

Approved: November 7, 2013

Posted: November 8, 2013



Town Council Meeting Minutes

Thursday, October 24, 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, 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 extended its deepest sympathy to the family and friends of Larry Spencer who passed away on October 20th. Mr. Spencer served with the U.S. Army during the Korean Conflict and was a loyal and dedicated employee of the Town of Merrimack Public Works Wastewater Division for more than 30 years retiring in 2005 as its Assistant Director of Public Works. Mr. Spencer will be sorely missed.

Regular meetings of the Town Council will be conducted on Thursday, November 7th and 21st at 7:00 p.m. in the Matthew Thornton Room.

The Halloween Party, sponsored by the Parks & Recreation and Police Departments is this Friday at Wasserman Park from 5:00-8:00 p.m. The night of free activities includes face painting, pumpkin decoration, costume contest, games and prizes, Halloween photo booth, lighted pumpkin patch, haunted house, and lots of treats.

The auction for 19 Cabot Road has been scheduled for 10:00 a.m. this Saturday, October 26th.

National Drug Take Back Day is this Saturday. Drop off all unwanted prescription medication from 10:00 a.m.-2:00 p.m. at the Police Department for proper disposal.

Merrimack's Trick-or-Treat hours are set for 6:00-8:00 p.m. on October 31st. The Police Department has posted Halloween Safety Tips on their website under Press Releases.

The Skate Park on O'Gara Drive will be closing for the season on Monday, November 4th.

The Annual Holiday Parade and Tree Lighting Ceremony will take place on Sunday, December 1st, with a rain date of December 8th. This year's theme is Holiday around the World, and will begin at 3:00 p.m. at the Commons Shopping Plaza.

Comments from the Press and Public

Terry Benhardt, Merrimack Youth Association

Spoke of the recent sale of his home noting it sold in the first week on the market and at an amount greater than the asking price. He introduced to the Council Michelle Walters-Byrne, President, Merrimack Youth Association (MYA), and wished her, the MYA, and the Council well. He stated his

final request to be consideration of a 45-day extension on the timeframe for which an audit is required to be provided under the terms of the current agreement. The certification of the financial records is a first time requirement for the MYA, and has involved a greater amount of research and time than had been anticipated. The information has been delivered to the Accountant. He stated his belief the 45-day extension would be sufficient time to allow the audit to be completed.

Michelle Walters-Byrne, 4 Clinton Court, President, Merrimack Youth Association

Informed the Council she has been associated with the MYA for some time having sat on the football board and having joined the Executive Board approximately 18 months ago. She has had a daughter go through the program and has a son and step-children currently in the program.

Recognitions, Resignations and Retirements - None

Appointments - None

Public Hearing

1. Public Hearing – Seat Belt Convincer Grant

Submitted by Lieutenant Paul Trepaney

The Town Council will hold a public hearing to consider the acceptance and expenditure of the Seat Belt Convincer Grant which is available through the New Hampshire Highway Safety Agency and valued at \$18,180.96, pursuant to RSA 31:95-b and Charter Article 8-15.

Chairman Rothhaus opened the public hearing at 7:10 p.m.

Lt. Paul Trepaney informed the Council the department acquired the Seat Belt Convincer about a year and a half ago. It is a device used at events in-town and taken to events around the State. The convincer simulates the impact of a crash at 5-7 mph. The program has been successful. Grant funds would be utilized to reimburse officers for time and travel expenses associated with promoting the program on behalf of the Town and the New Hampshire Highway Safety Agency. Funds also cover costs associated with maintenance.

When asked about the length of time the department could expect to have the Convincer in its possession, Lt. Trepaney explained the Dover Police Department had possession of it for some time and sought another department to take it over. The Merrimack Police Department took over the program, and can expect to continue with it until such time as it no longer sees a benefit to it. This grant is a renewal. Last year's grant was in a slightly lesser amount, and about 82% of the funds were expended. When asked Lt. Trepaney stated the device is used at events taking place outside of Town about 60% of the time.

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

Chairman Rothhaus closed the public hearing at 7:14 p.m.

MOTION made by Councilor Yakuboff and seconded by Councilor Harrington to accept and expend the amount of \$18,180.96 pursuant to RSA 31:95-b and Charter Article 8-15 for the Seat Belt Convincer Grant, and authorize the Town Manager to sign any and all appropriate documents

Vice Chairman Yakuboff spoke positively of the education that can be provided through such a program. Councilor Boyd commented on the opportunities demonstrations allow for the Police Department to continue their efforts in community outreach.

MOTION CARRIED 7-0-0

2. Public Hearing – Operation Safe Commute Grant

Submitted by Lieutenant Paul Trepaney

The Town Council will hold a public hearing to authorize the acceptance and expenditure of the Operation Safe Commute Grant which is available through the New Hampshire Highway Safety Agency and valued at \$5,148.00, pursuant to RSA 31:95-b and Charter Article 8-15.

Chairman Rothhaus opened the public hearing at 7:16 p.m.

Lt. Paul Trepaney stated the grant funds cover the cost of overtime patrols, which allow the department to dedicate officers to traffic enforcement on targeted days and hours. The dates are targeted throughout the State to provide for a concentrated blitz. The grant allows for officers to be focused on traffic enforcement and not have to respond to general calls for service.

