

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

August 16, 2017 7:00 PM

TOWN COUNCIL CHAMBERS

Approved September 6, 2017

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

EXCUSED: Councilor Amy Thompson

ALSO PRESENT: Town Administrator Steve Fournier, Facilities Director Greg Marles, Environmental Services Director Sean Greig, Town Communications Attorney Katherine B. Miller of Donahue, Tucker & Ciandella, PLLC, Richard N. Davee of Wright-Pierce

AGENDA

Chairman Dale Pike welcomed everyone to the August 16, 2017 Newmarket Town Council Meeting and called the meeting to order at 7:05 pm, followed by the Pledge of Allegiance.

Vice-Chair Weinstein made a motion to seal the minutes of the Non-Public Session, which was seconded by Councilor Burns. Town Administrator Fournier polled the Council and the motion to seal the minutes of the Non-Public Session was approved by a vote of 6-0.

Chairman Pike stated that that Councilor Amy Thompson was excused.

PUBLIC FORUM

Chairman Pike opened the Public Forum at 7:06 pm.

As there was no public comment, Chairman Pike closed the Public Forum at 7:06 pm

PUBLIC HEARING:

Resolution 2017/2018-04 Amending Cable Franchise Agreement with Comcast Maine/New Hampshire for a Five-Year Extension

Town Communications Attorney Kate Miller, of Donahue, Tucker & Ciandella, PLLC, said that she had worked with a different Town Council several years ago to do an extensive renewal for Comcast which resulted in a robust Cable Franchise Agreement. She said that towns did not have unlimited control over what to negotiate for in a Cable Franchise, and said the deck was stacked in favor of the existing Cable Operator. She said Newmarket could find another provider to compete with Comcast, but that it was economically not feasible for another operator to come in and replace all the existing equipment, and said Comcast was a kind of economic monopoly.

Attorney Miller explained that the Town could not kick out the current provider unless they were not in compliance or did not provide a reasonable proposal for the renewal of the Franchise Agreement. She said audit questions, reviewed by Town officials, had been submitted at the last renewal to make sure Comcast was compliant with the current agreement. She said there was nothing she could recommend to gain from the existing Franchise Agreement at this time, except adjusting the language relative to taxation of Comcast for use of the public right-of-way, which Comcast had agreed to. She said the easiest way forward was to do an amendment to the current franchise and extend it for another 3-5 years.

Attorney Miller said that at this point the Comcast business model included voice, internet, and video through the Cable TV part, but that most revenue was shifting to the internet side of their business over which towns and cities have no control. She said it was more in the Town's interest to keep up the same level of service in the future, and the best approach was to make small changes to the Cable Franchise Agreement and extend the terms out.

Town Administrator Fournier stated that the Town already had everything they needed from Comcast with 2 channels plus charging 5% for the franchise fee from Comcast. He said there were really not a lot of things they could negotiate, and said people were now getting away from Cable and going to streaming.

As there were no comments or questions from the public, Chairman Pike closed the Public Hearing at 7:14 pm.

Vice-Chair Weinstein made a motion to approve *Resolution 2017/2018-04 Amending Cable Franchise Agreement with Comcast Maine/New Hampshire for a Five-Year Extension*, which was seconded by Councilor Burns.

Discussion: Vice-Chair Weinstein said she had received a comment from a resident who was frustrated with Comcast's service, and asked if there was any way to address that issue. Attorney Miller stated that in the current Franchise Agreement, Section 7 referred to FCC's Customer Service requirements. She said those requirements were better than anything an individual community could negotiate, and it was hard to negotiate more than the standard for a town the size of Newmarket. She said there would be some big changes over the next 5 years, with people leaving traditional cable and getting video from other places. Councilor Bowden asked about getting Channel 13 on-demand. Town Administrator Fournier said it was based on the size of the community, and that currently the only area with on-demand was Boston.

Attorney Miller asked if Newmarket still had a portal for streaming through the website, as that could provide some of the same services. Town Administrator Fournier said that they did have the portal, and said that many communities were going to that kind of dual platform for providing dual information. He said that Comcast was rigid about what it would do in communities, and said that HDTV for the Seacoast would not be available until Comcast decided to make it available for all communities.

