



TOWN COUNCIL – AGENDA REQUEST FORM

THIS FORM WILL BECOME PART OF THE BACKGROUND INFORMATION USED BY THE COUNCIL AND PUBLIC

Please submit Agenda Request Form, including back up information, 8 days prior to the requested meeting date. **Public Hearing requests must be submitted 20 days prior to requested meeting date to meet publication deadlines** (exceptions may be authorized by the Town Manager, Chairman/Vice Chair).

MEETING INFORMATION

Date Submitted: November 9, 2015

Date of Meeting: November 19, 2015

Submitted by: Town Council Chair Nancy Harrington and Vice Chair Tom Mahon

Department:

Time Required: 25 minutes

Speakers:

Background Info. Supplied:

Yes: No:

CATEGORY OF BUSINESS (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

Appointment:

Recognition/Resignation/
Retirement:

Public Hearing:

Old Business:

New Business:

Consent Agenda:

Nonpublic:

Other:

TITLE OF ITEM

O'Gara Drive Tennis Courts Follow-up Discussion

DESCRIPTION OF ITEM

Town Council will discuss the details and options from the latest information received from the National Park Service relative to the O'Gara Drive tennis courts.

REFERENCE (IF KNOWN)

RSA:

Warrant Article:

Charter Article:

Town Meeting:

Other:

N/A

EQUIPMENT REQUIRED (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

Projector:

Grant Requirements:

Easel:

Joint Meeting:

Special Seating:

Other:

Laptop:

None:

CONTACT INFORMATION

Name:

Nancy Harrington

Address

Phone Number

Email Address

nharrington@merrimacknh.gov

APPROVAL

Town Manager:

Yes No:

Chair/Vice Chair:

Yes No:

Becky Thompson

From: Eileen Cabanel
Sent: Thursday, November 12, 2015 9:12 AM
To: Becky Thompson
Subject: FW: Tennis Courts
Attachments: LWCF Talking Points for compliance.docx

Eileen Cabanel

Town Manager
Town of Merrimack
6 Baboosic Lake Road
Merrimack, NH 03054
ecabanel@merrimacknh.gov

From: Matthew Casparius
Sent: Friday, November 06, 2015 11:11 AM
To: Eileen Cabanel
Subject: Tennis Courts

Hi Eileen

I just talked to Eric at NH State Parks. He had 1 minor update from the write-up which actually eases the restriction.

Item B –Section 4 – subset ii

Initially he told us that a new lease with the school would have to be for 25 years or more. Apparently we have already met that requirement so if we sign a new lease with the school it can be for however long a term we want it to be. NH State Parks would still need to review it before its signed but there is no minimum term requirement now

Attached is the corrected write-up based on this new information.

Matt

Matthew Casparius C.P.R.E.

Director of Parks & Recreation

Town of Merrimack

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Matt,

Thanks for being patient while we discussed with the NPS the issues regarding the Town's lease agreement with the Merrimack School District (MSD) relative to LWCF projects #33-00092 and #33-00560. As is understood, the lease between the Town and MSD will expire on July 30, 2018. It should also be reiterated that as the projects' sponsor, the Town remains subject to the provision of section 6(f) through the active term of the lease. The following options are available for the Town to proceed, with the applicable program compliance requirements noted:

- A. The Town may break the lease prior to expiration. If so, the provisions of section 6(f) remain in effect and the Town will be required to initiate a conversion process and supply substitute public recreational property of equal or greater value that would then be designated as a 6(f) property in perpetuity.
 1. This option would be used if we essentially wanted to eliminate the recreational value of that space. We would have to supply "substitute public recreational property of equal or greater value" The value is a combination of acreage, yellow book standards appraisal, and recreational value. That new recreational amenity we're creating would have to go on land in Town that is not currently a designated park, open space or recreation area or the town can purchase new property.
 2. The area leased from the MSD would no longer be subject to any LWCF program requirements and the protections in perpetuity would transfer to the new facility we've now created to replace it.

