



# Town Council Meeting Minutes

Thursday October 12, 2017, at 7:00 PM, in the Matthew Thornton Room

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

## Pledge of Allegiance

Chairman Harrington led in the Pledge of Allegiance.

## Announcements

Regular meetings of the Town Council will be conducted on Thursday, October 26<sup>th</sup>, November 2<sup>nd</sup> and November 16<sup>th</sup> at 7:00 p.m. in the Matthew Thornton Room. Tuesday, November 14<sup>th</sup> was identified as a date for a Joint meeting with the Merrimack School Board. A request will be made that the agenda include discussion of the tennis courts and skate park.

Beginning October 13<sup>th</sup>, the Daniel Webster Highway corridor traffic, both north and southbound lanes, will be shifted over to use Daniel Webster Drive. Police officers will be on duty to assist motorists during the shift. Traffic will be slowed to 25 mph. The lane shift is expected to remain in place for several weeks.

The Town of Merrimack's 25<sup>th</sup> Annual Halloween Party will take place on Friday, October 27<sup>th</sup> from 5:00 - 8:00 p.m. at Wasserman Park. This free event features a variety of games, crafts and other activities. The event is co-organized by the Parks & Recreation Department and the Merrimack Police Department. For complete details visit the Parks & Recreation Department website at [www.merrimackparksandrec.org](http://www.merrimackparksandrec.org).

## Perfluorooctanoic Acid (PFOA) Information Update

Chairman Harrington thanked the New Hampshire Department of Environmental Services (NHDES), the Department of Health & Human Services, and Dr. Benjamin Chan MD, MPH, State Epidemiologist, for the information shared during the October 10<sup>th</sup> PFOA informational meeting.

Although completing 200 samples was time consuming (800+ invitations were sent out), 217 samples came from 132 households. There were some highlights noted one of which was there are no cancer clusters in Merrimack. This data is what must now be looked at to determine what may need to be done. What needs to be understood is what the role of the Council is, legally, and what options are available.

Councilor Boyd will act as the Liaison to the Citizens for Clean Water. Councilor Albert has also volunteered to be involved. Councilor Albert stated the plan is to have a representative from each of the stakeholders involved. He noted Representative Barry was in the audience, and stated the desire for a representative from Merrimack's State legislators. Councilor Boyd spoke of the expectations he believed the community had for the informational meeting; environmental and health aspects. Regarding the health aspect, he believes the community was able to get through to the State on the

1 monitoring piece. If the State cannot step up and assist in providing financial assistance for testing, at  
2 least the State should be working with medical providers and providing them access to use the specific  
3 labs that have done the blood draws. He stated his hope that is taken seriously as he believes it to be  
4 the next step. The environmental aspect will be a longer process. He commented on having received a  
5 call from a representative of the Governor's Office during which he expressed those concerns.  
6

7 Councilor Flood commented she found the mood at the meeting to be panicky. She stated it is an  
8 outside company that has been polluting our water. From a personal point of view, the first thing that  
9 she would want is a filtering system. Everything else could fall into place.  
10

11 Councilor Boyd commented for the last 18 months the Council has endured advising people it has no  
12 control over the water as it is handled by the Merrimack Village District (MVD). He stated his hope  
13 the MVD Commissioners heard loud and clear the expectations people have regarding MVD water.  
14 Chairman Harrington spoke of the lack of communication at the start of this process. At this point, the  
15 Council is aware negotiations are ongoing, but is unaware of the content and progress of those  
16 negotiations.  
17

### 18 **Highway Garage Project Update**

19  
20 Vice Chairman Rothhaus stated the committee had a brief meeting, which was a continuation of  
21 discussions around the building appearance. A contract is close to or may have just come to fruition.  
22

### 23 **Comments from the Press and Public** - None

### 24 25 **Recognitions, Resignations and Retirements** - None

### 26 27 **Appointments**

#### 28 29 **1. Presentation of the Granite State Power Link by National Grid**

30 Submitted by Granite State Power Link

31 The Town Council will be presented with the details of the Granite State Power Link project.  
32

33 Shannon Baxevanis, National Grid, provided a presentation (copy attached to [agenda](#)). She noted  
34 National Grid is both a distribution and transmission company, is a global leader in transmission  
35 solutions, is headquartered out of Waltham, MA, and currently maintains transmission assets in New  
36 Hampshire.  
37

38 National Grid has partnered with Citizens Energy to propose a clean energy project for New England,  
39 which would deliver 1,200 megawatts (MW) of clean, Canadian wind power into New England  
40 through the construction of a 59-mile new high voltage direct current transmission line. That line  
41 would run from the Vermont border through the Northeast Kingdom of Vermont for 53 miles, cross  
42 the Connecticut River, and go through Littleton and Monroe for another 6 miles. At either end of this  
43 line would be converter stations, which are like specialized sub-stations that convert power from AC to  
44 DC and DC to AC. When this line hits in Monroe, it would hit the converter station and translate into  
45 AC power. That interconnection point would then run 109 miles of upgrades to existing lines that  
46 National Grid currently owns, operates, and maintains. A portion of that right-of-way is in Merrimack;  
47 approx. 1.1 miles that cuts through the northeastern corner of Town.  
48

1 Ms. Baxevanis stated the Massachusetts Legislature passed legislation in 2016 looking for  
2 opportunities to bring clean energy into New England. Massachusetts ratepayers would be paying for  
3 the project selected. They are one of the projects that bid into the process (about 55 other competitive  
4 projects bid in). Granite State Power Link (GSPL) is a little unique in that they are reusing all existing  
5 rights-of-way from the VT border all the way down to Monroe, and then that interconnection point that  
6 goes 109 miles again is reusing existing rights-of-way. One hundred and six of the 109 miles in NH  
7 that would be an upgrade or reconductoring, would not require an expansion of the existing right-of-  
8 way. That is something they are trying to do to minimize cost and environmental and visual impact.

9  
10 Impacts in NH include 6 miles of the new High Voltage Direct Current (HVDC) line, a converter  
11 station, and an interconnection upgrade for 109 miles.

12  
13 A slide was displayed that detailed what the powerline would look like. There exists the HVDC line  
14 that runs the 59 miles (goes all the way to Sandy Pond in Ayer, MA). They would build the 59 miles  
15 of the new HVDC line adjacent to that line in an expanded right-of-way. The objective is to have it be  
16 a mirror image of the existing line for the 59 miles. That line is in VT, continues through NH, and into  
17 MA, and terminates at Sandy Pond, which is a large sub-station in Ayer, MA.

18  
19 Councilor Koenig remarked it is an HVDC line in NH, and the intent is to convert to AC up in the  
20 northern part of NH and come down with AC. Ms. Baxevanis stated that to be correct, and added there  
21 is an existing HVDC line that still runs in that corridor. She showed a slide of its appearance. She  
22 noted the corridor of the area of reconductoring that National Grid would be doing as part of this  
23 project, the two outside towers are what would be focused on. Those are currently 230 kilovolt (kV)  
24 towers, which would be upgraded to 345 kV (through new wires and new insulators). For most of the  
25 project they would be reusing the existing structures. The existing HVDC line that runs all the way to  
26 Ayer, MA will not be touched as a part of this project. That tower is about 110' tall, and the two  
27 existing 230 kV lines are about 60' tall. They intend to reuse the two 60' 230 kV towers, and just  
28 basically string a new wire and new insulators and conductors. For the average person looking up at  
29 that right-of-way what they would see today is basically what they would see when the upgrade is  
30 complete.

31  
32 In some cases, it is being estimated about 20% of the towers would need to be replaced because of  
33 asset condition or clearance issues. They would replace them with a similar structure that would be  
34 taller. It would not exceed 80' tall. Field work is being conducted to better identify the parcels where  
35 that would need to occur.

36  
37 From Merrimack's perspective, they are doing this reconductoring upgrade, they may have to replace a  
38 tower or two, but likely it is just an upgrade to the voltage with new wires and new insulators; no  
39 expansion of the right-of-way.