Councilor Koenig remarked, as a driver, he can find presence itself distracting. He commented he wonders whether such efforts truly enhance the safe commute. He asked for additional clarification of the intent of the grant. Lt. Trepaney stated the intent to be for the officers to be out on the road during rush hour to check for all matters related to traffic enforcement. Councilor Koenig questioned whether it is typical for warnings/citations to be issued or if an idea is known of the type of impact the program has. Lt. Trepaney responded it is officer discretion based on the severity and nature of the offense. Officers are required to document the specific activity, and he has found it to be a good mix of summonses and warnings.

Chairman Rothhaus remarked the Council typically receives a yearly report of calls made by the department. He has always been intrigued that 6-8% of vehicles stopped for traffic violations end up with a ticket, and over 90% are issued warnings. He is pleased it is used to educate. It was noted the majority of revenue generated from moving violations goes to the State. There is a portion that is gained locally and a portion of the penalty assessment that goes to the Police Academy and Victims Witness Assistance Funds.

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

Chairman Rothhaus closed the public hearing at 7:22 p.m.

MOTION made by Councilor Boyd and seconded by Councilor Harrington that the Town Council authorize the acceptance and expenditure of the Operation Safe Commute Grant, which is available through the New Hampshire Highway Safety Agency and valued at \$5,148.00, pursuant to RSA 31:95-b and Charter Article 8-15, and furthermore that the Town Manager and/or her proxy be duly authorized to sign any and all documents necessary to perfect the transaction.

MOTION CARRIED 7-0-0

Legislative Updates from State Representatives

State Representative Richard Barry, 12 Kyle Road

Spoke of the Public Works and Highways Committee's vote (15-0) to reject a bill to remove the toll at Exit 12, and stated he had supported the inexpedient to legislate motion. As a way of providing a brief history, Representative Barry stated the Committee had discussed the issue on several occasions. A Public Hearing was conducted in the May timeframe. Because of the Committee of Conference process, this and a few other Bills were held hostage so that some Senators and House members could get what they wanted. Back in May it had been agreed this bill was inexpedient to legislate; there was no way they would shut down 1 or 2 tolls while still looking at a comprehensive plan for upgrading the Turnpike. It is known roads need to be widened and more roads and bridges need to be repaired, etc. The tolls are flat and going down. The loss of revenue caused by the bypassing of the airport toll is up around \$2 million. The increase at exit 10 generated about \$1 million. Representative Barry commented the expectation is a greater loss in revenue as more and more motorists become aware of the opportunity to bypass the toll.

Town Manager Cabanel stated her belief a Bill relative to placement of tourism signs was also rejected at the House. Representative Barry remarked an attempt was made to get a study committee together and put in a Bill that would have allowed placement of signage south of Concord and disallowed placement north of Concord. New Hampshire is one of about 4 states that don't have signage on the main I routes, e.g., I93 and I89. There are signs located on ramp, but there are a lot of businesses that would like to have signage on the highway itself. The North Country is not interested in that.

Representative Barry stated there will be additional meetings relative to the Ten-Year Highway Plan, which is in need of review and update. The tolls in Merrimack are a definitive piece of that Plan. He spoke of open-road tolling and the issue of how to get other states to help collect for motorists passing through those tolls. The system of identification is based on a photo of the license plate while the vehicle is going through the toll. Reciprocity Agreements are needed with other states. He touched upon the savings associated with no longer requiring the tolls to be manned as well as the cost to put such a toll complex in being 20-25% of current costs.

Chairman Rothhaus stated his desire for Representative Barry to vote against reciprocity. He commented until everybody is talking about the gas tax instead of tolls he would prefer reciprocity not be supported. Councilor Dwyer stated his disappointment with the 15-0 vote. He remarked there is mention in newsprint that Merrimack made a deal to accept toll booths and has not paid for them yet. He suggested, if a lawsuit were filed, it would have to be proved that the Town has not paid for the tolls. He would like to see a requirement that the amount paid, amount owed, and date on which the debt would be satisfied be put in writing; however, does not believe that will occur outside of a confrontation with the Government in Concord.

Councilor Mahon stated the figure is available. Councilor Dwyer stated he has not seen that figure or the date at which the debt would be paid in full and the tolls removed. Councilor Mahon stated they would never be paid in full. Councilor Dwyer remarked that is not how bonds are supposed to work. Councilor Mahon remarked that is the turnpike system; now we are going to widen out the road between Exit 11 and the Bedford town line and roll that in and then the same thing between Exit 8 and Exit 10, and that will get paid for in some way. He stated the e-mail he saw projected a \$.25 increase in the tolls for Merrimack in order to finance the grand scheme. The number the Department of Transportation stated at the hearing was \$18 million to redo the toll plaza for open road tolling.

He remarked Representative Graham is hinting at relocating the toll plaza to capture motorists avoiding the toll. It would no longer be the Bedford toll plaza. Town Manager Cabanel noted the Senator who sponsored the Bill was not in attendance for the vote due to his full-time employment.

