

Approved: January 10, 2013

Posted: January 11, 2013



Town Council Meeting Minutes



Thursday, December 6, 2012, at 7:00 PM, in the Matthew Thornton Room

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

Pledge of Allegiance

Chairman Mahon led in the Pledge of Allegiance.

Announcements

The next regular meeting of the Town Council will be conducted on Thursday, December 20, 2012 at 7:00 p.m. in the Matthew Thornton Room. In January, the budget review cycle will begin, and the Council will return to its regular meeting cycle of the 2nd and 4th Thursdays of the month. On Thursday, January 3, 2013 and Monday, January 7, 2013 budget meetings are scheduled at 6:00 p.m. in the Matthew Thornton Room. On Thursday, January 10, 2013 a regular meeting of the Town Council is scheduled for 7:00 p.m. in the Matthew Thornton Room. On Monday, January 14, 2013 and Thursday, January 17, 2013, budget meetings are scheduled at 6:00 p.m. in the Matthew Thornton Room.

Merrimack's property tax bills are due on December 10th. Property owners who have not received their tax bill should contact the Tax Collector's office at 424-3651 to arrange for a duplicate bill.

The Merrimack Police Department is accepting applications for the Citizen's Police Academy beginning in January, 2013. Please contact Community Services Officer Rob Kelleher. The Merrimack Police Department Holiday Food Drive is continuing. Please drop off non-perishable items in the lobby drop-boxes, through Christmas. The Police Department wants to remind everyone to keep their vehicle doors locked at night and when shopping. Also, keep valuables out of sight and packages locked in your trunk. Retrieve packages left outside on your doorstep, and be aware of suspicious vehicles or persons in your neighborhoods. Call the Police immediately if you have any concerns. The Merrimack Police Department is organizing the "Good Morning Merrimack" caller annual breakfast. For details or more information on the program contact Lt. Paul Trepaney.

Santa has asked for our help in surprising your children with a phone call this holiday season. If you would like to receive a call from Santa, please register for the Santa Calling program by December 14th. Santa Calling registration forms are available at the entrance table of Town Hall, at the Public Library, and can be downloaded from the Town website. Please call the Parks and Recreation Department at 882-1046 for more information.

Town Manager Cabanel informed the Council and the viewing public the Merrimack Library is open for business during regular hours. Power is back in the building, telephone service is restored, and the online Polaris catalog system is back on line. At present, it appears there was no physical damage to the Library, its equipment or its collection as a result of the recent incident. She thanked community members for their support and concern during this event, the Merrimack Fire Department and Merrimack Police Department for their quick response, and extended special thanks to everyone at the

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John O'Leary Adult Community Center and Librarian Ellen Knowlton for their collaborative work in moving Wednesday evening's program, "It's a Wonderful Life" to that venue.

Comments from the Press and Public

Debra Huffman, 60 Amherst Road

Extended her personal thanks to Mr. Powell for all he has done through the years, not only for the Town, but her personally. She remarked he has been her mentor and friend. She commented Mr. Powell was the one turned to by those who desired to be involved in public lands. He taught them a spirit of stewardship; something they could not have gotten from anyone else. He taught them when involved in the stewardship of publicly owned land; you have to do your best to balance the wishes of all residents understanding the varying views on how land should be managed.

Ms. Huffman stated she was asked to speak on behalf of Roland Roberge and Newt Coryell who could not be in attendance and wished to extend their gratitude to Mr. Powell.

Recognitions, Resignations and Retirements

1. Recognition of Andy Powell for his Service to the Town of Merrimack as a Member of the Merrimack Conservation Commission

Submitted by Town Council Chairman Tom Mahon and Vice Chair Finlay Rothhaus

The Town Council would like to recognize Andy Powell for his years of service to the Town of Merrimack as a member of the Merrimack Conservation Commission.

Chairman Mahon stated Mr. Powell sent his regrets he would be unable to be in attendance.

2. Recognition of the Retirement of Leonard Heath

Submitted by Human Resources Coordinator Sharon Marunicz

The Town Council will present a recognition plaque to Leonard Heath in recognition of his retirement from the Town of Merrimack Highway Division of the Public Works Department effective November 30, 2012. He has been employed by the Town of Merrimack Public Works Department since April 18, 1993.

Adam Jacobs, Operations Manager, Public Works Department, remarked Mr. Heath has stated he is too shy to appear before the Council to accept the plaque in recognition of his retirement, but wished to express his sincere gratitude for the honor.

Mr. Jacobs commented Mr. Heath came to the Town in 1993; his hiring sheet said he would be hired for an undetermined period of time due to the disability of another employee. He is a long-time resident of Merrimack, former Army Sergeant, and the go to welder and fabricator in the Highway Department. Mr. Jacobs expressed his wishes to Mr. Heath and his Wife for a happy and healthy retirement, and thanked him for his years of service.

Chairman Mahon extended his gratitude to both Mr. Powell and Mr. Heath for their service to the community, and wished them both well.

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Appointments

None.

Public Hearing

1. Rotary Club of Merrimack and The Friends of Kids Kove Donation

Submitted by Parks and Recreation Director Sherry Kalish

The Town Council will hold a public hearing to authorize and acceptance of a donation of up to \$8,000.00 from the Rotary Club of Merrimack and The Friends of Kids Kove to the Merrimack Parks and Recreation / Highway Department(s) for the future maintenance, equipment, supplies and upkeep of Kids Kove playground, pursuant to RSA 31:95-b and Charter Article 8-15.

