



Town Council Meeting Minutes

Thursday, February 27, 2020 at 7:00 PM, in the Matthew Thornton Room

Chairman Koenig called the meeting of the Town Council to order at 7:00 p.m. Present at the meeting were Vice Chairman Boyd, Councilor Albert, Councilor Harrington, Councilor Healey, Councilor Woods, Town Manager, Eileen Cabanel, and Assistant Town Manager/Finance Director Paul Micali. Councilor Rothhaus was excused.

Pledge of Allegiance

Chairman Koenig led in the Pledge of Allegiance.

Announcements

The Deliberative Session will be conducted on Wednesday, March 11, 2020 at 7:00 p.m. in the James Mastricola Upper Elementary School All Purpose Room. Regular meetings of the Town Council will be conducted on Thursday, March 12th and 26th beginning at 7:00 p.m. in the Matthew Thornton Room.

The Public Works Department (PWD) will be hosting a Public Hearing for the proposed roundabout at the Turkey Hill Road/Baboosic Lake Road intersection on Wednesday, March 4, 2020 at 6:30 p.m. at the Town Hall in the Matthew Thornton Room.

Filing period for Town offices began on Wednesday, February 26th and will go through Friday, March 6th. A complete list of open positions can be found on the Town website under Elections and Voting in the Town Clerk Department pages.

The Assessing office is currently accepting property tax exemption applications. The filing deadline is April 15th.

There being no objection, the Council went out of the regular order of business to take up Recognitions/Resignations and Retirements.

Recognitions, Resignations and Retirements

1. Recognition of Town Employee for 20 Years of Full-time Service to the Town

Submitted by Human Resources Coordinator Sharon Marunicz

The Town Council will present an award to John I. Trythall in recognition of 20 years of full-time service with the Town of Merrimack Highway Division of the Public Works Department.

December 30, 1999 - December 30, 2019. He will be awarded with a plaque.

Lori Barrett, Operations Manager, Highway Division, congratulated John on his 20 years of service with the Town. She spoke of him as being a significant part of the team, and cited some of his many contributions. She spoke of the impression he has made on his co-workers. When asked to provide input on how they would describe him, comments received included "he doesn't give up, he has that

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Yankee ingenuity, he comes up with really clever ideas, he is dedicated, works through adversity, gives 100%, team leader, etc.

Ms. Barrett thanked John for making a difference in the lives of those he works with, and stated her hope he continues to inspire.

Mr. Trythall was presented with a plaque in recognition of his 20 years of service to the Town of Merrimack.

2. Recognition of Retirement of Town Employee

Submitted by Human Resources Coordinator Sharon Marunicz

The Town Council will present an award to Catherine N. Nadeau in recognition of more than 31 years of full-time service with the Town of Merrimack in first the Community Development Department and then the Fire & Rescue Department. Cathy retired on January 31, 2020. She will be awarded with a Boston rocker.

Ms. Nadeau was unable to be in attendance. She will be awarded with a Boston rocker in recognition of more than 31 years of service to the Town of Merrimack.

3. Recognition of Retirement of Town Employee

Submitted by Human Resources Coordinator Sharon Marunicz

The Town Council will present an award to Lee R. Vogel in recognition of more than 34 years of full-time service with the Town of Merrimack Wastewater Division of the Public Works Department. He will be awarded with a Boston rocker. Lee Vogel retired on December 31, 2019.

Mr. Vogel was unable to be in attendance. He will be awarded with a Boston rocker in recognition of more than 34 years of service to the Town of Merrimack.

4. Recognition of Town Employee for Years of Service to the Town - Resignation

Submitted by Human Resources Coordinator Sharon Marunicz

The Town Council will present an award to Maureen Covell in recognition of her resignation after more than 20 years of full-time service with the Town of Merrimack in first the Town Clerk/Tax Collector's Office, then the Assessing Department. August 16, 1999 – December 27, 2019. She will be awarded with a plaque.

Ms. Covell was unable to be in attendance. She will be awarded with a plaque in recognition of more than 20 years of service to the Town of Merrimack.

5. Recognition of Town Employee for Years of Service to the Town – Resignation

Submitted by Human Resources Coordinator Sharon Marunicz

The Town Council will present an award to Michael N. Rotast in recognition of his resignation after more than 19 years of full-time service with the Town of Merrimack Assessing Department. June 26, 2000 – January 9, 2020. He will be awarded with a plaque.

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Mr. Rotast was unable to be in attendance. He will be awarded with a plaque in recognition of more than 19 years of service to the Town of Merrimack.

Councilor Albert spoke of having had the opportunity to work with John Trythall when he was with the PWD. His spirit of cooperation exemplified a can do attitude and a great person to work with.

He had the opportunity to work a good deal with Cathy Nadeau. He commented all of our department heads need great assistants. Chief Currier had a great assistant in her. She held the fort.

Chairman Koenig commented on the 34 years Lee Vogel spent in the Town. He commended all of the long-time employees that have retired and moved on.

The Council returned to the regular order of business.

Comments from the Press and Public

Dick Hinch, 14 Ichabod Drive

Representative Hinch urged the Council to soundly reject Saint-Gobain's appeal of the Industrial User Discharge Permit suggesting Saint-Gobain was not represented at the meeting as they recognize the discharge apparatus they installed is not working properly, and should be attended to. He along with two other State Representatives are members of the Saint-Gobain Community Advisory Committee. He commented on the meetings that have occurred and of being unimpressed with what he has seen to date. Saint-Gobain has not addressed the 9 points of the Council.

Rosemarie Rung, 21 Ministerial Drive

Representative Rung echoed the comments of Representative Hinch. Page 1 of the appeal and the attachments address the amount of PFAS that is being discharged and its percentage of the total PFAS found in the wastewater treatment system. She believes their arguments need to be dismissed outright as they don't take into consideration the persistence of PFAS in the environment and the fact that PFAS chemicals that leave their plant and go into the wastewater treatment system accumulate in the environment. They will not be degraded, are impermeable to the microbial degradation, and given the fact that our biosolids compost facility is used for soil implementation, it is in the public interest to ensure PFAS coming in is at a non-detect level to protect that plant and product.

Within the 14 pages of the petition, she found a lack of cooperative spirit, which has been contrary to what they have tried to establish at the Community Advisory Committee (CAC). She is dismayed that this comes to the Council without having the CAC briefed and the open dialogue that was promised. She urged the Council to reject the petition.

Wendy Thomas, 10 Wildcat Falls Road

Representative Thomas echoed the remarks of the previous speakers. She is a member of the CAC, which has met for the past three months. This petition has never been brought up; nothing has been advanced. They have not addressed the 9 points of the Town Council or the needs of private wells.

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We need to hold them accountable for their lack of addressing the needs and concerns. She requested the Council reject the appeal.

Kathryn Stack, 7 Knollwood Drive

Representative Stack spoke of having been a resident in Town for over 30 years. She told the story of a young man who grew up in a small NH town who was the pride of his family, school, and community. His family taught him about dental care. He would brush his teeth several times a day, floss, visit the dentist regularly, and care for his dental hygiene. His smile would win anyone over. Merrimack is a lot like that young man; Merrimack takes care of its Town. Merrimack takes care of the well-being of its residents. Merrimack takes pride in its community and schools. Like the young man with the smile, residents of Merrimack want Merrimack to shine.

Saint-Gobain is hurting our Town just like Gingivitis might hurt the teeth. If untreated, Gingivitis could cause teeth to rot, decay, and eventually they could fall out. In some cases, Gingivitis could lead to death.

Such is the case in our Town. If our Town is not looked after and cared for, it will ultimately die. Saint-Gobain has contaminated our air and water. Saint-Gobain has not remedied the situation, which is treatable. They have the resources to fix the issues they continue to cause. Saint-Gobain could filter the smoke stacks and could filter the water output. Instead they choose to ignore and put up legal obstacles all in the name of greed to let our Town suffer, decay, and potentially die. When given the opportunity to do the right thing, Saint-Gobain turns away.

She provided the example of the request made of Saint-Gobain to filter the schools; a request they refused, and the residents are paying, for the safety and care of their children. Saint-Gobain is not a good neighbor. Saint-Gobain was asked to assist the Merrimack Village District (MVD) with correcting the contamination to our wells, and refuses to even offer the MVD the same support they provided to another town they contaminated; Hoosick Falls.

Saint-Gobain could remedy the private well owners where levels are in excess of those considered safe. They could do the right thing and help Merrimack become whole, but have refused. Saint-Gobain has been asked to take responsibility for the water output and sewer issues it is causing. Again, as you see by the appeal, they are refusing to do the right thing. She requested the Council hold them accountable and reject their petition.

Katharine Hodge 44, Belmont Drive

Was asked to read two other statements into the record for people that could not be in attendance:

Laurene Allen, 16 French Court; is down in Atlanta at this time dealing with the CDC. Her letter states:

“Dear Merrimack Town Council members and Town Manager Eileen Cabanel, As a long-term resident of Merrimack and co-founder of the community group, Merrimack Citizens for Clean Water, dedicated to advocating for the needs of our PFAS residents, I am writing today to give my comments

on Saint-Gobain's wastewater discharge permit appeal. The Town Council has consistently acted in matters related to the PFAS presence in Merrimack in a fashion that serves the best interests of our community, and has the authority to do so.

Public employees, including technical experts such as Sarita Croce at the wastewater facility, have a responsibility to our community and accountability to our elected officials, the Town Council. Our citizens count on our elected officials to make decisions that do not harm ourselves and our families. The expectation of our residents, since we first learned of the PFAS contamination that has challenged our Town, has been overwhelmingly clear; stop the contamination at the source, hold Saint-Gobain responsible for the needed remediation and clean-up to end the burden of being perpetually added into our environment.

I do not have to specify the specific issues I have with Saint-Gobain's permit appeal. You know what they are as does every person in the greater Merrimack area who has been paying attention to this for the last 4 years and counting. Enough is enough. It is time to hold Saint-Gobain accountable for their own claims of being a cooperative good neighbor and an environmental steward. It is clear to all residents who have been involved and concerned from the start of this ongoing saga, that Saint-Gobain only does what they have to do, not a fraction more, and even then, they drag it out. They minimize the impacts and they attempt to negotiate the process to the least impactful to their profits and their liabilities.

This community has been forever altered by the willful actions of this corporation, and it is time to draw the line. I encourage you to hold fast and demand that this industrial manufacturer comply with the rules that you have the authority to set, and to ignore their self-serving arguments. I strongly suspect that this appeal is truly due to the knowledge that their very design that they have submitted and implemented, that we were assured would stop the PFAS chemicals from entering our wastewater system, is not sufficient. If it were, why would they be so vigorously protesting their accountability that the Town issued permit solidifies? We have been taken advantage of for far too long. Please continue to work to stop the harm this business poses to our health and our economics. We are paying the price of which we did not cause. Sincerely, Laurene Allen, Merrimack Citizens for Clean Water."

