

Approved: April 11, 2013

Posted: April 15, 2013



## Town Council Meeting Minutes



Wednesday, March 14, 2013, at 7:00 PM, in the Matthew Thornton Room

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

### **Pledge of Allegiance**

Life Scout Kevin Collins, Troop 15, led in the Pledge of Allegiance.

### **Announcements**

The Town Council will hold a special meeting on Thursday, March 21, 2013 at 7:00 p.m. in the Matthew Thornton Room, and its next regularly scheduled meeting on Thursday, March 28, 2013 at 7:00 p.m. in the Matthew Thornton Room.

The second session of the Annual Meeting, Town Elections, will be conducted on Tuesday, April 9, 2013 at the James Masticola Upper Elementary School. Polls are open between 7:00 a.m. and 7:00 p.m. The Town Council will conduct regular meetings on Thursday April 11, 2013 and April 25, 2013 at 7:00 p.m. in the Matthew Thornton Room.

The University of New Hampshire Cooperative Extension will be conducting a free pruning demonstration at the Maple Gate Farm located at 183 Amherst Road on Saturday, March 30, 2013 from 9:00 a.m. to 2:30 p.m.

Merrimack's Parks & Recreation Department and committee members are teaming up with Merrimack Friends & Families and Pet's Choice to co-host the 21<sup>st</sup> Annual Easter Egg Hunt at 10:00 a.m. at Wasserman Park on Saturday, March 23, 2013. Guests will see many new things this year beginning with staggered start times. This will allow parents with children in various age groups to see them all hunt for eggs. The Easter Bunny will be ready to pose for photos at 10:00 a.m. in the Function Hall.

The Voter's Guide will be available on the Town's website beginning Friday, March 15, 2013.

### **Comments from the Press and Public** - None

### **Recognitions, Resignations and Retirements** – None

### **Appointments**

#### **1. New Hampshire Municipal Association (NHMA) Membership Dues**

*Submitted by Town Manager Eileen Cabanel and NHMA Member-at-Large Guy Scaife*

Requesting the Town Council's position on paying the 2012-13 NHMA dues.

Chairman Mahon noted he was contacted by Mr. Scaife, Member-at-Large, New Hampshire Municipal Association (NHMA) concerning the Town's non-payment of member dues for the current calendar

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year. He reminded the Council of action taken in the budget process to no longer appropriate funding for dues for FY14.

Mr. Scaife stated Merrimack has been involved with NHMA for at least 25 years. The league was formed in 1941. Every state in the nation has an equivalent league whose purpose is to serve the communities, cities, and towns across the state. Unfortunately, over the past two decades the names and roles of the NHMA and The Local Government Center (LGC) have become blurred. The LGC was formed in 1984 for the sole purpose of providing coverage services, e.g., healthcare services and later worker's compensation and property and liability insurance coverage.

What has occurred in the last few years is an association with bad press received by the LGC. He commented many in the public have a hard distinguishing between the two although truly a clear distinction when looking at an organization that provides insurance coverage to schools, counties, and municipalities versus one providing league services. He stated the services to be:

- Advocacy service specific to legislation; State Statute authorizes towns to participate in the municipal league and authorizes the league to advocate legislative positions solely on bills that deal directly with municipalities.
- Legislative Hotline; multiple attorneys, one of which is on-call every day.
- Training/Workshops
- Publications

Mr. Scaife spoke of legislation relative to the New Hampshire Retirement System (NHRS), and noted, this year alone, there are nine (9) related Bills each of which would have economic ramifications. Some may be valid and some are chasing a phantom problem. If passed here will be a bureaucratic administrative workload that will come down, e.g., someone has to analyze those bills figure out the unintended consequences, attend those hearings, place calls to elected officials and others to testify to ensure when changes are made to a gigantic system affecting some 75,000 people, they are wise and strategic changes.

He commented a few years back there were significant changes that came about. Two years ago there were fundamental changes the NHMA helped drive, which extended the years of services police and/or fire would be on payroll before able to retire, closed some of the loopholes such as spiking at end of career, etc. NHMA is the one organization that helped to bring focus to that and gave a lot of insight to committee members. He touched upon the lawsuit challenging the State's universal right to decide not to fund Group 2 insurance. While that fight was lost, it was rightfully taken to the Superior Court and appealed at the Supreme Court. He questioned who else could have taken that fight forward other than the NHMA on behalf of all who participate, e.g., counties, schools, and municipalities?

