



## Town Council Meeting Minutes



Monday, January 12, 2012, at 7:00 PM, in the Town Hall Meeting Room

Chairman Rothhaus called the meeting to order 7:00 pm. Present at the meeting were Chairman Rothhaus, Vice Chair Boyd, Councilor Mahon, Councilor Koenig, Councilor Yakuboff, Councilor Dwyer, Councilor Flood and Town Manager Eileen Cabanel.

### **Announcements**

Chairman Rothhaus announced that copies of the contract with the New England Police Benevolent Association are available.

Upcoming meeting schedule: Budget meetings on January 16<sup>th</sup>, 19<sup>th</sup> and 23<sup>rd</sup> at 6:00 pm. Regular Town Council meeting on January 26<sup>th</sup> at 7pm.

Town Manager Eileen Cabanel made the following announcements:

- The 18<sup>th</sup> Citizen's Police Academy begins next Wednesday, January 18<sup>th</sup>, for 10 weeks. Call Officer Rob Kelleher at 424-3774 for more information.
- The Police Department would like to remind you to prepare for winter weather driving conditions. Please give yourself extra time for your commute and extra space between vehicles when driving during inclement weather conditions, and as always, drive safely.
- 2012 dog licenses are now available at the Town Clerk's office. Per NH state law, all dogs 4 months and older are required to be licensed annually by May 1<sup>st</sup>. Licenses not renewed by May 1<sup>st</sup> will be subject to late fees, and owners may receive fines and potential court action. If you no longer have your dog, please contact the Town Clerk's office. For more information, please see "Dog Licenses" in the Town Clerk's section of the website.

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

#### **Acceptance of the Resignation of Phil Straight from the Conservation Commission**

*Submitted by Chairman Rothhaus and Vice Chair Boyd*

The Town Council accepted the resignation of Phil Straight from the Merrimack Conservation Commission where he has served as a member since May 2006.

**MOTION was made by Vice Chair Boyd and seconded by Councilor Mahon to accept with regret the resignation of Phil Straight from the Merrimack Conservation Commission.**

**MOTION CARRIES 6-1-0 Councilor Dwyer voted in the negative**

*Chairman Rothhaus without objection moved New Business item #3 to be heard next.*

#### **Committee Appointments**

*Submitted by Chairman Rothhaus and Vice Chair Boyd*

The Town Council appointed the following recommended individuals to Town committees: Matthew Caron - Conservation Commission (to fill remaining term of Phil Straight) and Andy Powell - Town Center Committee (Full)

**MOTION was made by Councilor Yakuboff and seconded by Councilor Koenig to appoint Matthew Caron to the Conservation Commission (to fill remaining term of Phil Straight) and Andy Powell to the Town Center Committee (Full). MOTION CARRIES 5-2-0 Councilor Mahon and Vice Chair Boyd voted in the negative**

*Chairman Rothhaus without objection moved items 4 & 5 from New Business to be heard next.*

#### **Appointment of Merrimack Representative to the Nashua Regional Planning Commission**

*Submitted by Merrimack Planning Board Chairman Robert Best*

The Town Council appointed Anant Panwalkar as one of Merrimack's representatives to the Nashua Regional Planning Commission (NRPC), as recommended by the Merrimack Planning Board and pursuant to RSA 36:46 (III).

**MOTION was made by Councilor Mahon and seconded by Vice Chair Boyd to appoint Anant Panwalkar as one of Merrimack's representatives to the Nashua Regional Planning Commission. MOTION CARRIES 7-0-0**

### **Appointment of Trustee of Trust Funds**

*Submitted by Chairman Rothhaus and Vice Chair Boyd*

The Town Council appointed William Wilkes as a Trustee of Trust Funds to fill John Lyons' term until the April 2012 election, pursuant to Charter Article 6-2 and RSA 31:22.

**MOTION was made by Vice Chair Boyd and seconded by Councilor Flood to appoint William Wilkes as a Trustee of Trust Funds to fill John Lyons' term. MOTION CARRIES 7-0-0**

### **Appointments**

#### **1. Annual Review with the Conservation Commission**

*Submitted by Conservation Commission Chairman Andy Powell*

Per Town of Merrimack Charter Section 6-6, at least annually, there should be an annual review with the Conservation Commission. This agenda item is to highlight the commission's significant actions, current projects, anticipated actions, and to raise any concerns the Council should know or could act on. Mr. Powell reviewed the responsibilities of the Conservation Commission. He thanked Mr. Straight for his service. He advised the Council that Mr. Eber Currier has indicated that he would like to step down to an alternate position after serving 25 years on the Merrimack Conservation Commission (MCC).

