

MINUTES
REGULAR MEETING OF THE NEWTON CITY COUNCIL
February 5, 2013 – 7:00 P.M.

The regular meeting of the Newton City Council was held on Tuesday, February 5, 2013 at 7:00 p.m. in the Council Chambers at City Hall.

PRESENT: Mayor Anne P. Stedman, Mayor Pro Tem Bill Lutz, Council Members Mary Bess Lawing, Tom Rowe, Robert C. Abernethy, Jr., Wayne Dellinger and Wes Weaver

STAFF: City Manager Todd Clark, City Attorney John Cilley, Public Information Officer Julie Chang, Information Systems Director Jason Clay, City Department Heads and members of the management team

ABSENT: City Clerk Amy S. Falowski

ITEM 1: CALL TO ORDER – Mayor Anne P. Stedman

Mayor Anne P. Stedman welcomed everyone and called the meeting to order. The Mayor welcomed newly appointed City Attorney John Cilley and new Assistant City Manager Sean Hovis.

ITEM 2: OPENING – Council Member Mary Bess Lawing

Council Member Mary Bess Lawing introduced Rev. Fitzpatrick, who provided the invocation, and led the Pledge of Allegiance.

ITEM 3: APPROVAL OF MINUTES FROM THE January 8, 2013 REGULAR CITY COUNCIL MEETING

Upon motion duly made by Council Member Mary Bess Lawing, seconded by Council Member Robert Abernethy, Jr., it was unanimously RESOLVED:

That the Regular and Closed Minutes of the January 8, 2013 Regular City Council Meeting be – APPROVED

ITEM 4: CONSIDERATION OF CONSENT AGENDA ITEMS

Upon motion duly made by Council Member Robert Abernethy, Jr., seconded by Council Member Tom Rowe, it was unanimously RESOLVED:

That Consent Agenda be – APPROVED.

- A. Tax Releases – December 2012
- B. Sewer Adjustments – February 2013
- C. Consideration to Adopt a revision to the City Code – Chapter 46 Fire Prevention and Protection, Article III Fire Prevention Code, Section 46-141 – to Recognize the New 2012 NC Fire Prevention Code
- D. Consideration of Audit Contract for FY 2012-13

(Ordinances, Resolutions and Proclamations are hereby referenced and on file in the office of the City Clerk).

ITEM 5: **COMMENTS FROM THE PUBLIC: (PERSONS WANTING TO MAKE A PUBLIC COMMENT ON NON-AGENDA ITEMS ARE REQUESTED TO SIGN IN WITH THE CITY CLERK PRIOR TO THE MEETING)**

Mayor Anne P. Stedman asked if there was anyone present that would like to make any comments concerning agenda and non-agenda items. No one appeared.

ITEM 6: **Public Hearing**

A. Zoning Ordinance Text Amendment 2012-05

Assistant Planning Director Alex Fulbright stated the proposed Amendment 2012-05 would allow Gun and Ammunition Sales, Ammunition Manufacturing and Assembly and Indoor Shooting Ranges as permitted uses in the M-1 General Manufacturing Districts. Mr. Fulbright said the changes are not site specific and provided a map of M-1 Districts in the City. Mr. Fulbright said the Newton Planning Commission had initial concerns about safety, noise and the environmental impact of allowing those uses.

Mr. Fulbright said, after reviewing the concerns, the planning commission concluded that safety would be addressed under state building codes, the city's noise ordinance would address noise concerns and EPA and OSHA standards would regulate the environmental impact. Mr. Fulbright noted the City Council, if it approves the zoning ordinance text amendment, would also need to amend the City Code, specifically Section 66-3 – *Discharge of Firearms, explosives, etc.* Council would need to hold a separate public hearing to amend the City Code.

Mayor Stedman opened the public hearing and asked if anyone present would like to speak on the proposed zoning ordinance text amendment.

Mr. David Collins stated he was the applicant for the text amendment to the zoning ordinance. He said he operates Shooters Sanctuary LLC, which was established in September 2012. He has a three phase plan to open an indoor shooting range in the old Carolina Mills Building on Main Avenue. The business began ammunition production in January, Mr. Collins stated. The next step is firearms sales and service in May and opening the indoor shooting range in August. The building is a minimum of 15,000 square feet and the bulk of it will be used for the shooting range, Mr. Collins stated.

Mr. Collins showed the Council digital floor plans and computer generated images of the proposed shooting range, retail store, classrooms and production areas. Mr. Collins stated internal and external safety measures are important. The building would use a water filtration system to contain and remove expended rounds. The building has triple-thick walls, Mr. Collins stated, which should be sufficient for shielding and noise reduction. He is willing to add sound baffling if needed. Mr. Collins said there are community benefits to having an indoor shooting range, stating that fire arms owners could learn how to safely handle weapons at his business.

Mayor Stedman asked if anyone else would like to speak. She stated the Council is considering the zoning amendment, not one specific business. No one appeared.

Upon motion duly made by Council Member Bill Lutz, seconded by council Member Wayne Dellinger, it was unanimously RESOLVED:

That the Public Hearing be – CLOSED.