Kristen Mello, Westfield, MA, National Coalition for PFAS – letter states:

Dear Chair Koenig, Vice Chair Boyd, and honorable Merrimack Town Councilors, Thank you for receiving and considering these comments regarding the petition to appeal the Saint-Gobain Performance Plastics Industrial User Discharge Permit. My name is Kristen Mello, and I am a resident of Massachusetts. I respectfully submit the following for your careful consideration in light of the petition before you this evening:

As the Industrial User Discharge Permit granting authority, the Town of Merrimack, NH and its wastewater treatment facilities are ultimately responsible for any PFAS flowing into the Merrimack River from its sanitary sewer system. The second paragraph of the appeal claims a wastewater pre-treatment system is in place that is effectively removing PFAS from Saint-Gobain's wastewater. If this is true, Saint-Gobain will have no problem meeting the permit requirements of removing all PFAS compounds from process wastewater to non-detectable levels. The permit would require changing if the system were not properly working and maintained. Am I correct? Per the Saint-Gobain Performance Plastics Permit #20, page 2, the original application reported 1.3 million pounds of

PTFE (Teflon) dispersions. One point three million pounds of PTFE dispersions will be used with less than 0.1% anticipated, which is up to 1,300 pounds that will escape into the sewer. Commerce PTFE dispersions are 60% PTFE by weight. This permit would allow up to 780 pounds of PTFE being discharged into the sanitary sewer systems if the requirement for non-detect process wastewater were removed.

According to the U.S. Environmental Protection Agency, the Merrimack River provides drinking water for about 500,000 people in 5 Massachusetts communities; Lowell, Methuen, Andover, Tewksbury, and Lawrence. Article 97 of the Massachusetts Constitution states that people shall have the right to clean air and water. Massachusetts residents downstream from you have rights that will be violated with every man-made persistent bio-accumulating, toxic PFAS molecule that escapes your wastewater treatment. Whether or not the New Hampshire PFAS MCLs are being challenged in court, the Massachusetts MCL process is ongoing at a proposed 20 ppt for the sum of 6; PFOA, PFOS, PFHxS, PFHpA, PFNA, and PFDA.

Please stand strong in your convictions, and protect our rights as well as your citizens' and be aware that all potential consequences of not protecting these rights. Thank you for considering these comments in your deliberation. Very sincerely yours, Kristen Mello."

Ms. Hodge stated Kristen is also the co-founder of Westfield Residents Advocating For Themselves (WRAFT).

Ms. Hodge read into the record the written input she wished to provide:

"Good evening, Saint-Gobain claims to be a good neighbor and environmental steward and concerned about our Town and residents. Yet, in my opinion, they have done next to nothing in the last 4 years even though they make it seem like we should be eternally thankful to them. The only thing that they seem to do is switch the blame for our Town's contamination situation to others. They do absolutely no more than they have to, and God forbid anything should hurt their bottom line, their reputation, or their profit margins.

I did read the entire appeal; all 133 pages of it, which was a welcome break considering the fact their air permit was 4,000 pages. When I did read the appeal I got no further than the first paragraph before I actually laughed. Saint-Gobain states "Saint-Gobain installed a pre-treatment system designed to effectively remove all PFAS substance from its wastewater. The system is now in operation and is "effectively" removing PFAS from their wastewater. However, their first initial statement was they were going to remove all PFAS from the wastewater. Does that include all 5,000⁺ compounds? How many specifically is Saint-Gobain using of these 5,000 compounds? Yet, now that their system is completed and in use, their statement has changed from all PFAS to a general statement of PFAS chemicals. What is considered the difference of all PFAS to just general PFAS? How many and what compounds? Where is their clarification? Where is their definition of being effective? I'm sure their definition is very different from ours.

Throughout the appeal, they use words like trivial, insignificant, no basis, imposition, and arbitrary; page 1, paragraph 2, and many more pages.

I guarantee to this Town and its residents, there is absolutely nothing trivial about the contamination that Saint-Gobain has caused. Saint-Gobain has obviously never considered the imposition that it has caused to us or the continual body and environmental burdens that we face every day from their contaminated air, soil, water, which is a vicious cycle. They are called forever chemicals after all. Saint-Gobain even went so far as to state in this legal document that 99.99% of all PFAS that is present in our wastewater treatment facility comes from other sources. Yet they have no proof to back any of this. It is yet another outlandish statement by Saint-Gobain.

Saint-Gobain then claims that they use Town water to clean their equipment, etc., and then they say it is the Town's fault that there is PFAS in the water. Have they forgotten that they caused this, and they still cause this 24/7, 365 days/year? There is so much more that could be said about this document, but the main point is Saint-Gobain does not want to have to pay for the issues that they created, and they fear that their treatment systems are and will continue to be inadequate, and they themselves do not want to be held accountable for their actions and their own inadequacies as a company. Enough is enough with Saint-Gobain.

I ask and I encourage the wastewater treatment facility and the Town Council to stand strong and do what needs to be done to stop Saint-Gobain from continuing to harm our Town and its residents. Saint-Gobain is the true definition of hypocrisy."

Nancy Murphy, 20 Brenda Lane

Representative Murphy read the following statement into the record:

"I have made advocating for the environmental and public health protections of our community in the State of New Hampshire a priority in my work at the State House. An important part of my efforts has been to learn everything I can about why we are in such desperate need of these protections, and to sponsor legislation and support actions to that end. I am here tonight to ask that you support those protections on behalf of Merrimack residents.

In 2016, our community first became aware that our public drinking water supply was contaminated by PFAS; man-made, toxic chemicals that don't biodegrade in our environment, bioaccumulate in our bodies, and are known to be associated with human health harm. After contaminating communities in other states, Saint-Gobain moved here and was named the State identified industrial PFAS polluter responsible for the PFAS contamination of our public drinking water. That this incident occurred, sometimes referred to as the largest environmental industrial disaster in New Hampshire's history, is in the first place appalling. That it continues and residents are bearing many of the costs associated, is despicable.

Tonight Saint-Gobain is asking that the Town of Merrimack overturn a decision made by those whose goal it is to protect us, and allow them to discharge PFAS in their wastewater back to our Town. No thank you. The Merrimack community is sick and tired of cleaning up Saint-Gobain's mess. We have had enough of Saint-Gobain's toxins. We know that PFAS do not belong in our air, water, soil, and most certainly not in our bodies nor that of our children and our pets, yet that is exactly where they are found here in Merrimack; in our public and private wells, our air, our soil, and our bodies, and though

we all know that nationally there is some level of PFAS exposure to the United States' population, it is below that of what we have been and continue to be subjected to right here within our community. Why? Because Saint-Gobain continues to actively pollute our Town and expects you, our Town Council, to grant their appeal to continue to be allowed to do so via wastewater discharges.

The appeal our Town Council is airing tonight is completely consistent with the actions Saint-Gobain has taken all along. The Merrimack community sits at ground zero four years since this contamination was discovered; still fighting for protections from a multi-billion dollar corporation that takes advantage of every opportunity it can to escape responsibility and liability for the impacts of its industrial practices. Merrimack citizens have had enough, and we ask our Town Council continue to do the right thing, and protect us from a polluter that has no conscience.

Saint-Gobain has had the benefit of every opportunity to do the right thing for Merrimack and has fairly consistently chosen to do otherwise. Merrimack has had to fight to protect itself from a corporation that falsely proclaims itself to be a good corporate neighbor while actions it takes infer otherwise. The people of Merrimack have had enough of Saint-Gobain's toxic chemicals and want our Town Council to hold this polluter accountable for the PFAS in wastewater and testing wastewater affluent. We say enough is enough, and we ask that you deny Saint-Gobain's appeal.

I stand before you tonight to thank you and support the action taken by the Town's Wastewater Treatment Facility on January 6, 2020 relative to the Sewer Use Permit issued to Saint-Gobain. I ask you to hold firm in your decision making relative to the terms and conditions of the Industrial User Discharge Permit issued to Saint-Gobain. Though Saint-Gobain may not like the expectations our Town government has of it, I assure you the townspeople don't like having been put in a position that we didn't cause, can't get out of, and will be paying for for a very long time both in terms of remediation costs and suspected health impacts as well.

It is time for the best interests of the people of Merrimack to be represented not those of a multi-billion dollar industrial polluter who has taken advantage of us over and over again. Tonight we are here to say the Town of Merrimack must stand firm and show this polluter whose responsible for the PFAS contamination mess we are in, that it prioritizes people over corporate profits. Please do not grant Saint-Gobain its appeal. Thank you."

Geoff Daly, Nashua

Remarked the non-appearance of Saint-Gobain to be present and review the petition is a sign of disrespect to all the citizens of Merrimack and as an employer in the Town. This disrespect is a disgrace, and he is unimpressed by their actions. He respectfully urged the Council to dismiss their appeal on the grounds the petition is faulty. The 14+ page petition contains many inaccuracies and exclusion of facts.

The permit as written by Sarita Croce is in line with the Town's rules and regulations, and is entitled to formulate these rules especially in the wastewater handling in the wastewater treatment plant. What can be deposited into the sewer line applies to all communities and is set by Federal EPA law and wastewater rules.

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John Farrell, Chairman, Town Council, Londonderry

With him were Londonderry Councilors Ted Combes and Tom Dolan. They were in attendance to state their support and appreciation for Merrimack leading the way and taking the responsibility of going out with this ordinance. They are working on their own pieces. They wished to express they are proud of the Town Council and are with them. He invited Councilors and residents to their meeting with NH DES on Monday to learn more of the gift Saint-Gobain has given us.

Don Provencher, Chairman, Board of Commissioners, Merrimack Village District

Spoke of the construction of the PFAS treatment plant for wells 4 and 5. As part of that design, they had initially attempted to get a sewer connection to the Town sewer system to be able to backwash the brand new granular activated carbon media. There was concern they might backwash that media after it had been used and a small meniscal chance some of that backwash media could get into the sewer. They were denied the ability to backwash the carbon media. He wished to demonstrate that as a precedent; that they were rejected in backwashing essentially brand new clean carbon media for fear of putting PFAS in the wastewater stream. He suggested the Council consider that when deciding on the appeal before it.

Carol DiPerro, 10 Cambridge Drive

Requested the Council stand firm. When she first heard of the proposal, one thing discussed was that this wastewater potentially goes into sludge that is sold to other towns. We have a moral responsibility. How do we stop the cycle, if it is in our wastewater?

Charles LaFond, 7 Linden Way

Supports denying the appeal. Towns don't have to accept wastewater from processes; we just don't. If they can't control their processes, if they can't keep the PFAS out of the wastewater, they can tanker it out. It should not be combined with their sanitary waste. Having read some of the application, it appears they have it all separated. It is unacceptable a representative from Saint-Gobain is not in attendance.

Chairman Koenig stated the Council received a few letters providing comment. One from Gail Shaw, 10 Templeton Court, states although she has not had the opportunity to review all the documents pertaining to this issue, she wished to offer an opinion of a cursory review she has made of their permit request and appeal of same.

She does not believe Saint-Gobain fully disclosed in their permit request "all PFAS chemicals" they are using that could discharge into wastewater. She does not believe Saint-Gobain can say with certainty that they have tested their wastewater for "all PFAS chemicals" and that all PFAS tested are non-detect. In their appeal very early on and in their permit, Saint-Gobain repeatedly uses the words "all PFAS". According to FDA.gov, there are over 5,000 PFAS chemicals. While Saint-Gobain does not likely use 5,000 PFAS chemicals, does the Town of Merrimack know "All the PFAS chemicals" Saint-Gobain is using or even plans to use that could end up in wastewater? If Saint-Gobain has not provided full disclosure in their permit to the Town of all PFAS they use, how then can the Town

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know if all PFAS that Saint-Gobain is using has been tested for in their wastewater discharge? Is Saint-Gobain able to test for all PFAS chemicals they use at their plant that would potentially discharge to the wastewater, and if yes, where are the test results?

