



Town Council Meeting Minutes

Thursday, January 9, 2014, 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 Yakuboff, Councilor Boyd, Councilor Dwyer, Councilor Harrington, Councilor Koenig, Councilor Mahon, Town Manager Eileen Cabanel, and Finance Director Paul Micali.

Pledge of Allegiance

Chairman Rothhaus lead in the Pledge of Allegiance.

Announcements

The Town Council will conduct budget meetings on Monday, January 13th, Thursday, January 16th, and Monday, January 20th at 6:00 p.m. and a regular meeting of the Council on Thursday, January 23rd at 7:00 p.m. in the Matthew Thornton Room. Town Manager Cabanel questioned at what point within the budget review process the Council would deliberate. Chairman Rothhaus responded the Council typically flags items to be addressed at the last budget review meeting. Director Micali remarked past practice has been to have a separate meeting for the Council to deliberate; however, if desirable, Council review/acceptance could be placed as a specific item on the same agenda that will address the last of the departmental reviews (January 23, 2014). Another option would be for the Council to meet on Monday, January 27, 2014. Chairman Rothhaus suggested the meeting could be tentatively scheduled knowing a better understanding of need would be gained as the process progresses.

The library is offering an informal drop-in tech help session on January 10th from 11:00 a.m. - Noon. Library staff will assist in learning how to download books and music from the library to your tablet or phone.

Comments from the Press and Public

Tim Tenhave, 72 Amherst Road

Noted he is the Chairman of the Conservation Commission, and stated the Commission has not yet had the opportunity to discuss the request before the Council to use a portion of South Grater Road as a driveway to access Tax Map Parcel 4A/015 for the construction of a single-family residence.

He stated it was not his intent to oppose the request as he has not had the opportunity to discuss the issue with the Commission as a whole. After reviewing the plans and viewing the presentation before the Planning Board, he did not witness anything that raised specific concern(s).

One of the items brought up during the Planning Board meeting was the fact conservation land is about ½ a mile from where the driveway is proposed, which is true. However, during certain times of the year, that is the only access to large portions of conservation property. As a result, the Commission is interested in what takes place on South Grater Road coming in through Wilson Hill Road. The Commission is interested not only in access for recreation and/or forestry reasons, but also for safety reasons. He spoke of the variety of activities that occur on the 300± acres beyond the approximately

500 acres of conservation land e.g., ATV riders, target shooters, hunters, walkers, mountain bikers, etc., and noted the road is well used.

Mr. Tenhave remarked some of the proposed work will improve the slope; however, during the wintertime the slopes result in the potential for use of de-icing compounds and other activities to keep the roadway clear and usable. He stated the need to be cautious when it comes to the use of de-icing compounds as they would eventually wash off the roadway and make it into 1 or 2 places where they would be kept and then hopefully treated before entering the water system. He stated his belief the area is on a well-based system rather than Town water. If a large concentration of salt were to go into the ground in one area it may impact some of the abutters. He requested the Council give consideration to limiting the use of certain types of compounds.

Mr. Tenhave stated the stone wall, which abuts one side, is historic and serves as habitat for a good many small critters. He does not believe there is intent to disrupt the stone wall; however, would like to see that identified as a priority.

He spoke of the need to ensure snowplowing of the driveway and access into the property does not result in an embankment (snow storage) that would prevent emergency access. He reiterated, during certain times of year, that is the only access point. He noted entering through the school requires traversing a very steep hill, which certain emergency vehicles cannot do. Mr. Tenhave stated the need to ensure visitors to the residence don't park along the roadway and impede the use of the roadway by the public and emergency vehicles. He spoke to the limiting nature of the area, e.g., steep slopes, etc.

Mr. Tenhave remarked he is unsure if the Commission would have different/additional recommendations should the proposal be sent there for a recommendation. He stated a willingness to host the discussion and provide any feedback. He added he has not received any feedback from members of the Commission as the issue came up too quickly. He reiterated he does not see a large issue with the request, he simply believes because it is a well-used area the need exists to ensure it remains open.

Recognitions, Resignations and Retirements

1. Recognition of the Retirement of Bruce E. Cornelius

Submitted by Human Resources Coordinator Sharon Marunicz

The Town Council will present a recognition plaque to Master Firefighter Bruce E. Cornelius in recognition of his retirement from the Town of Merrimack Fire & Rescue Department effective December 27, 2013. He has been employed full-time by the Town of Merrimack Fire Department since November 30, 1987.

