

Approved: August 16, 2012

Posted: August 21, 2012



Town Council Meeting Minutes



Thursday, July 19, 2012, at 7:00 PM, in the Town Hall Meeting Room

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

Pledge of Allegiance

Chairman Mahon led in the Pledge of Allegiance.

Announcements

The Town Council has amended its regular meeting schedule for the month of August and will resume meeting on the 2nd and 4th Thursdays of the month in September. The meeting schedule is as follows: Thursday, August 16, 2012, September 13, 2012, and September 27, 2012 at 7:00 p.m. in the Town Hall Meeting Room.

Town Manager Eileen Cabanel informed the Council and the viewing public of events taking place at the Merrimack Public Library in the coming weeks. A Storytime lunch will be conducted at Abbie Griffin Park on July 23, 2012 from 12:00 - 1:00 p.m. for children of all ages. On July 25, 2012, from 6:30 - 8:00 p.m. there will be an Open Mic for teens and tweens to sing, play instruments, and read poetry. That night, the photography contest winners will be announced. On July 28, 2012, from 10:30 a.m. - 12:30 p.m. children of all ages should come dressed as their favorite Star Wars character and be eligible for prizes.

The Parks & Recreation Department is co-hosting a Block Party with WZID Radio on Tuesday, August 7, 2012 at Wasserman Park. Music, food, and entertainment will be provided at this mid-summer break.

Comments from the Press and Public

John Diggins, 6 Birchwood Drive

Speaking with regard to the appointment of Mr. Powell to the Conservation Commission, Mr. Diggins noted he has been a member of the Conservation Commission for approximately 3 years and has found the experience to be educational in that he has learned about governance as well as himself, and thanked the Town for the opportunity.

He stated a desire to publicly thank Mr. Andy Powell, as a citizen and a member of the Commission, for all that he has done. He remarked there are green spaces, open spaces, and forestry in the Town that would not have been possible without his efforts. He thanked Mr. Powell for all he has taught him and commented there is no other member of the Commission, at present, that has the amount of expertise in best management practices, forestry management, habitat creation, restoration, and all other aspects of conservation the Commission is involved in.

He commented Chairman Mahon once told him reasonable people can disagree reasonably, which is a statement he wholeheartedly agrees with. He stated one of the lessons he has learned is when politics

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enters the fray, arrogance, ego, and desire for vengeance also come into play. He stated, if tonight members of the Council dismiss Mr. Powell from his volunteer position after 12 years of devoted service, politics wins and reason goes out the window. He stated his hope the Council, with wisdom, thought, and sincerity, will return Mr. Powell to his position.

Tim Tenhave, 72 Amherst Road

Echoed the comments made by Mr. Diggins and stated Mr. Powell has made a tremendous contribution to the Town and has done a lot for conservation. He stated Mr. Powell has been on the Commission for 15 years. He noted there comes a time when new volunteers have to be allowed the opportunity to participate. There are never enough volunteers, and now is the time to allow others to become involved. He stated it is a chance, when so many state a willingness to participate on the Conservation Commission, for the Council to allow that participation.

He commented Mr. Powell has experienced some rocky roads and there are a number of issues members of the Council are aware of, which he did not believe appropriate to speak of because of the tremendous contributions Mr. Powell has made to the Town. He added there are things that cannot be ignored and things that you have to be able to move forward on.

He requested the Council allow other volunteers to participate not only on the Conservation Commission, but on other boards and committees for which appointments are being made. He suggested the most senior members be allowed to assist and mentor, which can be done in an alternate capacity or by attendance at meetings participating as a member of the public. He reiterated it is time to expand the volunteer base and allow others to participate, and thanked Council members for their time.

Recognitions, Resignations and Retirements

1. Presentation of Donated American Flag

Submitted by Councilor William W. Boyd, III

The Town Council to present the Parks and Recreation Department with an American flag that flew over the U.S. Capital to be flown at Wasserman Park.

Councilor Boyd remarked a few weeks prior Chairman Mahon had informed him of how the children at the Naticook Day Camp enjoyed being able to participate in the raising of the flag, and that it instilled in them a sense of pride and patriotic virtue. He reached out to Congressman Frank Guinta and questioned the possibility of obtaining a flag that flew over the United States Capital for Naticook Day Camp. He read into the record a letter received from Congressman Guinta:

“ Dear Chairman Mahon, it was recently brought to my attention by fellow Town Councilor Bill Boyd that the Naticook Day Camp in Merrimack was in need of a new U.S. flag for the camp. Our camps and day programs, such as Naticook, are so important to our children and their families; teaching them important lessons and values, allowing them to be kids, and to have fun during the summer months. It is my pleasure to donate a new flag to the camp, and I hope all of the campers, staff, and volunteers enjoy their summer and time at Naticook. If my office can be of assistance to you in the future, do not hesitate to contact me. Sincerely, Frank Guinta, Member of Congress.”

Councilor Boyd remarked accompanying the flag is a Certificate from the Architect of the Capital, Steven Ayers, which reads: “The flag of the United States of America. This is to certify that the
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accompanying flag was flown over the United States Capital on March 7, 2011 at the request of the Honorable Frank C. Guinta, Member of Congress.”

Councilor Boyd stated it was “his pleasure to offer to the Naticook Day campers both present and future this American flag.” He stated his hope the camp will reach out to Veterans to have the current flag properly disposed of, and suggested the campers would enjoy seeing how that process is conducted.

Councilor Boyd presented the flag to Sherry Kalish, Director, Naticook Day Camp.

Appointments

1. Hillsborough County Commissioner Carol Holden

[Tabled at the June 28, 2012 Meeting]

Submitted by Carol Holden

The Town Council to receive a presentation on the state of the Hillsborough County Budget for FY/13.

Chairman Mahon informed the Council Commissioner Holden has requested the presentation be tabled due to a personal physical impairment.

Legislative Updates from State Representatives

State Representative Chris Christensen informed the Council of a recent finding of Variable Milfoil in Naticook Lake. He remarked for a long time it has been believed the lake was free of Milfoil; however, some infestation has recently been found. The Department of Environmental Services (DES) is actively working on the situation. He stated the current plan is to start hand pulling plants (approx. 2-3 acres separated in space). It is hoped that will prevent further expansion of the plant over the season. He explained Variable Milfoil overcomes the water body, robs it of oxygen, destroys fish and fishing, and makes it unsuitable for boating and other recreational uses. It is important to rid the water body of the Milfoil before it really becomes a problem as was the case at Horseshoe Pond.