Council Member Tom Rowe stated he is concerned about the noise, and asked Mr. Collins to clarify what “baffling” does. Council Member Rowe said he wanted to know what keeps the noise from traveling outside. Mr. Collins stated the old Carolina Mills building was selected because it has triple thick walls. His research indicates the walls should be sufficient for dampening noise, Mr. Collins stated, but he is willing to add baffling to further reduce noise if it’s needed. Mr. Collins said, with the thick walls, the noise level would be about 50 decibels outside.

Council Member Rowe asked about other shooting ranges and how the city could control the noise. Mr. Fulbright said the Council could add conditions to address noise concerns.

Council Member Rowe said he’s concerned a new shooting range may produce too much noise and neighbors will be bothered. Mr. Collins said the City’s current noise ordinance should be sufficient to address noise concerns.

Council Member Robert Abernethy, Jr. stated that if Mr. Collins was speaking at 80 decibels, would he identify something that would make noise at 50 decibels. Mr. Collins said Council Member Abernethy was speaking at about 50 decibels. Mr. Collins said a normal conversation ranges from 50 to 85 decibels and a party would be about 85 decibels.

Council Member Rowe asked how Mr. Collins would keep rifle projectiles in the building. Mr. Collins said by regulation, he must have a steel deflector which is angled toward a water trough. The trough would collect expended lead, which is disposed of following regulations.

Mr. Collins said his business would do everything it could to be part of the community.

Council Member Rowe stated he did not want to allow a shooting range within 1,000 feet of a school. City Manager Todd Clark asked Mr. Fulbright to address Council Member Rowe’s question. Mr. Fulbright said the City could add a condition that would not allow a shooting range within 1,000 feet of a school. Mr. Clark reiterated the Council’s decision is not on Mr. Collins business but on the zoning amendment.

Mayor Stedman asked how the shooting range is regulated and where the lead ends up. Mr. Collins said the EPA regulates the shooting range. Lead will be directed to filters and will be disposed of by EPA regulations.

Mayor Stedman asked if neighbors across the street would be able to hear the noise. Mr. Collins said no.

Council Member Wayne Dellinger made a motion to ADOPT Ordinance 2013- to amend Chapter 102, “Zoning,” of the City Code and was seconded by Council Member Wes Weaver.

Council Member Rowe asked if the motion included the condition that the shooting range must be 1,000 feet from schools.

Council Member Dellinger stated that he did not want to include the condition because current regulations will protect the buildings which house indoor shooting ranges. Adding a condition that it must be 1,000 feet from a school could cause a problem with the area around the middle school. He stated he believes having a shooting range would help the community.

Council Member Abernethy stated the building is the Moretz Building and not the Carolina Mills building. He stated he hopes everyone was able to share their opinion in the discussion.

Council Member Mary Bess Lawing said she agreed with Council Member Rowe. She said she wants the condition to say indoor shooting ranges must be 1,000 feet from schools and churches.

City Attorney John Cilley stated if the council were to add the condition and change the already published proposed zoning amendment, it would have to set a new public hearing. Council Member Dellinger asked if the council could pass the zoning amendment as proposed and amend it later. Mr. Cilley said yes the council could modify the zoning ordinance at a later date.

Upon motion duly made by Council Member Wayne Dellinger, seconded by Council Member Wes Weaver, and with Council Member Tom Rowe and Council Member Mary Bess Lawing voting in opposition to – it was RESOLVED:

That Ordinance 2013-3 to amend Chapter 102, “Zoning,” of the City Code be – ADOPTED.

(Ordinances, Resolutions and Proclamations are hereby referenced and on file in the office of the City Clerk).

**ORDINANCE 2013-3
AN ORDINANCE AMENDING CHAPTER 102
“ZONING”
OF THE CITY CODE OF THE CITY OF NEWTON, NORTH CAROLINA
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON, NORTH
CAROLINA THAT:**

Section 1:

Chapter 102, “Zoning” of the City Code of the City of Newton shall be amended by adding to the existing Section 102-201, Table 4-1, “Gun/ammunition sales” as a permitted use within the M-1 Zoning District, to read as follows:

Use	B-1	B-2	B-3	B-4	M-1	EM-1
SHOPPERS GOODS						
Gun/ammunition sales		X	X	X	<u>X</u>	

NOTE: Items to be added are indicated with an underscore.

Section 2:

Chapter 102, “Zoning” of the City Code of the City of Newton shall be amended by adding to the existing Section 102-201, Table 4-1, “Ammunition Manufacturing and Assembly” as a permitted use within the M-1 Zoning District, to read as follows:

Use	B-1	B-2	B-3	B-4	M-1	EM-1
MFG PROCESS/ASSEMBLY						
<u>Ammunition Manufacturing and Assembly</u>					<u>X</u>	

NOTE: Items to be added are indicated with an underscore.