40  
41 In terms of benefits to NH, there is no cost to NH ratepayers and in fact there should be a decrease in  
42 rates because this will bring a significant amount of generation into the grid, which would then  
43 suppress prices across New England. All ratepayers should see a reduction in rate (approx. \$34/year).  
44 The project would create jobs; intent is to use local jobs first to build the project. It is estimated about  
45 1,500 construction jobs will be created at peak construction in NH. Energy assistance would be  
46 provided to low-income families through their partnership with Citizens Energy, which is a 40-year old  
47 company based out of Boston. What they do is invest in transmission projects like this, and take a  
48 reinvest a portion of their proceeds in communities along the route. They are looking at job creation

1 opportunities through local economic development partners. In NH, those discussions are very early  
2 on. They do have a partnership in VT, and are looking to do something similar in NH where they are  
3 offering revolving loan fund opportunities and local economic and community development grants for  
4 communities along the project route to enhance job creation and economic development. Local  
5 property tax revenues come with a project of this type because all the assets are taxed along the right-  
6 of-way (estimated at \$590 million for NH property tax revenue over 40-year project lifespan). There  
7 will be significant impact on regional greenhouse gas emission reductions with this project; estimating  
8 15.7 million tons of carbon dioxide would be removed from the environment within the first 10 years  
9 of operation.

10  
11 One of the slides states cost is “open to voluntary off-take in NH and VT”. Councilor Albert requested  
12 clarification, and was informed they are offering the opportunity for the local distribution companies to  
13 purchase power off the line. Councilor Boyd stated that would not stop that company from assessing a  
14 certain cost per kilowatt to absorb that cost. We’re not paying GSPL to come through, but as soon as  
15 we tap into the line they will try to absorb some of the cost because of that upgrade. Ms. Baxevanis  
16 stated they would not be paying for the upgrade. That would not be included in the cost. This is not  
17 on the tariff structure. This project is going through a commercialization opportunity in MA. Even if a  
18 company decided to take local off-take from the line, it would not go through the payment for the  
19 construction of the line. That is entirely paid for by MA ratepayers and the long-term contracts any  
20 selected project would go into with the MA electric distribution companies.

21  
22 When asked about the typical complaints or concerns are from other communities that the line is being  
23 run through, Ms. Baxevanis responded for situations such as Merrimack where they are doing a  
24 reconductoring, which is a pretty standard upgrade, they have not had too many concerns. There have  
25 been questions about whether domestic wind farm projects could be interconnected, about any changes  
26 to excess, would they be using herbicide or pesticide for clearing prior to project construction, and  
27 what construction impacts would be.

28  
29 Councilor Albert spoke of the Northern Pass, and questioned if there is concern about people cutting  
30 down trees, etc. He commented when he has been in other parts of the country he has seen utilities  
31 take the easements they go through and create utility roads, but they also make them bike/hiking trails,  
32 etc. to get some use out of the land. He suggested they consider doing that. Ms. Baxevanis responded  
33 the language in each easement differs. For this portion through Merrimack where they have existing  
34 easements she is uncertain what the language states in terms of recreational use. For the HVDC line  
35 that they would be putting in through VT, that area is big into recreational activities, and that is  
36 something they will honor with the construction of the new line; to maintain those uses. She stated her  
37 belief it may be different in this portion of the right-of-way in NH, and she would have to check on  
38 that.

39  
40 Councilor Boyd questioned if this project is being proposed to offset the decommissioning of Pilgrim,  
41 Plymouth, and Yankee Rowe. Ms. Baxevanis stated when MA came up with the guiding legislation  
42 that brought about these types of projects, that was part of the calculus; there is generation going  
43 offline and we are going to need to supplement that and replace it, and the push is toward clean energy  
44 to replace that.

45  
46 When asked about the timeframe for the 1,200MW coming into New England, she stated, at present,  
47 they are in the pre-permitting phase, they anticipate starting the permitting process this fall, and submit  
48 the first application to the Federal Government for the Presidential Permit (international border

1 crossing required). They would start the State citing processes in quarter 1 of next year. The timeline  
2 for the Massachusetts RFP solicitation response is January of next year. Once all the permits are  
3 received (mid 2020), they would begin construction, and look to complete construction in the fall of  
4 2022 with an end-of-year 2022 in service date.

5  
6 Councilor Flood questioned if the windmills are already in place, and was informed they are not. The  
7 project will enable the development of new wind facilities in Canada. They are on a little bit more of a  
8 rapid timeframe in terms of development, permitting, and construction. They would be ready when the  
9 line goes into service. Councilor Flood questioned how much 1,200MW is, and was informed it would  
10 take care of all of NH if it were the only thing in existence. Asked if energy generated by wind travels  
11 in the same quantity and quality as say a fossil fuel generated energy, Ms. Baxevanis responded wind  
12 has about a 40% capacity rating. There would be the need for backfill in the line, and they would look  
13 to have hydro as the likely backfill. Their model is a little unique as they have decided to take a  
14 calculated risk in putting in their bid in that they are going to go after short-term economic sales of  
15 hydro during winter months and times when the wind is not blowing, and are doing that at the risk of  
16 National Grid with no cost to customers because they believe they can get lower pricing for hydro for  
17 that purpose.

18  
19 Councilor Albert asked if communities along the route decide they are looking for an alternative form  
20 of electrical energy, and have space, would National Grid entertain some wind powered towers, etc. in  
21 that community to help defer some of the electric cost. Ms. Baxevanis responded what that gets to is  
22 an interconnection with a domestic facility tapping into the line. That can occur today on the existing  
23 right-of-way they are looking to upgrade, and that could occur after this project receives the required  
24 upgrade for the AC portion. That is not something National Grid decides, it goes to ISO New England;  
25 it must go into their regional study, and ultimately, they make that decision.

26  
27 Ms. Baxevanis spoke of the outreach and engagement piece of the project noting this activity has been  
28 conducted since the project was launched in March of this year. They have been able to garner  
29 significant support in both NH and VT from legislators, third-party groups, residences, and anticipate  
30 that will continue to grow as they advance the project. They have had 100% contact with all  
31 landowners, are proceeding to conduct environmental survey work in the VT portion, and have begun  
32 some of that in the NH portion. That will continue through the spring time.

33  
34 Ms. Baxevanis stated they are in a competitive solicitation, and spoke of why GSPL believes it is the  
35 best option for NH and the region.

## 36 37 **2. Annual Review with the Town Center Committee**

38 Submitted by Town Center Committee Chairman Nelson Disco

39 Per Town of Merrimack Charter Section 6-6, at least annually, there should be an annual review  
40 with the Town Center Committee. This agenda item is to highlight the committee's significant  
41 actions, current projects, anticipated actions, and to raise any concerns the Council should know or  
42 could act on.

43  
44 Nelson Disco, Chairman, Town Center Committee, stated the committee was established in 2009 to  
45 help implement the recommendations from the iTrac Study; building of sidewalks and making the  
46 Town more connected in the center portion. The purpose was to coordinate development, and make it  
47 a walkable center for residences and businesses alike.

1 The committee's main thrust in the past year has been working and encouraging the Souhegan River  
2 Trail. The trail was funded (approx. \$500,000 project) by a special grant through the Department of  
3 Transportation (DOT) in conjunction with Town money that was slotted to replace a section of  
4 sidewalk, which presented a safety hazard.

5  
6 The trail runs from Watson Park to the Merrill's Marauders Bridge over the Souhegan River on the  
7 Turnpike. From there it connects to trails that go all the way up to Wildcat Falls. A Public Hearing  
8 was conducted on January 5<sup>th</sup>. The consultant along with representatives from the State took public  
9 testimony. The purpose of the hearing was to look at alternative routes to the route that was planned  
10 and suggested in the iTrac Study, which would go under Route 3; connect from Watson Park through  
11 the old sluiceway, and then connect on up along the river. Townspeople and Town Departments have  
12 expressed preference for that route as opposed to one that would have people crossing Route 3,  
13 walking across in front of the fire station and then on up the Souhegan River. There is a requirement  
14 for a Division of Historic Resources (DHR) review. It was determined that there should be a  
15 professional review done on the value of certain concrete chambers and some remaining gate works  
16 that are still in place there. They are now out soliciting an approved Archaeologist to evaluate these  
17 structures. Additional public hearings will be scheduled.

18  
19 Mr. Disco spoke of the installation of the sign on the footbridge over the Souhegan River that identifies  
20 Merrill's Marauder bridge itself, which is on the F.E. Everett Turnpike, and notes certain significant  
21 accomplishments by Mr. Marauder during his time in the service. The Public Works Department  
22 (PWD) has been able to successfully remove graffiti from the sign.

