



## Town Council Meeting Minutes

Thursday June 14, 2018 at 7:00 PM, in the Matthew Thornton Room

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

### **Pledge of Allegiance**

Chairman Rothhaus led in the Pledge of Allegiance.

### **Announcements**

The Town Council Retreat/Worksession will be conducted on June 20<sup>th</sup> from 9:00 a.m. - 4:00 p.m. at the Carriage Shed at Buckley's Great Stakes located at 438 D.W. Highway.

Regular meetings of the Town Council will be conducted on Thursday, June 28<sup>th</sup>, July 19, and August 16<sup>th</sup> at 7:00 p.m. in the Matthew Thornton Room.

The Rock'n Ribfest will be held this weekend at Anheuser Busch. Expect traffic delays, especially Sunday morning between 9:00 - 10:00 a.m. during the 5-mile road race. There will be intermittent road closures between Anheuser Busch and Horseshoe Pond, please seek alternate routes during that time.

The Merrimack High School graduation will be held this Saturday at the High School. Expect delays in the morning hours in the area of O'Gara Drive, McElwain St. and Baboosic Lake Rd.

The Parks & Recreation Department would like to announce the start of their free weekly summer concert series at Abbie Griffin Park. Concerts are held every Wednesday night and begin at 6:00 p.m. The Annual Concert Series runs weekly from June 20<sup>th</sup> - August 15<sup>th</sup>. On stage for Wednesday, June 20<sup>th</sup> is Ben Rudnick & Friends which is the children's concert in partnership with the Merrimack Public Library and the start of their summer reading program.

Merrimack's property tax bills have been mailed and are due by July 6, 2018. Property owners who have not received their tax bill should contact the Tax Collector's office at 424-3651 to arrange for a duplicate bill. Bills not paid by July 6<sup>th</sup> are subject to 12% interest, per annum.

### **PFOA Update**

Councilor Harrington spoke of the two-day Environmental Protection Agency (EPA) Regional Meeting scheduled to begin on June 25<sup>th</sup> (4:30 - 10:00 p.m.) at the Exeter High School located at 1 Blue Hawk Drive, Exeter, NH. She stated the desire for written testimony to be prepared for submission from the Council regarding the impact of PFOAs on the Town.

Councilor Boyd stated his support of providing written testimony commenting as a community that has been dramatically impacted, it should carry some weight.

1 Councilor Harrington indicated she would draft language. She noted the Council would not meet again  
2 until after the Regional Meeting.

3  
4 **MOTION made by Councilor Boyd and seconded by Councilor Healey to approve the request**  
5 **for written testimony to be submitted, on behalf of the Town Council, at the EPA Regional**  
6 **Meeting**

7  
8 **ON THE QUESTION**

9  
10 Councilor Boyd spoke of his trust in Councilor Harrington to encapsulate the thoughts and concerns  
11 that have been experienced in our community for the past several years. Councilor Harrington stated  
12 the letter would be sent to the Council for feedback prior to submission.

13  
14 When asked if draft language could be made available in time for the Retreat, Councilor Harrington  
15 indicated she would work towards that goal.

16  
17 Town Manager Cabanel stated she is pleased the Council is preparing written testimony. She, Kyle  
18 Fox, Director, Public Works Department, Sarita Croce, Assistant Director, PWD/Wastewater, and  
19 perhaps Paul Micali and one other member of staff will be in attendance. They would not be in a  
20 position to make statements unless on behalf of the Council.

21 **MOTION CARRIED 7-0-0**

22  
23 **Highway Garage Project Update**

24  
25 Paul Micali, Assistant Town Manager/Finance Director, commented on the work underway.  
26 Foundation footings are going in. The maintenance bay building is expected to be delivered in the next  
27 week or so. A two-phase approach is being taken; will start with stick construction (office space) and  
28 the Butler building will be erected. Staff will be able to move into the new maintenance facility by  
29 Thanksgiving. At that point, work will start on the existing building. The site Foreman for the  
30 construction management company is onsite every day.

31  
32 Councilor Albert questioned if staff has been contacted by the garage construction committee in regard  
33 to citizen concern around the buffer area. He spoke of having seen comments posted on social media.  
34 Assistant Town Manager/Finance Director Micali stated some of the neighbors have reached out, and  
35 Director Fox and Lori Barrett, Operations Manager, have spoken with them. A 6' fence has been  
36 erected to minimize the view of construction. Temporary fencing has been placed on Turkey Hill  
37 Road to avoid people driving into the construction area. Staff has been in constant contact with the  
38 neighbor across the street. If residents have questions, they should contact Ms. Barrett or the Town  
39 Manager's Office.

40  
41 **Comments from the Press and Public**

42  
43 Lorraine Allen, 16 French Court

44  
45 Stated she is pleased members of the Council and staff will attend the Regional Meeting. She spoke of  
46 a recent article in the Union Leader wherein the Town Council was quoted. It suggested there wasn't  
47 communication from Citizens for Clean Water. At the end, it names facts that are untrue. She was

1 surprised because she tries to keep the community abreast; goals are listed on the website. She reaches  
2 out to Representatives, etc.

3  
4 She spoke of her surprise with the untrue statements in the article particularly given the reporter had  
5 received an email/press release from her before the Summit in May about the issue of not having a seat  
6 at the table. The reporter had acknowledged receipt of the information. The article clearly indicated  
7 Citizens for Clean Water was at the EPA Summit. She looked back at the video of the Council's last  
8 meeting and heard people once again indicate communication is a little glitchy. She remarked it is a  
9 two-way street, and she would like to hear from anyone having any questions.

10  
11 Town Manager Cabanel stated neither she nor the Council had anything to do with the comments  
12 included in the article. The issues were that there were several very detailed emails sent to Clark  
13 Freise, Assistant Commissioner, New Hampshire Department of Environmental Services (NHDES)  
14 that included photos of Watson Park and other areas of concern. It came to her attention that on social  
15 media it was implied the Town was not taking care of these things. The emails had never been  
16 received by the Town. They were being sent to Assistant Commissioner Freise who in turn forwarded  
17 them to her. She forwarded them to Director Fox who eventually met with some individuals down at  
18 Watson Park. The problem is we cannot start by hearing complaints on social media trying to dig up  
19 where the information went. It never came to her or the Council. That is what was being said.

