

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

December 7, 2016 7:00 PM

TOWN COUNCIL CHAMBERS

Approved 12/21/2016

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

EXCUSED: Councilor Kyle Bowden

ALSO PRESENT: Interim Finance Director Matt Angell

AGENDA

Chairman Gary Levy welcomed everyone to the December 7, 2016 Newmarket Town Council Meeting and called the meeting to order at 7:02 pm, followed by the Pledge of Allegiance.

PUBLIC FORUM

Chairman Levy opened the Public Forum at 7:03 pm.

As no one from the public came forward, Chairman Levy closed the Public Forum at 7:03 pm.

PUBLIC HEARING - None

TOWN COUNCIL TO CONSIDER ACCEPTANCE OF MINUTES

Acceptance of the Minutes of the Regular Meeting of November 16, 2016

Vice-Chair Nazzaro made a motion to approve the minutes of the Regular Meeting of November 16, 2016, which was seconded by Councilor Weinstein.

Town Administrator Fournier polled the Council and the minutes of the Regular Meeting of November 16, 2016 were approved by a vote of 5-0, with 1 abstention

Acceptance of the Minutes of the Non-Public Meeting of November 16, 2016

Vice-Chair Nazzaro made a motion to approve the minutes of the Non-Public Meeting of November 16, 2016 which was seconded by Councilor Weinstein

Chairman Levy requested that the start time of the meeting at the top be corrected to 5:30 pm.

Town Administrator Fournier polled the Council and the corrected minutes of the Non-Public Meeting of November 16, 2016 were approved by a vote of 5-0, with 1 abstention.

REPORT OF THE TOWN ADMINSTRATOR

Town Administrator Fournier first addressed the **Downtown Project** and stated that the painting of the lines on the crosswalks was completed on Friday, but the signage was just completed today. He said that along with the Town Attorney, they were continuing to monitor the cost of liquidated damages which was currently at \$60,000. Chairman Levy asked for an explanation of liquidated damages. Town Administrator Fournier stated that since the date of substantial completion, which was supposed to be September, they were adding \$750/day as a penalty which was listed in the contract. He said at this point they had not yet reached substantial completion, where the Engineers, the Town Administrator, and the State all signed off on the project. He said the penalty would go down to \$500/day when only small things were left to be done but they were not yet at that point. Chairman Levy asked what the Town would get, and Town Administrator Fournier said they would get 20% of the \$60,000 with the rest going to the State. He said he would provide a legal update at the next meeting

Vice-Chair Nazzaro asked if the penalty went to the contractor or DOT. Town Administrator Fournier said that at first DOT had delayed the project 1 ½ months, but that now it was the contractor Target Construction. Vice-Chair Nazzaro asked if references had been obtained before the contract with Target Construction was signed, and Town Administrator Fournier said the references had checked out. He said arbitration was covered by the Town's legal contract and said he had already spoken with DTC. Councilor Weinstein questioned the workmanship and said she observed that some of the bricks were already broken. Town Administrator Fournier said that was one of the reasons they had not yet signed off on the project, and said Target Construction had been notified that this was unacceptable. He stated that every part of the project was reviewed by Town and State Engineers, the concrete mix under the bricks had been regularly tested, and he said they were addressing the situation weekly to get an exact timeline. Vice-Chair Nazzaro asked the Town Administrator whether he would step back and address how to fix the process with contractors to allow some controls in the future. Town Administrator Fournier said some of the problems were due to State regulations, and said they would make sure they were prepared when working on State projects in the future.

Town Administrator Fournier stated that on Wednesday and Thursday of last week, the Public Works Director was flagged down by DOT and notified that **Pan Am Railways** would be making an **Emergency**

Repair at the railroad crossing on Route 108. He said he had been immediately informed, and as they found no notification had been put out at that time, and had started notification through emails, press releases, and Reverse 911 to get the information out and had alerted surrounding communities. He said he met with Pan Am on Monday as they were having issues getting signage from the State, and he had worked with them to get a sign package in place. He said that Amtrak would reimburse the Town for any costs, and said the repair was still scheduled to be finished late tomorrow.

Town Administrator Fournier stated that he had a final copy of the **MRI Efficiency Study** which was posted on the website. He said he had reached out to MRI to schedule a presentation of their findings to the Council, and that it could possibly be the first meeting in January after the holidays.

