

Approved: May 23, 2013

Posted: May 24, 2013



Town Council Meeting Minutes



Thursday, May 9, 2013, at 7:00 PM, in the Matthew Thornton Room

Chairman Rothhaus called the meeting of the Town Council to order at 7:08 p.m. Present at the meeting were

Vice Chairman Yakuboff, Councilor Boyd, Councilor Dwyer, Councilor Harrington, Councilor Koenig,

Councilor Mahon, Town Manager Eileen Cabanel, and Finance Director Paul Micali.

Pledge of Allegiance

Chairman Rothhaus led in the Pledge of Allegiance.

Announcements

The Town Council will hold a Retreat beginning at 8:30 a.m. on Friday, May 17th at the upstairs lounge at Swan's Chocolates. A regular meeting of the Town Council will be conducted on Thursday, May 23, 2013 at 7:00 p.m. in the Matthew Thornton Room.

The Merrimack Police Department's Open House is scheduled for Saturday, May 11th from 10:00 a.m. - 2:00 p.m. The new Prescription Drug Drop-Box located in the Police Department lobby is available for residents to properly dispose of unwanted prescription medications, no questions asked.

We are proud to announce our 2012 VFW Police Officers of the Year; Officer Daniel Jacques and Officer

Paul Wells. The awards will be presented this Saturday at 6:00 p.m. during the VFW Loyalty Day recognition at the VFW Hall on Daniel Webster Highway.

If you need a last minute gift for Mother's Day then register for a half-hour time slot on Saturday, May 11th between 10:30 a.m. - 12:30 p.m. in Garden to Go at the Merrimack Public Library. The Merrimack Garden Club co-hosts this event for Merrimack children. Prepare a spring flower to pot and give as a gift for Mom. We'll have decorations to dress up the container for gifting. For all ages; children 6 and younger must be accompanied by an adult caregiver. Please register using an adult Merrimack Library card.

Celebrate National Police Week at the Library on Tuesday, May 14th at Cookies with the Cops from 4:00 - 5:00 p.m. Officers from the Merrimack Police Department will be visiting for this special children's program, taking place on National Police Week.

Director Micali stated he was approached by an individual questioning whether prescriptions left in the drop box have to have the printed label on them. Mark Doyle, Police Chief, responded there are no questions asked, and no need for labeling. He noted information is not disseminated to anyone, and the DEA does not receive the information as it is destroyed prior to reporting. He stated an individual could place the medication in a plastic Ziploc bag and drop it in the drop box if they wished.

Councilor Dwyer questioned why unused medication could not simply be flushed. Chief Doyle responded it cannot be filtered out at the Waste Water Treatment Facility, and a lot of that will end up

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leeching back into the groundwater at some point. Councilor Mahon commented trace amount of medication are being found in the water.

Comments from the Press and Public - None

Recognitions, Resignations and Retirements - None

Appointments

1. Annual Review with the Planning Board

Submitted by Planning Board Chairman Robert Best

Per Town of Merrimack Charter Section 6-6, at least annually, there should be an annual review with the Planning Board. 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.

Robert Best, Chairman, Planning Board, informed the Council, in 2012 the Planning Board held 22 meetings and approved 19 site plan applications the majority of which were either commercial or industrial. Some of the more significant ones were; Synergy Self-Storage off of D.W. Highway; approved for a large self-storage facility (144,000 sq. ft.), bank and three restaurants by the Merrimack Premium Outlets, Atrium Medical Corporation (100,000 sq. ft.) research& development project, and XTL Warehouse, which was approved in 2013 for a 150,000+/- sq. ft. warehouse. To date in 2013, the Planning Board has met 6 times. In addition to the XTL project, another significant project approved by the board was the subdivision and warehouses on the Flatley property.

Mr. Best informed the Council the board, at present, has a full complement of members. In May of last year he was re-elected Chair and Mr. Millns Secretary. Both of their terms are up this year and both have submitted letters to be re-appointed by the Council once the interview process is completed. Mr. Nelson Disco has also submitted a letter to be re-appointed as an Alternate Member. Mr. Peter Gagnon has indicated he is unable to continue attending meetings. He has been a continual member of the Planning Board for 39 years having been originally appointed in 1974. Mr. Best applauded Mr. Gagnon's long tenure of service. He stated Mr. Gagnon's departure will require the board, at some point, to seek another Alternate member.

One of the significant projects of the Planning Board is updating the Master Plan. The board is in the third year of this three-year process. Vanasse Hangen Brustlin, Inc. has been utilized as a consultant and a Master Plan Steering Committee was created and has met each month to update the plan chapter-by-chapter. The Planning Board is preparing to conduct its review of the plan. Once the Public Hearing process has completed and the plan is adopted, there may be various responsibilities, tasks, etc. charged to the Planning Board and Town departments, e.g., there may be suggestions and recommendation as far as ways to change sub-division or site plan regulations.

Mr. Best noted recent changes to parking regulations to update the way they determine how many parking spaces a particular site plan needs to have. It is an important change that Town staff worked very diligently on. The revised regulations reach a better balance and continue to allow the board the discretion to individualize where it may be believed a different number of spaces should be required. There is also an effort underway to make revisions to the way bonds are recommended, approved, released, etc. so that the process can be streamlined while maintaining the transparency and oversight needed.

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Chairman Rothhaus touched upon the length of service provided by Mr. Gagnon.

Alastair Millns, Secretary, Planning Board, remarked the Planning Board is very well served by the Community Development staff and is saddened by the departure of Jeff Morrisette. Mr. Best added the staff does an incredible job, and the board could not function without them.

Public Hearing

1. Homeland Security Statewide Portable Radio Grant

Submitted by Lieutenant Paul Trepaney

The Town Council will hold a public hearing to consider the acceptance and authorization of state of the art portable radios that promote interoperability and future technology incorporation for the Merrimack Police Department. The radios are valued at approximately \$82,028.40 and made available through the State of New Hampshire Grant Management Unit's Local Law Enforcement Radio Working Group and purchased with unexpended Homeland Security grant funds, pursuant to RSA 31:95-e and Charter Article 8-15.

Chairman Rothhaus opened the public hearing at 7:25 p.m.

Lt. Paul Trepaney, Merrimack Police Department, informed the Council back in 2012 the Department of Safety Grant Management Unit had unexpended funds remaining from the 2011 Homeland Security Grants. In furthering some of the goals they set for interoperability and upgrading all radio systems, they wanted to purchase radios and provide them to local agencies. Merrimack is a recipient agency. The Police Department is not applying for actual funds, the funds are on-hand with the State and they will provide the radios as long as we agree they will be programmed for interoperability.

Councilor Boyd noted the Council's packet included a letter dated July 31st acknowledging that the Merrimack Police Department accepted delivery of 21 radios, and questioned whether this issue had come before the Council previously. Chief Doyle responded the money came about as a result of the Department of Homeland Security and FEMA loosening up regulations associated with the way it was originally earmarked for expenditure. Because of the original stringent rules a lot of towns and cities did not apply for grant funding for project(s) they had. At the end of the fiscal year there were unexpended funds that either had to be de-obligated or reprogrammed. It was in February of 2012 that FEMA decided to restructure the regulations in such a way that it allowed cities and towns to go forward with accepting some of those funds without as many conditions attached. The money had already been earmarked for homeland security funding and for homeland security funding at the local level. The Grant Review Committee formed a subcommittee, the Local Law Enforcement Radio Working Group, to earmark those funds for the portable radio procurement for law enforcement only because previous radio procurement that had been done through the Department of Homeland Security grant funding was done for the fire service.

They decided to replace some of the old radios (roughly 13 years old) and put new, state-of-the-art radios in the hands of the patrolmen and officers in the field. The subcommittee worked under a strict timeline of February to May when the procurement number had to be forwarded to the State. They were able to meet the deadline and get the radios into the hands of the officers. There was roughly \$4.3 million that was going to be de-obligated, which the group was able to earmark for radio procurement. The funds were broken down proportionally to ensure every town and city that had a

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full-time police officer in it received one of these radios. Merrimack was able to receive 25 radios. All towns in the state were able to receive at least 1 radio that is now interoperable state-wide.