Representative Barry commented there are several ways, including that suggested by Councilor Dwyer, of approaching the issue. They have been trying it for 30 years and have failed wonderfully. He remarked he is unsure a lawsuit is the right way to go, and suggested a Freedom of Information Act request that says show us the documentation that an official from the Town of Merrimack signed agreeing not only to one of the off ramps but also the tolls, someone that said we will cover the bond and take the bonds out of the toll revenue minus the cost, someone that said we approve the upgrades and expansion of the tolls. The more of that type of information that can be obtained the better the chance of getting it through the Ten-Year Plan. He suggested Exits 11 and 12 could be removed. He added that may mean we want to say move the current toll from Bedford down to Exit 10.

Councilor Mahon stated he made that Right-to-Know request and the information has been provided. That request was made two years ago when discussions were taking place regarding moving the Bedford toll plaza down to Exit 10. Information was received and is on file somewhere in Town Hall. Representative Barry suggested it be located and stated he would obtain recent information. When the subject of the bond approval was brought up, Councilor Mahon stated that information was included in the information provided from the '84-'85 timeframe. Councilor Dwyer remarked it was 30 years ago. Councilor Mahon stated the expansions were rolled in as well as the addition of Exit 12. Representative Barry questioned who approved the expansion, and was told the Town was not asked. Councilor Dwyer stated the expansions had nothing to do with Merrimack. Councilor Mahon stated his recollection of the information provided is it includes correspondence between the Town and the State regarding Exit 12. At the time, they said they would have no problem having a toll plaza there to cover the cost of putting Exit 12 in.

Town Manager Cabanel questioned where the concept of having some kind of commuter pass for Merrimack residents is being addressed. Representative Barry stated that to be part of the Ten-Year Plan. The Commissioner has been supportive of that and believes there is a good break-even point where that can be done. The details have yet to be worked out.

Representative Barry provided a copy of the 1918 State budget.

With regard to Medicaid expansion the Commission recommendation is known and a minority report available. The House has a special session already identified where public hearings will be conducted to try to get it through the House and Senate. There will be considerable changes between what was recommended and what will come out. When asked about the impact of the Affordable Care Act, Representative Barry clarified the Medicaid Expansion is not part of the Affordable Care Act, it was pulled out. He noted one of the suggestions for expanding Medicaid would be to put a cap on the amount that it will cost because the government says they will fund it 100% for a couple of years and then 80%.

Councilor Koenig commented discussion of a comprehensive plan is something he has heard about since moving to town in '91. He questioned when a comprehensive plan would be developed. Representative Barry stated his opinion "one that really works, never". He stated there had to be a reason for that from their perspective; if they ever said give me \$500 million and I will fix all of the red listed bridges, roads will be up to date and everything will be fine, they wouldn't know what to do. They have to have a priority list. He stated his impression to be they live for having a set of things they can't do so they can keep asking for more money.

Councilor Koenig stated he gets very frustrated listening to the continued explanation we will wait to do a comprehensive plan and then we will work something out. It doesn't seem like any progress is being made, and tolls are not a good way to raise revenue to pay for highways.

Talk continues about expanding the toll system with toll revenue and yet half of that toll system doesn't pull in any tolls, e.g., Nashua, Manchester. As far as he is aware Nashua and Manchester have not paid a nickel towards the expansion of their highways and yet Merrimack is being taxed and billed and having the bond added to.

He stated his confusion with what is occurring and frustration with the whole concept. He would like to see progress made instead of waiting for yet another comprehensive plan. He spoke of funds from the toll system being utilized to purchase a bridge to Maine that was not needed and did not provide any value but helped transfer funds from one system to another. They can say we don't rob the system, but in fact they did.

Councilor Koenig stated he would appreciate anything Representative Barry could do to help him feel as though progress is being made. Representative Barry stated he would like some suggestions. He reiterated they have been working on this for 30 years; everything from civil disobedience, etc. There is an option if the Town really wants to consider it; take Manchester, Bedford, Merrimack, and Nashua and make it one large city and then let them try to put the tolls where they are at and we will have the legislature behind us. When you have 8 people out of 400 the only thing you can do is try to get pieces of it or little things gone.

Councilor Dwyer remarked that is why you have to fight. The only way you fight in America is through the courts. He remarked we have never had any allies in our corner; never have and never will until you force their hand legally. Representative Barry stated his agreement the Town ought to start a lawsuit against the state. He added he would if he were in the Town's shoes.

Director Micali stated when it was learned the issue was being voted on he sent an e-mail to the entire Delegation inviting them to attend a Town Council meeting. Representative Barry was the only one who took him up on the invitation to this meeting. He has heard back from Representative Richard Hinch and Senator Peter Bragdon. Senator Bragdon has stated, if desired, he could attend the November 7th meeting. He added he has extended an open invitation to all Representatives informing them the Council meets the 2nd and 4th Thursday of each month.

Town Manager's Report

On September 26th, bids were opened by the Town of Merrimack and the City of Nashua for the Manchester Street Bridge replacement project. Bids ranged from a high of \$3.79 million to the low bid of \$1.97 million by R. S. Audley. Construction is expected to begin next month.

