asked if the town had done anything tangible since receiving the 2005 recommendation for a moratorium. Mr. Greig said there were no new sources of water, but the town had been moving forward until the votes failed. Councilor Levy read from a DES letter saying that

Newmarket had not instituted best practices with inspection processes around well heads. Mr. Greig said he had a well protection plan for the Bennett Well, but it had not yet been approved by DES. Councilor Wright asked how the \$150,000 expenditure was broken down. Mr. Greig said that included getting the equipment from GE, a generator, pump, fuel, the building of a shed, the testing and the report. Councilor Wright said they should begin selling this to the public now. Council Chairman Nazzaro agreed. He suggested that the short-term plan and corrective action plan be brought before the Council to help with this.

Mr. Greig confirmed that the earliest the test could start was September in part because they had to get the plans completed and approved and needed to order the equipment one month in advance. The action plan milestone would have the study begin one month after receiving the equipment. Town Administrator Wojnowski expressed concern that the report would come in December, and asked if it could be done earlier. Mr. Greig said he would certainly try by getting the road done earlier and ordering the equipment earlier. Town Administrator Wojnowski asked if the funds for putting in



the road still existed, as voted earlier. Mr. Greig said the funds were still there, but he would have to read the Warrant Article to see if they could be used.

Councilor Zink suggested that new people didn't necessarily understand the history of some of these issues. He said that last year an AE Com Report was done and there were discussions and meetings with the public on the priorities it set. He suggested that the report be read so that the information was not redone unnecessarily. Councilor LaBranche asked Town Administrator Wojnowski to get a legal opinion on whether the road could be started because of the vote two years ago.

#### 6. RESOLUTION #2011/2012-27 AUTHORIZING THE WITHDRAWAL OF \$21,289.76 FROM WASTEWATER LEGAL CAPITAL RESERVE FUND

Sean Greig said the fund had been set up to pay the law firm of Divine Millinet for help with EPA negotiations and also Hall and Associates for Coalition costs. The sum of \$35,000 had been set aside to cover legal costs from February through January 1, 2011. The sum of \$21,289.76 represented expenditures incurred thus far. Councilor said he had voted against this originally as the Coalition had brought this suit whether or not

Newmarket contributed. He asked about estimates for legal costs, and how much more than the \$35,000 originally set aside could be expected. Mr. Greig suggested that there be a non-public session before the next meeting for a strategy discussion. Councilor LaBranche asked if the resolution required a public hearing. Town Administrator Wojnowski said it did not. Councilor LaBranche noted that the 4th paragraph of the resolution contained a typo in the amount of money requested.

Councilor LaBranche moved to adopt Resolution 2011/2012-27 relating to the withdrawal of \$21,289.76 from the Wastewater Legal Capital Reserve Fund. Council Vice Chairman Bentley seconded.

Discussion: Councilor Zink said these were expenses the town had incurred. He suggested the Council move the decision up the ladder a bit. He would like to hear from other Town Council representatives as to the direction and feasibility of the suit. Mr. Greig stressed the importance of another non-public session. He said that

Newmarket had spent \$58,144 on this since 2010 and with the adoption of the resolution, a total of \$80,000 in the past two and one half years. Councilor Carmichael agreed with Councilor Zink's suggestion that they meet with other Coalition representatives, and also discuss a limit on costs

Newmarket might incur. Council Chairman Nazzaro agreed that the Council needed more information from the Coalition's law firm on overall strategy and costs. He also thought the Council should have a non-meeting to discuss this with the law firm. As to the resolution, he said this was a debt the Council had incurred that needed to be paid. Councilor Wright was concerned about the outcome of the suit and what could happen if a Coalition member dropped out. Councilor Levy said the Council needed to predicate its decision on affordability to

Newmarket. He said the suit would come down to a nitrogen level number from DES. He felt that the Council should set a limit for its legal costs after the non-public meeting. He was concerned that the costs would spiral, and the town would still have to build a new plant. His vote on the resolution would be negative, as he had voted against the original funding. He asked that Mr. Greig get an estimate from Hall and Dana Bisbee. Mr. Greig had distributed a background paper on the issue, and he encouraged the Council members to read it. When the Council meets with legal counsel it will be in non-meeting.

