

Approved: September 26, 2013

Posted: October 1, 2013



## **Town Council Meeting Minutes**

Thursday, September 12, 2013, at 7:00 PM, in the Matthew Thornton Room

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

### **Pledge of Allegiance**

Scout Kevin Collins led in the Pledge of Allegiance.

### **Announcements**

Regular meetings of the Town Council will be conducted on Thursday, September 26<sup>th</sup>, October 10<sup>th</sup>, and October 25<sup>th</sup> at 7:00 p.m. in the Matthew Thornton Room.

The Auction for 18 Cabot Road has been scheduled for October 26<sup>th</sup> at 10:00 a.m. Interested parties should contact the Town Manager's office at 603-424-2331 to be placed on a list and sent additional information about the sale.

Director Micali introduced the new Deputy Finance Director, Tom Boland.

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

Chairman Rothhaus stated Item #2 under New Business was originally posted as a Public Hearing. A presentation by the Public Works Department will be made at a future meeting after which the Public Hearing will be conducted. As a result of the initial posting, public comment was entertained at this point in the agenda.

Rick Elliott, Elder, First Congregational Church

Stated he was part of the group that originally represented the church when the land was transferred to the library. He is also a builder of homes and roads in New Hampshire, and is familiar with what is involved in a road closing.

He stated the biggest issue of the Church to be safety, and spoke of motorists cutting through the church parking lot while children are out playing. There is concern closure of the road would result in increased vehicle traffic in the parking lot. Speaking to pedestrian traffic, he stated the dangerous area is not at the bottom of Church Street but rather at the Wire Road intersection. He commented the turn-around suggestion would work perfectly if neither of the two buildings were in use; however, when the Senior Center and Church facilities are in use simultaneously both parking lots and driveways are full and vehicle parking is on the road leading back towards Baboosic Lake Road. In such instances attempting to get through the area and turn around would be difficult.

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

- 1. Acceptance of Resignation of Parks and Recreation Committee Member Tom Thornton**  
*Submitted by Town Council Chairman Finlay Rothhaus and Vice Chair David G. Yakuboff, Sr.*

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The Town Council to consider the acceptance of the resignation received from Tom Thornton of the Parks and Recreation Committee.

**MOTION made by Councilor Boyd and seconded by Councilor Yakuboff to accept, with regret, the resignation received from Tom Thornton of the Parks and Recreation Committee**

#### **ON THE QUESTION**

Councilor Boyd thanked Mr. Thornton for his years of service to the community. He commented since moving to Merrimack he has known both Mr. Thornton and his Wife to have been very active in the community. **MOTION CARRIED 6/0/0**

#### **Appointments**

##### **1. Annual Review with the Technology Committee**

*Submitted by Technology Committee Chairman Brian McCarthy*

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

Brian McCarthy, Chairman, Technology Committee, stated the six-member committee currently has one vacancy. The committee meets quarterly and/or as needed. It is advisory in nature and responsive to issues raised/questions posed by Town departments relative to technology.

Since its last review in October of 2012, the committee has met on four occasions. One of the focus items of those meetings was a presentation, requested by the Town Manager, on a potential new web vendor. Quotes were sought after and received, which were found to be reasonable. From the list of issues identified after the formation of the Committee, those identified as critical, e.g., security, backup, etc., have been addressed.

Chairman Rothhaus stated his understanding the school district's phone system has gone to the Voice over Internet Protocol (VoIP) as a means of obtaining cost savings. He questioned whether the Town should consider such a switch, and was informed the Town has migrated to VoIP for those phone lines that could be switched, and has experienced savings.

Councilor Boyd commented he views information technology as critical for the Town and continues to believe the committee and its knowledgeable membership are underutilized. Mr. McCarthy responded the Committee is reactionary in nature and thus does not seek out issues. Councilor Boyd spoke of emergency preparedness and questioned whether there is a role that information technology can play alongside the public safety team. Town Manager Cabanel suggested the Police and Fire Departments be asked to discuss the recent integration of the systems, and remarked there is likely a policy manual in place, which addresses infrastructure issues that could arise in emergency situations.