- B. The Town may allow the current lease agreement to expire. If so, the provisions of section 6(f) would also expire with the lease at that time, and the Town as projects' sponsor would no longer be federally required to provide perpetual public recreational property relative to these projects. It should be understood that the Town remains subject to LWCF compliance requirements, at a minimum, through current term of the lease. The present condition of the tennis courts would be considered by this office to be non-compliant.
 1. The Town would have to restore the area to alternate or passive recreation uses (pending NPS concurrence)
 2. The area where the tennis courts now sit can't be used for anything except alternate or passive recreation uses. (So for example, the School District couldn't decide to turn it into a parking lot unless the parking lot was needed to service other recreational uses and facilities within the boundary.
 3. Being declared obsolete and obtaining the letter from the National Park Service brings the Town back into compliance with the current lease which expires in 2018.
 4. The question in this option is what happens in 3 years when the lease expires.
 - i. If no new lease is signed with the school district – the perpetuity restrictions disappear but they also would take over the entire parcel of land. (Basketball courts, Skateboard Park, etc.). MSD would regain legal control of their own property
 - ii. If the Town signs a new lease with the School District to manage that parcel of land (basketball courts, Skatepark, etc.) the perpetuity restrictions remain in place as a recreational space for the length of the new lease. The new lease would have to be reviewed by NH State Parks and also the National Park Service. The new lease would need NH Parks approval before the lease is signed.

- C. Prior to expiration, the Town and MSD may extend the current lease past the signed expiration date. If so, the provisions of section 6(f) would continue to be applicable and the Town as projects' sponsor would be responsible for program compliance through the term of the extension.
 1. The town could choose option C and declare the tennis courts obsolete and establish an alternate recreational use for the facility and maintain the facility thru the current lease period. (See A1)

Eric Feldbaum – Community Recreation Specialist/CPRP
Division of Parks & Recreation
NH Dept. of Resources & Economic Development
603-271-3556- x 227

1 review the Fire Department as a whole, and make recommendations going forward. During the goal
2 setting process undertaken by the Council, the item identified as the first priority was the highway
3 garage. The second priority was fire and the third Wasserman Park. It could be that down the road there
4 may be a bond for a South Fire Station, but it would not be on next year's ballot.
5

6 Vice Chairman Mahon remarked there has been a significant change in the operations of the Fire
7 Department as to the mix of the services that they provide. One of the reasons for trying to do this study
8 is to take a look at what that mix is and how it impacts building, staffing, and equipment needs. Some of
9 those changes have been made. We are down one fire truck and one ambulance mainly because the
10 Chief and the department have come together to realign how they are operating.
11

12 4. O'Gara Drive Tennis Courts Update

13 *Town Council & Paul Micali (Acting Town Manager / Finance Director)*

14 Town Council to share the results of their investigation of options with the School Board and to
15 identify and discuss any necessary next steps.
16

17 It was noted a Memorandum of Understanding (easement) was created between the School and the
18 Town in 1993, which was updated in 2001, and expires in 2018.
19

20 On March 13, 2014, School Board Chairman Ortega appeared before the Town Council noting the
21 School Board had requested he make an inquiry of the Town Council relative to the plan for the ultimate
22 repair or replacement of the tennis courts. The tennis courts were inspected and an appraisal provided as
23 to the cost for repair/replacement (inclusive of a three-year warranty). That information has been
24 provided to all parties. The estimates ranged, in 2010, from \$29,000 - \$166,000. In 2012, the higher
25 end of the estimate had increased to \$183,000. The Town Council discussed whether the tennis courts
26 would be repaired/replaced, which resulted in a motion to expend no further monies on the repair of the
27 tennis courts and to explore alternative options. The Town Manager was instructed to explore
28 conversion, which involved collaboration with the New Hampshire Department of Resources and
29 Economic Development (DRED) relative to the possibility of an alternative site for recreational use.
30