Each year there is in excess of 800 new pieces of legislation, on average, 200 apply to municipalities. Last year alone there were 75 Bills signed into Law that directly impact municipalities. There were another 125 that failed. Last year the NHMA had better than a 90% average in support of those that both passed and failed. The hot button this year is double dipping (about half of the 9 bills); claiming towns are encouraging people to retire and then rehiring them, which is adversely affecting the system. There is no factual data to support that concept has economic impact because nobody is tracking it; however, there are statistics the NHRS has gathered that shows the average age of staying on the job is longer than it used to be.

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With regard to the Pole Tax, Mr. Scaife stated the telephone companies were not charged property tax on poles and conduits, but the utility or electric company was. That was a three-year battle, but had a direct impact on taxpayers. The Town's Assessor calculates the shift in taxation was \$123,000 annually. That cost is now being paid by FairPoint rather than being divided amongst Merrimack's taxpayers. There is currently a court battle relative to the assessment, but the legislation is solid.

Another piece of legislation at both the House and Senate this year is working to restore the environmental funding for state aid grant programs (127 across the State, two of which are for Merrimack projects related to the sewer plant). The funding is a cooperative effort with Federal, State, and Town dollars involved. The State has frozen their payment. He noted the Town's website addresses 20% anticipated funding (\$840,000) and states "The State Legislature needs to reauthorize this program, no payments have been made." The status of this legislation is addressed, nearly every week, in the NHMA bulletin.

Speaking of HB617 (funding for roads and bridges); Mr. Scaife remarked it increases gasoline/diesel tax, which has been flat since 1991. As a State and a municipality we are trying to use 1991 revenues to pay for repairs in 2013. This is a Bill that passed out of committee 18/0, and passed through the House, but the real concern is how it will do at the Senate. It is critical for monies to be gained for roads and bridges. The State publishes a bridge red list. Merrimack has three bridges on that list, two of which are identified as structurally deficient and one functionally obsolete. The average cost of a bridge today is approximately \$950,000. If the Bill is funded, over the 4-5 years it is phased in, the Town's revenues from the State Highway Block Grant will increase 47%.

The Legislative Hotline is a service used by the Town in the past, and an opportunity for the Town to reduce its general litigation budget. With regard to the focus on education, Mr. Scaife noted there are approximately 8 structured classes repeated year after year, e.g., Moderator's Workshop, Welfare Administration, Local Officials Workshops, Fundamentals for Planning & Zoning, Municipal Law Series, Right-to-Know Class, etc. Hand-in-hand with the training and workshops are publications.

Mr. Scaife spoke of the tremendous value gained by the services provided by the NHMA and his belief they cannot be replicated. He noted the Council received a communication at the end of December thanking the Town for previous dues and requesting payment for the following year. The letter also made a strong point that by agreement with the LGC Board and the Municipal Advocacy Committee inside the Municipal Association separation needs to and must be made. This was announced in November, and a new Board of Directors was formed. While still going through some legal entanglement because of being set up as an LLC in 2003, organizationally and operationally, the line has been drawn. He requested the Council reconsider its position with regard to participation.

Councilor Boyd spoke of a statement included in the letter, which reads: "While NHMA membership is not currently required for LGC risk pool participation, please be aware that the pool boards have made it clear that should this portion of the regulatory decision be overturned on appeal, they intend to reinstate the requirement of membership in NHMA as a prerequisite for pool participation." He questioned whether the Town would be allowed to participate if deciding to discontinue its membership in the NHMA. Mr. Scaife responded the statement is a position the LGC is taking. They are attempting to place a requirement on people receiving services from them to be a member of NHMA. He noted the Hearing Officer's ruling was that you cannot mandate that as a requirement.

What they have said is, in the event the Supreme Court overturned that, they want to reinstate that requirement. He remarked, at present, they have no legal right to do that. Councilor Boyd commented

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although the publications were discussed and are appreciated by him, they are imprinted with the statement the LGC provides the publication as part of the dues paid into the NHMA. He remarked if there is a bifurcation between the two entities there is some type of symbiosis because they are saying you are receiving the publication as a member of the NHMA. Mr. Scaife stated that was prior to the break in December.