Because it is a new infestation, the State will absorb 100% of the costs of the initial treatments. Maps are available, and have been posted on www.ChristensenNH.com. Representative Christensen stated he and others would be attending a meeting in Concord, NH with the Department of Agriculture to discuss Milfoil in the Suncook Lake in Barnstead. That meeting will provide him the opportunity to relay any issues/concerns the Council might have. He added he would continue to post to the website any new information that becomes available. He noted he is the Chairman of the Exotic Aquatic Weeds and Species Committee, and remarked early identification of Milfoil could avoid long-term results such as diminished property values, which could cause residents to look to the Town for abatements. He added if the Milfoil starts to crawl around the lake it could find its way into residential areas such as Camp Sargent.

Chairman Mahon stated his presumption the Department of Environmental Services is involving the Merrimack Village District (MVD) since the water runs down into two well areas on the other side of Greens Pond Road. Representative Christensen stated he is confident if there is anything of concern to the MVD, they would be contacted. He stated, at this point, there is no risk to anyone. There are instances, such as with Horseshoe Pond, where an herbicide might be used; however, DES is very strict in the application process of herbicides (permitted) and will not allow it to be used any place

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where there is a water supply such as with MVD. Chairman Mahon remarked he assumed that is why hand pulling is the form of treatment being utilized. Representative Christensen responded that is part of the reasoning; however, hand pulling is more effective in general, if you can get to it soon enough.

Chairman Mahon spoke of his familiarity with a Milfoil infestation on a pond in Western Massachusetts. He attended a meeting where he received a briefing on the eradication of Milfoil, and learned it will require hand pulling on a regular basis. Representative Christensen stated DES is using diver assisted suction harvesting and GPS to assist in the process. Councilor Flood stated her appreciation for the proactive approach being taken. Councilor Koenig questioned whether Greens Pond had been looked at to determine if expansion has occurred or if there was reason to believe the Milfoil is contained within Naticook Lake. Representative Christensen responded the immediate concern is Naticook Lake because it has been reported as an infestation. The other lakes are being looked at. He noted both Otter Pond in Greenfield and Naticook Lake, although Naticook has an association, do not have a Weed Watcher Program. Although there are times individuals notice weeds, they do not necessarily know what they are or who to contact. The delay in reporting can result in a growing season passing before the infestation is reported.

He spoke of an instance in Hollis where a Fish & Game Officer identified Milfoil, reported it early, and within two days there were divers in the water who were able to clean it up. He stated the importance of people being trained to watch for invasives and noted DES provides such training.

Town Manager's Report

Town Manager Cabanel informed the Council and the viewing public the Town-wide paving program is in full swing with roads in the Lamson Drive area already completed. Reconstruction work on Lyons Road began this week. Updates can be found on the Public Works website page and their Facebook page.

The Amherst Road culvert replacement project is set to begin. As part of the project, Amherst Road will be closed for a ten-day period beginning August 1st between Meetinghouse Road and Riverside Drive. A detour will be set up using Naticook Road and Peaslee Road. The Department of Public Works (DPW) is working on a small tree and earth moving project to increase site distance when pulling out onto Baboosic Lake Road from Longa, Carter, and Miriam Roads.

The Highway Department will be resurfacing the skateboard structures at the skatepark at O'Gara Drive next week replacing all weathered skatelite material. The Highway Department is working with the Rotary to create and place walking trail marker posts at Twin Bridge Park.

The Waste Water Department is 1,114 days, essentially three years, of continuous no lost time due to accidents.

We have received notice from the County of Hillsborough Board of Commissioners that the Department of Corrections' Community Service Program has been immediately and indefinitely suspended. The Town has utilized this service in the past couple of years having 8-10 prisoners for two weeks at a time for groundwork and labor.

Consent Agenda

None.

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Old Business

None.

New Business

1. Eagle Scout Project Presentation for Watson Park

Submitted by Joseph Parker

Life Scout Joseph Parker is requesting Town Council approval to construct a pergola and two picnic benches to be placed on a cement pad at Watson Park.

Scout Parker provided sketches of the proposed pergola. He stated his desire to gain the Council's approval on the location, which is within the floodplain area, and noted the existence of hazardous waste in the area. Because of the existence of hazardous waste the pergola cannot penetrate the ground below 2'. As a result, a deadman design will be used with concrete supports covered by a concrete slab (20' x 12').

Chairman Mahon questioned whether Scout Parker was in receipt of and understood the process outlined in the memorandum from the Community Development Director, Timothy Thompson. Town Manager Cabanel responded she has instructed Scout Parker to contact Mr. Thompson who will walk him through the process. Scout Park stated his understanding of the requirement to work with Mr. Thompson as well as the Department of Environmental Services to gain approval for the project. He noted he has received approval from the Parks & Recreation Department as well as the Department of Public Works.

When asked to explain the project further, Scout Parker stated it would be 20' x 12'. Six (6) posts will be cemented into the base (2'). The structure will stand 12' high. A cement pad will be placed in the center (4" down). Climbing vines will be planted next to each of the posts to create a shaded area.

When asked how the 2' depth limitation would be addressed. Scout Parker explained he would have normally gone down 4-5', but because of the 2' depth limit, the deadman design will be utilized and will provide stabilization. When asked how the deadman concept came about in terms of the footings, Scout Parker spoke to the 2' limitation requirements and of an Eagle Scout project for the construction of a kiosk at Watson Park. That project also had the 2' requirement. The kiosk was constructed using a deadman design. That same design was used as a reference for the one he created, which, due to its larger size, calls for the pergola to be cemented in.

Councilor Boyd requested clarification of the exact location for placement. Councilor Flood remarked when she was a member of the Watson Park Committee the idea of providing shade through canopies, etc. was discarded because of the maintenance involved. She commented what is being proposed is a superior alternative to that. She questioned the amount of weight the top of the structure could support. Scout Parker spoke of a 15' x 14' pergola built by a friend who sat upon it while constructing it. He noted his plan calls for notched slats, which will provide additional stability. He stated his belief the structure could withstand someone climbing on it and the proposed vines would discourage such behavior.