20  
21 Ms. Allen commented she got the gist when watching the video, but that situation had nothing to do  
22 with Citizens for Clean Water.

23  
24 Town Manager Cabanel remarked "we don't know who they are, we don't know who you are  
25 collectively". Ms. Allen responded there are 174 members in Town, but we are also all citizens.  
26 People are going to have concerns, and we cannot tell them what to do. Town Manager Cabanel  
27 reiterated for anyone having concerns, the place to go is her office not to Assistant Commissioner  
28 Freise and implying that the Town is not responsive.

29  
30 Ms. Allen agreed people do make emphatic comments. She spoke of the issue discussed after the  
31 meeting in Litchfield regarding mapping, which still does not work. The individual who informed her  
32 of that is an engineer and very reputable person. She sent that email to the Town and then she  
33 forwarded it to Assistant Commissioner Freise requesting he respond. He indicated it works. She  
34 checked it again, and it does not load. The other question was about where the alternative water tests  
35 are. They were in fact where he said, but the information is buried. Assistant Commissioner Freise  
36 responded "Lorraine please come to me directly and tell people to come to me directly, Eileen is  
37 busy."

38  
39 Town Manager Cabanel requested she be kept in the loop noting she can follow-up on citizen  
40 concerns/requests.

41  
42 Councilor Harrington remarked the impetus for her comments was that the Council has designated  
43 Councilors who really have volunteered to focus their attention on PFOA. She would be pleased to sit  
44 down and have a cup of coffee with anyone but speaking on social media doesn't solve the problem.

45  
46 Ms. Allen spoke of the first in the nation regional meeting. Her involvement in the planning of that  
47 meeting began with talks in early May with Alexandra Dunn, Administrator, Region 1, EPA regarding  
48 how to go about getting citizens on record. That discussion resulted in a teleconference between the

1 group and individuals in Boston. Included in the group were Ms. Allen, representatives from the  
2 Seacoast, and two communities; Cape Cod and Westfield, MA.

3  
4 The day before the Washington conference kicked off, the group was told by Ms. Dunn that she had  
5 received the okay for the idea of regional meetings. The group was then informed of the dates (June  
6 25 & 26), and the ability to help plan the agenda. The group submitted feedback. This morning she  
7 received notification of being identified as a designated community representative that will get a 15-  
8 minute spot, was instructed to do a PowerPoint and have it sent in by next Friday. She will solicit  
9 input and utilize it when composing her presentation.

10  
11 Ms. Allen spoke of information she would provide the Board commenting the document identifies 4  
12 actions (goals for the year) Scott Pruitt announced on May 22<sup>nd</sup> & 23<sup>rd</sup>. She commented on the  
13 excellent job NHDES did in Washington. They talked about the health study. There was talk of the  
14 need for the hazardous waste designation, whole class being counted together, etc.

15  
16 Councilor Thornton requested a copy of the presentation that would be provided at the regional  
17 meeting. Ms. Allen stated the information would be released.

18  
19 Councilor Albert questioned if a member of the cable television staff would be recording the meeting.  
20 Councilor Boyd stated he has inquired if a member of staff could be sent to the meeting to spend the  
21 two days videotaping the event. Town Manager Cabanel stated her intent to leave the decision of  
22 utilizing staff in that manner to the Council. She commented it is likely there could be coordination  
23 with Exeter's media group.

24  
25 Ms. Allen stated the request was made on May 29<sup>th</sup>; to have that to share with other communities in  
26 Region 1. She has not received a response to the request. It was noted permission was given to  
27 residents to live stream. Councilor Harrington noted if the event will be streamed live, the Town could  
28 publicize the website the stream can be found on. Ms. Allen stated her belief that is being coordinated  
29 by Westfield, MA.

30  
31 Councilor Albert stated he and Councilor Boyd were contacted by members of Concerned Citizens and  
32 received emails from a few MVD Commissioners. A meeting has been scheduled for 7:00 p.m. on  
33 June 26<sup>th</sup> at the Library.

34  
35 Nancy Murphy, 20 Brenda Lane

36  
37 Questioned if, instead of referring to the spot on the agenda as PFOA Update it could be called PFAS  
38 Update, which more accurately describes the chemical class.

39  
40 She informed the Council of having attended a conference in Boston the previous evening. It was a  
41 meeting of the Society for Risk Analysis (NE Chapter). Presenters spoke of Human Immunotoxicity  
42 associated with PFAS exposure. The Titles of the presentations were Insights into PFAS Toxicity  
43 from Recent Research and Previously Undisclosed Documents and Development of PFAS Guidelines.

44  
45 The big takeaway was the questions posed. The most asked was whether the EPA's current guideline  
46 of 70 ppt is safe. The response was the EPA, when asked, is no longer saying that chemical levels  
47 below that are safe. They are no longer using that terminology.

1 Ms. Murphy stated she is not only part of the Merrimack Citizens for Clean Water, she is also on the  
2 Joint Advisory Group with Councilors Boyd and Albert. She was unable to attend the Council's May  
3 24<sup>th</sup> meeting, but reviewed it online. As a community advocate for clean water she took particular note  
4 of the PFOA update and related discussion. She offered an additional perspective relative to the  
5 comments made of how residents' concerns over some potential chemical contamination and health  
6 and safety issues noted at Watson Park were conveyed to the Town. She understands the points made  
7 about social media, but acknowledged we live in a world where that is a huge tool.

8  
9 Having direct knowledge of both groups, she felt she should speak. She indicated her statements were  
10 her own. She hopes, in the future, consideration will be given to whether or not concerns such as those  
11 voiced at the May 24<sup>th</sup> meeting might be better addressed in another venue.

12  
13 She spoke specifically about the concerns Councilor Harrington raised, and suggested there may be a  
14 misunderstanding of a communication protocol that she may have believed was in place or had been  
15 agreed upon. From what she got, they don't share the same understanding. She does not believe there  
16 has ever been an agreement that the Councilors were the single conduit to communication with the  
17 Town Council. The Councilors and other members of the group speak as individuals not on behalf of  
18 either group. Unless they specifically indicate they are speaking for the Council or the group, that is  
19 not the case. She believes a recognition that people don't give up their individual rights to address the  
20 Council would be helpful.

