

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

MAY 16, 2018 7:00 PM

TOWN COUNCIL CHAMBERS

Approved June 6, 2018

PRESENT: Council Chairman Dale Pike, Council Vice Chairman Toni Weinstein, Councilor Zachary Dumont, Councilor Kyle Bowden, Councilor Amy Burns, Councilor Casey Finch

EXCUSED: Councilor Gretchen Kast

ALSO PRESENT: Town Administrator Steve Fournier, Town Planner Diane Hardy, Jim Weber of the NHDES Dam Bureau, Macallen Dam Study Committee Chairman Bill Arcieri, Dam Study Committee Member Bob Sheehan, Cheri Patterson of NH Fish & Game, Todd Munson of GZA GeoEnvironmental, Inc., Facilities Director Greg Marles,

AGENDA

Chairman Dale Pike welcomed everyone to the May 16, 2018 Newmarket Town Council Meeting and called the meeting to order at 7:00 pm, followed by the Pledge of Allegiance.

PUBLIC FORUM

Chairman Pike opened the Public Forum at 7:01 pm.

Mr. Glenn Traquair of 156A Exeter Road spoke on efforts to bring a Rights-Based Ordinance (RBO) to Newmarket, which would basically protect the community from environmental threats from corporations. He said though Newmarket may already be protected by the NHDES or the NH Department of Health & Human Services, New Hampshire has the highest rate of breast cancer in the country and 2nd highest bladder cancer rate. He stated that the Coakley Landfill registered as having the highest rate of PFCs in the country and efforts had been made to quell that information. Other examples of contamination were Saint-Gobain in Merrimack, NH and the Pease Air Force Base in Portsmouth, NH. He said the Newmarket Town Charter did not give its citizens the right of protecting their environment, and though an RBO would be an act of civil disobedience, it was about the Town's rights of democracy. He said a NH Community Rights Amendment, seeking to protect already existing inalienable rights to local democracy, gained

support in the NH House this year, and said Newmarket residents were working to prevent future chemical trespass from coming into their local waters.

Representative Ellen Read of 283 Lita Lane stated that she was one of the State Representatives for the Town of Newmarket, and was there to talk about the proposed Rights-Based Ordinance (RBO). She said it was her understanding that the Council would be provided later with the idea that an RBO is unconstitutional, as the State does not have Home Rule. She stated that a town could pass an RBO, which several other towns in NH had done already, none of which had been constitutionally challenged. She stated that she was the prime sponsor of a Constitutional Amendment that went before the NH House this year that would have sent a valid question to all people in the State asking if the State Constitution should be amended to essentially protect a town's rights to pass RBOs, laws that protect the health, safety, and welfare of people or their natural environments. She said the NH House normally required 3/5 passage and they gotten over a third approval in the Sub-Committee, with a 3-2 vote in the Committee, which would have explicitly protected a town's rights to pass an RBO. She said she intended to continue to work on the amendment next year, with a possible ballot question on this issue in the next 2 years.

Mr. Terry Martin of 212 South Main Street stated that he was in favor of this RBO, and said his first exposure to water contamination affecting area residents was from 2 articles in the Pease Quarterly from last June. He said one of the articles stated that a Federal agency had dropped its plans to release a shorter version of a feasibility assessment for a potential health study for people exposed to city water contaminated by PFCs at the former Pease Air Force Base. He said in May of 2014 the Air Force found dangerous levels of PFAS chemicals and closed the Haven Well. He said the second article addressed the efforts of Senator Jeanne Shaheen to assist in getting something done about the Pease Air Force Base contamination, and to find the best way to fund the needed health study in the Seacoast Region. In a recent email she stated that Pease had been selected for inclusion in a critical national study on the impact of PFAS compounds. Mr. Martin said he had also just learned about the Town of Nottingham, NH adopting a Water Rights & Self-Government Ordinance in 2008, after fighting a losing battle against USA Springs, LLC. He said no legal action had been taken against the Town of Nottingham RBO and they were considering a second one with regard to toxic waste disposal and chemical trespass.

Ms. Pia Bickford of 14 Ham Street said she had been reading about corporations dumping hazardous chemicals in surrounding communities. She said the Coakley Landfill was told they needed to install a treatment system for their waste runoff, but after EPA lobbying the Department of Environmental Services group allowed them to forego adding this system. She said monitoring of wells in Greenland and North Hampton found PFOS levels 20 x higher than the EPA Health Advisory Level and nearly 3 x higher in Berry's Brook in Rye. She said these chemicals were carcinogens and a pediatric brain cancer cluster was found in that vicinity. She said she also read about a \$100 million lawsuit that Pease Development Authority was settling for knowingly discharging contaminants into waterways and Great Bay. She stated that EPA and White House officials had failed to release CDC data which showed PFCs threaten human health at a lower level that currently thought safe. She said a local RBO is a way to protect communities against the financial interests of corporations taking precedent and priority over the health and safety of Newmarket citizens, and she asked the Town Council to use their authority and ability to help keep the Town safe.