Councilor Boyd questioned the process that would be used to penetrate the ground. Scout Parker responded a trench will have to be dug in the area of each of the posts where a 4' beam would be

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placed. Councilor Boyd stated his pleasure with the overall design, wished him luck, and thanked him for taking on a project that will benefit the Town. Councilor Harrington questioned how funds would be raised and the process by which the structure would be constructed. Scout Parker responded it is his hope to have all of the materials donated by local businesses. If unsuccessful, he would look to conducting a fundraiser, perhaps a pancake breakfast at Watson Park. The construction process will take place over a three-day period with the first two days dedicated to delivery of product, cutting of lumber and construction, and a third for cementing. He stated he would be leading his troop in the completion of the project along with volunteers from his church, family, and friends. Councilor Harrington thanked him for his efforts and contribution to the park.

When asked who would provide advice on the cementing aspect of the project, Scout Parker remarked several of his friends are builders and will assist along with the friend who has already constructed a pergola. Chairman Mahon questioned whether Rebar would be utilized to provide reinforcement of the concrete pad. Councilor Flood commented Fred Kelley, Building Official, has a tremendous amount of knowledge of cement slabs, and recommends a single pour with Rebar. Chairman Mahon reiterated Rebar would change the dynamic slightly; however, without it, the cement would begin to crack and buckle after a few winters.

Chairman Mahon stated his appreciation for Scout Parker's efforts. Councilor Koenig questioned whether there were restrictions imposed on cutting of pressure treated lumber in the park. Scout Parker stated, if necessary, cutting would take place at a carpenter's shop. He further stated he would research whether pressure treated lumber could be cut onsite.

When asked if a Town employee would oversee the construction, Town Manager Cabanel responded the Planning Board will be reviewing the project and she would look to have someone from the Building Department inspect the work at different stages. Councilor Koenig stated a need for a Town employee to oversee the project from start to finish. Councilor Dwyer stated his opinion consideration should be given to the addition of Rebar especially given the 2' depth restriction as 2' is generally not enough to prevent frost. He noted the cost of concrete will likely be greater than anticipated. He remarked the location is typically under water during large flood events, and Rebar would prevent future damage.

MOTION made by Councilor Harrington and seconded by Councilor Boyd to provide permission to proceed with the project of Joseph Parker.

ON THE QUESTION

Councilor Koenig stated a concern regarding oversight and the potential liability for the Town as he believes a pergola will be a great attraction for kids to climb on. Scout Parker noted the beam closest to the ground would be 10' up. Councilor Koenig stated his agreement Rebar should be included. Councilor Flood stated her hope, should the project be financially prohibitive, the scout not become discouraged but instead consider another project and return to the Council. Councilor Dwyer questioned whether consideration was given to a gravel floor. Scout Parker responded he originally considered stone dust and could go that route; however, it could impact the strength of the structure. He noted his project was approved by the Eagle Board as presented; however, should it be necessary he could return to that Board with a revised design to seek approval.

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There being no objection, the Council went out of the regular order of business and took up the discussion on the Voter Identification Law.

4. New Voter Identification Law Discussion

Submitted by Town Clerk Tax Collector Diane Trippett and Town Moderator Lynn Christensen

The Town Council will discuss the new voter identification law and the effect that will have on the elections.

Lynn Christensen, Town Moderator, remarked there were essentially three bills passed this year in the Legislature that affect the Vote I.D. law, and there are pieces of each of them that interplay, and contradict. She informed the Council she spoke with Dave Scanlan, Deputy Secretary of State, earlier in the day, and was informed the take on it, at the moment, is that voters will be asked for their identification for the September Primary. If voters are unable to produce identification they will be informed the requirement will be in place for November, will be provided with information on acceptable forms of identification, and will be provided a ballot. In November, if unable to produce valid identification, an Affidavit will have to be signed indicating the individual can legally vote. She was also informed the Ballot Inspectors can provide an Affidavit, however, it remains unclear who can authorize Affidavits.

Valid voter identifications for September and November include a Driver's License, a State issued non-driver identification, a military I.D., a passport, a student I.D., a government I.D., or any other I.D. acceptable to either the Town Clerk or Town Moderator such as an employer I.D., or are personally known to an election official. After November the rules may change. She remarked the one wildcard is the Department of Justice in that they have come into states on some instances and said what you have enacted is illegal and you cannot enforce it. In other instances they have said it is perfectly alright you can go ahead and enforce it. They have not ruled on the latest changes.

Councilor Flood remarked she noticed the alternative of a Voter I.D. Card, and questioned who issues such a card. Moderator Christensen responded a non-driver I.D. is issued by the State. Councilor Flood believed it to be another alternative. She questioned if such an I.D. could be provided by the Town Hall. Chairman Mahon asked if the State would be billed for associated costs. Councilor Koenig stated language concerning that is included in the Statute. Councilor Boyd noted Section 284:4 subsection 5(a) specifically states the Secretary of State will issue a voter I.D. card specifically for the purposes of voting and the way the I.D. card would be validated is by the applicant presenting himself to the Clerk's Office. The Clerk has to state the individual is on the Town's voter list. He questioned what materials would be required to be provided as proof of residency. Moderator Christensen responded that has yet to be defined. This year that will not be addressed. If individuals arrive at the polls in November without a valid identification, they will simply sign an Affidavit stating they are legal to vote, and will be allowed to do so. The other process has not been legitimized by the Secretary of State to know how it will be handled or who will incur the costs. Councilor Boyd questioned whether, votes cast by those signing an Affidavit would be segregated, and was informed that would absolutely not occur.

Diane Trippett, Town Clerk, noted the Ballot Inspectors are going to mark the voting record on the check list as having not seen identification. That information as well as all of the Affidavits will be sent to the Attorney General's Office for follow-up. They are supposed to investigate all individuals who do not provide identification. Moderator Christensen stated, in September, the number (not names) of people who do not provide identification will be tracked as a means of gaining a better

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understanding of the issue. This information will not need to be tracked in November as the number of Affidavits will be known.

Town Clerk Trippett informed the Council a study committee has been formed to which she has been appointed to representing Town Clerks. When asked if the Ballot Inspectors would be provided with training, Moderator Christensen stated she and the Town Clerk are constantly providing training. Town Clerk Trippett added the Office of the Secretary of State is setting up training for all local election officials to go over the new processes.