Chairman Rothhaus informed the Council and viewing audience Mr. Cornelius was unable to be in attendance. He read, into the record, the following statement engraved in the plaque, which will be presented to Mr. Cornelius:

"Presented to Bruce E. Cornelius upon the occasion of your retirement from the Town of Merrimack Fire & Rescue Department in recognition of the loyal and dedicated full time service which you have contributed for more than 26 years. Your dedication and devotion to duty has been a tremendous asset to the Town of Merrimack. We wish to extend to you

our sincere appreciation for your outstanding performance of duty. November 30, 1987 – December 27, 2013. Presented by the Town Council and Town Manager this 9th day of January 2014.”

Appointments

1. Fraser Square Veterans Monument Update

Submitted by Brian Snell

The Town Council to be provided with an update on the monogrammed pavers and order sheets for the proposed Fraser Square Veterans Monument.

Mr. Brian Snell informed the Council Paper Graphics has completed the forms for the bricks (1,000 forms have been delivered). He had with him a sample of the brick that will be used (12” x 12”), and noted Paper Graphics donated the forms in lieu of a brick being placed. Fundraising efforts have begun. The desire is to utilize funds, when available, to purchase the challenge coins.

Councilor Harrington commented she has been questioned by citizens as to whether the Council should have sought recommendations from the Planning Board. She stated the decision to have already been made, but suggested consideration be given to requesting recommendations/guidance on future projects. Chairman Rothhaus agreed the Council could make it a habit to request input, and noted Mr. Snell has attempted to contact the Planning Board.

Councilor Dwyer questioned whether any member of the Planning Board contacted the Town Manager or the Chairman. Vice Chairman Yakuboff stated he originally received a call from Anita Creager regarding the square itself and the monument. She informed him of another Veteran for whom a monument was not constructed. His response to her was since it is Fraser Square and it was anointed as that for the monument he did not believe you could place a separate monument identifying a single individual. He contacted Mr. Snell who reached out to Ms. Creager. It was decided she could utilize one of the bricks to honor that Veteran. From there he believes the issue was brought up to the Planning Board, which resulted in a request to meet with Mr. Snell.

Councilor Dwyer questioned if there was any formal line of communication from the Planning Board or any member of the Planning Board expressing interest in participating in the project. Vice Chairman Yakuboff stated there was not. He recommended Mr. Snell provide information to the Planning Board. Mr. Snell stated he provided the Planning Board with the same PowerPoint presentation given to the Council. Councilor Dwyer remarked the Planning Board could have obtained the requested information through review of the Council’s meeting minutes. He commented it makes it sound as though the Council is being second guessed. He noted he was not suggesting anyone from the Planning Board has stated the project should go before them, but was simply questioning what had occurred.

Chairman Rothhaus remarked in the past the Council has provided the Planning Board had the opportunity to review such projects as it is that board which has the greatest experience with aspects that should be considered with such projects, e.g., impacts on roadways, businesses, etc. He noted he has spoken with Mr. Disco regarding the issue. Councilor Dwyer remarked no one on the Council expressed the idea of referring the project to the Planning Board for review. He added, as Town

owned property, he believes permissions begin and end with the Council.

Vice Chairman Yakuboff reiterated he had suggested Mr. Snell provide the requested information and express his willingness to address any questions. Mr. Snell stated he would be before the Town Center Committee the following Monday and would be providing the PowerPoint presentation to that Committee. Councilor Dwyer noted the Council has already approved the project and questioned the reason for seeking input at this time.

Councilor Harrington stated she has made it clear to those who have brought the issue forward that approval has already been granted. Her only suggestion was that the Council considers, in the future, requesting input from other boards/committees that have specific experience/expertise in certain matters and might bring to light issues/concerns the Council may not otherwise have considered. She clarified she was not stating the Council should be beholden to other entities or advocate its responsibility, but rather that the Council utilize available resources.

Mr. Snell can be contacted at BSnell1@gmail.com or (603) 315-4864.

2. Annual Review with the Conservation Commission

Submitted by Conservation Commission Chairman Tim Tenhave

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

Tim Tenhave, Chairman, Conservation Commission, provided a PowerPoint presentation (copy attached). The Presentation highlighted membership, the Commission's Mission (RSA 36-A), activities completed in 2013, finances, and activities planned for 2014.