The Guaranteed Maximum Rate (GMR) of increase was received this past week from the health trust. The rate of increase had been estimated at upwards of 15%, was modified down to 7-10%, and has come in at 6.9%. That represents an increase in the budget of approximately \$207,000. One of the reasons why the rate was so low is because they dipped into their surplus fund. As a result, what will follow next year is unknown. Additional information is being sought with regard to how much the Town's own experience is reflected in the 6.9% and how much of was affected by their return of contribution.

A new video surveillance system is now operational at the Transfer Station resident scrap metal drop-off area to help curb any theft of metal items.

Drainage master plan work by the Highway Division is now substantially complete for this summer. One of the largest drainage improvement projects is also now complete in the area of 161 Bedford Road.

All utility pole obstructions have been moved and the area has been prepared for paving at the realigned Patten Road at Turkey Hill Road intersection.

Nanocomp Technologies Inc. received a variance from the Zoning Board to allow for a building height expansion to their building at 57 D.W. Highway. Nanocomp will be before the Planning Board soon to expand their operations by 32,000 square feet into the center portion of the building and construct additional site improvements.

Consent Agenda

1. Acceptance of Changes to Chapter 193 – Welfare Guidelines [Final Reading]

Submitted by Town Councilor Tom Mahon and Welfare Administrator Patricia Murphy

The Town Council to consider final approval of the recommended changes to Chapter 193 – Welfare Guidelines of the Merrimack Town Code, pursuant to Charter Article V, Section 5-4.

MOTION made by Councilor Boyd and seconded by Councilor Mahon to move the Consent Agenda. MOTION CARRIED 7-0-0

Old Business

1. Fraser Square Veterans Monument Follow Up

Submitted by Brian Snell

To update the Town Council on the proposed Fraser Square Veterans monument of which the concept was approved at the July 18, 2013 Town Council meeting.

Mr. Brian Snell provided a PowerPoint presentation, which included a depiction of the area where placement of the monument is proposed. Noted was the location of a single tree, which is an impediment to the project. Given the proposed location, if the tree were to remain in its current location the project would require an approx. \$50,000 wall behind the existing bushes to level out the land. The tree was a small Christmas tree that was pruned in 1985. Now it is 35-40' tall. There is a flagpole dedicated to Mr. Fraser with his memorial. The light for the flagpole is in the center of the tree, and is not functional. There is the need for the tree to be removed in order for the project to move forward.

A slide was shown depicting a photo of the memorial itself. Mr. Snell explained it would be laid in so that the parking area would be used for handicapped accessibility and a walkway constructed to gain access to the memorial. Seven markers would be constructed atop which would be bronze plaques honoring the Army, Navy, Air Force, P.O.W. M.I.A., United States Marine Corps, U.S. Coast Guard, and U.S. Merchant Marines. The existing rock, which has affixed to it a bronze plaque providing information on Mr. Fraser (under the tree) will be moved to the center point and will be incorporated into the memorial.

The design was made square (less costly) and curbing incorporated. Taken into account were Councilor Koenig's previous comments regarding colors (different color border; stones will be a sort of white granite and there will be a lighter black (different grade of granite) to tie in). Mr. Snell showed slides depicted other memorials and the types of materials used.

The octagon will have etching only on the side you walk into when entering the memorial. Etched in the stone will be: "This memorial is dedicated to honor the men and women of the armed services for their duty and great sacrifices they have made to keep us a free nation." The fallen soldier memorial will sit on top of the octagon.

Costs have been provided by Mr. Gleason. The expectation is it will take about 2 days to get the site prepared. That cost alone will be approx. \$11,000, which includes taking out the existing material, laying in the dense grade base, sandstone, curbing, and sonotubes. The flagpoles and the 8 bases all need to be affixed by rods to the sonotubes. Costs associated with all etching being completed are estimated at \$92,000. That would be the cost if all nine hundred and forty six 6x12s and all hundred and thirty two 12x12s are etched (complete sell out). Project costs would be covered if half of the available bricks are sold. As additional bricks are sold non-etched bricks could be replaced with etched bricks. That will be an ongoing project along with upkeep of the site. The only changes in costs that would occur would relate to the amount of engraving. If donations were received for parts of the memorial different sized pavers could be engraved as well.

Vice Chairman Yakuboff commented one of the things Mr. Snell has come before the Council for is to begin the process of establishing the necessary account. Donations will be made to the Town of Merrimack, and a mechanism is necessary for acceptance and expenditure of those funds.

Mr. Snell noted his desire to receive the Council's blessing on the final design and the go ahead to move forward and begin fundraising efforts.

Councilor Dwyer stated a concern with the area designated for parking. He questioned why consideration would not be given to parking on Railroad Ave. His concern is with vehicles backing out of the proposed area onto D.W. Highway. Mr. Snell noted that has been occurring for a long period of time. Councilor Mahon spoke of the way the highway is oriented and the size of the area available for vehicles. Mr. Snell stated his desire for those spaces to be dedicated for handicapped use.

