



Town Council Meeting Minutes



Thursday, September 28, 2023, at 7:00 PM, in the Matthew Thornton Room

Call to Order

Chairman Rothhaus called the meeting to order at 7:02 pm. Present at the meeting were Chairman Rothhaus, Vice Chair Harrington, Councilor Hunter, Councilor Koenig, Councilor M. Murphy, Councilor N. Murphy, and Town Manager Paul Micali. Councilor Healey was excused.

Pledge of Allegiance

Chairman Rothhaus led the Pledge of Allegiance.

Announcements

Upcoming Town Council Meetings:

- Thursday, October 12, 2023, 7:00 PM Regular meeting
- Thursday, October 26, 2023, 7:00 PM Regular meeting

The Town Council meets on the first & third Thursdays in the months of November & December.

- Thursday, November 2, 2023, 7:00 PM Regular meeting
- Thursday, November 16, 2023, 7:00 PM Regular meeting

Come and join Merrimack Parks & Recreation this Saturday, September 30th at Wasserman Park for their final free movie night of the year. They will be showing the movie Puss In Boots: The Last Wish, which begins at 6:30 pm. There will be free popcorn available and the movie is sponsored by the Merrimack Lions Club and Xfinity. For questions, please call Parks & Recreation at 603-882-1046

Supervisor of the Checklist Sessions for Voter Registrations, Party, Name and /or Address Changes and Deletions will be held tonight, Thursday, September 28th from 7:00 PM - 8:00 PM at the Merrimack Town Hall and on Friday, October 6th from 7:00 PM - 7:30 PM.

This is the last time to change party affiliations prior to the Presidential Primary.

New Hampshire Secretary of State David Scanlan is a proud partner of [Vet the Vote](#), a nonprofit organization that recruits veterans to volunteer as poll workers during elections. To encourage New Hampshire veterans to serve as poll workers in their communities, especially during the upcoming Presidential Primary, the Secretary of State's Office is hosting a public event with Vet the Vote and Merrimack Moderator Lynn Christensen on Saturday, October 7, 2023, 10:00 a.m. – 1:00 p.m. at James Masticola Upper Elementary School, 26 Baboosic Lake Road. During the event, veterans and any other interested members of the public will have the opportunity to walk through a mock polling place set up for Election Day. New Hampshire election officials, many of them veterans, will explain the process to participants each step of the way and answer any questions about how elections work in New Hampshire. Vet the Vote gives New Hampshire veterans the opportunity to continue to serve their country and local communities by participating in the election process. Attendees will get a firsthand look at how elections in New Hampshire are run and why the Granite State has one of the highest voter turnout rates in the country. New Hampshire veterans who are interested in attending should arrive anytime between 10:00 a.m. and 11:00 a.m. Media are highly encouraged to attend between 10:00 - 10:30 a.m. Veterans and members of the public who plan to attend the event should register using the following link by 10:00 a.m. on 10/6/2023: <https://www.eventsquid.com/event/21636>

1 **Amherst Road Bridge** – Amherst Road will be **CLOSED** to all traffic between the Amherst Town Line
2 (County Road) and Seaverns Bridge Road for emergency repairs. The closure will begin on October 10th and
3 run until the end of November. Seek an Alternate Route.
4

5 Long awaited **Souhegan River Trail Project** will begin construction the first week in November. The
6 Ground breaking Ceremony is scheduled to be on November 3rd at 10 AM.
7

8 The last two Household Hazardous Waste Collections will be held on Saturday, Oct. 7th and Saturday, Nov.
9 4th, at 9 Stadium Drive in Nashua NOT 25 Crown Street Nashua. The original site will be occupied for the
10 foreseeable future. Merrimack residents, for \$15.00, can bring up to 10 gallons or 20 pounds of waste.
11 Additional charges are \$1.00 per gallon about 10 gallons of 50 cents per pound above 20 pounds. Cash or
12 check is acceptable. Please make checks payable to NRSWMD.