31 Director Micali stated the original court and upgrade was conducted with Federal monies. Rather than
32 repairing the tennis courts, conversion would require some other property in Town to be identified for
33 recreational use, e.g., volleyball courts, walking trails, etc. The Division of Parks and Recreation of
34 DRED was responsible for reviewing every one of the federally funded recreation projects throughout
35 the State. Included were the tennis court, basketball court, and skating rink. An inspection was
36 conducted, which resulted in a determination the skating rink and basketball court were in good shape
37 with minor repairs needed. The State is in the process of completing the write-up on the tennis courts.
38 Director Micali stated he made attempts to contact the representative at the Division of Parks and
39 Recreation; however, has not yet been able to speak with him. He noted Town Manager Cabanel has
40 had conversations with him in the past to begin the discussion of conversion. It appears very possible.
41 What she has been told is there is the need to look at what the Town would be required to do as a
42 conversion, whether it is believed the tennis courts are repairable, etc. That information is anticipated.
43

44 School Board Chairman Ortega noted approximately 6 months have passed since the inspection, and
45 questioned the expected timeframe for a response. Director Micali stated his belief a response should be
46 received within the next 5-6 months.
47
48
49

Approved: March 27, 2014

Posted: March 31, 2014

committees, pursuant to Charter Article 4-8:

Dan Ricker – Agricultural Commission (Full Membership)

Councilor Dwyer commented the Council is typically provided with a recommendation from the interview committee. Vice Chairman Yakuboff informed the Council when the appointment process was undertaken, there was difficulty getting all parties together for an interview. He referred to Section III, A, 2 of the Appointment Policy for Boards, Committees and Commissions (changes accepted and approved by the Council on October 10, 2013), which states in part: “At the discretion of the Appointment Committee, full members seeking re-appointment, or alternate members seeking re-appointment as an alternate or appointment as full members may not be required to interview.” He noted Mr. Ricker had been interviewed previously for another committee, and the feeling was it would be acceptable to simply bring the appointment forward.

Councilor Boyd remarked he would have appreciated receiving a copy of Mr. Ricker’s letter expressing interest in the position. Chairman Rothhaus informed the Council he had the opportunity to speak with Robert McCabe, Chairman, Agricultural Commission, who made him aware of his desire to ensure members appointed are of a particular caliber. Director Micali stated Mr. McCabe has informed him he has had the opportunity to speak with Mr. Ricker.

Vice Chairman Yakuboff remarked when Mr. Ricker was interviewed previously the opportunity was provided for a lengthy discussion. It was during discussion of his background that it became apparent his skillset was fitting for the Agricultural Commission.

MOTION made by Councilor Boyd and seconded by Councilor Harrington to appoint Dan Ricker as a full member of the Agricultural Commission, pursuant to Charter Article 4-8. MOTION CARRIED 6-0-1 Councilor Koenig Abstained

Old Business

MOTION made by Councilor Mahon and seconded by Councilor Yakuboff to take from the table the item on the O’Gara Drive Tennis Courts. MOTION CARRIED 7-0-0

1. **O’Gara Drive Tennis Courts [Tabled at the February 18, 2014 Town Council Meeting]**
Submitted by Town Council Chairman Finlay Rothhaus
The Town Council to discuss the condition of the O’Gara Drive tennis courts and the Town’s agreement.

Chairman Rothhaus informed the Council he had spoken with Christopher Ortega, Chairman, Merrimack School Board, prior to the Council’s last meeting during which he had informed Mr. Ortega his presence was not required. He had not believed it necessary as he had believed the Council would reach a decision as to whether or not and at what level to invest in the tennis courts.

Mr. Ortega informed the Council at the January 6th School Board meeting, the state of the tennis courts was discussed. At that time, the Board requested he make an inquiry of the Town Council relative to the plan for the ultimate repair or replacement of the tennis courts.

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Vice Chairman Yakuboff remarked the letter addressed to Chairman Rothhaus from Chairman Ortega makes mention of a review of the agreements conducted by the School District's legal counsel and an opinion generated providing a number of possibilities for amending or terminating the agreements. He commented it appears to him termination of the agreement is a major issue for discussion, and questioned whether Mr. Ortega agreed with that impression. Mr. Ortega stated he did not. He stated the Board requested its legal counsel look into what recourse the School Board has as it relates to existing contracts. As a result, options were offered. What the School Board is asking, at this point, is simply, what is the plan to bring the tennis courts into conformance with the contract. He added, if there is something else to be considered he and Mr. Powell could bring it back to the Board for consideration.