23  
24 The next big grant project is for the Woodbury Street sidewalk and an extension north of the Library as  
25 far as Wire Road. That grant was received at the end of last year. In its current state, the paperwork is  
26 at the DOT to proceed with hiring an engineering consultant to manage the project.

27  
28 In conjunction with that are the Wire Road/Route 3 intersection improvements, which have been in the  
29 long-range capital plan for some time. This year that was added to the Nashua Regional Planning  
30 Commission's (NRPC) ten-year plan. Although scheduled for 2023, the PWD is confident some  
31 projects may drop out pushing this one forward. That ties in with the Route 3 bridge over the Baboosic  
32 Brook, which is hopefully in the same timeframe.

33  
34 The Rotary Club has started to construct a connecting sidewalk between Route 3 and the Abbie Griffin  
35 Park, through volunteer work provided by O'Keefe Landscaping, All Outdoors Landscaping and  
36 Gleason Ineson Stone.

37  
38 Regarding public outreach, the committee has a new NRPC Town Center map handout, which has  
39 been distributed at various places around Town to keep public interest in the activities of the  
40 committee. Information booths have been run this year at the Pancake Breakfast on July 4th and at the  
41 Farmers' Market. A great deal of public feedback has been received, all of which has been positive.  
42 The committee made a presentation of its activities regarding the iTrac Study for public television,  
43 which has been played dozens of times.

44  
45 Regarding Safe Routes to School, the school did some repaving on O'Gara Drive in front of the high  
46 school. Their Capital Improvement Plan (CIP) includes a sidewalk on O'Gara Drive (2020-2021).  
47 The James Masticola Upper Elementary School students participated in the National Walk to School  
48 Day on October 4<sup>th</sup>.

1 Plans for 2018-2019 include continued efforts with the Transportation Alternatives Program (TAP)  
2 Grants, e.g., input at hearings, continued public outreach, bringing complete streets awareness to  
3 Merrimack, coordinate efforts with the NRPC, which is working on a Route 3 bike/pedestrian map and  
4 plan, and additional Merrimack TV presentations.  
5

6 The committee would like the Town Council to add the Town Center implementation into the CIP,  
7 continue support through the Town Manager and PWD, and help in the recruiting of committee  
8 membership.  
9

10 When asked about the timing of the historic resource review, Mr. Disco stated they are in the process  
11 of hiring a certified Archeologist. It should be a fairly short period of time for that project (few  
12 months). Councilor Albert spoke of the TAP Grant for Woodbury Street, and commented on other  
13 areas in Town where sidewalks could be used. Mr. Disco stated agreement there are other places  
14 where sidewalks are needed; however, the committee is restricted to work within the Town Center. He  
15 spoke of the large number of students that walk (in the road) from the high school down to the Town  
16 Center every school day. Those who have automobiles also come down that same way. It is a  
17 congested area, which is how it became such a high priority. The highest priority is the crossing of  
18 Baboosic Brook, which is out of the committee's financial means.  
19

20 Assistant Town Manager/Finance Director Micali stated the PWD has incorporated the request into the  
21 CIP, and will bring information forward when the CIP is presented.  
22

23 Councilor Koenig commented he had the impression there were a lot of strings attached to TAP Grants  
24 that were starting to get expensive, and the Town was contemplating passing over those. He believed  
25 they had stated it would actually cost around a million dollars to build that trail because it had to be 6'  
26 wide, ADA compliant, etc. Mr. Disco stated he had not been informed of that.  
27

28 Kyle Fox, Director, PWD, stated the CIP submitted last year and this year's will be similar; had the  
29 two previous TAP Grants in there as well as proposed TAP Grants for the next two cycles (biennial  
30 cycle), and projects from the Town Center Plan have been selected for the next two cycles as well.  
31 The sidewalk projects in the CIP are tied to the Town Center Plan.  
32

33 Regarding the first TAP Grant received in 2014, they are still in the feasibility study phase, which ties  
34 into the question of the historic study that is required by the DHR. In terms of where they are in the  
35 process, they have a contract amendment approved by DOT, now they need to get the Federal  
36 Government to sign off and commit the funds to the State so the State can commit them to the Town,  
37 and the Town can engage its chosen historian to perform the study. Once that has been completed, it  
38 should allow the feasibility study to be completed. The feasibility study will conclude with the  
39 consultant recommending a preferred alternative for the project. At that point, they will know what the  
40 approximate cost of the project is. If required to build it to the standards that the Feds seem to want to  
41 require, it is probably out of our budget, and they would advocate for shortening the project to get it  
42 from Watson Park to the fire station through the sluiceway and then to the forest. That is believed  
43 achievable with the \$535,000 we have. Should the State's response be you applied for this length of  
44 project, it is all or nothing, the Council will have a decision to make of whether to take the study we  
45 have (the State will still pay for 80% of everything up to date) and then we can decide to do whatever  
46 part of the project we want with our own funds or continue on, use the 80% of the \$535,000 and  
47 supplement the rest with Town funds.

1 Councilor Albert asked if the historical survey would be required if we didn't go with the Federal  
2 Grant; if the route were different. Director Fox responded that may have been required regardless as  
3 there is the need for a shoreland permit and the wetland permit. The wetland permit automatically  
4 triggers DHR review. Once you get into Federal money you get into the National Environmental  
5 Protection Act, which has an additional set of requirements.  
6

7 When asked, Tim Thompson, Director, Community Development, stated there is a link to the Town  
8 Center plan process through the Community Development Department pages on the Town's website.  
9

## 10 **Public Hearing**

### 11 **1. Public Hearing - Consideration of Changes to Chapters of the Merrimack Town Code**

12 Submitted by Town Council Chair Nancy Harrington and Vice Chair Finlay Rothhaus

13 The Town Council will hold a public hearing to consider the acceptance of recommended changes  
14 to Chapters 11, 79, 139, 158 and 178 of the Merrimack Town Code, pursuant to Charter Article V.  
15  
16

17 *Chairman Harrington declared the Public Hearing on Chapter 11 open at 8:11 p.m.*

18  
19 No public comment was offered.  
20

21 *Chairman Harrington declared the Public Hearing closed at 8:12 p.m.*

22  
23 **MOTION made by Councilor Boyd and seconded by Councilor Albert to move Chapter 11 to the**  
24 **Consent Agenda. MOTION CARRIED 7-0-0**

25  
26 *Chairman Harrington declared the Public Hearing on Chapter 79 open at 8:13 p.m.*

27  
28 No public comment was offered.  
29

30 *Chairman Harrington declared the Public Hearing closed at 8:14 p.m.*

31  
32 **MOTION made by Councilor Boyd and seconded by Councilor Dwyer to move Chapter 79 to**  
33 **the Consent Agenda. MOTION CARRIED 7-0-0**

34  
35 *Chairman Harrington declared the Public Hearing on Chapter 139 open at 8:15 p.m.*

36  
37 No public comment was offered.  
38

39 *Chairman Harrington declared the Public Hearing closed at 8:16 p.m.*

40  
41 **MOTION made by Councilor Boyd and seconded by Councilor Albert to move Chapter 139 to**  
42 **the Consent Agenda. MOTION CARRIED 7-0-0**

43  
44 *Chairman Harrington declared the Public Hearing on Chapter 158 open at 8:17 p.m.*

45  
46 No public comment was offered.  
47  
48



1 ***Chairman Harrington declared the Public Hearing closed at 8:18 p.m.***

2 Councilor Boyd noted on pages 28 and 29, regarding sewer screening levels, there is a listing of  
3 compounds, and questioned if there is need to be concerned with C6/C8 PFCs or any GenX chemicals  
4 as a part of this document. Jim Taylor, Assistant Director of Public Works/Wastewater, responded not  
5 at this time, we're still in the evaluation process, and looking into this in terms of analytical testing and  
6 methodologies. Currently there is no testing as far as the industrial pre-treatment program, and a test  
7 would have to be incorporated into Federal regulations for the Town to be able to then enforce  
8 standards or limits on that. Councilor Boyd questioned if the department would come back to the  
9 Council, once that comes down, and indicate the need for X number of dollars to administer the test.  
10 Mr. Taylor stated they would also have to come back and modify the sewer use ordinance.