21  
22 Ms. Murphy commented the group met pretty regularly early on. There were a lot of changes within  
23 the MVD and people leaving the group to join the MVD, schedule changes, etc. The goal of the group  
24 was to ensure that all members were present for meetings. Although a good goal, it was unrealistic.

25  
26 Katharine Hodge, 44 Belmont Drive

27  
28 When asked if any Councilors have read the 1,200 page report from Flatley to DES about the new  
29 property and the soil and water samples, several Councilors indicated they have not. Ms. Hodge  
30 requested 1 or all Councilors read the document, analyze the data, and consider placing the topic on a  
31 future agenda.

32  
33 Town Manager Cabanel stated she has been following it. She has not read the 1,200 page document,  
34 but it has been a concern to her. She and Assistant Commissioner Freise have been discussing  
35 Flatley's construction for some time. DES has been informed every step of the way. When Assistant  
36 Commissioner Freise was informed Flatley had submitted their building permits, he stated the Town  
37 would have to hold onto them because they had not done their testing. Town Manager Cabanel  
38 informed him the Town has no right to hold their building permits, and if he put in writing that they  
39 should be held, she would hold them. He responded that he would not.

40  
41 She stated her understanding, from Assistant Commissioner Freise, that the groundwater that they  
42 tested on the Flatley site was in the neighborhood of 1,400 ppt.

43  
44 Ms. Hodge stated they only did 2 water tests on the property because that is what they were limited to  
45 by Flatley. Both results were at 1,400.

1 Town Manager Cabanel indicated she has been keeping the Council abreast of those items so that they  
2 are all aware there is an issue there with the groundwater. When asked if she is aware there are issues  
3 with the soil as well, she stated Assistant Commissioner Freise did not discuss soil.

4  
5 Councilor Boyd remarked that goes back to the conversation regarding Kids Kove and Watson Park;  
6 whether remediation services could be looked at based on the report that came out of the soil  
7 discoveries at the Flatley property.

8  
9 Town Manager Cabanel commented on having spoken with Assistant Commissioner Freise about soil  
10 (soil PFAs are tested in parts per billion rather than parts per trillion). He said there were no issues  
11 because the 500 ppb is what the EPA's standards are and the State has not adopted standards; he  
12 believes because there are no agreed upon tests.

13  
14 Ms. Hodge stated she read all 1,200 pages. They were limited to two water tests. There were issues  
15 with the soil; patches that were above 500. One of the issues was the first 24" were severely  
16 contaminated and from 24-36" there was less contamination. They found from 48" - 12' everything  
17 seemed okay. The agreement between Flatley and DES was that Flatley could not, under any  
18 circumstances, remove the first 24" of soil. They had to keep the soil on the property, use it on the  
19 property, and keep it away from the water. Another thing suggested in the Flatley letter was OSHA  
20 issues. They classified it as being a D1, which has a minimum requirement of wearing breathing  
21 apparatus.

22  
23 Ms. Hodge stated from day 1 no breathing apparatus has been worn by contractors or anyone on that  
24 site. It was also suggested that water trucks be used to keep the dust at a minimum. None of that was  
25 used and dust is flying onto other properties.

26  
27 Town Manager Cabanel stated she continues to send emails to Assistant Commissioner Freise keeping  
28 him apprised of what is occurring. He sends the messages on to LeaAnne Atwell, Hazardous Waste  
29 Remediation Bureau. The only document she has seen was from DES to Flatley, which basically was  
30 a letter of recommendations. There was no mandate.

31  
32 Ms. Hodge stated the one she is referring to was released the 3<sup>rd</sup> week of May from Flatley to DES and  
33 included all of the soil and water samples. She commented she has kept up with Ms. Atwell. She  
34 wrote to her earlier in the day. She apologized for not having copied the Town Manager or Council as  
35 she was sending it as an individual. To date there is no more testing to be done that she is aware of,  
36 which is of concern.

37  
38 Carol Dipirro, 10 Cambridge Drive

39  
40 Commented on document digging that has been going on, noting they have seen things that are being  
41 sent to a health officer. She is uncertain who that is. They have not seen the Town Manager copied on  
42 a lot of stuff, which is an area of concern. She suggested that be looked into in terms of the DES  
43 OneStop database. With regard to Flatley, the Town may not have official jurisdiction, but could reach  
44 out to Flatley with concern for the workers on the project.

1 Katharine Hodge, 44 Belmont Drive

2  
3 Stated she has spoken with the supervisor for the district at OSHA. They won't do anything.

4  
5 Chairman Rothhaus remarked if OSHA won't, he is uncertain how else it could be handled.

6  
7 Ms. Hodge stated she was told it was recommended that they do certain things, and if the workers  
8 choose not to; it is up to them. OSHA cannot force them to do anything.

9  
10 Kathryn Stack, 7 Knollwood Drive

11  
12 Remarked hearing the discussion about piles of sand, contaminated soil and the buildup, which is  
13 relatively high at this point, she is a little concerned for abutters. She is uncertain what the Town  
14 Council could do not having jurisdiction over it. She commented, as a Town, we need to come  
15 together and be somewhat concerned about the people that will be impacted by this contaminant in the  
16 air. She implored the Council to do whatever it is able to.

17  
18 **Recognitions, Resignations and Retirements**

19  
20 **1. Recognition of Economic Development Citizens Advisory Committee (EDCAC) Members**

21 Submitted by Town Council Chairman Finlay Rothhaus and Vice Chair Tom Koenig

22 The Town Council will recognize the following individuals for their volunteer service to the Town  
23 of Merrimack as members of the EDCAC:

- 24  
25 - Susan Lee  
26 - Ken Asai  
27 - David Shaw  
28 - Joshua Schiavone

29  
30 At the last meeting the Economic Development Citizens Advisory Committee (EDCAC) came before  
31 the Council with a request to disband the committee noting its work has been completed. That action  
32 was taken.