Director Micali explained a Public Hearing is not required as the Rotary Club of Merrimack (Rotary) will retain the funds. When the need arises for maintenance to be performed or equipment purchased a request will be made of the Rotary for payment. Chairman Mahon commented the Rotary continues to make significant contributions to the Town and its residents. Councilor Koenig suggested the public be provided the opportunity to provide comment given notice was made of a Public Hearing.

Chairman Mahon opened the floor to public comment.

Mr. Peter Giacapuzzi, Rotary Club of Merrimack

Stated the Rotary is pleased to be able to give the Parks & Recreation Department a donation of \$8,000 for any maintenance items required at Kids Kove.

2. Proposed Charter Amendment – Article VII, Section 7-7, Administration of Government

Submitted by Town Council Chair Tom Mahon

The Town Council will hold a public hearing to consider the recommended proposed amendment to Article VII, Section 7-7 – Administration of Government, of the Town of Merrimack Charter, pursuant to New Hampshire RSA 49-B:5.

Chairman Mahon opened the public hearing at 7:22 p.m.

Chairman Mahon explained the Amendment is to delegate the duties and responsibilities of Cemetery Trustees to the Town Manager. Copies of the proposed changes are available at the Town Manager's Office, the Town Clerk's Office, the Merrimack Public Library, and the Town's website.

The Board of Cemetery Trustees demised in 1971 for a reason the Council could not discern from available records. The positions have not been filled since despite the fact, by State law, the Town is required to have a burial site and a Board of Cemetery Trustees. The issue was brought to the forefront after a request of a resident to obtain a burial plot in one of the older cemeteries. Upon review, cemetery records were found to be complete and incomplete, accurate and inaccurate. The Charter Amendment is put forth as a means of complying with State law (RSA 289), and to provide for a mechanism for recommendations to be made to the Council regarding the administration of the cemeteries.

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

Chairman Mahon closed the public hearing at 7:25 p.m.

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Chairman Mahon noted the final reading would take place at the Council's December 20th meeting. At that time, a decision will be made as to placement of the Charter Amendment on a Warrant Article for action by the voters in April.

Councilor Koenig requested clarification on the notation included in the letter to the Council, which reads: "Within seven (7) days after the hearing, the Council must order the proposed Amendment be placed on a ballot for the April 9th election." Chairman Mahon suggested if a motion were made and passed to waive the rule for the second reading, a subsequent motion could be made to order the proposed Amendment to be placed on the ballot.

MOTION made by Councilor Boyd and seconded by Councilor Koenig that the rules be so far suspended as to waive the second reading. MOTION CARRIED 7/0/0

MOTION made by Councilor Boyd and seconded by Councilor Rothhaus to order the proposed Amendment to be placed on the ballot for the April 9th election. MOTION CARRIED 7/0/0

Legislative Updates from State Representatives

None.

Town Manager's Report

Atrium Medical received conditional approval from the Planning Board for their modification to the June 2012 conditionally approved site plan, bringing their addition to the existing building at 40 Continental Boulevard to 100,800 sq. ft. It is expected the plans will be signed by the Board this month, which will allow the commencement of construction on the site soon thereafter. Town Manager Cabanel spoke of an article in the Nashua Telegraph regarding Atrium's intent to add hundreds of new jobs to the community.

Also on December 4, the Planning Board accepted jurisdiction for both a subdivision of the property and construction of a 120,000 sq. ft. high-bay warehouse/office/flexible industrial building at the Flatley site off of D.W. Highway (near Saint-Gobain). The public hearings for both projects have been scheduled for February 5, 2013.

The Planning Board also heard presentations on the Capital Improvements Plan from the Town Manager and Finance Director, have assigned their suggested priorities to the projects, and will be forwarding that information to the Council shortly.

Councilor Koenig clarified both of the above-mentioned applications before the Planning Board were continued until the Board's February 5, 2013 meeting. Although not formal public hearings, the Planning Board always accepts public input.

Consent Agenda

None.

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Old Business

1. Dog Park Location

Submitted by Parks and Recreation Committee Chairman Tom Thornton

The Parks and Recreation Committee to update the Town Council on the Dog Park location in Merrimack, as requested at the October 25, 2012 meeting.

Laura Jaynes, Secretary, Parks and Recreation Committee thanked the Council for participating in the site walk conducted at Wasserman Park, and noted the Committee met on November 14th and reached consensus Wasserman Park is a suitable location for a dog park. She requested the support of the Council.

Chairman Mahon remarked the dog park would be located at the south end of what is referred to as the non-resident parking lot. Ms. Jaynes stated the location would be safe, is a popular choice away from the main road, close to parking, located near a public restroom, buffered on three sides by trees, and has Town staff onsite most of the year.

Vice Chairman Rothhaus stated his belief the proposed area would work out nicely. Ms. Jaynes noted the subcommittee has also visited the proposed site and is in agreement. Chairman Mahon noted improvements will be made to the parking area, which has been used, in the past, as a stockpile area.

