

Approved: April 11, 2013

Posted: April 15, 2013



## Town Council Meeting Minutes

Thursday, March 28, 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 Flood, Councilor Koenig, Town Manager Eileen Cabanel, and Finance Director Paul Micali. Councilor Harrington was excused due to illness.

### **Pledge of Allegiance**

Chairman Mahon led in the Pledge of Allegiance.

### **Announcements**

Tuesday, April 9th is the voting day for the School District and the Town. Polls are open from 7:00 a.m. to 7:00 p.m. at the James Mastricola Upper Elementary School, which is the only polling place. Absentee ballots are now available at the Town Clerk's Office.

The next regular meeting of the Town Council is scheduled for Thursday April 11, 2013, a special meeting will be conducted on Thursday April 18, 2013, and a regular meeting on Thursday, April 25, 2013 each taking place at 7:00 p.m. in the Matthew Thornton Room.

Town Manager Cabanel reminded the viewing audience the ballot for the Town consists of three pages this year.

The Parks & Recreation Department will host a bus trip to two New Hampshire wineries and Swan's Chocolate on Wednesday, May 8<sup>th</sup>. The bus will depart from Wasserman Park at 9:00 a.m. The \$65 fee includes transportation, tour tickets, samples, lunch, and driver gratuity. Please visit the Town website or call the Parks & Recreation Department at 882-1046 for more information.

The Voter's Guide will be mailed to all residential customers of the Post Office on Friday March 29<sup>th</sup>. It is also available on the Town's website under the Finance Department. The 2012 Town Report is now available at the Town Hall, Library, Police Department, and Central and South Fire Stations.

The Merrimack Police Department won the 13<sup>th</sup> Annual Golden Skate Challenge 5/4 over the Merrimack High School Hockey Team. Proceeds went to Special Olympics.

The 18<sup>th</sup> Citizens Police Academy Graduation is scheduled for April 3<sup>rd</sup> at 6:00 p.m. at the Police Station, and the public is invited to attend. The Crimeline Magic Show is scheduled for April 13<sup>th</sup> from 10:00 a.m. to 2:00 p.m. at the American Legion. Come and see shows and magic acts by area magicians as well as a demonstration of our K-9 Gunny. All proceeds go towards the K-9 program. The Annual Police and Children Together (PACT) Basketball Game is scheduled for April 18<sup>th</sup> in the Smith Gym at the James Mastricola Upper Elementary School. All proceeds go toward funding the PACT Program.

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The Library will be holding a special mid-semester Book Sale on April 13<sup>th</sup> and 14<sup>th</sup>. The Library Trustees have designated the proceeds from this sale to specifically go towards the costs of refurbishing and furnishing the Lowell Room in the original building to be used as a reading room and a meeting room. Items for sale will include things recently withdrawn from the library collection as well as items donated by members of the community.

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

**Recognitions, Resignations and Retirements** - None

**Appointments**

**1. Annual Review with the Highway Safety Committee**

Submitted by Highway Safety Committee Chairman Mark Doyle Per Town of Merrimack Charter Section 6-6, at least annually, there should be an annual review with the Highway Safety Committee. This agenda item is to highlight the committee's significant actions, current projects, anticipated actions, and to raise any concerns the Council should know or could act on.

Chief Mark Doyle, Chairman, Highway Safety Committee, remarked the purpose of the Committee is to have a Highway Safety Program designed to reduce traffic accidents, deaths, and property damage resulting from motor vehicle accidents, which is done through review of current policies, ordinances, and engineering and traffic design of the roads to ensure the safety of motorists, pedestrians, and bicyclists.

The Committee met twice last year; June and November. Membership consists of Chief Doyle, Chairman, Councilor Rothhaus, Council Representative, Tom Touseau, School District Representative, Fire Chief Michael Currier, Kyle Fox, Deputy Director, Public Works or his designee, and Tim Thompson, Director, Community Development Department as well as five citizen representatives; Glen Wallace, Bob L'Heureux, Fran L'Heureux, Paul Konieczka, and Norm Pepin.