13 **Comments from the Press and Public**

14 None.

15 **Recognitions, Resignations and Retirements**

16 **1. Recognition of Town Committee Member**

17 *Submitted by Town Council Chairman Finlay Rothhaus and Vice Chair Nancy Harrington*

18 The Town Council to present a certificate to the following individual for his volunteer service to the
19 Town of Merrimack:

20 - Neil Anketell (Planning Board)

21 Mr. Anketell was present to receive his certificate from Chairman Rothhaus.
22

23 **2. Recognition of Retirement of Town Employee**

24 *Submitted by Human Resources Director Sharon Marunicz*

25 The Town Council will present a recognition award to Paul Ford in recognition of his retirement from
26 the Solid Waste Division of the Public Works Department after more than 20 years of full time
27 service to the Town of Merrimack: June 8, 2003 – August 1, 2023.

28 Mr. Ford was present to receive his recognition award for his retirement from the Solid Waste Division after
29 more than 20 years of full time service.
30

31 **3. Recognition of Retirement of Town Employee**

32 *Submitted by Human Resources Director Sharon Marunicz*

33 The Town Council will present a recognition award to Becky Starkey in recognition of her retirement
34 from the Merrimack Public Works Administration after more than 40 years of full time service to the
35 Town of Merrimack: June 27, 1983 – September 29, 2023.

36 Ms. Starkey was not present to receive her recognition award for her retirement from the Public Works
37 Administration after more than 40 years of full time service.

38 **Appointments**

39 **1. Annual Review with the Zoning Board Adjustment**

40 *Submitted by Zoning Board of Adjustment Chair Rich Conescu*

41 Per Town of Merrimack Charter Section 6-6, at least annually, there should be an annual review with
42 the Zoning Board of Adjustment. This agenda item is to highlight the board's significant actions,
43 current projects, anticipated actions, and to raise any concerns the Council should know or could act
44 on.
45

1 Zoning Board of Adjustment Chair Rich Conescu was present to discuss the annual review of the Zoning
2 Board of Adjustment. He began by stating that Rod Buckley has stepped down from the Zoning Board and in
3 his place is now Ben Niles. They also have a new member and new alternate, so they officially only have one
4 opening left on the board for the first time since before the pandemic. Vice Chair Harrington asked how
5 many hearings they've had, in which Mr. Conescu shared that they don't have exact metrics, but this
6 particular year has been very similar to the last two years, with typical requests. Vice Chair Harrington asked
7 for a guestimate on approval vs disapprovals, in which Mr. Conescu stated that the approvals are around 85%
8 for variances, and there is a firm history of denying appeals.
9

10 **Public Hearing**

11 **1. Public Hearing – Zoning Ordinance Amendments to Repeal Section 2.02.4.D**

12 *Submitted by Town Council Chair Finlay Rothhaus and Town Manager Paul T. Micali*

13 The Town Council will hold a public hearing to consider the proposed Zoning Ordinance
14 amendments to repeal Section 2.02.A.D (Mixed Use Developments Permitted in the I-1 District by
15 Conditional Use Permit), pursuant to Charter Article V.
16