33  
34 The EDCAC was established on December 14, 2006 and held its first meeting on March 17, 2007.  
35 Councilor Boyd was the committee's first Chairman. Susan Lee chaired the committee since  
36 September 22, 2009. Ms. Lee was presented with a plaque in recognition of her dedicated service to  
37 the Town of Merrimack.

38  
39 Chairman Rothhaus spoke of the commitment to public service made by Messrs. Asai, Schiavone, and  
40 Shaw. Messrs. Asia and Schiavone were presented with certificates of appreciation recognizing their  
41 commitment to the community. Mr. Shaw was unable to be in attendance.

42  
43 **Appointments**

44  
45 **1. NH Opioid Litigation**

46 Submitted by Town Councilor Bill Boyd

47 Town Council to be presented with the details of the New Hampshire Opioid Litigation.

1 Councilor Boyd introduced Thomas Colantuono, Esq., who was before the Council to discuss potential  
2 litigation regarding the opioid epidemic. In the interest of full disclosure, he noted he and Attorney  
3 Colantuono have been friends for about 15 years. Attorney Colantuono is currently affiliated with  
4 Bianco Professional Association out of Concord, NH and served as the United States Attorney for the  
5 District of New Hampshire from December 2001 to March 2009.

6  
7 Thomas Colantuono, Esq., remarked we are all aware of what is occurring with the opioid epidemic in  
8 this country. Several years ago states began suing the manufacturers and distributors of the opioid  
9 medications. The State of New Hampshire has a suit filed. Communities started saying if states are  
10 able to recover costs, which would go into the state coffers, how would that help the individual  
11 communities that are on the front lines of responding to this epidemic. Local communities started  
12 getting involved. His law firm is involved with a consortium of national law firms together with a few  
13 firms in MA who reached out to his firm to become the NH adjunct to this to serve as local council in  
14 NH. They were the first consortium that started representing local communities to bring such cases.

15  
16 Presently the consortium represents over 460 communities. Here in New Hampshire when they got  
17 involved they reached out to smaller cities and larger towns. They have signed up Derry,  
18 Londonderry, Franklin, and Laconia. There are several other consortiums out there; Berlin, Keene,  
19 Dover are also getting involved with other consortiums. He has an appointment with Hudson on July  
20 9<sup>th</sup>.

21  
22 All of the cases are originally filed into the federal court in the jurisdiction (Concord) and get  
23 transferred to the multi-district litigation program for this type of case, which is in Cleveland, OH.  
24 There is a Judge out there who is managing all of these cases (several hundred). What happens in a  
25 multi-district litigation situation is, unless there is settlement, the Judge will schedule bellwether trials.  
26 There are 3 scheduled for March of 2019. Based upon the results of those trials and ones to follow,  
27 presuming the Plaintiffs succeed in trial the Defendants would come to the table and set aside a fund.  
28 The expectation is that there will be a multi-billion dollar fund put together, eventually, that the  
29 Plaintiffs can share in.

30  
31 Attorney Colantuono commented damages would not only be intended to compensate for past losses,  
32 but also to try to put together a remediation fund to stop the problem in the future.

33  
34 No taxpayer dollars would have to be expended were the Town to join the consortium. Associated  
35 attorney fees are contingent based (1/4).

36  
37 Were the Town to decide to participate, a Fee Agreement would be entered into. Once executed, the  
38 firm would prepare a lawsuit for approval by the Council. Once approved, it would be filed in the  
39 Federal Court. It would then be sent to Ohio, and the Town would join the pool of plaintiffs.

40  
41 Councilor Albert questioned the hierarchy of how compensation would be calculated, e.g., size of  
42 community, value of loss, etc. Attorney Colantuono stated once the bellwether trials are held and a  
43 decision made to put together a settlement offer, those details will be worked out. All factors would be  
44 considered to make it fair to all. It is reasonable to assume, if Merrimack got involved as a Plaintiff,  
45 once that settlement matrix was made, the settlement offer that would be made to Merrimack wouldn't  
46 be as high as it would be to Manchester or Nashua.



1 Councilor Healey questioned the premise of the suit commenting several different activities that are in  
2 question were named. The three drugs have been around quite a long time. Although advertising  
3 seems to be a part of that, she questioned if they were compliant with the regulations at the time the  
4 drugs were taken out. The FDA approved the drugs for distribution within the United States. She does  
5 not understand the premise of the lawsuit at its root.  
6

7 Attorney Colantuono stated his understanding the problem developed in the '90s when they developed  
8 the opioid pain medications and they were sold to physicians on the premise that they are not addictive.  
9 Then the Federal Government created laws which required them to monitor sales and distribution and  
10 report back if noticing anomalies where unreasonable amounts are being prescribed, and they didn't  
11 follow that. They violated that. There have been settlements with the DEA on some of the major  
12 companies with hundreds of millions of dollars of fines already. The premise is these companies  
13 knowingly pushed dangerous, addictive drugs onto the population for profit without following the law.  
14

15 Councilor Healey responded the lawsuit doesn't take into account physician prescribing habits. It is  
16 kind of like going back to the deep pockets and saying we're going to blame you because doctors were  
17 over-prescribing these drugs.  
18

19 Attorney Colantuono stated the consortium is not suing any local doctors, hospitals, pharmacies. Other  
20 consortiums had and that was a turnoff to some.  
21

22 Councilor Healey stated the FDA also regulates how much of these drugs these companies can  
23 produce, and if you go into the FDA rules and actual monitoring, the companies that are being sued  
24 have not increased production over the last 10 years. If not increasing production she can perhaps see  
25 why they didn't think there was an over-abundance. They have a certain number of pills going to the  
26 different pharmacies, etc. across the country, and she is uncertain how they would notice that all of a  
27 sudden they are seeing an increase in output.  
28

29 Attorney Colantuono responded they are responsible for reporting through the DEA ARCOS program.  
30 There was just a major development where a Judge approved their request for discovery of the ARCOS  
31 facts and figures. They will be able to see exactly where the medication has been sent. There are some  
32 states where in 1 year there are more prescriptions of the pills than there are people in the state.  
33