Town Administrator Fournier said he had received a statement from **Town Moderator Chris Hawkins**, with information he wished to share with the Town Council and the public regarding possible voter fraud in New Hampshire. Mr. Hawkins said in his statement that news reports suggesting the New Hampshire vote was tainted by widespread voter fraud had no basis in fact or reality. He said they were audited by an official from the Attorney General's Office who reported no problems whatsoever with the Newmarket election process, and said there were no unusual occurrences at the polling place. He stated that the Council and the residents of Newmarket should feel confident that the election process was open and fair and there was no voter fraud

Town Administrator Fournier lastly provided an update on the **MacIntosh Well**, and said the blending facility had started pumping water into the system at the beginning of November. He said that since November 15th the well and the blending facility had been pumping 24 hours/day, and said that as of December 1st the MacIntosh Well was online and pumping 1.984 million gallons of water into the water system. He said the Water Department had performed water sampling and testing, and that all tests had passed the All-Safe drinking water standards. Vice-Chair Nazzaro asked how that was impacting the water situation, and Town Administrator Fournier said he was waiting to hear from the Water Department and said he would also provide the recharge rate. Chairman Levy asked if the testing met all standards, and Town Administrator Fournier said it had but that there would always be some deviation due to contaminants. He said the chemicals were added at the pump house and then went out to blend with the other water in the system.

COMMITTEE REPORTS

Councilor Weinstein stated that there had been two meetings of the *Budget Committee* on November 28th and December 5th, and said no significant concerns had been discussed at either meeting, and no changes had been made to the budgets. She said the Town Public Hearing would be held on December 12th at 7:00 pm, and there would be another meeting on December 19th at 8:00 pm to review the School Warrant Articles and any other questions on the School Budget. She said the School Public Hearing was scheduled for January 12, 2017, which was a Thursday, and was different from their usual Monday night meetings.

OLD BUSINESS

ORDINANCES AND RESOLUTIONS IN THE 2ND READING

Resolution #2016/2017-13 Approval of the Memorandum of Understanding between the Town and the School for Finance Director Services

Councilor Pike made a motion to approve *Resolution #2016/2017-13 Approval of the Memorandum of Understanding between the Town and the School for Finance Director Services*, which was seconded by Councilor Weinstein.

Town Administrator Fournier reviewed the Memorandum of Understanding (MOU) between the Town and the School for Finance Director Services. He said he had met with the School Board and the Joint Sub-Committee, and they had come up with a job description for the position and the draft of the Memorandum of Understanding. He explained that the position would be an employee of the School in consultation with the Town Administrator. He said the School Finance Office and the Town Finance Department would remain independent, supervised by a single Finance Director who would fulfill the duties of both offices. He said in the event the Administrators were unable to come to an agreement, the School Board Chair and the Town Council Chair would discuss the matter, with any further disagreements to be resolved by a joint meeting of both boards. He stated that the position would be effective March 1, 2017 and the termination would be no later than 6 months prior to the intended termination date of June 30th of the year following written notice.

Town Administrator Fournier said the School and the Town had agreed to share all costs, and that the School would be 64% of the gross budget and the Town 36%. He said the total salary and benefits were \$117,006, with the Town Share \$42,668, and the School Share at \$74,338, and said the Town currently budgeted \$80,000 for contracted services. He explained that this was a first step, and anything they found that did not work could be changed. He said both departments, as well as the individual, were getting ready and a proper transition time had been observed. He said this was a huge step not just for Newmarket but Statewide, and said this would be a model and they wanted to get it as right as possible.

Discussion:

Councilor Thompson referred to section 6 of the MOU with regard to disagreements, and felt it was a good idea to bring that back to the boards. She referred to section 9 regarding termination and said she still felt 6 months was a lot. Town Administrator Fournier said that the parties in this case were the School and the Town, and they could terminate before the 6 months if both agreed. Chairman Levy asked what was left on the Bond Limit. Town Administrator Fournier said each of the bond limits were separate, with a limit of \$23,738,184 for the Town, \$55,389,097 for the School, \$79,127,282 for Water and no limit for Sewer.