Mr. Tenhave noted the completion and acceptance by Town Council of the Grater Woods Forest Stewardship Plan. The Red Maple Rehabilitation project was the Town's mitigation for the Manchester Street Bridge projects. Along with that was the opening of a primary access point on Conservation Drive. The commission accepted a donation of a 10.75 acre parcel at 283 Continental Boulevard, which contains a good many wetlands and is key to water that flows off of private and public properties and to the Pennichuck water system. The Commission created a parcel assessment tool for utilization when considering future land acquisition(s). A vision statement was created to prioritize expenditure of funds. Several key infrastructure items were addressed in Grater Woods. One of the projects completed was the construction of a walking bridge for non-motorized access across a stream area, which had been troublesome. Another project completed was addressing the area at the bottom of Gateway Hill; a 54" wide x 32' long bridge was constructed. Mr. Tenhave spoke of the number of volunteers both individual and groups that assist in ongoing projects on the properties. He noted the availability for additional volunteers on some of the sub-committees.

The Land Use Change Conservation Fund has a balance of \$1,323,390.68. The funds are intended for the purchase of property and/or easements. The Commission has developed a Parcel Assessment Tool for use when considering properties for acquisition/easement. Properties are considered based on identified criteria developed using information contained within the Biodiversity Plan completed for

Approved: January 23, 2014

Posted: January 24, 2014

the Commission in 2010, which identified Conservation Focus Areas (CFAs) as well as the Town's Master Plan:

- Acquisition Assessment
 - Is the parcel supportive of all elements of the RSA on Land Use Change Tax (LUCT) (work, recreation, and ecosystem conservation)
 - Is the parcel part of an identified CFA
 - CFA's include HHNP, Grater Woods, Souhegan River, Merrimack River, and Baboosic Brook
 - Reference the 2012 Master Plan Update: Section 5.5.4.
 - Does purchasing the parcel help to increase contiguous acreage for existing properties in the CFA
 - Is the parcel in an area under high development pressure
 - If parcel is not acquired and left for development, could it affect the acquisition efforts on other parcels that would increase contiguous acreage of the CFA
 - Does the parcel increase access opportunities for other MCC properties
- Conservation Easement assessment after doing Acquisition Assessment
 - Does parcel contain structures
 - Is the owner interested in an easement and its benefits?
 - Is there a low potential for development

Mr. Tenhave noted the Commission has had the opportunity to acquire some properties that did not meet the identified criteria and were turned down. The intent is to remain focused on priorities identified by the Town planners as well as those within the Biodiversity Plan.

The Commission also developed a Finance Vision Statement:

- Strategically pursue land acquisition for the protection of open space and natural resources
- Maintain current and future conservation properties to:
 - expand recreational opportunities
 - protect and enhance wildlife habitats
 - protect and enhance water resources
 - ensure proper forest stewardship
- Maximize the prudent use of technologies to educate and expand information opportunities about our conservation properties
- Update plans, maps, and files to have a consistent and comprehensive documentation set for all properties
- Expand community education programs to include getting the student population outdoors

Mr. Tenhave informed the Council of the following account balances (end of FY13): Account 51 - Special Conservation Fund; \$51,704.46, Account 53 - Land Use Change Conservation Fund; \$1,323,390.68, and the Horse Hill Nature Preserve (HHNP) Fund; approximately \$900.

In 2014, the Commission will enter acquisition mode and work to acquire land/easements that meet the criteria and vision. An update of Chapter 111 of the Town Code on Conservation Properties will be brought forward for consideration, which will include establishment/identification of clear rules for major properties. Updated and consistent forestry plans will be created for conservation properties.

A plan for beaver management will be established; recent beaver activity has resulted in issues on both private and public lands. There are residents whose leach fields have been washed out of their back yards as a result of beaver activity. In excess of \$5,000 has been expended from Commission funds in the removal of beaver. An RFP will be put together for a consultant to provide guidance. When asked, Mr. Tenhave stated 18-19 beaver have been removed, to date, from an approximate one-mile stretch in the area around Baboosic Brook. Beaver have begun to impact the new Wire Road bridge, which was recently re-opened. There is a large beaver dam in the area, which, if it let go, would produce a large amount of water coming through the area.