Town Administrator Fournier polled the Council and Resolution 2017/2018-04 Amending Cable Franchise Agreement with Comcast Maine/New Hampshire for a 5-Year Extension was approved by a vote of 6-0.

TOWN COUNCIL TO CONSIDER ACCEPTANCE OF MINUTES

Acceptance of the Minutes of the Regular Meeting of July 19, 2017

Councilor Bowden made a motion to approve the minutes of the Regular Meeting of July 19, 2017, which was seconded by Councilor Burns.

Changes/Corrections: Chairman Pike requested correction of 2 typographical errors on page 6.

Town Administrator Fournier polled the Council and the minutes of the Regular Meeting of July 19, 2017 were approved as amended by a vote of 5-1, with 1 abstention.

Acceptance of the Minutes of the Non-Public Session of July 19, 2017

Councilor Bowden made a motion to approve the minutes of the Non-Public Session of July 19, 2017, which was seconded by Councilor Kast.

Town Administrator Fournier polled the Council and the minutes of the Non-Public Session of July 19, 2017 were approved by a vote of 4-0, with 2 abstentions.

REPORT OF THE TOWN ADMINISTRATOR

Town Administrator Steve Fournier said that he first wanted to commend the Newmarket Police Department and Newmarket ASAP for a very successful **Newmarket Night Out** this past Saturday. He said there were a lot of people and a lot of excitement, and it was a great chance to meet Fire & Rescue and Police personnel. He commended everyone for their hard work and thanked Downtown businesses for their contributions. He said there had been enough donations to have funds available for next year.

Town Administrator Fournier next addressed the **Heron Point Sanctuary** and the matter of it currently being gated. He said that while it was gated, it was still open to the public from dawn to dusk, though vehicle access was restricted. He said earlier this year the Heron Point Homeowners Estates Cooperative contacted the Town through their legal counsel with a complaint of people in the Park after dusk. At that time they increased Police patrols and encouraged neighbors to call the police if people were in the Park after dusk. He said that in June the Town received notice to lock the gate on a permanent basis if they could not assure the gate would be locked nightly. He said they continued to patrol, and in July received

a follow-up letter from the Board of Directors threatening legal action to revoke the Town's access over their property to the Park. He said the Town could not risk legal action from the Cooperative and they were forced to comply. He said the Town did have an easement, but that the Town Attorney advised that it could be revoked, and they would then have no access to their land if the Homeowners Group would not cooperate and come up with another plan.

Vice-Chair Weinstein said she thought it was completely unreasonable for the Cooperative to react in this way and it was unreasonable to ask people to walk along Bay Road from the parking lot. She asked if it would be possible to move back the gate and allow for a few parking spaces. She said it was a beautiful area and it was a shame to have it blocked off to the public. Councilor Kast said she would like more explicit clarification about what would happen if they lost the easement, and asked if it was the only legal access to the land at this time. Town Administrator Fournier said it was the only access. Vice-Chair Weinstein asked what the issues had been, and town Administrator Fournier there were complaints of parties in the park and traffic after dark. He said he would ask about moving back the gate and asked that people of the community express the importance of the access to the Homeowners Board. Councilor Finch said that the Conservation Commission also hoped to meet with their board to see if something could be worked out.

Town Administrator Fournier next provided an **LED Street Lighting Update**, and said he had been notified by Eversource that they would provide the Town with a \$24,100 rebate for replacement of all overhead streetlights in the community. He said they were estimating the total cost of the project to be \$57,000 and had applied to CFDA for a loan to fund the remainder of the project. He said they would also be getting a rebate on the decorative lighting of about \$7,000. He said it looked like they would be able to complete both projects by late 2017/early 2018, and would next get 3 proposals for costs.

Town Administrator Fournier next addressed the **Additional Road Money** being provided by the passage of State Senate Bill 38, in which the Legislature would be returning money to municipalities specifically for road and infrastructure projects. He said the Town of Newmarket would receive \$154,378.12 in additional funds, and he had reviewed streets that could move forward in the plan with the Director of Public Works. He said he had the roads before the Council tonight, and asked the Town Council to suspend the rules to act on this resolution this evening so they could be included in the original Bell & Flynn estimate.