Councilor Flood asked for clarification this relates to individuals already on the voter checklist who arrive at the polls without a photo identification, and was informed that was correct. She questioned the process when an individual registers to vote on Election Day. Town Clerk Trippett responded the laws have changed for that as well. When coming in to vote Individuals are supposed to provide identification, proof of residency, and proof they are a U.S. citizen. For every piece of information they are without, there is an Affidavit they can complete and sign. The identification part will be followed up on at the registration process. Councilor Flood questioned whether a Birth Certificate or Naturalization papers are required to be produced within a certain period of time. Town Clerk Trippett stated that would not be required for registering to vote; however, it is believed the Attorney General's Office will follow up on the issue of I.D.s.

Councilor Dwyer commented with the passage of the voter identification law, the State of New Hampshire has placed its citizens on notice that it is a priority to acquire an I.D. If voting is important to you, it is your responsibility to come to the polls prepared. Councilor Flood spoke of being sympathetic to individuals who have to travel to Nashua to the Department of Motor Vehicles. She suggested there ought to be a way for individuals to receive a form of identification at the Clerk's Office. Moderator Christensen responded that is being looked at. Town Clerk Trippett stated her belief it is but a small fraction of the population that would require such a service.

Councilor Koenig questioned the forms of valid identification and noted the law speaks to acceptance of expired driver's licenses from any state as being acceptable. Moderator Christensen stated that to be the case and remarked any photo I.D. that is deemed acceptable by an election official will be valid. Councilor Koenig remarked there is language in the law that speaks to acceptable to the election official and also language that speaks to if not challenged per RSA 659:7. In theory you can accept anything; however, forms of identification outside of those specifically identified are subject to challenge. Moderator Christensen stated it has always been the case that a challenge could be made.

The Council recessed at 8:15 p.m.

The Council reconvened at 8:20 p.m.

2. Committee Appointments

Town Council Chairman Tom Mahon and Vice Chair Finlay Rothhaus
Committees, pursuant to Charter Article 4-8:

Chairman Mahon informed the viewing public, Charter Article 4-8 states in part: "All officers and members of all boards, commissions and committees, and vacancies thereto shall be appointed by the Council from among Town residents unless otherwise provided by this Charter." In accordance with the provision, he, Vice Chairman Rothhaus, and Councilor Boyd have spent the past four weeks engaged in interviews of candidates for different boards and commissions. Being presented to the

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Council are the results of those interviews. He noted four of the appointees to the Zoning Board of Adjustment have not yet had their office designated.

Agricultural Commission

Three individuals expressed interest in the Agricultural Commission and were interviewed for the positions. They are all incumbents. There are two full and one alternate position open. Bob McCabe and Bess-Arden Parks have expressed interest in full membership and Arthur Pete Gagnon has expressed interest alternate membership. Councilor Harrington requested clarification of the total number of open positions. Chairman Mahon stated there to be two full member positions and five alternate member positions open.

The interview committee, which consisted of Chairman Mahon, Vice Chairman Rothhaus, and John Lastowka, provided favorable recommendations for the aforementioned individuals.

MOTION made by Councilor Boyd and seconded by Councilor Koenig to appoint the following individuals to the Agricultural Commission: Bob McCabe and Bess-Arden Parks, as full members, for three-year terms and Arthur Pete Gagnon, as an alternate member, for a three-year term.

ON THE QUESTION

Councilor Flood commended the individuals who have worked so diligently and accomplished so much in the past three years. Councilor Koenig questioned the total number of members, and was informed there are 7 in total. Chairman Mahon remarked if any other residents are interested in participating the Council would be happy to accept a Letter of Intent.

MOTION CARRIED 6/0/0

Conservation Commission

Chairman Mahon stated there to be two full and one alternate position open. The three applicants were Thomas Lehman, Matthew Caron, and Andy Powell. Mr. Lehman and Mr. Caron received favorable recommendations from the interview committee.

Chairman Mahon questioned the will of the Council with regard to the two individuals who were recommended by the interview committee. Councilor Boyd remarked if the Council took action on the two individuals recommended, it would nullify the third person who is an incumbent. He suggested there may be a desire by members of the Council to see the incumbent considered under a vote, against the recommendation of the interviewing committee. Chairman Mahon questioned whether any member wished to offer a motion.

MOTION made by Councilor Boyd and seconded by Councilor Dwyer to appoint Thomas Lehman and Matthew Caron to the Conservation Commission, as full members, for three-year terms.

ON THE QUESTION

Councilor Harrington noted public comment received regarding the appointments. She commented when it comes to deliberation on an appointment of a volunteer who has served for the number of years

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Mr. Powell (candidate) has, she has a few questions to pose. She questioned whether anyone had spoken to the candidate related to performance and whether or not an assessment was performed to determine whether the performance in question was the result of a lack of knowledge or compliance. She remarked when measuring performance, if you are determining performance not acceptable, you have to let the individual know they do not meet the expected performance and determine if the lack of appropriate performance was due to either knowledge or a compliance deficit. She stated she is not aware of whether or not that due process took place. She also questioned whether or not the candidate was made aware the Council would be discussing the appointment and/or that there is an issue to be discussed. She added making the candidate aware is simply a matter of being respectful of an individual who has volunteered in the community for a great number of years.

Councilor Flood stated her agreement with the comments made by Councilor Harrington. She remarked this issue came as a shock to her. She spoke of public comment given by two individuals for whom she has a great deal of respect, each speaking on opposite sides of the issue. She stated her disagreement with the conversation taking place in public. She spoke of her respect for the candidate. She remarked she has witnessed what she believes to have been subjective reviews of his performance, which she believed to be blown out of proportion.

Councilor Harrington remarked she is not discounting some things that require improvement and acknowledges there were problems; however, that does not change the questions she wished to be addressed. She added the Council has a responsibility to act in instances where there are believed problems with either the process taken or decision made.

Chairman Mahon responded a conversation took place between the Town Manager and the candidate, approximately 1 year ago, regarding his interaction with residents in specific areas of town and the process undertaken when addressing their issues. He noted there was a high level of displeasure on the part of the Council with how certain items were handled in addition to the fact the Town Manager, Director of Public Works, and others had to step in and resolve the situation. He stated the interview committee discussed with the candidate the lack of accuracy of minutes prepared up until June of last year. The candidate vehemently asserted his intimate knowledge with the Right-to-Know Law and what was required of him for inclusion in the minutes; however a review of some of the minutes indicated sufficient information was not included. Chairman Mahon provided the example of a particular motion and subsequent vote, which had not been recorded as well as the specific action itself not being recorded, which is what precipitated the discussion with the Town Manager. Councilor Boyd added the appropriation was not recorded either.