**Public Hearing** - None

**Legislative Updates from State Representatives** - None

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

Capital Improvement Plans are due from Department Heads by the end of September. The Town Manager will present the items to the council in late October/early November.

The Wastewater Facility has achieved a phenomenal goal of 1,516 days (4+ years) of no time lost time due to accidents.

The Manchester Street Bridge replacement project is now advertised for bid. Bids are due to the City of Nashua by Wednesday, September 25th. Work on the project is expected to begin this coming fall (2013) and run through to the summer of 2015. Manchester Street will be closed for the duration of the project once construction begins. Signs will mark the detour route prior to closing of the road.

Twenty seven applications were received for the position of Parks and Recreation Director. Applications are no longer being accepted. Interviews will begin in the near future. Town Manager Cabanel spoke of other communities, which have programs that are virtually self-supporting. She would like to see recreation be another area the Town is known for. To that end, she would like to involve groups such as the athletic group that runs the sports programs and the seniors to see what the Town might do to help enhance some of the offerings. She has spoken with Yvette Couser, Library Director, regarding programs run for some of the younger children in the community to try to identify some of the missing pieces not yet provided. The desire is to involve as many groups as possible in devising a vision for what the Parks & Recreation Department can be. She spoke of an article in a recent publication of Town & City Magazine regarding a new generation of retirees from the baby boom generation who will be looking for activities other than bingo, e.g., will be active and want to take on more adventurous activities. She remarked this direction will allow the incoming Director to take a look at Wasserman Park with fresh eyes, and come up with a plan.

The YMCA/Melton Associates projects for elderly housing and athletic fields are on the September 24<sup>th</sup> Planning Board agenda for continued public hearings. The YMCA was gifted 68 acres of land by Reverend Wright. Conditions were placed on the Deed. Before the YMCA could sell the 8.2 acres to Melton Associates it was necessary to appear before the Charitable Trusts Unit of the Office of Attorney General to gain approval to modify the Deed so that elderly housing could be located on the parcel. The Charitable Trusts Unit in conjunction with the Superior Court allowed for the parcel's use for an elderly housing complex; however, stated a portion of the proceeds from the sale of the parcel will need to be used to fulfill Reverend Wright's wishes for the remainder of the property. Tim Thompson, Community Development Director, has been tasked with ensuring whatever occurs happens simultaneously as there are ball fields proposed and neither of them has heard who will construct or maintain the fields.

The Community Development Department has been approached by the City of Nashua's Community Development Department to conduct an economic development tour of Merrimack with an eye toward involving Merrimack in Nashua's revolving loan program. Town Manager Cabanel spoke of her experience with a regional economic development group where the State lends funds to the organization, which can then be lent out, at small interest rates, to businesses and start-ups. The funds come back to the agency, with interest. They are allowed to keep it and continue loaning it out. It is viewed as another positive tool Merrimack would have to assist in attracting businesses or to assist smaller businesses in Town.

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**Consent Agenda** - None

**Old Business** - None

**New Business**

**1. Acceptance of a Donation for the Merrimack Police Department**

*Submitted by Police Chief Mark Doyle*

The Town Council to consider the acceptance of a donation from Eagle Scout candidate Kevin Collins in the amount of \$192.50 to the Merrimack Police Department K-9 Program, pursuant to Charter Article 8-15 and RSA 31:95-b.

Mark Doyle, Police Chief, spoke of the presentation Scout Collins provided the Council back in February requesting support for an Eagle Scout project, which attended to the beautification and aesthetics of the front of the parking lot at the Police Station. He stated his pleasure with the outcome and that it makes the area far more welcoming for anyone visiting the station.

He commented the Boys Scouts are generally all about volunteerism, community service, and civic duty, and Life Scout Kevin Collins exemplifies all three of those attributes. As an Eagle Scout himself, he values the hard work that goes into the planning, preparation, and execution of a community service project the likes of which Scout Collins had an opportunity to complete for the Merrimack community. He thanked him on behalf of everyone at the Police Department and the community-at-large.