11

12 **MOTION made by Councilor Boyd and seconded by Councilor Dwyer to move Chapter 158 to**  
13 **the Consent Agenda. MOTION CARRIED 7-0-0**

14

15 ***Chairman Harrington declared the Public Hearing on Chapter 178 open at 8:18 p.m.***

16

17 No public comment was offered.

18

19 ***Chairman Harrington declared the Public Hearing closed at 8:19 p.m.***

20

21 **MOTION made by Councilor Boyd and seconded by Councilor Albert to move Chapter 178 to**  
22 **the Consent Agenda. MOTION CARRIED 6-1-0**

23 *Councilor Koenig voted in opposition*

24

25 **2. Public Hearing – Introduction of Chapter 1, General Provisions, of the Merrimack Town**  
26 **Code**

27 Submitted by Town Council Chair Nancy Harrington and Vice Chair Finlay Rothhaus

28 The Town Council will hold a public hearing to consider the acceptance of Chapter 1, General  
29 Provisions, of the Merrimack Town Code, pursuant to Charter Article V.

30

31 ***Chairman Harrington declared the Public Hearing open at 8:20 p.m.***

32

33 No public comment was offered.

34

35 ***Chairman Harrington declared the Public Hearing closed at 8:21 p.m.***

36

37 **MOTION made by Councilor Boyd and seconded by Councilor Albert to move Chapter 1 to the**  
38 **Consent Agenda. MOTION CARRIED 7-0-0**

39

40 **Legislative Updates from State Representatives**

41

42 Representative Richard Barry spoke of the 2017 Legislative Softball Game being conducted at  
43 Anheuser-Busch on Saturday, October 14<sup>th</sup> beginning at Noon. Proceeds will go to Manchester's  
44 Liberty House, which assists homeless veterans.

45

46 Representative Barry spoke of a Bill they believed it appropriate to attach to as a means of addressing  
47 the desire for legislation that would allow the DES the ability to conduct air quality analysis for  
48 unregulated emerging contaminants like C6 (GenX). The Bill should be voted on by the House

1 Finance Committee next week, it would then come to the full House (likely in January), and then be  
2 turned over to the Senate. The needed additional funding is not yet identified, but DES has enough to  
3 do what is being requested.

4  
5 Representative Barry informed the Council Broadband Access is the subject of a Bill, which resulted  
6 from communities around the State indicating they are not getting fully served. When Verizon sold  
7 their broadband to Fairpoint, which has since sold it to Consolidated Communications, the requirement  
8 of the sale was that they reach 95% broadband service throughout the State. They have done more  
9 than that depending on how you define broadband; if you do it as over the telephone it is there, but  
10 there are towns that say that is not service that is unserved. Those communities would like to be  
11 identified as unserved so that they, along with the communities that are completely unserved, would  
12 have the ability to bond a competing service with their existing provider. He asked if the Council has  
13 received complaints about underserved areas.

14  
15 Councilor Albert stated his all of Merrimack has internet access, but he has had people question why  
16 there is no competition in the community. Representative Barry commented the reason the Town has  
17 the community/government/education channels is because the Town made a commitment that the  
18 carrier would be the prime carrier. There is Fairpoint, Comcast, and satellite. He explained further the  
19 Towns in question would like to set up their own internet service for underserved areas.

20  
21 Councilor Boyd stated he has not received complaints, but is supportive of any opportunity to open  
22 competition in any community as it relates to internet access.

23  
24 Vice Chairman Rothhaus stated he has not received a single complaint, but believes that is because  
25 there are much fewer people who have been using Fairpoint, Verizon before that, and whatever it is  
26 today. He is not certain of the percentages, but believes it to be a very low number compared to  
27 Comcast.

28  
29 Assistant Town Manager/Finance Director Micali stated you can get Fairpoint; they have had several  
30 problems, but nobody has really complained about it. They have been trying to work on getting the  
31 system up and running and have been doing a media blitz in Merrimack trying to get people on 10  
32 Mbps or higher. It is dependent on house miles from a routing point in Town.

33  
34 Chairman Harrington spoke of a discussion that took place years ago wherein it was indicated part of  
35 the problem in gaining competition is no one wants to come in and invest the money they would need  
36 to invest. There is an agreement with the current provider, but it doesn't preclude someone coming in.

37  
38 Representative Barry commented there is an issue of the taxing authority being in competition with the  
39 entity it taxes. The Town taxes the local cable company, and if you become in competition with them  
40 there is concern. If there is no service, he has no issue with it, but the definition of underserved has not  
41 yet been identified. He stated a desire to be aware of any complaints the Council has received.

42  
43 Chairman Harrington stated she has not heard any complaints. Councilor Boyd stated he has not heard  
44 any complaints. Councilor Koenig stated his belief there would be a lot of people dissatisfied if they  
45 had to depend on Fairpoint. They are going to other means, etc. If talking about is the Town served  
46 adequately he would say no. When multiple people in a neighborhood get on the internet it slows to a  
47 crawl. They talk about offering 10 Mbps, but they don't guarantee that ever. There is a lot of

1 frustration, but they are not complaining to the Council as they know the Council cannot do anything  
2 about it.  
3 Representative Barry spoke of suits at the Superior Court regarding evaluations of utility property.  
4 Normally the utility evaluation is done by the Department of Revenue Administration (DRA). The  
5 Town had argued the assessment for the property increased, therefore, the amount of tax revenue was  
6 increased. The utility stated it was out of line, and went to the courts. The courts said the 4-5 different  
7 methods of evaluating property are all acceptable. The suits were thrown out. What they did say was  
8 because the Legislature didn't specify which one, you need to go to the Legislature if you want relief.  
9 They are looking to the Science, Technology and Energy Committee for that.

10  
11 Assistant Town Manager/Finance Director Micali spoke of HB324 noting he received an email from  
12 the Town's Assessor, which stated in part: PSNH's assessment in the Town of Merrimack is \$106  
13 million. This does not include land and land rights, which add value to this. PSNH's book value is  
14 \$89 million. If we use the DRA assessment, which DRA is proposing we use, our assessment will be  
15 \$53 million. Assistant Town Manager/Finance Director Micali stated the Town would lose the  
16 difference. She went on to say that Merrimack has not had an abatement or appeals with PSNH.  
17 PSNH/Eversource has done significant upgrades to their transmission stations in the Town, which  
18 increases the value. The Board of Tax and Land Appeals found in recent Eversource and NHEC  
19 appeals that the area values were not properly valuing the properties in each community and should not  
20 be the basis for local taxation. That is what Representative Barry was stating, the Supreme Court  
21 upheld that decision. It will cost the Town of Merrimack, and the tax rate would go up; if we had to  
22 lower our utility valuations. If HB324 is passed, the Town will be forced to use the DRA assessment.  
23

24 Representative Barry commented on the other side, if it continues, it will be rolled into the electric  
25 rates. The more you run after more taxable income from that kind of an entity, the higher your rate is  
26 going. Representative Barry commented when he signed on for this job he said he wanted to reduce  
27 the State's electric rates. Currently we are the 4<sup>th</sup> or 5<sup>th</sup> highest in the country.  
28

29 Councilor Albert stated he is skeptical that if the law passed our electric rates would go down. He is  
30 concerned it would only result in additional profit for the entity. Councilor Boyd expressed agreement.  
31 Councilor Albert stated a desire to have something in place to show him that over a period rates would  
32 go down. Representative Barry stated one of the things to be considered is which evaluation method is  
33 used so that it is fair across all towns. When it changes it will have to be leveled out. If there is a  
34 significant difference (more than 5%) between what you are collecting now and what you will collect  
35 in the future then it should be phased in. He wants verification they have taken that and rolled it into  
36 rate reductions.  
37

38 When asked, Assistant Town Manager/Finance Director Micali stated the Town has not had a problem  
39 with Eversource regarding the way the Town values property. The one thing he wished to touch upon  
40 is the methodology; the State methodology says \$53 million, and Eversource is even saying it has \$89  
41 million in the Town. They are acknowledging a certain amount (\$36 million more than the State's  
42 valuation). Representative Barry responded he would think that is a timing issue. Chairman  
43 Harrington requested the amount be verified to determine the discrepancy.  
44

45 Representative Barry stated the Council has the responsibility to value the property in Town its way.  
46 You can negotiate with people as has been done in the past. If they are agreeing to the higher assessed  
47 valuation, the DRA gets note of that. Vice Chairman Rothhaus remarked apparently the DRA is doing

1 it differently because if there is an admission by the property owner that it is one thing and DRA is  
2 stating it is substantially lower, that is a problem.