Over the last year, the Committee has discussed:

- A replacement plan for the light located at D.W. Highway and Front Street, which has been problematic for a number of years. This item is included on the Public Works Department Capital Improvement Program list.
- Parking issues; Silver Doe Lane, which has been resolved, and Chapel Lane, which the Fire Chief continues to look into. A resolution is anticipated to be brought forward at the April meeting.
- Reviewed the plan for the rebuilding of the Bedford Road Bridge. Currently the project is in the engineering phase. The specific issue addressed was that of the profile of the existing road lending itself to being washed out and flooded during times of heavy rains. It has been and will continue to be reviewed from an engineering perspective not only during bridge construction but to ensure the profile of the road is raised to such a degree as to allow water to flow around and not over it.
- A lengthy discussion took place regarding the Exit 13 southbound and northbound off-ramps from the Turnpike; where they merge at the bottom before intersecting with D.W. Highway. A problem

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was brought to the attention of the Committee relative to the original design that had both off-ramps merging together, which created a problem from both line of sight and signage perspectives. A meeting was conducted last fall with the NHDOT in which the Bedford Police Chief was asked to participate. As a result, changes were made, and the design has been greatly improved, e.g., signage. Also, a plan is in place (coming spring) to reduce the height of the berm at the point of the intersection to allow for clearer and longer line of sight for vehicles traveling both northbound and southbound.

- Other items the Committee discussed included Election Day concerns regarding traffic backups as well as Black Friday plans put in place for the Merrimack Premium Outlets.

The next meeting is scheduled for April 11, 2013. The agenda includes discussion of the meeting with the subcommittee for the Town Center Committee relative to their charge to look at extending the sidewalk from the library on the western side of D.W. Highway north to the Wire Road intersection (perhaps closing the east end of Church Street) and an issue relative to no parking signs along both sides of Manchester Street prior to hitting the Nashua line.

Councilor Dwyer remarked he has come off the ramp at Exit 13 southbound and literally had to ask his passenger to look for traffic coming off the northbound ramp due to the poor site distance. He thanked the Committee for addressing the issue with NHDOT. Chief Doyle commented NHDOT was very receptive to discussing the problem. He noted they had conducted some preliminary surveys in the area in advance of the request and were aware of the issues. Councilor Flood stated she is pleased the Committee will look to address the issue at Church Street and suggested residents in the area might be relieved to have that closed off.

Councilor Koenig stated his appreciation the Committee is reviewing the situation at Exit 13; however, remarked he does not believe signage does any good and what needs to be improved upon is line of sight. He was pleased to hear of changes being made to the berm.

**Public Hearing** - None

**Legislative Updates from State Representatives** - None

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

President Obama signed a FEMA Declaration for the February 8<sup>th</sup> and 9<sup>th</sup> snowstorm. The Finance Department will be submitting a request for reimbursement after attending the State's kick-off meeting, which is intended to explain eligible costs.

Atrium Medical held their preconstruction meeting this week, and will begin construction of their 108,000 sq. ft. addition at 40 Continental Boulevard on April 15<sup>th</sup> with an approximate 18-month construction schedule. On April 2<sup>nd</sup> the Planning Board will hear an application from a company called XLT to construct an 183,000 sq. ft. warehouse facility on Mast Road near the Wastewater Treatment Plant. The project calls for the eventual utilization of a rail spur to connect to the Boston & Maine Corporation Railroad to the east of the property. In February, the lot received conditional subdivision approval by the Planning Board.

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The Planning Board adopted amendments to the Town's parking requirements in the sub-division site plan regulations on March 22<sup>nd</sup> establishing an effective date of March 27<sup>th</sup> for all new applications to comply with the new requirements. All projects currently in the review process will be allowed to utilize the former requirements. The changes will now bring the requirements up to modern standards and should better reflect the parking demands and needs of businesses going through the site plan process.

Chairman Mahon questioned what would be going into the warehouse facility on Mast Road. Councilor Koenig noted the applicant was before the Planning Board on the same evening the Board adopted the new parking regulations. The computerized action and density planned for the warehouse facility anticipates the facility will have approximately 20 employees. The new regulations for warehouses would require close to 100 spaces for a warehouse of this size. The applicant wanted to know they could be grandfathered in and able to avoid the need to request a variance.

**Consent Agenda** - None

**Old Business** - None

**New Business**

**1. Pavement Resurfacing Project on US Route 3**

Submitted by NHDOT Pavement Management Engineer Kevin Prince

The Town Council to be presented with the New Hampshire Department of Transportation's proposed pavement resurfacing project on US Route 3 (Daniel Webster Highway) beginning at Henri Bourque Highway in Nashua north to Greeley Street in Merrimack.

Also in attendance; Eric Thibodeau, Pavement Management Chief, NHDOT

Mr. Kevin Prince, Pavement Management Engineer, stated the project to be basically a paving project. A bonded wearing course (thin maintenance overlay) will be placed down (approx. 1/2" thick). As part of the project, the guardrail will be updated (height and installation of proper terminals) and the drainage structure will be raised (because of additional pavement). The intent is to properly maintain the road. At present, the Traffic Control Plan is to perform the work during daytime hours. There will be restrictions from 7:00 - 9:00 a.m. and 3:00 - 6:00 p.m.

