



## Town Council Meeting Minutes

Thursday, September 28, 2023, at 7:00 PM, in the Matthew Thornton Room



### **Call to Order**

Chairman Rothhaus called the meeting to order at 7:02 pm. Present at the meeting were Chairman Rothhaus, Vice Chair Harrington, Councilor Hunter, Councilor Koenig, Councilor M. Murphy, Councilor N. Murphy, and Town Manager Paul Micali. Councilor Healey was excused.

### **Pledge of Allegiance**

Chairman Rothhaus led the Pledge of Allegiance.

### **Announcements**

#### **Upcoming Town Council Meetings:**

- Thursday, October 12, 2023, 7:00 PM Regular meeting
- Thursday, October 26, 2023, 7:00 PM Regular meeting

The Town Council meets on the first & third Thursdays in the months of November & December.

- Thursday, November 2, 2023, 7:00 PM Regular meeting
- Thursday, November 16, 2023, 7:00 PM Regular meeting

Come and join Merrimack Parks & Recreation this Saturday, September 30<sup>th</sup> at Wasserman Park for their final free movie night of the year. They will be showing the movie Puss In Boots: The Last Wish, which begins at 6:30 pm. There will be free popcorn available and the movie is sponsored by the Merrimack Lions Club and Xfinity. For questions, please call Parks & Recreation at 603-882-1046

Supervisor of the Checklist Sessions for Voter Registrations, Party, Name and /or Address Changes and Deletions will be held tonight, Thursday, September 28<sup>th</sup> from 7:00 PM - 8:00 PM at the Merrimack Town Hall and on Friday, October 6<sup>th</sup> from 7:00 PM - 7:30 PM.

This is the last time to change party affiliations prior to the Presidential Primary.

New Hampshire Secretary of State David Scanlan is a proud partner of [Vet the Vote](https://www.vetthevote.org/), a nonprofit organization that recruits veterans to volunteer as poll workers during elections. To encourage New Hampshire veterans to serve as poll workers in their communities, especially during the upcoming Presidential Primary, the Secretary of State's Office is hosting a public event with Vet the Vote and Merrimack Moderator Lynn Christensen on Saturday, October 7, 2023, 10:00 a.m. – 1:00 p.m. at James Masticola Upper Elementary School, 26 Baboosic Lake Road. During the event, veterans and any other interested members of the public will have the opportunity to walk through a mock polling place set up for Election Day. New Hampshire election officials, many of them veterans, will explain the process to participants each step of the way and answer any questions about how elections work in New Hampshire. Vet the Vote gives New Hampshire veterans the opportunity to continue to serve their country and local communities by participating in the election process. Attendees will get a firsthand look at how elections in New Hampshire are run and why the Granite State has one of the highest voter turnout rates in the country. New Hampshire veterans who are interested in attending should arrive anytime between 10:00 a.m. and 11:00 a.m. Media are highly encouraged to attend between 10:00 - 10:30 a.m. Veterans and members of the public who plan to attend the event should register using the following link by 10:00 a.m. on 10/6/2023: <https://www.eventsquid.com/event/21636>

**Amherst Road Bridge** – Amherst Road will be **CLOSED** to all traffic between the Amherst Town Line (County Road) and Seaverns Bridge Road for emergency repairs. The closure will begin on October 10<sup>th</sup> and run until the end of November. Seek an Alternate Route.

Long awaited **Souhegan River Trail Project** will begin construction the first week in November. The Ground breaking Ceremony is scheduled to be on November 3<sup>rd</sup> at 10 AM.

The last two Household Hazardous Waste Collections will be held on Saturday, Oct. 7<sup>th</sup> and Saturday, Nov. 4<sup>th</sup>, at 9 Stadium Drive in Nashua NOT 25 Crown Street Nashua. The original site will be occupied for the foreseeable future. Merrimack residents, for \$15.00, can bring up to 10 gallons or 20 pounds of waste. Additional charges are \$1.00 per gallon about 10 gallons of 50 cents per pound above 20 pounds. Cash or check is acceptable. Please make checks payable to NRSWMD.

### **Comments from the Press and Public**

None.

### **Recognitions, Resignations and Retirements**

#### **1. Recognition of Town Committee Member**

*Submitted by Town Council Chairman Finlay Rothhaus and Vice Chair Nancy Harrington*

The Town Council to present a certificate to the following individual for his volunteer service to the Town of Merrimack:

- Neil Anketell (Planning Board)

Mr. Anketell was present to receive his certificate from Chairman Rothhaus.