Vice-Chair Nazzaro also questioned section 6 with regard to disputes, and said they should be solved by the Town Council and the School Board rather than the Chairs. He referred to section 5 which listed the duties of the position and said that he could find nothing that clearly stated managing the personnel of the Finance Department. Town Administrator said that was covered under "oversees the day-to-day operations of the Finance Department". Vice Chair Nazzaro said he thought that 6 months was too long, and said there was also no duration to the contract. Town Administrator Fournier said they wanted to

keep the agreement open, as they were hiring contracted services for an individual, and they could review it at any time. Vice-Chair Nazzaro felt there should be a limit to the contract as the method of deriving the salary was not necessarily fair. He said there was a fixed cost to Finance Department work which did not vary linearly according to budgets of administrators. He felt they should time-track the process for a year and then establish the salary based on the ratio of time spent in each department. Councilor Pike felt the 6-month time period was acceptable as it would allow time for transition and time for the budget to adjust for both parties. He stated that this was a move toward a unification of government and felt the percentage breakdown of time would matter more if there were two different sets of payers, but that this was all the same tax base.

Vice-Chair Nazzaro said he felt it was absolutely essential they find ways to collaborate with the School, but felt this was a pilot for a partnership and should be done right. Councilor Pike pointed out that there would be a great deal of variability and fluctuation in sharing the position. Councilor Weinstein said it was a fundamental shift in how they were looking at their governments and providing services to the community. Vice-Chair Nazzaro felt there should be some level of testing out the system. Councilor Burns asked how the 6-month term was decided on, and Town Administrator Fournier said it was due to the Fiscal Year ending on June 30th, which would be the termination date. He said this would still leave time to impact the budget and amend it if something came up, and he felt there would be a bigger impact with a shorter time period.

Chairman Levy said he understood how the apportionment of time was crafted, but he felt they should do this right and felt the formula was not lined up logically. He said the Town would be sharing the position with the School and the Superintendent would ultimately be the boss. He felt there might be issues if either party could not get something they needed, and there should be some understanding as to how those things would get done. He questioned the job responsibilities and wanted to make sure there was no overlap between the Town Purchasing Agent and the role of the Facilities hire. Town Administrator Fournier said there was no overlap, and said that currently the Finance Director was the Purchasing Agent for the Town and he provided for every department. He said the purchasing role for Facilities would be no different from other departments soliciting bids, and said every department had a level of purchasing by submitting the bids and the Purchasing Agent provided the final review.

Chairman Levy brought up the employee reviews, which were to be done by the Superintendent in writing with input from the Town Administrator, and suggested that it would be appropriate for the Town Administrator to also provide written comments for the review process. Town Administrator Fournier said that in any contractual relationship things would be put in writing so that there would ultimately be a record. He said any issues he had or any complaints would become part of the personnel file in writing. Chairman Levy felt that should be in writing in the contract. Vice-Chair Nazzaro said he also felt that what was written in the job description should be included in the MOU, so that how the evaluation was done was contractually agreed upon.

Chairman Levy said he supported this resolution totally, but felt that 6 months was unacceptable as a time period and it should be 90 days. He said that on page 13 under Reports To: the Supervisor should be listed and pointed out that no working conditions, including mental, physical, and environmental demands, were listed in the Job Description and needed to be added. Town Administrator Fournier said the School

District was writing the job description but he would let them know. Chairman Levy asked if under Performance Responsibilities on page 14, the Town should also be listed with regard to assistance with the preparation and negotiation with various departments, and Town Administrator Fournier said the Town should also be listed.

Councilor Thompson said this was a contract and they did not get to write the specifications for the position. She said approving the MOU was to her approving a contract to hire financial services with the School, not necessarily the whole job description. She said she did not have a problem with the MOU and felt that the 6-months term or prior was fine with her. Vice-Chair Nazzaro pointed out that if the Town or School did not agree on wanting to terminate the agreement, they could not get out of it for 6 months. Chairman Levy felt it was important as it was a contract that they clarify as much as possible up front. Vice-Chair Nazzaro said he felt the issue was that if something egregious happened they would be tied for 6 months with no ability to get out of the contract.

Councilor Thompson asked if this was the only sticking point and asked what they needed to do to get this done. Town Administrator Fournier said he would have to meet with the School Board to renegotiate and the Council would not act on it this evening. Councilor Weinstein said she understood the concerns raised, but felt if something so concerning to the Town occurred, the person would be terminated in a reasonable amount of time if the Town and The School agreed. Councilor Burns said she hoped that if it were a termination situation both parties would agree. She said she did not want to have to go back and renegotiate if it was unnecessary, and hoped they could come to some conclusion. Vice-Chair Nazzaro said he would also prefer they not have to go back and renegotiate. He said he was concerned that there was no end date to this contract, and that if a future Supervisor decided they needed a Business Administrator 90% of the time, the Town would be hamstrung. He said they needed to do this right as protection from a worst-case scenario, and said he did not see the downside to waiting 2 weeks to change the 6 months to 90 days. Councilor Burns said she thought the wording of the termination of the agreement was confusing, especially the "6 months prior to termination which shall be June 30th". Town Administrator Fournier said firstly that the contract was negotiated and not binding on the Superintendent, and secondly he needed guidance from the Council as to how to proceed, and asked if they wanted him to go back and renegotiate.