Scout Collins thanked those in the community who provided him assistance during the process. He commented completing the project has helped him display and better refine the skills he has learned through scouting. As part of the project he constructed a stone retaining wall underneath the new signage in the front parking lot, reworked two of the large flower beds in front of the building, and built some planting boxes with flowers, which were placed near the corner.

He thanked Lakeview Materials, which donated all materials, Farm Depot Stand, which provided a generous donation as well as Steve and his Wife who prepared a diagram of plants suitable for use and identified placement that would aid their growth. The project raised \$789.00. Project costs totaled \$593.08. The remaining balance, which Scout Collins wished to donate to the Police Department K-9 Program was \$195.92 minus the fee for the cashier's check (\$3.18).

**MOTION made by Councilor Boyd and seconded by Councilor Yakuboff that the Town Council accept the donation of one hundred ninety two dollars and fifty cents (\$192.50) to the Merrimack Police Department K-9 Program, a/k/a Gunny, and that the Town Manager and/or Finance Director or the Assistant Finance Director be authorized to execute and effectuate any documents that need to be signed to perfect the transaction**

**ON THE QUESTION**

Councilor Boyd thanked Scout Collins for his contribution to the community. He spoke of recent accolades the Town received through the Money Magazine's designation of Merrimack as #1 in New Hampshire and remarked efforts such as those put forth by Scout Collins contribute to the reason Merrimack was nationally recognized. **MOTION CARRIED 6/0/0**

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*There being no objection, the Council went out of the regular order of business to take up Item #5 under New Business.*

**5. Acceptance of Drainage Easement for Bedford Road Drainage Improvements**

*Submitted by Highway Operations Manager Adam Jacobs*

Town Council to consider a request to secure a permanent drainage easement for drainage improvements on Bedford Road.

Adam Jacobs, Highway Operations Manager, requested the Council accept an easement from the property owners at 161 Bedford Road. He spoke of the Town's drainage master plan, which contains approximately 50 items. Projects on the list are addressed based on priority and cost and are completed by contractors and in-house labor for smaller projects. Over the summer two of the top 4-5 areas were worked. The next item on the list, and the highest priority remaining for in-house work, is at this location on Bedford Road. The area experiences icing issues during the winter months, has no closed drainage, and the area directly in front of #161 has a sag in the road, which holds a good deal of water, especially in the winter when snow banks are present, which do not allow water to shed off into the existing minimal shoulders and swales. There is a natural drainage runoff point that runs between parcels 161 and 165 (off in woods). Water does not reach the area as it is relatively flat until reaching about 150' into the property.

Proposed is the installation of two catch basins; one on either side of Bedford Road (15" plastic pipe connecting the two), shaping of the swales to direct any flow that comes off the road in a sheet flow into those swales and eventually into 1 or 2 of the catch basins. There is the need for an area for the water to outfall. The proposal calls for the water to outfall into the property at 161 and meet up with the natural depression area in the woods, which will eventually lead into the brook (230-240' long outfall pipe along the northern edge). The easement would follow the northern property boundary, would be 20' wide at Bedford Road and extend to 30' wide at the end where the outfall would be.

Some accidents have occurred in the area of the fence line/driveway at 161 Bedford Road, and the property owner regularly has to maintain his front yard due to runoff. The property owner is in agreement with the project, which will improve the safety of the driveway and property, and has offered to provide the easement to the Town at no charge (will benefit from work done). The easement would run in a direction away from the road (200-250'). The property owner has requested, upon completion of the project, the lawn be loamed and seeded. The irrigation that is installed will not be affected by the project. Erosion control measures would be utilized, e.g., jute matting.

Without the easement, the department would likely have to request either a temporary construction easement to create a shallow swale, which would not have as much maintenance down the road as a pipe would, but certainly would not be the quality an enclosed drainage system would be in this area. Mr. Jacobs noted the lack of room between the stone wall and road to create any kind of natural swale, which could hold water until it percolated into the soil, and stated what is being proposed is the best option.