Mr. Powell spoke about the Biodiversity Conservation Plan. He stated that HHNP has been used tremendously. He advised the Council that the Eagle Scouts continue to make improvements to the property. The MCC continues to work with the Agricultural Commission. Mr. Powell stated that the Grater Woods Subcommittee has completed and presented a Stewardship Plan to the MCC. The MCC is reviewing the Stewardship Plan. The MCC issued a contract for a forestry and wildlife habitat study on the most recently purchased land of about 100 acres of Grater Woods. Mr. Powell advised the Council that due to the issues that arose regarding access through School District land, maintenance and construction activities in the area have curtailed. He stated that it is his hope that a resolution can be found.

Mr. Powell spoke about the Wasserman conservation area and future possibilities of connecting walking trails to other areas. Wildcat Falls Conservation Area has improved parking area and new saplings planted. Mr. Powell advised the Council that the MCC continues to offer assistance to the middle school teachers in the area of education.

Mr. Powell spoke about future expectations for the MCC. He stated that they are focusing on managing natural resources. He advised the Council that with the help of Mr. Tim Tenhave, there will be a website called Merrimack Outdoors that will provide tremendous information regarding conservation parcels. Mr. Powell stated that they continue to work with other Town committees and departments.

Mr. Powell spoke about issues of concern. He stated that volunteers are always needed. He stated that the Town needs a policy to address the management of Town land to avoid confusion and enforce restrictions. He suggested that the MCC could offer their thoughts on revising Chapter 111, Conservation Areas, of the Town Code. Mr. Powell stated that another concern is the issue of access to Grater Woods.

Councilor Dwyer asked Mr. Powell what his opinion is regarding access to Grater Woods. Mr. Powell advised the Council that he believes the best access is the one that is already created across the School District land. Mr. Powell stated that the road is done and paid for. He stated that the access road is a

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heavy duty road. He advised the Council that the other options for access have issues, such as wetlands. Mr. Powell explained that other access points would need to be developed and would cost the Town \$25,000 to \$30,000. He cautioned that access from the lower section of Grater Woods would present challenges in getting trails developed to access the upper section of Grater Woods. Mr. Powell advised the Council this would all be illustrated in the Stewardship Plan when it is presented to the Council. Councilor Flood questioned the access gate on Beebe Lane. Mr. Powell explained that the gate is on private property and the MCC was working with the landowner negotiating a land swap but at the last second, the owner withdrew. Councilor Flood extended her appreciation for the MCC's dedication.

Vice Chair Boyd inquired about the swamp along South Grater Road that floods consistently. He asked if there was any mitigation that can be done to make that a passable trail. Mr. Powell believes the area would have to be bypassed. Vice Chair Boyd asked if there will be trail in the future that will bypass that area. Mr. Powell stated it will be considered in the Stewardship Plan. Vice Chair Boyd asked if there is any suitable access off Old Blood Road to Grater Woods. Mr. Powell indicated there is not.

Councilor Koenig inquired about the method of funding for the MCC. Mr. Powell stated that the funding comes from Land Use Change Tax (LUCT). He explained that currently there is a 50/50 split between the general fund and MCC. He stated that after the MCC fund reaches the cap, all the funds would go to the general fund.

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

Mr. Tim Tenhave of 72 Amherst Road spoke about the access point off Old Blood Road to Grater Woods. He stressed that the access point through the deeds will never be an access point that will serve all the uses. Mr. Tenhave stated that there has to be another access point created. Mr. Tenhave spoke about the Tentative Agreement for a one year contract with the New England Police Benevolent Association Local 12 that includes step raises, rather than the merit system. Mr. Tenhave stated that he was disappointed to see step raises. He urged the Council to continue moving forward with the merit system. Mr. Tenhave stressed that his comments in no way reflect on the Police Department and the job they do. He believes it is more appropriate to reward performance, not mediocrity. He would like a better understanding of where the Council stands on the issue of merit pay.