“I believe the Town needs to look more closely at the permit and determine if each line item was fully answered, and if any item with an asterisk was footnoted with an explanation. I also believe the Town should examine Saint-Gobain’s verbiage when they state “all PFAS” because they are likely not even capable of testing their wastewater for all PFAS that they utilize. For the above reasons, I question the completeness and accuracy of their permit application, and I believe the permit should be denied in its entirety until they fully answer questions on the permit application and provide a copy of the lab reports for all the PFAS they use and tested for their wastewater to the Town and residents.”

Appointments – None

Public Hearing

1. Public Hearing – Milfoil Grant Funds for Horseshoe Pond & Naticook Lake

Submitted by Planning and Zoning Administrator Robert Price

The Town Council will hold a public hearing to accept and authorize the expenditure of up to \$46,429 for the milfoil treatment program at Horseshoe Pond and Naticook Lake, of which \$18,571 is from a grant from the New Hampshire Department of Environmental Services (NHDES) for milfoil control, and the Town’s matching share is \$27,859, to be funded from the Milfoil Expendable Capital Reserve Fund, pursuant to RSA 31:95-b and Charter Article 8-15.

The Town has been treating the Milfoil since 2012 at both Horseshoe Pond and Naticook Lake. It has been managed annually with a variety of chemical and non-chemical techniques. In 2019, Milfoil in Horseshoe Pond was treated with Diver Assisted Suction Harvesting (DASH). However, a mix of herbicide and DASH control actions are likely to be necessary going forward. In 2002, NHDES proposed a herbicide treatment as well a targeted DASH treatment for Horseshoe Pond. In 2019, Naticook Lake was treated with DASH. In 2020 NHDES proposed a DASH or herbicidal treatment in the lagoon area and installation of a Benthic Barrier near the swimming beaches. A Benthic Barrier is a type of blanket or net that is placed on the bottom of the lake and kills Milfoil by eliminating access to light during the growing season.

The cost is anticipated to be \$46,429. Of that amount, grant matching funds (40%) total \$18,571. Total cost to the Town would be \$27,859.

Assistant Town Manager/Finance Director Micali spoke of the continued efforts of the Lake Naticook Conservation Association. He commented on their flagging of the areas where Milfoil is found, which goes a long way towards the efforts of the DASH activity.

Chairman Koenig declared the Public Hearing open at 7:56 p.m.

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Laura Jaynes, 6 High Noon Avenue

Member, Lake Naticook Conservation Association; a very diligent group that works to maintain the lake. She spoke of appreciating the support of the Council in addressing this issue, and of the hope it continues.

Rosemarie Rung, 21 Ministerial Drive

Representative Rung informed the Council she serves on the House Committee for Aquatic Invasive Species. She is pleased the Town is availing itself of the grant opportunity. She volunteered to share information relative to training opportunities concerning eradication of Milfoil. There are a great many other aquatic invasive species making their way into the State; plants and animals. She is hopeful we can be open minded and on the look out for other species. Perhaps even rename the Capital Reserve Fund the Aquatic Invasive Species so that it reflects the fact that we may have to go beyond Milfoil at some point.

The Public Comment period was declared closed at 7:58 p.m.

MOTION made by Councilor Albert and seconded by Councilor Harrington to accept and authorize the expenditure of up to Forty Six Thousand Four Hundred Twenty Nine Dollars (\$46,429) for the Milfoil treatment program at Horseshoe Pond and Naticook Lake, of which Eighteen Thousand Five Hundred Seventy One Dollars (\$18,571) is from a grant from the New Hampshire Department of Environmental Services (NHDES) for Milfoil control, and the Town's matching share is Twenty Seven Thousand Eight Hundred Fifty Nine Dollars (\$27,859), to be funded from the Milfoil Expendable Capital Reserve Fund, pursuant to RSA 31:95-b and Charter Article 8-15, and furthermore the Town Council authorizes the Town Manager or her designee to execute any and all documents, which may be necessary

ON THE QUESTION

Councilor Albert commented on the continued support for addressing the issue, specifically in these two water bodies.

Councilor Harrington commended the Lake Naticook Conservation Association for how active the group is in protecting its waterbody for the community and the Town as a whole.

Councilor Woods echoed the remarks of his colleagues, and spoke of the importance of community action expressing his gratitude for the level of activity of the people at Naticook Lake. Their efforts benefit the lake and all users of it, as well as provide a financial benefit to the Town.

Chairman Koenig noted the Council's receipt of several letters from Amy Smagula, Limnologist / Exotic Species Program Coordinator, NH Department of Environmental Services, in support of and explaining the program.

MOTION CARRIED 6-0-0

Legislative Updates from State Representatives

Representative Wendy Thomas stated SB694, the Medicaid to School Bill, passed on a voice vote. The Bill undoes the emergency ruling put in place during the summer, and would mean that Merrimack could recover up to \$8,000/year in Medicaid payments. It has passed the Senate and the House, and is on the way to the Governor's Office. The School Board has been notified. She encouraged the Town Council to send the Governor a letter of support for the bill.

Representative Thomas indicated she has a degree in Medical Biology, has worked as a Clinical Microbiologist, and has Graduate work in Epidemiology. Today she attended a conference call with Councilor Healey for State and local officials on the status of the Coronavirus (COVID-19) in the United States. Her notes have been provided the Council and are posted on social media. She urged the Council to take this up as an agenda item, and to work on a COVID-19 pandemic plan for the Town and schools, and to make it public to residents as soon as possible. In the meantime, she will continue to pass on and post information as she receives it.

Councilor Albert remarked years ago when the Avian Flu was considered a threat, the State lead the charge on preparing for a pandemic flu. Law enforcement and fire agencies began to prepare as did all medical services. He believes the community should be creating a plan, and that some of the infrastructure is already in place. He questioned if preparations are taking place on a State level. Representative Thomas responded she has heard nothing, which is why she is so alarmed about the issue. The information she is receiving is coming from other countries. We have had two months to prepare for this, and know it will be bad. For the normal flu, the fatality rate is 0.1. Right now they are estimating this is between 1 and 2%. If we get verifiable numbers out of China, it could be as high as 5%. It is a new, never before seen virus. We have no immunity to it. It seems to hit the respiratory system. Elderly and children will be hit hard as will those who are immunocompromised. During the call, they stressed there have to be plans for care facilities and nursing homes. We've had the Avian Flu, we've had H1N1 before. This is something we've never ever seen before.

Councilor Albert spoke of being pleased the conversation has started, and his hope it will continue up in Concord and in the community as well.

Chairman Koenig noted the Health Officer along with the Fire Chief/Emergency Management Director, and the school district are looking into the matter.

Representative Nancy Murphy stated HB1558 - relative to the provision of special education services for older students, was heard this week. New Hampshire does not follow Federal guidelines in terms of serving students with disabilities up to the 22nd birthday. This bill would change the terminology for a student with a disability to put us in line with the Federal law. The bill came from committee with a 19/0 vote. It will go to the House on the Consent Calendar. There were some objections from NH special educators. When she spoke with the Chief Legal Counsel for the Department of Education, she said it will in fact make her job easier. Some school districts are letting students stay up until their 22nd birthday and some are being booted out in June when their birthday is in October, etc. In terms of funding, the thought is that it will not impact many students (perhaps 45 throughout the State). Any financial impact will be minimum (most kids would be eligible for Medicaid at 21).

Representative Murphy spoke of SB287 - requiring the Commissioner of the Department of Environmental Services (DES) to revise rules relative to perfluorinated chemical contamination in drinking water. She noted in one of Saint-Gobain's objections to the permit, they cite the fact that the permit incorrectly states that there are existing Maximum Contaminate Levels (MCLs) in drinking water and ambient groundwater quality standards for the 4 PFAS compounds that NHDES had put regulations on back in the summer. Saint-Gobain states that these standards have been legally challenged in the Superior Court, thus they argue they are not in effect.

Representative Murphy remarked she has attended all of the court hearings relative to 3M's Motion to Intervene/to stop the MCLs from being set and to be more protective. She requested anyone interested write their Representatives and the Governor to implore that they pass this bill. It passed the Senate on a 24-0 vote. This is the bill that will allow the MVD to seek some restitution relative to the MCLs. Asked if it is the bill that legislates the MCLs, she stated it is; it would make the court issue moot, and would save the State the cost of fighting it.

Asked if she is involved in the committee addressing bail reform laws, she noted she sits on Criminal Justice and Public Safety. Representative Rung was a co-sponsor of HB1384 - relative to the re-release of a person on bail. Senator Levesque is sponsor of SB551 - adding a bail commissioner to the commission on pretrial detention, pretrial scheduling, and pretrial services, and relative to the release of a defendant pending trial. The feeling is the Commission on Bail Reform is really becoming active now. They believe the reform bills that were coming before the House will be resolved by the Commission. However, another thought was to ITL (Inexpedient to Legislate) the other bills with the assumption it will be taken care of by the Commission. However, as a precaution, they were retained.

Town Manager's Report - None

Consent Agenda - None

Old Business

There being no objection, the Council went out of the regular order of business to take up Item # 2.

2. Saint-Gobain Performance Plastics Petition to Appeal Town of Merrimack Industrial User Permit #20 Discussion

Submitted by Town Manager Eileen Cabanel

The Town Council to be presented with the details of Saint-Gobain Performance Plastic's petition which appeals, and requests reconsideration of the terms and conditions of the Industrial User Discharge Permit issued by the Town of Merrimack's Public Works Wastewater Division.

Chairman Koenig stated Saint-Gobain was invited to come forward to address the appeal. This afternoon they sent a letter indicating they would not be able to make it. They also asked if the matter could be tabled to provide them an additional 60 days to discuss it with wastewater treatment.

Town Ordinance requires the Council to respond within 30 days. In the absence of that, the appeal is automatically denied. If automatically denied, there is no basis or argument from the Town on why it would be denied, and they could go to court to appeal it without any background information.

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It is imperative that the Town Council act, this being the last public meeting before the end of the 30-day period. As duly noted in the agenda, which has been published for a week, the Council plans to move forward with its discussion of the appeal.

Saint-Gobain did send in a reiteration of their appeal request along with their email. That information is available as part of the input.

Town Manager Cabanel commented on the importance of noting that Saint-Gobain had planned on attending the meeting all along. They confirmed they were coming as late as yesterday. Notice was provided at 2:30 p.m. this afternoon that they were not going to attend. They simply did not feel they needed to be here.

Joanna Brown Tourangeau, Esq., Drummond Woodsum, stated as you kick off the quasi adjudicatory proceedings on the appeal, the Town Ordinance specifies that it is the Town, which is defined in the Ordinance as the Town Council, hears requests for reconsideration of permits issued by the Wastewater Treatment Facility for industrial discharges to the wastewater treatment plant. That is what is happening tonight. She stated the desire to poll members of the Council in advance of commencing the proceedings to review the appeal, to confirm that no members have any conflicts of interest as defined in the Charter.

No conflicts were stated; all members of the Council were deemed eligible to sit and hear the appeal. Attorney Tourangeau stated the process to be that the Chair open the session to hear the appeal, which will be on the record from Saint-Gobain, and to then hear the presentation from the wastewater treatment plant, have the ability to ask any questions, and deliberate and fact find.