Mr. Snell stated his desire to dress up, take out, or replace the four bushes in the area. Councilor Harrington suggested the placement of benches in that area would have a nice appearance. Mr. Snell commented if able to sell all of the available bricks the project could be built up even more. He anticipated being able to have 50% of the bricks sold by next spring and the ability to begin construction some time in the summer.

Councilor Koenig noted mention of landscaping included in the design, and reiterated the desire of the Council to have landscaping incorporated. Mr. Snell spoke of a mulch bed included in the plans and his intent to discuss with the Garden Club the potential of their performing the upkeep of the mulch bed and any flowers they wish to introduce. Beyond that, anyone interested in donating trees, etc., he would be amenable to.

MOTION made by Councilor Yakuboff and seconded by Councilor Boyd to accept the final design for the Fraser Square Veterans Memorial and authorize Director Micali to establish the appropriate account for collection of funds

ON THE QUESTION

Vice Chairman Yakuboff spoke of the level of detail presented to the Council. He believes the project will be a very valuable one for the Town. He thanked Mr. Snell for his efforts.

MOTION CARRIED 7-0-0

There being no objection the Council went out of the regular order of business to take up Item #1 under New Business.

1. Committee Appointments

Submitted by Town Council Chairman Finlay Rothhaus

The Town Council to consider the appointment of Jackie Flood to the Town Center Committee, pursuant to Charter Article 4-8.

MOTION made by Councilor Mahon and seconded by Councilor Boyd to appoint Jackie Flood to the Town Center Committee pursuant to Charter Article 4-8. MOTION CARRIED 7-0-0

Oath of Office administered by Chairman Rothhaus.

The Council recessed at 8:23 p.m.

The Council reconvened at 8:25 p.m.

The Council returned to the regular order of business.

2. Deadline Extension Request by MYA for Required Audited Financial Statements

Submitted by Town Council Chair Finlay Rothhaus

The current agreement between the Town of Merrimack and the MYA requires that the MYA provide audited financial statements to the Town by October 31, 2013 each contract year. The MYA is requesting that the Town Council grant a 45-day extension to the deadline. The new deadline would be December 15, 2013.

Chairman Rothhaus informed the Council the Merrimack Youth Association (MYA) was unable to have their audit completed in time for the October 31st deadline, and are requesting an extension. Paperwork has been forwarded to the auditors.

MOTION made by Councilor Rothhaus and seconded by Councilor Boyd to amend the agreement to allow the Merrimack Youth Association until the end of 2013 to have their audit completed and provided to town staff

ON THE QUESTION

When asked, Chairman Rothhaus stated the extension equates to 61 days. He commented it has always been about protecting the taxpayers' dollars. Having a complete audit done will address his concerns.

Councilor Harrington questioned why, at this point in time, an extension is being requested. She stated the contract was signed on the 1st of July, and requires audited financial statements be provided to the Council, yet she is of the belief the auditor just received the information necessary to begin the process. Mr. Benhardt stated that to be correct.

Mr. Benhardt responded it simply took a great deal of time to gather the necessary information. He explained with 7 different programs, turnover in the programs and differing timeframes for elections, etc. the task was a great one. A financial certified audit requires a great deal of information that the group is not accustomed to providing or having available. People who really didn't understand the full depth of what they were up against were providing information they believed to be desired. Information requests had to be made again and again before all required information was received. These individuals were dealing with the requests on an evening basis to get the work done between vacation time in the summer and other responsibilities. They simply had no idea how long it would take to complete the task.

Councilor Harrington remarked the MYA has an accountant that assists with the books. Mr. Benhardt stated the accountant was the one responsible for gathering the information. He led the charge of stating what had to occur and then it was the responsibility of the MYA to go to the various programs to obtain the information through the Executive Board and to the various program boards. Councilor Harrington suggested future consideration be given to alignment of board elections. Mr. Benhardt remarked it is worth considering; however noted what comes into play is the times the programs are active, which is when most of the involvement takes place.

Councilor Harrington remarked she believes the Council provided concession to the MYA and yet she understands the difficulties. She believes it is symptomatic of how the program was created; there is no accountability and responsiveness. She stated she would go along with approval of the request for an extension, but would like to stick with the 45 days.

Councilor Boyd remarked in the context of researching the MYA this past year and reviewing the contract, he looked to the MYA's website, which contained Bylaws and meeting minutes. The minutes identify it was communicated to the Board of Directors back in February that, as part of the agreement, the Town Council would be asking that an audit be performed. He shares Councilor Harrington's frustration, as at a minimum, the MYA was on notice in February that would be one of the things the Council would be seeking. After that conversation a process should have been put in place to begin tabulating that information.

Councilor Boyd addressed Ms. Walters-Byrne when saying in each particular organization, the Treasurer and Assistant Treasurers all have no continuity of what their job description is in their Bylaws. He suggested, as she moves forward with the running of the organization she give consideration to working with the individual organizations to re-write the Bylaws and have them written in such a way that they are consistent with the parent organization. He stated his belief she has a good opportunity to utilize the results of the audit to come up with a job description for the treasurers and a set of protocols that filter up to the parent organization. He stated he would support the motion in some form as he would find it unfair to request the auditor produce the report requested in a matter of days.