Councilor Boyd remarked the location had to provide a level of accessibility for families, parking, and above all safety. He commented the proposed lighting will benefit the dog park as well as other users of the site. He stated the Council has attempted to find ways to make Wasserman Park a more viable place to congregate and recreate in the community, and he believes those efforts are beginning to take fold with the placement of the dog park at this location. He added the ability for residents to partake in the various activities available at Wasserman Park and walk across the lot to the Quarry Trail and gain access to the Horse Hill Nature Preserve is a nice added benefit. He thanked the Committee its work.

Councilor Dwyer expressed his gratitude for the Committee's efforts and their willingness to work with the Council in identifying what he believes to be the best location for the dog park.

MOTION made by Councilor Boyd and seconded by Councilor Dwyer to accept the Park & Recreation Committee's recommendation to have a dog park at Wasserman Park.

ON THE QUESTION

Councilor Boyd remarked several months ago he and Councilor Dwyer changed their position as they felt the originally proposed location was not the most appropriate and wished to consider alternatives. He commented, at tremendous political risk, Councilor Flood was supportive of giving consideration to alternative locations. He stated he would be remiss if he let the opportunity go by without recognizing the leadership she showed. He thanked her for her actions and stated his belief the community will be well served by having a great facility in its downtown known as Watson Park and an even better facility for its dogs up at Wasserman Park.

Councilor Koenig questioned whether the Council was taking on any financial impact on the effort or if it was simply making a statement of support. Town Manager Cabanel noted the total cost of the project is not yet known. She stated her preference for the Council to postpone identification of

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funding until the end of the fiscal year. It is hoped, at that time, knowledge would be gained of associated costs as well as any unencumbered fund balance from FY13.

As a means of adding safety and security to the area, two additional PSNH lights are proposed in the parking lot area (\$1,400 installation/monthly maintenance charge of \$24.30 for all night operations and \$21.51 for illumination beginning at midnight). Town Manager Cabanel stated her desire to bring all associated costs forward for consideration at the end of the current fiscal year. Chairman Mahon remarked there are other associated cost items, most of which are intended to be covered through fundraising efforts, which would have to come before the Council for acceptance.

Councilor Dwyer stated his belief the motion is to make a commitment to the location, which would allow the Park & Recreation Committee and other volunteers to concentrate fundraising efforts. Councilor Flood stated she had anticipated the Council would make a motion of support for the location. She commented Director Seymour has stated his belief the trees required to be removed could result in revenue. She also stated her belief the Dog Park Subcommittee would work on rules that would govern the ongoing running of the park, and that the Parks & Recreation Committee would identify a budget.

MOTION CARRIED 7/0/0

New Business

1. MCC Membership Status Change

Submitted by Town Council Chair Tom Mahon

The Town Council to consider the acceptance of Merrimack Conservation Commission member Robert Croatti's request to change from full member status to an alternate member status, pursuant to Charter Article 4-8.

Chairman Mahon stated Robert Croatti, a full member of the Merrimack Conservation Commission, wishes to change his status to that of Alternate Member. Councilor Boyd questioned whether an alternate position was available, and was informed an alternate position was made available upon the resignation of Mr. Powell.

MOTION made by Councilor Boyd and seconded by Councilor Harrington to accept the request of Robert Croatti to change his status from full member to alternate member pursuant to Charter Article 4-8, with regret. MOTION CARRIED 7/0/0

2. Road Acceptance of Portside Drive

Submitted by Public Works Deputy Director Kyle Fox

The Town Council to consider the recommendations from the Planning Board and the Public Works Department to formally accept Portside Drive, pursuant to Charter Article 4-8 and Subdivision Regulation Section 5.01.1 (f).

Kyle Fox, Deputy Director, Public Works Department, stated Portside Drive is a subdivision road, part of the Holt's Pond Estate subdivision, which is off of Tinker Road in the south end of Town. Construction on the road began last December and was completed this October. Upon final inspection, the Public Works Department forwarded a recommendation to the Planning Board to release the performance bond in favor of a two-year maintenance bond. At the November 13th Planning Board meeting, the Board took that action. They also took action, in a unanimous vote, to recommend the Town Council's acceptance of Portside Drive. Councilor Dwyer stated, after visiting the site, he

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noticed the top coat had not been placed on the pavement. Deputy Director Fox stated that work has been done and the road is complete.

When asked what maintenance would occur, Deputy Director Fox stated when a developer builds a road the Public Works Department does complete inspections; however, cannot provide full-time inspection on any project. There is a certain level of trust that the developer will construct the project correctly. The process, as outlined in the subdivision regulations, is for the developer to post a two-year maintenance bond in the amount of 10% of the original bond amount for the project at the completion of the road. As the end of the two-year maintenance bond approaches, the Public Works Department conducts a follow-up inspection. If the road has performed well and there are no deficiencies, the bond amount will be released to the developer. If deficiencies were noted, the developer would be asked to address them. The maintenance bond provides the assurance that after two years, the road remains in good condition.

**MOTION made by Councilor Koenig and seconded by Councilor Dwyer to formally accept Portside Drive, pursuant to Charter Article 4-8 and Subdivision Regulation Section 5.01.1(f).
MOTION CARRIED 7/0/0**

3. Release and Expenditure of Drug Forfeiture/Asset Fund for the Merrimack Police Department

Submitted by Captain Mike Dudash and Chief Mark Doyle

Consideration to allow the Police Department to expend the amount of \$19,995.80 from the Drug Forfeiture/Asset Fund to upgrade/improve and/or replace communications equipment for the Police Department.