He further explained what was approved in 2003 was the LGC as the umbrella LLC when in fact NHMA was sitting there under them. It should have never happened. That is being torn down and there remain some legal steps to go through to define the proper legal structure. Trusts have already been set up for health and property and liability, but the NHMA type of corporation/organization is yet to be finalized. Organizational aspects have been addressed, e.g., separation of budget.

Councilor Boyd remarked he is not thrilled with some of the positions taken by LGC; however, focusing on NHMA alone, Merrimack is the 7<sup>th</sup> largest municipality in New Hampshire, has experienced certain growth, has a certain level of sophistication in Town, and is very lucky to have the quality staff it has and a legislative delegation that keeps the Town in the loop with regard to issues of important to the Town. When looking at advocacy issues relating to happenings in Concord that impact Merrimack he believes those that serve the community are keeping the Council in the loop. He noted the Town also has a very good Attorney who has advocated for the Town. He believes the NHMA really benefits the towns in New Hampshire that do not have the level of service Merrimack has.

He stated he has personally benefitted from the education component provided; however, is aware that information is available on the NHMA website. He spoke of the choices the Council had to make when addressing the FY14 budget and what he believed to be an easy choice to make to rescind membership in the NHMA, and be able to put taxpayer dollars back into the community as opposed to paying someone in Concord who represents a myriad of interests in New Hampshire and not necessarily his interests in Merrimack.

Mr. Scaife stated his knowledge cities and towns such as Concord, Londonderry, Derry, etc. utilize the legal services provided despite having funding for legal services within their budgets. He reiterated the amount of legislation that is introduced and the time needed to analyze it. He commented he is not aware of Merrimack's position on increasing the fuel tax, but stated the delegation voted party line; one vote in support and block vote opposed. He added, if the rest of the State goes in line with Merrimack's legislative delegation that funding will not be available. He remarked the next step is the Senate, and it has been pretty clear the Senate is, on the outskirts, opposed to this. He reiterated the amount of effort required to go against opposition.

Councilor Koenig remarked he was in support of the program and tried to retain membership. He spoke of financial challenges faced when preparing a budget. He stated he agrees with the benefits of legal advice, training, publications, etc. and that the Town should not be using the information put out by NHMA if not a participating member. He stated his preference to maintain the commitment to have an advocacy group. He commented there are years when it may not seem as though a lot is gained by membership; however, others when the benefits are great.

Councilor Dwyer stated he had not intended to give the impression he does not value the organization, but rather believes there to be other organizations providing the same services. He spoke of Merrimack's strong delegation and open communication with the Council. He added there is an

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additional cost associated with attendance at the workshops offered, and other organizations, such as Primex, that provide similar training. He remarked he does not see the value provided for the cost.

Town Manager Cabanel noted the bill received represents payment for two years. The cost of the first year (current) was funded in the FY13 budget, and has not been paid. She looked to the Council for a decision relative to the bill for the calendar year January 1, 2013 through December 31, 2013.

Chairman Mahon remarked the requirement to belong to NHMA was language put into the Trust Agreement in 1984 when the LGC was formed. The Acting Director spoke to the managers a few weeks ago regarding extracting the LGC from that lawsuit; withdraw appeal to State Supreme Court, a conversation, which was received by some with shock and dismay because he had not discussed the issue with the LGC Board. In regard to training that can be received from Primex, he commented their training is distinctly different than offerings by the NHMA, e.g., geared towards insurance products.

Councilor Dwyer stated his agreement the gas tax is needed, and commented on news the fund is raided. He remarked that is an issue that hits home for the residents of Merrimack when tolls have been bought and paid for. The fund is used to place ramps in Manchester and other locations. He remarked you could probably get everyone on board to agree to the gas tax if you could ensure it would only be spent on roads and bridges. Chairman Mahon stated that to be a constitutional requirement. Councilor Dwyer reiterated it has been robbed for years; they are using it for safety and now the Governor is talking about using it to hire state troopers.