With regard to the question of why the department did not come before the Council back in May seeking approval to apply for grant funding, Chief Doyle remarked the radios did not come through as an application, they came in the form of a statement; we have this money and we are going to give you radios. It came to light when he and Director Micali were receiving reimbursement monies back from the State for the programming, which was part of the grant. Director Micali suggested it come before the Council since it is grant funding even though there was no application associated with it.

Councilor Boyd stated his appreciation of the transparency. He questioned what would happen with the older radios and whether they could be used in another manner. Chief Doyle stated they have conducted a complete inventory of what they have on-hand, those radios are in the Communication Center ready to go in the event they need to be put in the field with volunteers. They will also serve as backup for officers should one of the newer radios break down and need repair.

Councilor Dwyer commented the grant was \$82,000 and the Town received 25 radios, which equates to a cost of over \$3,000 per radio. He questioned the high cost. Councilor Mahon spoke of the type of radio; hardened, digital, and the interoperability protocols built into them, which likely represents 1/3 of the cost. Councilor Dwyer touched upon the long lifespan of the radios. Chief Doyle added they are scalable meaning as platforms change with Motorola, they are scalable with Motorola infrastructure. Motorola seems to be the AdHoc standard the State has gone to and will continue to grow with over the next 10-20 years.

Councilor Boyd noted the radios have dual band, which allows the Town of Merrimack to do cross-jurisdictional communications with FEMA, etc. Chief Doyle stated they are dual band capable, not dual band yet. The single band version was purchased; however, with an upgrade that particular unit can be programmed as dual-band. The cost of programming was included and the radios came with a three-year warrantee.

No one from the public addressed the Council.

Chairman Rothhaus closed the public hearing at 7:34 p.m.

MOTION made by Councilor Yakuboff and seconded by Councilor Harrington to accept the Homeland Security grant funds for statewide portable radios in the amount of \$82,028.40 and authorize the Town Manager to sign any and all appropriate forms. MOTION CARRIED 7/0/0

Legislative Updates from State Representatives - None

Town Manager's Report

The Wire Road Bridge over Baboosic Brook was fully opened to traffic yesterday afternoon. The detours are no longer in effect.

The Merrimack Police and Fire Departments will be conducting drills with the Merrimack School District on May 16th at Thornton's Ferry School and on May 23rd at the Middle School. More information to follow, but messaging alerts through NIXLE will be sent prior to the exercises.

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Consent Agenda - None

Old Business

MOTION made by Councilor Mahon and seconded by Councilor Boyd to take from the table the contract for the running of the second hand shop. **MOTION CARRIED** 7/0/0

1. Second Hand Shop Update [Tabled at the April 25, 2013 Town Council Meeting]

Submitted by Finance Director Paul Micali

The Town Council to consider accepting the contract language for the independent contractor and the Town of Merrimack to run the second hand shop.

Director Micali informed the Council the language has been amended to address concerns expressed at the last meeting. With regard to the possibility of the individual running the shop leaving the premises in an unacceptable condition or causing damage to occur, the language now includes a requirement for a replenishable security deposit equal to one month's rent (\$200.00). If the Town has to address issues onsite monies from the security deposit can be used to offset the costs. The user of the facility would be required to replenish the security deposit to maintain an amount equal to one month's rent. If the individual vacates the premises and repairs, etc. are in excess of \$200.00, the individual would be responsible for all legal fees associated with collecting monies owed the Town. Language was also added to address the condition of the interior (wood paneling/carpeting). Language relative to the purpose of the shop and potential profit was removed. However, during the negotiation process, the successful bidder will be made aware the main purpose of the shop is to remove items from the solid waste stream.

Councilor Koenig stated he has had several people express concern as to why this endeavor is being undertaken. He questioned whether the ability to trade items at the landfill would be shut down if the Council did not accept the proposed second hand shop. Town Manager Cabanel stated the proposal came from the Recycling Committee. One of their tasks was to make the recycling facility more user friendly and easier for people to get through. There have been several people on the committee as well as at the Transfer Station who have received complaints from individuals stating they wish to recycle but do not because the activities taking place in that area prohibit quick and easy access. The primary focus was to make recycling easier and quicker.

Members of the committee went to the Bedford facility to view their operation, which is similar to what is being proposed, and has worked well for them for well over ten years. Town Manager Cabanel noted the Council approved the cost of moving of one of the portable classrooms, previously stored at the PWD garage, to the landfill, connecting electricity, etc. Approval of the contract is the next step in the process. She stated her recommendation, should the Council determine not to move forward with the proposal, would be to eliminate the swap aspect altogether as recycling and removing items from the waste stream is what the government should be doing rather than promoting people trading items. Director Micali noted there are also safety concerns with the area activity is presently occurring, which prompted the committee to take action. The proposal was intended as a means of keeping some sort of second hand shop on the premises.

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Councilor Harrington stated her support of the effort. She was pleased with a 6-month trial period as she believes any problems that might arise will be known in short order. Chairman Rothhaus noted the contract is for a period of six months with two one-year extensions. It is also severable with written notice. Councilor Harrington agreed with the recommendation, should the Council not approve the second hand shop proposal, the activity currently taking place come to an end.

Councilor Dwyer remarked he had expressed concern with the contract calling out the number of hours/week the facility would be run. However is agreeable to it given the language also includes the statement "However, such hours may be altered at the mutual agreement of the Town Manager and...". Chairman Rothhaus noted part of the reason for identifying a minimum of 40 hours/week for the first 6 months in particular was so that people would become aware of the shop. Director Micali added, with a presence, people will not take advantage of a vacant building with a table in front as a way to drop off a microwave or computer, which are items the Town has to pay to dispose of. The individual running the shop would inform the resident of the need to drop such items off at the scale house. In addressing the question of whether or not the Town would be stuck with having a trailer in this location should the shop not be successful, Director Micali noted he had suggested the trailer could be used as office space for employees. However, given the axles are located with the trailer, if needed, they could be put back on and the trailer moved.

MOTION made by Councilor Yakuboff and seconded by Councilor Harrington to accept the contract for the second hand shop and allow the Town Manager to move forward with the process. MOTION CARRIED 7/0/0

2. Acceptance of Willow Lane

Submitted by Town Manager Eileen Cabanel

Town Council will consider the acceptance of Willow Lane.

Chairman Rothhaus noted Willow Lane went through the planning process years ago, had not been accepted by the then Board of Selectmen, and requires action by the Council.

MOTION made by Councilor Koenig and seconded by Councilor Dwyer that the Town Council accept Willow Lane, a 182 linear foot road in the Town of Merrimack, located on Tax Map 4D4 pursuant to Charter Article 4-8.

ON THE QUESTION

Town Manager Cabanel noted a resident came before the Council to discuss a sewer right-of-way that exists perpendicular to Willow Lane. They were concerned with the road being cut across as a means of gaining access to a private residence. During the course of the discussion it was discovered Willow Lane had been offered, but never formally accepted by the Town. Chairman Rothhaus noted receipt of an e-mail received from Mr. Erik Cook of 1 Willow Lane, and stated his desire to ensure Mr. Cook is aware acceptance of Willow Lane is an issue separate from the prior discussion regarding the discontinuance of the Lozeau Drive Right of Way.

MOTION CARRIED 7/0/0

New Business

1. 2013 Fall Business Expo

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Submitted by Dave McCray

Discussion of 2012 and 2013 Business Expo.

Mr. Dave McCray stated the Town Council is ultimately responsible for the event. He provided a recap of the 2012 Fall Festival and the 2013 Fall Business Expo. Plan. In 2012 there were 104 exhibitors. The set-up went very well. One of the biggest complaints received over the years relates to the volume of music. Councilor Dwyer and Mr. Malzone addressed the issue this year, and the feedback received was positive. The Petting Farm was a great success as were the Clydesdales, the robotics group, and the wiffle and basketball tournaments for Sargent Ed Pane, which were huge successes. By not holding the event at the Abbie Griffin Park the festival was more compact and easy to navigate. The level of volunteerism was great. It was a great day for all who attended. The event resulted in a profit of \$600.00.