3  
4 Representative Barry reiterated there are four different methods of valuations of any property. With  
5 utility properties, the issue becomes they don't turn over like houses. You can't look at recent sale  
6 amounts, etc. The assessment may simply not have caught up. When asked if there is a means of  
7 verifying if it has caught up, Assistant Town Manager/Finance Director Micali indicated he would  
8 have the Assessor look into that.

9  
10 Councilor Flood remarked there is a Public Utilities Commission that reviews all accounting methods,  
11 etc. Representative Barry stated that to be correct for those utilities that are regulated. There are  
12 several that are not regulated. There is still the evaluation and they still must go through the PUC rate  
13 setting process; it is a little different for regulated and unregulated. They do not have to go through the  
14 examination of accounting to set the rates.

15  
16 Councilor Flood remarked it seems like we're just whipping ourselves by upping the assessment as it  
17 will just be approved by the PUC to wrap it into our rates. Furthermore, if Merrimack assessed the  
18 property the way it chooses, they will not just adjust our rates, it is a company-wide thing. She stated  
19 she is uncertain why the Town assesses a company that will simply pass that cost back onto ratepayers.  
20 Representative Barry commented you tax grocery stores, the mall, etc. The Town has the  
21 responsibility to look at what the values are within the Town and make a valued judgement. You have  
22 a chance to spread the wealth over all the citizens, and the businesses will pay a fair share.

23  
24 Representative Barry stated it to be his job to find an assessing method that is acceptable to both  
25 parties and is fair across the State. He welcomed input.

### 26 27 **Town Manager's Report**

28  
29 Recently, 24 Town employees and volunteers became certified in American Red Cross CPR/AED &  
30 First Aid. The courses were taught by Parks & Recreation Director and Red Cross Instructor Matt  
31 Casparius.

32  
33 The Planning Board will be having a preliminary traffic meeting with the developers proposing multi-  
34 family residential development on Executive Park Drive on October 17<sup>th</sup> at 7:00 p.m. The applicant  
35 has not yet formally filed an application for a site plan, but wishes to engage the Board and public in a  
36 discussion of potential mitigation strategies for the traffic impacts of the potential development. Staff  
37 anticipates the developer will make a final decision on filing a formal application or not shortly  
38 following this meeting.

39  
40 It should be noted that a preliminary design review meeting is a non-binding discussion, and any  
41 feedback from the Planning Board during the design review meeting is only advisory until a formal  
42 application is submitted and in the public hearing process.

43  
44 Due to the ongoing upgrades to the Town website, Planning & Zoning Board information will not be  
45 updated on the website during this time. Please follow @ComDevMerrimack on Twitter for  
46 information on agendas, minutes, etc. during the upgrade period.

1 The Library and St. Joseph's Community Services (SJCS) Meals on Wheels are partnering to deliver  
2 library materials to Meals on Wheels clients living in Merrimack. This is a pilot program that the  
3 Library hopes to expand to those residents who are not Meals on Wheels clients. This service is  
4 funded by a grant from DCU Digital Credit Union, earmarked for "programs that make a difference."  
5 Meals on Wheels clients fill out an application noting their preference for library materials. The  
6 Library's Home Delivery Outreach Coordinator will contact the program participant to discuss their  
7 selections. Meals on Wheels drivers will deliver materials twice a month along with the regular meal  
8 delivery, and will pick up return items to be brought back to the library. Any of the Library's regular  
9 circulating collection is available, large print as well as regular print, DVDs, audio books and  
10 magazines. The Library's telescope will not be available for check out.

11  
12 At this time, no overdue fines or replacement costs will be applied to SJCS clients. This policy will be  
13 reviewed by the Library Board of Trustees after a period of 6 months. This collaborative effort will  
14 deliver books and audio books to only Meals on Wheels home delivery participants as a starting point.  
15 The goal is to test the outreach program in Merrimack and to broaden the program over time with  
16 hopes that Merrimack's program can serve as a model for other communities where Meals on Wheels  
17 serves homebound clients. Additionally, the Library will be seeking volunteers to assist as additional  
18 drivers to deliver materials to residents who are home bound but not Meals on Wheels clients.

19  
20 Vice Chairman Rothhaus requested information on when the Town began allowing residential to go  
21 into Executive Drive including the extended stay facility that is now there.

22  
23 Director Thompson stated the hotel was a permitted use under the zoning ordinance. The multi-family  
24 was approved through special exception and variances by the Zoning Board of Adjustment (ZBA) in  
25 May. They granted the exception and the variances to allow the density of 280 units and for the  
26 location and the location on the opposite side of the turnpike where multi-family typically is not  
27 allowed under our ordinance. Vice Chairman Rothhaus commented on a proposal that came forward  
28 2-3 years ago. Director Thompson stated it was a similar proposal by a different developer with a  
29 different density and a different proposal that had gone to the ZBA, and was denied.

30  
31 **Consent Agenda** - None

32  
33 **Old Business**

34  
35 **1. Committee Appointments [Tabled at the August 17, 2017, Town Council meeting]**  
36 Submitted by Town Council Chairman Nancy Harrington and Vice Chair Finlay Rothhaus  
37 The Town Council to consider appointing the following individual to Town Committees, pursuant  
38 to Charter Article 4-8:

39  
40 - Richard Conescu – Zoning Board of Adjustment (Full member)

41  
42 Chairman Harrington noted Mr. Conescu was interviewed, and has been recommended for re-  
43 appointment. Vice Chairman Rothhaus stated he met with the Chair of the ZBA as well as Mr.  
44 Conescu, who is very involved in the community, and will do a really nice job.

45  
46 Councilor Koenig questioned if any of the concerns Vice Chairman Rothhaus spoke of were brought  
47 up in the discussions with the Chair and Mr. Conescu. Vice Chairman Rothhaus stated it had, but was  
48 an informal discussion. He spoke of being frustrated by what is occurring in that area of Town.

1  
2 Councilor Koenig remarked the reason he brought it up and questioned it is not necessarily that he  
3 doesn't want to approve Mr. Conescu, just that the Council seems to approve everyone that comes  
4 forward for the ZBA, sometimes because we are afraid we don't have any other opportunities. At  
5 some point, we need to make sure the ZBA, the Planning Board, and the Town Council are all walking  
6 on the same trail. If they are developing in areas by granting variances and things like that without  
7 even an argument, then maybe things aren't where they ought to be and we ought to be reviewing that  
8 more carefully.

9  
10 Chairman Harrington spoke of the ZBA being a quasi-judicial committee, and questioned what role the  
11 Council might possibly have. Vice Chairman Rothhaus commented they are representing us. We are  
12 appointing them, and by the nature of us doing the appointing it should represent our beliefs.  
13 Chairman Harrington stated her dilemma to be how you would influence that. Councilor Koenig  
14 remarked it is not an easy answer because it is hard to vote no for somebody, but it is our responsibility  
15 and job to do that if it is appropriate.

16  
17 Councilor Koenig stated any quasi-judicial or judicial program is made up of people with opinions, and  
18 we are constantly trying to get people with the opinions that we share on those boards. The Supreme  
19 Court is an amazing example of the fear the nation has over who will be sitting in the next vacant seat.  
20 We do have a responsibility to appoint people that we believe will have the best interest of Merrimack  
21 at heart and not necessarily this group or that group's, but we have the problem that we have our own  
22 interest as well so we are always trying to balance that out. Simply rubber stamping, which is what it  
23 appears to be sometimes he does not think is necessarily serving that purpose. He suggested there is  
24 the need for better guidance from the Community Development Department and our staff as to where  
25 the different members of these boards should be going and what should happen.