34 Councilor Harrington commented she had a lot of the same concerns, but the reality is a lot of the  
35 current problems is the international mail of Opioids, Fentanyl, etc. She commented on the language  
36 that cites "failure to report suspicious orders to the DEA and prevent diversion of these dangerous  
37 drugs". It is not a matter of manufacturing but the distribution and the requirement that they monitor.  
38 They are not doing the reporting. That is where they should get them; they broke the law.  
39

40 She questioned cons involved in participation in the consortium. Attorney Colantuono stated he could  
41 think of any cons; no cost to the Town, the possibility for funds to be returned to the Town at some  
42 point. The one thing the Town would have to do is put a litigation hold in place, which simply means  
43 don't destroy your records. Next would be a request to start collecting data from the various  
44 departments. There may be some employee time to assist in that process. The firm will provide  
45 assistance as well, e.g., investigators, paralegals.  
46

47 Councilor Harrington questioned if there would be any designation of use applied to funds recovered.  
48 Attorney Colantuono stated the Town could use it for anything it wishes. Councilor Harrington spoke

1 of the possibility the Town may not recover any of its costs. Attorney Colantuono noted the State will  
2 not get funds that are offered to the Town if the Town is a Plaintiff. They have their own separate  
3 lawsuit going on.

4  
5 Councilor Albert commented 60 Minutes did an investigation on one of the corporations named in the  
6 suit. He found it enlightening to learn what that investigation brought to light. They sent millions of  
7 pills to a small pharmacy in Colorado (town of about 5,000 people and enough pills to cover the City  
8 of New York). There were red flags that were never addressed. He stated his support of joining the  
9 consortium. Attorney Colantuono stated the two retired DEA agents that were featured on that show  
10 are hired experts by the consortium who are under contract to work only for them.

11  
12 Attorney Colantuono commented they set up pill mills all over the Ohio River Valley. It was featured  
13 in a book titled Dream Land. Doctors just started writing scripts. People would line up out the door,  
14 come in for 2 minutes with a complaint, and leave with a prescription. It devastated whole towns. It  
15 was focused on Portsmouth, OH.

16  
17 Chairman Rothhaus stated his opinion the doctors were let off too easily. They own a lot of this  
18 problem.

19  
20 Vice Chairman Koenig questioned the difference between the various consortiums, e.g., why  
21 Merrimack should join the consortium along with Derry and Londonderry versus Manchester, Nashua,  
22 etc. Attorney Colantuono stated he is uncertain of what they offer. The benefits of this consortium are  
23 they were the first, the biggest, have the most attorneys on; this consortium has 5 out of the 22 seats in  
24 the Ohio litigation. The litigation team involves some of the most famous and well-known tort firms.

25  
26 Vice Chairman Koenig stated confusion with the Multi District Litigation (MDL) concept; to come up  
27 with multiple consortiums of attorneys that are representing multiple groups of people all being  
28 consolidated in one mass legal program and then come up with presumably 1 solution that gets  
29 distributed out across all, how it gets split up, etc. Attorney Colantuono stated it to be the mechanism  
30 that the federal courts have established to handle these type of mass tort litigation cases so that there  
31 is consistency, e.g., don't have different results all over the country and different Judges trying to try  
32 these cases.

33  
34 Vice Chairman Koenig asked for additional information on the 22 seats in the Ohio litigation.

35  
36 As indicated in the information provided, in December 2017, the cases brought against opioid  
37 manufacturers and distributors were consolidated in front of Judge Dan Polster in the Northern District  
38 of Ohio into an MDL. The MDL process permits the temporary transfer of civil lawsuits to one district  
39 court for pretrial consideration and/or consolidation. The consortium's legal team lead the way  
40 towards the creation of the MDL. The team received 5 of the 22 leadership roles on the Opioid MDL  
41 including Co-Lead Counsel, Co-Liaison Counsel, and 3 Plaintiff's Executive Committee positions.

42  
43 Attorney Colantuono stated the Judge authorizes the group to be set up; Plaintiff counsel team and  
44 Executive Committee and Defendant counsel. They negotiate everything. They are the ones who  
45 came up with the plan for the bellwether trials and whenever there are issues related to discovery,  
46 scheduling, etc., they are the ones who will send in lead counsel to argue a particular position, etc. His  
47 firm does not have expertise in MDL, what they are is the local counsel.

48

1 When asked for particular information about the makeup of the committee, Attorney Colantuono stated  
2 the various firms that are involved identified representatives and those are the representatives the court  
3 works with. When asked if the size of the committee is fixed, he stated, to the best of his knowledge, it  
4 will be for this litigation.

5  
6 Councilor Boyd commented when he sent the information along to the Chairman for distribution he  
7 included a news articles as antidotal evidence to show there are other consortiums representing other  
8 communities and their MDLs that are pursuing their own path. What attracted him about the  
9 conservation he had with Attorney Colantuono was the recent budget cycle during which Chief Roy  
10 requested \$80,000± for overtime and another half a million to staff the Special Investigation Unit  
11 (SIU). What has been seen over the past 5 months is real impact resulting from the monies expended  
12 in this regard. He saw this consortium as a possibility to recoup some of those dollars.

13  
14 Councilor Healey questioned what is believed to be the timeframe the litigation would require.  
15 Attorney Colantuono reiterated the Judge is pushing both sides to put this on a fast track and has been  
16 pushing for settlement from the onset. From what he has heard the hope is to wrap this up within a few  
17 years. When asked, he stated the team will be ready for trial with the first few cases, which are local  
18 to the court, and is very hopeful once the first few cases are done there will be a settlement offer.

19  
20 **Public Hearing** - None

21  
22 **Legislative Updates from State Representative** - None

23  
24 **Town Manager's Report**

25  
26 Construction has commenced on the first phase of the Flatley mixed use project on D.W.  
27 Highway. The initial phase calls for four 48 unit multi-family buildings.

28  
29 The redevelopment of the former Shaws Plaza continues to progress. The applicant recently received  
30 approval to modify the sizes of the 2 proposed pad site restaurants (one of which may become a  
31 bank). The developer hopes to open for some of the tenants in the coming months.

32  
33 The Planning Board will continue discussion on the Rt. 3 corridor pedestrian and bicycle plan on July  
34 17<sup>th</sup> with staff from the Nashua Regional Planning Commission (NRPC). The Board will review  
35 results of the Election Day surveys and begin preparing a draft plan, in the hopes of completing the  
36 project by the end of the year.