**MOTION made by Councilor Yakuboff and seconded by Councilor Harrington to secure the drainage improvement on 161 Bedford Road and authorize the Town Manager to sign any and all paperwork required**

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### ON THE QUESTION

Councilor Boyd commented he is familiar with the area and believes the proposal to be a good solution. He commended Mr. Jacobs for working with the residents and thanked Mr. & Mrs. Pellerin for their support of the project. **MOTION CARRIED** 6/0/0

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

## **2. Proposal to Dead End Church Street**

*Submitted by Town Center Committee Member Nelson Disco*

This is an informational session provided by the Town Center Committee regarding the proposal to discontinue the intersection of Church Street and Daniel Webster Highway. This was previously posted as a public hearing notice.

Mr. Peter Flood, Chairman, Town Center Committee, introduced Mr. Nelson Disco, Chairman of the sub-Committee formed to address the administrative burdens of reaching a point of decision on the matter. Mr. Disco stated the Town Center Committee has been tasked with facilitating implementation of the Town Center Pedestrian & Trails Master Plan. To continue the implementation, the sub-committee was formed to review what it would take to extend the sidewalk north from the Library as far as Baboosic Brook.

Looking at the impediments to extending the sidewalk, the first thing one comes to is Church Street and the intersection of Church Street and Route 3. The way Church Street is presently pitched into Route 3 and the way the intersection is formed you cannot build a flat sidewalk that would meet ADA requirements across that intersection without some major earthwork and moving the road either to make a steeper bank or push the entire road back with a lot of earthwork and perhaps retaining walls to allow it to function with a sidewalk.

The sub-committee was aware of previous discussions regarding discontinuing that intersection; making Church Street a dead-end road from Baboosic Lake Road around as far as the Senior Center and dead-ending there. There would be no direct intersection with Route 3. The sub-committee met the Public Works Department to gain input and spoke with the Fire Department, Police Department, ambulance, the Board of Trustees of the John O'Leary Community Center, the Senior Citizens Group, Highway Safety Committee, Library Board of Trustees, and Congregational Church Deacons. In addition, letters were sent to each of the property owners along Church Street seeking their input.

In summary, all of the groups expressed the belief making it a dead-end street would not hinder emergency access, and would eliminate a dangerous intersection. Several traffic and parking issues were raised, which, for the most part, are present today. One is the concern with motorists utilize the church driveway as a cut through. Mr. Disco suggested improved signage may be able to assist with that issue. Parking at the Community Center is generally a problem when significant meetings are conducted there. They are able to use some of the Congregational Church parking at times; however, when that option is not available conflicts arise.

It was pointed out the intersection of Church Street, Baboosic Lake Road, and McElwain Street is a problem. The way the streets are laid out, motorists heading west on Baboosic Lake Road wanting to make a left hand turn onto McElwain Street stop and essentially block traffic going

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down Baboosic Lake Road. Anyone trying to come out of Church Street is impeded. These are solvable problems that complicate the matter of closing off the street. The Senior Center bus loading and unloading was pointed out as a problem. Buses sometimes stop in the road to unload, which is dangerous to the individuals getting out into the street. Speeding through Church Street has been a problem. Library parking is insufficient on certain occasions, although there may be the possibility of adding a few additional spaces into the current space.

The Highway Department has laid out a possible sketch for how to make a hammerhead turnaround in the area, and noted in order to move forward with discontinuance, a proper roadway with proper striping, curbing, and signage should be laid out to address some of the issues that have been brought to the committee's attention.

Councilor Dwyer stated his opposition to the closing of the street. He remarked there is a common sense term in the housing business called two means of egress; it is always safer to have two means to get out of somewhere. If the discontinuance is granted there will be only one way to exit the area. He commented the Adult Learning Center is underutilized and more use is desired. He sees the area becoming busier and believes two means of egress is superior. When asked, Mr. Disco stated, if discontinued, that portion of the road would be planted with grass. Councilor Harrington spoke of the issue of visualization. It was noted the slope of the road is such that digging back (4-6') to level off the sidewalk would cause the road to become steeper, and if the decision were to cut back further into the road the need would exist for retaining walls on either side. There is a cost factor involved with that approach.