The project was originally scheduled to be advertised for May 7<sup>th</sup>; however, due to funding issues, is currently scheduled to be advertised on August 7<sup>th</sup>. Should a further delay occur, the final date would be February 25, 2014. Even if the project advertises on August 7<sup>th</sup>, by the time approval is achieved, it would likely be September with a start date of May or June of 2014. When asked, he stated the estimated project completion time to be 20 days as a worst-case scenario for paving and likely a week for the guardrail and an additional week for drainage. Project completion date is currently scheduled for August 23, 2013. At present the cost is approximately \$1 million; 80% Federal contribution, 20% State contribution.

Mr. Prince noted he had with him a Municipal Work Zone Agreement, which establishes the NHDOT's authority to control traffic. He provided it to the Council for review and approval.

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Councilor Boyd stated his appreciation for the work being conducted and spoke of the vitality of the south end of Town and the need to properly maintain the road infrastructure.

## **2. Lozeau Drive Right of Way Discontinuance Proposal**

Submitted by Resident Jean Washburn Resident

Jean Washburn of 1 Willow Lane is requesting that the Town Council discontinue the right of way portion of Lozeau Drive.

Mr. Erik Cook, 1 Willow Lane

Stated Mr. Lozeau owned a home in front of his residence and later purchased a building behind his home. Without anyone's knowledge, he paved a road for use in traveling back and forth to his business. Mr. Lozeau has long since left the Town, the building was sold, and the new owners were required to construct a fence on one side of the road. Half of the road is discontinued. Why the remainder of the road was not discontinued he is unsure. He stated the road has not been utilized for 20 years and is overgrown.

A new resident wishes to utilize the road to allow trucks, trailers, etc. to access the area, which would result in that type of traffic traversing a road some 10' from his bedroom window. He stated his belief the entirety of the road should have been discontinued, and that it makes sense to do so at this time. He remarked he has resided in his home for the past year; however, has been informed by a neighbor who has lived in the area some 30 years that the issue has been disputed in the past. He requested the Council discontinue this portion of road.

When asked if he received a copy of the memorandum sent to the Town Manager by the Adam Jacobs Operations Manager, Public Works Department, Mr. Cook stated he had not. He was provided a copy and time to review it. Mr. Cook stated after a quick review, it appears the Town's desire is that "Discontinuance of the ROW is not advised due to the presence of a sewer line that runs through the area, and the potential damages to property owners on Griffin Street who could lose or experience reduced access to their back lots."

Chairman Mahon explained further, if the road were to be closed something would have to be done to maintain access to the sewer the line for maintenance purposes. Mr. Cook noted there is a sewer line that runs behind the house as well, which can be accessed from anywhere. He questioned the last time the sewer line was accessed. Chairman Mahon commented there are more stringent requirements from the EPA regarding maintenance and care of sewer lines in order to comply with the Clean Water Act and other regulations. He added, over the past 5-6 years the Town has invested a great deal of time and effort into clearing out the Right of Ways (ROWs) to allow access and demonstrate available access to the EPA.

Mr. Cook remarked although understandable, it does not mean this portion of the road should be a throughway to residents of Griffin Road. He reiterated nobody stopped Mr. Lozeau from paving a road and questioned who would stop the current owner doing the same.

Adam Jacobs, Operations Manager, Public Works Department, informed the Council of the results of his research; prior to 1994, Lozeau Drive connected Daniel Webster Highway with Willow Lane through what is now the Brown & Brown Insurance Company parking lot at 309 D.W. Highway and

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was treated as a street until Willow Lane after which the road made a 90 degree turn to the left and Willow Lane had the two houses (#1 and #3). The Right of Way, or paper street, extended from the end of Lozeau Drive to the property owned by the YMCA. That ROW was paved at some point. It is believed the paving was done by the owner of #8 Griffin Street.

In 1994, Mr. McDuffee, owner of 309 D.W. Highway as well as property on the other side of Lozeau Drive, brought forward a recommendation that Lozeau Drive be shifted north a few hundred feet and the first half be discontinued in order to provide for contiguous parking with his building. At the time, the plus side for the Town was that it would be a safer intersection; further away from the traffic island that leads into the signalized intersection with Greeley Street, etc. The proposal made its way onto the Town Warrant in 1995; however, failed. After additional discussions, drainage improvements, etc. the issue received Planning Board approval and appeared on the Warrant in 1996, at which time it passed. What was passed was the discontinuance of Lozeau Drive from D.W. Highway until Willow Lane with no discussion of the paved ROW beyond the end of what was known as Lozeau Drive.