Mr. Scaife remarked that is another area of intentional misdirection, and suggested the allocation to some other areas has been the case for years, and those who have just yelled the loudest passed that in their budget. He stated part of the funding goes to Fish & Game, and touched upon the argument that could be made funds resulting from gas sold at marinas should go to the agency that oversees waterways. He also stated funds go to the Department of Safety. Much of their focus is safety engineering and in general on highways, bridges, etc. When information is provided about where the funding is being allocated justifications are not included. He commented the NHMA works to get information out to offset some of the inflammatory headlines that appear in local newsprint.

*There being no objection, the Council went out of the regular order of business to take up the first item under New Business, and agreed to return to discuss this matter further.*

## **1. Eagle Scout Project Presentation**

*Submitted by Life Scout Kevin Collins*

Life Scout Kevin Collins will present the Town Council with his proposed Eagle Scout project, which involves creating and installing a 12" high decorative stone retaining wall around the sign at the Merrimack Police Department and planting a garden of low maintenance, drought tolerant Perennials.

Scout Collins informed the Council his proposed Eagle Scout project is to spruce up the look of the Police Department building and some of its outside features. He commented on the new sign installed last year, which is surrounded by bark mulch and flowers. He would like to construct a decorative retaining wall around the base of the sign (12" high), fill it with dirt and stone and place bark mulch and flowers on top. He provided photos of the sign as well as a bark mulch bed at the corner of the lot by the stop sign where he would like to construct two planting boxes to be placed on the bark mulch bed and plant flowers. In the area between the entryway and the handicap ramp he proposes replacing

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the old bushes with small shrubbery. On the left hand side of the front of the building there are bushes and a tree requiring trimming. There is also an area where an old bush will be removed and replaced with a few small trees and flowers. In all areas where work will be performed old bark mulch would be removed and replaced with new bark mulch. Total cost is approximately \$805. It is believed 13-15 scouts and/or leaders would be involved in the project (volunteers).

When asked if he has coordinated with the Police Department, Scout Collins responded he has met with the Chief multiple times and provided a copy of the project packet, which has been signed off on. When asked about fundraising efforts, he stated he would be coordinating a Pancake Breakfast at Applebees. Of the \$5 cost per pre-sold ticket (sold by scouts), \$3 would be gained. The only other request is that scouts assist in busing tables. Councilor Koenig questioned whether Scout Collins would be seeking the assistance of an individual such as a landscape architect, and was informed he would be working with the owner of the Farm Depot Stand in Merrimack. They will discuss which flowers are best suited for the area (low maintenance, etc.). When asked, Director Micali stated the Public Works Director would be provided with the necessary information. If any questions arise he can address them with the scout directly.

**MOTION made by Councilor Rothhaus and seconded by Councilor Boyd to authorize the project as presented. MOTION CARRIED 6/0/0**

*The Council returned to the regular order of business.*

**MOTION made by Councilor Koenig and seconded by Councilor Harrington to pay the dues, as presented, for 2013, based on the previous commitment for membership.**

#### **ON THE QUESTION**

Councilor Koenig remarked the commitment was made, he believes there to be an opportunity to gain value from the membership, and the expectation existed for membership and for the dues to be paid. Although the NHMA operates on a calendar year as opposed to a fiscal year, he is not sure it would be appropriate to try to separate the bill at this time. He stated the Council had reason to know that was expected and should move forward. Councilor Boyd stated, as much as he was in support of removing those particular dues for the upcoming budget, he is in agreement with Councilor Koenig that, from a policy perspective, the Council made a commitment in last year's budget to the NHMA, which should be fulfilled.

When asked, Director Micali stated a request has been made for formal notification to be provided should the Town Council decide not to continue membership. Councilor Boyd questioned whether it would be appropriate for the Town to include a letter of withdrawal along with payment for the 2013 calendar year. Chairman Mahon stated the NHMA is aware the Town will not be continuing its membership and has not included the allocation in its FY14 budget. He agreed it would be appropriate to provide formal notification.

**MOTION CARRIED 5/0/1**

#### **Public Hearing**

##### **1. Reimbursement from FEMA – Hurricane Sandy** *Submitted by Finance Director Paul T. Micali*

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The Town Council will hold a public hearing to consider the acceptance and authorization of the expenditure of a grant of up to \$20,460 from the Federal Emergency Management Agency to defray the costs associated with Hurricane Sandy cleanup, pursuant to RSA 31:95-b and Town Charter 8-15. These funds are unanticipated revenues to the Town.