Vice Chairman Yakuboff remarked there are two parts to the issue; termination of the agreement and use of the property or, something he would not be in favor of, replacing the tennis courts. He noted the documented issue of instability of the site. He suggested, in order for the School Board to come to a determination of how to utilize the property, termination of the agreement by both parties would have to occur as well as the Town Manager identifying an alternate location for recreational activity.

Mr. Ortega stated his agreement with almost everything stated except for the sequence. He remarked the agreements in place are between the School District and the Town and the Town and the Federal Government, through the National Park Service. Vice Chairman Yakuboff stated the agreement between the Town and the Federal Government has nothing to do with the School District. Mr. Ortega stated either the Council needs to repair or replace the tennis courts, enter into some alternate agreement, or terminate the agreement. He stated the sequence to begin with a determination of what to do with the tennis courts.

Chairman Rothhaus noted the Council has been provided with proposals (few years old), which range in cost from \$29,000 to \$183,000. The proposals represent varying levels of repair to a total rebuild of the tennis courts. At the most expensive cost, total rebuild, the property would continue to be a problem in outlying years. He stated his opinion the discussion that needs to take place amongst the Council is what direction to take with regard to the current location and the tennis courts. Should the Council reach a decision to no longer utilize the property, a determination would be necessary from the School Board as to whether the desire would be to leave the pavement in place, for the site to be brought back to its natural condition, etc.

Councilor Dwyer stated a desire for the School Board to make their position known. He would like to see the discussion come to a conclusion and the future of the tennis courts be known. He stated his hope the School Board would recognize the reports provided, which identify the structural fault, and perhaps determine another use for the property and make a request of the Council to locate tennis courts in an alternate location. He reiterated he is not clear what outcome the School Board would like to achieve.

Mr. Ortega responded the point is that direction is not for the School Board to state; it was not their agreement to build the courts in that location. The Town built the tennis courts and entered into an agreement that said they would be maintained there or replacements would be provided. The question is simply what is the Council's plan for either improving or replacing those courts.

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Chairman Rothhaus stated the Town's agreement with the School District states the tennis courts will be located there, have to be in usable and safe condition, maintained, etc. Because of the unsafe condition, the courts are closed, which is what he believes is the concern of the School District. Mr. Ortega stated if the courts were usable the High School Tennis Team would take advantage of them as would physical education classes from the High School and Masticola schools. Chairman Rothhaus stated his belief if the Council comes to the decision the location is not suitable for the tennis courts, which is the opinion he is of, then he would imagine the School District would wish for the property to be made available for whatever use they deem appropriate, which is a decision for the School Board to make. He stated his desire for the Council to make such a determination.

MOTION made by Councilor Yakuboff and seconded by Councilor Dwyer to remove the tennis courts on O'Gara Drive

ON THE QUESTION

Councilor Boyd questioned whether the desire was to address the agreement as opposed to the removal of the tennis courts. Vice Chairman Yakuboff noted the agenda item addresses both the condition of the O'Gara Drive tennis courts and the Town's agreement.

Vice Chairman Yakuboff questioned the level of use the tennis courts received. Mr. Ortega was unsure. When asked, Mr. Ortega stated the Town has first right of use for the courts as they are Town courts. The involvement of the School district was in the granting of an easement for the land to allow the Town to construct the courts for Town use. Councilor Dwyer remarked, prior to their closure, there were no restrictive hours in place for use of the courts.

Vice Chairman Yakuboff stated the need for the Council as well as the School District to reach a decision, and stated his belief those involved can agree the tennis courts are in disarray, that it would not be advisable to expend \$200,000 on tennis courts that would not be guaranteed beyond three years, and that the courts, should they be rebuilt, would not gain the level of use necessary to justify the expenditure. Councilor Dwyer stated documentation has been provided stating the location of the courts is wrong, and spoke of his willingness to incur some expense to relocate the courts.

Councilor Mahon remarked the Council is not required to replace tennis courts with tennis courts. Councilor Dwyer stated that to be a separate subject. Councilor Mahon spoke of the level of use, and suggested, if contemplating expenditure of funds, he would rather it be for something that would generate a bigger bang for the buck. Councilor Dwyer stated, when having such a discussion, he would be interested in knowing the level of use, the number of individuals who travel to Wasserman Park to utilize those facilities, etc. in order to come to a decision on whether or not to rebuild the tennis courts, and if so, number of courts, etc.