The weather was dreary for the second year in a row. There was lower attendance than the prior year due to weather and a \$3,000 reduction in the advertising budget. In 2012, \$4,400 was raised whereas nearly \$8,000 was raised in 2011. The difference came down to \$3,000 less being expended in advertising, which was not expended as it was not available. Mr. McCray stated he made a calculated decision to not go out this year and bang on doors whereas in previous years he had traveled from Merrimack to Bedford, to Nashua, etc.

Mr. McCray spoke of an instance two years ago when, due to weather conditions, the event had to be moved indoors. Twenty five exhibitors had to be located in a separate room, which reduced the number of visitors they received. The gymnasiums can accommodate 90 people and an additional 50 had to be accommodated. The situation was not pleasant especially for those individuals who spent the entire day sitting in a room where they could not be found. As a result he decided he would not sell any spaces beyond those that could be accommodated indoors. This year the number of exhibitors was 104.

During set-up the room was arranged so that exhibitors could be placed indoors if necessary. As that need did not come about, the indoor rooms appeared half empty. He stated he has come up with an idea he believes will address that situation. One of the things noticed last year was the number of people who were out of town that entered the raffle. That was a direct result of advertising efforts.

With regard to the plans for 2013, Mr. McCray remarked, in prior years, exhibitors signing up to be outdoors were guaranteed a space indoors. This year that will not be the case. What is being offered is a money back guarantee. They will also do their very best to bring the exhibitors indoors understanding those who experienced the need to move indoors two years ago would have rather been reimbursed than be forced into the situation that existed. There will be options to address inclement weather; can bring a canopy, can choose not to exhibit, can request and receive a full refund, no questions asked, or can set up indoors providing space is available. Volunteers will be given the option of being outdoors at no cost or paying to be located indoors. That approach would allow for the renewing of the door-to-door solicitation of vendors with the desire to sell 150 spaces (110 indoors and 40 outdoors). It would provide approximately \$8,000 in revenue. If it does rain, a lot of people will choose not to exhibit and the rest will be indoors.

Mr. Shaw has expressed a desire for more participatory events for the children. In addition to the petting zoo and visits with Wally, there could be an outdoor obstacle course, potato sack races, tug-of-war, etc. That was attempted a few years ago with the NFL-sponsored pass, punt and kick contest, but

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it was done in a location (O'Gara Drive) that was too far away from the main event. Mr. Shaw has stated he will make that work.

In the evening hours the intent is to conduct a concert at Watson Park with fireworks and a tribute to a Merrimack hero, Marine Cpl. Timothy Gibson. Parking is proposed at the high school with spectators walking down Woodbury Street and the shuttle bus for the elderly, those out of shape, and children. Mr. McCray informed the Council he, Town Manager Cabanel, and Chief Currier have discussed the event in detail and came to the conclusion the concert can be conducted at Watson Park, and a Class C fireworks show can be put on. Both the Chief and Atlas Fireworks have suggested, if done properly, a Class C show can be very similar to another class of show, and in fact can take a professional to figure out the difference. The individual that runs the show for Atlas is a Captain on the Merrimack Fire Department. The Chief has stated he is comfortable, based on the information provided, that a good show could be done from that location. Mr. McCray noted, should the Council approve the fireworks show there will be a month-long permitting process that has to be undertaken, etc. If determined not to be a suitable location, the schools would be considered as an alternate location.

Mr. McCray stated he was seeking the Council's permission to move forward seeking sponsors, which is something that has never been done. He remarked he believes the cost of the entire event to be in the area of \$20,000. He is looking for a donor for a minimum of \$5,000 who would be identified in the event title in a way similar to "All Basic Stove Shop presents Merrimack Rocks, a night of music, fireworks, and tribute to 2013 honoree Corporal Timothy Gibson". Mr. McCray spoke of a conversation he had with Mr. Gibson who relayed to him he and his family could not have asked for more than what the Town has done for them since the tragic event. He stated his support of any event that helps keep Tim's memory alive. Mr. McCray remarked the family would not take an active role. What he perceives is music; light rock and some pop, followed by childhood friends or perhaps one of Tim's brothers speaking while photos are displayed, followed by a fireworks display.

Once sponsorship is gained, he would seek the Council's approval on how the sponsorship would work. He would like to gain some large sponsors and has already received commitments from three businesses in town for \$1,000 contributions. He stated the fees charged would remain as they have been for the past few years. He informed the Council letters were sent out a few days earlier informing past exhibitors the plans are underway for the 7th Annual Merrimack Fall Festival, which will take place on September 28th from 10:00 a.m. to 3:00 p.m. Within that letter is mention of an issue that has come up for the past few years with direct businesses such as Avon, Scentsy, Tupperware, etc. being unhappy if more than one person is allowed to exhibit as they do not wish to compete with each other. He has always responded that these entities need to police their own vendors. He noted those who sign up are listed on the website.

Mr. David Shaw commented he looks forward to being a part of this event and will do everything he can to ensure its success. He remarked it is a great opportunity to bring a lot of local businesses together. He reiterated his desire to incorporate a few contests for the children to participate in.

Mr. McCray informed the Council he and the Town Manager spoke earlier in the day about vision. He told her the initial vision for the event was for it not to be limited to mom and pop type operations, which is what it has typically been. What was envisioned was larger companies exhibiting such as Anheuser-Busch, but that never materialized. Town Manager Cabanel noted she has made good connections in her position and is willing to speak with some of these companies to see if she can gain

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their participation. Another idea put forth was for businesses to be allowed to conduct a job fair of sorts where they can provide information on open positions within their organization.

Town Manager Cabanel commented one of the things that came about as a result of Mr. McCray's suggestion of a job fair was her feeling it would be a good idea for her, Mr. McCray, and whoever else the Council believes appropriate, to meet with Elaine Devine, General Manager, Merrimack Premium Outlets, to find out whether they have a bulletin board or something where they can connect with the very successful stores they have down there to see what kind of presence they might have.

Councilor Boyd thanked both gentlemen for their efforts and commented the Fall Festival is one of the best things that occurs in the community. He questioned how money-back guarantees would be addressed in terms of the funding that would be necessary. He suggested the monies held in reserve would be depleted quickly and it might be necessary to utilize some of the sponsorship monies. Mr. McCray stated the existing reserve funding would be used to purchase new signs. The cost associated with the possible financial liability to the outdoor vendors (\$25 each) would be in the range of \$1,250. Each year efforts would be made to retain that amount as part of the savings fund. Mr. McCray commented his gut feeling is most exhibitors would remain even in the event of rain. He stated, in the worst case scenario, he and Mr. Dwyer would write a check from whatever remains in Silver Chariot and be done with it.

Mr. McCray stated although the taxpayers pay for the police presence and the office workers, overall the event is run with the intent to be self-supporting. Mr. Shaw remarked, if necessary, raffles, etc. could be put together at the last minute as a means of generating additional revenue. If the weather is not looking promising a reserve would be established with monies that might otherwise go to advertising.

Councilor Harrington questioned whether consideration has been given to imposing a timeline on the ability to receive a refund. Mr. McCray stated, for the first year, they were looking to allow for a refund, no questions asked. Councilor Dwyer shared his memory of an instance a few years back when there was a great deal of rain and only 1-2 exhibitors requested a refund. Chairman Rothhaus commented he is pleased with the new ideas presented, and with the Fire Chief's involvement. Mr. McCray reiterated the Fire Chief and Atlas were involved in considering whether Watson Park would be an acceptable location for a fireworks display. Town Manager Cabanel stated she has spoken with the Police Chief briefly who expressed he has no issues with regard to activities proposed for Watson Park.

Councilor Koenig remarked over the past 6 years, the business expo. has run from 10:00 a.m. – 3:00 p.m. after which the businesses are worn out and everybody is going home tired. He questioned how they would go about ensuring attendance at the evening events. Mr. McCray responded although some refer to the event as the Business Expo. he has continued to refer to it as the Fall Festival as he continues to believe the event will grow year after year. He sees families attending the daytime events, going home for dinner, etc., and returning in the evening for those events. He commented it would be similar to how people conduct themselves on the 4th of July when they watch the parade, go home, and return for the fireworks. He spoke of individuals that do not have the opportunity to attend the festival due to other obligations that may be able to participate in the evening events.