#### **2. Recognition of Retirement of Town Employee**

*Submitted by Human Resources Director Sharon Marunicz*

The Town Council will present a recognition award to Paul Ford in recognition of his retirement from the Solid Waste Division of the Public Works Department after more than 20 years of full time service to the Town of Merrimack: June 8, 2003 – August 1, 2023.

Mr. Ford was present to receive his recognition award for his retirement from the Solid Waste Division after more than 20 years of full time service.

#### **3. Recognition of Retirement of Town Employee**

*Submitted by Human Resources Director Sharon Marunicz*

The Town Council will present a recognition award to Becky Starkey in recognition of her retirement from the Merrimack Public Works Administration after more than 40 years of full time service to the Town of Merrimack: June 27, 1983 – September 29, 2023.

Ms. Starkey was not present to receive her recognition award for her retirement from the Public Works Administration after more than 40 years of full time service.

### **Appointments**

#### **1. Annual Review with the Zoning Board Adjustment**

*Submitted by Zoning Board of Adjustment Chair Rich Conescu*

Per Town of Merrimack Charter Section 6-6, at least annually, there should be an annual review with the Zoning Board of Adjustment. This agenda item is to highlight the board's significant actions, current projects, anticipated actions, and to raise any concerns the Council should know or could act on.

Zoning Board of Adjustment Chair Rich Conescu was present to discuss the annual review of the Zoning Board of Adjustment. He began by stating that Rod Buckley has stepped down from the Zoning Board and in his place is now Ben Niles. They also have a new member and new alternate, so they officially only have one opening left on the board for the first time since before the pandemic. Vice Chair Harrington asked how many hearings they've had, in which Mr. Conescu shared that they don't have exact metrics, but this particular year has been very similar to the last two years, with typical requests. Vice Chair Harrington asked for a guestimate on approval vs disapprovals, in which Mr. Conescu stated that the approvals are around 85% for variances, and there is a firm history of denying appeals.

## **Public Hearing**

### **1. Public Hearing – Zoning Ordinance Amendments to Repeal Section 2.02.4.D**

*Submitted by Town Council Chair Finlay Rothhaus and Town Manager Paul T. Micali*

The Town Council will hold a public hearing to consider the proposed Zoning Ordinance amendments to repeal Section 2.02.A.D (Mixed Use Developments Permitted in the I-1 District by Conditional Use Permit), pursuant to Charter Article V.

Before beginning, Vice Chair Harrington recused herself. The public hearing was then opened at 7:34pm.

Attorney Morgan Hollis from Gottesman and Hollis at 39 East Pearl St in Nashua was present to represent Merrimack Parcel A LLC, speaking in opposition on their behalf. He stated that his client received a variance for a mixed use development in an I-2 district, which was granted as a conditional use permit. Years later, this needed to be amended with some minor modifications, and eventually a more significant amendment which doubled the residential numbers and reduced the commercial numbers. Once again, this was granted subject to the Planning Board determining that all requirements under the CUP (which only applied to I-1 districts) were met. Over the course of about a year, the Planning Board thought that the proposed number of residential units was too much and too dense, and the town staff felt that it did not meet the requirements of the PUD density. The Zoning Board evaluated the application and negotiated the number of residential units down with the applicant and proceeded to go through the criteria. They decided essentially two section, section "4E" which allows the Planning Board to either increase or decrease the density under certain criteria. Eventually, the amendment to the original CUP was granted. Attorney Hollis wanted to stress that this was a one-off situation because the whole CUP mixed use development was a variance, not a mixed use under the zoning ordinance. Having given this background, he has four comments: If the section is deleted, any development within the I-1 district proposing a mixed use must go through the Zoning Board for a variance. If this CUP is removed, there will be no CUP criteria and no mixed use in Merrimack. Anything creative would have to go through the Zoning Board which isn't really what they do. Additionally, if this is deleted, the new paragraph states that the existing mixed use become essentially non-conforming uses, and any change has to meet the underlying zoning density requirements, which is I-1 which doesn't allow residential change and this would also go back to the Zoning Board. Third, RSA 674:39 protects developments that have been under construction, so any approval that wants to make a modification would proceed back to the Planning Board to amend their CUP. Lastly, if this RSA doesn't apply, then the existing projects that were approved under a provision of Merrimack ordinance will run into financial issues as the development matures as they have to now go to the Zoning Board. In conclusion, his suggestion is to not throw the entirety of the ordinance out, but to hone in on what the issue is. He suggests a proper amendment would be to remove subsection E and remove the flexibility that everyone has to either get a variance from the Zoning Board to have greater density that is allowed under the PUD or meet the density requirements of the PUD. This allows the Planning Board to still have some flexibility but the PUD density will be better defined.