Director Micali informed the Council costs associated with overtime/cleanup from Hurricane Sandy were approximately \$27,000. The Governor received a FEMA Declaration entitling the Town of Merrimack to 75% reimbursement of the \$27,000 from the Federal Government, through the State. He commented there is typically a sharing of the remaining 25%; State picks up 12.5%. However, as of this time, the State has not yet made such a commitment. If that decision is made and reimbursement provided, acceptance of the funds would be placed on a future agenda.

Councilor Dwyer remarked this is one of the many things times 1,000 in this country that are the reasons why we are at \$16 trillion in debt. He stated the Town should have some personal responsibility relative to the expenses associated with police, fire, etc. He noted Merrimack was not affected in any way like other areas were; however, with the filing of paperwork reimbursement is received. Vice Chairman Rothhaus responded he believes most everyone agrees with the commented made by Councilor Dwyer; however, it is unfortunate the situation is that it would be silly not to accept the funds as they would simply go elsewhere.

***Chairman Mahon opened the public hearing at 8:21 p.m.***

Chairman Mahon opened the floor for public input. No one from the public addressed the Council.

***Chairman Mahon closed the public hearing at 8:22 p.m.***

**MOTION made by Councilor Boyd and seconded by Councilor Rothhaus to accept and authorize the additional expenditure of a grant of up to \$20,459.17 from the Federal Emergency Management Agency (FEMA) to defray the costs associated with Hurricane Sandy cleanup, pursuant to RSA 31:95-b and Town Charter 8-15. These funds are unanticipated revenues to the Town. Furthermore that the Town Manager, Finance Director, and/or their proxy be authorized to effectuate any and all documents necessary to effectuate the transaction. MOTION CARRIED 6/0/0**

**Legislative Updates from State Representatives** - None

**Town Manager's Report** - None

**Consent Agenda**

**1. Technology Committee Meeting Frequency Change**

*Submitted by Technology Committee Chair Brian McCarthy*

The Technology Committee would like to meet on the third Tuesday of February, May, August and November. In addition, the Chair could call a meeting at any time. This agenda item is to inform the Town Council of this change and if they have any concerns over the change.

Chairman Mahon stated the item is not technically a Consent Agenda item. He explained the Technology Committee is of the belief they are required to meet on a certain date. He requested

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information on the Committee's charge be reviewed, the results of which did not indicate there to be any such requirement.

*Council members were given the opportunity and expressed no concerns.*

**Old Business** - None

**New Business**

**2. Reclassification of Deputy Town Clerk/Tax Collector Position on Wage Scale**

*Submitted by Town Clerk/Tax Collector Diane Trippett*

The Town Council to consider the reclassification of the Deputy Town Clerk/Tax Collector position on the wage scale.

Diane Trippett, Town Clerk/Tax Collector, noted the Deputy Town Clerk has retired effective December 31, 2013. During the past few months the department, along with the Town Manager, Finance Director, and Human Resources Manager have met and reviewed the duties of the position and the operations of the department in anticipation of posting for the position. The review highlighted the Deputy Town Clerk position is currently on the same level as an Executive Secretary, Grade 9; however, the duties and responsibilities related to that position are more in line with that of an Office Manager. Town Clerk Trippett stated her request of the Council to be that of moving the classification of the position to a Grade 14, which would put it in line with other Office Manager positions on the Town's wage salary scale.

Councilor Koenig noted information pertaining to the duties and responsibilities of the position were not included in the Council's packet, and stated a desire to be able to review the position information to ensure it is classified correctly to be in a different job grade, e.g., education requirements, supervisory expectations, etc. He requested the Town Clerk and/or Town Manager work to ensure the definition and grade line up with expectations of the position. Town Clerk Trippett noted there are a few additional items she wishes to add to the current position description, e.g., prepare payroll, etc.