Councilor Harrington questioned whether there is a compromise to be had given the candidate does have the experience, knowledge, and history and has done a lot of good things in the Town and acknowledging there have been attempts made to improve the candidate's chairmanship, which he has not been responsive to with regard to process. Chairman Mahon remarked some change has occurred in the area of the responsibilities of the Chair; however, performance in other areas has not.

Councilor Harrington suggested the applicant be removed from the position of Chairman and appointed as an alternate member of the Commission thereby allowing the Commission to retain the knowledge and history the applicant brings to the Commission. She remarked if in fact the candidate's intention is to be able to work within the Commission for the purpose of the Commission, he should be acceptable to that compromise. She added to not recommend him at all would be unnecessary and by making a recommendation, the final decision would be that of the candidate.

MOTION WITHDRAWN

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MOTION made by Councilor Boyd and seconded by Councilor Harrington to appoint the following individuals to the Conservation Commission: Thomas Lehman and Matthew Caron, as full members, for three-year terms and Andy Powell, as an alternate member, for a three-year term.

ON THE QUESTION

Councilor Flood remarked she is uncomfortable instructing a committee who should serve in leadership roles. The Commission conducts elections as other boards and committees do and the decision of who should serve in these roles is that of the Commission. She stated the candidate had a hand in over 1,000 acres being designated as conservation area, which is quite an accomplishment. She remarked she has witnessed Chairman of various boards over time who did not perform to the level of the candidate being discussed.

The result of what was perceived as a dereliction of duty was a very fine piece of engineering skill, and was, in her opinion, blown out of proportion. She spoke of the candidate's diligence in the performance of his duties related to finances of the Commission. She stated her opinion this fine individual would not accept a position which would likely be seen as a demotion, and the Town would lose his services.

Councilor Dwyer stated the interviewing process is conducted by a committee, which has always been led by the Chair and Vice Chair of the Council and welcomed other Council members to attend. Two Councilors on that committee provided an unfavorable recommendation. He stated his respect for the candidate and the service he has provided the Town; however, noted decisions regarding acquisition of conservation land are made by the townspeople through ballot questions. He stated he would be voting based on the committee's recommendation.

Councilor Koenig applauded the Council for engaging in discussion rather than simply rubber-stamping the recommendation of the Committee. He stated his awareness of the work the candidate has done for the Conservation Commission. He noted no discussion had occurred regarding the characteristics or qualifications of the other candidates up for consideration yet the motion is for the appointment of three candidates. He remarked, given the chance, he would have recommended the Council consider appointing the candidate as a full member for a one-year term and consider the appointment again in a year's time.

Chairman Mahon stated his belief the option of shortening the length of term is not available as the Charter defines the terms of Conservation Commission members. Councilor Koenig suggested consideration be given to a Charter Amendment at the next Town Meeting.

Chairman Mahon commented he respects the work the candidate has done; however, as the Council representative to the Commission for the past 15 months, he, along with Vice Chairman Rothhaus has spent a great deal of time addressing issues. He stated because of the initial actions of the candidate in a situation that involved the School Board the situation spiraled out of control resulting in discord. He remarked when he joined the Commission, one of the first things he raised with the candidate, in his role as Chairman of the Commission, was the lack of opportunity for public input at meetings, and found it somewhat difficult to gain his agreement to include public participation. He commented there were 4-5 revisions of an RFQ for a Forester. The Commission discussed at length what was believed necessary to be included, the Chairman agreed, yet did not incorporate the items. He remarked it is

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those types of situations that need to be addressed. He agreed it is difficult to say to an individual who has devoted 15 years to the Town that he is not being recommended.

Councilor Flood stated all of the objections she heard had to do with the candidate serving in the capacity of Chairman. They have nothing to do with appointing the candidate to another full term and allowing the Commission to decide on their leadership. Chairman Mahon stated the Annual Meeting of the Conservation Commission was conducted in June when the Bylaws state it will occur in the month of July. The candidate was elected to serve as Chairman.

Councilor Boyd stated the richness of the candidate's stewardship on the Commission cannot be disputed, and the Town has benefited from his experience; however, he could not ignore things such as lack of transparency and lack of willingness to listen to and work with other individuals, which was prevalent with the project down along Currier Road. He remarked if the candidate truly believed the plan he wanted to see come to fruition was the best plan, over the one that was previously voted upon, it should have been vetted in public.

Recognizing the amount of work the other two candidates have already done on the Commission and Grater Woods Stewardship Plan and understanding they are both active users of conservation land, he does not believe the Commission would be lacking in experience should the candidate make a decision not to accept a nomination for an alternate position. He reiterated the need for transparency, for following a process that allows for complete and proper vetting of projects, and a willingness to work with the citizens of the Town.

MOTION CARRIED 4/2/0

Councilors Koenig and Flood voted in opposition

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Economic Development Citizen Advisory Committee

Chairman Mahon stated there to be five full member positions and two applicants, both of whom are incumbents. Applicants are Susan Lee, the current Chairman, and Richard Tucker. Both have received a favorable recommendation from the interview committee for full membership.

MOTION made by Councilor Boyd and seconded by Councilor Harrington to appoint the following individuals to the Economic Development Citizen Advisory Committee: Susan Lee and Richard Tucker, as full members, for three-year terms.

ON THE QUESTION

Councilor Boyd remarked he has worked with both candidates over the course of the past year and has witnessed their enthusiasm and willingness to do the research work the Council has tasked them with. He added their enthusiasm for the future of what is coming up in Town was evident in their interviews. Chairman Mahon noted the candidates were very appreciative of the confidence shown in them by the Council. He remarked in the early stages members were feeling a little orphaned; however, with the new leadership in the Community Development Department and the focus of the Council on some of the more mundane factors of economic development, the committee has been energized.