Town Administrator Wojnowski polled the Council: Motion carried 6 – 1, with Councilor Levy voting against it.

#### 7. DISCUSSION OF HIRING WRIGHT-PIERCE ENGINEERING TO UNDERTAKE REVIEW OF THE WASTEWATER SYSTEM AND DEVELOP A CAPITAL IMPROVEMENT PLAN

Sean Greig said they had been working toward setting up a CIP plan to review the wastewater system. They had followed state guidelines in seeking help with the collection system review so that state and federal funds would be available for any resulting projects. They had interviewed 5 firms, and selected Wright-Pierce. Once the evaluation is

complete, a CIP would be created to cover forecasted projects. Mr. Greig stated that the new permit would require a more-in-depth operation and maintenance plan for the sewer system, a justification for the number on staff necessary to conduct maintenance, a preventative maintenance plan for influx and infiltration (done), collection system mapping (80% done), a description of management system goals for staffing, etc., information management and legal authorities. Also required would be a report on the overall system condition based on recent studies, construction activities, and a schedule for the development of operation and maintenance plans.

Mr. Greig said evaluating the collection system requires creating a flow model through the use of flow meters and filming. He said they were in the beginning of the effort. He identified some of the milestones that had reached since the last evaluation study in 2008 as completing

New

Village, fixing most of the manholes, and completing most of the sewer mapping. The 2006 study showed about 330,000 gallons in I & I, and in 2009 there were about 275,000, and currently about 175,000 gallons. This new evaluation should further reduce these figures. He said once the review was complete, money would be set aside in a CIP to reach goals with little affect on wastewater rates.

Councilor LaBranche asked if Wright-Pierce had been selected through a bidding process. Mr. Greig said they had followed standard DES guidelines, which require interviewing firms. Following these guidelines would make the town eligible for state and federal funds. Councilor Levy asked how much more in expenditures could be expected. Mr. Greig replied that it would not be known until the evaluation was completed and they had a list of system upgrades. The study would be a critical evaluation of all 6 lift stations, specifically Bay Road, and an appraisal of a section of sewer pipes. They would also put a flow meter in

New

Village to check work that had been done. He said that over time, they would look at areas section by section as the entire project was too large to do all at once. Councilor Levy asked if there was a relationship between the consulting fee and the amount to be anticipated in system upgrades. Town Administrator Wojnowski stated they would not know the cost of upgrades until the report was completed, and it was known that certain areas of town would require more work than others.

Councilor Zink stated his support of Mr. Greig as the expert in this area, although he did not feel comfortable that this had not gone out to bid. Mr. Greig said they had to follow state rules requiring a qualifications review from which the final choice of a firm was selected. In terms of qualifications, Wright-Pierce came in ahead of other applicants. At that point, costs can be negotiated, and if a sum agreeable to both parties is not determined, the town can move on to another applicant. New Hampshire DES also reviews the contract for compatibility with federal and state grant criteria. Councilor Zink stated he did not like the state system, and thought towns should be able to choose from a "B" list to make the project less costly.

Councilor

Carmichael asked who from the town ranks and interviews applicants. Mr. Greig said it is usually a group of 4 including himself. Councilor

Carmichael asked if town staff works with the consultant group once the project starts. Mr. Greig said they work together, and the town does as much as it possibly can to help reduce costs. In response to Councilor Carmichael's question, Mr. Greig said the I & I part of the study would take longer than the lift study, but that much depends upon the amount of rainfall necessary to provide good data on ground water. Probably the study could take months. Council Chairman Nazzaro asked who specifically had done the ranking of applicants for the review. Mr. Greig said that he, his assistant technician and the maintenance person, as they were all familiar with the system. Council Chairman Nazzaro then asked what the repercussions would be if they put the project out to bid. Mr. Greig said that any projects resulting from the review would not be eligible for federal funds. He said that Town Administrator Wojnowski had participated in cost negotiations on a previous project and had been able to get a cost reduction of about \$23,000.