Chief Mark Doyle, Merrimack Police Department, stated he and Captain Michael J. Dudash were before the Council to request permission to release and authorize the expenditure of asset forfeiture monies in the amount of \$19,995 for the purpose of radio repairs and upgrades to the current radio system.

Captain Dudash informed the Council the radios and microwave systems have been degrading over the past couple of years. With the help of the vendor, Ossipee Mountain Electronics (Ossipee), they have continued attempts to repair the systems; however, have reached the point where repairs are no more than band-aids. The console itself (at the station) requires an upgrade at a cost slightly over \$4,000. The microwave system (begins at Police Station and heads out to the Hutchinson Road tower) is also failing. As a result of all of the recent storms, the department is down to one of the two units working properly. There is no backup system in place. If the system were to go down, the department would be in a state of emergency; arranging for a system to be set up could take hours or a full day.

He remarked Mr. Marchesseault, an employee of Ossipee, has been working with the system for years, knows it inside and out, and has stated the need for the system to be upgraded. An upgrade was considered a few years back and pushed out to FY16 with the hope the system would hold on until that time. At present, the system has been reduced from digital to analogue. On top of the microwave being replaced and the console upgraded, Mr. Marchesseault has suggested the antenna be replaced (approx. 2 years outdated). While performing the analysis, Mr. Marchesseault took note the batteries in the repeaters (located at three sites) are near expiration (approx. \$265.00).

Captain Dudash spoke of situations that have occurred over the past three months where communications with officers on the street have been lost (6-7 dropped calls per shift), and stated it is

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a public safety issue. Chief Doyle remarked in the event the microwave goes down, the department would have to go back to a point in communications where they were over 20 years ago when they had no repeater system. The lines that were formerly used for the repeater system were replaced with the microwave so that a system would be in place that was operationally self-sufficient, e.g., would not be effected by downed phone lines. The microwave is a point-to-point piece.

He explained further normally in each end of that link you have a redundant board in the system and the redundant board is simply replaced when one goes out. Because it is original equipment from 12-15 years ago, they cannot locate replacement boards any longer. The vendor has stated the need to upgrade, which is what they are looking for now as a replacement. Basically what is being proposed is instead of doing a console upgrade as one larger project in 2016, a small piece of it (microwave) is being replaced now. Chief Doyle remarked because of the weakness of the antenna it is kicking back power to the transmitter and clouding the transmission power of the repeater at the site, which becomes problematic. They are hopeful repairs would be able to be in place by the end of the month.

Councilor Harrington questioned, as a matter of policy, whether bids are required given the dollar amount involved. Director Micali stated, in this instance, it is a sole source vendor. Councilor Boyd questioned the current balance of the forfeiture account. Director Micali stated it to be approximately \$28,000. He noted the account would be replenished somewhat through upcoming events, e.g., auction, seizures, etc. Councilor Dwyer questioned the lifespan of the equipment. Chief Doyle was unsure and stated an answer could be provided. Chairman Mahon commented, having been told a few years ago replacement should be considered, it is likely the lifespan is approximately ten years or perhaps less given the pace of technology.

When asked if the communication system functions on two antennas, Chief Doyle explained the way the system is set up is on a repeater system. The repeater is located at the highest point in town, which is the top of the tower at Hutchinson Road. When a microphone on a radio is keyed in a car or on a portable, that radio signal goes to what is called a voter. There are five voters in town; Police Station, Reeds Ferry Fire Station, Parker Road, Hutchinson Road, and South Fire Station. The reason they call it a voter is because the repeater actually finds the strongest signal from the voter that is picking up the strongest signal from the radio it is being transmitted on. When the Police Station keys its microphone in the console it takes that signal, hits the microwave on the top of the station, shoots that signal to the repeater at the Hutchinson Road tower, and then repeats it to everyone out there. The radio at the police station doesn't use the voters it actually receives the signals from the voters through the repeater. The radio system at the station uses the repeater to push that signal back out to all of the portables and radios.

Councilor Boyd questioned whether there are a sufficient number of antennas in Town or if it is believed, down the road, more antennas would need to be strategically placed. Captain Dudash noted the department is looking at a federal grant to fund an additional voter to be located at the mall. That would cover the southeast part of town. Although there is coverage in that area they have experienced a good many dropped calls, e.g., when the Fire Department goes to that area they have to change to what they call a ground channel because of the lack of voter in that area. He spoke of a partnership being formed between the Police Department, the Fire Department, and the mall to identify federal dollars to pay for an additional voter. When asked about matching funds, Chief Doyle stated there would be no match. The department will likely know whether their efforts are successful by the end of the current fiscal year, e.g., prior to the next budget cycle, it will be known whether or not an allocation would be necessary. When asked, he stated a rough estimate of the cost would be \$8,000 - \$10,000.