Once the discontinuance was approved, the land swap was able to occur; Mr. McDuffee traded the land on the north end of his property (abutting the YMCA property) and the Town discontinued the first section of Lozeau Drive. Mr. McDuffee was able to pave his parking lot up to the building and decided, as a way to avoid confusion, would rename the new street Angelo Lane. The accepted street the Town maintains is Willow Lane; they do not plow onto the ROW except perhaps a few feet in for snow storage. Pavement is overgrown.

Mr. Jacobs commented the residents at 4 Griffin Street are utilizing Willow Lane and the ROW to access the back of their property, which appears to be the primary dispute.

With regard to discontinuance of the street; by law, half of the ROW would be returned to the property owners on either side to the center line. In discontinuing the unnamed ROW the Town would want to retain the normal width ROW for Willow Lane (overlaps in an area; about half way across property line for #4 Willow Lane). He pointed out where the sewer line runs (on maps displayed), noted several easements on the YMCA property for the sewer line, and stated there is no easement in place for the ROW because it is Town property and, therefore, not needed. If discontinuance were to be granted, the Wastewater Treatment Plant and staff would want an easement in place (likely 20' wide on top of sewer pipe running underneath ROW). The ROW is necessary for regular maintenance, emergency repairs, etc. The full width ROW for Willow Lane creates a jog in the property line at the corner of #4 Griffin (8-12'). There would remain access from the end of Willow Lane onto the property at #4. Residents of #4 Willow Lane would retain access to the back side of their property.

He suggested it would be very unlikely, if they were to go through the driveway permit process, a permit would be granted based on the proximity of the property corner (would not be able to be a full width driveway). He remarked you don't need an official driveway to access your property as long as you can use public property to get to it.

He reiterated the effect of discontinuance would not change use by the residence of #4 Willow Lane significantly, but would affect the residence of #6 Griffin Street in that they would no longer have public property abutting their property on the back side. He spoke of the difficult topography of Willow Street being the reason the residents have used the back side of the property at the lower level to gain access.

Vice Chairman Rothhaus asked for clarification the ROW never continued beyond where it was depicted on the photo provided. Mr. Jacobs responded he was unable to locate, during review of Planning Board meeting minutes, any discussion of whether a verbal or written right to access had been granted. He commented it was likely a trespass issue, which could have been the reason for the fence being installed and unauthorized improvements made.

Councilor Flood questioned whether there would be the opportunity for the YMCA property to use the portion of road for access or egress, and was told that could occur. She then questioned whether it would be necessary for a permit. Mr. Jacobs stated it would be necessary to go through the Planning Board process if looking to create or improve upon a street. He remarked the YMCA would lose one access point to their property although they have other access points. Councilor Flood questioned whether the road, as it stands, is able to be traversed all the way through, and was informed it will be more accessible shortly as the staff at Wastewater intends, as part of their rounds through Town, to clean Town easements and ROWs over the sewer pipes to clear some of the overgrowth. Councilor Flood stated a concern with impeding the potential for future use by discontinuing ROWs. Mr. Jacobs noted the Local Government Center (LGC) recommends not discontinuing ROWs unless there is actual land use planning for that very reason; you lose flexibility. In this instance there would be three properties affected.

Councilor Dwyer remarked having seen the information provided by the Public Works Department and heard the testimony his only question was the nature of the actual dispute. Mr. Cook stated the desire is to prevent vehicle access to 4 Griffin Street. He noted the location already has driveway access; however, the residents wish to bring vehicles across the property into their backyard. Councilor Dwyer remarked he has not seen any evidence that activity is occurring. Mr. Cook stated he has knowledge the property owners want to. Councilor Dwyer commented them wanting to and actually doing so seem to be in question as the photos do not indicate that activity is taking place. Mr. Cook responded they have threatened they are going to. Councilor Boyd suggested the word threatened is a strong statement.