Management Plans for Gilmore Hill Memorial Forest, Fields Farm, Mitchell Woods, and the Wasserman Conservation Area will be identified. The Commission's website, www.merrimackoutdoors.org, will continue to be expanded (averages 70-100 hits/day). The Commission's processes and procedures will be documented.

Mr. Tenhave remarked the Commission will look to the Council for approvals for land/easement acquisition, for assistance with the continued implementation of the Grater Woods Stewardship Plan, and in putting in place an update to Chapter 111.

He remarked the Commission would be pleased to see the Council fund the GIS system. The current system is dated and is used widely by the Commission and members of the public, e.g., real estate brokers, businesses, perspective home buyers, etc. The Commission would like to add layers to the GIS system that would identify the trail systems, wetland mappings, etc. Town Manager Cabanel questioned whether Commission funds could be utilized to assist with the cost of updating the GIS system. Mr. Tenhave reiterated the system is of assistance to the Commission, and stated a discussion could be had as to whether or not that would be an appropriate use of funds.

Mr. Tenhave commented when projects come before the Commission and a recommendation is made for carefully applied de-icing compounds, the suggestion is that projects utilize the green SnoPro Certification program from UNH. The Commission requests contractors adhere to that system and would like to ensure the Town is also utilizing the program. He noted the Public Works Department (PWD) has been participating in the project, and there is good training being done with Town employees. At one time there were four members of the PWD certified in the program, today there is only one operator with certification. He noted the training budget is limited, and certification comes at a cost of \$60. He stated the desire to see put in place a program that would ensure half of the operators are certified each year (an additional \$500 or so in the educational fund). He spoke of savings that could be gained in materials and labor.

Councilor Dwyer expressed his gratitude to the Commission for the amount and quality of work it has completed, on behalf of the Town, over the past year. Councilor Boyd echoed comments made by Councilor Dwyer. He added the current membership and its commitment to transparency has gone a long way towards educating the public on the efforts of the Commission. He remarked the Commission is both proactive and aggressive. He believes the Commission to be a model for other communities to look to with regard to acquiring and maintaining open space. With regard to the intent to create updated and consistent forestry plans for conservation properties, he suggested portions of the Grater Woods Stewardship Plan could serve as a template. He questioned whether the intent was for a single master plan or individual plans for individual properties. Mr. Tenhave responded the intent is to

develop individual plans as the properties are unique in nature. A template will be developed, and will be used initially on a single property as a way to mature the template. Aspects of the Grater Woods Stewardship Plan will be incorporated into the template. Commissioner Kras is a Conservation Easement Steward for the Society for the Protection of New Hampshire Forests (Society), and has access to templates used by other communities as well as the Society, which will be drawn upon as well.

Councilor Boyd spoke of cross-jurisdictional cooperation the Commission has fostered and suggested that is also a model for other communities to use.

Mr. Tenhave informed the Council the Amherst Conservation Commission has expressed an interest in participating in the activities/meetings of the Grater Woods Sub-Committee.

There being no objection, the Council went out of the regular order of business to take up Item #1 under New Business.

1. Donation Acceptance for the Merrimack Police Department

Submitted by Captain Peter Albert

The Town Council to consider the acceptance of a \$500.00 donation from Merrimack resident Stacie Sebring and a \$100.00 donation from Stephen R. Kelley in memory of Bob and Betty Kelley, to the Merrimack Police Department for the purchase of equipment and maintenance of the Police Canine Unit, pursuant to Charter Article 8-15 and RSA 31:95-b.

Captain Peter Albert, Merrimack Police Department, informed the Council of a donation in the amount of \$500.00 received from Merrimack resident Stacie Sebring. Ms. Sebring is a graduate of the Citizen Police Academy and a supporter of the department. Also received was a donation of \$100.00 from the Kelley family in memory of Bob and Betty Kelley. Donations are intended to support the purchase of equipment and maintenance of the Police Canine Unit.

MOTION made by Councilor Yakuboff and seconded by Councilor Harrington to accept the donation of Five Hundred Dollars (\$500.00) from Merrimack resident Stacie Sebring and the donation of One Hundred Dollars (\$100.00) from the Stephen R. Kelley in memory of Bob and Betty Kelley for the purchase of equipment and maintenance of the Police Canine Unit, pursuant to Charter Article 8-15 and RSA 31:95-b

ON THE QUESTION

Vice Chairman Yakuboff requested the Council's gratitude be expressed, and commented on the level of support received from the community for the canine unit. **MOTION CARRIED 7-0-0**

The Council returned to the regular order of business.