MOTION CARRIED 6/0/0

Planning Board

Approved: August 16, 2012

Posted: August 21, 2012

Chairman Mahon stated there to be four applicants for four open positions. The interview committee, which included Planning Board Chairman, Robert Best, forwarded favorable recommendations for the following candidates: Stanley Bonislowski and Desirea Falt as full members for three-year terms, Matthew Passalacqua as an alternate member for a three-term term, and Nelson Disco, as an alternate for a one-year term (remainder of Mr. Bonislowski's term as an alternate).

Chairman Mahon noted Mr. Disco's desire to remain on the Planning Board until the completion of the Master Plan process. Councilor Harrington thanked Mr. Disco for his commitment. She touched upon his willingness to step down as Chairman and remain on the Board providing his expertise and mentoring the incoming Chairman.

Councilor Koenig noted, as the Council representative to the Planning Board, he was part of the interview committee. He too spoke of the work Mr. Disco has done with the Planning Board and remarked there were several on the interview committee who would have liked to have kept Mr. Disco on as a full member; however, he has indicated on several occasions he wishes to reduce the level of activity while seeing through the process of the Master Plan. In the capacity of an alternate member, he will be provided that opportunity and the Board will retain his experience and expertise for at least another year.

Councilor Koenig stated Mr. Bonislowski had stepped down and participated in the capacity of an alternate member. He possesses a great deal of experience and research ability. It would be nice to see him have the opportunity to bring that to the Board in the capacity of a full member.

Councilor Koenig spoke of the other two candidates stating his pleasure to see individuals with experience, knowledge, and backgrounds expressing a willingness to serve in this capacity. He remarked with a full and alternate position open it is difficult to make a determination of which individual should fill which position. Serving as an alternate member would afford Mr. Passalacqua opportunity to become familiar with the roles and responsibility of the Board and actively participate in decision making. He commented Ms. Falt is astounding in her interest. She has attended Planning Board meetings, Town Council meetings, and has taken the time to gain additional knowledge of the process. She possesses an architectural background and is believed to be a great fit for the Planning Board.

MOTION made by Councilor Koenig and seconded by Councilor Boyd to appoint the following individuals to the Planning Board: Stanley Bonislowski and Desirea Falt as full members for three-year terms, Nelson Disco, as an alternate member for a one-year term, and Matthew Passalacqua as an alternate member for a three-term term.

ON THE QUESTION

Councilor Boyd commented, as a former Planning Board member, he would be remiss not to mention the yeomen's work Mr. Disco has done throughout the years. He publicly thanked him for his tutorage and mentorship to the many he has assisted over the years. He echoed the comments made by Councilor Koenig with regard to the remaining candidates.

MOTION CARRIED 6/0/0

Technology Committee

Approved: August 16, 2012

Posted: August 21, 2012

Chairman Mahon stated the Committee has one vacancy for which Mr. John Lastowka has applied. The interview committee has forwarded a favorable recommendation. Mr. Lastowka's background is in high-tech communications. He is very knowledgeable and has been a very effective with the Committee.

MOTION made by Councilor Flood and seconded by Councilor Dwyer to appoint John Lastowka as a full member of the Technology Committee for a three year term. MOTION CARRIED 6/0/0

Zoning Board of Adjustment

Chairman Mahon stated there to be two full member and four alternate member positions. Mr. Richard Conescu stated a willingness to be considered for either full or alternate membership, Mr. Nathan Berry applied for an alternate position, Mr. Anthony Pellegrino applied for full membership as did Ms. Fran L'Heureux, both of whom are incumbents. Mr. Kevin Shea applied for full membership.

Councilor Boyd requested a Point of Order and questioned whether the resignation was required to be taken up prior to discussion of appointments. Chairman Mahon stated that to be the case, and informed the Council and the public of the resignation of Mr. Michael Marshall.

MOTION made by Councilor Boyd and seconded by Councilor Koenig to accept the resignation of Michael Marshall from the Zoning Board of Adjustment, with sincere regret.

ON THE QUESTION

Councilor Flood commented Mr. Marshall is a great potential future member of the Zoning Board of Adjustment and stated her hope he would give that consideration. Councilor Boyd echoed the comments made by Councilor Flood. Chairman Mahon thanked Mr. Marshall for his service to the community.

MOTION CARRIED 6/0/0

It was noted all five candidates received favorable recommendations from the interview committee. Councilor Koenig requested the appointments be addressed individually.

MOTION made by Councilor Boyd and seconded by Councilor Harrington to appoint Anthony Pellegrino to the Zoning Board of Adjustment as a full member, for a three-year term.

MOTION CARRIED 6/0/0

MOTION made by Councilor Boyd and seconded by Councilor Flood to appoint Fran L'Heureux to the Zoning Board of Adjustment as a full member, for a three-year term.

ON THE QUESTION

Councilor Koenig questioned whether there were any other recommendations from the interview committee regarding the interview and position of Ms. L'Heureux. Chairman Mahon responded his recommendation was for an alternate position based on the quality of the other applicants was such that it would provide new sets of eyes to projects coming before the Zoning Board of Adjustment while Ms. L'Heureux would still be available to provide the Board her experience. He added the three other

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candidates are quite remarkable and he would welcome individuals who express a desire to contribute in such a capacity.

Councilor Flood stated her agreement in welcoming younger residents to gain volunteer status in the community. She stated her belief this particular board could be difficult as a starting point in such endeavors without specific training in the area, and she would prefer to see an individual with experience such as Ms. L'Heureux complete her volunteer service in a dignified way until such time as she makes the decision to either complete her service or serve in an alternate capacity or on another board or committee within the community. She remarked boards such as the Zoning Board of Adjustment and Planning Board impact the livelihoods, property rights, etc. of individuals coming before them.

Councilor Flood stated her desire for it to be mandatory for new members to receive training, and noted the Local Government Center (LGC) offers training at the Town's cost. Councilor Koenig stated his belief training could be offered; however, the Council cannot make it mandatory. Chairman Mahon stated his understanding training is being arranged. Town Manager Cabanel informed the Council the Zoning Board of Adjustment requested Mr. Thompson provide training, which has been scheduled. Councilor Dwyer stated he is aware Mr. Thompson has had conversations with members of the Zoning Board of Adjustment who all appear very willing and excited about training being provided for new and current members alike.

Councilor Harrington commented suggesting the candidate be moved from a full member to an alternate member seems to imply there has been an issue. She questioned if that was the case, and if so, had due process been completed.