Councilor Dwyer commented if the situation is a dispute between neighbors he wishes for that to be clear for those watching the proceedings and to be noted as part of the record. He reiterated, at present, there is no evidence the activity is taking place. Mr. Cook reiterated the intent exists. Mr. Cook stated his belief the Town made the new owners of the building on the YMCA side construct a fence on the paved area to avoid use of the road by vehicular traffic, and suggested that requirement is noted somewhere within meeting minutes. He noted the area was never legally a road (had been grassed). He stated his understanding access to the sewer lines is necessary; however, commented prior to the area being paved the lines were accessed. Councilor Dwyer commented the area may be paved, but it is impassable. Councilor Dwyer stated his hope it is understood the easement providing access to the sewer line is paramount to the issue. Mr. Cook stated his understanding; however, added he does not believe vehicle access should be allowed, through his front yard, to someone's back yard. Councilor Dwyer noted, to date, the owner of that property has not, petitioned the Planning or Zoning Boards to allow for such activity.

Councilor Boyd suggested the characterization of front yard is misleading as it is currently a public way, which any member of the public has access to. Mr. Cook stated his belief a portion of the pavement is located on his property and noted the area was not surveyed prior to paving. Councilor

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Dwyer commented that may be the case; however, when the property was purchased it was also the responsibility of the purchaser to perform the necessary due diligence to understand the particulars of the property such as abutting an easement with a sewer line. Mr. Cook responded he was simply informed it is an old road that nobody uses. Councilor Dwyer reiterated the issue of the sewer line is paramount to the entire debate and Wastewater has already stated publicly the intent to ensure the easement is improved upon for the purpose of access.

Mr. Cook questioned whether the neighbor would have to appear before the Planning or Zoning Board if looking to access their property from that area. It was stated access is allowed as the area is a public way; however, if seeking to construct a driveway, the proper process would have to be undertaken.

Councilor Boyd commented if the sewer line were removed from the equation and if discontinuance were granted, access would still remain to Willow Lane given the configuration of the lot line, etc. Mr. Cook stated the area in question is not Willow Lane. Councilor Boyd explained, if discontinued, based on the testimony provided, the area would be part of Willow Lane. He remarked he sees no remedy to the situation as the property owners have a legal right to come down Willow Lane and enter their property from the back side.

Mr. Cook stated he was told by the Town if a dispute were to arise the Town would construct a fence to keep the peace. Members of the Council stated their disagreement. Vice Chairman Rothhaus referred to a photograph depicting a divided ROW if the road were to be discontinued and explained the yellow line indicating the ROW on Willow Street is the opening Councilor Boyd was speaking to when explaining if the road were to be discontinued there would remain access to #4. Councilor Boyd remarked whether #6 would have access comes down to a legal question of whether they would have a right to a prescriptive easement, which is a totally different subject.

Councilor Flood questioned the amount of land that would be added to #s 4 and 6 should the easement be discontinued and the area divided (half of the road attributed to the property of either side). Mr. Jacobs responded it would be approximately 10-12'. Councilor Flood remarked were Willow Street extended (10-12') she believes there would be plenty of room for a driveway. She commented she too lives on a ROW and believes it a permanent part of the property. She was unsure of the difficulty that would be created by allowing access to the back of the lot and believes the property owners would experience a loss were they suddenly no longer allowed to access the back of their property.

Mr. Cook questioned whether discontinuance would make Willow Lane a throughway. Chairman Mahon stated it would make it an access to the back of #4, but would not make it a throughway. Once crossing the edge of pavement the property owner would be off of Town property and onto his/her own property. He noted part of the issue is whether harm exists by having the area in its present condition. Mr. Cook stated he would comment; however, as has been suggested, it is likely a legal issue. Chairman Mahon noted, if taken to court, it would be necessary to show harm. Mr. Cook stated his belief he would be able to meet that criteria.

#### Mr. Marquis, 3 Willow Lane

Questioned when Willow Lane became a Town road. He stated he was informed, during a meeting over the issues raised by Mr. McDuffee that it would remain a private road. It was noted the Town maintains the road. When asked, Mr. Jacobs stated he had not researched whether or not the Town has



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ever accepted the road in preparation for the anticipated scope of this discussion. Mr. Marquis stated, when he first moved in, the road was private. When Mr. McDuffee constructed a new road it was understood it would remain private, but would be maintained by the Town for the sake of access by emergency services.

Councilor Boyd questioned whether the Town is obligated to place street signs on private ways. Chairman Mahon was unsure. Councilor Boyd noted he visited the site and witnessed Town signage for both Angelo Drive and Willow Lane. Chairman Mahon stated the issue of whether or not it is an accepted Town road has to be resolved. Councilor Boyd noted the memorandum provided by Mr. Jacobs includes the following statement: "The partial discontinuance of Lozeau Drive..." which leads to the question of where Lozeau Drive ends and Willow Lane begins. He questioned, if the argument is made the old Lozeau Drive that came in off of D.W. Highway and went all the way to the YMCA property is completely Lozeau Drive and the partial discontinuance is what is known as the parking lot for Brown & Brown, then, technically, wouldn't the remainder be Lozeau Drive, and therefore still be considered a public way? Chairman Mahon was unsure.