Monica Christofilli of 6 Central Street thanked the Town Council for their service to Newmarket. She said she was cofounder of the community group Alliance for Newmarket Citizen & Ecosystem Rights (ANCER), and they would like to bring a Rights-Based Ordinance (RBO) to Town vote so the people of Newmarket could democratically choose whether to adopt a local law that would protect the Lamprey River and the Great Bay watershed from future corporate chemical trespass. She said the Town Administrator had shared a summary of the opinion of the Town Attorney on this RBO, which said the people of Newmarket were not allowed by the State and would not be allowed by the Town Council to vote on this RBO as the State did not have home rule and the Town Charter gave no pathway to ask the Town Council to let them vote on the issue.

Ms. Christofilli said NH was a Dillon's Rule state where municipalities cannot adopt local laws unless the State tells them they can. She said ANCER recognized that Article 3 of the State Constitution, the NH Bill of Rights, says that in a state of society citizens give up some rights in return for protections, and if those protections are not received, the relinquishment of rights is void and they can take back those rights. She said Article 8 of the NH Bill of Rights states that all power resides originally in and derives from the people, and Article 10 was the Right of Revolution if public liberty were manifestly endangered. She said the people of Newmarket have an inalienable and inherent right to protect their health, safety, and welfare and to change government in order to serve this protection, and the Town Council could not take this right away.

Ms. Christofilli said Newmarket residents have no local pathway to directly cast their right to vote on a local matter that concerns them, like wanting local protection in place to prevent chemical contamination of local waters. She said the Council was the body of elected officials chosen by the people to protect the things they rely on, like water, and said the opinion of the Town Attorney did not represent the people. She said of the 11 towns that have adopted RBOs in NH over the last 12 years, not one has been challenged and they have forced corporations to propose better, safer projects. She said they stood on their rights affirmed in the NH Bill of Rights to establish a new form of government based on the right of residents to govern their communities. She challenged the Council and the Town Administrator to make a fully informed decision by actively seeking opinions other than that of the Town Attorney. She said that along with ANCER, she invited the Town Council to place this issue on their agenda for a 20-minute public presentation at an upcoming meeting, and said she looked forward to their invitation in return.

Chairman Pike closed the Public Forum at 7:26 pm.

PUBLIC HEARING – Resolution #2017/18-46 Authorizing the Town Administrator to Enter into an Agreement with GZA GeoEnvironmental, Inc. for Final Design and Engineering Services Related to the Rehabilitation of the Macallen Dam

Town Planner Diane Hardy said she was there on behalf of the Macallen Dam Study Committee asking for consent and concurrence on the chosen Preferred Alternative for addressing the Dam issue. She said she wanted to recognize Jim Weber of the NHDES Dam Committee who they had worked closely with over the last 4 years, Cheri Patterson from NH Fish & Game, and Dam Committee Chairman Bill Arcieri and committee member Bob Sheehan, as well as consultant Todd Munson of GZA Geo Environmental, Inc.

Town Planner Hardy said that GZA GeoEnvironmental was hired over a year ago to do some conceptual designs and look at alternatives to address the letter of deficiency from the NHDES with regard to the dam received in 2008. She said the Town looked at removal of the dam and hired a consultant to do a feasibility study, then in 2014 decided instead to look at repair and rehabilitation of the dam. She said the proposal before the Council tonight was the preferred alternative to replace the existing antiquated gate structure with a pneumatic-operated gate system, along with some repairs to the side walls and raising the left abutment for means to secure the dam during high-peak flood period.

Mr. Todd Munson of GZA GeoEnvironmental, Inc. said the company was hired in July of 2017 to develop conceptual alternatives to address deficiencies cited in the letter of 2010, and said he would provide a brief overview of the progress made by the Macallen Dam Committee and go over the proposed next steps for the project. He said they were focusing on the technical engineering aspects to specifically address the stability of the dam and the inadequate spillway capacity. He said moving forward they planned to coordinate and cooperate with multiple stake-holders, including abutters and NH Fish & Game, who own the property adjacent to the dam and operate the fish ladder.