Vice Chairman Yakuboff stated he would not be supporting the motion; however, has full faith in Ms. Walters-Byrne's abilities. He suggested the Council allow the auditor to perform the work without placing the caveat of the 45 days in place. He looks forward to the opportunity to ensure the MYA stays a vital part of the community as he believes the way it is run it is a good program. He does believe it needs some serious help with its accounting records and commented within his business he could have provided the same type of report being requested in a matter of 2 hours. He reiterated his unwavering support of the new Chairperson on the Executive Board.

Councilor Mahon stated what took place last year and earlier this year was a symptom of the deeper problems and issues that go along with very poor financial record keeping, lackadaisical attention to detail, and violation of their own Bylaws. He added the lack of leadership from the Executive Board is monumental. He stated the Board was aware of the requirement prior to February as the Town Manager spoke with them regarding what the Council would be asking for. The MYA fought the audit until there was no longer a choice but to sign the contract to gain financial support from the Town. It is not something that has popped up in the last few months and been delayed because of changes in leadership or individual's vacation schedules. As others have said, if the books had been kept properly, it would have taken no time at all to pull the material together.

He agreed requirements from an audit are very detailed and he could see where that would cause some difficulty as all of the information may not be in the format most useful to the auditor. He stated he

would not be supporting the motion. He added, had the amount of time spent trying to avoid having to do an audit been put into discussions with the programs about getting their books in order we wouldn't have this problem.

Councilor Dwyer stated he was not supportive of the motion. He spoke of the current accountant, Mr. Ditman, who informed the Council directly in a meeting almost a year ago that he did not think an audit was necessary, believed it would not do any good as even if fraud were identified it was related to when the former Treasurer was investigated when funds went missing. He has never been on board with sharing the books. Councilor Dwyer remarked an audit is a snapshot in time. You are not supposed to have a lot of time to fix the books. What should have been done is what was done yesterday in gathering the information available and bringing it to the auditor. That should not have taken several months. He suggested the auditor be allowed to come back with a report stating what information is missing. Ample opportunity has been available over several months. He reiterated an audit is a snapshot in time and what the Council will receive is a doctored snapshot in time.

Councilor Koenig questioned what the motion was looking to accomplish as the MYA is already in default of their contract as it states, at the end of Article 17, that the auditor will be engaged on or before August 31st. He is of the belief, if not provided any information prior to yesterday that does not satisfy engagement by the 31st of August. Chairman Rothhaus stated his impression engagement meant they had hired an auditor. The reason, in his opinion, for the extension is so that they can now get the audit completed. Councilor Koenig stated the contract includes language that the audit is provided by October 31st. He was of the belief that could be accomplished between when the contract was authorized in June and that date, and had fought against the wording to have the auditor engaged by August 31st assuming anyone could back up two months from October 31st and figure out when they needed to get the auditor engaged in order to get the audit completed in a reasonable timeframe. In hindsight, he applauded Vice Chairman Yakuboff for having added that language. They may have been hired, but for the last month and a half or more have apparently not been doing anything towards the audit if the information was only provided recently.

Having no desire to shut down the MYA or restrict its use of the fields or facility, it is necessary for the agreement to remain in place. He stated there to be a level of responsibility everyone needs to take, and stated he would be more in favor of a discussion around what the repercussions are of not meeting the contract. Without responsibility there is no value to the contract. He suggested the possibility of a percentage of contribution loss during the time when the audit is not provided or something similar.

Chairman Rothhaus reiterated what he has heard is it is about protecting the taxpayers' dollars. He remarked comments made tonight regarding sloppy books he can agree with; however, those which suggest impropriety, conspiring to hide money, etc. he takes offense to. If the intent is that of protecting the taxpayers' dollars and the Council is willing to accept the books now because they were turned in, but is of the belief all of this collusion has gone on behind the scenes, why would there be a willingness to accept anything the auditor has to say.

Councilor Harrington stated collusion never crossed her mind, incompetence did. It is her opinion it is a matter of incompetence not poor intention. Chairman Rothhaus stated his agreement.

Councilor Koenig stated he never intended to imply collusion or anything of that nature. There is some kind of an issue going on that he does not understand, but he felt they should have had plenty of time based on the discussions that went on at the start of the year about the need for it and the intense discussions back in June when the contract was finally agreed to. If the Council simply turns around

and says there is no impact to not getting it done then there is no reason to get it done in the 45 days either. He offered, above and beyond an extension there be perhaps a 20% penalty for any monies that would normally be offered during that time when the MYA is in breach of contract.

When asked, Director Micali stated the MYA is paid \$18,000 quarterly. The first quarter payment was made once the auditor was secured; August 6th. The next quarter payment, which would have been October 1st, has not been paid. Councilor Harrington stated her agreement with a financial consequence of inaction, although she did not believe it could be retroactively made part of the agreement.

MOTION FAILED 2/5/0 *Councilors Harrington, Yakuboff, Mahon, Koenig, and Dwyer voted in opposition.*

Councilor Mahon provided possible language for a motion stating his belief it would address a lot of the concerns expressed and also provide both sides with flexibilities as to how the issue is dealt with.