Section 3:

Chapter 102, “Zoning” of the City Code of the City of Newton shall be amended by adding to the existing Section 102-7 “Definitions”, Indoor Shooting Range means an indoor area designed and improved to encompass shooting stations or firing lines, target areas, berms and baffles, and other related components. The term includes training and education related to firearms and firearm safety.

Section 4:

Chapter 102, “Zoning” of the City Code of the City of Newton shall be amended by adding to the existing Section 102-201, Table 4-1, “Indoor Shooting Range” as a permitted use within the M-1 Zoning District, to read as follows:

Use	B-1	B-2	B-3	B-4	M-1	EM-1
SERVICES						
<u>Indoor Shooting Range</u>					<u>X</u>	

NOTE: Items to be added are indicated with an underscore.

Section 5:

This Ordinance shall become effective from and after the date of its adoption.

Adopted on this the 5th day of February, 2013

ITEM 7: New Business

- A. Consideration of Amendment to the Appearance Commission’s Powers and Duties

Newton Appearance Commission Chair Person Lori Wray stated the commission is requesting its responsibilities be expanded to incorporate additional powers and duties consistent with NC General Statute 160A-452.

Ms. Wray stated the commission’s original powers and duties are contained within a small paragraph. As the commission grew and new members came on board, they wanted to know what the commission could do, Ms. Wray stated. Their research led to NC G.S. 160A-452, and the amendment to the City Code is based on the state law.

City Manager Todd Clark stated the amendment includes all of NC G.S. 160A-452 except for subsections (6)(g) and (6)(h). Wray clarified that subsections (6)(f) and (6)(h) are not part of the amendment to Section 2-212 of the City Code.

Ms. Wray stated the amendment is something everyone thought was done a while ago but it was not.

Council Member Wayne Dellinger said the Appearance Commission is talking about holding more events, and he has no problem with that as long as the commission stays within its budget and does not ask for more funding. Ms. Wray stated the commission recently had a planning session and expects to stay within budget.

City Attorney John Cilley stated though the proposed amendment eliminates of NC G.S. 160A-452(6)h, the Appearance Commission would still be subject to open meetings law.

Council Member Robert Abernethy, Jr. asked Ms. Wray if the powers and duties of the commission, as currently written, were restrictive. Ms. Wray stated the commission wants to be included in things. In the past, Council Member Tom Rowe has helped get their ideas to Council, Ms. Wray said. She stated the Appearance Commission has ideas and wants to present them.

Mayor Anne P. Stedman stated the Sanford Holshouser study recommended expanding the scope of the Appearance Commission. Ms. Wray stated the commission found during its research that no other local appearance commission had only a small paragraph of powers and duties.

Upon motion duly made by Council Member Wes Weaver, seconded by Council Member Tom Rowe, it was unanimously RESOLVED:

That the amendment to Section 2-212 of the City's Code of Ordinances, "Powers and Duties" assigned to the Appearance Commission be – ADOPTED.

B. Consideration of Adoption of By-Laws for Festival and Events Committee

Festival and Events Committee Chair Person Catherine LeFevers stated the committee began researching its role, it determined it did not have any by-laws. Ms. LeFevers said the committee reworked its mission statement and defined its role – to develop an annual plan of events, plan and promote those events and to find volunteers to staff the events. The committee has established a plan for 2013-14 to include Art Fest, Halloween Spooktacular, Light Up the Town, Newton Fest and movies in the park. She invited committee members in the audience to stand and be recognized. Ms. LeFevers thanked the council for its consideration of the by-laws.

Council Member Robert Abernethy, Jr. stated the Festival and Events Committee does a good job. He stated the mission statement says the committee will showcase the city and businesses. Council Member Abernethy said some businesses open their doors for events and asked how to get other businesses to do the same. He stated he appreciates the festivals. Ms. LeFevers said the committee has seen more businesses staying open during festivals, and newer businesses tend to stay open.

Council Member Mary Bess Lawing said she appreciated the by-laws specify that committee members must be a Newton resident, business owner or commercial property owner whose business or property is located within the city limits. She asked about the committee bringing Newton Fest back.

Ms. LeFevers said the committee hopes to move the city-wide yard sale to the south end of downtown. As the event clears out, the committee will be setting up Newton Fest and people can transition from one event to the other. She stated the committee wants to do that in 2014 and wants to add some live music on the square on Friday nights.

Council Member Lawing said that was her next question, and asked if music on the square would be a monthly event. Ms. LeFevers stated music on the square could work monthly, but it is not in the current plan for the year. The committee is open to it, Ms. LeFevers stated. Council Member Lawing said she has heard from several people they want music.

Mayor Anne P. Stedman asked if the committee would have enough volunteers for Newton Fest. Ms. LeFevers answered yes.

Council Member Tom Rowe asked when Newton Fest would take place. Ms. LeFevers said this year the committee will transition with music on the square to generate excitement for Newton Fest. The committee hopes to move the yard sale to downtown this year.