Mr. Joe Kearns of 4 North Jebb Road echoed the comments of Mr. Tenhave. He spoke regarding the renovation of the Town Hall meeting room. Mr. Kearns stated that it appears that the former Town Manager handed that contract for the general contractor contract without going out to bid. Mr. Kearns stated that the Town's Purchasing Policy is straight forward. Mr. Kearns stated that the reason he is pursuing this is because he has an enormous tax bill and he wants to have trust in the Town on how the money is spent. He asked the Council to look into this. He asked the Council to close any loophole that would have allowed this to happen. He asked Chairman Rothhaus to revisit this on the next agenda. Chairman Rothhaus stated that the Town Manager would provide the backup data that Mr. Kearns is looking for. Mr. Kearns believes this deserves public scrutiny. Chairman Rothhaus stated he is not sure this requires an agenda item or an explanation, but he would look into it. Councilor Yakuboff advised Chairman Rothhaus that he would like to read a written statement regarding his communications with Mr. Kearns. Chairman Rothhaus asked him to wait until after public comment.

Trustee of the Trust Funds Chris Christensen thanked the Council for appointing Bill Wilkes to the Trustees of Trust Funds.

Councilor Yakuboff read the following into the record: (verbatim) *"Mr. Kearns: Paul Micali not only answered all of your questions, as shown in the email thread that was going back and forth between myself and you and Paul Micali and I believe, maybe possibly the Town Manager, but has gone one step further to offer you his time to meet, as well as go through a binder with even more details than*

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*you were originally asking for. He has also provided you with a website link for any additional data that you could have found.*

*I reached out to you as a Councilor and said I'd be more than happy to meet with you, but as of yet, I have not met with you and you have not requested to meet with me. What concerns me is the time you're taking of the staff, as well as the cost of taxpayers for doing your research for your project for a project that was completed over two years ago, very well knowing that is all public knowledge and available to you.*

*It is not the job of the staff to do research for your own specific items that you could be doing on your own. The reason I got involved is because of the waste of tax dollars to the Town's people for your own purpose and your own witch hunt. My recommendation to you sir is to hire an attorney and pay him to do the research that you're requesting rather than waste taxpayers' dollars for your own purpose.*

*In closing, we exchanged emails and for you to accuse any Town member or Town Councilor or Town Manager for misuse of funds or back door deals disgusts me and in my answer to your question about taking it personal, there is not a citizen out there that would not tolerate such an accusation without going on the defensive and standing up for themselves. If you have an issue with the Council or previous Town Manager, I would also point you in the direction of the State's Attorney General."*

Councilor Yakuboff explained that the thing that he eluded to in his statement can be found in the email thread with Mr. Kearns. Councilor Yakuboff stressed that Mr. Kearns' questions have been answered in a timely fashion. He stated that this project happened over two years ago and was done above board. Councilor Yakuboff stated that it was also approved by the voters.

Mr. Kearns responded by asking for the bids. Chairman Rothhaus stated that he would get the information from Eileen. Mr. Kearns stated that the answers he received from Mr. Micali were often stonewalling and the responses from Councilor Yakuboff were self righteous and misleading.

### **Public Hearing**

#### **Acceptance and Expenditure of a Matching Grant from the NHDES**

*Submitted by Planning and Zoning Administrator Nancy Larson*

Chairman Rothhaus opened the public hearing at 7:50 pm.

The Town Council held a public hearing to authorize the acceptance and expenditure of up to \$20,350 of a grant from the NH Department of Environmental Services for milfoil control. This is a matching grant of which the Town's share would be 50%, up to \$10,175.00, for variable milfoil control efforts in portions of Horseshoe Pond, pursuant to Charter Article 8-15 and RSA 31:95-b.

Nancy Larson summarized the previous milfoil treatments at Horseshoe Pond (in 2001 and either 2005 or 2007). She advised the Council that currently there is \$11,000 in the milfoil reserve account. She stated that a copy of the grant has been provided that outlines two treatment options. Option #1 is a one time treatment of a granular form at a cost of \$20,350. Option #2 is recommended by the contractor, which is a liquid form of treatment done twice for a cost of \$16,450. Chairman Rothhaus hopes that in the future, the Horseshoe Pond association(s) and Island Drive residents can factor in the cost of the treatment. Nancy Larson stated that there are approximately 100 homes/condos on Horseshoe Pond. Town Manager Eileen Cabanel asked for clarification on the matching grant. Nancy Larson stated that if the Town Council were to accept the grant, the State would match half of either option.