Water & Wastewater Buildout Report

Director of Environmental Services Sean Greig introduced engineer Richard N. Davee of Wright-Pierce to present a review of the Water & Wastewater Buildout Study.

Mr. Davee stated that infrastructure was the key to a vibrant community, and said Newmarket had a new Wastewater Treatment Plant coming onboard and a new drinking water service with the MacIntosh Well. He said as the community continued to grow, they needed to know how long they are good for. He said the goals for the Town were to update the water and wastewater flow analysis, complete the buildout analysis, review the capacity of the Wastewater Plant and water supply, and discuss strategies for management.

Mr. Davee said the Water and Wastewater Flow Analysis was based on metered use, water loss, inflow and infiltration and peaking factors, using real numbers based on demands and meter records and breaking them into classes. He said Newmarket was continuing to cut into water loss, and that inflow and infiltration, based on extraneous water leaking into the sewer system, had come down quite a bit. He said the community had to be able to meet Peaking Factors and not just averages and had to build that capacity into plants and water sources.

Mr. Davee explained that for the Buildout Analysis they looked at population growth and made some gross assumptions to come up with water demands and water needs for the 20-year analysis. He said they also looked at the Town's current land area and zoning, and looked at what would happen if they built everything out. He said that Saturation Buildout was based on buildable area and zoning, and said it was not a real number but a number for guidance. He said they looked at the present zoning and the impact of changes as a sensitivity analysis, and stated that he had met with the Planning Board and looked at some minor zoning expansions.

Mr. Davee next reviewed the Wastewater Treatment Facility, and said they looked at flows, BOT, TSS and nitrogen removal based on 20 years (2037) to see if things still looked good, which they basically did. But he said if they got to saturation, and built out everything the way it was planned, they would have some problems. He said the Town did not have an excess of capacity and should use it wisely. As far as the Water Supply, they looked at the Town's sources: the Bennett/Sewell Wells and the MacIntosh Well.

Mr. Davee said they did a safe yield analysis of the water supply with two conditions, the first being the average daily demand and the second being the maximum per day with the largest pumping unit out of service. He said that originally they had a 300 gal/min safe yield, which was how much they could pump continuously in a dry year. He said the safe yield for the Bennett/Sewell Wells had gone down to 150-200 gal/min as they were currently not as strong as before, but that the MacIntosh Well had relieved that a little. He said the MacIntosh Well had a safe yield of 300 gal/min but it had to be blended with Bennett/Sewell in order to be used, and said the Town was not in good shape in all conditions.

Mr. Davee stressed that the MacIntosh Well was a blending facility and was a difficult well to operate, with a complex system which required taking water from one side (Bennett/Sewell) and blending it with the MacIntosh, which was not a good solution. He reviewed Table 7-5 which showed the adequacy of the existing water supply system, and said the average daily demand of 378,470 gal/day could be met with all wells online (813,600 gal/day) and could also meet the maximum day demand of 574,600 gal/day. He said safe yield adequacy could be met without the Bennett Well, but not without the Sewell which needed to blend with the MacIntosh. The 2037 average daily demand of 513,190 gal/day could be met with all wells online, but not the maximum day demand, and things got worse with other situation buildouts. Councilor Bowden asked how the numbers for 2037 were determined. Mr. Davee said for the average daily demand they looked at population growth, and for the maximum day demands they looked at all the peaking factors.

Mr. Davee lastly reviewed Water Management Strategies which involved looking at new water sources. He said the Town had already looked at the Tucker Well, which like the MacIntosh would need treatment.

He said that because of chemical issues, the Town's 2 big water sources needed treatment to take advantage of safe yields for the future and they needed to start looking into treatment costs. He said Newmarket was continuing with inflow & infiltration reduction in Wastewater Management, which was a good strategy, and said some of the same strategies could also apply to Demand Management.

Chairman Pike said that he was not prepared to fully understand it as there was a lot to digest. He said it sounded like, should they reach a point where neighbors wanted to send effluent to their Wastewater Treatment Plant, there could be some need to possibly reach a restraint on capacity. Environmental Services Director Greig said there were incentives to increase the Town's capacity, with credits from the EPA for shifting flows from one watershed to another. Mr. Davee said there was a quantity issue as they were up against the allowable flow out of the Wastewater Plant, but said there were ways to get higher quality water so they could take on more flow. Environmental Services Director Greig said better quality would entail treatment to increase flow.