37  
38 The Engineering Interns for Public Works will be out in the neighborhoods around Town performing  
39 pavement condition inspections.

40  
41 In partnership with Eversource, the Solid Waste Division of Public Works offered a free Freon  
42 appliance disposal event last Saturday. On a normal Saturday, approximately 10 to 20 units are  
43 brought in for recycling. During Saturday's event 142 units were recycled at no cost to the depositor,  
44 saving Merrimack residents over \$2,100. Details of the event can be found on the Public Works  
45 Facebook page.

46  
47 Councilor Boyd questioned what the Town's Ordinances are in relation to picketing. Town Manager  
48 Cabanel was uncertain. He specifically asked if individual(s) are required to obtain a permit to picket.

1  
2 Captain Mike Dudash, Merrimack Police Department, stated there is no requirement for individual(s)  
3 to seek permission from the Police Department. Some of the restrictions include keeping the public  
4 ways free, stay off private property of the establishment being picketed.

5  
6 **Consent Agenda** - None

7  
8 **Old Business**

9  
10 **1. “The Longest Day” 2018 Proclamation**

11 Submitted by Town Council Chairman Finlay Rothhaus and Vice Chair Tom Koenig  
12 The Town Council to issue a proclamation designating June 21, 2018, as “The Longest Day” to  
13 promote the efforts of raising funds and awareness for the care and support of those facing  
14 Alzheimer’s disease.

15  
16 Chairman Rothhaus offered the following language:

17  
18 “National Alzheimer’s and Brain Awareness Month, June 2018. The Longest Day, June 21, 2018.

19  
20 **WHEREAS** Alzheimer’s Disease, a progressive neurodegenerative brain disorder that tragically robs  
21 individuals of their memories and leads to progressive mental and physical impairments, and

22  
23 **WHEREAS** there are no known treatments to prevent, cure or even delay the onset or slow the  
24 progression of Alzheimer’s Disease, and

25  
26 **WHEREAS** every 65 seconds someone in the United States develops Alzheimer’s Disease with the  
27 disease being the 6<sup>th</sup> leading cause of death in the United States, and

28  
29 **WHEREAS** between 2000 and 2015 deaths from heart disease have decreased 11% while deaths from  
30 Alzheimer’s Disease have increased 123%, and

31  
32 **WHEREAS** 5.7 million Americans are living with Alzheimer’s and by 2050 this number is projected to  
33 rise to nearly 14 million, and

34  
35 **WHEREAS** with early detection and diagnosis individuals and their families can gain access to  
36 medications and management strategies that may temporarily improve symptoms, and

37  
38 **WHEREAS** there is a need to raise awareness of Alzheimer’s Disease and to honor all of the caregivers  
39 who support and care for loved ones with the disease;

40  
41 **NOW THEREFORE**, be it resolved that we, the Town Council of the Town of Merrimack hereby  
42 proclaim June as Alzheimer’s and Brain Awareness Month and June 21, 2018 as the Longest Day in  
43 Merrimack.”

44  
45 **MOTION** made by Councilor Boyd and seconded by Councilor Koenig that the Town Council  
46 issue a proclamation designating June 21, 2018, as “The Longest Day” to promote the efforts of  
47 raising funds and awareness for the care and support of those facing Alzheimer’s disease

1 ON THE QUESTION

2

3 Councilor Boyd thanked Chairman Rothhaus and Vice Chairman Koenig for their efforts in this  
4 regard. Chairman Rothhaus thanked Robert Bergin for bringing it to the attention of the Council.

5 **MOTION CARRIED 7-0-0**

6 **New Business**

7

8 **1. Donation to the Parks and Recreation Department Camp Scholarship Fund**

9 Submitted by Parks and Recreation Director Matthew Casparius

10 The Town Council to consider the acceptance and expenditure of a donation in the amount of  
11 \$210.00 from the Merrimack Lions Club to the Parks and Recreation Department for the Camp  
12 Scholarship Fund, pursuant to RSA 31:95-b and Charter Article 8-15.

13

14 Assistant Town Manager/Finance Director Micali stated the Lions Club has offered to donate funds for  
15 a resident who could not afford it, the opportunity to go to camp.

16

17 **MOTION made by Councilor Boyd and seconded by Councilor Thornton to approve the  
18 acceptance and expenditure of a donation in the amount of Two Hundred Ten Dollars (\$210.00)  
19 from the Merrimack Lions Club to the Parks and Recreation Department for the Camp  
20 Scholarship Fund, pursuant to RSA 31:95-b and Charter Article 8-15**

21

22 ON THE QUESTION

23

24 Councilor Boyd requested a letter of gratitude be sent to the Lions Club.

25 **MOTION CARRIED 7-0-0**

26

27 **2. Donation to the Parks and Recreation Department Camp Scholarship Fund**

28 Submitted by Parks and Recreation Director Matthew Casparius

29 The Town Council to consider the acceptance and expenditure of a donation in the amount of  
30 \$1,050.00 from OVP Management, Inc. (building Merrimack 360 Shopping Plaza) to the Parks and  
31 Recreation Department for the Camp Scholarship Fund, pursuant to RSA 31:95-b and Charter  
32 Article 8-15.

33

34 **MOTION made by Councilor Harrington and seconded by Councilor Boyd to approve the  
35 acceptance and expenditure of a donation in the amount of One Thousand Fifty Dollars  
36 (\$1,050.00) from OVP Management, Inc. (building Merrimack 360 Shopping Plaza) to the Parks  
37 and Recreation Department for the Camp Scholarship Fund, pursuant to RSA 31:95-b and  
38 Charter Article 8-15**

39

40 ON THE QUESTION

41

42 Councilor Boyd expressed gratitude to OVP Management commenting he views this as a testament to  
43 corporate partnership. He requested a letter be sent expressing the Council's sincere gratitude and  
44 welcoming them to the Town of Merrimack.