Ashley Tenhave of 75 Shelburn Rd then spoke, sharing that she lives in the Webster Green community across the street from Flatley and she very much approves of the decision that the board has made to take another look at this. She has been at Webster Green for almost 7 years and attends every Planning Board meeting that speaks about Flatley, arguing over the different uses and changes that they're doing. She would like to see some control taken away from the Planning Board as none of the projects actually get built the way that the Planning Board approves. Any concerns brought up get immediately brushed off, and she is frustrated that nothing is being done with the developers who are not following the CUP. She would also like to see the Zoning Board be put under a microscope as well as they are getting away with too much in this town and they are not listening to the community when concerns are brought to meetings.

Bernard Plante of Edgebrook Heights LLC of 179 Amherst St., Nashua then spoke, sharing that in August of 2006, he and Kevin Slattery, a Nashua based builder, formed Edgebrook Heights LLC after acquiring property that's at the very south end of Merrimack around the Harris Pond shopping center. The previous owner had secured site plan approvals for 280,000 square ft space called "corporate woods" which is around where the proposed circumferential highway was proposed, but did not come to fruition. This property is zoned I-1 and a CUP was proposed to them and approved. They have relied on this CUP to determine the development of the property over the years. He is requesting that the Council maintains section 2.02 4D in its entirety, or at a minimum do not penalize existing CUP permit holders for modifying their design due to physical or dramatic market changes as proposed in the new paragraph at the end of the modification that the board is considering.

Katie Poirier of 11 Kimberly Drive, also in the Webster Green area, then spoke, sharing that the CUP approvals change from one area to another without completing projects. Some developers add new projects to the CUP without even finishing what they've started. She also stated that she has attended multiple board meetings and feels that she is not being heard and is frustrated. She appreciates the Council for taking action on this.

Chairman Rothhaus then read a statement from Gordon Leedy, Jr. who is with Tighe & Bond, Inc:

Dear Mr. Chairman and Members of the Town Council:

I am providing written testimony to the Council with regard to the proposed repeal of the Mixed-Use section of the zoning ordinance, Article 2.02.4.D. I apologize for not being in attendance, but I have a conflicting commitment. I felt it important to reiterate for the record my concerns regarding the proposed amendment that I previously voiced at the Planning Board.

The Mixed-Use zoning provision was adopted by a vote of the Town pursuant to important goals set forth in the 2013 Master Plan. The vehicle chosen for the implementation was the Conditional Use Permit. This vehicle was chosen in large part to allow flexibility to the Planning Board in approving these developments based on site-specific criteria showing fiscal benefit to the Town and adequate of public infrastructure. A side benefit was to provide a method for the Planning Board to weigh benefits and potential impacts on public health, safety, and welfare while avoiding a cumbersome process through the Zoning Board of Adjustment.

Over the last decade of implementation, the ordinance has shown a need for adjustment in that it does not spell out with any clarity what the expectations are of the Town and with respect to the mix of uses in a mixed-use project. This leaves the matter up to the Planning Board and the Zoning Board of Adjustment, with no formal guidance through the language of the ordinance. Importantly, the criteria contained in the ordinance for approval do not continue to offer protection to the town from undue impacts of development.

Over the years, there have been changes both in market conditions and in the development of mixed-use projects under the ordinance. The reaction to these changes is to reject the concept of mixed-use development and revoke the entirety of the ordinance provision. This action would create significant non-conformities with zoning and would threaten the financing and ability to complete developments previously approved by the Town. It would also throw any modifications of these approved projects into the ZBA, a result that the zoning ordinance was crafted to avoid. Revocation would also remove consideration of the criteria for approval that currently protect the Town from impacts of development.

These were brief comments at a previous Town Council meeting that the Town should not spend taxpayer resources on amending the ordinance prior to preparation of a new Master Plan. The preparation and adoption of an updated Master Plan is at least two years away, and adoption of zoning amendments pursuant to that plan are at best several months subsequent to adoption of the plan. Revocation of the ordinance would create a void in zoning, with millions of dollars of tax revenue at stake for at least the next three years.