Public Hearing

1. Public Hearing - Request for Acceptance of Additional Right-of-Way at 59 Wire Road by Merrimack Congregation of Jehovah's Witnesses

Submitted by the Community Development Department

The Town Council will hold a public hearing to take action on a request to consider the acceptance of a 509 square foot (approximately) triangular piece of land with an estimated value of \$1,000.00 at 59 Wire Road for right-of-way purposes from the Merrimack Congregation of Jehovah's Witnesses, pursuant to Charter Article 8-15 and RSA 31:95-e.

Chairman Rothhaus declared the Public Hearing open at 8:15 p.m.

Timothy Thompson, Director, Community Development Department, informed the Council the Merrimack Congregation of Jehovah's Witnesses opened their facility on Wire Road within the past year. One of the conditions of Site Plan approval was a donation of Right-of-Way 25' off centerline to ensure sufficient Right-of-Way for future road improvements. It is not the entire length of the frontage of the parcel; a small triangle of about 500± square feet. The Assessing Department has identified a value of approximately \$1,000.

Chairman Rothhaus opened the floor for public comment. No one from the public addressed the Council.

Chairman Rothhaus declared the Public Hearing closed at 8:16 p.m.

MOTION made by Councilor Boyd and seconded by Councilor Koenig to accept the Right-of-Way dedication as shown on Sheet SP-2 of the approved Site Plan of the Merrimack Congregation of Jehovah's Witnesses, Hillsborough County Registry of Deeds Plan #37644 and described in the recorded Quitclaim Deed (HCRD Book 8541, Page 0129). MOTION CARRIED 7-0-0

Legislative Updates from State Representatives - None

Town Manager's Report

The Merrimack Police and Public Works Departments want to thank all who donated food for the local pantries. The friendly competition between the two departments yielded over 3,700 pounds of food making the pantries the big winner.

Merrimack Police would like to remind residents it is the law to clear your vehicle of any snow or ice before traveling on the roadways. Please do your part for the safety of others.

Final year 2013 numbers for compost sales, through Agresource, at the Wastewater Facility indicate that revenue is up to \$134,960 per year, an increase of 5% over the previous year. Final year 2013 numbers for single stream recycling at the Transfer Station indicate that annual tonnage is up to a total of 1,437 tons, an increase of 5.5% over the previous year. This total tonnage represents a cost avoidance savings for tipping fees paid by the Town of \$93,400 for the year. Indications are the Town is recycling approximately 21% of refuse materials.

Councilor Dwyer remarked we can do better, and suggested the need for additional involvement by the schools, advertising on the fences, etc. He suggested a goal be set for next year of 25% and the

following year of 30%. Director Micali noted the swap shop has been moved out of the recycling building, which has eased the flow of traffic in the area.

Consent Agenda - None

Old Business

1. MYA Contract Discussion

Submitted by Town Councilor Thomas Mahon

The Town Council to discuss the continuation of the MYA contract per the motion made at the December 5, 2013 Town Council meeting.

Councilor Mahon noted the Council's receipt of the audit report from the Accountant, Vachon Clukay & Company PC, which was provided in accordance with the extended deadline of January 9, 2014. The report identified "deficiencies in Merrimack Youth Association's internal control to be material weaknesses". These material weaknesses were in line with what the Council understood and had expressed concerns over in terms of how monies were being accounted for, handled, etc. He noted the Council has delayed at least one quarterly payment as a result of the non-compliance letter issued.

He stated the need for the Council to make a determination as to whether or not the Merrimack Youth Association (MYA) is in substantial compliance with the contract and whether that signals the resumption of quarterly payments.

Councilor Mahon stated his desire for the Council to be provided with a schedule for implementation of recommendations included within the report. He noted a finding made regarding donated facilities (Note 4), which reads: "The Association utilizes various fields and facilities that are provided and maintained by Town of Merrimack. These financial statements include \$41,855 of donations related to the maintenance of fields and facilities as well as \$1,971 for insurance coverage." He stated if the monies identified come from Town donations that is in violation of the contract. Director Micali clarified the amount listed is the Town's portion of insurance costs to cover the buildings. Councilor Mahon retracted his statement.