Councilor Pike said there were essentially 6 votes here, and that 4 of the Councilors were okay with the contract as it was written and 2 of the Councilors were not. He said if the majority of the people present thought the contract was satisfactory as written, and everyone agreed they should move forward, he was not sure they should have to go back and renegotiate. He said he preferred to vote tonight though he would have preferred the vote to be unanimous. Chairman Levy said he did not think 2 weeks would make any difference, and asked about the June 30th date that Councilor Burns had brought up. Town Administrator Fournier explained that if they decided they did not want the service any longer, the latest they could tell them was 6 months prior to June 30, 2017.

Vice-Chair Nazzaro said he was even more against the June 30th deadline, and said it would not be a bad thing to take 2 weeks to go back the School Board and have a conversation. He said if they were going to continue working with the School, then they would have to get used to things taking a little longer as they were 2 independent bodies. Councilor Thompson pointed out that if something egregious happened with

the employee, it would come under the Employee Agreement. She said she thought some people were getting confused between what was an employee agreement and what was a contract agreement with the School. Councilor Burns said her point had been that if this was something that most agreed upon, she did not see the point of going back to the School Board. She said on the other hand, if they were going to continue to align services with the School, part of the process might be for both boards to have more joint meetings or have representatives of the School Board present to answer questions.

Town Administrator Fournier said that the Council did appoint 2 representatives to participate in the negotiations, and Vice-Chair Nazzaro pointed out that this was the Council conversation. Councilor Pike said he would like that the whole atmosphere moving forward not be any more divisive than it needed to be, and preferred it not be divisive at all. He said he would like this to be a unifying experience and he was willing to have a conversation with the School Board about the time period, but he did not want the 6 months versus 3 months to deep-six the whole thing. Vice-Chair Nazzaro stated that he wanted to vote for this, and felt if they could take a few more weeks so everyone could get to a point to vote yes, it would be a more unifying experience. Chairman Levy said they had also addressed whether disagreements should go to the Chairs or the Boards. Councilor Pike said his understanding was that the Chairs were there as a sort of preliminary discussion. Councilor Weinstein said she appreciated Councilor Pike's diplomacy, and felt they could either present their concerns to the School Board or they could amend it this evening.

Town Administrator Fournier said if they changed 6 months to 90 days and took out "Chairs", he felt it would be acceptable to say they were amending it in this way and passing it on to the School Board, but felt if there were more issues they would need to send a letter. Chairman Levy reviewed the issues, which were the Boards rather than Chairs and 90 days rather than 6 months, but said he did not know about "June 30th". He said the only other thing was to include that written reviews be added by the Town Administrator. Councilor Pike said he agreed there should be written reviews from both parties, but he still thought that it was more practical for the Chairs to meet first. He said he was okay with talking to the School Board about the timing to see if they could get to a unanimous Council vote.

Town Administrator Fournier said he did not have a majority for 90 days versus 6 months, and said he had 90 days with and without June 30th. Vice-Chair Nazzaro said there should also be a section in the MOU about the evaluation, taken exactly from the Job Description, with written reviews added. He said he also did not want to be tied down by the June 30th date, and Chairman Levy agreed. Vice-Chair Nazzaro felt that 90 days was immaterial if June 30th was still in there, and said he would rather have 6 months with no June 30th than 90 days with June 30th. Councilor Pike asked if they could agree on 6 months with no June 30th. Chairman Levy said he would not agree but the Council had the vote.

Town Administrator Fournier asked if at this point the Council was amending or going back to the School. Vice-Chair Nazzaro said he would rather they send the School something that the Council had voted on. Councilor Pike said he did not want this to be the Town Council insisting on these changes, as that did not represent their position. Vice-Chair Nazzaro said he would agree to 6 months no June 30th as a compromise. Councilor Pike said there was a collaborative enterprise here, which was about respecting each other's budget processes, and said he felt it was a reasonable compromise. Town Administrator Fournier again asked if the Council wanted to amend the agreement or send it as a communication to the

School. Councilor Thompson said she would like to amend it tonight, vote on it, and send it out. She said she assumed Town Administrator Fournier would speak with the Superintendent.