Chairman Koenig spoke of the appeal received. The entirety of the appeal and the email submitted earlier in the day will be made part of the record. (Appendix A)

Sarita Croce, Assistant Director, Public Works Department/Wastewater, provided a presentation. The Town's wastewater treatment plant receives wastewater from residential, commercial, and industrial sources. There are many laws in existence that are utilized to determine how the facility functions; determines what discharges are and what we can and cannot accept. One of the rules the facility is required to comply with is the Federal Pretreatment Program. That program is specifically responsible for telling us how to deal with those industrial discharges. The point of the program is to ensure the industrial discharges to our plant don't interfere with our operations, don't pass through and end up in the river, don't cause any harm or issues with biosolids or the sludge we generate. The facility does generate compost as part of the operation, and it is something we market to other communities and out of state.

As part of the Pretreatment Program, we were required (long ago) to put into place a Sewer Use Ordinance. The Town has a very comprehensive Ordinance, which gives the Town the authority to issue a pretreatment permit to an industrial user. The permit is something the Town developed based on how our plant operates, the loads we receive from all of the residential, commercial, and industrial sources. We divvy up what we allow these industrial discharges to give us.

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There is the need to ensure that anything we put into a permit is federally acceptable. Attorney Tourangeau has reviewed our pretreatment permit in the past to verify everything in there is legally acceptable.

On October 31, 2018, Saint-Gobain submitted a permit application to install and design a treatment system to remove PFAS from their wastewater.

Saint-Gobain has a coating operation. As part of their coating operations, they use chemicals that have PFAS in them. Perfluorooctanoic acid, which is considered PFOA, is one of the biggest things they have there, and it is one of the contaminants that is found in the groundwater around the site. That particular contaminant of concern is something they have been trying to deal with, and what they were trying to deal with in terms of this treatment system.

As part of putting forth this application, they also submitted an Industrial Wastewater Indirect Discharge Request (IDR) Application to the State. The point of that application is that the State wants to be certain any of the wastewater that comes to our plant is treated in a manner that again will not interfere with the operations or cause an adverse impact.

Assistant Director Croce noted the primary purpose for a wastewater treatment plant is to protect public health. They ensure what is being discharged will not impact anyone.

Following the submission of the application on October 31, 2018, Saint-Gobain commenced the design and construction of the treatment system. In January of 2020, after the system was installed, the Town issued a permit to Saint-Gobain. The permit was issued based on not only the information provided in the application, but also supplemental information obtained through sampling and inspections at the facility. On February 5th, Saint-Gobain appealed the permit.

In the IDR permit application, Saint-Gobain specifically stated that, based on treating 2,400 gallons of processed wastewater, they were able to confirm that no PFAS were detected in the affluent above analytical reporting limits. Currently the analysis involves testing for 23 PFAS compounds. Those 23 PFAS compounds were found below method detection limits.

The permit application, which they submitted, lists PFOA, PFOS, PFC, plasticizers, and PCBs all reported below detection limit. In this case, they are using a concentration of micrograms/liter because that is what happened to be on the application. But the detection limit for most PFAS compounds ranges between 2 to about 10 nanograms per liter, which is a ppt. The legal authority the State has to require them to submit an IDR application is found in RSA 485-A:5 and Env-Wq 305, which are the standards for pretreatment of industrial wastewater.

Upon receiving a permit application, the department goes through the process of trying to determine what will be put within the permit. The first part of the permit is identification of exactly what they are allowed to discharge. In this case, they have 2 allowed discharges; plant discharge, which is their affluent from their sanitary, cooling, compressor condensate, and other various operations, and the second, discharge from their pretreatment affluent system. They were given a maximum daily discharge of 2,000 gallons.

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Also in the Sewer Use Ordinance are pretreatment limits, which are applied to basically every permit issued. Under PFAS compounds, the limit is identified as non-detect/report. The Asterisk states “Per Saint-Gobain Industrial Wastewater Indirect Discharge Request (IDR) Application received on October 31, 2018, the treatment system shall remove all PFAS compounds from process wastewater to non-detectable levels.”

Assistant Director Croce noted there are no federal requirements in place to require Saint-Gobain to remove PFAS from their wastewater. What we do have in place is two permits; 1 one from Massachusetts and one from the State of New Hampshire that require the Town to monitor PFAS in its compost. Because of that and because we have a Sewer Use Ordinance that requires us to make sure our compost is viable and that we can continue to sell and market it, we have placed it in this permit. The non-detect is solely there because Saint-Gobain placed it in their permit application. The reporting requirement is well within the requirements of our Sewer Use Ordinance.

When we feel we need to, and we do this commonly for Molybdenum, a cooling tower chemical that we don't have a pretreatment limit for, we monitor because it is an issue in compost. There are other things that will be put into these type of permits, e.g. VOC, to keep the chemical out of the wastewater treatment plant because of safety and discharge.

A diagram was displayed showing the building and the discharge pipe. The intent was to show manhole #8, which is the last manhole before Saint-Gobain's sewer line combines with the Town's sanitary sewer line. From the point where it exits the facility to the point where it combines with the sanitary sewer line is about 1,200 linear feet.

In regard to permit conditions, going back 3½ years, the first sampling of Saint-Gobain's wastewater resulted in identification of quite a lot of PFAS compounds and at very very high concentrations. The information was shared with Saint-Gobain, and began the discussion of them putting in a treatment system. The permit states “Saint-Gobain will pretreat all wastewater containing PFAS through the Pretreatment System.” It also clearly states what the pretreatment system consists of. There are two equalization tanks that allow you to put the water in and the ability to treat a set amount. Then you go through coagulation; moving all the large material that is in the water. Were that to pass through the carbon, carbon utilization would be so high it would not make economic sense. They remove all the large material through the coagulation process and then use a bag filter to remove the solids. From there they go through granular activated carbon, which is very similar to what MVD is doing. They go through two passes of the granular activated carbon, and the final PH adjustment. The Town has a final permit limit, and they have to be certain they discharge within that permit limit. They have a sludge holding tank and dispose of all solids offsite. They have a sampling port where the Town can sample the wastewater prior to exiting the system.

A few things to understand about the system; carbon is the thing that is doing all the work; removes the PFAS. It is a very unique animal in that anything that wants to absorb onto carbon can. If you have a lot of stuff in the water the carbon can be used up very quickly. During the permitting process, when they were installing the treatment system, they did a lot of testing, but they were testing on a set number of coating operations or chemicals that were coming to the treatment system. After the system was online, the Town conducted sampling. The results were displayed. Not all results were non-detect; 25.4 PFOA, 22 PFBA, 7.27 PFPeA, 14.6 PFHxA, and 4.16 PFHpA. The ten compounds listed

on the table were those that the Town is required to look at as part of the biosolids permit; as part of the permit with the State of New Hampshire for compost and part of the permit with the State of Massachusetts. It is very likely that as time goes on that there will be some sort of permit limits associated or that something will come out of this. Normally how agencies work is they first ask you to monitor things and the next time they put a permit limit in place.

Noteworthy is that if you look at the end of pipe, that manhole #8, and the numbers there, the results were 386 ppt PFHxS, 448 ppt PFOA, 228 ppt PFBA, 1,360 ppt PFPeA, 2,340 ppt PFHxA, etc. If you add that line up you come up with 5,147 ppt. That is a big number and where the concern comes: 1) what is going on with this treatment system that you have that much sitting in a manhole at the end of pipe, 2) is there something else going on in that pipe that we don't know about that we should know about, 3) are you doing things like cleaning out your pipes on a regular basis or something and discharging things that might end up sitting in the sewer. That is the piece the department was concerned by. They met with Saint-Gobain after they collected the samples and shared all of the analysis. They discussed everything in quite a bit of detail. They didn't have a reason for why the concentrations in manhole #8 were so high.

Assistant Director Croce spoke of the sampling the Town did in October and a site inspection, which brought to light a few issues of concern for the Deputy Director as well as the Town's Pretreatment Manager, one of which was that they didn't seem to have a very good handle on the actual operations. She remarked the Town runs a wastewater treatment plant, and she can state that all who are responsible for that wastewater going out to the river look at our discharge, our analytical results, on a daily basis. The Chief Operator is constantly looking at all of the discharges because that is what it is all about. It is about paying attention to what the numbers are, understanding what they mean, and making changes that help to ensure those numbers are the lowest they possibly can be. Understanding that and that they only tested for a very small number of products through that treatment system, what they realized is there is the potential that there is a great variability there, they have a lot of chemicals that are going through the system and some of them may be in fact be impacting the carbon's ability to remove PFAS.

During the meeting, they felt that Saint-Gobain should spend time trying to figure out if there are other parameters that they can look at to determine when breakthrough occurs, e.g., sometimes people will use total organic carbon analysis; a measure of how much carbon is in there. If you start to see total organic carbon in the affluent then you know breakthrough has occurred and you need to change out your carbon. Some places will use pressure differential. From looking at some of their data, what is known is that the density of the products that are sent to their treatment system will vary. Water has a density of 8.34 pounds/gallon. If she sees something that has a density of 15 versus something that has a density of 10, there is more stuff in the 15. The stuff (density) in the 15, if it is not removed through that coagulation step, it will be removed someplace else. That means you use up your carbon a little faster.

One of the things they said to Saint-Gobain, as part of what they call process optimization, was to go back and investigate is there anything else you can do to ensure you are changing out the carbon at the right time, and not just after 2,200 gallons. When the data was reviewed, seen was that the raw wastewater coming in was at all sorts of PHs and densities. They suggested Saint-Gobain go back and look at the raw data, start to put spreadsheets together, and begin testing different things to figure out

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whether or not any one of these might need to be treated just a little differently or they might have to change out the carbon just a little faster. All of the suggestions are what wastewater does in its business.

They also stated in the permit the need for Saint-Gobain to refine the breakthrough estimates for continuous operation. Two thousand two hundred gallons may not be what it should be, it may be 2,000 or 1,500. They need to figure it out.

Town Manager Cabanel questioned the response received in regard to the suggestions made relative to the optimization of the process. Assistant Director Croce read the response: *"We believe that the statement that Saint-Gobain needs to pay closer attention to the system logs and operational data mischaracterizes our efforts to date to adhere to applicable system monitoring requirements. In this regard, the plant was at all times in compliance with reporting and monitoring requirements contained in the permit and were in effect at the time of the site visit."* Essentially what they are saying through all of this we're doing a good job, and there are no laws that tell us that we have to do any more.

Assistant Director Croce went on to state Saint-Gobain was asked that when affluent results are above detection limits, they need to include an explanation and documentation of why this occurred and a procedure to be implemented to prevent the reoccurrence. This is standard practice.

Assistant Director Croce commented she worked in industry for a very long time, and when a customer complained they pulled out all stops to make sure they got it right. When there was an issue with compliance, they pulled out all the stops. She stated her hope Saint-Gobain is paying the same attention to this system that they would pay to perhaps some of their customer needs as this requires the same attention, and it is very important to be very disciplined and to pay close attention to all the details of the system. Wastewater treatment engineering is all about the details.