Mr. Flood noted the iTRaC Committee recognized the opportunity to close off a very dangerous intersection while allowing for installation of a good, safe sidewalk. It was listed as an action item within the Master Plan the Council approved in November of 2009. With regard to access and egress, there are actually 3 egresses and emergency accesses to the site; one through the Library parking lot, one through the private driveway, and Church Street to the west.

Chairman Rothhaus noted the plan shows the sidewalk would be 385' from Baboosic Lake Road and includes a proposed drive. Mr. Disco responded the thought was to perhaps make an exit from the Library parking lot out onto Route 3 so that traffic from the Library would no longer go through Church Street. Unfortunately, that would take away some of the parking the Library has and becomes an intersection that is very close to the backup from the lights at Baboosic Lake Road. Further, it would have to be limited to a right turn only. Chairman Rothhaus noted Director Fox has expressed to him it might be too close to Baboosic Lake Road. He noted motorists are presently restricted from turning left heading north out of the library.

Councilor Koenig stated he is in support of the overall idea and would agree with the committee's thoughts regarding access capability, certainly from an emergency perspective. He spoke of the number of times he has heard residents talk about a desire to maintain their cul-de-sac or not have their road connected to another because they like the quiet, the fact there is only one way in and out, etc. He is not convinced having the street a through-way into a bad intersection that is a south-only intersection is that big of an advantage. He suggested the plan has a lot of merit, and stated his hope each of the issues brought forward would be addressed to some degree.

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Chairman Rothhaus stated the need for a representative of the Public Works Department to make a presentation, and, if a decision is made to move forward, a Public Hearing scheduled. Mr. Disco stated the need for some detailed design work to be completed and presented. Town Manager Cabanel stated the desire to gain a consensus of the Council with regard to whether or not work should proceed on such a plan. Councilor Boyd stated a desire to see, from the Highway Department, information on the impact of the proposed discontinuance and the sidewalk. He would also like to see, as part of that work, whether or not some part of the northerly side of the Library's property could be leveled out to provide additional parking.

Councilor Harrington stated she is not against the concept and believes, while equipment is in the area, the possibility of expanding the parking should be considered and a cost identified. It was noted if additional parking were to be considered, the need would exist for construction of retaining wall(s) due to the slope. Councilor Dwyer commented, based on knowledge of previous projects, the cost would likely be in the area of \$100,000. He remarked the project is more about having the sidewalk on that side of the street. He reiterated two egresses are always superior to one. He suggested, if the area were to be fixed the way desired the end result would be an exit is cut off, there is a nice sidewalk with \$100,000 worth of retaining walls, and only one way to exit.

Chairman Rothhaus stated a desire to understand impact and potential costs. He stated his belief the possibility exists to use a south turn lane allowing for the remainder of Church Street to be open so that motorists wishing to head northbound could continue to exit the Library the same way they would today. He would like the Council to be presented with information from the Highway Department, after which, if the desire of the Council, the issue would go to a first reading.

Councilor Harrington suggested, in the meantime, improved signage be considered for the church driveway.

***Chairman Rothhaus opened the floor for public comment.***

David Gailus, 9 Church Street

Stated he appreciates consideration of dual access. He spoke of difficulties traveling the road, and commented when leaving his home in the morning he sometimes looks at the traffic backed up and questions whether it is worth it for him to poke his nose out into the highway and risk it while people looking into the sun are coming up Baboosic Lake Road. If the other end of the intersection is closed off his option would be eliminated. He stated his desire to also see more sidewalks in Town.