17 Before beginning, Vice Chair Harrington recused herself. The public hearing was then opened at 7:34pm.
18

19 Attorney Morgan Hollis from Gottesman and Hollis at 39 East Pearl St in Nashua was present to represent
20 Merrimack Parcel A LLC, speaking in opposition on their behalf. He stated that his client received a variance
21 for a mixed use development in an I-2 district, which was granted as a conditional use permit. Years later,
22 this needed to be amended with some minor modifications, and eventually a more significant amendment
23 which doubled the residential numbers and reduced the commercial numbers. Once again, this was granted
24 subject to the Planning Board determining that all requirements under the CUP (which only applied to I-1
25 districts) were met. Over the course of about a year, the Planning Board thought that the proposed number of
26 residential units was too much and too dense, and the town staff felt that it did not meet the requirements of
27 the PUD density. The Zoning Board evaluated the application and negotiated the number of residential units
28 down with the applicant and proceeded to go through the criteria. They decided essentially two section,
29 section "4E" which allows the Planning Board to either increase or decrease the density under certain
30 criteria. Eventually, the amendment to the original CUP was granted. Attorney Hollis wanted to stress that
31 this was a one-off situation because the whole CUP mixed use development was a variance, not a mixed use
32 under the zoning ordinance. Having given this background, he has four comments: If the section is deleted,
33 any development within the I-1 district proposing a mixed use must go through the Zoning Board for a
34 variance. If this CUP is removed, there will be no CUP criteria and no mixed use in Merrimack. Anything
35 creative would have to go through the Zoning Board which isn't really what they do. Additionally, if this is
36 deleted, the new paragraph states that the existing mixed use become essentially non-conforming uses, and
37 any change has to meet the underlying zoning density requirements, which is I-1 which doesn't allow
38 residential change and this would also go back to the Zoning Board. Third, RSA 674:39 protects
39 developments that have been under construction, so any approval that wants to make a modification would
40 proceed back to the Planning Board to amend their CUP. Lastly, if this RSA doesn't apply, then the existing
41 projects that were approved under a provision of Merrimack ordinance will run into financial issues as the
42 development matures as they have to now go to the Zoning Board. In conclusion, his suggestion is to not
43 throw the entirety of the ordinance out, but to hone in on what the issue is. He suggests a proper amendment
44 would be to remove subsection E and remove the flexibility that everyone has to either get a variance from
45 the Zoning Board to have greater density that is allowed under the PUD or meet the density requirements of
46 the PUD. This allows the Planning Board to still have some flexibility but the PUD density will be better
47 defined.
48

1 Ashley Tenhave of 75 Shelburn Rd then spoke, sharing that she lives in the Webster Green community
2 across the street from Flatley and she very much approves of the decision that the board has made to take
3 another look at this. She has been at Webster Green for almost 7 years and attends every Planning Board
4 meeting that speaks about Flatley, arguing over the different uses and changes that they're doing. She would
5 like to see some control taken away from the Planning Board as none of the projects actually get built the
6 way that the Planning Board approves. Any concerns brought up get immediately brushed off, and she is
7 frustrated that nothing is being done with the developers who are not following the CUP. She would also like
8 to see the Zoning Board be put under a microscope as well as they are getting away with too much in this
9 town and they are not listening to the community when concerns are brought to meetings.

10
11 Bernard Plante of Edgebrook Heights LLC of 179 Amherst St., Nashua then spoke, sharing that in August of
12 2006, he and Kevin Slattery, a Nashua based builder, formed Edgebrook Heights LLC after acquiring
13 property that's at the very south end of Merrimack around the Harris Pond shopping center. The previous
14 owner had secured site plan approvals for 280,000 square ft space called "corporate woods" which is around
15 where the proposed circumferential highway was proposed, but did not come to fruition. This property is
16 zoned I-1 and a CUP was proposed to them and approved. They have relied on this CUP to determine the
17 development of the property over the years. He is requesting that the Council maintains section 2.02 4D in its
18 entirety, or at a minimum do not penalize existing CUP permit holders for modifying their design due to
19 physical or dramatic market changes as proposed in the new paragraph at the end of the modification that the
20 board is considering.

21
22 Katie Poirier of 11 Kimberly Drive, also in the Webster Green area, then spoke, sharing that the CUP
23 approvals change from one area to another without completing projects. Some developers add new projects
24 to the CUP without even finishing what they've started. She also stated that she has attended multiple board
25 meetings and feels that she is not being heard and is frustrated. She appreciates the Council for taking action
26 on this.