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Vice Chairman Rothhaus stated, for him, it is critical to know the assets that have been taken through forfeiture have been taken as a result of their being achieved through ill-gotten gain, and that the individuals from whom assets were taken were all found guilty of the felonies they were charged with. Chief Doyle responded the large cases they have received some monies from (dating back to 2008) were all found guilty at the State level of felonies for conspiracy to sell controlled drugs. He added it is important to know once these individuals are targets of the government for the purposes of asset forfeiture they are not deprived of any due process rights in the procedure, meaning just because they are served a notice that some of their assets that may have been purchased or received as a result of any illicit profiteering from either gambling or the sale of narcotics, are still subject to due process procedures put in place for folks that would otherwise be accused of any criminal wrong doing, e.g., they have the right to be confronted by their accusers, the right to cross examine evidence, etc.

Vice Chairman Rothhaus remarked having sat on a subcommittee dealing with asset forfeiture, he is aware of situations such as one where an individual was charged with a felony in trafficking, went through the court process, and was found not guilty of trafficking and instead found guilty of a misdemeanor of possession. The government continued their forfeiture proceedings, which is a civil case, and the individual had to spend monies out of his own pocket for legal representation. He commented if the individual is guilty of a felony charge it is very appropriate; however, if found not guilty he has heartburn over it.

Councilor Flood questioned whether money and/or goods are received in advance of a guilty verdict. Chief Doyle responded in some cases yes, and that is only as a result of the process having run its course. There can also be instances where the individual chooses not to exercise due process rights or fight the asset forfeiture process, in which case assets are turned over to the State or the Federal Government right away. The guidelines are very strict when it comes to asset forfeiture, e.g., notice be served to persons whose assets are going to be forfeited immediately (at time of arraignment).

Vice Chairman Rothhaus questioned whether, in such a case, the individual would have been found guilty at that time. Chief Doyle responded that would depend on whether or not they chose to exercise their right to have those assets go through due process, meaning they desire a hearing and to hire their own attorney. It is a civil process on the asset forfeiture side. Assets could be turned over long before the criminal case was adjudicated if that is what they so choose. It is strictly up to the individual who is served the notice of asset forfeiture.

Vice Chairman Rothhaus spoke again to his example, and added, in that case, the individual was charged with a felony of trafficking and found not guilty. He was found guilty of a possession charge as the result of having a small amount of marijuana in his bedroom. His house was taken. The house was not purchased with ill-gotten gains because there were no ill-gotten gains.

Captain Dudash remarked if it is not a felony they are not looking for the individual's property, and if it is not clear and convincing for the level of proof needed, they would not go for the property. Councilor Flood questioned if the assets could be held until such time as they are able to understand the outcome. Chief Doyle responded because forfeiture guidelines are so strict and need to be strictly adhered to, you actually have to put the person on notice that we are going to go through the process to seize assets. That process has to be started immediately. They cannot hold assets until the case is resolved. Because the process is so strict in terms of timelines the ball starts rolling for the asset forfeiture piece separate and aside from the criminal proceeding.

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Director Micali noted the funds are not turned over to the Town until a ruling is received from the Court, e.g., everything remains in evidence until there is a defined final ruling from the Court. Chief Doyle stated that to be the case.

MOTION made by Councilor Boyd and seconded by Councilor Flood to allow the Police Department to expend the amount of Nineteen Thousand Nine Hundred Ninety Five Dollars and Eighty Cents (\$19,995.80) from the Drug Forfeiture/Asset Fund to upgrade/improve and/or replace communications equipment for the police Department, and furthermore that the Town Manager, Finance Director or their proxy thereto be authorized to sign any and all documents to effectuate the transaction. MOTION CARRIED 6/1/0

Councilor Rothhaus voted in opposition.

4. MCC Land Purchase

Submitted by Conservation Commission Chair Tim Tenhave

Merrimack Conservation Commission seeks Town Council approval to utilize conservation funds in the amount of \$15,000.00 for the purchase of property located off of McElwain Street, Tax Map Parcel 5D-4/100.

Tim Tenhave, Chairman, Conservation Commission, spoke to the work being done at the dog park and suggested the Council may want to consider doing other forestry projects while the tree cutting is occurring. It is evident the forest in that area has had troubles and needs some thinning. He suggested it would be beneficial if disturbance of the area could be limited to one occasion. He also suggested the Commission's Forester may be able to identify an opportunity to mix this project with another in the area as a means of achieving cost savings. He offered to help coordinate such an effort. Chairman Mahon requested he pass the suggestion along to the Parks & Recreation Commission as well.

With regard to the land purchase request, Mr. Tenhave informed the Council the Commission conducted the required Public Hearing several weeks ago. The Council's approval is necessary for the expenditure of monies from the Conservation Fund (RSA 36-A:4).

Director Micali informed the Council the Conservation Commission negotiated with the property owner to purchase the land for a purchase price of \$15,000. After costs associated with the sale (taxes, etc.) the property owner will receive a check from the Town in the amount of \$12,000. Mr. Tenhave stated prior to this year's assessment (\$100,000) the land was assessed at \$10,000. It was this year that it was realized the property has attributes such as a right-of-way (up to McElwain Street). When the assessed value was questioned, it was noted it was previously believed the property was landlocked.