There was a brief discussion regarding the difficulty of treating milfoil. Councilor Flood echoed Chairman Rothhaus' comments regarding the association(s) taking over the grant process. Mr. Chris Christensen explained the herbicide treatment process and the hand removal of remaining plants in the

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second year. He stated that it is recommended to have funding, approximately \$5,000 for the second year for divers to remove any remaining plants by hand in the second year.

Councilor Dwyer stated that he can not support this. He stated that he believes the infestation is too far along to be eradicated. Councilor Dwyer stated he was looking for real information that shows the program will be successful. He recognizes that this is a never-ending problem. Councilor Yakuboff stated that he is not averse to moving forward since there is \$11,000 set aside. He hopes this will encourage the association(s) to move in this direction. Councilor Flood stated that Horseshoe Pond affects all residents. She believes any steps taken to eradicate milfoil will be beneficial.

*Chairman Rothhaus opened the floor for public comment*

*Mr. Chris Christensen* stated that the divers can be very effective. Councilor Mahon asked if there are regulations requiring boat owners to clean their boats before entering a water body. Mr. Christensen stated there is nothing requiring that. Councilor Dwyer asked Mr. Christensen if he felt this was a lost cause. Mr. Christensen stated that it is controllable.

*Mr. Allen Pinet of 28 Island Drive* stated that of the three water bodies in Merrimack, Horseshoe Pond offers the best access for boaters. He believes that the majority of boaters in Merrimack utilize Horseshoe Pond over the other water bodies. He stated that someone brought the milfoil to Horseshoe Pond and he feels that the owners are being penalized.

*John McDonald of 19 Pondview Drive*, President of the condo association, thanked the Council for discussing the milfoil issue. He stated that the pond is used by people other than those who live on the water. He stated that Horseshoe Pond is an asset for the Town. He summarized the past efforts to address the issues. He spoke about the mutual benefit that Horseshoe Pond brings the Town. He stated that the residents on Horseshoe Pond have been good stewards. Councilor Yakuboff asked for clarification regarding the possibility that the association would form a committee to work and plan ahead for future treatments. Mr. McDonald clarified that the Horseshoe Pond residents have paid through their property taxes. He stressed that it is the entire Town that benefits and uses Horseshoe Pond. Councilor Flood stated that the Town has not spent any money on Baboosic Lake. She spoke about the Baboosic Lake Association and their efforts to maintain the lake.

*Chairman Rothhaus closed the public hearing at 8:34 pm*

**MOTION was made by Councilor Koenig and seconded by Councilor Dwyer that the Town Council vote in the affirmative, to accept and authorize the expenditure of up to \$16,450 of the grant from the NH Department of Environmental Services for milfoil control. This is a matching grant of which the Town's share would be 50% up to \$8,225 for variable milfoil control efforts in portions of Horseshoe Pond and that the Town share be expended from the Expendable Trust Fund for milfoil. MOTION CARRIES 5-2-0 Councilor Mahon and Councilor Yakuboff voted in the negative**

*Discussion on the motion*

Councilor Koenig explained that milfoil has been an issue for years. He believes that it is critical that the Town watch over its waterways. Councilor Koenig stated that if ignored, it would become a swamp. He spoke about the benefits of treating the pond. Councilor Yakuboff explained that he will not support the motion because he is concerned that next year funding might not be available through a state grant or Town fund. He stated that money used this year would not be wasted. Councilor Koenig stated that treatments have spanned over 5 years. He stated that if funding is an issue next year, this year's treatment would not be a waste. Vice Chair Boyd and Councilor Dwyer expressed their support for the motion.

**MOTION was made by Councilor Koenig and seconded by Vice Chair Boyd that the Town Council vote in the affirmative, to authorize the Town Manager to execute any documents which may be necessary. MOTION CARRIES 6-1-0 Councilor Yakuboff voted in the negative**

## **Consideration of Changes to Chapters of Merrimack Town Code**

*Submitted by Tim Tenhave*

*Chairman Rothhaus opened the public hearing at 8:44 pm*

The Town Council held a public hearing to consider the acceptance of the recommended changes to Chapters 19, 25, 27, 66, 81, 119, 139, 158, 180 and 193 of the Merrimack Town Code, pursuant to Charter Article V. Mr. Tenhave advised the Council that the recommended changes have been incorporated as discussed at the December 15<sup>th</sup> meeting.