Councilor Dwyer noted some members of the committee believed the 10:00 a.m. - 3:00 p.m. time period was too short and would have liked it to be 10:00 a.m. - 5:00 p.m. Over the years, the

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availability of the church parking lot has prohibited that. Consideration was given to moving the event to the High School; however, as there is an event planned there the night before and because it is believed the success of the event has been linked to the ability to set up the night before, the location was not changed. Chairman Rothhaus suggested splitting the events up may draw an additional crowd.

Councilor Koenig expressed his belief the intent is to raise donations from sponsors to cover the cost of the evening events. Mr. McCray stated that to be the case, and stressed there will be a need for him to come back before the Council to discuss levels of sponsorship, type of advertising, etc.

MOTION made by Councilor Boyd and seconded by Councilor Mahon that the Town Council grant permission conceptually to the Friends of the Merrimack Fall Festival Business Expo. to begin planning and preparing for the September 28th event, and furthermore, that the Council extend its best wishes and willingness to provide assistance to David McCray and David Shaw as they undertake efforts to get the event going. MOTION CARRIED 7/0/0

2. Merrimack Crimeline Donation Acceptance for Police K-9 Unit

Submitted by Police Captain Peter Albert

To consider the acceptance of a donation in the amount of \$1,516.00 from the 5th Annual Crimeline Magic Show Fundraiser which was held on April 13. These funds were raised to specifically benefit the Merrimack Police Department's K-9 unit, pursuant to RSA 31:95-b and Charter Article 8-15.

Captain Peter Albert, Merrimack Police Department, stated the department is requesting the Council approve the donation of \$1,516 from Merrimack Crimeline to the K-9 program to support Gunny's activities. He remarked the Crimeline is a wonderful volunteer civic organization that fully supports the Police Department and believes in giving back to the community. This is the 5th year they have run the Magic Show. After expenses were paid the remaining balance was \$1,516, which they wish to contribute towards Gunny's upkeep.

MOTION made by Councilor Yakuboff and seconded by Councilor Boyd to accept a donation in the amount of \$1,516.00 from the Merrimack Crimeline donated to the Merrimack Police Department's K-9 unit.

ON THE QUESTION

Vice Chairman Yakuboff remarked and Captain Albert agreed, Gunny has been very useful over the years. Vice Chairman Yakuboff extended his gratitude to the Merrimack Crimeline.

MOTION CARRIED 7/0/0

3. MS4 Review and MS4 Group Participation Agreement

Submitted by Public Works Director Rick Seymour

PWD would like to inform the Council about the significant changes and additions to the MS4 Stormwater Permit and the financial impacts. Also, PWD would like Council to consider approving the participation of the Town in the NH MS4 Permit Communities Group and the use of Town funds for legal assistance.

Town Manager Cabanel stressed the importance of the Council taking action on what is likely one of the most important topics to come before it. She stated the new agreement being proposed has the

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potential to result in enormous costs for the Town over the next 6 months. She explained, the Town has an MS4 Agreement with the Environmental Protection Agency (EPA), which relates to the Clean Water Act. The Town is currently under the 2003 agreement, which is basically for the prevention of groundwater contamination. The 2003 stormwater plan was intended to last five years.

Ten years has gone by, and the EPA is requiring information from the New Hampshire Department of Environmental Services (NH DES) relative to guidelines on how stringent NH should be as it relates to the Clean Water Act as well as data, which could be used in determining the requirements for the State.

Town Manager Cabanel stated there is a commented period during which the Town has the opportunity to provide comments on the MS4 Agreement for 2013. Once that time period comes to an end there will be no further opportunity to comment, and whatever the agreement requires to be done the Town will be required to do within the time period established.

The various communities involved collectively requested an extension to the comment period, which was granted. The comment period comes to a close on August 15th. A draft response to the Agreement has been put together. She remarked none of the activities being proposed imply the Town is not interested in clean water, it is simply that there needs to be scientific and timely data utilized and a decent period of time allowed for compliance. As an example of how Merrimack was called out in the new agreement; they looked at Horseshoe Pond and said you need to clean that up for Phosphorous. To do so would result in a cost of about \$2.5 million. They are basing their requirements on data collected 15 years ago without having ever tested for Phosphorous

The Council recessed at 8:28 p.m.

The Council reconvened at 8:33 p.m.

Kyle Fox, Deputy Director, Department of Public Works, remarked this is a big topic for Merrimack and many towns in New Hampshire. There are 60 municipalities in New Hampshire that have been identified for this program, which is a costly prospect. The Stormwater Program was derived from the Clean Water Act (Federal regulation). In 1990, the EPA was authorized to regulate point sources to waters of the United States. The way they did that is through their National Pollutant Discharge Elimination System (NPDES) permit program. Phase I of the NPDES program began in 1990. The communities included in that program were those that had populations over 100,000.

Phase II is where most of the New Hampshire municipalities came in. Program requirements for inclusion are being defined as an urbanized area, e.g., population of 1,000 people per sq. mile, or areas designated by the permitting authority (EPA). When asked, he explained the MS4 Program is the Municipal Separate Storm Sewer System. What the permit regulates is all stormwater discharge, e.g., catch basins leading to stormwater pipes, which leads to waters of the United States, which include lakes, ponds, rivers, streams, etc. This program is designed to give blanket authority for all of our discharge so we don't have to have 1,000 permits.

The first permits under Phase II of the program were issued in 2003. What that involved was the requirement for the Town Manager to file a Notice of Intent, but the Town Manager at that time, through the Selectmen's authority, filed a Notice of Intent to Discharge stormwater through the EPA. The first permit required those permitted to reduce the discharge of pollutants to the Maximum Extent Practical (MEP). The goals of the program are to protect water quality and satisfy the appropriate water quality requirements of the Clean Water Act. Councilor Koenig questioned who the MEP was

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measured by. Deputy Director Fox responded during the Notice of Intent process, the Town sent a document to the EPA outlining what would be done in the program, e.g., what the goals were and what would be achieved in each of the five years of the program. The EPA accepted that, and that is what the Town has been working under.

Deputy Director Fox stated, under the first permit there were 6 minimum control measures the EPA wished the Town to focus on: 1) public education and outreach; accomplished through brochures, classroom education, etc., 2) public participation and outreach; goals were volunteer programs such as the stencils on the catch basins, 3) Illicit Discharge Detection & Elimination (IDDE); goal was to identify where stormwater system is, where it goes to, and be able to locate illicit discharges (not normal from stormwater). A great deal of money was expended in 2003 and 2004 on this part of the program specifically for GIS (have a storm sewer layer that is about 99% complete at this point). Another part of that was the visual inspection of every outfall (photographed), which was largely a consultant effort. 4) Construction Site Runoff Control, 5) Post Construction Runoff Control; where those come into play is with the Ordinance to amend Chapter 4:12 of the Town Code to include regulations on stormwater discharges during construction and site control post-construction. That programming is working pretty well. The State and Federal regulations for construction control kick in at 1 acre. The decision was made, as a Town, to set the limit at 20,000 sq. ft.

Councilor Boyd questioned the number of discharge points in Town and what has been the level of illegal discharge from either of those points. Deputy Director Fox stated there to be over 500 discharge points and noted in the past two years there have been 3 incidents where they have received calls about illicit discharges, which have been addressed. Through the inspection program they have not found any. The sixth control measure is Pollution Prevention/Good Housekeeping, which is an internal training program. As part of the 2003 MS4 Permit requirements, he prepares an annual report of the stormwater activities under those 6 control measures each year by May 1st and forwards it to the EPA.

Town Manager Cabanel noted the 2003 requirements were not particularly onerous, the Town was able to meet them, and continues to operate under the 2003 permit. Deputy Director Fox remarked in 2008 the EPA issued a draft permit to replace the 2003 MS4 permit. It was a lot more onerous than the 2003 permit, a great deal of comment was received, and the EPA never issued the permit. In February, the EPA issued a new draft permit. In it, they roll in another 13 municipalities. All of the goals identified within the permit have to be met within 5 years. The program itself in format is the same; 6 control measures. However, each include a great deal more responsibilities and duties to be accomplished.