In the appeal, Saint-Gobain stated the Town does not have the authority to regulate PFAS pursuant to federal law, state law or local ordinance. They also stated that the PFAS in their wastewater discharges does not contribute to issues at the wastewater treatment plant or ambient groundwater. That the Town's inclusion of permit requirements that PFAS treatment must remove all PFAS compounds from process wastewater at non-detectable limits is arbitrary and capricious as a matter of law. Assistant Director Croce reiterated Saint-Gobain is the one that said they could do it and they put it in their IDR application and in the permit application to the Town of Merrimack. The permit only required monitoring and reporting.

Saint-Gobain objected to the 5 conditions that we put in that said you have to do it better, e.g., process optimization. They objected to testing their wastewater affluent because there is no USEPA approved test method. That is correct, there is no USEPA approved test method; however, Saint-Gobain for the last 4.5 years has been testing everything using a test method that was approved by and required by NHDES.

Saint-Gobain also objected to MCLs referenced in the permit. These are the MCLs that were stayed by the courts. Attorney Tourangeau has pointed out, the fact that they are in the permit does not have any regulatory impact to Saint-Gobain specifically.

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As was mentioned by one of the State Representatives, there is a bill in place that would regulate not 4 but 5 PFAS compounds. For the 5 she believes there to be a combined total limit of 20 ppt.

Chairman Koenig noted, in the appeal permit, Saint-Gobain has focused on 4 different points they want changed.

Councilor Harrington commented on the information provided within the presentation that answered a lot of the questions. She requested clarification on whether the permit contains a non-detect limit for all PFOS compounds, and was informed it does not. It only contains monitoring and reporting requirements.

Councilor Harrington questioned the difference between non-detect and the MCLs. Assistant Director Croce explained the only reason the MCLs were brought up is because the department listed it as a regulatory rule that is out there.

Asked if by having the MCLs in the permit, should the Bill pass and this become law, the MCLs would be able to be applied to the permit in the future, Assistant Director Croce responded no. There are aquatic groundwater quality standards as well. The reason for them to be in place is so that Saint-Gobain understands that regulations do exist outside, and should their pipe, which we believe is compromised and there is exfiltration from their sewer pipe to groundwater, should that occur, it is an issue as well as there is an issue should groundwater that is contaminated get into our sewer pipe. That was the reason that was put in there. The non-detect was specifically listed only because Saint-Gobain placed that in their permit application.

Asked if the permit requires Saint-Gobain to optimize operations and processes over the next year or a specified period of time, she indicated it to be over the next year. Asked if there are any sampling results more recent than October, Assistant Director Croce responded there are not. One reason being it is a slippery slope to get down to manhole #8 in the winter months. They are planning to sample early next month.

Chairman Koenig questioned if there is an ongoing discrepancy between the department's samples and those of Saint-Gobain. The response was that Saint-Gobain utilized Eurofins and the department utilized Alpha Analytical. When down in the ppt range, there are a lot of discrepancies between samples. Alpha Analytical has been approved by the State of Massachusetts to conduct solids and PFAS analysis for anyone who send biosolids or compost to the State of Massachusetts. The State of New Hampshire has entered into a contract with Alpha Analytical to complete all of their sampling and analysis. That is why the Town utilized them.

Asked if the results were using the processes mentioned earlier that are not necessarily USEPA approved, but accepted by the State, she responded they are accepted by the State. The process of an analytical method to be approved by USEPA can take years. They look at the method and send samples to multiple labs to ensure all of the samples come back within a certain range. What they want to know is that if you follow the method, and you go to any lab in the country, you are going to get the same result. It is a very laborious process they go through, and they have been going through it for the last year and a half. The method that is being used right now is based on an isotope dilution method, called 537 that has been modified. Each lab is doing something slightly different and that is

one of the issues that is also there with the different laboratories. Eurofins might be doing something slightly different than Alpha Analytical, which might be a reason for the discrepancy.

Attorney Tourangeau asked, if the department were to conduct the testing in March and Saint-Gobain did as well, if the results were above non-detect, what would the result be under the current permit, as it is written. Assistant Director Croce responded, under the current permit, if they have discharges from their treatment system above non-detect, they would write a report, state that they were above, try and investigate why it happened, and put together a corrective action plan. Asked, she stated they would not receive a notice of violation. Assistant Director Croce stated the department does not have the authority to issue a notice of violation on a number.

Councilor Harrington stated her understanding Saint-Gobain has no interest in finding out why the results may come out not in their favor. They have not provided any assurance that they will do that. Assistant Director Croce responded it certainly appears that way.

Councilor Woods spoke of the credentials of Assistant Director Croce. He requested clarification the individuals operating the pretreatment system at Saint-Gobain have similar credentials. Assistant Director Croce stated they hired a wastewater treatment plant operator who formerly worked at a municipality. They have consultants who designed that system who can provide assistance and are very competent in this area.

Vice Chairman Boyd questioned if there are any applicable surface water standards for PFOS as it stands, and, if not, how those standards would impact implementation of such a permit down the road. Assistant Director Croce stated NHDES is in the process; submitted a plan to develop surface water standards. The first phase of the standards development will be for human health protection. Other phases will be fish, other microorganisms. Once that comes into place, the Town of Merrimack, in its discharge permit, will receive a permit limit for PFAS. Once we have a permit limit, we are obligated by our pretreatment program to take a look and see who is contributing to us, and develop pretreatment limits. Then we will have permit limits in place at that point.

Councilor Albert commented the appeal seems to indicate the Town has no authority to monitor PFAS from their wastewater that goes to our facility. He asked for information as to the importance of doing so particularly in regard to biosolids. Assistant Director Croce stated we are allowed to require them to monitor. We're allowed to monitor and to deny a permit if a discharge has an impact on our wastewater treatment plant. In terms of our affluent, if it impacts the Town so that we violate a discharge permit or if the wastewater they discharge to the Town has a potential to impact our biosolids. If it impacts the ability of the Town to distribute or dispose or process biosolids then there is an issue. We also have the authority to require them to monitor because we have two permits that require us to monitor. The State of New Hampshire is doing leachability studies with USGS. They are looking at how much the stuff that goes into the compost can leach out and contaminate groundwater.

Vice Chairman Boyd asked what the fiscal impact would be should Merrimack's compost be deemed non-compliant with the permits issued, and was told the operating budget would increase by about \$2.5 million/year. Town Manager Cabanel commented on the \$2.5 million to dispose of sludge, and questioned the amount of revenue loss. Assistant Director Croce stated the Town receives sludge from other communities (approx. \$300,000/year), septage from communities all around us (approx.

\$300,000/year) and we sell our compost (nearly \$200,000) Lost revenue would be approx. \$800,000/year.

Councilor Healey questioned if the septage received from other communities is tested, and was informed currently NHDES has a program where they are starting to test septage. A few problems exist with testing septage; it is a truck and when you empty it you may or may not get all the stuff out. How you test it and where you test it becomes a very sticky point. The Town will be testing sludge moving forward in addition to testing the compost for PFAS.

Chairman Koenig stated while the Town understands the basis for the objection they have on the MCLs being listed, we would like to provide the following clarification: Senate Bill 287 is proposing to set the Maximum Contamination Level (MCL) for PFAS in drinking water. This bill was passed in the Senate on February 13th, and will now go to the House of Representatives for review. The limits in the bill are the numbers in the permit. We believe that these should remain even though they are not enforceable until either the Senate Bill passes and is signed by the Governor or the courts remove the injunction on the limits that were set by DES.

We feel it is valuable to have that information in there for future use assuming it clears the courts. While the injunction is in place, it has no impact on Saint-Gobain. Chairman Koenig stated the Town could not kick back at them for anything on those numbers, and asked Attorney Tourangeau to verify the correctness of that statement. Attorney Tourangeau responded yes, and that she wished to speak to that by reading what they put in on that point.

In their appeal, pages 12-13, they listed 4 conditions and alternate language. The one on MCLs is #3:

*“3. Permit inaccurately states that there are existing maximum contaminant levels (MCL) in drinking water and ambient groundwater quality standards for the following PFAS compounds: PFOA (12 ng/l), PFOS (15 ng/l), PFHxS (18 ng/l), and PFNA (11 ng/l).
These standards should be removed from the permit and only a standard of PFOA and PFOS at 70 ppt should be included in the Permit.”*

The point the Council and Assistant Director Croce were trying to make was that leaving in the current reference to the MCLs even though they are stayed or may be changed in the future by legislation, has no effect in terms of an effective standard currently. It just means that if there is an MCL that comes in later, leaving that reference to the MCLs would allow that to be effective. If you take them out, as requested by Saint-Gobain and put in a hard limit of 70 ppt, you would then be stuck with that 70 ppt limit for the next year unless you amended the permit to reincorporate the MCLs.

Town Manager Cabanel spoke of the level of detailed information provided through the presentation. Councilor Harrington spoke of the valued education the Council has received over a long period of time, and expressed her gratitude towards Assistant Director Croce for the manner in which she has shared her knowledge with the Council and community.

Councilor Woods spoke of the number of hours he has spent following discussions that have taken place with the Town Manager and Assistant Director Croce. The last two presentations provided the

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Council on the operations of the plant gelled everything very nicely in his mind. He expressed his appreciation.

Chairman Koenig remarked # 4 in the appeal addresses the location of making the measurements; should it be at the exit of their wastewater treatment system or potentially at manhole #8. They seem to be confused as to where we are asking for it to be done. He believes their liability would extend at least to the end of their property. Assistant Director Croce stated the Town can sample anywhere it chooses. They will sample inside at the end of their treatment system; outfall 001. We also have Outfall 002, and Outfall 008. Manhole 8 is very important because that is the end of their treatment system and it gives us a really big picture of what is getting down to the bottom. The treatment system itself, it is very important to sample right there as well because we want to know the efficacy of that system. We plan to sample at all of those locations. In the permit that we issue, we will give them that drawing, and say that we have the right to sample at all of those locations.

Attorney Tourangeau asked that Assistant Director Croce explain the importance of obtaining samples at the outfalls from the process water treatment system and at 008; what does the delta tell you. The response was with 008 we tend to be able to get a better idea of what is happening over time. The process wastewater system, that is a one shot deal. You collect the sample; it is what is happening that day at that moment. At 008 and 001 you can see other things. You can see if anything has bypassed that system. That happened to be one of the questions asked when sampling 008; if they had gone back and checked their piping to make sure they were not bypassing the system, or anything wasn't bypassing the system. You can also see if there is any residue buildup in the piping that might be impacting the wastewater treatment plant long term. You also can see if there is an issue with infiltration from groundwater. If it isn't coming from the wastewater from Saint-Gobain; if it is not coming from their treatment system or their municipal side of their activities, it might be coming from groundwater and we might have compromised sewer piping there. All of these things will be telling us a story and it is very very important to understand what that story is.

If we go out in March and the numbers in manhole 8 are the same or higher than what they were, we've got a problem. We would go back to Saint-Gobain and say okay well now you have to do something. There is a specific prohibition in our Sewer Use Ordinance that prevents them from discharging groundwater to the sewer. That would be the first thing we would go to. We would say we want you to make sure that is not happening. We would say to them you need to go back and see what you are doing in everything else; all of those sinks that you have in that plant from all of those R&D labs etc., you need to make sure that nothing is being thrown down those sinks as well. There are a lot of things that we can see from that testing.

Councilor Harrington remarked although there has been seen a lack of respect to the Town and Council by the absence of representation from Saint-Gobain, it should be noted the Council has remained respectful to the process. Data obtained has been carefully analyzed.