That in the absence of a completed audit on October 31, 2013 as stipulated in Article 17 of the Agreement between the Town of Merrimack and the Merrimack Youth Association that the Town, on November 1, 2013, notify the MYA, by letter, signed by the Town Manager, of the following items of non-compliance with the Agreement: Article 17 - Failure to provide audited financial statements for the fiscal year ending June 30, 2013; Article 5 - Use of town payments for Executive Board expenses and not for direct program support, i.e. uniforms, equipment, officials; Article 26 - Failure to perform in accordance with the terms and provisions of the Agreement. That the letter notify the MYA of the 30 days from the receipt of the letter provided for in Article 26 for compliance. That the second quarter payment under Article 4 of the Agreement continue to be withheld; And, that the continuation of the contract be placed on the agenda of the Council's first Regular meeting in December if the MYA has not complied with the deficiencies cited above within the 30 day period.

Councilor Boyd questioned the reasoning behind the proposed language relative to Article 5 of the Agreement. Councilor Mahon stated the budget document from last year and the budget submission this year indicates, all of the Executive Board expenses are paid by the Town contribution, e.g. audit, insurances, office expenses, etc. This year the cost was \$15,400±. Next year the estimate is approx. \$23,000. Councilor Harrington asked for clarification and was informed the funds are intended for direct program support.

Mr. Benhardt stated what has been done is to avoid having to pay a program fee and an MYA registration fee, the program collects both the program fee and the MYA registration fee, and when the allotment from the Town is received their expenses are taken out of that allotment and then the balance is distributed to the programs. He remarked that formula was devised a few years ago, and it is obvious it is not at the pleasure of the Council that it be presented that way. He stated the can return to the practice of collecting the registration fee directly as opposed to indirectly through the programs or have the programs collect it and provide it to the MYA. Chairman Rothhaus stated that has to occur to adhere to the agreement.

Vice Chairman Yakuboff questioned whether any of the funds, registration fees, etc. go towards the Skeffington Fund. Mr. Benhardt stated they do not. He explained the Skeffington Fund is a separate fundraiser by the baseball program, and is strictly monies raised from the participants in that program, entrance fees, etc. When asked how that fund is set up, Mr. Benhardt stated recent receipt of 501C(3) status. Any monies retained by the MYA will be placed into a separate tax free program.

Councilor Harrington proposed the October 1st payment be allowed and that a stipulation be put in place as of December 15th no further payment would be allotted until all requirements are met. Councilor

Dwyer questioned providing the October 1st payment. Councilor Harrington stated her reasoning to be the audit was not due until October 31st. Councilor Dwyer spoke of information now known that the audit was not provided in accordance with the agreement. Councilor Harrington stated she was trying to allow some leeway for the new President of the MYA. Councilor Boyd suggested changing the language regarding the letter of notification to state 30-45 days and that the meeting at which the continuation of the contract be discussed be the first meeting in January. Councilor Mahon stated the reason he suggested the December meeting was because the Council would have a sense of progress made by that time. At that time, it would be up to the Council to determine whether or not to continue to withhold the October payment. At the end of 30 days, if there is no compliance with deficiencies the Council could terminate the contract. He stated this notification to be what the contract calls for. He noted he tried to build some flexibility into the motion so that the Council is not locked into a course of action, that the ability exists to take into consideration what is occurring and the actions being taken, but at the same time making a statement that funds will not be provided until the Council is of the opinion satisfactory progression is being made.

Councilor Dwyer suggested there be no motion. He would like to see the auditor perform his work. He suggested there may be all kinds of other recommendations and changes the Council may wish to make after the audit is provided. He suggested things be allowed to continue the way they are until a report is received from the auditor, e.g., no payments be made until the report is received. Councilor Boyd stated the MYA is in breach of contract as of October 31st. Councilor Dwyer suggested the Council has the discretion to wait until receipt of the report. Vice Chairman Rothhaus agreed with Councilor Harrington the payment due on October 1st should be put forward in accordance with the Agreement as they are not in default until October 31st.

Councilor Koenig stated his opinion the MYA is technically not in default; however, they are in default in that they didn't take the right actions and steps to even remotely be on time. The Council and the MYA knew long before today that October 31st was not going to be a date that would be reached, and, in his opinion, that means they are in default. Councilor Koenig stated his preference not to simply ignore the situation. He suggested Councilor Mahon's point is valid in that the contract requires the Council provide a 30-day notice if they are found to be in default or breach, and that should be provided.

MOTION made by Councilor Mahon and seconded by Councilor Boyd that in the absence of a completed audit on October 31, 2013 as stipulated in Article 17 of the Agreement between the Town of Merrimack and the Merrimack Youth Association that the Town, on November 1, 2013, notify the MYA, by letter, signed by the Town Manager, of the following items of non-compliance with the Agreement: Article 17 - Failure to provide audited financial statements for the fiscal year ending June 30, 2013; Article 5 - Use of Town payments for Executive Board expenses and not for direct program support, i.e. uniforms, equipment, officials; Article 26 - Failure to perform in accordance with the terms and provisions of the Agreement. That the letter notify the MYA of the 30 days from receipt of the letter provided for in Article 26 for compliance. That the second quarter payment under Article 4 of the Agreement continue to be withheld; And, that the continuation of the contract be placed on the agenda of the Council's first Regular meeting in December if the MYA has not complied with the deficiencies cited above within the 30-day period

ON THE QUESTION

Councilor Harrington stated she would not support the motion, noting had the motion included language stating the October 1st payment would be made she would have been supportive of it.