The parcel is .92 acres in size. North of the parcel is the lower ball fields of the Merrimack High School. The area to the right of the parcel is no longer wet (behind fire station). When asked about the triangular parcel to the west (coming off of East Chamberlain) and whether it is school district property, Mr. Tenhave responded it is currently believed to be. He added it is believed the triangle designation came into existence by human error as the GIS system was put in place. He noted a review of the GIS system indicates the parcel is owned by a particular individual in the condominium development at the opposite side of the river. A review of plans for activities that occurred shows none have ever included a parcel across the river and no one on that side of the river ever believed they owned that portion. There is also a PSNH easement in the area. Markings for the easement were shown in dash lines in old maps, and it appears somehow the dash line became a solid line and lead to some confusion.

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At present it is believed to be School District land; however, the question has not yet been completely resolved. It was noted the School District is the owner of the land all around the property to the east. When asked how the right-of-way came about, Mr. Tenhave stated his belief it may date back to the '60s. Councilor Flood stated her understanding you cannot sell property without giving any landlocked piece a right-of-way. Councilor Harrington remarked she was on the Merrill Marauder's Pedestrian Bridge Committee and remembers the status of the parcel was unclear back then. She stated her pleasure with the proposed purchase of the property as well as the purchase price.

Councilor Dwyer commented, at first glance, citizens might question why the Town would desire to own the property; however, the fact remains if the landowner wished to construct a fence, it would block any future trail. He stated his support of the requested purchase.

Mr. Tenhave remarked an additional benefit to ownership would be the ability for the School District to place a storage structure, etc. in the area of their ball fields. He also spoke of educational opportunities that would be provided with ready access to the river. Ownership of the property would allow for the conservation of a precious piece of land along the riverbank. The property has the deeded right-of-way access to the river, and helps fill in a piece of a link, which is part of a long-term plan for a Town center trail. He provided a copy of the Town Center Master Plan, which identifies the location of the parcel, and explained the connectivity the parcel would provide for the trail.

MOTION made by Councilor Harrington and seconded by Councilor Boyd to authorize the Conservation Commission to utilize conservation funds in the amount of Fifteen Thousand Dollars (\$15,000.00) for the purchase of property located off of McElwain Street, Tax Map parcel 5D-4/100 and furthermore that the Town Manager, Finance Director or their proxy thereto be authorized to sign any and all documents to effectuate the transaction. MOTION CARRIED 7/0/0

5. Review of Quarter Ending September 30, 2012 Financial Statements

Submitted by Finance Director Paul T. Micali

Finance Director Paul Micali will review the key financial information for the first quarter of the 2012/2013 fiscal year.

Director Micali provided a PowerPoint presentation outlining the financial statements for the first quarter of FY13. The 2011/2012 audit was just completed and resulted in a clean opinion. He noted a few management items for review were received most of which deal with new regulations the Government Accounting Standards Board (GASB) has put in place. He commented there will come a point when the Fund Balance Policy will be reviewed to update it with new designations for terms such as "unreserved fund balance", etc.

Speaking to health insurance, Director Micali stated last year's Guaranteed Maximum Rate (GMR) was 5%. The FY14 GMR is 15.6% to 15.8%. He commented five years ago and through the first quarter of FY09 the Town experienced a cost of approximately \$600,000. In the first quarter of FY13 the Town's cost was \$717,000, and is on track to expend approx. \$2.8 or \$2.9 million for the year. Anticipated cost for FY14 is in the area of \$3.2 to \$3.5 million.

With regard to the New Hampshire Retirement System, the Town is in the second year of a contract where some spikes will occur. The increase in the Police Department is the result of an increase in overtime as well as the new contract, e.g., some benefits have gone up as well as step increases. In the

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Fire Department the increase is related to overtime. In FY14 another spike is anticipated due to the State raising the contribution rates for towns.

Director Micali reiterated overtime for the Police Department is increasing. He noted the department is experiencing difficulties filling positions for special police officers. As a result the shifts are being filled through overtime. The increase in overtime for the Fire Department is significant (\$55,000). A grant was approved that will cover \$45,000 of that cost; however, the funds have not yet been received from the State. Once received an adjustment will be made.

When asked, he stated the figures to be first quarter only. When asked how the Town is tracking with budgeted funds, Director Micali responded through efforts being made, e.g., the Fire Chief has made some changes in the way overtime is computed, etc., they are hoping to come in on budget. Similar efforts are being made with the Police Department. Other departments are tracking on budget. If additional funds are needed departments are tasked with identifying monies within their existing budget to offset costs.

Speaking to the Revenue Comparison, Director Micali stated if the Town is short in the area of revenues attempts are made to make that up through savings in appropriations. There are three components to revenue outside of the tax base; auto registrations, building permits, and interest. Pooled interest is an area in which the Town is at the mercy of the banks and the Federal Reserve. The Town is performing better in this area and is almost level with FY11 for interest income (approximately \$45,000). He noted the Town has significant funds in the bank beginning July 1st (over \$20 million) and anticipated receiving approximately \$45,000 in interest in the first quarter. He spoke of low interest rates (.15%) and commented a bank recently came in with an interest rate of .37% on a 90-day Treasury Bill, which is a much greater interest rate than can be earned on monies held in a savings account. Interest rates simply are not there.