Councilor Levy asked for a break down of the 304 hours slated for the project to be completed. Of the \$37,500, \$32,000 is for labor and \$5,000 for video inspection. Since the \$37,500 is the budgeted amount, the firm will be paid only for the number of hours it takes to complete the study. The total cost of the study is a not-to-exceed amount. There is more than \$438,000 in the Wastewater CIP. Councilor Wright asked if Mr. Greig intended to rent or purchase the flow meters. Mr. Greig said he preferred to buy them as they have to be installed underground and they would be able to use them for monitoring other parts of town. Councilor Wright asked which budget the purchase would come from. Mr. Greig will look at that.

Councilor Levy moved to accept the hiring of Wright-Pierce Engineering to undertake a review of the wastewater system and to develop a Capital Improvement plan in an amount not to exceed \$37,000 taken from the Capital Reserve Fund. Councilor Carmichael seconded. Town Administrator Wojnowski polled the Council. The motion carried unanimously, 7 – 0.

#### 8. RESOLUTION #2011/2012-28 AUTHORIZING THE HIRING OF DUBOIS & KING AS ENGINEERS FOR THE MAIN STREET PEDESTRIAN SKY BRIDGE PROJECT FOR A COST NOT TO EXCEED \$52,400

Council Chairman Nazzaro read the Resolution. Councilor Levy said he could support this, but had asked at the May 2nd meeting for a breakdown of subcontractor added fees. He recalled this was 12% for administration and another 12% for expenses. He asked what percentage of the work was being done by Dubois & King versus that by the subcontractors. He said these were inappropriate fees and should be a pass through. He said Dubois & King were being paid to oversee the project, and should not be adding fees. He said on that basis he would like to amend to resolution to eliminate these fees as they should be a pass through. He said that with a project at Pease, they had successfully negotiated to eliminate such fees. Councilor Wright said he thought the Town Planner was going to look into this with the engineering firm. The fees are included in the \$52,400 total and eliminating them would reduce the total. Councilor Zink expressed concern that if this were industry practice the cost could come back in another form, and he wanted an update from the Town Planner. Councilor Levy said this was industry practice from a negotiating stand point, and cited the Pease project. The minutes from the May 2nd meeting were read, and Town Administrator Wojnowski will ask Town Planner Diane Hardy for more information. The resolution will be moved to the next agenda after the information is received.

#### 9. ENERGY COMMITTEE – RESIGNATION OF PHILIP BOURNE

Mr. Bourne had to resign due to work issues, and the position has been posted. So far, there has been no response.

#### 10. TOWN COUNCIL TO CONSIDER APPOINTMENTS TO COMMITTEES/COMMISSIONS

a. CEMETERY TRUSTEE: Council Vice Chairman Bentley moved to appoint Richard Alperin as a Cemetery Trustee with a term to expire in 2015. Councilor Zink seconded. Town Administrator Wojnowski polled the Council. Motion passed unanimously, 7 – 0.

b. ADVISORY HERITAGE COMMISSION: Council Vice Chairman Bentley moved to appoint Elizabeth Dudley to the Advisory Heritage Commission with a term to expire in 2015. Councilor Zink seconded. Town Administrator Wojnowski polled the Council. Motion passed, 7 – 0.

Council Vice Chairman Bentley moved to appoint Gerry O'Connell to the Advisory Heritage Commission for a term to expire in 2013. Councilor Carmichael seconded. Town Administrator Wojnowski polled the Council. Motion carried unanimously, 7 – 0.

c. ZONING BOARD OF ADJUSTMENTS ALTERNATE TERM: Council Vice Chairman Bentley moved to appoint Ea Ksander as an alternate to the Zoning Board of Adjustments. Councilor Levy seconded. Town Administrator Wojnowski polled the Council. Motion carried unanimously, 7 – 0.

d. ZONING BOARD OF ADJUSTMENTS FOR ONE ITEM ONLY, (1 position): Council Vice Chairman Bentley moved to appoint Richie Shelton to the Zoning Board of Adjustments for one item/vote only. Councilor Zink seconded.

Council Vice Chairman Bentley moved to appoint Amy Johnson to the Zoning Board of Adjustment for one item/vote only. Councilor Levy seconded.