City Attorney John Cilley stated the by-laws need to be clarified regarding appointment of membership. Mr. Cilley said a city staff member raised concerns about the following sentence, "A Committee member cannot be an elected or appointed official of any other governmental body." He suggested tightening the language if the committee wants to allow its own elected or appointed officials to serve on the committee. Mr. Cilley said the language could exclude elected and appointed officials outside of Newton.

Council Member Lawing asked if any elected or appointed officials currently serve on the committee. Ms. LeFevers said no. Council Member Lawing said she thought it would be a good idea to have an elected or appointed official on the committee, as he or she could act as a liaison. Ms. LeFevers said in the past, when an elected or appointed official served on the committee, it was in an ex-officio manner.

Council Member Lawing said she thinks the committee should have an elected or appointed official serve. Council Member Wes Weaver volunteered to serve on the committee.

Upon motion duly made by Council Member Wes Weaver, seconded by Council Member Robert Abernethy, Jr., it was unanimously RESOLVED:

That the Festival and Events Committee By-Laws, with the clarification to membership appointment that no elected or appointed official from outside of Newton may serve on the committee, be – ADOPTED.

C. Consideration of Ordinance to Cause a Dwelling to be Demolished as Provided in Sec. 18-211 (c)(1) of the City of Newton Code.

Newton Police Department Capt. Tim Hayes stated on October 12, 2012 Code Enforcement Officer Jon Raines contacted Phillip Yoder, owner of record of 1280 E. NC 10 Hwy, commonly known as Yoder Fuel Oil Company, regarding the hazardous structure on the property. Records show Judy Yoder Geitner, Mr. Yoder's sister, was mailed a letter on September 27, 2011 regarding the property. Mr. Yoder said October was the first time he had been informed about the complaint against his structure.

Capt. Hayes stated Officer Raines applied for a Commercial Safety Permit issued by Catawba County and 2 p.m. November 1, 2012 was set for the Catawba County building inspections department to perform an inspection of the property. The inspection found the structure was "dangerous and unsafe." On Nov. 27, Officer Raines determined at a hearing at the Newton police department that the building at 1280 E. NC 10 Hwy be demolished. Capt. Hayes stated Yoder was given 30 days – until December 26, 2012 – to demolish the structure, but it hasn't happened.

Mayor Anne P. Stedman stated enforcement of city codes is long overdue and told the police department good job for following through.

Council Member Wes Weaver asked Mr. Yoder if he had anything to say.

Mr. Yoder said he owns the property with his sister. He thought December 26 was the date he needed to get a permit to demolish the structure. Mr. Yoder said he would remove the structure, but asked for an extension until June 1, 2013 to remove all the materials and to find out what condition the city would like the property in.

Council Member Weaver asked how long it would take the city to tear down the structure on its own and the timeframe for it. Capt. Hayes said the last structure, a mobile home, took two weeks. The police department would work with Mr. Yoder to remove his items.

Council Member Weaver asked Mr. Yoder why he needed until June 1. Mr. Yoder said he does not have a lot of time, and he needed to remove items such as steel beams, air conditioning and heating units and other materials.

Council Member Weaver said he would like to give Mr. Yoder more time but not until June. Mayor Stedman said Mr. Yoder has already been given a long time to remove the structure.

Council Member Robert Abernethy, Jr. asked if there were any fines involved for the city to remove the structure. Capt. Hayes said if the Council adopts the ordinance, the city would incur the cost of demolishing the structure through a vendor and Mr. Yoder would be billed. He would have 30 days to pay the bill. Any recyclable materials collected from the site would be subtracted from the cost, Capt. Hayes said.

Council Member Abernethy asked what happens after the building is demolished. He asked if a hole is left in the ground, and what the next step is. Capt. Hayes said any holes would be filled with soil and plant grass according to erosion control standards.

Council Member Wayne Dellinger asked if Mr. Yoder would have to fill in the hole, and what would happen to retaining walls. Capt. Hayes said the city's vendor would fill the hole, and it would be part of Mr. Yoder's bill. A structural engineer is required to remove the retaining walls, Capt. Hayes stated.

Capt. Hayes said the city will specify what work needs to be done and what the property should look like at the end.

Council Member Lawing asked how much time would be sufficient for Mr. Yoder. She said two weeks sounds ok. Council Member Dellinger said if Mr. Yoder himself is clearing the property, he would give him until April 15. Council Member Abernethy stated he agreed with Council Member Dellinger.

Mayor Stedman stated if the council gives Mr. Yoder more time, it would set a precedent for future cases. Council Member Dellinger said every case will be different. He said the Council is not talking about letting Mr. Yoder get away with anything. Council Member Dellinger said it would take 30 days at the most.

Council Member Lawing said the last time the issue came up, the property owner thought he had a buyer but the council chose to not give him more time. Council Member Weaver said every case is different and depends on the situation and time needed.

Council Member Tom Rowe made a motion to APPROVE the ordinance authorizing the code enforcement officer to begin no later than February 18, 2013 the procedure to demolish the structure at 1280 E. NC 10 Hwy and was seconded by Council Member Lawing.