Councilor Harrington noted the motion on the floor did not address the issue of responsibilities associated with the agreement reached with the Federal Government relative to acceptance of LCHIP grant funds. That issue remains to be addressed.

Councilor Boyd stated his support of the motion, and thanked the School District for the arrangement that has been in place over the past 30+ years. Councilor Koenig asked for clarification the intent of the motion was to determine if a majority of the Council were of the opinion the tennis courts are in a

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condition not worthy of repair and to reach a decision to terminate the agreement to keep tennis courts in good condition; therefore placing the Town in violation of its agreement with the Federal Government.

Councilor Yakuboff questioned whether reaching a decision to remove the tennis courts would allow the Town Manager to seek out alternative recreation use(s)/locations. Town Manager Cabanel stated there to be a formal procedure that has to be followed through the Division of Parks & Recreation within the State Department of Resources and Economic Development (DRED) which coordinates with the Federal Government. An element of the agreement has the effect of a perpetual recreation use commitment, which can only be changed by prior State and Federal approval such a "conversion" and that that approval must include adequate substitution of land and/or facilities." A representative from the Division of Parks & Recreation has stated the requirement is not for recreational use of a similar dollar value or type, but simply the replacement of a recreational use with one of the same quality.

Councilor Harrington questioned whether it would be premature to tear down the tennis courts prior to gaining approval for a conversion. Town Manager Cabanel stated the motion on the floor would provide the response requested by the School Board. Councilor Dwyer expressed a concern that the response to a request for conversion could be denied resulting in the tennis courts remaining in a state of disrepair. Chairman Rothhaus remarked he is unsure what unintended consequences could result. When asked, Town Manager Cabanel stated DRED is the local representatives for the Federal Government. The Town would make a proposal and DRED would review it and pass it on to the Federal Government. Councilor Koenig commented the Town is technically in violation of its contract with the Federal Government at this time.

Mr. Ortega noted the easement agreement covers more than just the tennis courts, e.g., basketball courts, skate park, etc. In that regard, the School District would need to change the easement agreement. There is a process involved in that. The 1993 agreement (long-term extension) states "the provisions of this agreement can be revoked or amended only with the written concurrence of the State of New Hampshire Liaison Officer and the National Park Service which would require appropriate substitution of public recreation land and facility replacement from the Town of Merrimack in event of termination of this agreement." He requested the Council provide clarification. Councilor Dwyer stated a desire for the Council to come to a decision so that the School District understands the position of the Council. The endless possibilities of alternatives can be discussed at a later date. He would like to see the site improved. Councilor Harrington stated her agreement the Town should not expend additional monies (based on the documentation provided) on the existing tennis courts. Councilor Dwyer reiterated his desire to provide clear direction with regard to the desire to remove the tennis courts, and look for the School District to provide direction as to how they would like the property to be left.

Chairman Rothhaus questioned whether there may be additional grant funding available, given the current agreement calls for recreation use in perpetuity. Town Manager Cabanel stated the Town received LCHIP grant funds on two occasions (courts constructed in 1973 and redone in 1986; 50% matching funds). She is unsure whether it would be prudent to seek additional grant funds given the requirement for matching funds. Councilor Mahon noted the grant funding was utilized to cover the cost of lights and the costs for renovating the courts was covered through the operating budget. Town Manager Cabanel stated the grant received in 1973 was for the tennis courts and skating rink and in 1988 for repair of the tennis courts and the lighting.

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Chairman Rothhaus stated, for the record, the three repair scenarios were at costs of \$27,000 - \$29,000 for refinish of the courts, \$78,000 for major repairs, e.g., new fencing (life expectancy of 3-7 seasons), and \$183,000+ for new courts (3 year warranty).

Councilor Harrington stated she would not support the motion and would offer a motion to address both the tennis courts and the easement agreement. Councilor Boyd stated he would not support the motion based on comments made by Councilor Harrington regarding the process. He remarked the Council has budgeted funds for electricity to Watson Park and has conceptually discussed moving the skating rink from its current location to Watson Park. If exploring conversion, the opportunity exists to consider how to maintain the easement relationship with the School District and put a plan in place so that when the determination is made as to what is viable at the school site there will be a better understanding of what to do with the tennis court.