Councilor Koenig stated, although in favor of the concept, he would like the opportunity to review the completed position description in advance of action by the Council. Town Manager Cabanel stated the role of putting together the job classifications is that of the Town Manager. However, if it is the desire of the Council to direct her to do, so she will ensure that occurs and Councilors are provided with a copy. Chairman Mahon suggested it to be more of a reorganization of sorts, and noted, from that standpoint, the Charter requires the Council to vote on authorizing such a change. He added the Council could vote to table the item until receiving a copy of the revised position description. Councilor Harrington suggested as long as the educational requirements, etc. are specified she would be comfortable with approving the request.

**MOTION made by Councilor Koenig and seconded by Councilor Dwyer to reclassify the position of Deputy Town Clerk/Tax Collector from a Grade 9 to a Grade 14 with the understanding that the responsibilities of that position are significantly greater than a secretarial position and more in line with an Office Manager, and that the Town Manager be asked to re-evaluate the job responsibilities and requirements and provide copies to the Town Council, when complete, showing not only educational requirements but other requirements of the position**



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**both related to experience and day-to-day requirements commensurate with a Grade 14.**

**MOTION CARRIED 6/0/0**

### **Minutes**

Approve the minutes of the January 24, 2013, February 14, 2013, and February 28, 2013 Town Council meetings.

**MOTION made by Councilor Boyd and seconded by Councilor Harrington to approve the minutes of the January 24, 2013 Town Council Meeting as presented. MOTION CARRIED 5/0/1**

*Councilor Koenig Abstained*

**MOTION made by Councilor Boyd and seconded by Councilor Harrington to approve the minutes of the February 14, 2013 Town Council Meeting as presented. MOTION CARRIED 5/0/1**

*Councilor Koenig Abstained*

**MOTION made by Councilor Boyd and seconded by Councilor Rothhaus to approve the minutes of the February 28, 2013 Town Council Meeting as presented. MOTION CARRIED 3/0/3**

*Councilors Koenig, Mahon, and Dwyer Abstained*

**Comments from the Press** - None

**Comments from the Public** - None

### **Comments from the Council**

Councilor Boyd commended the Merrimack Boys Hockey Team on their recent participation in the State Championships. Unfortunately, the team lost to Bedford 5/2. However, they had a great season.

He mentioned his 9<sup>th</sup> place finish at the Laconia World Champion Sled Dog Derby conducted in Laconia, and spoke of a new junior mentor from Merrimack, Connor Donovan. Connor is a freshman at Merrimack High School. He thanked Connor for helping him and his Wife out with setting up the dogs along with Emily, their other musher.

Councilor Boyd remarked he met a young girl, Rebecca Neil. Rebecca has Down Syndrome and had the opportunity to run Deamon on Sunday in the one-dog derby class. He commented sharing his dogs with this young girl was an emotional experience and one which she enjoyed to the fullest. He stated he and his wife were gratified to help her cross off one of the items on her bucket list. Rebecca was also named Citizen of the Week by the sponsor of the one-dog derby race, the Meredith Village Savings Bank.

Councilor Koenig noted receipt of an e-mail that mentioned Officer Murray's assistance at the Winter Special Olympics, and expressed his gratitude. He stated his son participated in those Olympics, and although he does not believe he came across Officer Murray while he was there, he wished to extend

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his appreciation to all of the public servants that come out to help that organization with each of their events.

Vice Chairman Rothhaus stated the Merrimack Police Department and the Merrimack High School Hockey Team will be conducting a fundraiser, which he believes benefits the Special Olympics. It will be conducted at 7:00 p.m. on March 29, 2013 at the Ice Den in Hooksett, NH.

Vice Chairman Rothhaus remarked the constitutional amendment that locked in the funds from the gas tax into the highway funds dates back to 1938, and specifically identifies the funds as being for the highway. The diversion into Fish & Game, while it can be rationalized, is not what the amendment says. The funds are diverted by twisting it to include safety and Fish & Game as well as other entities, which is a problem. He remarked while he can appreciate the dollar amount from 1991 is a little low he believes there are too many diversions and other areas where they could begin to work harder to correct.

**MOTION made by Councilor Harrington and seconded by Councilor Boyd to adjourn the meeting. MOTION CARRIED**

*The March 14, 2013 meeting of the Town Council was adjourned at 8:41 p.m.*

Submitted by Dawn MacMillan