A solution to the issues identified by the Council would be to simply adopt a definition of mixed-use development and a range of proposed mixes (e.g. no more than x% residential, nor more than x% commercial). This would keep some zoning provisions in effect with appropriate Planning Board oversight and would be further protection to the town until a more comprehensive revision of the ordinance can be undertaken pursuant to the Master Plan update. This could also be done at little or no cost to the Town.

If there is a concern with regard to urgency of the current proposal, the Council could table the revocation amendment and consider an alternative amendment concurrently.

I appreciate the opportunity to relay my thoughts to the Council and apologize again for not being there in person to offer my testimony.

Very truly yours,

**TIGHE & BOND, INC.**

R. Gordon Leedy, Jr., AICP

Principal Landscape Architect

*The Public Hearing was closed at 8:16pm*

Councilor Koenig shared that he doesn't believe this is based off of one development, and that developments throughout the town have dramatically changed from what was originally presented. He has noticed a pattern of true mixed used variances or commercial areas being changed into apartments over the past few years. He believes a thorough review of the whole program needs to be done, and would be more effective and better financially to review this now instead of revamping the master plan. Councilor Hunter is in agreement with Councilor Koenig, and Councilor N. Murphy shared that the residents tonight represent many thoughts she has heard from others in Merrimack, and there is a vast majority of support for this amongst the community.

**MOTION made by Councilor Koenig and seconded by Councilor N. Murphy to move the Repeal of Section 2.02 4D to a Final Reading and to be placed on the Consent Agenda at the next meeting.**

**MOTION CARRIES 5-0-0 with Vice Chair Harrington abstaining**

### **Legislative Updates from State Representatives**

Councilor N. Murphy shared that they are in the process of redrafting legislative service requests that have bill numbers not yet been assigned, and there are about 800 LSRs right now in the House.

### **Town Manager's Report**

On October 18<sup>th</sup> between the hours of 11 AM and 1 PM the Transfer Station, Highway Division and the Wastewater Plant will be closed for training and lunch.

South Baboosic Lake Road and Joppa Road will be receiving the base and final courses of pavement in the next couple of weeks. Once that is complete the driveways and side streets will be tied into the pavement.

The 800MHz system is currently under negotiations with Verizon to utilize a site to erect a tower. This is currently with the attorneys who are speaking directly with Verizon's attorneys.

Social Media posts or comments regarding action items or requests from the public are not regularly monitored by the Town. The best way to reach someone is to go through the website or email or call the Town Manager at (603) 424-2331.

### **Consent Agenda**

None.

### **Old Business**

None.

### **New Business**

*Without objection, Chairman Rothhaus moved Item # 5 to be heard first*

#### **5. Committee Appointments**

*Submitted by Town Council Chair Finlay Rothhaus and Vice Chair Nancy Harrington*

The Town Council to consider appointing the following individual to Town committees, pursuant to Charter Article 4-8:

➤ **Lon Woods** – Heritage Commission (*Full member*)

#### **1. Community Development Director Position Confirmation**

*Submitted by Town Manager Paul T. Micali*

The Town Council shall consider the confirmation of the appointment of a new Community Development Director, pursuant to Charter Article 7-8.

Town Manager Paul Micali stated that they have selected Robert Price, who has been with the town for about 8 years, as the new Community Development Director. He has an extensive background in planning, having previously worked as a planning developer in Raymond.

**MOTION** made by Vice Chair Harrington and seconded by Councilor M. Murphy to confirm the appointment of Robert Price as the new Community Development Director, pursuant to Charter Article 7-8.

**MOTION CARRIES 6-0-0**

#### **2. Proposed Amendments to Chapter 193, Welfare Guidelines, of the Merrimack Town Code [First Reading]**

*Submitted by Welfare Administrator Patricia Murphy*

The Town Council to consider the acceptance of recommended changes to Chapter 193, Welfare Guidelines, of the Merrimack Town Code, pursuant to Charter Article V.

Welfare Administrator Patricia Murphy was present to share the changes to Chapter 193, Welfare Guidelines, of the Merrimack Town Code. She began by stating that one of the changes is a law that was just signed by the Governor and became effective on September 26<sup>th</sup> which clarifies some residential issues regarding moving places. Another change involves eligibility criteria, as well as a telephone allowance. These changes would allow the town to be current with guidelines.