James Taylor, Assistant Director, Wastewater, noted the requirement to achieve compliance within a 5-year period is very unusual. New Hampshire will have one of the strictest stormwater permits in the country if approved in the form seen now as a draft. When asked why, Assistant Director Taylor responded the State does not allow the DES to issue compliance schedules. It says you can have permits for periods of five years. The five-year permit constrains the Town to complete everything within the five-year period. At present, there is pushback that the State, through the legislative process, allow compliance schedules to be issued from the DES and also extend the periods of time in which the Town would have to comply.

Chairman Rothhaus commented it is the State that is causing the issue not the EPA. He remarked, if that is the case he wants to understand what the Governor has heard about this. He stated the Town does not fit within the criteria of an urbanized area and some designating authority with DES in the

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State has made life more difficult. He stated the Clean Water Act came out in 1990, the first permit came out in 2003, Article 28-a came about in 1978, which is long before this was thought of so it is absolutely an unfunded mandate especially where the EPA isn't requiring these things of the Town the State is. Councilor Boyd questioned whether towns abutting the Souhegan River Watershed will be subject to the same type of rules the Town is being asked to abide by and if so at what level. Deputy Director Kyle Fox noted one of the towns that has been rolled into the 2013 permit is Lyndeborough, because they are closer to the Souhegan Watershed. They have a population of 54 people per sq. mile.

The draft permit was issued in February with an April 15th deadline to submit comments. He and Director Seymour prepared comments. The deadline was extended to May 15th and again recently until August 15th. He reiterated they were prepared to send some comments in, the unfunded mandate being one of them. Program inclusion is another; many towns have taken note the City of Concord is not included in the program. Councilor Boyd clarified his point, the financial burden to administer the program will fall upon the Town of Merrimack because of its geographic location, not necessarily other communities that are upstream of the Souhegan, but because their stormwater flows into the Souhegan eventually, the Town will be responsible for monitoring illicit discharge that may emanate from Mason, Lyndeborough, Wilton, etc. Deputy Director Fox stated his belief Councilor Boyd's understanding is correct.

Councilor Dwyer disagreed. He stated it is not about the Souhegan. The catchword is stormwater; it is rain. He remarked you could be living in a town in New Hampshire without any water in it and the need would still exist to file permits. Councilor Boyd stated the point to be the discharge collection point is in Merrimack.

Deputy Director Fox stated one of the confusing things for New Hampshire communities is that New Hampshire is a non-delegated state. Many states have their own stormwater programs; however, New Hampshire does not so it falls under EPA control. However, the NH DES gives the EPA the pollutant limits that are required. Town Manager Cabanel noted the data also is generated by the NH DES.

Deputy Director Fox stated the 6 control measures are the same in title; however, are much more extensive and much more expensive. He stated the most onerous part of the 2013 draft permit to be the Total Mass Daily Load (TMDL) limits. NH DES has determined pollutant loading in a number of water bodies throughout the State based on very old testing and sometimes with testing that remains to be verified. They perform calculations and determine loading limits that are allowed out of the stormwater pipes. They have placed a large restriction on the stormwater pipes to try and bring the entire water body under the pollutant limits they want to see. The program does not necessarily regulate rain water, it is just the water that comes through our pipes; however NH DES and the EPA are using it as an opportunity to correct deficiencies in water bodies as a whole.

Councilor Dwyer stated stormwater discharge is rain. Deputy Director Fox responded rain itself is fine, it is the pollutants it collects along the way they are trying to address. The water bodies in Merrimack that have been identified as having loading issues are: Horseshoe Pond and Baboosic Lake; Phosphorous limits and Naticook Lake/Wasserman Park Beach, Merrimack River, Souhegan River, and Pennichuck Brook; bacteria limits. The data used to formulate the limits for Horseshoe Pond was collected about 14 years ago. The goal of the permit would be 76% reduction in Phosphorous. Using a spreadsheet the City of Nashua developed, which uses watershed size, they estimate a cost of approximately \$2.5 million to address Horseshoe Pond alone. Baboosic Lake also has a Phosphorous limit (in permit Amherst listed as the lead agency) and a 44% reduction is sought.

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When asked how the limits were formulated, Director Seymour remarked there are a lot of times assumptions are made based on national formulas/data. He remarked when Manchester looked at their loadings in certain water bodies they sat down with the EPA and tried to determine how it was decided they had a particular amount of Phosphorous and were told it was based on the number of acres of drainage that went to the pond and what would be expected for Phosphorous addition to that pond over time. Therefore, based on that data, they would calculate how high the Phosphorous level was and the percentage of reduction that needed to be taken into account for reducing the pollutant levels.

When they met as a group, one of the things looked at was the way the total maximum daily limits were calculated. He stated it was difficult to identify even for the DES who came back with all of the flow through diagrams that showed how the numbers were created. He commented the figures used for pounds and loadings are old. It is more than likely the data used for a lot of the TMDLs throughout the State are based on very old data.

Bacteria TMDLs for the water bodies listed vary in reduction limits from 45-87%. Some of the things the Town would be required to do include increased street sweeping in those areas, public education, and full IDDE implementation. He noted one of the differences between the current permit and the proposed permit provides for more leniency in determining where the trouble catch basins are located. Being within the watershed of these water bodies automatically puts them in the dangerous category, which requires full testing (dry and wet weather), which is costly. Councilor Koenig requested clarification they are not suggesting any of the levels are a result of failed septic systems, etc. Deputy Director Fox stated the permit does not regulate septic systems only stormwater discharges. Councilor Koenig questioned whether the belief is Phosphorous is coming off the streets. Deputy Director Fox remarked Horseshoe Pond has a lot of nice lawns in the area where fertilizers are likely used, and the dilemma is how do we, through stormwater discharge (have 3 that go towards Horseshoe Pond) reduce 76% of the Phosphorous in that water body. He suggested it may not be possible.

Town Manager Cabanel stated addressing Horseshoe Pond alone will result in a cost of approximately \$2.5 million. With Baboosic Lake Amherst is lead; however, the Town will likely be pulled in. There is no estimated cost known. She stated they have not been able to cost out the expense of addressing bacteria levels. She suggested it will be several million dollars of expense for projects that have to be completed in a five-year timeframe. Deputy Director Fox remarked they have been able to address the requirements of the 2003 permit through the use of Town staff and interns. Under the proposed permit it would be impossible to keep up with the requirements with staff alone. There would be the need to hire consultants. He stated his belief the 6 control measures alone will cost tens to hundreds of thousands per year and the TMDL limit issues will cost in the millions.

Director Seymour informed the Council in reaction to what is occurring with the MS4 draft permit, a lot of communities have gotten together (around 41 communities in attendance for the initial meeting). He stated one of the requests of the Council is to authorize the Town to become part of the MS4 Group and to participate in the activities of that group. Approximately 500,000 residents are represented by the towns that have committee to participate to date.

The MS4 Group is working with Sheehan, Phinney, Bass and Green out of Manchester, a firm heavily into the environment process and one that has been working with the seacoast on their permitting. They also hired a lawyer from Washington who has dealt with a lot of EPA cases. The cost of legal services would be split amongst the MS4 Group based on population. Initially the desire is to use their

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services to provide MS4 permit comments. He remarked, although it sounds innocuous and perhaps not a very high quality task, it is a very complicated and detailed task. The MS4 Group has a core group that has been meeting with NH DES, has stated the permit is unattainable and DES will have to partner with the Group to change the way it will evolve as without that change the communities are likely to appeal and perhaps bring suit against the EPA and the State.

There will be a cost of approximately \$75,000 to get the comments together. He noted the MS4 draft permit will require legal review. Although the Town could probably do it to some degree, there are a lot of cases throughout the country where some of the MS4 requirements in other districts have been overturned through legal efforts. When the comments are forwarded they will include comments generated by Director Seymour and Deputy Director Fox as well as an additional set provide on behalf of all of the towns that are part of the MS4 Group. Merrimack's portion of that expense would be \$5,000. The mechanism to manage the MS4 Group and to work with the lawyers and any other consultants will be a subcommittee of the New Hampshire Public Works Association, which is expected to be formed in the next few days. That subcommittee will work with the towns to coordinate the efforts to get consultants and any experts we need together to work on the MS4 permit.