Mr. Munson said GZA was hired specifically to address the inadequate spillway capacity by developing alternatives to raising the abutment walls and to assure dam stability. He said the work stemmed from an obligation by the Town of Newmarket to address safety, most notably the deteriorated abutment walls, the deteriorated wooden gate structure and its inability to seal properly, and the inadequate spillway capacity to meet the design storm standards. He said the Preferred Alternative was to demolish the existing gate structure and replace it with an automated pneumatic steel Crest Gate to prevent blockage. He said the stone block pier on the left side would remain in place and a concrete abutment poured. He said the abutments on the right side needed to be raised approximately 3 feet, and said the Crest Gate would lower the target water elevation for the abutments.

Mr. Munson said the gate was a bottom-hinged Crest Gate with an air pressure-based system, having a bladder life-expectancy of approximately 30 years, at which time just the bladder could be replaced. He said they looked at multiple other alternatives of raising/constructing the abutment walls, and said a 6-foot abutment obstructed views and was not recommended. He said a scope of services for GZA for the preferred alternative would continue the proposed design including Final Design, field investigations, permitting, and bidding support services. He said the proposal was submitted to the Dam Committee for review along with an outlined schedule for future work.

Mr. Munson said GZA would begin the engineering final design by July 2018, submit permits in the fall, and submit a Construction Bond to the Town Meeting in March 2019. He said they would then move through the bidding process and he anticipated a summer 2019 contract award, with construction ending in late October 2019. Chairman Pike added that when the Dam Committee selected the preferred alternative, they chose the lowest estimated cost for the best aesthetic result. Mr. Munson said they would be continuing to work with all stake holders.

Chairman Pike closed the Public Hearing at 7:40 pm.

TOWN COUNCIL TO CONSIDER ACCEPTANCE OF MINUTES

Acceptance of the minutes of the Regular Meeting of May 2, 2018

Vice-Chair Weinstein made a motion to approve the minutes of the Regular Meeting of May 2, 2018, which as seconded by Councilor Bowden.

Town Administrator Fournier polled the Council and the minutes of the Regular Meeting of May 2, 2018 were approved by a vote of 6-0.

REPORT OF THE TOWN ADMINSTRATOR

Town Administrator Steve Fournier said that **Tax Bills** had gone out and were due on July 2, 2018. He said as previously brought up in Public Forum, the Alliance for Newmarket Citizens and Ecosystem Rights submitted a draft of their **Citizens Rights Ordinance** requesting the Town Council to enact or they would submit a petition warrant article to place on the ballot. He said he asked the Town Attorney to review the document and it was his opinion that the Town cannot enact or enforce a Citizens Rights Ordinance that is a freedom from chemical trespass ordinance.

Town Administrator Fournier stated that New Hampshire was not a Home Rule state but a Dillon's Rule state, and as such, municipalities could only adopt ordinances that the State permitted. He said as of now the State did not have a law allowing these ordinances and they would not be able to enforce it. He said as far as submitting a petition warrant article for the ballot, the Town of Newmarket was not a "Town Meeting" form of government but a council/administrative form of government with a budgetary Town Meeting, and only items that raise funds could be placed on the warrant unless it were State Law. He said that there was a division for initiative petitions which required 100 signatures, or a referendum petition that required 400 registered voter signatures. He said a Special Election would need to be held to consider the item, and they would still not have the authority to enforce the rules by State Law.

Town Administrator Fournier said they were removing oil from the **Leaking Fuel Tank** at the Wastewater Treatment Facility with an estimated cost of \$2,900 to filter the oil for reuse. He said they received one quote from Gafteck for approximately \$16,000 and were working on a second quote. He said they were working with Wright-Pierce to do a change order as part of the Wastewater Treatment project to see if they could use those funds for a new boiler as part of the Wastewater Treatment Facility renovations.

Town Administrator Fournier said the Facilities Director had finished the **Facilities Report** and would make a presentation in June on the findings. He said as far as the **FY2018 Budget Report**, they ended April with 83% of the year complete expending 80% of the Operating Budget and remained under-budget at this time. He said Revenues were a little tighter as they had been predicted higher, but were right on target.

Discussion: Vice-Chair Weinstein commented on the Building Report with regard to the statement that 9 businesses were closing due to parking concerns, and felt this was not an accurate picture of the Town's parking situation. Town Administrator Fournier said he agreed. Vice-Chair Weinstein asked for a check on the heating system at the Community Center, and said she was aware they were addressing the lighting. She said also a meeting was held last night with the School Board, and she understood that the School

Board voted to approve funds for a second Police Officer position at the School. She said she felt the Council should have a conversation on this issue at some point.