45 **MOTION CARRIED 7-0-0**

46

47

48

1 **3. Donation Acceptance for the Merrimack Police Department**

2 Submitted by Captain Mike Dudash

3 The Town Council to consider the acceptance and expenditure of an anonymous donation in the  
4 amount of \$500.00 from long-standing residents to the Merrimack Police Department, pursuant to  
5 RSA 31:95-b and Charter Article 8-15.  
6

7 Captain Dudash remarked for the past two years the department has received a donation from a long-  
8 standing couple in Merrimack who present the check during the Annual Open House with a thank you  
9 to the department and a request to keep their identity confidential. At this time, the department has not  
10 identified how the donation will be utilized. It is likely it will be utilized for the National Night Out in  
11 August.  
12

13 **MOTION made by Councilor Boyd and seconded by Councilor Thornton to approve the**  
14 **acceptance and expenditure of an anonymous donation in the amount of Five Hundred Dollars**  
15 **(\$500.00) from long-standing residents to the Merrimack Police Department, pursuant to RSA**  
16 **31:95-b and Charter Article 8-15**

17 **ON THE QUESTION**

18 He requested a letter of gratitude be sent.

19 **MOTION CARRIED 7-0-0**  
20

21 **4. Donation Acceptance for the Merrimack Police Department**

22 Submitted by Captain Mike Dudash

23 The Town Council to consider the acceptance and expenditure of a donation from Merrimack  
24 Crime Line in the amount of \$1,436.75 to the Merrimack Police Department's K-9 Program for the  
25 purposes of upkeep and maintenance, pursuant to RSA 31:95-b and Charter Article 8-15.  
26  
27

28 Captain Dudash stated Merrimack Crime Line is a great partner for the Merrimack Police Department  
29 and community. This is their 2<sup>nd</sup> donation of the year. This year's donation was raised at the magic  
30 show held a few weeks ago. Funds will go towards the K-9 Program.  
31  
32

33 Councilor Albert requested the gratitude of the Council be expressed to Crime Line.  
34

35 Councilor Harrington commented this organization, which has given over \$16,000 cumulatively, is a  
36 prime example of the type of group she would like to see the Council recognize with the presentation  
37 of a plaque at a Council meeting.  
38

39 **MOTION made by Councilor Harrington and seconded by Councilor Thornton to approve the**  
40 **acceptance and expenditure of a donation from Merrimack Crime Line in the amount of One**  
41 **Thousand Four Hundred Thirty Six Dollars and Seventy Five Cents (\$1,436.75) to the**  
42 **Merrimack Police Department's K-9 Program for the purposes of upkeep and maintenance,**  
43 **pursuant to RSA 31:95-b and Charter Article 8-15. MOTION CARRIED 7-0-0**  
44

45 **MOTION made by Councilor Harrington and seconded by Councilor Healey that Merrimack**  
46 **Crime Line be awarded a plaque in appreciation of their dedication and service to the Town of**  
47 **Merrimack**  
48

1 ON THE QUESTION

2

3 Councilor Albert stated the desire for presentation of the plaque to be included on a future agenda and  
4 that representatives from Crime Line be invited to attend. **MOTION CARRIED 7-0-0**

5

6 **5. Lower Merrimack River Local Advisory Committee (LMRLAC) Nomination**

7 Submitted by Town Council Chairman Finlay Rothhaus and Vice Chair Tom Koenig

8 The Town Council to consider the nomination to reappoint Nelson Disco as a member on the  
9 LMRLAC.

10

11 **MOTION made by Councilor Boyd and seconded by Councilor Albert to reappoint Nelson Disco  
12 as a member of the Lower Merrimack River Local Advisory Committee**

13

14 ON THE QUESTION

15

16 Councilor Boyd commented on the number of years Mr. Disco has dedicated to the community.

17 **MOTION CARRIED 7-0-0**

18

19 **6. Disposal of Tax Deeded Properties**

20 Submitted by Town Manager Eileen Cabanel

21 The Town Council to consider the disposal of tax deeded properties, pursuant to RSAs 80:88,  
22 80:89, 80:90 and Chapter 66 of the Town Code.

23

24 Town Manager Cabanel stated, as detailed in the communication from Sharon Marunicz, Human  
25 Resources Coordinator, on April 26, 2018, the land and building at 33 Pearson Road, Tax Map 7D/046  
26 was deeded to the Town of Merrimack by the Town Clerk/Tax Collector for non-payment of taxes.  
27 The Deed was recorded at the Hillsborough County Registry of Deeds on April 30, 2018. Being asked  
28 of the Council was whether it wished to retain the property or dispose of it at public auction.

29

30 When a tax deeded property is sold at auction, proceeds are first utilized for payment of taxes,  
31 penalties, etc., then to the lien holders and anything remaining to the prior owner.

32

33 Councilor Albert questioned if the Town has heard from the owner. Assistant Town Manager/Finance  
34 Director Micali indicated while at the property, staff noted a vehicle parked in the driveway. The  
35 Police made contact with the prior owner earlier in the day. The prior owners were provided  
36 paperwork, which was signed for. There are other procedures that have to be undertaken in the process  
37 of assuming ownership of the property.

38

39 Town Manager Cabanel stated the Town went through the required process; eviction notice was given  
40 without a response. When staff went to change the locks earlier in the day the previous owner was  
41 onsite. There is a different pathway that has to be taken if the owner has been contacted. That action  
42 occurred earlier in the day and changes the process a bit.

43

44 When asked, Assistant Town Manager/Finance Director Micali, stated the Council could move  
45 forward with a decision. The property is not on hold, it is just a different avenue that has to be  
46 followed before the property can be sold.

47

1 Councilor Albert commented on not knowing the response of the prior owner. He stated hesitancy  
2 with moving forward not knowing if the individual is able to come up with the monies owed the Town.  
3 Assistant Town Manager/Finance Director Micali stated the prior owner has 30 days to inform the  
4 Town of intent and 90 days to repurchase.

5  
6 Councilor Boyd questioned if the home remains furnished and was informed it does. When asked if it  
7 is in livable condition, Assistant Town Manager/Finance Director Micali stated it appears to be, but he  
8 is not certain having not been onsite himself. Town Manager Cabanel noted the tax card would  
9 indicate it is a nice home. Councilor Boyd questioned the amount of arrearage, and was informed it is  
10 at least 3 years of taxes plus penalties, etc. Town Manager Cabanel stated she could not state the exact  
11 amount; however, there is a procedure that has to be followed, by law, in the taking of a piece of  
12 property, regardless of the amount. The information can be provided, but the process remains the  
13 same; you must take property unless there are extenuating circumstances.