Council Member Abernethy said it was not a cut and dry situation. He stated Mr. Yoder should get some leeway. Council Member Abernethy said if Mr. Yoder pays for it upfront, why should the city finance removing the structure. He stated Newton is a city, not a financial institution.

Capt. Hayes said the city tries to reduce the burden on the owner, and the city tries to do what it can with the funds budgeted for the program. He stated demolishing the structure does not occur overnight.

Council Member Dellinger asked if the council passes the ordinance, would the contractor fill in the dirt and make the property presentable. Capt. Hayes said the vendor has done a few projects for the city, and the city is satisfied with the vendor's work. Additionally, the code enforcement officer is on site to ensure everything is done to the city's specifications.

Mayor Stedman stated it is the same job either way. Council Member Abernethy stated that it is not, as the city would be financing money at basically no interest. He said if the building has asbestos, it may cost more to tear it down.

City Manager Todd Clark stated the Council made clear to staff to get aggressive with code enforcement. He stated the city is adhering to the policy the Council set forth. Allowing an extension is beyond the scope of city staff.

Upon motion duly made by Council Member Tom Rowe, seconded by Council Member Mary Bess Lawing, and with Council Members Tom Rowe, Mary Bess Lawing and Mayor Pro Tem Bill Lutz in favor of; and Council Members Wayne Dellinger, Robert Abernethy Jr. and Wes Weaver in opposition of; and Mayor Stedman voting in favor of – it was RESOLVED:

That an ordinance authorizing the code enforcement officer to begin no later than February 18, 2013 the procedure to demolish the structure at 1280 E. NC 10 Hwy be – APPROVED.

(Ordinances, Resolutions and Proclamations are hereby referenced and on file in the office of the City Clerk).

**CITY OF NEWTON
Ordinance 2013-2**

OWNERS ADDRESS: Phillip Yoder - 744 S. Main Ave Newton, Ms. Judy Geitner - 2654 36th Ave NE Hickory

PROPERTY ADDRESS: 1280 E. NC 10 Hwy Newton NC 28658

TAX MAP REFERENCE: MAP# 019N 06040, BOOK 4/32, LOT 22-25/, COUNTY Catawba

PIN: 3740-18-30-4992

AN ORDINANCE DIRECTING THE CODE ENFORCEMENT OFFICER TO REMOVE OR DEMOLISH THE PROPERTY HEREIN DESCRIBED AS UNFIT FOR HUMAN HABITATION AND DIRECTING THAT A NOTICE BE PLACED THEREON THAT THE SAME MAY NOT BE OCCUPIED.

WHEREAS, the City Council of the City of Newton finds that the structure described herein is unfit for human habitation under the City Non-Residential Maintenance Standards, and that all of the procedures of the Non-Residential Maintenance Standards have been complied with; and

WHEREAS, this structure should be removed or demolished, as directed by the Code Enforcement Officer, and should be placarded thereon a notice prohibiting use for human habitation; and

WHEREAS, the owner of this structure has been given a reasonable opportunity to bring the structure up to the standards of the Non-Residential Maintenance Standards accordance with G.S. 160A-439 pursuant to an Order issued by the Code Enforcement Standards on 27 November 2012 and the owner has failed to comply with the Order;

NOW THEREFORE BE IT ORDAINED BY the City Council of the City of Newton that:

Section 1. The Code Enforcement Officer is hereby authorized and directed to place a placard containing The legend noted below on the building located at the following address:

1280 E. NC 10 Hwy Newton, NC **“This building is unfit for human habitation; the use or occupying of this building for human habitation is prohibited and unlawful.”**

Section 2. The Code Enforcement Officer is hereby authorized and directed to proceed to remove or demolish the described above structure in accordance with the Order to the owner thereof dated the 27th of November 2012, and in accordance with the Non-Residential Maintenance Code and G.S. 160A-439, and improvements of the lot.

Section 3. The cost of demolition and improvement of the lot shall be a lien against the real property as provided by G.S. 160A-439.

Section 4. It shall be unlawful for any person to remove or cause to be removed the placard from any building to which it is affixed. It shall be likewise unlawful for any person to occupy or to permit the occupancy of any building therein declared to be unfit for human habitation.

Section 5. A copy of this Ordinance shall be recorded in the Register of Deeds of Catawba County, North Carolina, and indexed in the name of the property owner or owners in the grantor index.

Section 6. This Ordinance shall become effective upon its adoption.

Adopted this 5th day of February, 2013

D. Consideration of Budget Ordinance to Purchase Replacement Patrol Car

Newton Police Department Chief Don Brown stated an officer was involved in a violent vehicular crash on Northwest Boulevard, and the driver of the other vehicle was found to be at fault. He said the cost of replacing the patrol car is approximately \$42,000. There was no insurance settlement at the time of the meeting.

Chief Brown stated the police department expended funds in the current fiscal year to provide security under mutual aid to Charlotte-Mecklenburg Law Enforcement during the Democratic National Convention. The city was reimbursed \$23,000 and those funds are reflected in the general fund, Chief Brown said.