26  
27 Director Thompson stated it is extraordinarily difficult to express opinions through a zoning board. He  
28 noted the ZBA is the one body in Town where he cannot make recommendations. They are bound by  
29 what the State sets forward through the courts and law as to the criteria that must be met to grant a  
30 variance, and the ordinance language is plain; what they need to do to grant a special exception. It is  
31 inappropriate for staff to try to influence the board. They must make their decision based on the facts  
32 of law. The ZBA is that one board in Town where it is extraordinarily difficult to get a read on people  
33 before you appoint them to the board. It is not appropriate for him to comment on how they perform  
34 once they are there because ultimately, they must make the decision they feel is the best in accordance  
35 with the criteria the State sets forward.

36  
37 Councilor Koenig stated his appreciation for the position the Director is in, but sitting on the Planning  
38 Board he has been really amazed when ZBA approvals have come through and then the Planning  
39 Board must make some statement or they have approved a variance that just doesn't seem to make a  
40 whole lot of sense.

41  
42 Chairman Harrington questioned if there is an appeal process. Director Thompson stated the Council,  
43 as a body, he believes would be someone the court would consider having standing to file. First there  
44 would have to be a request for re-hearing because that is the administrative process that the ZBA must  
45 go through, and following that it would go to Superior Court. He stated his belief there was a case in  
46 Hooksett some years ago where the Conservation Commission tried to file an appeal and either the  
47 Superior or Supreme Court said that they didn't have standing to appeal the decision as a non-elected  
48 body. He stated he would have to research if the Council would have that type of standing. When

1 asked, Director Thompson stated it to be 30 calendar days from the date of decision to file a request for  
2 re-hearing.

3  
4 When asked, Director Thompson stated a request could be made to mitigate the impacts of the  
5 development they are proposing. To solve the existing issues, no.

6  
7 Councilor Albert spoke of Z1 Express and the road that runs between that facility and the childcare  
8 center stating there were plans at one point to take that and go straight through to Amherst Road. He  
9 questioned if that is something that could be considered by those involved in the thought process.  
10 Director Thomson stated there would need to be, under U.S. law and caselaw, a rational nexus between  
11 the impacts of the development and the types of mitigation and costs the developer would be  
12 responsible for mitigating. He commented he would have a hard time saying the traffic added by  
13 apartments would be enough to generate that type of offsite improvement.

14  
15 Chairman Harrington brought the focus back to the agenda item. Vice Chairman Rothhaus re-stated  
16 how pleased he is with the appointment of Mr. Conescu, and commented he will do a good job.

17  
18 **MOTION by Councilor Rothhaus and seconded by Councilor Koenig to re-appoint Richard**  
19 **Conescu as a full member of the Zoning Board of Adjustment. MOTION CARRIED 6-1-0**  
20 *Councilor Boyd voted in opposition*

21  
22 **2. MS-434 Review [Tabled at the September 28, 2017, Town Council meeting]**

23 Submitted by Town Manager Eileen Cabanel and Finance Director Paul T. Micali

24 Town Council will be presented with the details of the undesignated fund balance as it relates to  
25 the 2017 MS-434.

26  
27 Assistant Town Manager/Finance Director Micali, stated as of June 30, 2016, the Town added approx.  
28 \$597,000 to the undesignated fund balance. The year began at \$6,643,965 to which \$597,773 was  
29 added to get to the estimated undesignated fund balance as of June 30, 2017 of \$7,240,738. At its last  
30 meeting, the Council voted to allocate \$450,000 toward tax relief leaving a balance of \$6,790,738.

31  
32 There is a fund balance in place that identifies ways in which these funds could be utilized:  
33 Emergency appropriations, capital projects or transfers to capital reserves (Warrant Article required),  
34 reduction of the tax rate for the ensuing year, and any other non-recurring appropriation as deemed  
35 appropriate by the Council (Town vote).

36  
37 Regarding revenues, he spoke of the largest being interest, automobile registrations, and building  
38 permits. Looking at what was proposed during the budget process last year for motor vehicle permits,  
39 he increased that up to \$4.9 million. An uptick in auto registrations has been seen over the last several  
40 years. Interest rates have increased slightly. Another reason an uptick has been seen in interest is  
41 competition amongst banks. The total of revenues and credits is \$22,674,033 expected from non-tax  
42 purposes. Last year the tax rate was \$4.91 for the municipality, and this year it is estimated, after the  
43 \$450,000 reduction, to be \$4.92.

44  
45 Councilor Albert questioned if the \$4.92 takes into account cost of living type increases regarding  
46 insurance costs, etc. for the coming year. Assistant Town Manager/Finance Director Micali responded  
47 it takes into account everything that was voted on back in April.

1 **MOTION made by Councilor Boyd and seconded by Councilor Albert to approve the 2017**  
2 **MS434 document, as presented. MOTION CARRIED 7-0-0**

3  
4 **New Business**

5  
6 *There being no objection, the Council went out of the regular order of business to take up Items 2*  
7 *and 3 under New Business.*

8  
9 **2. Town of Merrimack / Lakeside Drive (Bazzocchi) Easement Discussion**

10 Submitted by Meridian Land Services Environmental Dept. Manager Thomas E. Carr, CSS, CWS  
11 Town Council to be presented with a cross easement plan and documents for septic force main and  
12 water line under road and road over private property.

13  
14 Thomas Carr, Meridian Land Services, stated his clients, Mr. & Mrs. Bazzocchi, own property on  
15 Lakeside Drive on Baboosic Lake (3 properties). The Town line cuts through the Lakeside Drive lot,  
16 and they own another lot that is across the street. He provided a map of the property noting a boundary  
17 survey has been done. He pointed out the area of the house and noted the septic system is to the  
18 northeast. The septic system has been stressed for years, and they are proposing to replace that on the  
19 other property. There is an existing well to the north of the proposed location, and a waterline. They  
20 are not sure where the line goes, but it does cross under the road to the house. As part of the proposal  
21 to replace the septic system, they would replace that line under the road in that easement location and  
22 wrap it into the north side of the house.

23  
24 There will still be a septic tank with a pump chamber in the location where the septic system currently  
25 is. It will come toward the south along the edge of the building and then turn and go up through the  
26 easement across on to Lot 6A-1/151 and pump to the leach field. The objective is to try and get the  
27 leach field further away from the lake to enhance water quality and comply as best they can with State  
28 and local regulations regarding septic systems. They submitted the plan for review by the PWD. In  
29 the process of their review, it became obvious that the Town road, Lakeside Drive, was built over a  
30 portion of their land.

31  
32 The intent of the plan is to swap easements between the Town and the property owners so that the use  
33 can be legitimized and legalized with a plan and the documents. The property owners' attorney has  
34 prepared the legal documents to back the plan. They have been submitted, revised, and final revisions  
35 were provided to the PWD earlier in the day. The Town's attorney has reviewed them, and the  
36 requested revisions have been made. The request is that the Council allow for signatures on the  
37 Easement Deed so that it can be recorded and the septic system can be replaced.

38  
39 Councilor Albert noted there are plans for two trenches, and questioned how they would approach that  
40 and how long it would take. There is a dead-end north of the area, and there are 6 residences that  
41 would be impacted coming and going. Mr. Carr responded they would do it half at a time so that the  
42 road could be open. When asked what the duration of the project would be, he stated it is likely one  
43 day for each of the crossings.

44  
45 Dawn Tuomala, Deputy Director/Town Engineer, PWD, noted a lot of the details are spelled out  
46 within the easement deeds. The road will have to be restored to an acceptable condition, and they  
47 would still have to obtain a Right-of-Way permit to do the work.



1 When asked, Mr. Carr stated the septic tanks that are there now for the existing system will be pumped  
2 out and removed. The existing leach field is simply abandoned in place. It is unknown whether it is a  
3 dry well or leach field.

4 Councilor Koenig commented there appears to be a lot of effort to do multiple crossings. He requested  
5 additional information about the desired outcome, e.g., trying to get to the outside edges of the  
6 property. Mr. Carr stated they cannot put the water line and septic line in the same trench because of  
7 separation distances and cross contamination concerns. They know the existing water line comes  
8 down somewhere on the northern side. They are trying to plat that and put the line in the right  
9 location. They will make some upgrades to the house so it makes sense to upgrade that line. He  
10 pointed to the area where a retaining wall is located, and stated the reason they were not crossing at  
11 that location is because they are trying to get around that/limit the disturbance to the area.