27
28 Chairman Rothhaus then read a statement from Gordon Leedy, Jr. who is with Tighe & Bond, Inc:

29
30 Dear Mr. Chairman and Members of the Town Council:

31 I am providing written testimony to the Council with regard to the proposed repeal of the Mixed-Use section
32 of the zoning ordinance, Article 2.02.4.D. I apologize for not being in attendance, but I have a conflicting
33 commitment. I felt it important to reiterate for the record my concerns regarding the proposed amendment
34 that I previously voiced at the Planning Board.

35
36 The Mixed-Use zoning provision was adopted by a vote of the Town pursuant to important goals set forth in
37 the 2013 Master Plan. The vehicle chosen for the implementation was the Conditional Use Permit. This
38 vehicle was chosen in large part to allow flexibility to the Planning Board in approving these developments
39 based on site-specific criteria showing fiscal benefit to the Town and adequate of public infrastructure. A
40 side benefit was to provide a method for the Planning Board to weigh benefits and potential impacts on
41 public health, safety, and welfare while avoiding a cumbersome process through the Zoning Board of
42 Adjustment.

43
44 Over the last decade of implementation, the ordinance has shown a need for adjustment in that it does not
45 spell out with any clarity what the expectations are of the Town and with respect to the mix of uses in a
46 mixed-use project. This leaves the matter up to the Planning Board and the Zoning Board of Adjustment,
47 with no formal guidance through the language of the ordinance. Importantly, the criteria contained in the
48 ordinance for approval do not continue to offer protection to the town from undue impacts of development.

1 Over the years, there have been changes both in market conditions and in the development of mixed-use
2 projects under the ordinance. The reaction to these changes is to reject the concept of mixed-use
3 development and revoke the entirety of the ordinance provision. This action would create significant non-
4 conformities with zoning and would threaten the financing and ability to complete developments previously
5 approved by the Town. It would also throw any modifications of these approved projects into the ZBA, a
6 result that the zoning ordinance was crafted to avoid. Revocation would also remove consideration of the
7 criteria for approval that currently protect the Town from impacts of development.

8
9 These were brief comments at a previous Town Council meeting that the Town should not spend taxpayer
10 resources on amending the ordinance prior to preparation of a new Master Plan. The preparation and
11 adoption of an updated Master Plan is at least two years away, and adoption of zoning amendments pursuant
12 to that plan are at best several months subsequent to adoption of the plan. Revocation of the ordinance would
13 create a void in zoning, with millions of dollars of tax revenue at stake for at least the next three years.

14
15 A solution to the issues identified by the Council would be to simply adopt a definition of mixed-use
16 development and a range of proposed mixes (e.g. no more than x% residential, nor more than x%
17 commercial). This would keep some zoning provisions in effect with appropriate Planning Board oversight
18 and would be further protection to the town until a more comprehensive revision of the ordinance can be
19 undertaken pursuant to the Master Plan update. This could also be done at little or no cost to the Town.

20
21 If there is a concern with regard to urgency of the current proposal, the Council could table the revocation
22 amendment and consider an alternative amendment concurrently.

23
24 I appreciate the opportunity to relay my thoughts to the Council and apologize again for not being there in
25 person to offer my testimony.

26
27 Very truly yours,
28 **TIGHE & BOND, INC.**
29 R. Gordon Leedy, Jr., AICP
30 Principal Landscape Architect

31
32 *The Public Hearing was closed at 8:16pm*

33
34 Councilor Koenig shared that he doesn't believe this is based off of one development, and that developments
35 throughout the town have dramatically changed from what was originally presented. He has noticed a pattern
36 of true mixed used variances or commercial areas being changed into apartments over the past few years. He
37 believes a thorough review of the whole program needs to be done, and would be more effective and better
38 financially to review this now instead of revamping the master plan. Councilor Hunter is in agreement with
39 Councilor Koenig, and Councilor N. Murphy shared that the residents tonight represent many thoughts she
40 has heard from others in Merrimack, and there is a vast majority of support for this amongst the community.