Equipment from the damaged patrol vehicle cannot be retrofitted to a new vehicle, but a \$1,800 computer is salvageable, Chief Brown said. And there is \$5,000 in savings in the Education Incentive Program. Altogether, \$28,300 of funds has been identified, leaving a shortfall of about \$11,900. The insurance settlement, when it is determined, would be applied back to the fund balance.

Mayor Anne P. Stedman asked if purchasing the vehicle would reduce the need for a police car in the next budget. Chief Brown said the car had about 64,000 miles on it so it would not have lasted many more years.

Mayor Pro Tem Bill Lutz asked if the city is self-insured. City Manager Todd Clark said the city has a carrier but in this case restitution would come from the other driver's insurance. Human Resources Director Teresa Laffon said the city's insurance company is filing with the other driver's insurance company. The city expects to hear back by the end of the week, Ms. Laffon said, but the insurance company is delayed because the driver, who was hospitalized, cannot be interviewed.

Chief Brown said GM deadline to order the vehicle is Feb. 20. The insurance company gave a four to six week time frame until it determines the settlement.

Council Member Wes Weaver said the city could file with its own insurance company tomorrow. Mayor Pro Tem Lutz concurred and stated if the city has collision insurance, it should be able to settle with its own carrier, who will recover its money when it settles with the insurance company of the driver at fault.

Upon motion duly made by Council Member Wayne Dellinger, seconded by Mayor Pro Tem Bill Lutz, it was unanimously RESOLVED:

That the police chief contacts the city's insurance carrier about filing a claim, and if the settlement would not arrive before the deadline, to adhere to the ordinance transferring reimbursement funds from the fund balance to Capital Outlay Motor Vehicles (11-4310.8400) for the purpose of replacing and equipping the damaged vehicle be –
APPROVED.

(Ordinances, Resolutions and Proclamations are hereby referenced and on file in the office of the City Clerk).

ORDINANCE 2013-5
AN ORDINANCE TO AMEND REVENUES AND EXPENDITURES FOR FISCAL
YEAR 2012-2013 FOR THE CITY OF NEWTON

WHEREAS, the City Council of the City of Newton have adopted a Budget Ordinance for fiscal year beginning July 1, 2012, and ending June 30, 2013, in accordance with the General Statutes of the State of North Carolina, and

WHEREAS, on January 20, 2013 a City of Newton Police Officer was involved in an accident on US 321 North at the intersection of Boundry Street in which the driver of the other vehicle was found to be completely at fault. The 2006 Crown Victoria is considered to be a total loss. The only equipment salvageable was the laptop computer with a value of approximately \$1,800. \$40,200 is needed to fully replace the vehicle and necessary patrol equipment. The City's insurance will not fully cover the loss; therefore, additional funds will be necessary to purchase and equip a replacement vehicle, and

WHEREAS, the City would like to utilize revenues not currently recognized to offset this cost. A number of City of Newton Police Officers provided security under mutual aid to Charlotte-Mecklenburg Law Enforcement during the Democratic National Convention (DNC). The City incurred \$23,300 in meals and salaries to provide this support during the DNC. Per the mutual aid agreement with Charlotte-Mecklenburg, the City was reimbursed the full amount expended. These funds have been received. In addition, the Police Department has identified

\$5,000 within the Education Incentive Program to help offset the cost to replace the police vehicle. The City does anticipate funds from the other driver's insurance carrier; however, we are still awaiting information as to how much they will be providing to the City.

WHEREAS, City Council desires to purchase a replacement vehicle and related patrol equipment for \$40,200. The City will recognize additional revenues of \$23,300 for mutual aid support during the DNC, will utilize savings from Education Incentive Program, and will utilize fund balance for \$11,900. The total amount of the insurance once received will offset a portion of the fund balance appropriation.

WHEREAS, the City Council desires to utilize fund balance, recognize additional revenues and authorize the related expenditure appropriation and revenue within the operating budget.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON, NORTH CAROLINA, THAT:

THE FOLLOWING SOURCE OF REVENUE AND APPROPRIATION ARE HEREBY APPROVED.

Section 1

General Fund Revenues

Fund Balance Appropriated	11.0000.3990	\$ 11,900
Miscellaneous Police Reimbursements	11.4310.3761	\$ 23,300

General Fund Appropriations

Capital Outlay – Motor Vehicles	11.4310.8400	\$ 40,200
Education Incentive Pay	11.4310.4840	\$ (5,000)

Adopted this 5th day of February, 2013

E. Consideration of Capital Project Amendment to Redirect Lease Purchase Savings to Other Identified Projects

Finance Department Director Serina Hinson stated the city financed several projects in 2012, three of which were over expended by \$36,650 and ten (10) of which had savings of \$134,850, resulting in a net impact of \$98,200 in savings. The savings came from taxes and contingencies, Ms. Hinson said. The borrowed funds will sit in an escrow account until the city spends it.

Ms. Hinson stated staff recommends transferring the savings to cover additional costs on the over expended projects and to approve the remaining savings of \$98,200 on a sewer project on Southfork Drive.