COMMITTEE REPORTS

Councilor Finch stated that the *Conservation Commission* met August 10th, and they had heard back from the Planning Board that they did get a Technical Assistance Grant to help update Stormwater requirements, which would be a 6-month project in combination with Setting Sail. He said they spent a lot of time on Schoppmeyer Park and the progress there, and had approved the sign that would be installed. He said they were looking at detailed landscaping plans for the entrance and would be installing granite posts, and said they also discussed maintenance of the park. He said they talked about Schanda Park and installing safety fencing due to the erosion, and also about the boat ramp. He said they also discussed Heron Point.

Councilor Burns stated that the *Planning Board* had met August 8th, and had approved Michal Zahorik as an Alternate to the Planning Board. She said they had a work session, which was a discussion of the new overlay district on New Road which was set for a Public Hearing on September 12th. She said they discussed meeting the high demand for medical staff with the increase of Continued Care facilities in the Seacoast area and talked about traffic. She said they also discussed the longevity of such facilities. She said the boat ramp at Schanda Park was brought up as well as Heron Point.

Councilor Weinstein asked Councilor Finch if Schoppmeyer Park was open to public access at this time, and Councilor Finch said it could be accessed but was not really open.

OLD BUSINESS

ORDINANCES AND RESOLUTIONS IN THE 2ND READING

Resolution 2017/2018-01 Authorization to Purchase a 2017 Ford F-250 Pickup for the Sewer Department, and withdraw said funds from the previously-established Sewer Capital Reserve Fund

Vice-Chair Weinstein made a motion to approve Resolution 2017/2018-01 Authorization to Purchase 2017 Ford F-250 Pickup for the Sewer Department, and withdraw said Funds from the Previously-Established Sewer Capital Reserve Fund, which was seconded by Councilor Burns.

Environmental Services Director Greig said that the current truck was purchased in 2004 for the Sewer Department to deliver samples to the laboratory. He said it was also used by other sewer operators to check pumping stations and for other sewer system work. He said trucks were normally kept for 12 years and this truck was 13 years old. He said the truck was sent to Auto Excellence and they estimated approximately \$9,000 to bring it up to par, saying it was not worth putting the money into. He said according to their contract, Grappone Ford was a State Bid and they had given him a price of \$28,978 for a new truck. He said they had been saving for the truck for the last 13 years and had the money in CIP. He said he was looking for authorization to withdraw the money from CIP and purchase the new vehicle.

Discussion: Councilor Kast asked procedurally why they went to Grappone Ford, and Environmental Services Director Greig said it was a State Bid, which according to their purchasing policies qualified as doing a bid process. Chairman Pike asked about the mileage, and Environmental Services Director Greig said the vehicle had 55,000 miles on it, but was being used more now due to a bigger workforce.

Town Administrator Fournier polled the Council and Resolution 2017/2018-01 Authorization to Purchase 2017 Ford F-250 Pickup for the Sewer Department, and withdraw said Funds from the Previously-Established Sewer Capital Reserve Fund, was approved by a vote of 6-0.

Resolution 2017/2018-02 Creation of an Energy and Environment Advisory Committee

Vice-Chair Weinstein made a motion to approve Resolution 2017/2018-02 Creation of an Energy and Environment Advisory Committee, which was seconded by Councilor Bowden. The resolution was sponsored by Councilors Weinstein and Kast.

Vice-Chair Weinstein stated that she had been approached by members of the community about looking into issues such as composting and the use of solar arrays for the community. She said she had spoken with Town Administrator Fournier and Councilor Kast about putting together an Advisory Committee to investigate costs, the benefit to the community, and the willingness of the community to participate. She said the Advisory Committee would be made up of a Town Council member, a Conservation Commission member, a Planning Board member, and 4 members-at-large, and felt it was important for both the community and the environment.

Councilor Kast felt the issue was timely and would give the community an opportunity to move forward. Chairman Pike asked if anyone from Administration would participate on a regular basis, and Town Administrator Fournier said they would go as needed depending on the topic of discussion.

Town Administrator Fournier polled the Council and Resolution 2017/2018-02 Creation of an Energy and Environment Advisory Committee was approved by a vote of 6-0.