14  
15 Councilor Boyd questioned if the Council had to act at this meeting and was told it did not. Councilor  
16 Boyd stated the Town has the Deed and can just let the property sit and let the situation play out.  
17 Councilor Harrington stated a desire for it to be clear the public needs to be aware that to get to this  
18 stage of the process the Town Council will have dealt with the issue for multiple years in non-public  
19 session. By the time it gets to this point there were likely four years' worth of non-payment of taxes,  
20 the Town notifying the property owner on numerous occasions, the Police Department will have been  
21 involved, etc. Whatever the decision of the Council, it is a very deliberate process that has been  
22 followed for quite some time before reaching this point. She stated agreement with tabling the item.

23  
24 Vice Chairman Koenig noted the Town now owns the Deed to the property, and, therefore, is liable for  
25 the property. If the decision were to sit back and ignore it, it would mean taking on that liability. He  
26 does not believe that to be a good position for the Council to take. He stated a preference to inform the  
27 previous owner of the intent to sell, which starts the 90-day clock. The previous owner has 30 days to  
28 respond that he/she wants to make good on it, and if it doesn't work it doesn't work. It has already  
29 been dragged out for three years.

30  
31 Town Manager Cabanel commented action by the Council is not what starts the clock, it is only  
32 identifying the intention with regard to how to move forward. Because of the situation that was faced  
33 earlier in the day, the Town has to provide a 30 day notice to vacate. That moves the clock up another  
34 30 days. The Town owns the property now, will own it 30 days from now, for 90 days, and will have  
35 liability for that time. The Town's property & liability insurance carrier comes over as soon as the  
36 Town takes ownership. It is already under the coverage.

37  
38 Vice Chairman Koenig asked for confirmation there is a 90-day period from when the previous owner  
39 is informed of the intent to sell and was told that is the case. He suggested that clock could start any  
40 time. The previous owner has 30 days after receiving that letter to let the Town know if there is intent  
41 to repurchase.

42  
43 Councilor Thornton stated he would have to be provided additional information on the interaction that  
44 occurred earlier in the day prior to deciding.

45  
46 Councilor Albert questioned if there would be a lot of risk by waiting for the Council's next meeting to  
47 see if any kind of a response is received from the previous owner. Vice Chairman Koenig reiterated  
48 the property is currently covered under the Town's policy. However, it strikes him the Town should



1 make a legal effort to go forward given the Town has been working with this for three years and it has  
2 gotten to this development point.

3  
4 **MOTION made by Councilor Harrington and seconded by Councilor Thornton to table until the**  
5 **June 28, 2018 meeting. MOTION CARRIED 6-1-0**

6 *Councilor Koenig voted in opposition*

7  
8 **Minutes**

9  
10 **May 24, 2018**

11  
12 *The following amendments were offered:*

13  
14 Page 3, Line 14; replace “Governor” with “Senator”

15 Page 5, Line 21; delete “while in the program”

16 Page 8, Line 28; replace “American, apple pie” with “hot dog”

17 Page 9, Line 26; insert “DRA” before “wanted to ensure”

18  
19 **MOTION made by Councilor Boyd and seconded by Councilor Albert to accept the meeting**  
20 **minutes of the Town Council meeting of May 24, 2018, as amended. MOTION CARRIED 7-0-0**

21  
22 **Comments from the Press** - None

23  
24 **Comments from the Public** - None

25  
26 **Comments from the Council**

27  
28 Councilor Albert spoke of having attended a dinner for the volunteers for Meals on Wheels. He  
29 commented on having had the opportunity to sit with the volunteers from Merrimack (approx. 20). He  
30 extended his gratitude.

31  
32 Councilor Boyd commented on how fortunate the community is to have medical professionals who  
33 have dedicated their lives to serving others. He spoke of how the community has been struck by the  
34 deaths of Anthony Bourdain and Kate Spade and how prolific that they have been for those who have  
35 followed their certain genre. He wished to express to anyone going through a tough time to reach out  
36 to someone; call the Police Department, Fire Department, call a doctor or a friend. At the end of the  
37 day, there is so much to look forward to in this life.

38  
39 Vice Chairman Koenig thanked the Council for its support of the Alzheimer’s Proclamation. He spoke  
40 of its meaning to him and others who have been directly impacted by this disease. He stated his hope  
41 Merrimack does become more aware of the situation and through the help of Bob Bergin and others  
42 that we can help raise awareness and support those who have and are living with Alzheimer’s.

43  
44 Vice Chairman Koenig spoke of the informal Planning Board Roundtable conducted by the NRPC on  
45 Monday, June 11<sup>th</sup>. The intent was to provide planning board members in the region with an  
46 opportunity to meet with peers from different communities, discuss current issues and trends of  
47 common interest and share their observations, thoughts and experiences. Approx. 20 individuals  
48 attended. The conclusion was that the group wished to have such opportunities more frequently. It

1 may be that these types of roundtables will occur 3-4 times/year, and at some point may be bifurcated  
2 so that smaller communities are grouped with smaller communities and larger communities with larger  
3 communities, as the issues faced, and the resources differ.

4  
5 Vice Chairman Koenig commented on the interesting opportunity he has had with participation on the  
6 Planning Board. He believes there is always a frustration on the part of the residents thinking that the  
7 Planning Board has some kind of control over whether people should develop their land, and what it  
8 has is an ability to help them follow the rules and regulations that have been established, and work  
9 with them to do things that keep it within the guidelines but cannot stop them from doing things that  
10 they are legally allowed to do.

11  
12 **Adjourn**

13  
14 **MOTION made by Councilor Boyd and seconded by Councilor Thornton to adjourn the**  
15 **meeting. MOTION CARRIED 7-0-0**

16  
17 *The June 14, 2018 special meeting of the Town Council was adjourned at 9:21 p.m.*

18  
19  
20  
21 Submitted by Dawn MacMillan