Councilor Levy moved to appoint Kate Renaud to the Zoning Board of Adjustment for one item/vote only. Council Vice Chairman Bentley seconded.

Amy Johnson asked that her name be withdrawn as she had a time conflict. Council Vice Chairman Bentley withdrew his motion.

Town Administrator Wojnowski polled the Council on Richie Shelton's appointment. The motion carried unanimously, 7 – 0.

Town Administrator Wojnowski polled the Council on Kate Renaud's appointment. The motion was denied by a vote of 3 – 4, with Councilors Wright, LaBranche and Zink in favor and Councilors Levy and Carmichael, Council Vice Chairman Bentley and Council Chairman Nazzaro against.

The Council thanked the applicants for their interest.

## 11. REVIEW OF MINUTES FROM STANDING COMMITTEES AND COUNCIL REPRESENTATIVES

a. Councilor Carmichael, Planning Board: The Committee met on May 8th with CRC about the Dover Woods project and Arcadian about the

13 Water Street project.

b. Council Chairman Phil Nazzaro, Black Bear/Highway Safety: Highway Safety had no meeting. Black Bear met on May 15th and Mr. Stevens, a Selectman from Newfields and the Town Planner attended. They discussed building an access road behind Ship to Shore which would create a four-way intersection where Dunkin Donuts. A committee will meet about designing a bridge for access to the area and report back at the next meeting.

c. Councilor Wright, Conservation Commission: June 16th is the fishing derby, and Old Home Day is August 11th.

d. Councilor LaBranche, CIP/Efficiency Committee: CIP had its first meeting the previous week. He said they were going to hold their meetings at the various sites they would discuss. He said the deadline for CIP requests would be June 15th.

e. Councilor Levy, Budget Committee: He had missed most of the meeting because of a Council meeting. He had brought up the CIPs and they had reviewed the numbers.

f. Councilor Zink, Advisory Heritage Commission: The meeting is scheduled for May 17th.

g. Council Vice Chairman Bentley, Energy Committee: There was no meeting.

The Efficiency Committee meeting is scheduled for Monday, May 21st.

## 12. OLD/NEW BUSINESS

Vote on Resolution #2011/2012 – 26, Withdrawal of \$10,956.42 from the Telecommunication Capital Reserve Fund for the Purchase of 2 IBM X Series Servers

Councilor Levy moved to approve Resolution 2011/2012 – 26 for the withdrawal of \$10,956.42 from the Telecommunication Capital Reserve Fund for the purchase of 2 IBM X series servers. Councilor LaBranche seconded. Town Administrator Wojnowski polled the Council. Motion carried unanimously, 7 – 0.

Acting Finance Director Matt Angell came forward to say that an earlier vote the Council had taken was invalid:

Council Vice Chairman Bentley moved to allocate \$483,681 from the Down Town TIF,

Fund 9, to the Main Street Enhancement Fund, Fund 48, and allocate \$198,279 from the Water Fund, Fund 20, to Water Capital Reserve Fund, and from Water Capital Reserve to the Main Street Enhancement Fund, Fund 48, thus zeroing out the Down Town TIF. Councilor Zink seconded.

The motion had carried 4 – 3, but since the second element of the motion required a unanimous vote, the vote would have to be rescinded and the issue re-voted. He said he would add another part that the captured assessed value be returned to the General Fund. Council Chairman Nazzaro asked if they should set up 3 separate votes, one to transfer funds from the Down Town TIF to the Main Street Enhancement Fund. Mr. Angell said the second should be to transfer money from the Water Capital Reserve Fund, and the third to return the captured assessed of the Down Town TIF to the General Fund. He said the third element was necessary so that on August 30th the taxpayers would not be charged incrementally.

Councilor Zink moved to extend the meeting beyond 10:00 p.m. Council Vice Chairman Bentley seconded. Motion carried unanimously.

Council Vice Chairman Bentley asked if he was allowed to make a motion to allocate \$483,681 from Fund 9, Downtown TIF, to the Main Street Enhancement Fund, Fund 48. As this was confirmed, he so moved. Councilor Zink seconded the motion.