Vice Chairman Boyd read, into the record, the letter sent by electronic mail dated February 27, 2020 to 6 Baboosic Lake Road, Merrimack, NH 03054, regarding petition to appeal Saint-Gobain's Performance Plastics Industrial User Discharge Permit #20:

“Dear Merrimack Town Council:

On behalf of Saint-Gobain Performance Plastics, Inc. (SGPP), I thank you for the invitation, communicated through the Town’s outside counsel, to appear before the Town Council during its regularly scheduled meeting on Thursday, February 27, 2020 to discuss the appeal referenced above.

We are aware of the Town Council’s desire to hear more details on our appeal, but it is our understanding that an appeal of a technical industrial wastewater discharge permit to a governing body such as this is highly unusual. We are also aware that the town Council is proceeding pursuant to the provisions of the Town’s Sewer Use Ordinance (SUO) to consider our petition to reexamine provisions of the Permit (Petition). We continue to be prepared to meet with the Town’s staff to work with the issues set forth in our Petition. As such, we felt it was best to provide our concerns - which are also outlined in the appeal - via a letter for the Town Council. In lieu of our appearance tonight, please accept this letter as our statement, for the record, that aims to crystalize the issues and lay a proposed path forward.

Why the Permit was Appealed

We understand that typically permittee concerns, if any, are addressed through discussion and mutual resolution directly with the Town’s Department of Public Works (DPW). On several occasions, SGPP requested meetings or calls with DPW staff to discuss concerns following DPW’s issuance of the permit on January 6, 2020. In each instance, DPW either declined, or was unwilling to meet with SGPP personnel. Faced with a 30-day appeal deadline under the Town’s SUO and without any other readily apparent avenue to preserve our opportunity to address our concerns with the permit, the Petition was filed with the Town Council on February 5, 2020. We followed the process outlined in the Town’s SUO to preserve our rights in this matter with the hope that DPW, as would be the normal course, would be willing to meet, discuss, and work collectively to address our concerns with the permit.

Requested Provisions

As fully described in our Petition, our appeal involves four concerns related to new PFAS-related conditions, as briefly summarized below:

- 1. The inclusion of a non-detect enforceable affluent limitation for PFAS compounds at pages 6 through 8 of the permit.***

It is our goal to achieve non-detect for PFAS in our wastewater discharge even though there is no factual or legal basis for the Town to impose such a limit in the permit.

As detailed in our Petition, the non-detect discharge limitation for PFAS in the permit is unsupported by the facts and contrary to the law. In this regard, the following key points are relevant:

- *In 2018 and 2019 SGPP voluntarily took steps to design, construct, and install the Granular Activated Carbon (GAC) system that is designed to treat and remove as much PFAS as feasible and practicable from its process wastewater. Our voluntary efforts in this case are entirely consistent with our ongoing leadership position and proactive responses to address PFAS.*
- *DPW has no legal authority under Federal, State, or its SUO to impose an enforceable non-detect discharge limitation for PFAS. This is also the case for any concern raised by the Town related to bio-solids, groundwater, surface water or any other issue.*
- *As a factual matter, by most measurements, more than 99.99% of the PFAS present at the Town's wastewater treatment facility (WWTF) comes from other sources.*
- *No one company should be singled out for regulation. As far as SGPP is aware, DPW has not imposed similar non-detect discharge limitations for PFAS in any other permit issued to a discharger of industrial wastewater to the WWTF.*

Requested Change to Permit Condition: *This permit condition should change to require SGPP to monitor and report for PFAS as was the case in SGPP's prior permit.*

2. ***The inclusion of conditions and requirements related to GAC system optimization at page 6 of the permit.***

As detailed in our Petition, Conditions 1-5 for Process Water Treatment System listed here are vague and overly broad. SGPP cannot ascertain what is required of it to comply with the permit obligations.

Requested Change to Permit Condition: *SGPP and DPW should meet and discuss these conditions so we can understand DPW's concerns and mutually agreeable conditions can be developed.*

3. ***The lack of certainty regarding the sampling point for compliance purposes at page 8 of the permit.***

As detailed in our Petition, the sampling location, as currently drafted on page 6 of the permit, is vague. The sampling location to determine compliance with the permit should only be located at the discharge point of the newly installed treatment system.

Requested Change to Permit Condition: *This condition should be modified to make clear that the sampling location for compliance with the permit shall be at the discharge point from the process wastewater treatment system.*

4. ***The inclusion of reference to NHDES' currently stayed new MCL for PFOA, PFOS, PFHxS, and PFNA at page 4 of the permit.***

As detailed in our Petition, the permit incorrectly states that there are existing maximum contaminate levels for drinking water and ambient groundwater quality standards for these four PFAS compounds. As it stands today, these standards have been enjoined by the Superior Court and are no longer

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enforceable standards. Therefore, including such a statement in the Permit, or relying upon these standards in any way, is unreasonable and unlawful.

Requested Change to Permit Condition: *To conform to law, we are requesting that the permit reference the legal standards in effect on the date of permit issuance.*

Proposed Path Forward

Our business is committed to working to resolve the permit conditions. We believe it will be mutually beneficial for SGPP and DPW to meet, discuss, and work together to address our concerns with the permit. In order to allow time for meaningful dialogue, we are asking the Town Council to table its decision and extend the period of time for it to make a decision on the appeal. Specifically, we are asking for an extension period of 60 days, until May 5, 2020, which will allow for SGPP to meet with DPW to address our concerns regarding the permit. On or before the end of the 60-day period, SGPP will report to the Town Council in writing on the resolution of the issues included in this appeal and the status of any related permit modification. At that time, as appropriate, and provided a mutually acceptable resolution is reached, SGPP would consider withdrawing its appeal.

SGPP looks forward to working with the Town and DPW to resolve this matter. As a next step, we would be happy to address any follow-up questions the Town Council may have and we will contact the Town's outside counsel to discuss when the DPW team might be available to meet.

Respectfully,

Brett Slensky, Environmental, Health & Safety Counsel, Saint-Gobain, North America"

Assistant Director Croce spoke of the reason they did not meet; normally when counsel will be present, the Town is informed of that and provided an explanation. In this case, Brett Slensky was going to be present at the meetings. She happened to know he was an attorney based on the CAC meetings they had attended. When she asked why he would be present, she did not receive an answer. At that point, they felt it important to notify the Town Manager and get legal counsel involved.

Chairman Koenig stated the Sewer Use Ordinance requires the Town act within 30 days or the appeal is deemed to be denied. If we allowed it to be deemed denied because we went past the 30 days without having these comments or discussions, then any of our supporting documentation would not be admissible in a court if they were to appeal to the next level. It is necessary for the Council to react and enact a decision on this so that all of the discussion can be part of any ongoing appeal effort, which is why, even though they have asked for 60 days from the Town, they didn't grant us an extension beyond that 30-day requirement. If they don't grant the extension, we can't just assume it.

Attorney Tourangeau stated they provided for an extension of time, but did not say that they would waive the 30-day requirement in the Sewer Use Ordinance.

Chairman Koenig questioned the will of the Council relative to how to proceed with the appeal.

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Councilor Harrington questioned if the proper procedure would be to deliberate on each requested change separately and motion to accept or deny.

Attorney Tourangeau recommended the Council go through the requested alternate conditions on pages 12-13 of their actual appeal, and read through each one and have discussion and a vote if the Council believes it has enough information to reach a decision.

Requested Alternate Conditions

- 1) *The Permit requirement that SGPP's process wastewater treatment system remove all PFAS compounds from process wastewater to non-detectable limits.*

This permit condition should be changed to a requirement for SGPP to effectively operate the new pretreatment system and to monitor only for PFAS, as was the case in the November 2018 permit.

MOTION made by Councilor Harrington and seconded by Councilor Woods to reject the appeal

ON THE QUESTION

Councilor Harrington remarked the discussion has provided global and specific answers to questions posed. She does not believe there to be sufficient evidence to state Saint-Gobain is capable of meeting the criteria that has been put forward.

Chairman Koenig noted there is not a non-detect limit perse, there is a non-detect reporting value. It seems to be erroneous the way they are asking for this. We haven't asked them to limit all wastewater and put them in violation if they don't, we simply ask them to monitor it and let us know, based on the fact that they said they would reach non-detect levels. He stated agreement with the motion to reject.

Councilor Healey reiterated the language comes from their own permit application. Let's hold them to what they said they were going to do.

MOTION CARRIED

6-0-0

- 2) The Permit requirements found at page 6 of the 2020 Industrial User Discharge Permit, namely, conditions 1-5.

These conditions should be deleted in their entirety, SGPP, with approval from the Town, has already established that the 2,200 gallon carbon change out control mechanism is the best available option for controlling the discharge of PFAS.

MOTION made by Vice Chairman Boyd and seconded by Councilor Healey to reject the appeal

ON THE QUESTION

Vice Chairman Boyd stated the fact they are objecting to the implementation of process controls to optimize internally is just telling. There is no commitment from Saint-Gobain to better a process so that when the end product gets to the wastewater treatment facility there is a level of confidence that the affluent being received from Saint-Gobain has been cleaned to the best amount possible. He spoke of Assistant Director Croce taking the time and expressing a willingness to partner and work with Saint-Gobain especially since they have had troubles with their GAC. For a company that prides itself on being an environmental leader in the community it makes a mockery of it if you are unwilling to sit down with the people in your community that are here to help you. Based on just the optimization piece alone, he believes it worthy of rejecting item #2 of their appeal.

Councilor Harrington commented she has the feeling they believe the reporting is sufficient; it doesn't matter what the results are. That is not acceptable to her.

Councilor Woods stated agreement with the comments of Vice Chairman Boyd. They are simply ingenuous.

Chairman Koenig stated agreement commenting the issue of stating the 2,200 gallon carbon changeout control mechanism is sufficient when they never tested the system with all of the various different chemicals and wastewater flow that they would send through it, does sound very disingenuous. There is a concern that if they in fact are getting PFAS in the outflow when they said they could reach a non-detect level, it may be there is some optimization that does have to happen and maybe their GAC filters need to be changed more frequently. It is their responsibility, in his opinion, to optimize their flow to do the best they can.

MOTION CARRIED

6-0-0

- 3) *Permit inaccurately states that there are existing maximum contaminant levels (MCL) in drinking water and ambient groundwater quality standards for the following PFAS compounds: PFOA (12 ng/l), PFOS (15 ng/l), PFHxS (18 ng/l), and PFNA (11 ng/l).*

These standards should be removed from the permit and only a standard of PFOA and PFOS at 70 ppt should be included in the Permit."

MOTION made by Councilor Healey and seconded by Vice Chairman Boyd to reject the appeal

ON THE QUESTION

Councilor Healey stated the discussion has already been had that the Town is not asking Saint-Gobain to manage to those standards, but we are going to include them in there because with the help of our Senate and the House, we will have the bills in place, signed by the Governor, to make sure that those are our drinking water standards.

Chairman Koenig stated agreement; he feels they should be in there and to take them out completely would tag us with at best a 70 ppt for PFOA and PFOS. We would have to open it up and revisit it if anything should change. At this point, that seems inappropriate.

Town Manager Cabanel remarked we have been told that Saint-Gobain has not been using PFOA since 2014. Why is it still turning up in their wastewater?