Town Administrator Fournier asked that someone make a motion to amend the Memorandum of Understanding to include the following: (1) to have the Chairs discuss the matter with the 2 Administrators, (2) to include a written review of the Finance Director by the Town Administrator, and (3) to amend the last paragraph to read 6 months and to strike out June 30th.

Vice-Chair Nazzaro made the motion to amend the Memorandum of Understanding as stated above, which was seconded by Councilor Pike.

Town Administrator Fournier polled the Council and the motion to amend the Memorandum of Understanding passed by a vote of 5-1.

Town Administrator Fournier again polled the Council and *Resolution #2016/2017-13 Approval of the Memorandum of Understanding between the Town and the School for Finance Director Services* was approved, as amended above, by a vote of 5-1.

Chairman Levy stated that for the record he voted no because the term was not 90 days.

ORDINANCES AND RESOLUTIONS IN THE 3RD READING – None

ITEMS LAID ON THE TABLE – *Resolution #2015/2016-52 Authorizing the Designation of a Portion of Route 152 as an Economic Recovery Zone.* (This Resolution is tabled from the June 15, 2016 Council Meeting pending Planning Board action.)

NEW BUSINESS/CORRESPONDENCE

TOWN COUNCIL TO CONSIDER NOMINATIONS, APPOINTMENTS AND ELECTIONS

Strafford Regional Planning Commission, Commissioner

Candidate: *Lisa Henderson – Term Expires December 7, 2020*

Vice-Chair Nazzaro made a motion to approve the nomination of *Lisa Henderson* as a *Commissioner to Strafford Regional Planning Commission - Term to Expire December 2020*, which was seconded by Councilor Burns.

Town Administrator Fournier polled the Council and the nomination of *Lisa Henderson* as a *Strafford Regional Planning Commissioner* was approved by a vote of 6-0.

Lamprey River Advisory Committee

Candidate: *Elizabeth Dudley – No Term Expiration*

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Councilor Weinstein made a motion to approve the nomination of *Elizabeth Dudley - No Term Expiration*, to the *Lamprey River Advisory Committee*, which was seconded by Councilor Pike.

Chairman Levy asked why there was no term limitation, and Town Administrator Fournier said the committee was advisory rather than statutory.

Town Administrator Fournier polled the Council and the nomination of *Elizabeth Dudley* to the *Lamprey River Advisory Committee* was approved by a vote of 6-0.

ORDINANCES AND RESOLUTIONS IN THE 1ST READING

Resolution #2016/2017-14 Relocation of Water & Sewer Utilities as Part of NHDOT Bike Lane Project

Chairman Levy read *Resolution #2016/2017-14 Relocation of Water & Sewer Utilities as Part of NHDOT Bike Lane Project* without reading the breakdown of the Water & Sewer Capital Reserve figures.

Resolution #2016/2017-15 Water & Wastewater System Buildout Analysis

Chairman Levy read *Resolution #2016/2017-15 Water & Wastewater System Buildout Analysis* in full.

Resolution #2016/2017-16 Amending the Administrative Code: Creation of the Department of Buildings

Chairman Levy read *Resolution #2016/2017-16 Amending the Administrative Code: Creation of the Department of Buildings* in title only.

Resolution #2016/2017-17 Replacement of Windows at the Community Center

Chairman Levy read *Resolution #2016/2017-17 Replacement of Windows at the Community Center* in full.

CORRESPONDENCE/CLOSING COMMENTS

Councilor Thompson said she wanted to thank the Newmarket Elves for the decorations, and say Happy Holidays to everyone. Councilor Burns echoed the statement.

Councilor Weinstein said she had spoken with the Town Moderator Chris Hawkins and Town Administrator Fournier about the Civics students who assisted with the election, and the idea was brought up to formally recognize those students during the School day. Town Administrator Fournier said they were thinking of a certificate of appreciation which would be presented to the students in class.

NEXT MEETING: The next regular meeting of the Town Council is scheduled for December 21, 2016.

ADJOURNMENT

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Councilor Burns made a motion to adjourn the meeting, which was seconded by Councilor Weinstein. The meeting was adjourned at 9:07 pm.

Respectfully submitted,

Patricia Denmark, Recording Secretary