Discussion: Councilor Levy questioned the closing of the Downtown TIF through the motion, as there would not be enough to pay what was needed in the Main Street Enhancement Fund. Acting Finance Director Angell said the two were not related, and the TIF would not be closed, but zeroed out. There are 3 separate funds: the TIF pays for the

Main Street project, the Water Fund was supposed to pay for the water/sewer portion, but that would require a unanimous vote, so he had suggested that the funds come from the Water Capital Reserve Fund. If the Council doesn't vote to close the Downtown TIF Mr. Angell would not be allowed to use it to reduce the tax rate. It would take 2 more years of funding to close the gap by moving money Main Street Enhancement Fund.

Council Chairman Nazzaro explained the Council had a procedural error in the vote that needed to be corrected. Councilor LaBranche asked how to eliminate the last vote. Mr. Angell said he needed a clean vote, and if the earlier vote stayed in place it would not cure the paper deficit, but could affect the tax rate and bond rating. Those who made the original motion and second would have to move and second to rescind it.

Council Vice Chairman Bentley moved to rescind his earlier, three part motion. Councilor Zink seconded.

Discussion: Mr. Angell explained the Down Town TIF was one of 3 funding sources, and the remainder of the funds to close out the gap would come from the Water Capital Reserve Fund. Removing the \$483,681 from the TIF and voting to close it would remove its captured value.

Town Administrator Wojnowski polled the Council. The motion carried unanimously, 7 – 0 and the earlier motion was rescinded.

Council Vice Chairman Bentley moved to allocate \$483,681.57 from the Down Town TIF, Fund 9 to the Main Street Enhancement Fund, Fund 48. Councilor LaBranche seconded.

Town Administrator Wojnowski polled the Council. The motion carried unanimously, 7 – 0.

Council Vice Chairman Bentley moved to allocate \$198,279.52 from the existing Water Capital Reserve Fund, Fund 20, to the Main Street Enhancement Fund, Fund 48. Councilor Zink seconded. .

Discussion: There will be \$55,000 left in the TIF for the

Sky

Bridge. However, since those are encumbered funds, it is possible to close the TIF.

Town Administrator Wojnowski polled the Council. The motion passed 4 – 3, with Councilors Levy, Wright and Carmichael voting nay.

Acting Finance Director Angell said the final piece was to close the Down Town TIF and give an \$.18 tax reduction. Mr. Angell confirmed that had the previous votes not taken place, the deficit would show at the end of the year.

Council Vice Chairman Bentley moved to close the Downtown TIF and return the captured value to the general tax rolls. Councilor Zink seconded.

Discussion: This motion removes the ability to raise taxation for the TIF, while the earlier one removed its excess funds. This vote would be required to affect the tax rate.

Town Administrator Wojnowski polled the Council. Motion passed unanimously, 7 – 0.

Councilor LaBranche asked when the Council would have a public hearing on the release of open space properties to the school. Town Administrator Wojnowski reported that the attorneys were working on the language, and he hoped to present their opinion at the next meeting, with a Public Hearing to be held at the next Workshop. He and the Superintendent of Schools agreed with Councilor LaBranche that this was cutting the time close.

Councilor Zink reported that he had been approached by several people with comments they had read in newspaper articles, letters to the editor, editorials and seen on web sites. There was a question as to the accuracy of the facts presented. He said that as better communication with the public was a Council priority, he felt this should be presented. He felt the Town Council needed to publish the unbiased facts to the town to stop the spread of rumors. Council Chairman Nazzaro said that communication would be a part of the discussion at the next meeting. Councilor Wright will get copies of the Durham Newsletter for the Council.

## 12. APPROVAL OF NON-PUBLIC MEETINGS: MAY 2, 2012

Council Vice Chairman Bentley moved to approve the non-public minutes of May 2, 2012. Councilor Carmichael seconded. Town Administrator Wojnowski polled the Council. The motion passed 6 – 0 – 1, with Councilor Zink abstaining as he had not been at the meeting.

Councilor Levy moved to adjourn. Council Vice Chairman Bentley seconded. Motion carried unanimously. Meeting adjourned at 10:24 p.m.

Next meeting will be  
June 2, 2012.

Respectfully submitted,

Ellen Adlington,

Recording Secretary