Vice Chairman Boyd remarked why are they fighting over it? If there is no PFOA why are we here?

Chairman Koenig commented those are great questions, and ones we have been trying to figure out for 4 years now. As they have pointed out, the volume of PFOA that they are using is dramatically reduced, that doesn't change the fact that they are still contaminating with numbers that are above the EPA expected limits, and we still have contamination in the ground around them and in our well water, which exceeds some of the limits.

MOTION CARRIED

6-0-0

4) *The Permit unlawfully and unreasonably states that: "All measurements, tests, and analysis of the characteristics of waters and waste to which reference is made in this permit shall be determined in accordance with the EPA-approved methods published in the Code of Federal Regulations, Title 40, Part 136 (40 CFR 136), or if none are available, then sampling and analysis shall be performed using validated analytical methods or other applicable procedures approved by the Town. Sampling methods, location, times, duration, and frequencies are to be determined on an individual basis subject to approval by the Town." Id. at 8.*

This condition should be modified to make clear that the sampling location for compliance with the permit shall be at the end of process from the process wastewater treatment system.

MOTION made by Vice Chairman Boyd and seconded by Councilor Woods to reject the appeal

ON THE QUESTION

Vice Chairman Boyd stated there to be two points he wished to address. It is interesting that at the plant they have very low numbers, and in a manhole they have huge numbers. Sampling location is critical. We heard from Assistant Director Croce that the Town of Merrimack has a permit with the Commonwealth of Massachusetts and a permit with the State of New Hampshire. The affluent that flows down a river has a regional impact on our neighbors to the south. He serves on the New Hampshire Drinking Water and Groundwater Advisory Group. They approved a loan to Pennichuck so that they could put a pump in the Merrimack River to provide drinking water to the users of the Pennichuck water system. The last thing he believes Saint-Gobain would want to do would be to pollute that particular water that is servicing the very customers that they just hooked up to that very water. Our neighbors in Lawrence, Lowell, and Haverhill that rely on the Merrimack River for their drinking water.

We have a responsibility, as a community, to ensure what we are putting into the Merrimack River has been treated to the maximum extent possible. We need to hold Saint-Gobain, to a larger extent, accountable for the stuff that is going into the wastewater treatment system.

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If the Town is not compliant with State and Federal regulations the feds will not go knocking on Saint-Gobain's door, they will be at our door. It is our responsibility to make sure what is flushed out of wastewater into the Merrimack River is clean to the maximum extent possible.

Councilor Healey stated this deals with two issues. One is the testing methodology, which we are currently using and has been approved by NH DES. Saint-Gobain has been using this methodology now for well over 3 years. There is no change in the test and the test methodology. If anything it stands to reason that we would want to be consistent in our testing methodology based on what has gone on previously and what will go on in the future.

It is also good investigative method to test several sites along the way so that you know if you are seeing averment results at the far end before it leaves their property. Wouldn't they want to know where their problem is? In her mind, that would only serve to help them in the future, and in their operations as they seek to clean their wastewater as it leaves their plant.

Chairman Koenig stated concurrence.

MOTION CARRIED 6-0-0

There being no objection, the Council took a five-minute recess at 9:27 p.m.

The Council reconvened at 9:32 p.m.

The Council returned to the regular order of business.

1. Update on NH 101A Project

Submitted by NH Department of Transportation Project Manager Jennifer Reczek

The Town Council to be briefed on changes to the project as a result of public input. Work will be limited to improvements at the intersection of NH 101A and Continental Boulevard and intersection of Boston Post Road and Craftsman Lane.

Jennifer Reczek, Project Manager, New Hampshire Department of Transportation, spoke of the past public process; public informational meeting on July 27, 2015, presented to the Town Council on June 28, 2018, public informational meeting on August 23, 2018, Public Hearing on September 25, 2018, and a Finding of Necessity on January 17, 2019. In that process, there is a special committee of 3 members of the New Hampshire Executive Council that are appointed to hear testimony and determine whether or not there is a need for the project and whether the State has the ability or necessity to take property rights, if needed, to complete the project. In January of 2019, they found there was necessity for the layout of the project.

A diagram was displayed showing the full scope of the project at that time. The project would make improvements at the intersection of Continental Boulevard with 101A, continue west creating a 3rd eastbound thru lane to match the 3 current westbound thru lanes, and look at reconfiguring the intersection of Craftsman Lane and Boston Post Road to limit the cut through movements using those local roads as a bypass for 101A, particularly with the westbound movements.

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Beginning at the public informational meeting, dialogue began with an abutter having significant concerns about the project and how this would impact their business and operation. Discussions occurred in the summer of 2019 with the Nashua Regional Planning Commission informing them of concerns from the abutter and attempts to work through them.

There are two different processes with the department. The ten-year plan process, which is the long-range transportation planning process that introduces projects into the plan for future implementation (updated every 2 years). This year corresponds with a year when the department is actively working on an update to the ten-year plan. Separate from that is a regional planning process that looks at our Transportation Improvement Plan (TIP). Each regional planning commission has their own TIP as well as the State's plan. Those two need to be in alignment. If that Statewide Transportation Improvement Plan (STIP) doesn't have the correct information for the project, ultimately we cannot advertise it.

At a GACID hearing, through the ten-year plan process, mention was made that there are some concerns and that possible revisions were being looked at. Ms. Reczek stated she heard from Kyle Fox, Director, Public Works Department (PWD) after that meeting. They spoke about some of the conflicts they were trying to work through. In early December, they received buy-in from the abutter on a reduced scope. That is when the STIP amendment was initiated. That is the separate process that deals with the funds coming from the Federal Government towards the projects.

At that point, there was coordination with the Town Manager (January) to inform her of what was occurring and a request to be placed on the Council's agenda.

Some of the objections stated at the public hearing dealt with issues ranging from how a third lane may back up traffic to the visual effects to their property and concerns over the stormwater treatment that was proposed and required to meet the MS4 Stormwater Discharge Permit, concerns about blasting, etc. The concerns that were brought up at the public hearing are outlined in the report of the Commissioner produced after the hearing, and available on the website.

Based on all of the discussions, they are looking at essentially removing the work in front of their property; the eastbound through lane starting to the west of Boston Post Road and coming up to somewhere in the neighborhood of the VIP Auto. Last spring it was looking very much like the whole project could be in jeopardy. The design team went back to say what can we do to work within their concerns and still provide some value to the Town.

What they noticed is near the VIP Auto driveway, the proposed plan tied in pretty well with the existing curb line in that location. They can begin the project there and widen out to add the 3rd thru lane at Continental Boulevard so it maintains all of the benefits at this intersection (all of the other legs are unchanged from the original plan).

Chairman Koenig remarked effectively you are bringing the third lane that starts just to the other side of Continental Boulevard through the intersection and starting it close to VIP or Friendly's.

Ms. Reczek stated, at the other end, there have been a few modifications since the time of the public hearing. One of the requests made was for the continuation of the sidewalk on the north side of 101A up along Boston Post Road. That is shown in the plan. Otherwise the improvements have not changed; creating a 90 degree intersection from Craftsman onto Boston Post Road to help limit the cut-thru traffic that is using this as a bypass. We're not doing any work on 101A in this area based on the current scope.

Graphs were displayed depicting a level of service or sort of grading system for intersections. It looks at how efficiently each intersection can move traffic. There is an AM peak, a PM peak, and a Saturday midday traffic volume shown for Boston Post Road and Route 101A at Continental Boulevard. Shown were comparisons of what could be expected in terms of delay if there was no build, a full build, and a modified build. There are things that can be done with signal timings to adjust how the intersection of Route 101A and Boston Post Road is operating today.

A slide was shown identifying the comparison between the 3 options (no build/full build/modified build) in regard to turning movement. The two that stand out the most are the left-hand turns from Boston Post Road onto 101A as well as the through movements. Because you don't have the 3 lanes, there is some decrease in the level of service that is able to be provided. Focus there was on the AM peak hours as it is the time period that can benefit the most from the thru lane.

At this stage, the STIP amendment did get approved. It is a process that is gone through every 3-6 months depending on what is being changed. That process can be changed, but the scope presented is what is believed can be carried forward and be able to complete the project.

Town Manager Cabanel commented it seems pretty obvious the issue has to do with having a connection be satisfied. She questioned if anyone has sat down with the abutter to look at their engineered plans. She contacted them and asked if they have spoken with the State and asked if they could come in and propose something. They have a plan whereby there would be 3 lanes, but it is not exactly like the plan of the State.

Ms. Reczek stated they have met with the abutter on 3 occasions as well as having quite a bit of correspondence back and forth. This is the first she has heard of any plan. They first met with them, at their offices, in early September of 2018, between the public meeting and the public hearing. They discussed a wide variety of issues and concerns. There was email follow-up after that meeting. After the hearing, they received, in addition to testimony that evening, letters from connections themselves as well as their counsel and an engineering firm. Those concerns were all documented and addressed in the report of the Commissioner. All of the things they have brought up are fairly easily addressed and things the department routinely deals with.

Following the Finding of Necessity, they reached out again with concerns that what was written in the report of the Commission was not able to address. They sat down again with the Commissioner's level and met with them and their attorney and went through the concerns. That is the stage where they said we may have to just do away with this project entirely, and where they went back to try to come up with some sort of a compromised scope. They met again in September to go through that modified scope, and based on the outcome of those discussions, is where they had agreed this looked like a good plan.

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Town Manager Cabanel stated she spoke with the abutter probably 2 weeks ago, and Bob Pratt suggested there might be a meeting. They do have a plan. She is aware the State has tried to work with them, but this may be some new information.

Ms. Reczek agreed it may be, and that they could evaluate it. She noted there is a budget to be considered; Federal funding/taxpayer money. Sometimes the solutions that a private entity may have for different constraints are a little bit different than what we can build. We have to pass a straight face test on the use of taxpayer money.

Councilor Albert stated understanding of the intent of the project to help out during rush hour. He commented on the number of traffic lights suggesting you could add 5 lanes on either side and not be able to get traffic to move any faster. Now you are adding crosswalks. That will slow it down even more every time someone hits a button. He believes the only thing within the plan that will help is changing the intersection at Craftsman and Boston Post Road.

Vice Chairman Boyd questioned if the project would create a bottleneck with westbound traffic coming out of the Continental Boulevard/101A intersection as a consequence of only widening to 3 lanes. You are 3 lanes at that intersection and then dropping down to 2 at that location. Ms. Reczek responded westbound has 3 lanes today all the way through Boston Post Road.

Vice Chairman Boyd noted the intersection of Boston Post Road and Craftsman Lane; because of minimal traffic coming out of the connection (cyclical) he would speculate the traffic coming out of Boston Post Road is either church traffic or people coming and going into the neighborhoods during rush hour. He questioned if consideration was given to a roundabout at that location. Ms. Reczek responded she is uncertain if that was something looked at.

Dave McNamara, Project Manager, Stantec Consulting, stated that was not looked at originally. There was a roundabout looked at at Continental Boulevard at one point. One of the problems would be that differential in traffic. Roundabouts want to have some evenness of traffic from the different legs. If you do have a light leg it does tend to lessen their effectiveness. You would get that dominant move coming through; that 101A eastbound move will dominate in the mornings and westbound in the afternoons. It is harder for those side roads to get in with the lack of balance between the legs.