MOTION FAILED 3-4-0

Councilors Boyd, Harrington, Rothhaus, and Mahon voted in opposition.

MOTION made by Councilor Harrington and seconded by Councilor Dwyer that the Council determine no further monies will be expended on the repair of the tennis courts at O’Gara Drive, to authorize and instruct the Town Manager to immediately explore conversion, and that the Council revisit the topic in 6-8 months

ON THE QUESTION

Councilor Harrington stated the motion would allow the opportunity for feedback from DRED relative to a request for conversion and would identify a timeline for the tearing down of the tennis courts. With a plan in place for the conversion, the Council could discuss an alternate site. Councilor Dwyer stated he would not support the motion as he does not agree with waiting on others and does not wish to see another season go by before taking action. When asked, Town Manager Cabanel stated her belief the process would take at least 6 months.

Councilor Mahon requested the Town Manager obtain information relative to the financial investment the Town would be required to make as part of the conversion, and noted the documentation speaks to fair market value. Town Manager Cabanel stated she has reviewed the documentation and believes it to require adequate substitution of land or facilities of the same quality, not necessarily value. The former Director of Parks & Recreation had contacted DRED several years back to provide notification the Town would not be able to repair the tennis courts due to budget concerns. At that time, the representative from DRED suggested the Town might put up volleyball courts in another location. This was simply a comment made by an employee of DRED, which does not necessarily indicate that would be an acceptable solution; however, it has led her to believe what would be sought would not necessarily be a particular dollar value. She stated the documentation states “Payment to the United States of an amount equal to the amount of assistance extended under this agreement by the United States would be inadequate compensation to the United States for any breach of this agreement.” The appropriate remedy would be specific performance of the agreement. She stated her belief that is intended to suggest an equal quality recreational opportunity rather than a specific dollar value.

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Councilor Harrington stated she would not object to an amendment to the motion stating information sought relative to a conversion plan should include any financial requirements. Councilor Mahon stated he would like to have a written response to the questions posed. Town Manager Cabanel stated conversion requires that a suggestion be made and a subsequent decision provided as to whether the suggestion is adequate.

AMENDED MOTION made by Councilor Harrington and seconded by Councilor Dwyer that the Council determine and inform the School District that no further monies will be expended on the repair of the tennis courts at O’Gara Drive, authorize and direct the Town Manager to seek immediate information regarding exploring conversion, including any monetary or specificity requirements, and that the Council revisit the topic in 6 month to determine the status.

MOTION CARRIED 4-3-0

Councilors Dwyer, Koenig, and Yakuboff voted in opposition

The Council discussed amending the easement agreement to remove the portion upon which the tennis courts are located. Town Manager Cabanel stated, even if that portion is removed, the agreement in total expires in 2018. There is a need to discuss the future of the parcel as a whole. Councilor Dwyer remarked this is step 1. It is important to understand this is the beginning step to provide the School Board some insight into where the process will go. Many future discussions will be necessary.

Mr. Ortega stated his assumption that in approximately 6 months’ time there may be additional follow-up that takes place, which could include a request to amend the easement agreement.

Councilor Dwyer stated the site is very important as it is the gateway into the High School. He has, from the beginning, had the desire to make the site look the way it should. He remarked if he believed it would pass, he would propose a motion to remove the fence and the posts that hold the net, which would improve the appearance of the site. He suggested another season not be allowed to go by without taking some action. He questioned whether a consensus could be reached on the removal of the fence. Mr. Ortega reiterated the Town is responsible for the maintenance of the courts, fences, etc. He stated he would relay to the School Board the questions posed of what the School Board would like to occur. He added, the only thought that occurs to him about the fence is if the courts are in fact unsafe the fence is a way of keeping people off of an unsafe playing environment. Mr. Ortega thanked the Council, on behalf of the School Board, for the thoughtful consideration given to the topic.