41
42 **MOTION made by Councilor Koenig and seconded by Councilor N. Murphy to move the Repeal of**
43 **Section 2.02 4D to a Final Reading and to be placed on the Consent Agenda at the next meeting.**

44 **MOTION CARRIES 5-0-0 with Vice Chair Harrington abstaining**

45 **Legislative Updates from State Representatives**

46 Councilor N. Murphy shared that they are in the process of redrafting legislative service requests that have
47 been put in that have not yet been assigned, and there are about 800 LSRs right now in the House.

1
2 **Town Manager's Report**

3 On October 18th between the hours of 11 AM and 1 PM the Transfer Station, Highway Division and the
4 Wastewater Plant will be closed for training and lunch.
5

6 South Baboosic Lake Road and Joppa Road will be receiving the base and final courses of pavement in the
7 next couple of weeks. Once that is complete the driveways and side streets will be tied into the pavement.
8

9 The 800MHz system is currently under negotiations with Verizon to utilize a site to erect a tower. This is
10 currently with the attorneys who are speaking directly with Verizon's attorneys.
11

12 Social Media posts or comments regarding action items or requests from the public are not regularly
13 monitored by the Town. The best way to reach someone is to go through the website or email or call the
14 Town Manager at (603) 424-2331.
15

16 **Consent Agenda**

17 None.

18 **Old Business**

19 None.

20 **New Business**

21 *Without objection, Chairman Rothhaus moved Item # 5 to be heard first*

22 **5. Committee Appointments**

23 *Submitted by Town Council Chair Finlay Rothhaus and Vice Chair Nancy Harrington*

24 The Town Council to consider appointing the following individual to Town committees, pursuant to
25 Charter Article 4-8:

26 ➤ **Lon Woods** – Heritage Commission (*Full member*)
27

28 **1. Community Development Director Position Confirmation**

29 *Submitted by Town Manager Paul T. Micali*

30 The Town Council shall consider the confirmation of the appointment of a new Community
31 Development Director, pursuant to Charter Article 7-8.
32

33 Town Manager Paul Micali stated that they have selected Robert Price, who has been with the town for about
34 8 years, as the new Community Development Director. He has an extensive background in planning, having
35 previously worked as a planning developer in Raymond.
36

37 **MOTION made by Vice Chair Harrington and seconded by Councilor M. Murphy to confirm the**
38 **appointment of Robert Price as the new Community Development Director, pursuant to Charter**
39 **Article 7-8.**

40 **MOTION CARRIES 6-0-0**
41

42 **2. Proposed Amendments to Chapter 193, Welfare Guidelines, of the Merrimack**
43 **Town Code [First Reading]**

44 *Submitted by Welfare Administrator Patricia Murphy*

45 The Town Council to consider the acceptance of recommended changes to Chapter 193, Welfare
46 Guidelines, of the Merrimack Town Code, pursuant to Charter Article V.
47

1 Welfare Administrator Patricia Murphy was present to share the changes to Chapter 193, Welfare
2 Guidelines, of the Merrimack Town Code. She began by stating that one of the changes is a law that was just
3 signed by the Governor and became effective on September 26th which clarifies some residential issues
4 regarding moving places. Another change involves eligibility criteria, as well as a telephone allowance.
5 These changes would allow the town to be current with guidelines.
6

7 **MOTION made by Councilor Koenig and seconded by Councilor M. Murphy to accept the**
8 **recommended changes to Chapter 193, Welfare Guidelines, of the Merrimack Town Code, pursuant to**
9 **Charter Article V and move to a Public Hearing.**

10 **MOTION CARRIES 6-0-0**
11

12 **2. Investment Policy**

13 *Submitted by Finance Director Adam Britten*

14 The Town Council to review and consider the approval of the Town's Investment Policy, for the
15 investment of public funds held by the Town Treasurer, in accordance with RSA 35:9 and RSA 41:29
16 for FY 2023-24.
17