Vice Chairman Boyd questioned if any traffic studies were conducted of the volume of cars utilizing that intersection at those particular times, and was informed they were. He questioned what the PM number was. Mr. McNamara stated for 101A it was up near 37,000-38,000 (peak day). He did not recollect what the number was for Boston Post Road.

Vice Chairman Boyd questioned whether it would be worthwhile to consider a roundabout at that location. He would believe there would be better traffic flow as a result of having the calming of the roundabout there at the same time still having the free flow of traffic going through that particular intersection.

Ms. Reczek suggested there is a point at which you have such a great volume that you are looking at 2 and 3 lane roundabouts. At some point there becomes a traffic volume number where it can become a

challenge for people to navigate. Mr. McNamara remarked with the signals approximate to that you will lose some of the effectiveness of that roundabout.

Vice Chairman Boyd spoke of having raised the issue regarding the MS4 permit and whether or not DOT would follow the Town's blasting ordinance. There are other things that were brought up at the Public Hearing that were specific to the abutter's site needs. The blasting concern was unable to be addressed at that time. They were able to address the MS4 piece by saying they would be responsible for the runoff. It would be their drain; their responsibility and the engineering would be designed in such a way. He was trying to understand why there was abutter concern about those particular issues.

Ms. Reczek responded, with the blasting concern, questions were raised regarding the ordinances. The State is not required to follow them, but certainly want to work with municipalities and understand that there is a history in this location. One of the abutter's concerns is potential implications on their communication lines and the ability for them to continue business. They have many ways they can work with blasting companies limiting vibrations, limiting the blasts. On several occasions they said they had worked out some limitations when the Home Depot went in. The State has asked to be provided with what those limitations were to ensure they are meeting or exceeding them. None of that information has been provided as of yet. Certainly that is something they routinely work with. They believe it to be something they could address, but the abutter felt otherwise.

There were a lot of questions on the MS4 permit, what that is and means. Municipalities have their compliance and likewise the department has their compliance to provide. What that is looking at is any place where you are redeveloping impervious area that we need to capture and treat the stormwater. For redevelopment that is an 80% removal rate and for new development, a 90% removal rate. Most of the Best Management Practices that are installed to do that only get an 80% removal rate, which effectively means that you need to treat that stormwater treatment volume off of 100% of the impervious area coming into your project.

With the initial layout, that is what they were attempting to do. Even with that layout they were not quite at 100%. That was the purpose of the stormwater treatment; all necessary to meet that requirement. They and their engineer felt otherwise about it, but as the entity that has to provide the compliance and assure the EPA that we are meeting that permit, they felt it necessary.

Councilor Albert spoke of the ten-year planning meeting conducted in Bedford a few months back. This project comes with a cost of \$6.3 million. He suggested the message be brought back to the Commissioners that he would like to see them repurpose the money for the State maintained road on D.W. Highway north from exit 10. There are a number of people that are impacted because of the amount of development and delays. He was surprised when the Bedford side of the area was going to get improved. Merrimack may be better served through addition of on/off ramps at 12 that aren't there or northbound on D.W. Highway, which is maintained by the State. That could use some widening, turn lanes, etc. He also learned during that meeting there is the possibility of funding being delayed for other projects.

Dawn Tuomala, Deputy Director PWD/Town Engineer, stated her understanding of the desire for D.W. Highway improvements, and that it would be nice to have a full intersection at 12. However, what is happening on 101A is servicing more than just Merrimack. It is all the towns to the west, e.g.,

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Amherst, Milford, Wilton, Hollis, Brookline. There are more backups here. She stated the desire to see this project continue. Even in the reduced scope, the Town gains a lot of benefit. We also have the F.E. Everett coming up in a few years. That involves two bridges in Town plus we have the Wire Road intersection and the bridge at Pine and Burg. She restated her belief this project will be a big benefit and commented the area of Craftsman Lane does help in the MS4. Water coming from the roads will be treated.

Councilor Healey agreed with the help in regard to the MS4. However, from the original to the modified plan, the timing for traffic isn't significantly improved. She questioned if both sides of the roadway would be done simultaneously. Ms. Reczek commented typically they leave timing up to the contractor. They can put provisions in a contract that could limit them to doing one part at a time. Councilor Healey spoke of the disruption that would occur if both sites were done at the same time.

Chairman Koenig spoke of being disappointed the 3rd lane was dropped. When he originally heard of the project he was concerned with the cost for a project with this relatively short magnitude. His concern is if we do this work on the intersections on both ends and don't put in that third lane, we will never get that 3rd lane. While the 3rd lane only goes to just past Craftsman Lane/Boston Post Road, if we don't put it in when we can, and we never get it we will never get a 3rd lane further west without that piece, to make it manageable and worthwhile. Hearing the Town Manager comment that the abutter felt they were not being heard, he is concerned he is hearing different stories concerning the communication. He requested they reach out to learn what they have to offer to see if it is workable. It may not be.

Ms. Reczek stated there to be a small section of green on the Home Depot side and then there are several hatched areas that are wetlands. They are not permitted to disturb wetlands to create stormwater treatment. One of the proposals was to utilize that space to treat that stormwater. Unfortunately, that is not permitted by NHDES. There was an area on the uphill slope (VW dealership) that they suggested it be pumped to. That is something that a State agency can't continue to operate and maintain especially when there are locations available within the property that they already own. There was one other area just to the left of where VIP Auto is. There are 2 outlet pipes that run through there. They were investigating the feasibility of constructing a larger more of a stormwater pond there as opposed to the bioswales. The type of treatment they are proposing in most locations would be a grass swale (no standing water). In the area proposed there was a concern with grade. The outlet pipes are really the only place in the project that give a point to outlet.

Mr. McNamara remarked there are multiple easements through there between private entities. The State does not own the property. There were Right-of-Way issues in addition to the 42" that is carrying that wet area (everything coming down from Home Depot and everything on that side of the existing 101A). There is a smaller pipe running parallel with it pulling down from VIP as well. They could not fit a pond in there without then having to move all of that water as well as access easements that NHDOT isn't a party to that the pond would sit on and block.

Chairman Koenig commented he agrees the intersection changes will in fact improve the flow through Continental intersection. Just having that 3rd lane there will help people get across that intersection. He is uncertain if it would improve site distances.

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Vice Chairman Boyd commented Director Fox is a member of the NRPC's Transportation Technical Advisory Committee (TTAC). TTAC met a few days ago regarding the amendment, and submitted a letter to NHDOT expressing opposition to the change, but approving the change knowing that the modified version was still a necessity to this particular area to meet the transportation needs. They shared a strong level of disappointment that the amendment was coming from NHDOT as it relates to removing the 3rd lane. He too expressed the desire for additional discussion with the abutter commenting from a regional perspective it is a key artery for folks coming from the west to get to the turnpike and into Nashua.

Assistant Town Manager/Finance Director Micali questioned removing the 3rd lane from this portion of the project; if it could remain understanding there are other portions of the project further east in the Nashua area that it could be tagged onto, e.g., when widening from Target down towards the city line.

Ms. Reczek responded she is uncertain that it would be necessarily added on to the other project, but it is certainly something that could be talked about with regional planning and reintroduced as a future project. Where they are looking at tying in is where the curb line was anyway. There is nothing that is being constructed now that would preclude them from going back and implementing the full design.

Deputy Director Tuomala stated the TTAC is displeased with losing the 3rd lane. This road is the region's number 1 concern. To take part of it away was really disheartening. They would like to see something versus nothing. They did discuss tacking the 3rd lane onto the Nashua section that will be coming up shortly. That just wasn't a viable option. She is uncertain of the timing in regard to whether they could change these plans at this point and still meet the timeframe they are trying to work under. It could result in loss of the whole project or it being pushed out.

Chairman Koenig asked for clarification TTAC determined there was sufficient improvement in the Continental intersection to make it viable to go forward, and was told that was the case.

Greg Lantos, Principal Transportation Planner/MPO Coordinator, NRPC, stated they supported it wanting to ensure something was done. They also had to see if the amendment were defeated by the MPO. TTAC is advisory to the Metropolitan Planning Organization (MPO). That would have included the CMAC projects that had been approved and we would have lost them for now if we denied that amendment. They did it under duress.

Chairman Koenig reiterated his disappointment in losing the 3rd lane, and his desire to see it returned to the project. He is unclear on the objections and their validity.

Ms. Reczek indicated they could reach out to the abutter again to engage in further discussion. She went over the current schedule, which identifies construction in 2022-2023. Were the project to revert back to the full scale design, construction would likely be pushed out.

New Business

1. Sponsorship Donation of Parks and Recreation Department Summer Movie Nights

Submitted by Parks and Recreation Director Matthew Casparius

Approved: March 12, 2020

Posted: March 13, 2020

The Town Council to consider the acceptance of a donation in the amount of \$600 from the Merrimack Lions Club to the Parks and Recreation Department to sponsor Summer Movie Nights in the Park, pursuant to RSA 31:95-b and Charter Article 8-15. These funds are used to pay the licensing fee to publicly show movies.

MOTION made by Vice Chairman Boyd and seconded by Councilor Woods to approve the acceptance of a donation in the amount of Six Hundred Dollars (\$600.00) from the Merrimack Lions Club to the Parks and Recreation Department to sponsor Summer Movie Nights in the Park, pursuant to RSA 31:95-b and Charter Article 8-15

ON THE QUESTION

Vice Chairman Boyd expressed gratitude to the Merrimack Lions Club for their continued support of programming in the community.

MOTION CARRIED

6-0-0

2. 2020 Deliberative Session

Submitted by Town Council Chair Tom Koenig and Vice Chair Bill Boyd

Town Council to discuss the details and motions of the upcoming 2020 Deliberative Session being held on Wednesday, March 11, 2020.

Chairman Koenig stated there to be 6 articles on the Warrant. The Council discussed who would motion and second the motions at the Deliberative Session.

Minutes

MOTION made by Vice Chairman Boyd and seconded by Councilor Healey to approve the meeting minutes of the Town Council meeting of January 15, 2020, as presented. MOTION CARRIED 6-0-0

January 22, 2020

MOTION made by Vice Chairman Boyd and seconded by Councilor Harrington to approve the meeting minutes of the Town Council meeting of January 22, 2020, as presented. MOTION CARRIED 6-0-0

January 23, 2020

MOTION made by Vice Chairman Boyd and seconded by Councilor Harrington to approve the meeting minutes of the Town Council meeting of January 23, 2020, as presented. MOTION CARRIED 6-0-0

Approved: March 12, 2020

Posted: March 13, 2020

January 29, 2020

MOTION made by Vice Chairman Boyd and seconded by Councilor Healey to approve the meeting minutes of the Town Council meeting of January 29, 2020, as presented. **MOTION CARRIED** 6-0-0

February 6, 2020

MOTION made by Vice Chairman Boyd and seconded by Councilor Woods to approve the meeting minutes of the Special Town Council meeting of February 6, 2020, as presented. **MOTION CARRIED** 6-0-0

Comments from the Press - None

Comments from the Public - None

Comments from the Council - None

Adjourn

MOTION made by Vice Chairman Boyd and seconded by Councilor Healey to adjourn the meeting.
MOTION CARRIED 6-0-0

The February 27, 2020 meeting of the Town Council was adjourned at 10:33 p.m.

Submitted by Dawn MacMillan