Mr. Marquis stated back in '75/'76 Lozeau Drive went to McDuffee's parking lot and turned. Willow Lane started from there on to the YMCA property. He added Lozeau Drive never went to the back, it was a dirt road where Mr. Lozeau bought the swimming pool business in the back. That was his access instead of going through Griffin.

Town Manager Cabanel stated there to be a few ways a Town can gain ownership of a road; acceptance of the road and prescriptive rights. She noted the need for research to be conducted.

**MOTION by Councilor Boyd and seconded by Councilor Dwyer to table the matter until the Council's meeting of April 8, 2013**

#### **ON THE QUESTION**

Councilor Flood remarked she could understand why such a motion would be made; however, suggested the issues raised by the residents are apart from what might be discovered through the requested research. Councilor Boyd did not disagree, but stated his belief a great deal of the discussion hinges on whether or not Willow Lane is a public road in the Town of Merrimack. Councilor Dwyer commented even if discovered to be private, it does not change the larger issue of the sewer line and easement. He agreed it is important to have accurate information; however, he is not sure the dispute will be resolved in the manner hoped.

Mr. Cook stated he understands the sewer line issue completely and that is not a problem. He stated he has spoken with Ms. Nancy Larson, Planning & Zoning Administrator, who informed him it is a private way. Councilor Boyd noted the motion to table is non-debatable. Town Manager Cabanel stated another question to be whether a sewer easement is accessible to an abutting property owner.

**MOTION CARRIED 5/1/0**

*Councilor Flood voted in opposition*

Avery Finver, 4 Griffin Street

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Informed the Council he is the owner of 4 Griffin Street although he resides at 25 East Chamberlain Road. He stated, as the owner of the property, no one in the room has contacted him on this issue; neither the individuals bringing forth a complaint or the Town to inform him the issue would be discussed.

Town Manager Cabanel stated the matter before the Council was not actually that of a public hearing, which is why notification was not sent. She remarked the Council would hear the request and recommendations, and then move the matter forward to a Public Hearing at which time the property owner would be notified. Mr. Finver stated his appreciation of the clarification and reiterated he has never been approached by anyone with regard to this matter. He stated he has spoken with his tenant and been assured the intent is not to use the area as a driveway, but to use it for the storage of equipment, e.g., snowmobiles, 4-wheelers, etc. He stressed the intent is not to use the area on a daily basis or to turn it into a driveway, and in fact he would not allow the area to be utilized as a driveway as it would cause damage to the property in the long-term. He stated a willingness to meet with the other residents of Willow Drive to discuss the issue to avoid it becoming an issue for the Town to address.

## **2. Acceptance of Donation/Gift for the Merrimack Police Department**

Submitted by Captain Dudash

The Town Council to consider the acceptance of a donation/gift of \$800.00 from the United Way of Greater Nashua to the Merrimack Police Department for reimbursement for the permanent prescription drug drop box that was purchased through the National Association of Drug Diversion Investigators, pursuant to RSA 31:95-b and Charter Article 8-15.

Captain Michael Dudash informed the Council a few years prior a drug take back initiative began with the DEA and the New Hampshire Attorney General's Office. The initiative was intended to bring unused prescriptions into the Police Station to be properly disposed of. Over time, the DEA has requested the program be expanded and be permanent in nature. Prior rules required the Chief to be the specific individual to take in the prescription drugs. The rules now state, a permanent box can be placed providing there are at least two individuals responsible such as a Detective Lieutenant and a Detective. The Chief requested Captain Dudash look into the permanent drug box as an additional service to the citizens of the Town.

The National Association of Drug Diversion Investigators (NADDI) had a grant program that provided free boxes to police departments. Application was made only to discover the funds were no longer available. At that point, the United Way of Greater Nashua and Beyond Influence began a program to assist local police departments in acquiring boxes. An application was made and approved contingent upon the Town purchasing the box in advance and abiding by restrictions such as policies set by the DEA and the New Hampshire Attorney General's Office. The funds were paid in advance and the box has been installed. There are two keys, which are under the direction of the Detective Lieutenant. Additional items need to be addressed such as the purchase and installation of a surveillance camera. Although there is a cost involved, the department has been in contact with Target, which has a grant program through which acceptance is anticipated for the expense of the camera.