18 Town Manager Paul Micali shared that their funds are 100% collateralized in banks, meaning they do not get
19 the highest amount of yield, but they do get a lot of interest for the money now. This policy has not changed,
20 this is a yearly review for the auditors to have documentation of.
21

22 **MOTION made by Councilor M. Murphy and seconded by Councilor Koenig to approve the Town's**
23 **Investment Policy, for the investment of public funds held by the Town Treasurer, in accordance with**
24 **RSA 35:9 and RSA 41:29 for FY 2023-24.**

25 **MOTION CARRIES 6-0-0**
26

27 **4. MS-434 Update**

28 *Submitted by Finance Director Adam Britten*

29 The Town Council to receive an update on the MS-434.
30

31 Town Manager Paul Micali presented the MS-434 update, beginning by sharing that automobile registrations
32 were anticipated to be reduced, but they are actually right on track for hitting their target revenue estimate.
33 Additionally, interest, dump fees, other income, and the highway block grant have all been increased.
34 Current use tax has been decreased, and rooms and meals is to be determined until the tax rate is set. Net
35 total increases for revenues was \$333,000 estimated. Undesignated fund balance estimates at the last fiscal
36 year was \$8,979,537 and has been projected this year at \$8,201,958. Mr. Micali also shared the following
37 information:
38

39 **2023 Municipal Tax Rate Estimate**

- 40 • Appropriations: \$41,770,184
 - 41 • Estimated revenues (as revised): (\$20,092,787)
 - 42 • Bond Proceeds: -
 - 43 • Tax Overlay: \$350,000
 - 44 • General Fund Surplus
 - 45 ○ Property Tax Relief: (\$2,384,500)
 - 46 • Veterans Exemptions: \$886,580
 - 47 • Property Tax Levy: \$20,529,477
 - 48 • Valuation for state property tax rate: \$4,966,661,459
 - 49 • Municipal property tax rate: \$4.13
- 50

1 **MOTION** made by Councilor N. Murphy and seconded by Vice Chair Harrington to approve the use
2 of \$2,484,500 of unreserved fund balance to help offset the property tax.

3 **MOTION CARRIES 6-0-0**

4
5 **MOTION** made by Councilor M. Murphy and seconded by Councilor N. Murphy to approve Lon
6 Woods to the Heritage Commission as a Full Member.

7 **MOTION CARRIES 6-0-0**

8
9 Mr. Woods was present to get sworn into his new position.

10
11 **Minutes**

12
13 Approve the minutes from the following Town Council meeting:

14 ♦ September 14, 2023

15
16 **MOTION** made by Vice Chair Harrington and seconded by Councilor Koenig to approve the minutes
17 from September 14, 2023 as written.

18 **MOTION CARRIES 5-0-1** with Councilor M. Murphy abstaining

19 **Comments from the Press**

20 None.

21 **Comments from the Public**

22 None.

23 **Comments from the Council**

24 Councilor N. Murphy wanted to share that on September 16th, long-term resident and community volunteer
25 Anita Creager was recognized and honored at a ceremony and banquet at Camp Carpenter. She also shared
26 that Camp Whip-o-will was renamed to Camp Creager in her honor.

27 She also stated that MVD is having an open house from 12:00- 4:00pm on September 30th at Wells 2 and 9,
28 as well as the Treatment Facility which is located at 20 Berry Ln off of Continental Blvd. The public is
29 invited to tour the facility and speak with various professionals.

30 Next, she shared that the Fire Department has their open house scheduled for October 14th from 10:00am-
31 2:00pm at their central location off of DW Highway.

32 Lastly, she asked for people to consider donating to Wreaths Across America, which will be taking place
33 again this year on December 16th at noon at Last Rest Cemetery

34
35 **Adjourn**

36 **MOTION** made by Vice Chair Harrington and seconded by Councilor M. Murphy to adjourn the
37 meeting.

38 **MOTION CARRIES 6-0-0**

39 The meeting adjourned at 9:04pm.

40
41 Respectfully submitted by Jennifer Steagald