**MOTION made by Councilor Koenig and seconded by Councilor M. Murphy to accept the recommended changes to Chapter 193, Welfare Guidelines, of the Merrimack Town Code, pursuant to Charter Article V and move to a Public Hearing.**

**MOTION CARRIES 6-0-0**

## **2. Investment Policy**

*Submitted by Finance Director Adam Britten*

The Town Council to review and consider the approval of the Town's Investment Policy, for the investment of public funds held by the Town Treasurer, in accordance with RSA 35:9 and RSA 41:29 for FY 2023-24.

Town Manager Paul Micali shared that their funds are 100% collateralized in banks, meaning they do not get the highest amount of yield, but they do get a lot of interest for the money now. This policy has not changed, this is a yearly review for the auditors to have documentation of.

**MOTION made by Councilor M. Murphy and seconded by Councilor Koenig to approve the Town's Investment Policy, for the investment of public funds held by the Town Treasurer, in accordance with RSA 35:9 and RSA 41:29 for FY 2023-24.**

**MOTION CARRIES 6-0-0**

## **4. MS-434 Update**

*Submitted by Finance Director Adam Britten*

The Town Council to receive an update on the MS-434.

Town Manager Paul Micali presented the MS-434 update, beginning by sharing that automobile registrations were anticipated to be reduced, but they are actually right on track for hitting their target revenue estimate. Additionally, interest, dump fees, other income, and the highway block grant have all been increased. Current use tax has been decreased, and rooms and meals is to be determined until the tax rate is set. Net total increases for revenues was \$333,000 estimated. Undesignated fund balance estimates at the last fiscal year was \$8,979,537 and has been projected this year at \$8,201,958. Mr. Micali also shared the following information:

## **2023 Municipal Tax Rate Estimate**

- Appropriations: \$41,770,184
- Estimated revenues (as revised): (\$20,092,787)
- Bond Proceeds: -
- Tax Overlay: \$350,000
- General Fund Surplus
  - Property Tax Relief: (\$2,384,500)
- Veterans Exemptions: \$886,580
- Property Tax Levy: \$20,529,477
- Valuation for state property tax rate: \$4,966,661,459
- Municipal property tax rate: \$4.13

Approved: October 12, 2023

Posted: October 13, 2023

**MOTION** made by Councilor N. Murphy and seconded by Vice Chair Harrington to approve the use of \$2,484,500 of unreserved fund balance to help offset the property tax.

**MOTION CARRIES 6-0-0**

**MOTION** made by Councilor M. Murphy and seconded by Councilor N. Murphy to approve Lon Woods to the Heritage Commission as a Full Member.

**MOTION CARRIES 6-0-0**

Mr. Woods was present to get sworn into his new position.

### **Minutes**

Approve the minutes from the following Town Council meeting:

♦ September 14, 2023

**MOTION** made by Vice Chair Harrington and seconded by Councilor Koenig to approve the minutes from September 14, 2023 as written.

**MOTION CARRIES 5-0-1** *with Councilor M. Murphy abstaining*

### **Comments from the Press**

None.

### **Comments from the Public**

None.

### **Comments from the Council**

Councilor N. Murphy wanted to share that on September 16<sup>th</sup>, long-term resident and community volunteer Anita Creager was recognized and honored at a ceremony and banquet at Camp Carpenter. She also shared that Camp Whip-o-will was renamed to Camp Creager in her honor.

She also stated that MVD is having an open house from 12:00- 4:00pm on September 30<sup>th</sup> at Wells 2 and 9, as well as the Treatment Facility which is located at 20 Berry Ln off of Continental Blvd. The public is invited to tour the facility and speak with various professionals.

Next, she shared that the Fire Department has their open house scheduled for October 14<sup>th</sup> from 10:00am- 2:00pm at their central location off of DW Highway.

Lastly, she asked for people to consider donating to Wreaths Across America, which will be taking place again this year on December 16<sup>th</sup> at noon at Last Rest Cemetery

### **Adjourn**

**MOTION** made by Vice Chair Harrington and seconded by Councilor M. Murphy to adjourn the meeting.

**MOTION CARRIES 6-0-0**

The meeting adjourned at 9:04pm.

Respectfully submitted by Jennifer Steagald