Daniel Wiedenheft, 3 Church Street

Stated his impression traffic on Church Street wouldn't necessarily be reduced as traffic coming out of the Library would have no choice but to use Church Street. He stated the need for plans to address that traffic flow, which will also increase traffic at the other end where it typically jams up from the gridlock at McElwain Street. One of the problems he experiences is attempting to make a right turn out of Church Street onto D.W. Highway, which is difficult to see around. Although not categorically opposed to closing off Church Street, he wishes to ensure things are

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done in the correct way, e.g., all opinions considered and all issues addressed. He commented although it may be expensive to put in retaining walls, it may be more expensive to fix all of the issues that arise from trying to reroute traffic and the issues it causes. He stated he is not opposed to the proposal providing the egress is maintained and correct safety measures taken. He believes Church Street being a dead-end street would be wonderful especially considering there are children living on the street and frequent pedestrian traffic. He suggested consideration needs to be given to protecting those from the Senior Center while entering/exiting buses.

Bill Behrens, 5 Church Street

Remarked he and his wife closed on their property at 5 Church Street on September 12, 1985. They have resided in their home for 28 years. He provided the Council with an aerial photograph of the Church Street area dating back to 1952. He remarked, with the jagged intersection at Baboosic Lake, McElwain Street, and Church Street motorists cannot get out onto the highway without nosing their way out. If a motorists wishes to make a left turn coming up the hill from the Mobil Station to get onto McElwain Street they block Church Street. He has suggested to Mr. Disco that the Highway Department consider putting yellow lines, do not block intersection, blinking light, etc. to try to help with the congestion. He is neither in favor of or opposed to the proposal.

In the area of the library parking lot and where the Cans for Kids storage area is, if a line were sighted through there a retaining wall could be built creating another 15-25 parking spaces. The road could be closed at the top creating the desired access to Route 3 making a right turn. There is a large tree that would have to be removed and a fire hydrant in the area. He suggested if that were to be done, he would like to see Liberty Utilities contacted and asked to run the natural gas line up Church Street as there are three people up there that would probably like to have that access.

He noted earlier in the evening a bus came up Church Street, made the hairpin turn on the right, and pulled straight into the parking lot right in front of the steps for the seniors. If that were the normal routine, it would eliminate the safety issue. If loading were done in the back side of the building so that the door to the bus is to the building, the bus would have to travel through the church parking lot to exit; however, that would address the safety issue for the seniors. He remarked, although likely expensive, if the decision were made to go with the retaining walls it would eliminate the problem and add parking spaces for the library. He spoke of a proposal to close off Church Street, which was brought forward about 22 years ago; however, at that time the Fire Chief and Police Chief were not supportive because of double access to the highway and due to the hairpin turn that would have to be navigated.

Rick Elliott, Elliot Custom Homes

Remarked if the road were pushed back to accommodate a sidewalk it is likely additional parking spaces could be gained at the library; however, an exit from the library would be discontinued and the increased number of users of that parking lot would have to exit within 20-25' of the intersection between Route 3 and Baboosic Lake Road. The area would be bottlenecked with no other way to get in or out. The problem that occurs 350' up the road would be moved to 25-50' of the intersection itself. He suggested what might make sense and be reasonably inexpensive would be to take the two edges of the street and push the bank back far

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enough to accommodate the sidewalk. In doing so, there would be visual in both directions. He commented he has been attending church there since 1973 and has not witnessed any accidents.

Adam Jacobs, Highway Operations Manager

Informed the Council the department is currently looking at the potential of adding dedicated turn lanes on Lake Road at McElwain, School Street, and O’Gara Drive. It is believed the right-of-way is available and Lake Road may be wide enough to avoid adding much pavement from Church Street on to be able to get the dedicated short turn lanes in. The one impediment remaining is the utility pole at the corner. It is not holding utilities but rather pulling the power line over. If it can be swapped over to a push poll on the other side of the street things may be able to be opened up.

On D.W. Highway there are proposed intersection improvements at Lake Road, Wire Road, and Front Street to signalize intersections at Front Street and Lake Road and a yet undetermined proposal for the intersection of Wire Road. There will be a lot happening in that area especially around the Wire Road, which would impact this project. He suggested there could be a desire for a crosswalk and perhaps pedestrian buffer type traffic calming measures to get people across the street into the MYA lots back and forth from Town Center. There may be a way to solve both problems or at least work the two designs into the ongoing work.