She stated she is personally aware members of the Zoning Board of Adjustment have requested training for at least the past four years. They recognized a long time ago not only is training needed for new members, but sitting members should be provided with updates on new rules, regulations, etc. She remarked if there is perceived lack of knowledge in an individual member it is not that he/she has not asked for help.

She stated she is not aware of any reason why the candidate should not be appointed as a full member. She agreed it is nice to see new applicants; however, there is a learning curve involved and she questioned why a new member would be put in a full member position over a sitting member with experience. Councilor Boyd commented the applicant has been a long-time resident of Merrimack and has been very committed to transparency, ensuring the public is part of the process, and that projects are fully vetted. He stated his enthusiastic support of the candidate's nomination.

Councilor Koenig stated he was inclined to go along with the recommendation of the interview committee and understands the need to bring in people interested in serving in such a capacity. Although unaware of the full backgrounds of the candidates, it seemed appropriate to fill the available positions with candidates expressing a willingness to serve. He added he is not sure the opportunity of moving an individual into an alternate position is necessarily a degradation although it could be perceived in that way.

MOTION CARRIED 4/2/0

Councilors Koenig and Flood voted in opposition.

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MOTION made by Councilor Boyd and seconded by Councilor Harrington to appoint Kevin Shea to the Zoning Board of Adjustment as a full member for the remainder of Mr. Marshall's term ending in 2013.

ON THE QUESTION

Chairman Mahon remarked he was going to recommend Mr. Rich Conescu as he has conducted a great deal of research during which he had many conversations with building officials and has become well informed. That is not to say that Mr. Shea was not fully informed; however, he had indicated willingness to service in either capacity. Councilor Dwyer remarked with three great candidates it is difficult to determine which should be placed in which positions. Councilor Boyd stated his belief Mr. Shea's telecommunications and construction background would be applicable as a full member. He commented his support of Mr. Marshall's nomination had been due to his building trade background. Councilor Harrington noted Mr. Shea is a lifelong resident of Merrimack and has great knowledge of the Town. If everything else is equal, she would favor a Town resident.

Councilor Flood commented Mr. Shea ran for Town Council and in doing so presented himself very well. He has a steady interest in the Town. The other candidate has an impressive resume and is very well educated with a BA in Business Administration. Councilor Koenig reiterated it is difficult to determine how to vote on such nominations as all of the candidates would be good additions to the Board. As Mr. Shea has stated a willingness to serve in either capacity, he would have suggested he be nominated for the alternate position.

MOTION CARRIED 5/1/0

Councilor Koenig voted in opposition.

MOTION made by Councilor Boyd and seconded by Councilor Harrington to appoint Nathan Berry to the Zoning Board of Adjustment as an alternate member, for a three-year term.

MOTION CARRIED 6/0/0

MOTION made by Councilor Boyd and seconded by Councilor Dwyer to appoint Richard Conescu to the Zoning Board of Adjustment as an alternate member, for a three-year term.

MOTION CARRIED 6/0/0

Oath of Office administered to Ms. Desirea Falt and Mr. Thomas Lehman.

3. Off Highway Recreation Vehicle (OHRV) Grant Acceptance

Submitted by Lieutenants Denise Roy and Matt Tarleton

The Police Department is seeking Town Council approval to accept an Off Highway Recreational Vehicle (OHRV) grant in the amount of \$1,080.00 available through the New Hampshire Fish and Game, pursuant to Charter Article 8-15 and RSA 31:95-b.

Lieutenant Tarleton informed the Council this would be the 8th year the Town has received this grant. It is in the amount of \$1,080 and awarded by the New Hampshire Fish & Game Department for the purpose of OHRV enforcement. An added benefit is that the grant allows for patrol of remote areas not accessible by cruiser or as easily accessed by mountain bikes. Acceptance of the grant would allow for enforcement of Town Ordinance violations, private property trespass issues, to be able to provide OHRV law education, and having a presence.

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The areas that will be patrolled would include, but are not limited to, the Horse Hill Nature Preserve as well as the Grater Woods and Wildcat Falls conservation areas, the OHRV park off of West Road in the north end of town as well as some of the parks and camps including Camp Sargent, Wasserman Park, and surrounding trail systems. Details are 4 hours in length. The officers would be working in an overtime capacity. Details are scheduled on weekends during daylight hours as that is typically when an increase in activity is seen.

Councilor Koenig questioned the amount of overtime covered by the grant. Lieutenant Tarleton responded it would cover approximately four 4-hour patrols for one officer. When asked if a single officer patrolling was safe, Lieutenant Tarleton stated a preference for two. When asked if a greater amount of funding was received in the past, he stated his belief that was the case. He remarked the grant would afford the opportunity to have an officer out there for four-hour periods without interruption.

Councilor Flood questioned whether the vehicle has environmentally friendly components, e.g., four stroke engine as opposed to a two stroke engine, etc. Lieutenant Tarleton stated the four-wheelers the department has are forestry approved, have four stroke engines, clean burning, quiet, etc.

MOTION made by Councilor Harrington and seconded by Councilor Boyd to accept the One Thousand Eighty Dollars (\$1,080) grant from New Hampshire Fish & Game for the purpose of enforcing off highway recreational vehicle laws within the Town of Merrimack. MOTION CARRIED 6/0/0

5. Library Board of Trustees Search Committee for Library Director Replacement

Submitted by Town Council Chair Tom Mahon

The Town Council will discuss the possibility of assigning a Council member to participate in the Library Board of Trustees' Search Committee which will assist in finding a replacement Library Director brought forth by the retirement of Janet Angus.

Chairman Mahon stated the Chair of the Library Trustees has forwarded a letter requesting a Council member to participate in the Library Board of Trustees Search Committee, which will assist in finding a replacement Library Director. Councilor Koenig has been asked to serve in that capacity.

MOTION made by Councilor Boyd and seconded by Councilor Dwyer to appoint Councilor Koenig to serve as the Council's representative to the Library Board of Trustees Search Committee. MOTION CARRIED 6/0/0

Councilor Boyd thanked Councilor Koenig for his willingness to serve in this capacity. He remarked there will be a lot of work involved in identifying a suitable successor to Ms. Janet Angus. Councilor Dwyer thanked the Trustees for making the request and involving the Council in the process.

6. Ratification of Rotary Grant Application

Submitted by Town Council Chair Tom Mahon

The Town Council to ratify the Rotary's grant application for the Watson Park pavilion project.