He remarked the core group has not made a lot of progress with NH DES; however, did achieve the extension of the deadline, which provides the necessary time to comment properly, to dig into the TMDLs, and to allow a legal review. One of the things brought to the attention of NH DES is the five-year timeframe dilemma associated with the permit. They were encouraged and have agreed to begin the legislative process to create compliance schedules and that they be 20 years long. Director Seymour stated one of the items key to the process is the validation of data. He remarked Horseshoe is a prime example of 14-year-old data being used in some huge formula to calculate out what the loading is for the Town to determine the percentage of reduction that is required to occur. It is the belief of the Group the first five years of a compliance schedule should involve a sampling schedule extensive enough to ensure data relative to weather conditions, seasonal conditions, depth, and area sampling throughout so that the data is sensible. If the pond were determined impaired at that point there would be 15 years remaining to determine how to address the issue.

Director Seymour noted a lot of the things that have been done as a result of the 2003 permit have already gone into effect, e.g., extra street sweeping, catch basin cleaning, the creation of an Ordinance to control stormwater, etc. They believe each of those things have added to reducing the loads to all of the water bodies in Town and they want credit for that. The only way to get credit for that is to test. They feel it is important to test up front as part of the first five years of the compliance schedule.

It is believed legislation will be put in place to allow for a 20-year compliance schedule and that the EPA will not balk at it as it is already happening in other states. The MS4 Group would select the consultants. A Project Coordinator would be selected to coordinate activities for the Group. The plan of action consists of four steps: 1) send comments to the EPA by August 15th, 2) EPA and State will review the comments, 3) if not successful, the Group would go to the Environmental Appeals Board, and 4) appeal through the First District Court. He remarked legal support at this point in time is critical as that same group may be needed to work on behalf of the towns to draft any appeals.

Town Manager Cabanel summarized Phase I has a cost factor of \$75,000 to be split amongst all participants (based on population). What they are trying to do is to respond, before the August 15th deadline, in a scientific and legal way because, as individual communities, we don't have the staff, scientists, etc. A response will be written on behalf of all of the participating towns/cities by legal

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counsel, and the Town will forward its own comments regarding our specific water bodies that have been called out.

Chairman Rothhaus stated his belief this as an unfunded mandate and that the State is causing this difficulty. When not required by the Federal Government to be an urbanized area, our own state has mandated that we are. He remarked that amendment (Article 28-a) is ignored constantly, which is a failure of ours. He stated his opinion the \$5,000 expenditure is more of an insurance policy and he is not opposed to hiring an attorney to prepare the comments. He stated his desire for the state to step up to the plate to cover the things that the Town does not have to do for the Federal Government but has to do because of NH DES. He stated he would like the Governor to be made aware of the issue. Town Manager Cabanel stated she has personally spoken to the Commissioner at NH DES. She is not clear why no one has contacted the Governor.

Councilor Dwyer stated his opposition to allocating \$5,000 towards this endeavor and the Town's participation in the Group. He suggested, the moment the first check is written, the lawyers will turn the situation into a money machine. He stated the Group is in bed with the lobbying effort with the EPA; they go to Washington and meet with the bureaucrats. He stated this to be our worst nightmare. He remarked with all due respect to the staff putting hours and hours into this work, he begged the Council to stop making them do this work. He suggested the Council make them sue the Town for non-compliance as he believes the case would continue for decades.

He stated his comment would be why don't you make us clean Horseshoe Pond for \$2.5 million. He spoke of the newspaper article that stated in order for Manchester to be compliant they would have to raise \$600 million in five years' time. He suggested it would take \$6-8 million for Merrimack to comply. He remarked it is craziness and the moment you start trying to be professional and courteous and pay attorneys to be lobbyists to fulfill their obligations you are caught in it and will always be bound to fighting the madness instead of rebelling against the bureaucratic madness that is encroaching on our way of life. He suggested the moment we decide to participate we make their effort legitimate. Vice Chairman Yakuboff stated his agreement with the comments made by Councilor Dwyer; however, added his belief what you spend at the onset is vital. He noted there is no commitment being made beyond that initial investment.

MOTION by Councilor Yakuboff and seconded by Councilor Mahon that the Council authorize the Town of

Merrimack to join the MS4 Group at a cost of \$5,500 for Phase I of the legal effort and authorize the Town Manager to execute any documents required to reflect the participation in the MS4 Group

ON THE QUESTION

Vice Chairman Yakuboff agreed there is a need to stop the madness; however, we cannot all go to jail. He stated his belief you have to use a little bit of money to start the fight by joining with the other towns. He stated the level of financial commitment to be minor when compared to the potential financial liability of the Town, and noted the opportunity exists to pull away from the Group and its efforts at any time. If, when faced with a second phase, he confidently believes it is not important enough to move forward with the Group, he will vote against it.

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Councilor Dwyer stated his agreement with most of the remarks made, but added what makes him hesitant is NH DES has not been our ally in this process. They recognize that 14 years ago a college student doing his thesis was the one who tested Horseshoe Pond. They already know all of the data and can't even replicate it themselves right now. They know what they have is garbage, and yet they are still making you do it. He stated that is the madness part when our own state government knows the system is flawed, knows the data is flawed, and yet they continue to push the buttons for you to do it. Vice Chairman Yakuboff stated it is an unfunded mandate built on a foundation of sand because of the erroneous data, but he would rather spend \$5,500 than \$8 million with the opportunity of pulling out after the initial investment.

Councilor Boyd questioned whether it was fair to assume the data the Town has been collecting, as part of the 2003 permit, does not meet the methodology they need. Deputy Seymour stated water sampling was not done as part of the 2003 permit. They had no idea these TMDLs were coming down the road. If they had been aware of it they would have questioned it. The first time they saw the TMDL for Horseshoe Pond they only had two months to respond. The Town does not have data. Data has to be collected appropriately with QC/QA and what they call a QWAP, which is a process you have to put together explaining how you will sample and get the numbers. They want to go back to the EPA and say we both should acknowledge that those numbers are not good and arrange for the setup of a sampling schedule, etc. Councilor Boyd stated his opinion that work should not have to be done. He remarked if they are going to set the mandate and establish a standard, they should be responsible for proper testing, it should not be done at a cost to the taxpayers. He stated he agrees with a lot of what Councilor Dwyer's stated, but he also believes the Town needs to have a voice because the insanity has to stop.

Councilor Harrington suggested not responding is abdicating giving our opinion. Our non-response is giving them permission to continue with their intentions. Councilor Dwyer suggested responding in a letter doesn't mean you have to write a \$5,000 check. Councilor Harrington stated a letter is not what she is understanding the response to be; it is looking at past practice in other states that have been successful in such an endeavor, understanding the methods they used to fight the issue, etc. She stated her opinion participation is providing an opportunity and getting the experts to act on our behalf.

Councilor Dwyer stated his fear with that approach is it still gives them the end result that you will spend X to buy the pipes and divert the rain from heaven. That is the EPA's end game that every municipal government across America will spend millions to collect the rain and do what they tell them to do. Councilor Harrington stated her belief, right now, the best effort we have is to give it a shot at this stage.

Councilor Koenig stated his agreement with the comments made by Councilor Dwyer. He remarked he believes it to be a sad state of affairs. He is unclear on who the MS4 Group is or who is controlling it. He sees Manchester as the elephant in the room and wonders how Merrimack will get anything out of it even for \$5,000. He stated a concern the Town would be pitching in with a law firm he is not familiar with, and does not understand why the Town cannot provide comment based on what has happened in Merrimack, especially since that is going to be done on top of the efforts of the Group. He suggested it would become very difficult down the road to decide to step back and not spend any more money after having made an initial investment.

He stated his belief it ought to be made as clear as possible that what we have is a bad situation and respond in that fashion. It may not carry the same impact, but would tell them where we are coming from as a town. He added most times he would say go ahead, \$5,000 is not enough money to worry

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about, but he is beginning to become more and more convinced by Councilor Dwyer that once you make a financial investment you will continue to throw into that same bad pot, and he is not prepared to support doing that right now.