Town Administrator Fournier said all they had now was a vote of the School Board to raise funding. He said the next step would be for him to sit down with the Superintendent and the Police Chief and come up with some kind of agreement. He said the Town did not have funds to pay for the position, and the officer would report to the Chief of Police, whose role it was to decide where to place police officers, not the Town Council or the School Board. Chairman Pike asked about the implementation of the recommendations of the Facilities Report, and Town Administrator said the report just stated what facility repairs were needed and what years the Facilities Director was recommending they be done, and would probably be going into CIP.

Vice-Chair Weinstein said that Saturday, May 19, 2018 the Wastewater Treatment Facility would be holding an Open House from 9:00 am to noon for residents to take a tour of the new plant. Chairman Pike stated that the nitrogen level was going down and they were currently below the lower standard.

COMMITTEE REPORTS

Councilor Dumont announced that the *Budget Committee* had scheduled their next meeting for May 21, 2018 due to Memorial Day being on May 28th.

Chairman Pike said there was a *Macallen Dam Committee* meeting which was covered earlier.

OLD BUSINESS

ORDINANCES AND RESOLUTIONS IN THE 2ND READING

Resolution #2017/18-46 Authorizing the Town Administrator to Enter into an Agreement with GZA GeoEnvironmental, Inc. for Final Design and Engineering Services Related to the Rehabilitation of the Macallen Dam

Vice-Chair Weinstein made a motion to approve *Resolution #2017/18-46 Authorizing the Town Administrator to Enter into an Agreement with GZA GeoEnvironmental, Inc. for Final Design and Engineering Services Related to the Rehabilitation of the Macallen Dam*, which was seconded by Councilor Burns.

Discussion: Councilor Finch said he had concerns with task 1 Project Coordination for \$3,200, and task 2 Project Kickoff for \$8,400. Mr. Todd Munson explained that Project Coordination was the current project for conceptual design, covering some meetings. He said for the Kickoff they would sit down and officially discuss the final design and permitting, timelines, and review specific steps. Vice-Chair Weinstein said she was thrilled the Town had been putting aside money for this project and would be withdrawing from the Macallen Dam Fund. She asked if the \$200,000 was part of the \$1.2 million cost or in addition to it. Town Administrator Fournier said it was in addition to the \$1.2 million which would most probably have to be bonded. Chairman Pike said they were saving money by providing some of their own oversight through Facilities Director Greg Marles.

Town Administrator Fournier polled the Council and Resolution #2017/18-46 *Authorizing the Town Administrator to Enter into an Agreement with GZA GeoEnvironmental, Inc. for Final Design and Engineering Services Related to the Rehabilitation of the Macallen Dam* was approved by a vote of 6-0.

ITEMS LAID ON THE TABLE – None

NEW BUSINESS /CORRESPONDENCE

TOWN COUNCIL TO CONSIDER NOMINATIONS, APPOINTMENTS AND ELECTIONS – None

ORDINANCES AND RESOLUTIONS IN THE 1ST READING

Resolution #2017/18-47 Resolution to Increase the Water Rate 50 Cents

Town Administrator Fournier read Resolution #2017/18-47 *Resolution to Increase the Water Rate 50 Cents* in full.

Resolution #2017/18-48 Purchase of 3 Motorola Radios (Police, Fire and Backup) with 6x8 Structure

Chairman Pike read Resolution #2017/18-48 *Purchase of 3 Motorola Radios (Police, Fire and Backup) with 6x8 Structure* in full.

CORRESPONDENCE – None

CLOSING COMMENTS

Vice-Chair Weinstein asked if backup could be provided on the first resolution as the report mentioned the 20-year Water Plan to increase water rates 50 cents/year for 10 years. She commented on the Newmarket Cares Day that took place the previous Friday, and said there was a sea of yellow shirts around Town and it was a fabulous project to be part of. She said they were at a dozen different sites, some private residences, and said the kids worked very hard. She thanked Patty Marsden for organizing the event.

Councilor Bowden said he would also like to thank Newmarket Cares for the work they did on Beanie Howcroft Field to help prepare the Snack Shack for full operation.

NEXT MEETING: The next Regular Town Council Meeting will be held on June 6, 2018 in the Town Council Chambers.

ADJOURNMENT

Chairman Pike adjourned the meeting at 8:09 pm.

Respectfully submitted,

Town Council Regular Meeting
May 16, 2018

Patricia Denmark, Recording Secretary