Vice Chairman Rothhaus questioned how often the Town goes through the process of shopping banks. Director Micali stated he speaks with the major players in banking quarterly, and with his counterparts to see what they are achieving for rates. He follows the investment policy and tries to get guaranteed money, meaning collateral paper, e.g., if a million dollars is placed in a bank he wants that bank to buy insurance in another bank so that if something were to occur with the bank the Town's money is secured. As a result of requiring banks to buy collateral, interest rates are lower. Vice Chairman Rothhaus questioned the ability to do business with credit unions, and was informed that is not allowed by State Statute.

Director Micali noted building permits have remained steady over the last couple of years. With new businesses coming into town he foresees the revenue number identified in the FY13 budget being reached. The major item is auto registrations (approx. \$3.8 million). He stated a concern with the figure as the Town has dropped back to pre-2008 numbers on auto registrations (around \$950,000). He noted this revenue stream represents nearly half of the total revenue stream.

At present, the Town has sufficient appropriations, revenues are tracking closely and believed sufficient. In the event they come up short, every effort will be made avoid the need to utilize fund balance.

The Council recessed at 8:50 p.m.

The Council reconvened at 8:55 p.m.

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6. Presentation of Proposed 2013/14 Town Manager Budget

Submitted by Town Manager Eileen Cabanel

Town Manager will present her recommended 2013/14 budget to the Town Council.

Director Micali noted every \$28,900 increase to the budget represents a \$.001/\$1,000 increase on the tax rate.

Town Manager Cabanel noted a great deal of the budget is prepared by the Finance Office, e.g., salary information, fuel rates, etc.

The following increases are known: health insurance (\$470,155), retirement (\$361,235), workers compensation (\$22,838), and property liability (\$15,720) for a total increase of \$869,948.

Adjustments/reductions made to the proposed budget since the last presentation to the Council were identified as: Compensated Absences (\$26,640), Sand & Salt - Highway (\$50,000), Fire Reorganization (\$15,000), Library (\$52,000), Elections - General Government (\$5,000), Police Reorganization (\$15,000), Special Police Officers (\$12,000), Overtime Solid Waste (\$15,000), Paving - Highway (\$100,000), Debt Services (\$10,078), Equipment Operator I - Highway (\$60,000 through attrition), Part-Time Fire (\$10,000), Copier - Assessing (\$5,000), and Education (IT) – General Government (\$5,000) for a total reduction of \$370,718.

Adjustments made in the area of revenue were identified as: Valuation Increase (\$58,000; mall was valued at 85% as of April 1st), Insurance Rebate (\$75,000; funds contributed by employees are required to be repaid), and Media Fund (\$68,000; 20% of cable franchise fees will be placed in the general fund) for a total increase in anticipated revenue of \$201,000.

The resulting budget shortfall, before the tax increase, is \$298,230 (\$.10 tax increase or \$290,000). The total budget shortfall, after the tax rate increase, is \$8,230.

The Town has been carrying a revenue estimate of \$300,000 (interest) each year. What is being achieved is in the area of \$100,000. As a result, the proposed budget was reviewed with the intent of reducing appropriations. The resulting changes are as follows: reductions in Legal - General Government (\$20,000; reduction in legal fees due to not requiring the presence of the Town attorney during negotiations), Computer Exp. - General Government (\$15,000; the decision has been made to move more slowly in terms of funding for licenses, etc.), GIS Upgrade - Community Development (\$32,000; being delayed by 1 year), Computer Maintenance Communication (\$2,000), Cellular Devices Communication (\$2,000), Operating Equipment PWD Administration (\$3,000), Overtime Supervisor Highway (\$2,000), Overtime Other Highway (\$10,000), Hot Top - Highway (\$3,000), Equipment - Highway (\$2,000), Special Waste Disposal - Solid Waste (\$4,000), Full-Time to Part-Time – Community Development (\$56,000; secretarial position - through attrition), Tipping Fees Highway (\$6,450), Overtime Other Parks & Recreation (\$1,100), Electricity Parks & Recreation (\$2,200), Reorganization due to retirement - Highway (\$5,000), Equipment - Equipment Maintenance (\$3,000), and Housing - Welfare (\$4,000). An increase of \$4,000 was made to Other - Solid Waste. These changes resulted in a reduction to the proposed budget of \$168,750.

Town Manager Cabanel spoke of spreadsheets given to the Council that provide information in a format whereby a year-to-year comparison can be viewed as well as the opportunity to more easily identify monies appropriated and expended from the general fund (which is what is used to determine

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the tax rate separate from those associated with Capital Reserve Fund deposits, Other Capital (3 police cruisers), Capital Reserve Fund Expenditures, and Road Infrastructure to identify the allocations requested to the general operating fund (\$20,569,752). Also provided was information relative to the self-supporting funds, e.g., fire protection district, wastewater fund, etc. Those accounts have separate funding mechanisms.

The slide entitled "Appropriations General Fund" provides a comparison between FY13 and proposed FY14 appropriations (general fund allocations only) to outline where increases/decreases are proposed. Town Manager Cabanel reiterated what will be seen throughout the budget is the impact of the significant increase in costs associated with both health insurance and retirement.

With regard to the stated reduction in the Parks & Recreation Department (\$28,291), Town Manager Cabanel noted a review of expenditures for that department resulted in relocation of some items, e.g. expenses associated with the day camp are now identified within the line items for the day camp, etc. The reduction in the Library budget (\$50,480) can be traced back to the hiring of a new director at a different salary level and change in the custodian position from full-time to part-time. The reduction in the Community Development Division is the result of a change in the full-time position to part-time as well as the delaying of the GIS system upgrade.