**MOTION made by Councilor Dwyer and seconded by Councilor Koenig to accept the donation/gift of \$800.00 from the United Way of Greater Nashua to the Merrimack Police Department for reimbursement for the permanent prescription drug drop box that was**

**purchased through the National Association of Drug Diversion Investigators, a program instituted by the DEA. MOTION CARRIED 6/0/0**

### **3. Simunitions Instructor Training Grant for the Merrimack Police Department**

Submitted by Lieutenant Matthew Tarleton

The Town Council to consider the authorization and acceptance of a grant available through the New Hampshire Police Standards and Training Council (PSTC) for the Merrimack Police Department valued at \$926.50, to have instructors trained in areas that PSTC does not currently offer instruction, pursuant to RSA 31:95-b and Charter Article 8-15.

Captain Peter Albert informed the Council the department applied to the New Hampshire Police Academy for a grant earmarked for specific training for law enforcement agencies. The simunitions program began last year with three instructors. Unfortunately, one of the instructors was lost due to retirement. The program, which is non-lethal use of force training, is seeking two instructors. This training has been found to be beneficial to both the department and the officers. The request before the Council is for acceptance of grant dollars to fund the training of two instructors both of whom are young and will continue the program.

Town Manager Cabanel remarked, during the staff meeting conducted earlier in the day, Chief Doyle provided a snapshot of what would occur with the training, e.g. potential scenarios that are covered such as how a common traffic stop could escalate based upon the officer's interaction with the individual(s). The instructors are trained for motor vehicle stops as well as practicing using different levels of appropriate force and/or recognizing a threat and deterring it before it requires the use of force. Vice Chairman Rothhaus questioned whether this was the same program as was conducted at the Zyla property at one time. Captain Albert remarked, during a time when LGC insured the department, they conducted a program, which all officers went through, for two consecutive years. It was found to be the type of training that should occur on a regular basis. Once trained themselves, the instructors, will be able to take officers out for instruction during duty hours.

Captain Albert noted the overall cost is \$1,390. With the acceptance of grant funds, the remaining cost to the Town would be \$464.00. Councilor Koenig questioned whether there would be a requirement/expectation of the officers being trained as instructors to be available to work with other departments or organizations outside of the Town of Merrimack. Captain Albert stated first and foremost it would be for the support of the Merrimack Police Department; however, added, in acceptance of the grant, the Academy requests the instructors be provided if needed to assist the Police Academy. He noted many of the department's instructors currently provide that type of assistance (during duty hours), e.g., firearms instructors, defensive tactics instructors, etc. He reiterated the Academy does not currently run a simunitions program. However, should they institute such a program in the future and make a request for assistance the department would be obliged to provide that assistance.

When asked whether there is reimbursement for the cost to the Town, e.g., participation during duty hours, Captain Albert responded there is no reimbursement. He explained in an instance such as a defensive tactics instructor being scheduled to work patrol and instead sent to the Academy, an officer from another division may be transferred to cover patrol for the day. Captain Albert commented the relationship has been a productive one. Councilor Koenig remarked he has no issue, in general, with the relationship that has been established; however, there is a cost to the Town and he would like the

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Town to receive something in return beyond good will as it does represent an expense for the Town. Captain Albert stated the firearms instructors and defensive tactics instructors received their instructor training from the Academy at no cost to the Town, and reiterated, at present, the Academy does not have a simunitions instruction program.

Vice Chairman Rothhaus questioned whether overtime would be involved, and was informed no overtime has ever been used to cover this type of situation.

**MOTION made by Councilor Boyd and seconded by Councilor Dwyer to authorize and accept a grant available through the New Hampshire Police Standards and Training Council (PSTC) for the Merrimack Police Department valued at \$926.50, to have instructors trained in areas that PSTC does not currently offer instruction, pursuant to RSA 31:95-b and Charter Article 8-15, and furthermore that the Town Manager, Finance Director and/or the Police Chief be authorized to execute any and all documents to effectuate the transaction. MOTION CARRIED 6/0/0**

**4. Join the Clique Enforcement Program Grant for the Merrimack Police Department**

Submitted by Lieutenant Paul Trepaney

The Town Council to consider the acceptance of a “Join the New Hampshire Clique” seatbelt enforcement program grant available through the New Hampshire Highway Safety Agency for the Merrimack Police Department valued at \$4,680.00, to promote increased seat belt and child restraint usage, pursuant to RSA 31:95-b and Charter Article 8-15.