12  
13 Mr. Carr commented when the subdivision was done it included 10' paths that allow access to the lake.  
14 Nothing was ever platted well or monumented well. Houses were built on these 10' rights-of-way, etc.  
15 Based on the condition of the retaining wall, it just made sense to bring the sewer line down and up  
16 through the section where there was a tract line, and get the two separated.

17  
18 **MOTION made by Councilor Boyd and seconded by Councilor Dwyer to approve the cross-**  
19 **easement plan and documents for septic force main and water line under road and road over**  
20 **private property, and that the Town Manager or her proxy be authorized to sign any and all**  
21 **documents required to complete the transaction. MOTION CARRIED 7-0-0**

### 22 23 **3. Town of Merrimack / Lakeside Drive (Grenon & Wheeler) Easement Discussion**

24 Submitted by Thomas F. Quinn, Esq.

25 Town Council to be presented with a cross easement plan and documents for septic force main and  
26 water line under road and road over private property.

27  
28 Thomas F. Quinn, Esq., stated the property in question is immediately to the south of the subject of the  
29 previous agenda item. His clients own four lots (103, 104, 153, and 154). The septic system was  
30 failing, the surveyors went out and started to design a plan, and discovered the encroachments. This  
31 case is a little different than the previous one in the sense that the corner of the house, deck and septic  
32 tank beneath the deck are all built within the limits of the historic right-of-way. That is possible  
33 because it turns out that the road is not constructed within the limits of the right-of-way.

34  
35 Being proposed is the exchange of easements with the Town. Mr. Wheeler would grant to the Town  
36 Easements B and C allowing the roadway to remain as constructed. Easement A is within the right-of-  
37 way, and would allow the buildings and improvements to remain as is and Easement D, which is a  
38 crossing of the roadway, would allow a sewer line crossing (already there). At that point, it hits the  
39 area known as Easement E, then it will connect to Easement F, which is on Lot 75. Easements E and F  
40 technically don't involve the Town as they are easements on private property. They were included in  
41 the exhibit to help better understand what is proposed.

42  
43 Councilor Albert asked how long the project is expected to take to complete, and commented on the  
44 disruption on that road particularly given the other two road crossings. Attorney Quinn responded the  
45 likelihood that it would be done in conjunction with the other project is pretty slight as there are  
46 separate owners, and they don't have a final design yet. The design of the septic system is conditioned  
47 upon getting these easements. One of the conditions in the easement deed that the Town is granting

1 contains provisions that the work would be done in such a way as to cause as minimal an impact to the  
2 public as possible.

3  
4 **MOTION made by Councilor Boyd and seconded by Councilor Dwyer to approve the cross-**  
5 **easement plan as presented with the instructions that the Town Manager or her proxy be**  
6 **authorized to sign the Easement Deed necessary to complete the transaction. MOTION**  
7 **CARRIED 7-0-0**

8  
9 *The Council returned to the regular order of business.*

10  
11 **1. Consideration of Changes to Chapters of the Merrimack Town Code [First Reading]**

12 Submitted by Town Council Chair Nancy Harrington and Vice Chair Finlay Rothhaus

13 The Town Council to consider the acceptance of recommended changes to Chapters 19, 27, 111,  
14 142 and 193 of the Merrimack Town Code, pursuant to Charter Article V.

15  
16 Chapter 19 - Conservation Commission; no questions were posed.

17  
18 **MOTION made by Councilor Boyd and seconded by Councilor Dwyer to move to a Public**  
19 **Hearing consideration of acceptance of recommended changes to Chapter 19 of the Merrimack**  
20 **Town Code, pursuant to Charter Article V. MOTION CARRIED 7-0-0**

21  
22 Chapter 27 - Heritage Commission; no questions were posed.

23  
24 **MOTION made by Councilor Boyd and seconded by Councilor Dwyer to move to a Public**  
25 **Hearing consideration of acceptance of recommended changes to Chapter 27 of the Merrimack**  
26 **Town Code, pursuant to Charter Article V. MOTION CARRIED 7-0-0**

27  
28 Chapter 111 - Conservation Areas

29  
30 Councilor Albert stated a desire to further amend by deleting Section J under §111-1 Rules of Conduct,  
31 which reads: “There shall be allowed, by permit, overnight camping where at least one person is at  
32 least 21 years of age.” He spoke of the discussion the Council had earlier in the year, and stated  
33 concern allowing the language to remain could result in a burden on Town Services. He spoke of the  
34 valid points Chief Currier made regarding allowing camping. Councilor Albert remarked he does not  
35 believe these locations are geared for that.

36  
37 Chairman Harrington asked about special exceptions for instances such as a group of Girls Scouts.  
38 Director Thompson stated the way it is currently set up a permit is required for overnight camping  
39 within a Town conservation area. Vice Chairman Rothhaus commented if section J were to be  
40 removed, the chapter would be silent on the issue, which is how he believes it should be. He agreed he  
41 would not want to have to create campsite areas, etc. Councilor Albert voiced concern over the  
42 possibility of a 21-year-old obtaining a permit and inviting many people along. He sees it as an issue  
43 that could have to be addressed by the police and/or fire departments.

44  
45 Vice Chairman Rothhaus stated his support of the motion. He added were someone to spend the night  
46 there, and it was an uneventful happening that did not involve law enforcement, there would be no  
47 harm. Councilor Dwyer stated his support of the motion. He commented if the language were

1 removed there would be nothing stopping a group such as the Girls Scouts from coming before the  
2 Council to seek permission to camp there.

3  
4 Director Thompson noted Section A reads: "No person shall remain, stay or loiter in or on any  
5 conservation area during the period from 1/2 hour after sunset to 1/2 hour before sunrise, except under  
6 the authorization of the Conservation Commission or its designated agents. This provision is not  
7 intended to preclude authorized activities from occurring outside of the prescribed times." It is the  
8 Conservation Commission that would have to be approached for permission. Councilor Dwyer  
9 remarked since Section A addresses that scenario, it is a non-issue.

10  
11 Councilor Albert questioned if the area identified under §111-3B - Designation of Conservation Areas,  
12 as "Parcel 4B/035, commonly known as "Riverside Drive."" is referring to the Ireland property. Vice  
13 Chairman Rothhaus stated his belief that is the case.

14  
15 Councilor Albert spoke of the recently purchase Sklar property, and noted its absence from the list.  
16 Director Thompson suggested inclusion of that property might be a little premature as he is aware the  
17 Commission may be coming forth with an idea to establish a steering committee to determine what  
18 will happen with that property.

19  
20 It was noted Grater Woods and the Horse Hill Nature Preserve are also not included in the list.  
21 Chairman Harrington suggested the Conservation Commission evaluate the Chapter.

22  
23 **MOTION by Councilor Boyd to table Chapter 111**

24  
25 **ON THE QUESTION**

26  
27 It was noted any additional changes could be made at the time of the Public Hearing. Director  
28 Thompson commented there may be other documents that have separate rules and regulations. It may  
29 be there is a reason why some of the properties are not included in the list, e.g., because of the rules  
30 that apply to this section.

31 **MOTION WITHDRAWN**

32  
33 **MOTION made by Councilor Boyd and seconded by Councilor Rothhaus to move to a Public**  
34 **Hearing, with the subtraction of Item J under §111-1 and further discussion regarding §111-3**  
35 **with the Conservation Commission Chairman, consideration of acceptance of recommended**  
36 **changes to Chapter 111 of the Merrimack Town Code pursuant to Charter Article V. MOTION**  
37 **CARRIED 7-0-0**

38  
39 **Chapter 142 - Parks and Recreation Areas**

40  
41 Councilor Albert noted the recommended changes include language that would prohibit swimming at  
42 the boat ramp at Veterans Park, and suggested the language state swimming is prohibited at Veterans  
43 Park. He questioned where the boundary line of the boat ramp begins and ends. He touched upon the  
44 issue of enforceability.

45  
46 Councilor Dwyer noted there is a private house there, and such language would prohibit the home  
47 owner from swimming in front of his own home. Vice Chairman Rothhaus stated he does not like to  
48 make thing smore onerous than they have to be, but the reason the language was suggested is for safety

1 purposes. He believes it unlikely people will wish to swim there given the difficulty in getting to the  
2 area, and does not believe it necessary for the language to prohibit swimming altogether.

3  
4 Councilor Flood stated her belief there is no way to prohibit swimming particularly given the number  
5 of people that reside on that lake. Councilor Dwyer remarked misconduct in the area is likely not  
6 prevalent enough to be a problem.