The resulting proposed FY14 budget is a \$367,953 increase over FY13.

Town Manager Cabanel explained Capital Reserve Funds (CRF) are monies that have already been raised and are placed in an account to cover the costs of approved expenditures. The chart provided identifies expenditures from CRFs for FY13 (\$2,696,423) and proposed for FY14 (\$1,201,000).

Councilor Koenig stated his belief, by vote at town meeting several years prior, the Town is required to deposit monies into the Fire-Ambulance fund each year. Town Manager Cabanel stated she is not aware of such a requirement; however, would look into it. Chairman Mahon stated his recollection any insurance payments for ambulance transport could be set aside and used to build up the Capital Reserve Fund. He was unsure whether a specific dollar amount was identified.

A chart was provided detailing beginning balances, appropriations, expenditures and ending balances for FY13 and those proposed for FY14. A separate chart depicted proposed purchases through the use of Capital Reserve Funds. When asked if she anticipated a continued reduction in Highway Block Grants, Town Manager Cabanel responded the lien item has been reduced somewhat (approx. \$10,000). She noted it may be necessary to come back before the Council if that revenue source is reduced. It is not yet understood what the State will be passing down to the Town. Chairman Mahon remarked that will not be known until June.

2013 Proposed Tax Rate; total appropriations (\$28,687,902) less non-tax revenues, capital reserve fund withdrawals, and self-supporting funds (\$14,521,323), plus overlay for abatements (\$325,000) and Veterans' credits (\$712,000) results in the amount to be raised by taxes: \$15,203,579. When divided by the value of the Town \$2,894,059,602, the estimated increase is \$5.25 (Town only).

Town Manager Cabanel spoke of pending issues such as changes that could occur in Concord (new biennial budget). With the current figures, that tax bill for a property having an assessed value of \$300,000 would be \$7,029, which can be broken down into the following categories: School; 72.73% (\$5,112), Municipality; 22.36% (\$1,572), and County; 4.91% (\$345).

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Vice Chairman Rothhaus questioned the increased tax revenue that would be generated by the mall (assessed 15% higher in FY14), and was informed the Town portion of the increase would be \$58,000. Vice Chairman Rothhaus questioned the use associated with the CRF for Land Bank (\$412,238). Director Micali stated that fund could be used for municipal property, e.g., expanding the Town Hall complex or purchasing land for a municipal building.

Councilor Koenig questioned why salaries were not included under the topic of pending issues. Town Manager Cabanel stated the Town is currently in negotiations for 6 union contracts. She remarked it is hoped health insurance savings can be balanced with wage increases; however there are also steps involved, which would require additional Warrant Articles that could quite possibly increase the tax rate the taxpayers would vote on. It was noted the budget does not include salary increases for non-union employees.

Councilor Dwyer remarked a few months earlier the Council was informed, if nothing were done, the budget would increase over \$800,000. The administration was asked to make cuts to reduce that amount. That figure has been reduced to \$367,953. He commented the most important number that he sees is the general operating fund, which is identified as \$20,201,799. If the proposed budget were accepted, the FY14 operating budget would be \$20,569,752. He questioned what the resulting increase would be for a home assessed at \$300,000. Director Cabanel stated it to be \$33.00 (1.5%). Councilor Dwyer applauded the efforts of the administration.

Chairman Mahon noted there would be a great deal of changes to the budget between now and the deliberative session in March.

Minutes

Approve the minutes of the November 15, 2012 Town Council meeting.

MOTION made by Councilor Boyd and seconded by Councilor Dwyer to approve the minutes of the November 15, 2012 Town Council Meeting as presented. **MOTION CARRIED** 5/0/2
Councilors Harrington and Koenig abstained.

Comments from the Press

None.

Comments from the Public

None.

Comments from the Council

Councilor Flood remarked Mr. Andy Powell served on the Merrimack Conservation Commission for 15 years, and commented if you have ever walked at the Horse Hill Nature Preserve or Grater Woods you are participating in his wonderful work. She stated Mr. Powell has been a remarkable steward of the land and is a very knowledgeable Forester.

She stated the Council chose not to renew Mr. Powell's appointment as a full member, which came as a surprise to her and others. Since that time she has had the opportunity to speak to individuals who have provided differing versions of the facts than were given the Council. She stated her belief, had the Council been provided additional time to gather information, Mr. Powell would still be serving in

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the capacity of Chairman of the Merrimack Conservation Commission. She stated her hope this action will not be a bad legacy and prevent another dedicated volunteer from stepping forward.

Councilor Koenig spoke of the forward progress being made by Atrium at 40 Continental Boulevard; more than doubling the size of the building. He commented he is looking forward to Atrium becoming part of the Merrimack community.

Councilor Dwyer noted several Councilors attended the Grand Opening of the Holiday Inn Express, and recommended the facility highly.

MOTION made by Councilor Koenig and seconded by Councilor Harrington to adjourn the meeting. MOTION CARRIED 7/0/0

The December 6, 2012 meeting of the Town Council was adjourned at 9:35 p.m.

Submitted by Dawn MacMillan