Council Member Robert Abernethy, Jr. asked if the South Fork Drive project is in the CIP (Capital Improvement Plan) and where it is located. Ms. Hinson said it is not in the CIP. Council Member Wayne Dellinger stated South fork Drive is located near the intersection of U.S. Hwy 321 and NC Hwy 10.

Council Member Dellinger said the city signed a contract in 1998 to put in a sewer line but ended up putting in a septic tank. City Manager Todd Clark stated Public Works and Utilities Director Wilce Martin recognized the project as something the city needed to accomplish and felt compelled to get the project done.

Upon motion duly made by Council Member Mary Bess Lawing, seconded by Council Member Tom Rowe, it was unanimously RESOLVED:

That an Ordinance to Amend Capital Project Funds for Water and Wastewater Rehabilitation Projects and to redirect savings to Southfork Drive Sewer Project and three over expended projects be – APPROVED.

(Ordinances, Resolutions and Proclamations are hereby referenced and on file in the office of the City Clerk).

ORDINANCE 2013-6

AN ORDINANCE TO AMEND CAPITAL PROJECT FUNDS FOR WATER AND WASTEWATER REHABILITATION PROJECTS FOR CITY OF NEWTON.

WHEREAS, The City Council of the City of Newton have adopted a Budget Ordinance for Fiscal Year beginning July 1, 2012, and ending June 30, 2013, in accordance with the General Statutes of the State of North Carolina, and

WHEREAS, The City of Newton has completed a large number of water and wastewater rehabilitation projects approved by City Council as part of the Fiscal Year 2012 Capital Improvement Plan and Budget. These rehabilitation projects (project names noted below) have been completed, and

WHEREAS, Three of these projects were overexpended due to approved change orders at the end of the project completion by \$36,650; however, the other 10 projects came in under budget with savings of \$134,850. This is a net impact of \$98,200 still remaining in the borrowed funds, and

WHEREAS, The City Council desires to transfer savings to cover the additional costs on the three overexpended projects and to approve the remaining savings of \$98,200 on a sewer project on Southfork Drive.

NOW THEREFORE, Be it Ordained by the City Council of the City of Newton, North Carolina, that:

THE FOLLOWING SOURCE OF REVENUE AND APPROPRIATION ARE HEREBY APPROVED.

Water & Wastewater Capital Project Fund

Appropriation

Water Rehabilitation Projects

47.7100.5957

Shannonbrook	100	(47,950)
Hwy 70 W Conover	101	(11,350)
N. College	102	(8,850)
Ervin Ave - B St to Caldwell	103	(350)
Davis Ave - B St to Caldwell	104	(9,700)
E. E St - Ervin to Saunders	105	(12,350)
Boundary	106	(14,350)
S. Brady - 4th to D St	107	(17,750)
S. Brady - N St to K St	108	4,900
College St - E St to K St	109	(1,400)
Sewer Rehabilitation Projects	47.7100.5958	
Snow Creek to Fall Line	100	7,100
S. Cline to S. Main Ave	101	(10,800)
N. Frye Ave - 13th St to 15th St	102	24,650
Southfork Drive	103	98,200
		0

Adopted this 5th day of February, 2013.

F. Consideration of Resolution to Accept Loan Assistance from the Clean Water State Revolving Fund in the Amount of \$1,399,000 for Snow Creek Sewer Outfall Rehabilitation Project

Public Works and Utilities Director Wilce Martin stated the city received on January 17, 2013 an “Offer of Acceptance for a State Loan” from the N.C. Department of Environment and Natural Resources, Division of Water Quality in the amount of \$1,399,000. If the city accepts the loan, it must be used to finance the rehabilitation of the 12” Snow Creek Gravity Sewer Trunk Line, Mr. Martin stated. The interest rate is 2 percent for a term of 20 years.

Mr. Martin stated the city worked with engineering firm Wooten to submit a required preliminary engineering report. All phases of the project were approved by the city council as part of the Fiscal Years 2013 to 2017 Capital Improvement Plan. The Local Government Commission has also approved the project.

Upon motion duly made by Council Member Robert Abernethy, Jr., seconded by Council Member Wes Weaver, it was unanimously RESOLVED:

That Resolution 3-2013 making the applicable assurances contained therein be –
ADOPTED.

Upon motion duly made by Council Member Wes Weaver, seconded by Council member Tom Rowe, it was unanimously RESOLVED:

To authorize the Mayor to execute the Offer and Acceptance Document supplied by the State be – APPROVED

Upon motion duly made by Council Member Robert Abernethy Jr., seconded by Council Member Tom Rowe, it was unanimously RESOLVED:

That a Capital Project Ordinance for the Snow Creek Sewer Rehabilitation Project be –
ADOPTED.

(Ordinances, Resolutions and Proclamations are hereby referenced and on file in the office of the City Clerk).

ORDINANCE 2013-7
CITY OF NEWTON'S CAPITAL PROJECT ORDINANCE FOR
SNOW CREEK SEWER OUTFALL REHABILITATION, PHASE II, III & IV

Be it ordained by the City Council of Newton that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following project ordinance is hereby adopted.