New Business

2. Donation Acceptance for Parks and Recreation

Submitted by Parks and Recreation Director Matt Casparius

Town Council to consider the acceptance of a \$185.00 donation from the Sno-Buds Snowmobile Club to the Parks and Recreation Department to provide financial assistance for children in need to attend the Summer Day Camp Program, pursuant to Charter Article 8-15 and RSA 31:95-b.

MOTION made by Councilor Boyd and seconded by Councilor Yakuboff to accept a donation in the amount of One Hundred Eighty Five Dollars (\$185.00) from the Sno-Buds Snowmobile Club to the Parks and Recreation Department to provide financial assistance for children in need to attend the Summer Day Camp Program, pursuant to Charter Article 8-15 and RSA 31:95-b

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entertain the thought of entering into any type of agreement that impedes the Town of Amherst and the community to be able to govern itself.

Mr. Knight commented the one point the Council may not be aware of is that this was offered to the Selectmen same as it is being offered to Merrimack, and their only interest was to purchase the property. There is no interest in selling the property.

Vice Chairman Yakuboff stated his impression the proposal is an end-run around Amherst to get Merrimack involved. He is of the opinion Merrimack is not interested. Councilor Dwyer stated his impression Amherst has spoken through the ballot box and their governing body and both have said no. He is uncomfortable trying to force the opposite of what their wishes are in their own town. He stated his greatest concern to be that the MYA, the largest group of youth sports in Town, has stated they are not interested in playing there. If our largest group in Town is not interested there is no interest from Merrimack.

Mr. Knight thanked the Council for its time.

MOTION CARRIED 6-0-0

3. O’Gara Drive Tennis Courts

Submitted by Town Council Chairman Finlay Rothhaus

The Town Council to discuss the condition of the O’Gara Drive tennis courts and the Town’s agreement.

Town Manager Cabanel stated it appears the request the School Board made of their attorney is not the request they are making to the Council. The request to the attorney was for counsel to devise strategies for the School District to terminate the Easement granted to the Town. The letter, provided in advance of the meeting, goes on to state counsel is of the understanding the School Board would like to take over the tennis courts and maintain them. The question from the School Board is “By consensus, the School Board requested that I share this legal opinion with the Town Council, request remediation of the tennis courts by the Council and a schedule for bringing the courts back into compliance.”

Councilor Mahon stated that could not occur this year as the budget cycle is complete. Councilor Dwyer stated, with no disrespect to the School Board as he respects every member on that board, he questions the level of importance given the request was made and granted to place the item on the agenda; however, no one is in attendance to speak to the issue. He commented the tennis courts have been shut down for several years and the agreement was put in place over 30 years ago when the Town received grant funding to allow for the construction of the courts. Unfortunately the courts were placed on rock ledge, which turned out to be a horrible location. Almost immediately the ledge started shifting and buckling.

Town Manager Cabanel has in her possession a letter dated in 1986, which states “There is major structural fault in the asphalt base that is situated on the south service line and creates a serious player ability problem. This fault has existed since the courts were first built.” Through the School Board, they have presented what they would like to see done, which is invest funds into the present tennis courts.

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Councilor Dwyer stated the most startling thing is not the price of the estimates (\$183,000) to replace and rebuild the courts, but the fact there would only be a three-year warranty. He stated his opinion it would be a gross negligence to spend that kind of money to rebuild the tennis courts in this location. He stated he would never support spending a single dime in that location. If the School Board needs formal notification of relinquishing control over the courts, he would support that. He reiterated in order to have a discussion both entities need to be represented. He found it troublesome instead of engaging in a discussion, the decision was made to contact an attorney, at a cost, to determine a resolution. He stated the School Board wishes for the Town Council to spend close to \$200,000 to build them tennis courts, and as far as he is aware, have never even opened up the discussion of we want you to spend the money, but we will locate them here instead. That is a different discussion he would be willing to have.

Councilor Boyd noted the second paragraph on page three of the legal opinion refers to Section 6(f) of the LWCF Act by which the grant monies were allocated. It states "No property acquired or developed with assistance under this [the LWCF Act] shall, without the approval of the Secretary, be converted to other than public outdoor recreation uses. The Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value...." He stated his interpretation to be the grant money was provided and has been used to create a public outdoor resource. As much as he agrees with comments made that the property is probably ill-suited, it is not as if the grant funds could be returned, and the Town is obligated, as a condition of that grant, to provide some type of public outdoor space.