Councilor Koenig asked for clarification on the title of Chapter 66, referring to the Board of Selectmen. Mr. Tenhave is not aware of any reason why it can not be revised to refer to the Town Council. Councilor Koenig suggested revising the language of Article II in Chapter 19, Conservation Commission, to better define the policy. Mr. Tenhave suggested inserting the language from the Warrant Article. The Council agreed. Councilor Mahon pointed out that for the sake of consistency, consideration should be given to adjusting the references to NH and New Hampshire and RSA and R.S.A. Paul Micali advised the Council that staff would give it another comb through. Mr. Tenhave cautioned that it will be found throughout the document.

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

*Chairman Rothhaus closed the public hearing at 8:34 pm*

**MOTION was made by Councilor Koenig and seconded by Councilor Dwyer to move this to the next public hearing. MOTION CARRIES 7-0-0**

Mr. Tenhave suggested the next time this is brought forward that it be placed on the consent agenda. The Council agreed.

## **Legislative Updates from State Representatives**

State Representative Chris Christensen advised the Council that there will be a few toll bills brought forward this year. Hearings will be held February 2<sup>nd</sup>. He stated that in the past, it was helpful when Councilor Mahon attended hearings to represent the Town Council. Representative Christensen explained that HB1369 would remove the Bedford toll and move it to Exit 10; the elimination of the northbound side of Exit 10 and Exits 11 and 12. He believes this would reduce traffic on DW Highway, but southbound commuters would still have to pay at least a \$1 toll. Representative Christensen stated that HB1192 offers a commuter discount on E-Z pass. Another bill proposed calls for the elimination of tolls on the turnpike. Representative Christensen urged representation from the Town Council and Town Manager at the February 2<sup>nd</sup> hearings. Councilor Mahon questioned the language of the proposed House Bill. Councilor Mahon suggested a meeting with Representative Christensen on January 26<sup>th</sup>, prior to the hearing.

Councilor Flood stated that at the January 26<sup>th</sup> meeting, she would like additional information on other bills that would affect Merrimack. Councilor Dwyer asked Representative Christensen for his feeling on the success of HB1369, as proposed. Representative Christensen feels that it has a very good chance. Councilor Dwyer stated for the record, that anyone traveling north should get off at the airport access road and make a legal u-turn at the first light to avoid the toll. He believes the solution to lost revenue is in the gas tax.

## **Town Manager's Report**

- Single stream tonnage totals have increased to 1,373 tons for the year 2011. In 2009 without single stream, tonnage totaled 890 tons. 1,373 tons is a 56% increase up from the last year of no single stream. This increase results in an annual tipping fees savings to the Town, of \$31,000.
- The Planning Board recently approved 2 new commercial projects. Interstate All Battery Center will be constructing a new facility on DW Highway, near Skips Marine, and a multi-story self storage

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building on the land behind the Merrimack Vision Care on DW Highway. Upcoming on the Planning Board's agenda will be the proposed 311,000 square foot Atrium Medical facility (accepted as complete by the Board on 12/6,) on Robert Milligan Parkway and a multi-building commercial office project at the corner of DW Highway and Crosswoods Path. This project is a phased development of 6 units at 12,500 square feet.

- The grand opening for the Merrimack Premium Outlets is June 14<sup>th</sup>. A list of 57 stores will be published tomorrow.

- She will be meeting next week with the Rotary to discuss the 4<sup>th</sup> of July midway.

Chairman Rothhaus would like additional comparison information (2009 to present) on the disposal of trash. Town Manager Eileen Cabanel stated that in 2009 there was 8,500 tons, of that 890 tons was recyclables and in 2011 there was 8,800 tons and 1,373 tons of recyclables.

*Without objection Chairman Rothhaus moved the Polling Location Discussion up to be heard next.*

### **Polling Location Discussion**

*Submitted by Town Moderator Lynn Christensen*

Town Moderator Lynn Christensen discussed the possible changes to polling locations for future elections. Mrs. Christensen stated that she has two items to present to the Council for their consideration. She asked the Council to consider changing the polling hours from 7am to 7pm. She stated that there is a lack of voters from 6:15pm to 8pm.

**MOTION was made by Councilor Koenig and seconded by Councilor Yakuboff to change the polling hours from 7:00 am to 7:00 pm or later as dedicated by the Town Moderator dependent upon the need or utilization at the polls that day.**

Vice Chair Boyd does not support the motion. He stated that there are some professionals who are working during the proposed hours. Lynn Christensen stated that those individuals could vote by absentee ballot. Vice Chair Boyd would like to allow public input before voting on this policy change. This discussion was tabled until a determination could be made regarding taking this action given the language of the agenda item.