Vice Chairman Yakuboff questioned how a cost of \$1 million/year would affect the tax rate. Director Micali stated the increase to be about \$.33/per thousand. Councilor Boyd questioned whether funds are available to cover the cost. Town Manager Cabanel responded the funds are available (due to savings in the legal budget). She stated not only does the Town not have the expertise to site legal precedence, but for them to hear us they have to hear from a person they have heard from before who has been successful in cases with the EPA. She reiterated if we don't get involved now that opportunity will be gone, the regulations will be imposed on the Town, and then the lawsuits will begin.

Councilor Boyd questioned whether staff has spoken with Attorney Upton regarding this matter. Town Manager Cabanel responded she has spoken with Attorney Upton. Councilor Boyd questioned whether Attorney Upton is in agreement it is in the Town's best interest to synergize with the MS4 Group. Town Manager Cabanel reiterated what is being discussed is the response that is required to be given. She remarked she has met with the MS4 Group, which includes the DPW Directors for Manchester, Dover, Portsmouth, etc., and they don't feel that they have the expertise to respond adequately. Attorney Upton is fully aware of this and is supportive of the idea of this particular component. She remarked, once that commitment is made the response will be clear, scientific, consistent between a group of people who represent a population of half a million, and the answers will be the same with the exception of calling out individual issues. Once that response is provided, the Town is in the game. She remarked those cities/towns that choose not to participate cannot ride on our coattails. Those not participating in this effort could have the regulations imposed upon them.

Councilor Mahon suggested a response prepared by the Town will not be persuasive. Councilor Dwyer commented the thought process is that they will read our response and change their minds. He suggested again that the Town allow them to sue and go through the courts. He questioned how the Town could be made to comply.

Councilor Mahon stated the Town would not prevail on Article 28-a; this isn't a State program it is following a Federal mandate. Chairman Rothhaus stated his disagreement. Councilor Mahon re-stated it is following a Federal mandate and is not a State program. Chairman Rothhaus stated he would request Attorney Upton conduct the necessary research and make the Council aware of what the situation is, as he is of the belief it exceeds what the EPA has wanted, which to him makes it an unfunded mandate because his state has told a lower level of government what they had to do without funding it. Councilor Mahon responded, perhaps on that basis he might be correct. Councilor Mahon questioned why the State is delegated when the other states around it are not.

Director Seymour responded the State was given a choice years ago and decided to allow the EPA to be the control authority. New Hampshire chose not to because if they took over the activities of the EPA in full they would have to increase staff and take on that cost. Although there is funding that carries over from the EPA to the states if they run the environmental programs with the EPA; however, they likely felt it was insufficient at the time.

MOTION CARRIED 4/3/0

Councilors Dwyer, Koenig and Rothhaus voted in Opposition

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Chairman Rothhaus commented he would like to pursue the other side of the issue. He stated his surprise it is NH DES that has created the most conflict. Councilor Mahon remarked it is the State Legislature that created the conflict. Chairman Rothhaus clarified the State Legislature delegates regulatory authority to the NH DES. Regardless, it is his own State that has caused the conflict, and he would like to know what can be done to pursue the issue. Although he believes it would be an expensive undertaking, he would like to understand what the cost would be. He commented this issue is so easily seen as an unfunded mandate, if the Town were not to prevail on that basis, then Article 28-a is a joke.

Chairman Rothhaus requested the Town Manager seek a legal opinion.

Director Micali questioned whether the \$5,500 was a not to exceed amount. Vice Chairman Yakuboff stated his intent to have been approximately \$5,500. Councilor Boyd noted the list provided by Director Seymour identified the Town's portion as \$4,919.86. It was noted that number could change as more towns/cities join.

4. Cross Country Sewer Line Easement Clearing Project

Submitted by Assistant Director of Public Works/Wastewater James E. Taylor

The Town Council to be presented with the details of the upcoming easement clearing project.

James E. Taylor, Assistant Director, Wastewater, provided the Council with a PowerPoint presentation on the Cross Country Sewer Line Easement Clearing Project. When the Town's EPA Discharge Permit was reissued in 2005 it included requirements to maintain and identify any issues on the sewer system. The Program was known as CMOM (Capacity, Management, Operations, and Maintenance). Goals of the program are to provide uninterrupted, reliable, cost-effective services to residents, businesses, commercial enterprises, and industry and to lay out a logical cost-effective roadmap so that the Town knows where we are today and where we need to go in the future. The intent is to meet permit requirements, which is to prevent sanitary sewer overflows (SSOs). The EPA issues the Town a permit to discharge from the Wastewater Treatment Facility, but it also includes many operational controls. The permit requires the entity permitted to identify and maintain any issues in the entire collection system. To date the accessible portion, which is typically in the streets, has been identified (videoed), and maintained. Assistant Director Taylor provided slides depicting various enforcement actions taken by the EPA against cities/towns not in compliance.

The sewer/collection system consists of approximately 90 miles of sewer lines ranging in size from 8" to 48" pipes. There are about 1,500 manhole structures and 6 pumping stations. About 11 miles or 12% are located on private property and run through private property to the main interceptor, which runs along the railroad tracks. Councilor Koenig questioned, and was informed there are Town easements in place that provide for access.

In Phase I of the Recovery Program a surveyor was hired to survey the easements and ensure the appropriate Deeds were in place on the properties in question. A typical easement is about 20' wide and allows access for equipment. Phase II involves clearing, as most of the easements have become overgrown. Phase III will be to video the lines to assess the condition.

A proposal is out to bid for the hiring of a qualified land clearing company. It is anticipated the signing of a contract will take place at the end of June (3-year project). Funding for the project was

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included in this year's fiscal budget. Town Manager Cabanel noted this project does not involve the tax rate, but rather the sewer user rate.

Once a contractor is on board notifications will be sent to abutters and landowners of property that the sewer lines cross, they will meet with property owners to discuss the project and any access issues that might exist. Some of the issues they expect to encounter are trees, gardens that were planted, fences, sheds, etc. Assistant Director Taylor and Ken Conaty, Wastewater Sewer Inspector, have walked around and looked at some of the access issues. In most cases, they believe they will be able to work with the landowner. The goal is to clear the easements to gain access to the sewer lines. The intent is for the clearing to commence in November. A list was provided identifying the cross country sewer lines (15 projects in total).

Projects chosen for 2013 include Constance St. to Level St. (3,026'), Interceptor to McGaw Bridge Rd. (2,129'), Lorraine Rd. to Christina Dr. (1,828'), and Joey Rd. to Naticook Rd. (1,182'). Assistant Director Taylor commented one of the reasons for splitting the projects up over a period of years is to be able to control what the contractor does, how he performs, be able to assess the selection to ensure they are not creating issues on private property, etc. If all of the projects were occurring simultaneously, it would be difficult to oversee.

Councilor Koenig questioned the intent to address 1.5 miles in the first year if there are 11 miles in total. It was noted the 15 projects total 5.4 miles. Mr. Conaty stated the railroad easement that goes along the entire D.W. Highway Railroad is the main easement through the whole property. That one will not be touched through this project, it is not too costly, and is pretty much open to where it can be accessed. That is a large part of the 11 miles.

Assistant Director Taylor noted the cross country line that goes from Level Street to Cathy Street is on property that was subdivided. At one time it was buildable. Beavers got in there and have created a wetland. Now the issue is not only that of overgrowth, but the sewer line is on the northern edge of a wetland. When asked if permits have to be pulled to gain access, he stated that would be the responsibility of the contractor; however, the department will work with them to ensure the necessary permits are in place. Chairman Rothhaus questioned whether there is infiltration into the lines. Assistant Director Taylor responded the area is one of the worst. He noted several years ago they had to go into the area to do some sealing of manholes because the joint sections were leaking in. He commented the system in total does not really have any infiltration problems.

Assistant Director Taylor concluded by saying it is not only good business practice, but a permit requirement to have this work done. It is a multi-year project (3 years). The hope is that funding will continue to support the final phase; video and assessment of pipes. The ultimate goal is to be able to clear the overgrowth to gain access to view the condition of the pipes.

Councilor Dwyer stated he fully supports the system and anything that can be done to improve it. Councilor Boyd remarked during Phase III you will clean, video, and assess the condition of manholes and pipes, and stated his assumption there will be a plan put in place identifying areas where improvements/repairs need to be made. Assistant Director Taylor stated that to be the objective for the entire system. The system is pretty young, and what they have found so far is that it is in pretty good shape. Councilor Boyd noted to replace the entire system the project cost would be \$60 million.