Chairman Mahon remarked a similar request was made last year regarding \$1,000 for sign painting. He noted there is no guaranteed the Rotary will receive the grant although there is hope it will.

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MOTION made by Councilor Boyd and seconded by Councilor Harrington to ratify the grant application for the Watson Park pavilion project.

ON THE QUESTION

Councilor Koenig stated his surprised with a comment within the letter that states, under proposed financing, the cooperating organization, Town of Merrimack, Parks & Recreation Department, would donate \$10,000, and questioned where those funds would come from as the requirements of Watson Park are that Town of Merrimack tax dollars not be expended there.

Town Manager Cabanel remarked the Park & Recreation Department received a grant from the State in the total amount of \$20,000, half of which has been recommended to be allocated towards the dog park and half towards the pavilion project. Councilor Flood stated it was the Land & Water Conservation Grant applied for five years ago. Funds could not be accepted until the park was open. \$20,000 was received in January of this year. The grant is reimbursement for monies, time, and labor expended. The grant was for that part of the park, the southeast corner, which was being referred to as the River Overwalk and intended for the pavilion.

The Parks & Recreation Committee believed the funds could be split; however, \$3,500 has to be taken out for maintenance of the toilet, which was part of the grant (3 years of maintenance). It was believed fair to deduct the \$3,500 from the \$20,000 total, allocate \$10,000 towards the pavilion and consider the remainder for allocation to the dog park.

Councilor Koenig questioned whether it was monies expended by the Town being reimbursed through the grant or monies that were donated. Councilor Flood stated the requirement of the grant was to identify \$40,000 in expenditures, most of which was made up of volunteer hours. She commented the parking lot was free of charge because the Department of Public Works allowed the paving company to store their equipment and trucks behind the lot during the time the dam was being moved. She noted an itemized list could be provided if requested. Councilor Koenig stated a desire to be provided with the itemized list.

MOTION CARRIED 6/0/0

Minutes

Approve the minutes from the May 24, 2012, May 31, 2012, June 7, 2012, June 14, 2012, and June 28, 2012.

It was noted Councilors unable to be in attendance should be identified as “excused”.

MOTION made by Councilor Boyd and seconded by Councilor Koenig to approve the minutes of the May 24, 2012 Town Council Meeting as presented. MOTION CARRIED 5/0/1
Councilor Harrington Abstained

MOTION made by Councilor Harrington and seconded by Councilor Boyd to approve the minutes of the May 31, 2012 Town Council Meeting as amended

The following amendment was offered:

Page 3, Line 32, replace “Body” with “Boyd”.

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MOTION CARRIED 6/0/0

MOTION made by Councilor Boyd and seconded by Councilor Harrington to approve the minutes of the June 7, 2012 Special Town Council Meeting as presented. MOTION CARRIED 5/0/1

Councilor Dwyer Abstained

MOTION made by Councilor Boyd and seconded by Councilor Dwyer to approve the minutes of the June 14, 2012 Town Council Meeting as presented. MOTION CARRIED 5/0/1

Councilor Koenig Abstained

MOTION made by Councilor Boyd and seconded by Councilor Dwyer to approve the minutes of the June 28, 2012 Town Council Meeting as presented. MOTION CARRIED 5/0/1

Councilor Koenig Abstained

Comments from the Press

None.

Comments from the Public

None.

Comments from the Council

Councilor Boyd recognized Connor Martin, a 15 year-old Sophomore at Merrimack High School who was one of five (5) New Hampshire teens selected nationally to attend the Young Rescuers U.S.A. 2012 Team. The Young Rescuers Program is an international competition where participants learn basic life safety, participate in competitions, and compete against other like-minded kids from around the world. They will be competing at Lake Naroch in the Republic of Belarus from September 15th through September 23rd. Councilor Boyd expressed his best wishes and remarked it is a tremendous honor for a resident of Merrimack to be selected, and noted because of his expertise, skill, and the type of skill set involved in this competition, he deserves to be recognized and commended.

When asked, Councilor Boyd stated Belarus is part of the former Soviet Socialist Republic located just north of Lithuania, which is Northwest of Russia.

Councilor Boyd recognized Tom Erickson who will be participating in the Pan-Mass Challenge on October 4th and 5th raising money for the Dana-Farber Cancer Institute (PMC.Org), and wished him the best of luck in his pursuits.

Councilor Boyd recognized Laurie Giles who was recently diagnosed with Cancer. He informed the Council and the viewing public a fundraiser will be conducted for her at the end of July. The e-mail address is tkeefe@comcast.net. Councilor Boyd conveyed his thoughts and prayers to Laurie and her family as she embarks on a very challenge course.

Councilor Boyd recognized Dr. John Segedy for the 32 years of credible public service he has given to the Merrimack Planning Board. He remarked he has often been the lone wolf on the Board. He stated his belief had it not been for his efforts, the Town would not have gotten the tremendous site plan it did with the Merrimack Premium Outlets. He added he does not believe some of the site plan reviews he

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has participated in would have risen to their level of quality had his voice not been part of the process. He remarked he has enjoyed serving with Dr. Segedy and believes him to be a very unique individual of tremendous principle. He stated his hope there would come a time when the Council would be able to honor Dr. Segedy's service in the community.

Councilor Koenig echoed the comments made by Councilor Boyd regarding Dr. Segedy. He stated his appreciation for Dr. Segedy's work on the Planning Board. He commented it is sad to see him go and he appreciates all of the time and effort he has provided the Town.

Councilor Flood thanked the Rotary Club for their efforts in bringing back the 4th of July Midway. She remarked it was a lovely thought to have the activities occur on grass. She commented the tents were not only festive, but provided great shelter from the heat. She spoke of the Rotary's dedication and continued efforts to assist programs/activities.

Chairman Mahon informed the Council of his receipt of a post card from the Local Government Center (LGC) with regard to municipal recognition for municipal volunteers. Should any of the Councilors wish to nominate a volunteer they should contact either the Chairman or Town Manager Cabanel. Town Manager Cabanel stated the deadline for submission to be August 31, 2012.

MOTION made by Councilor Koenig and seconded by Councilor Harrington to adjourn the meeting. MOTION CARRIED 6-0-0

The July 19, 2012 meeting of the Town Council was adjourned at 10:10 p.m.

Submitted by Dawn MacMillan