Section 1. The project authorized is the Snow Creek Sewer Outfall Rehabilitation , Phase II, III and IV to be financed by a North Carolina Clean Water Revolving Fund Loan (SRF) through the North Carolina Department of Environment and Natural Resources.

Section 2. The officers of this unit are hereby directed to proceed with the capital project regulations of the North Carolina Department of Environment and Natural Resources, and the budget contained herein.

Section 3. The following revenues are anticipated to be available to complete this project:

Revenues

North Carolina State Revolving Fund Loan – Snow Creek Sewer Outfall Rehabilitation

SRF Loan	49.7141.3901	\$1,399,000
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Section 4. The following amounts are appropriated for the project:

Appropriations

North Carolina State Revolving Fund Loan – Burris Road Pump Station

Snow Creek Sewer Outfall Rehabilitation		
Administration	49.7141.5920	\$ 67,000
Engineering	49.7141.5921	142,150
Construction	49.7141.5922	1,081,900
Contingency	49.7141.5929	<u>107,950</u>
Total		<u>\$1,399,000</u>

Section 5. The Finance Officer is hereby directed to maintain within the Capital Project Fund sufficient specific detailed accounting records to provide the accounting to the grantor agency required by the loan/grant agreement(s) and federal and state regulations.

Section 6. Funds may be advanced from another fund for the purpose of making payments as due. Reimbursement requests should be made to the grantor agency in an orderly and timely manner.

Section 7. The Finance Officer is directed to report, on a quarterly basis, on the financial status of each project element in Section 4 and on the total loan revenues received or claimed.

Section 8. The Budget Officer is directed to include a detailed analysis of past and future costs and revenues on this loan project in every budget submission made to this Council.

Section 9. Copies of this capital project ordinance shall be made available to the City Manager, the City Clerk and the Finance Officer for direction in carrying out this project.

Adopted this 5th day of February, 2013

G. Consideration to Award Bid for the Installation of Pump at Water Treatment Plant

Public Works and Utilities Director Wilce Martin stated funds for the installation of a new 3MGD pump at the Water Treatment Plant is already available. On January 10 at 10 a.m. bidders responded with the following:

1. A.C. Schultes of Carolinas, Inc.	\$408,750.00
2. Brushy Mountain Builders, Inc.	\$352,000.00
3. Dellinger, Inc.	\$393,181.00
4. Gilbert Engineering Company	\$405,673.00
5. Hickory Construction Company	\$625,100.00
6. McCall Brothers, Inc.	\$508,569.34
7. Turner Murphy Company, Inc.	\$473,248.00

Mr. Martin stated McGill Engineering reviewed the bid proposals and recommended Brushy Mountain Builders, Inc. Mr. Martin stated there is \$570,000 budgeted for the project.

Upon motion duly made by Council Member Mary Bess Lawing, seconded by Council Member Wes Weaver, it was unanimously RESOLVED:

That Brushy Mountain Builders, Inc. be awarded the bid for the water treatment plant finished pump installation for \$353,000.00 be – APPROVED

ITEM 8: City Manager's Report

- Business Advisory Committee Business Owners Meeting, 6:30 p.m. Feb. 7 at Newton-Conover Auditorium
- City Manager Todd Clark and Assistant City Manager Sean Hovis will be at a NC city and county management meeting the rest of the week
- The Newton Recreation Center is hosting a Senior Citizens Sweetheart Dance from 7 to 10 p.m. Feb. 7
- The council will hold its annual workshop from Feb. 13 to Feb. 15 at the Newton Depot
- The annual Easter Egg Hunt is at 2 p.m. March 24 at Southside Park
- Duke Energy announced it has submitted an application for a rate increase
- Snow Creek project bids are coming soon
- With the approval of the Zoning Ordinance Text Amendment 2012-05, the council will need to come back and amend the City Code with respect to discharging firearms
- Congratulated and welcomed City Attorney John Cilley and Assistant City Manager Sean Hovis

ITEM 9: Questions and Comments from Mayor and Council

Mayor Stedman asked if there were any questions or comments from the City Council.

Council Member Wayne Dellinger stated at the last board meeting, the council voted to spend money from the Estate of Lillian Sewell Jones, and he still has a problem with it. He stated he hopes the recreation commission will give the council some projects that need to be done.

Mayor Pro Tem Bill Lutz stated the recreation commission has had those discussions and will bring its ideas to the Council.

CLOSED SESSION to consult with the City Attorney – G.S. 143-318-11(a)(5) and G.S. 143-318-11(a)(6)

Upon motion duly made by Council Member Mary Bess Lawing, seconded by Council Member Tom Rowe, it was unanimously RESOLVED: that the City Council enter CLOSED SESSION per G.S. 143-318-11(a)(5) and G.S. 143-318-11(a)(6)

ITEM 9: Adjournment

There being no further business, the meeting – ADJOURNED.

Anne P. Stedman, Mayor

Amy S. Falowski, City Clerk