### **3. Recommendations for Appointment of the Representatives/Liaisons to the Parks and Recreation Committee**

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

The Town Council to consider the recommendations to re-appoint the following individuals as the representative/liaison members to the Parks and Recreation Committee, pursuant to Charter Article 6-1:

- School Board Representative Member – *Shannon Barnes*
- *Alternate* School Board Representative Member – *George Markwell*

**MOTION made by Councilor Boyd and seconded by Councilor Harrington to re-appoint the following individuals as the representative/liaison members to the Parks and Recreation Committee; Shannon Barnes as the School Board Representative and George Markwell as the Alternate School Board Representative**

### **ON THE QUESTION**

Vice Chairman Yakuboff remarked he is aware of the Charter language and understands the language addresses the actual representative member. He questioned whether the appointment of an Alternate representative follows the same interview process. Councilor Boyd noted Article 6 states four alternate members, one from each named Merrimack organization, may be recommended and appointed in the same manner as the regular appointed members. **MOTION**

**CARRIED 6/0/0**

### **4. Administration and Appointment Policy for Boards, Committees and Commissions**

*Submitted by Town Councilor William W. Boyd III*

The Town Council to consider the recommended changes to the Town of Merrimack’s Appointment Policy for Boards, Committees and Commissions.

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Councilor Boyd stated the existing policy was adopted in 2008, and while it identifies the general nature of the policy, it does not provide clear guidance to potential candidates. In an attempt to provide clarity, he drafted language changes, which were presented back in November. Since that time he has discussed the proposed language, on several occasions, with Attorney Upton. The draft version provided to the Council in advance of the meeting was intended to be the final draft; however, a key component to the appointment policy was not included, e.g., identification of the appointment committee.

He suggested the language from Section 4 of the current policy be inserted into the proposed amended policy under Section III, B and that the remaining paragraphs are re-named accordingly, e.g., B becomes C, etc. Further that #4 under Section C, Appointment Process, be deleted, and number sequencing corrected.

Vice Chairman Yakuboff recommended the policy be further amended in the newly identified Section III C, Factors for Consideration, (1), by replacing the word “selection” with the word “consideration”.

In order to address current language that prohibits “full-time permanent employees of the Town from eligibility to serve in any appointed position where there may be a conflict of interest with their official duties” the category of “potential conflicts of interests” was added to the section now entitled “Consideration Criteria”. What that provides for is residents wishing to serve who are employees of the Town, can be considered; however, the Council would have to evaluate whether their current position would create a conflict.

Councilor Koenig commented the language is very strict and formalized, and stated concern with the use of words such as “shall” and “will not”. He recommended the following further amendments:

Section I, Introduction, paragraph 2, sentence 2; replace the words “abrogate the prerogative of” with the word “impede”.

Section II, General Appointment Process; remove the words “Except in cases of emergency”. Councilor Harrington suggested the following language be added: “Exceptions to the thirty (30) day requirement can be made by the Town Council.”

Delete Section II, E, Re-advertising.

*A brief discussion ensued with regard to whether or not State law requires the “Town Council to accept recommendations from the Planning Board for appointments to the Nashua Regional Planning Commission.” As indicated in Section II, F, Recommendations.*

Section II, G, Promotion of Alternate Members, third sentence; remove the words “Whenever warranted, first”

Councilor Koenig suggested, in instances where phrases such as “Except in extraordinary circumstances”, are used, a definition should be provided.

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Councilor Koenig questioned whether use of the phrase “may not be considered”, which occurs in Section III, B (2), Re-Appointment, a), b), and c), ties the hands of the Council in any way. Councilor Boyd commented the purpose for inclusion is to make expectations clear. Chairman Rothhaus agreed the use of the words “may not” identifies an absolute. Councilor Harrington stated her belief “shall” would be definitive whereas “may” is the softer of the two words. Councilor Dwyer remarked “may” and “shall” are legal terms that have been argued for hundreds of years, and are subject to legal opinion. He stated a concern with the language as stated and offered the example of a volunteer having a single outburst, which would eliminate the opportunity for re-appointment. Councilor Harrington suggested the language could speak to a pattern of behavior.