Lynn Christensen advised the Council that the polling location of St. James Church must be changed for safety reasons. She explained that the situation has gotten progressively worse with traffic issues. She spoke of her responsibilities as Town Moderator. She advised the Council that the Attorney General's office cited them for an unsafe location. Lynn Christensen spoke about inadequate space for voting booths, improper guard rails, and the building access is not handicap accessible. She recommended combining the St. James Church polling location with the Upper Elementary School polling location. She advised the Council that the School Board has voted not allow the High School to be used as the single polling place. Chairman Rothhaus asked Lynn to elaborate on the School District's decision. Lynn Christensen stated that it was not clear to her. Vice Chair Boyd explained that he spoke to School Board Chair Jody Vaillancourt. She indicated that her vote was based on calendar logistics for this election and the need to reschedule teacher workshops and adjustments to parents' schedules to accommodate the change. Chairman Rothhaus asked Town Manager to get more information on the Board's decision. Lynn Christensen advised the Council that relative to the school calendar, there would only be one day every four years that would be unknown, which is the Presidential Primary. Lynn Christensen stated that she was not aware that the School Board was discussing the item. She stated that had she been given the opportunity, she would have suggested the School Board to hold all elections at the High School, with the exception of the Presidential Primary. Chairman Rothhaus stated that he would call the School Board Chair for more information.

Town Manager Eileen Cabanel stated that she received a call from School Superintendent Marge Chiafery asking if half of the cost for protective flooring for the gym floor was included in the Town's budget. Town Manager Eileen Cabanel responded by advising Marge that the budget did not include

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funding for the protective flooring at the High School gym. Town Manager Eileen Cabanel stated that it was not a large sum of money and she could probably come up with it this year. She suggested to Marge that she should present this to the School Board prior to the Town Council meeting that would address this request. Town Manager Eileen Cabanel stated that she read in the newspaper of the School Board's vote and a comment from a School Board member who did not support the request because the Town Council did not make a formal request.

Chairman Rothhaus stated that regarding the first request to change polling times, it would be his preference to bring this back up at the next meeting as an agenda item. He stated that it does not require a public hearing. Councilor Koenig withdrew his motion.

**MOTION was made by Vice Chair Boyd and seconded by to Councilor Mahon to accept the Town Moderator's recommendation to close St. James United Methodist Church as polling place in the Town of Merrimack due to safety and access concerns. MOTION CARRIES 7-0-0**

Chairman Rothhaus thanked St. James Church for their generosity. Vice Chair Boyd requested that staff send a letter of gratitude.

### **Consent Agenda**

None

### **Old Business**

None

### **New Business**

#### **Pennichuck Board Appeal**

*Submitted by Town Manager Eileen Cabanel*

The Town Council considered whether to file an appeal against the Pennichuck Board's decision regarding the Public Utilities Commission (PUC). Councilor Mahon stated that he would make a motion but urges the Council to vote no.

**MOTION was made by Councilor Mahon and seconded by Vice Chair Boyd to file an appeal against the Public Utilities Commission's decision regarding Pennichuck. MOTION CARRIES 0-7-0 all members voted in the negative**

#### **Consideration for Payment of Legal Fees Associated with the Public Utilities Commission**

*Submitted by Town Manager Eileen Cabanel*

The Town Council to consider payment in full to Attorney Edmund Boutin of Boutin and Altieri, for the accrued legal fees associated with the Public Utilities Commission (PUC). Town Manager Eileen Cabanel advised the Council that in past discussions, it was discussed with the attorney regarding capping the amount of money that the Town of Merrimack would spend on the Pennichuck issue. She stated that a cap was in place at \$5,000. Town Manager Eileen Cabanel advised the Council that the expenditure remained under \$5,000, but in September and October, the Town received large bills from Attorney Boutin. She stated that \$22,000 remained outstanding. Town Manager Eileen Cabanel explained that in February, the hourly rate increased from \$150 to \$250 per hour. She stated that the Town was not aware of the increase, nor was it approved. She stated that discussions were had with Attorney Boutin to discuss the Town's expectations. She explained two proposals to address the issue. The first option would be to go back to the invoices from February on, and adjust the rate to \$175 receiving credit for invoices already paid and bringing the outstanding balance to \$8,702.56. The other option is to adjust the hourly rate back to \$150, taking the position that the Town was not properly notified and bringing the outstanding balance to \$3,925.44. Town Manager Eileen Cabanel stated that Attorney Boutin understands the situation; this is not a confrontational issue.