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5. 2013 Rotary Nashua West Rock n' Ribfest Waiver

Submitted by Town Manager Eileen Cabanel

The Town Council to consider waiving the newly adopted licensing fees and requirements of Chapter 180, Temporary Sales Locations and Vendors of the Town Code for the vendors participating in the 2013 Rotary Nashua West's Rock n' Ribfest.

Town Manager Cabanel stated she worked for the City of Laconia for ten years. They probably have the biggest event in the State in terms of number of vendors, etc. What they do, which she believes makes a great deal of sense, when changes are made to fee structures they give people warning one year in advance. She stated that to be why she is proposing a Waiver of the newly adopted licensing fees. She stated she has not received a request for a Waiver, but believes it should be provided out of fairness to those who may be coming from out of town or out of state. The Health Inspector, during his normal visits to inspect the vendors, can hand out brochures informing them of the change in fee structure for the following year.

MOTION by Councilor Boyd and seconded by Council Mahon to grant the 2013 Rotary Nashua West Rock n' Ribfest a one-year Waiver of the newly adopted Chapter 180

ON THE QUESTION

Vice Chairman Yakuboff remarked when the Town first implemented the permit requirement the Council discussed the issue of permits for the Ribfest and decided not to include the event that year. He stated his belief this is the second time a waiver would be granted. Town Manager Cabanel stated the event has never been charged a fee. Chairman Rothhaus remarked the new Ordinance came into play, and what is being suggested is that a waiver be granted for one year. Councilor Koenig questioned, if vendors are not charged a fee, is a fee imposed on the Rotary or anyone to help cover the cost of police, Health Inspector, etc. Director Micali stated the Town is paid \$25,000 - \$30,000 for police details on that weekend. Every sworn officer is on call that weekend and there is a mobile dispatch unit onsite. That cost is covered by the Nashua Rotary as well as the Fire Department and EMT personnel expenses. The vendors have never been charged a fee according to Chapter 180.

Councilor Koenig noted there is a cost associated with the Health Inspector, and questioned whether that has been covered in the past. Director Micali stated that has not been covered in the past. Councilor Koenig questioned if the reason for going through the permitting process was to cover those types of expenses. Director Micali stated that was part of the reasoning. He suggested it is short notice to be imposing a \$100 fee on vendors due to licensing requirements that need to be addressed through the State of New Hampshire because of their out of state status.

Councilor Koenig stated his recollection the Rotary came up during the discussion of the licensing fees as a reason to get the Ordinance completed quickly so that advance notice could be provided. Director Micali responded attempts were made to get the issue on the agenda and through the process so that sufficient notice could be provided to the Rotary. However, the planning process of the Rotary started prior to the approval process of the licensing fees. He stated his uncertainty permits could be in place for the event (June). Vice Chairman Yakuboff questioned why a month's time would not be sufficient. Director Micali stated there are some approvals required from the State.

Councilor Harrington questioned why that would create more of a burden. She remarked paperwork for the State has to be done regardless. Director Micali stated that is not the case currently. It is the

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Town's new requirement that would create the need to have paperwork approved through the State. He spoke of motor vehicle issues as well as background checks that are required in addition to the \$100 fee. Councilor Harrington suggested the Council consider waiving some of the criteria as opposed to the fee. Councilor Koenig stated he would be happier with that approach. He stated his belief the paperwork with the State could be done online and would not have to be onerous.

Councilor Dwyer asked for clarification vendors have never been charged fees. Chairman Rothhaus stated they have not. Town Manager Cabanel provided the language included in Chapter 180: "the applicant shall provide to the Town Council a completed criminal background investigation and a motor vehicle record provided by the applicant in writing from the State of New Hampshire and the applicant's state of residence."

AMENDED MOTION by Councilor Boyd and seconded by Councilor Mahon to Waive §180-3A of Chapter 180. MOTION CARRIED 7/0/0

6. Town Council Summer Schedule

Submitted by Town Council Chairman Finlay Rothhaus and Vice Chair David G. Yakuboff, Sr.

The Town Council will discuss a revised summer meeting schedule. The revised meeting schedule is proposed as follows: June 13, June 27, July 18 and August 15 and resume back to meeting on the second and fourth Thursdays in the month of September.

MOTION made by Councilor Boyd and seconded by Councilor Yakuboff to accept the summer schedule as presented. MOTION CARRIED 7/0/0

7. Town Council Retreat Discussion

Submitted by Town Council Chairman Finlay Rothhaus and Vice Chair David G. Yakuboff, Sr.

Discussion on the topics to be reviewed at the upcoming Town Council Retreat/Work Session.

The Council was provided with a list of agenda items, which represented a compilation of items recommended by individual Council members, some carry over items from last year, and a few items recommended by the Town Manager and Finance Director.

Vice Chairman Yakuboff suggested an 8:30 a.m. start time. Councilor Koenig questioned whether there is ample time to be properly prepared. Chairman Rothhaus responded the belief was moving the date forward would provide additional time for implementation. He stated he has checked with staff to ensure the May 17th date could be accommodated. Vice Chairman Yakuboff added the decision was made based on input received from Council members. When asked, Director Micali stated Rick Alpers, Member Services Consultant, Primex, would be the facilitator.

Councilor Koenig recommended bridges be added as a point of discussion under infrastructure.

Minutes

Approve the minutes from the Town Council meetings of April 11, 2013 and April 18, 2013.

April 11, 2013

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The following amendments were offered:

Page 5, Line 40; replace the word “Council” with the word “Councilor”

MOTION made by Councilor Boyd and seconded by Councilor Harrington to approve the minutes of the April 11, 2013 Town Council Meeting as amended. **MOTION CARRIED** 4/0/3
Councilors Koenig, Yakuboff, and Rothhaus Abstained

April 18, 2013

MOTION made by Councilor Yakuboff and seconded by Councilor Boyd to approve the minutes of the April 18, 2013 Special Town Council Meeting as presented. **MOTION CARRIED** 6/0/1
Councilor Koenig Abstained

Comments from the Press - None

Comments from the Public - None

Comments from the Council

Councilor Boyd informed the Council, Chris Woods, a member of the Economic Development Citizen Advisory Committee will not be seeking reappointment due to business and family commitments. He stated Mr. Woods served with distinction during his time on the committee for the past three years. Each year Mr. Woods participates in the New England Parkinson's Ride. He will be biking to raise funds for Parkinson's on September 7th. Additional information can be found at neparkinsonsride.com or individuals can reach out to Chris Woods at Advantage Insurance.

Councilor Boyd remarked on June 1st of last year Hannah Vaccaro conducted her 5K road race to collect shoes for an orphanage in Haiti. She collected over 2,000 pairs of shoes and raised \$4,000 for the La Gonave Orphanage. This year the focus for the orphanage is to develop a working well to provide clean water. This year's race will be conducted on Saturday, June 1st at 10:00 a.m. at the Merrimack High School. Additional information can be found at runningwaterrace.com.

Councilor Boyd spoke of the news of Pete Gagnon stepping down from his position on the Planning Board. He remarked Mr. Gagnon is his neighbor, a mentor, and has been an iconic classic in this community for close to 40 years. He stated his hope the Council will do something memorable to recognize the level of service and commitment Mr. Gagnon has provided to the community and as a decorated Vietnam War Veteran.

Councilor Harrington extended her best wishes to Jeff Morrisette, former Assistant Planner, and thanked him for his service to the Town.

Councilor Mahon remarked it appears the Legislature will again take up the issue of Exit 12. He commented while speaking with the Highway Commissioner he stated his desire for the State to create a comprehensive plan to deal with the turnpike system. The Commissioner agreed and the issue is coming back around.

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Councilor Dwyer commented even though he ran against Senator Bragdon he recognizes he put in everything he had to do something for the community. He thanked him for his efforts and commented he has taken this new district as his own.

MOTION made by Councilor Boyd and seconded by Councilor Mahon to adjourn the meeting.
MOTION CARRIED 7/0/0

The May 9, 2013 meeting of the Town Council was adjourned at 10:50 p.m.

Submitted by Dawn MacMillan