MOTION made by Councilor Harrington and seconded by Councilor Boyd to amend the motion by replacing the words “the second quarter payment under Article 4 of the Agreement continue to be withheld” with the words “the third and fourth quarter payments under Article 4 of the Agreement will be withheld”

ON THE QUESTION

Councilor Koenig stated his disagreement and recommended 2/3 of the second quarter payment be withheld, e.g., November and December portions, which would be the payment period during which the Agreement is in default. Councilors Harrington and Boyd stated their agreement.

Vice Chairman Yakuboff questioned how the Town would be in default of the contract. It was explained the October 1st payment has been withheld; however, the MYA is not in default until October 31st. When asked why the payment was withheld, Town Manager Cabanel remarked she felt enormous pressure to not make that payment as she believed the Council would disagree with doing so. Councilor Dwyer added the reason why the audit has not been completed is because the auditor had not received the books.

Chairman Rothhaus reiterated the contract does not speak to a breakdown of a quarterly payment, whether it is believed a default will take place, etc. The contract states the MYA is in default if the Council is not in receipt of the audit as of October 31st. Councilor Dwyer remarked he understands why the payment was not made; it was not a complicated reason, the check was not sent because the auditor had not received the books, therefore, could not make a deadline of October 31st. Town Manager Cabanel remarked it was known at the beginning of October that the information had not been provided to the auditor.

MOTION FAILED 3/4/0 *Councilors Dwyer, Koenig, Mahon, and Yakuboff voted in opposition.*

MOTION made by Councilor Koenig and seconded by Councilor Boyd to amend the motion by replacing the words “That the second quarter payment under Article 4 of the Agreement continue to be withheld” with the words “That 2/3 of the second quarter payment under Article 4 of the Agreement will be withheld and continue to be withheld until such time as the audit is delivered to the Town of Merrimack and the MYA is back in compliance with their original agreement with the Town”

ON THE QUESTION

Councilor Koenig stated that would take into account the timeframe during which the MYA would be in default. Councilor Boyd stated his agreement with the proposed amendment to the motion. When asked, Councilor Koenig explained, once the audit is received, the MYA would get the remaining 2/3. No penalty would be extracted except for the length of time it took for them to receive the funding. It would be a delay of the payment, which would be permanent if an audit is not turned in. Councilor Dwyer stated he could not support the proposed amendment as it does not represent a penalty. Town Manager Cabanel stated the audit would not be provided to the Town it would be provided to the MYA. The MYA will provide it to the Town.

MOTION CARRIED 5/2/0 *Councilors Dwyer and Yakuboff voted in opposition*

Vote on the main motion as amended:

MOTION CARRIED 5-1-1 *Councilor Rothhaus voted in opposition. Councilor Yakuboff abstained.*

New Business

2. Review of 2014/15 Budget Schedule

Submitted by Town Manager Eileen Cabanel and Finance Director Paul Micali

The Town Council to review the 2014/15 Budget schedule.

Director Micali noted the date previously stated as the start of the budget review is January 2, 2014 (approx. 1.5 weeks ahead of the typical schedule). The next meeting of the Council would be January 6th, which is the same date the School Board is meeting. Having the two meetings occur on the same evening would place stress on the media division. A review of past budget cycles has led to the belief if the Council were to compress the departmental reviews into three meetings (from 4), all deadlines could be met, the completion date would remain the same, and the review process would begin a week and a half later than typical. The proposed schedule would have the Council conduct departmental reviews on January 13th, 16th, and 20th, and a week later begin budget deliberations anticipating completion of the budget process a week ahead of filing deadlines. The proposed schedule was attached to the agenda materials.

MOTION made by Councilor Boyd and seconded by Councilor Mahon to accept the Budget Schedule as presented

ON THE QUESTION

Councilor Harrington questioned whether a shortened schedule would increase dramatically the length of meetings. Director Micali spoke of how the process has worked for the past few years, and commented the longest budget meeting was about 3 hours. The intent is to conduct the Public Hearing on the second Thursday in February. **MOTION CARRIED 7-0-0**

Minutes

Approve the minutes from the October 10, 2013 Town Council meeting:

MOTION made by Councilor Mahon and seconded by Councilor Boyd to approve the minutes of the October 10, 2013 Town Council Meeting as presented. MOTION CARRIED 7-0-0

Comments from the Press - None

Comments from the Public - None

Comments from the Council

Vice Chairman Yakuboff noted Brandon Snell is running his Fifth Annual Heroes Blood Drive on November 11th from 2:00 – 7:00 p.m. at the St. James Church.

MOTION made by Councilor Koenig and seconded by Councilor Mahon to adjourn the meeting. MOTION CARRIED 7-0-0

The October 24, 2013 meeting of the Town Council was adjourned at 9:30 p.m.

Submitted by Dawn MacMillan