7  
8 Councilor Boyd spoke of the legal term riparian rights, which is a system for allocating water among  
9 those who possess land along its path. When looking at the language “swimming activities shall be  
10 prohibited from the boat ramp at Veterans Park” he is seeing it as being prohibited at the boat ramp,  
11 and is not being prohibited at Veterans Park. When you take out “the boat ramp”, he sees it as saying  
12 you can’t access the lake from Veterans Park. It will not prohibit you from swimming in the lake, it is  
13 just you can’t access the lake from Veterans Park to swim in it.

14  
15 Councilor Albert reiterated his concern with whether or not the language is enforceable. Chairman  
16 Harrington agreed; either ensure it is enforceable or do away with it. Councilor Koenig stated support  
17 for the language as recommended. Councilor Dwyer commented it is a boat ramp, and there is a safety  
18 concern. The desire is to discourage activity other than getting in and out of the boat ramp. The boat  
19 ramp is a place of activity, and it can be a dangerous activity. He stated support for the language as  
20 recommended.

21  
22 Councilor Boyd spoke of the possibility of an ice rink down at Watson Park where there will be night  
23 lighting. There are facilities at Wasserman Park where there is night lighting and under §142-2 - Park  
24 Hours, there is no language that has any type of rule as it relates to lighting at the parks especially if  
25 looking to move the skatepark (had night lighting at its previous location). Matt Casparius, Director,  
26 Parks and Recreation noted the last sentence that reads: “(This provision shall in no way be intended to  
27 preclude authorized and regularly scheduled activities or events from occurring outside of the  
28 prescribed times.)”

29  
30 Councilor Boyd noted §142-15 - Wasserman Park Beach, reads: “The Wasserman Park Town Beach  
31 shall be for the exclusive use of Merrimack residents and their authorized guests. Nonresident visitors  
32 are permitted to use the area only when accompanied by a Merrimack resident or have the appropriate  
33 parking pass affixed to their vehicle.” Those two sentences are contradictory. He recommended the  
34 second sentence be deleted.

35  
36 Councilor Boyd remarked the way he reads it the second sentence still covers the scenario of a guest of  
37 a Merrimack resident. It may be that the Merrimack resident provided his guest with the car and  
38 parking pass to go enjoy the beach. He is acceptable with the language as written.

39  
40 Director Casparius provided the example of a non-resident having a pass such as Town employees,  
41 e.g., the waterfront director or maintenance staff parking near the maintenance shed.

42  
43 Councilor Koenig commented there can be an authorized guest, and if having an appropriate parking  
44 pass, they can go down there. Assistant Town Manager/Finance Director Micali stated there are other  
45 ways of obtaining a pass; if you are a business in Merrimack, it is a registered vehicle in Merrimack,  
46 and the employee who is authorized to use that registered vehicle lives outside of Town.

47

1 Councilor Flood stated all the exceptions are not allowed by the rule, and there should either be an  
2 enforceable rule or no rule at all. Although she would be in favor of it, the vote was not for taxpayers  
3 to be able to obtain a pass, it was for the exclusive use of Merrimack residents and their authorized  
4 guests accompanied by a Merrimack resident.

5 **MOTION made by Councilor Boyd and seconded by Councilor Dwyer to move to a Public**  
6 **Hearing consideration of acceptance of recommended changes to Chapter 142 of the Merrimack**  
7 **Town Code, pursuant to Charter Article V**

8  
9 **ON THE QUESTION**

10  
11 Councilor Koenig stated his hesitancy in voting for the recommended changes given Councilor Flood  
12 has indicated the wording is in violation of rules. Councilor Flood stated the wording is correct, but  
13 the interpretation was incorrect. Councilor Koenig noted the language that would allow a guest with a  
14 parking pass affixed to his/her car. Councilor Flood agreed that would be allowed under the current  
15 language. **MOTION CARRIED 7-0-0**

16  
17 **Chapter 193 - Welfare Guidelines**; no questions were posed. It was noted there was a massive  
18 overhaul of the guidelines in 2012, 2013, and 2024. Most of the allowances have an automatic update.

19  
20 **MOTION made by Councilor Boyd and seconded by Councilor Albert to move to a Public**  
21 **Hearing consideration of acceptance of recommended changes to Chapter 193 of the Merrimack**  
22 **Town Code, pursuant to Charter Article V. MOTION CARRIED 7-0-0**

23  
24 **4. Town of Merrimack Tax Bill Insert Submitted by Finance Director Paul T. Micali**

25 Town Council to consider enclosing a breakdown of the 2017 tax rate in the next tax bill mailing.

26  
27 Assistant Town Manager/Finance Director Micali questioned the will of the Council. The consensus  
28 was the information should be included in the next tax bill mailing. Councilor Albert suggested the  
29 information be placed in a very visible location on the Town's website.

30  
31 **MOTION by Councilor Boyd and seconded by Councilor Albert to enclose a breakdown of the**  
32 **2017 tax rate in the next tax bill mailing. MOTION CARRIED 7-0-0**

33  
34 **Minutes**

35  
36 Approve the minutes of the Town Council meeting of September 28, 2017.

37  
38 *The following amendments were proposed:*

39  
40 Page 1, Line 5; remove reference to Assistant Town Manager/Finance Director Paul Micali being in  
41 attendance.

42  
43 Page 8, Line 24; delete "and seconded by Councilor"

44  
45 **MOTION made by Councilor Boyd and seconded by Councilor Albert to approve the September**  
46 **28, 2017 Town Council meeting minutes, as amended. MOTION CARRIED 5-0-2**  
47 *Councilors Harrington and Flood Abstained*

48

1 **Comments from the Press** - None

2  
3 **Comments from the Public** - None

4  
5 **Comments from the Council**

6  
7 Councilor Koenig spoke of the Planning Board meeting scheduled for October 17<sup>th</sup> at which there will  
8 be a preliminary traffic meeting with the developers proposing a multi-family residential development  
9 on Executive Park Drive.

10  
11 The Planning Board voted to grant conditional final site plan approval for Mi-Box New England, LLC,  
12 which will be located at 101 Herrick Street. The intent is to construct a fairly large structure where  
13 they will be able to stack all their mi-boxes inside for storage in a controlled environment. He stated  
14 his opinion the appearance will be a little industrial, but will also represent the Mi-Box look; will be  
15 white metal, etc. It is a big use of land that has been unutilized for a long time.

16  
17 They are currently building and working on one of those commercial buildings off Continental  
18 Boulevard. They are using that now temporarily, and are planning to move completely into this new  
19 regional warehouse in some years. They will also use the structure as a staging or viewing spot for  
20 other people around the country that want to build similar facilities. It is another instance of putting  
21 Merrimack on the map from a commercial perspective.

22  
23 Councilor Albert spoke of being on the Board of Directors for Meals on Wheels, and commented when  
24 he saw what the Library is doing with this program he was very pleased, and is hopeful the program  
25 will take off.

26  
27 Councilor Dwyer informed the Council and viewing audience of his intent to resign from his position  
28 on the Council effective October 27<sup>th</sup>. He and his wife will be retiring and moving out of State.  
29 Although he is uncertain of the specific date he will be moving, because of the calendar, he wanted to  
30 be certain his replacement could get on board before the start of the budget season. He spoke of  
31 having thoroughly enjoyed his time on the Council, and thanked the residents of Merrimack for the  
32 opportunity to serve.

33  
34 Chairman Harrington stated letters of interest should be sent to the Town Manager by Monday,  
35 November 6<sup>th</sup>. Interview dates will be November 8<sup>th</sup> and 9<sup>th</sup> depending on the number of letters  
36 received. The selection will be at the Town Council meeting of Thursday, November 16<sup>th</sup>. The  
37 position would run from November 16<sup>th</sup> through the April election at which voters will elect an  
38 individual to fulfill the remaining year of that term.

39  
40 **Adjourn**

41  
42 **MOTION made by Councilor Boyd and seconded by Councilor Dwyer to adjourn the meeting.**  
43 **MOTION CARRIED 7-0-0**

44  
45 *The October 12, 2017 meeting of the Town Council was adjourned at 10:21 p.m.*

46  
47 Submitted by Dawn MacMillan