Resolution 2017/2018-03 Issuing \$10.34M in Bonds and Notes for the Wastewater Treatment Facility Upgrade

Councilor Burns made a motion to approve *Resolution 2017/2018-03 Issuing \$10.34M in Bonds and Notes for the Wastewater Treatment Facility Upgrade*, which was seconded by Councilor Finch.

Town Administrator Fournier explained that this was pretty much a clerical action authorizing the Town Council to issue bonds for \$14.1 million to reconstruct the Wastewater Treatment Plant. He said a loan was originally taken out of a State Revolving Fund, which had loan forgiveness of \$4.1 million. He said they were now taking funds from Rural Development in the form of a bond to pay off that amount and the \$10 million remaining debt. He asked the Council for a friendly amendment to the first “therefore let it be resolved” to insert in the blank space that the bonds be dated August 21, 2017. The Council was in agreement.

Town Administrator Fournier polled the Council and *Resolution 2017/2018-03 Issuing \$10.34M in Bonds and Notes for the Wastewater Treatment Facility Upgrade* was approved as amended by a vote of 6-0.

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 – None

TOWN COUNCIL TO CONSIDER NOMINATIONS, APPOINTMENTS AND ELECTIONS – None

ORDINANCES AND RESOLUTIONS IN THE 1ST READING

**Resolution 2017/2018-05 Resolution Amending the Bell & Flynn Road Paving Contract
(TA Requests Suspension of the Rules)**

Chairman Pike read *Resolution 2017/2018-05 Resolution Amending the Bell & Flynn Road Paving Contract* in full, and asked for a motion to suspend the rules.

Councilor Kast made a motion to suspend the rules which was seconded by Vice-Chair Weinstein.

Town Administrator Fournier explained that he wanted to use all the extra funds available for the roads from the State to update the bid from Bell & Flynn. He said the roads before the Council tonight were Elm Street, Spring Street, Pine Street, Central Street, Church Street, Granite Street, and Elm Court.

Councilor Burns made a motion to approve *Resolution 2017/2018-05 Resolution Amending the Bell & Flynn Road Paving Contract* which was seconded by Councilor Bowden.

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Town Administrator Fournier polled the Council and Resolution 2017/2018-05 *Resolution Amending the Bell & Flynn Road Paving Contract* was approved by a vote of 6-0.

Resolution 2017/2018-06 Resolution Authorizing the Town Administrator to enter into an Agreement with McDevitt Trucks to Purchase a 2017 Mack GU713 Roll Off Truck, and withdraw said funds from the previously-established Public Works Capital Reserve Fund

Chairman Pike read Resolution 2017/2018-06 *Resolution Authorizing the Town Administrator to enter into an Agreement with McDevitt Trucks to Purchase a 2017 Mack GU713 Roll Off Truck, and withdraw said funds from the previously-established Public Works Capital Reserve Fund* in full.

Resolution 2017/2018-07 Resolution Authorizing the Town Administrator to enter into an Agreement with Industrial Protection Services to Purchase a 2017 Zodiac MilPro ERB 400 Rescue Boat, and withdraw \$19,550 from the previously-established Fire Rescue Capital Reserve Fund

Councilor Pike read Resolution 2017/2018-07 *Resolution Authorizing the Town Administrator to enter into an Agreement with Industrial Protection Services to Purchase a 2017 Zodiac MilPro ERB 400 Rescue Boat, and withdraw \$19,550 from the previously-established Fire Rescue Capital Reserve Fund* in full.

CORRESPONDENCE/CLOSING COMMENTS

Councilor Burns reminded everyone that the Newmarket Splash & Dash would be held on Saturday with registration beginning at 10:30 am.

Vice-Chair Weinstein asked that data regarding the number of calls for the Rescue Boat be provided. Town Administrator Fournier stated that the Fire Chief would be available for the presentation.

NEXT MEETING: Next regular Town Council Meeting scheduled for September 6, 2017. Special Joint Town Council/School Board meeting scheduled for August 30, 2017.

ADJOURNMENT

Chairman Pike adjourned the meeting at 8:29 pm.

Respectfully submitted,

Patricia Denmark, Recording Secretary