Councilor Koenig questioned the amount of \$150 per hour. He feels Attorney Boutin worked very hard and well on the Town's behalf. He stated that he should be compensated fairly. Paul Micali stated



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that he spoke to Attorney Boutin earlier this week, who indicated that he was agreeable to the rate of \$150. He was grateful for the opportunity to serve the Town of Merrimack. Councilor Flood feels that the rate increase was steep. She stated that had the Council known how much this would end up costing, the Town would not have agreed to move forward. Councilor Yakuboff stated that because Attorney Boutin is agreeable with the \$150 rate, he supports the rate at \$150. Councilor Dwyer echoed Councilor Yakuboff's comments.

**MOTION was made by Councilor Mahon and seconded by Councilor Flood to pay Attorney Boutin \$3,925.44 at a rate of \$150 per hour going back to February 2011. MOTION CARRIES 6-0-1 Councilor Koenig abstained**

### **Consideration of Tentative Agreement with the NEPBA Local 12**

*Submitted by Town Manager Eileen Cabanel*

The Town Council considered ratifying the Tentative Agreement for a one year contract with the New England Police Benevolent Association Local 12. Town Manager Eileen Cabanel explained that this group has been out of contract since June 30, 2011. She advised the Council that the main thing that she tried to achieve was to get some movement on the health insurance, particularly the mail order prescription program. She had hoped to get every group in under contract for one year while working together as a group with a consultant to find the best and most cost effective insurance. Town Manager Eileen Cabanel stated that the Town is forced to provide the exact same insurance benefits as was offered when the contract expired. Town Manager Eileen Cabanel explained that the agreements calls for a 1% wage adjustment (\$18,229), step increases (\$31,782), benefits (\$11,777) the employees would pay, and an additional \$8,000 towards health insurance. Town Manager Eileen Cabanel stated the net cost to the town of \$31,916.14. Vice Chair Boyd would like to see how this proposal impacts the tax rate.

**MOTION was made by Councilor Koenig and Councilor Mahon to accept the Tentative Agreement for a one year contract with the New England Police Benevolent Association Local 12 at a cost to the Town of \$31,916.14. MOTION CARRIES 7-0-0**

Councilor Koenig explained why he feels this is worth supporting and moving forward. Councilor Dwyer addressed the merit pay issue stating that merit pay is very important to the Council. He appreciated the concessions towards medical costs.

**MOTION was made by Vice Chair Boyd and seconded by Councilor Mahon to extend the meeting past 10:00 pm to take care of the minutes. MOTION CARRIES 7-0-0**

### **Minutes**

Approve the minutes from the December 1<sup>st</sup> and 15<sup>th</sup> Town Council meetings.

**MOTION was made by Councilor Mahon and seconded by Councilor Koenig to accept the minutes of the December 1, 2011 Town Council meeting after corrections. MOTION CARRIES 6-0-1 Councilor Yakuboff abstained**

- Vice Chair Boyd will provide staff with list of punctuation corrections
- Page 2 last sentence of the first paragraph strike in put insert input
- Page 2 7<sup>th</sup> line of the last paragraph strike page and insert Page
- Page 3 Town Manager report 5<sup>th</sup> bullet strike thanks and insert thanked
- Page 6 strike Rise insert Rize

**MOTION was made by Councilor Mahon and seconded by Councilor Koenig to accept the minutes of the December 15, 2011 Town Council meeting after corrections. MOTION CARRIES 7-0-0**

- Page 2 first bullet insert an apostrophe to Zyla's

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**Comments from the Press**

None

**Comments from the Public**

None

**Comments from the Council**

Councilor Flood is impressed with the quality of volunteers who are stepping up. She urged anyone interested to contact Town Hall.

Councilor Yakuboff thanked Town Manager Eileen Cabanel for her efforts in negotiating the union contract.

**Adjourn**

**MOTION** was made by Councilor Mahon and seconded by Councilor Yakuboff to adjourn the meeting. **MOTION CARRIES 7-0-0**

Submitted by Tracy Doherty