Captain Peter Albert stated the Town has been involved with this program for approximately 7 years. The program timeframe is May to June. The officers involved are compensated at an overtime rate. Rather than one officer at a rate of 6 hours (five patrols), two officers are sent out together for a period of three hours. It is done during daylight hours.

Vice Chairman Rothhaus questioned whether it is used as an educational tool and not necessarily for the purpose of ticketing. Captain Albert stated that to be correct and remarked if an officer were to encounter an individual appearing to be under the age of 18 or a small child not in a child seat, the operator would be stopped. In more instances than not warnings are issued rather than summonses. He added the New Hampshire Highway Safety Agency provides information packets that can be handed out, which explain the law regarding child restraint. When asked if the grant funding is State or Federal dollars, Finance Director Micali stated 100% of the grant dollars are Federal dollars passed through the State.

**MOTION made by Councilor Boyd and seconded by Councilor Rothhaus to accept the “Join the New Hampshire Clique” seatbelt enforcement program grant available through the New Hampshire Highway Safety Agency for the Merrimack Police Department valued at \$4,680.00, to promote increased seat belt and child restraint usage, pursuant to RSA 31:95-b and Charter Article 8-15, and furthermore that the Town Manager, Finance Director and/or the Police Chief be authorized to execute any and all documents to effectuate the transaction**

**ON THE QUESTION**

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Vice Chairman Rothhaus questioned whether this relates to the Federal Government responding to refusal to enact a Seat Belt Law by stating it would either withhold monies or they would have to be used for such purposes. Chairman Mahon stated that not to be the case.

**MOTION CARRIED 6/0/0**

### **Minutes**

Approve the minutes of the March 13, 2013 Special Town Council meeting.

**MOTION made by Councilor Boyd and seconded by Councilor Rothhaus to approve the minutes of the March 13, 2013 Special Town Council Meeting as presented**

### **ON THE QUESTION**

Councilor Koenig stated he did not agree with the language “motion carries” as no motions were made at the meeting. He stated the intent to have been not to make any changes to what was presented at the Deliberative Session, and would prefer the language state the Council recommends the vote from the previous motion. The general consensus of the Council was that the minutes be amended as suggested.

**AMENDED MOTION made by Councilor Boyd and seconded by Councilor Rothhaus to approve the minutes of the March 13, 2013 Special Town Council Meeting as amended.**

**MOTION CARRIED 6/0/0**

**Comments from the Press** - None

**Comments from the Public** - None

### **Comments from the Council**

Councilor Flood wished her colleagues and the residents of Merrimack a Happy Easter and Happy Passover. She noted the Annual Town-wide Yard Sale will take place at Watson Park on Saturday June 22, 2013 to benefit the Parks & Recreation Committee.

Councilor Boyd commended Merrimack Junior Eric Gendron who once again was named USA Today and Gatorade New Hampshire Player of the Year in basketball. He remarked this young man performs very well in the classroom and even better on the court. He stated he is pleased Merrimack continues to produce scholar athletes that are receiving recognition such as this, and congratulated Tyler on his accomplishments.

On Thursday April 4, 2013 the Rotary will hold its monthly breakfast at which Senator Kelly Ayotte will be a guest speaker. Anyone interested in attending or learning more about the Rotary is welcome to attend. The breakfast will take place at the John O’Leary Community Center.

Councilor Boyd encouraged citizens to vote on April 9<sup>th</sup>. He touched upon the importance of the Warrant Articles before the voters, and spoke of honoring the men and women who fight for our right to vote.

Approved: April 11, 2013

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Councilor Boyd wished the University of New Hampshire Wildcats luck in the first round of the NCAA Men's Ice Hockey Tournament taking place in Manchester, sent a special shout out to the River Hawks from the University of Massachusetts at Lowell, and commented his alma mater, Boston College, will be playing against Union College in Providence on Saturday. He wished his colleagues and the residents of Merrimack a Happy Easter and Happy Passover.

Councilor Koenig commented when the Planning Board accepted the updated parking regulations interest was expressed in whether or not the Council was satisfied or comfortable with them. From what he knew he presumed the Council was; however, did not speak on behalf of the Council. He suggested, if an individual Councilor has an interest or concern, he/she make it known. He stated his opinion there is tremendous improvement, and thanked the Community Development Director, Tim Thompson and the department for the work they put in in re-writing the regulations and providing the necessary detail.

**MOTION made by Councilor Koenig and seconded by Councilor Boyd to adjourn. MOTION CARRIED 6/0/0**

*The March 28, 2013 meeting of the Town Council was adjourned at 8:41 p.m.*

Submitted by Dawn MacMillan