Additional language on page four states "While this does not give the District the ability to terminate the Agreement or any of the easements granted by the Agreement, it does provide some leverage for negotiations with the Town. In order to bring the park into compliance with the Agreement and the LWCF Act, the tennis courts and other facilities located on the land will need to be brought into a better state of repair." Additionally it states "I suspect that the Town would resist any obligation to provide substitute facilities."

Councilor Boyd remarked if the condition of the grant is that we have to maintain an outdoor facility and we cannot have it at this particular location, in order to stay in compliance with the grant, we have to look to another location to provide whatever is suitable to comply with the requirements of the grant that was applied for back in 1974.

Town Manager Cabanel stated language within a letter from the Division of Parks & Recreation within the State Department of Resources and Economic Development (DRED), who administers these grants, states "A perpetual recreation use commitment, which can only be changed by prior and Federal approval such as conversion and that that approval must include adequate substitution of land or facilities." It does not say it has to be in-kind facilities. She stated the representative from the Division of Parks & Recreation informed her that his colleague prior to him had suggested the Town might put up volleyball courts. It is a recreational use, does not have to be the same dollar value, but the same recreational value. Councilor Dwyer stated he would challenge the silliness of laws and that he will not be a slave to it. He will not participate in the Federal Government's language back in 1973 that said we would provide this in perpetuity.

Approved: March 13, 2014

Posted: March 19, 2014

Councilor Mahon commented if going to spend that amount of funds he would rather it be for something that would get more use than the tennis courts have gotten. He spoke of a request in 1986 for re-coating of the tennis courts because of the problem that existed. The question then was why. Next was a request for the lights. Each time it was because there was Land & Water Conservation Fund money available for that. That is the exact reason the Parks & Recreation Director, at the time, gave to the Budget Committee. That has obligated us to keep the lights on until 10:00 p.m. during the summer when there is nobody there. The Board of Selectmen in 1973 said they were willing to take the money under those conditions, and so they have obligated that.

Councilor Mahon stated he is not interested in throwing more money after a problem that is very difficult to resolve. This was discussed 2-3 years ago with the School Board when talking about the joint meeting that occurred in 2011. Councilor Dwyer reiterated if the School Board wants the land to do something with and need some kind of contractual agreement with the Council he is all for that. If they wish to discuss a future site to continue the spirit of the grant again that is another discussion, and one he is very willing to have. But to ask the Council to invest a quarter of a million dollars (2012 was the date of the \$183,000 quote), then he would think even the School Board would agree that Town funds in that amount invested in that site for tennis courts would be a bad decision.

Vice Chairman Yakuboff remarked the Town Manager is looking to work through the conversion. It could be something as easy as putting in a nice volleyball court at Watson Park and being able to use it during the summer and then in the winter put up a removable ice skating rink. Town Manager Cabanel stated there to be a few complexities involved. First she would need the Council to provide her the authority to begin the process of the conversion paperwork, which has to be approved by the State and the Federal Government. It would need to be specific on what the conversion was for and authorized by the Council. She stated a desire to gain additional information from the School Board because if their desire is to release the lease on the property there is a good deal more included than the tennis courts; skateboard park, basketball courts, etc. The lease is for the entire area.

Councilor Dwyer stated a desire for the opportunity for the Council to have a discussion with the School Board or their representative in the hope of coming to a mutually agreeable solution. Director Micali informed the Board the School Board Chairman had planned on attending the last meeting. He is unsure why he was unable to be in attendance this evening and suggested the weather may have played a role.

MOTION made by Councilor Boyd and seconded by Councilor Mahon to table the item until the Council's March 13, 2014 meeting. MOTION CARRIED 6-0-0

Minutes

Approve the minutes from the following Town Council meetings: January 13, 2014, January 16, 2014, January 20, 2014, and January 23, 2014.

MOTION made by Councilor Boyd and seconded by Councilor Harrington to approve the minutes of the January 13, 2014 Town Council Meeting as presented. MOTION CARRIED 6-0-0