Section III, B, (3), New Members; replace the words “must attend” with “are encouraged”.

Section III, C, Appointment Process, 3); add the words “, after appointments have been made by the Town Council,” before the words Applicants who are not appointed”.

Section IV, Administration of Committees, A; replace the word “practicable” with the word “practical”.

Section IV, B; replace the words “a chair, vice-chair, secretary, and minute taker” with the words “the officers”

**MOTION made by Councilor Boyd and seconded by Councilor Harrington to table until the Council’s meeting of September 26, 2013. MOTION CARRIED 6/0/0**

#### **Minutes**

Approve the minutes from the following Town Council meetings: August 15, 2013

**MOTION made by Councilor Boyd and seconded by Councilor Dwyer to approve the minutes of the August 15, 2013 Town Council Meeting as presented. MOTION CARRIED 4-0-2 Councilors Harrington and Koenig Abstained**

**Comments from the Press** - None

**Comments from the Public** - None

#### **Comments from the Council**

Councilor Boyd reminded the viewing audience the Strike Back Against Cancer 5K, honoring the memory of Erica Pombrio, will be conducted on Saturday, September 21<sup>st</sup> beginning at 9:00 a.m.

He thanked the Police Department for apprehending two bank robbers in the community, and remarked it is a testament not only to the Town’s law enforcement, but to the commitment made to community policing, specifically those who man the Crimeline. It is because of the commitment of these individuals to keep the community safe that Merrimack is ranked 23<sup>rd</sup> in the nation and #1 in the State of New Hampshire. He added he would be remiss if he did not point out one of the bank robbers is wanted for 5 bank robberies in Lower Manhattan, New York City. He stated the Town should take a great deal of pride in the fact Chief Doyle and the

Approved: September 26, 2013

Posted: October 1, 2013

Merrimack Police Department did something that Bill Bratton and the New York City Police Department could not.

Councilor Koenig commented Melton Associates had been scheduled to appear before the Planning Board the prior Tuesday and postponed. He believes they have been working diligently to try to get their plans in line with the comments and suggestions made by the current Planning Board. The project had been approved 3-4 years ago by the then seated Planning Board; however, due to their approval timeframe running out, there is the need for re-approval. The situation now is rather interesting in that he believes Horseshoe Pond has become a bit more sensitive since that time period. Any development on the north side of Horseshoe Pond will make for an interesting situation as far as potential runoff or extra phosphates going into Horseshoe Pond. Those are some of the issues the Planning Board is concerned with. He remarked the point made by Town Manager Cabanel regarding who would be responsible for the cost of installation and maintenance of the ball fields as well as how accessible they would be to residents is well taken.

Chairman Rothhaus noted the American Legion, last evening, conducted their September 11<sup>th</sup> memorial service. He commented they did a great job and he is appreciative of their efforts.

Chairman Rothhaus shared with his colleagues his pride in the fact that, earlier in the day, his son took his final exam for the Police Academy, passed with flying colors, and would graduate from the Academy the following day.

Director Micali spoke of the need for the Council to make a decision regarding the dates of the November meetings, e.g., 1<sup>st</sup> and 3<sup>rd</sup> Thursdays of the month or simply conduct one meeting on the 14<sup>th</sup> of the month. He noted September is the typical timeframe for a joint meeting with the School Board, and remarked, if interested, the Council should make the Town Manager aware so that arrangements can be made. The School Board has voted in favor of a joint meeting. Chairman Rothhaus suggested agenda items be sent in. Director Micali requested possible dates be provided.

**MOTION made by Councilor Boyd and seconded by Councilor Harrington to adjourn the meeting. MOTION CARRIED 5-1-0**  
***Councilor Yakuboff voted in opposition***

*The September 12, 2013 meeting of the Town Council was adjourned at 9:20 p.m.*

Submitted by Dawn MacMillan