Director Micali noted the attendance of Michelle Walters-Byrne, President, Merrimack Youth Association. Councilor Mahon questioned whether the Executive Board is moving toward a program to ensure consistency and implementation of the recommendations provided by the auditor.

Michelle Walters-Byrne, 4 Clinton Court, President, Merrimack Youth Association

Informed the Council an internal controls document has been devised and shared with all seven (7) programs. On January 27, 2014, a meeting will be conducted with all of the boards at which all Directors and Treasurers will be present. At that meeting, the accountant will go over the internal controls, processes, and procedures to ensure reporting is completed in a standardized manner.

Councilor Mahon questioned the use of the debit card. Ms. Walters-Byrne remarked that is new to the program this year. Some of the vendors used by the programs do not accept checks and require online payments (registrations) be made with a credit card. Utilizing the online registration process avoids the collection of cash as the process is handled by a third-party, thereby mitigating risk. Attempts are

being made to limit credit card usage and a procedure is in place (used as last option and requiring additional approval), which has been discussed at board meetings and will be reinforced at the meeting scheduled for January 27th. When asked if the procedures are or will be documented, Ms. Walters-Byrne stated they would be. When asked, she stated a copy would be provided to Director Micali.

Councilor Dwyer stated he is not opposed to releasing the payment that was withheld and withholding the second payment awaiting follow-up. He stated the audit to have been a long time coming, and with its receipt what remains to be addressed is the procedural aspect of implementing the recommendations. He stated the desire to be made aware of the success of implementation. Chairman Rothhaus stated his belief, if in receipt of all requested information the Council would be in violation of the contract if deciding to continue to withhold payment. Director Micali noted payments made to date include the first quarter payment and one month of the second quarter payment. Presently owed to the MYA is two months of the second quarter payment and the third quarter payment.

Vice Chairman Yakuboff questioned whether consideration is being given to utilizing QuickBooks software to record activity. Ms. Walters-Byrne stated it was highly recommended by the auditor for all programs to be on a standard system. During the meeting on the 27th, the recommendation will be for all programs to utilize QuickBooks. Although she is unsure that can be mandated it is the desire for that to be implemented.

Councilor Harrington stated the audit report has been provided and assurances have been made that recommendations will be implemented. She stated her appreciation of the timeliness in responding to the recommendations. She was in agreement with payments being released as the required documentation has been provided, and requested, as a courtesy, the Council be kept informed of progress. Councilor Mahon stated the only outstanding requirement to be next year's audit (due October 31st). He echoed appreciation of the quick response to the recommendations, and commented it is a reflection of the understanding of the Executive Board as to their responsibilities and the impact this has on their operations and the community's view of the organization.

Councilor Boyd stated his concern, after reading the audit, was standardization of the accounting system across all programs. He is very satisfied hearing that will be implemented.

MOTION made by Councilor Harrington and seconded by Councilor Boyd to disburse monies previously withheld and restore payments for the remainder of the fiscal year. MOTION CARRIED 7-0-0

New Business

2. Request to Use a Portion of South Grater Road

Submitted by Brett Vaughn

The Town Council to consider a request to use a portion of South Grater Road as a driveway to access Tax Map Parcel 4A/015 for the construction of a single family residence.

Mr. Tom Carr, Meridian Land Services, Inc., informed the Council of the request to upgrade and utilize approximately 25' of South Grater Road for access to the driveway location on Lot 4A/015, which is a 33.5 acre parcel. He stated a desire to make clear although requesting upgrade and use of the section, they are, in no way, implying or requesting that South Grater Road be converted to a

driveway. The intent is simply to upgrade the section to driveway standards so it meets the fire and safety requirements to get to the Vaughn property. Mr. Vaughn is aware the area is a Class VI Right-of-Way, which is utilized by the public and will continue to be used by the public should the Council approve the request.

Mr. Carr remarked at the onset of the process a conceptual meeting was conducted with Planning staff, Kyle Fox, Deputy Director, Public Works Department, and Chief Currier, Fire Department, to discuss goals. That resulted in four goals:

- 1) Increase site distance at the intersection; gravel surface has been realigned.
- 2) Design appropriate drainage facilities to handle any runoff; a basin on Mr. Vaughn's property handles all flow coming off the driveway. From the new section down a recharge basin will take flow and recharge it into groundwater. Currently any runoff goes right out onto Wilson Hill Road.
- 3) Provide a turnout at the house site sufficient to turn a fire truck around; designed to the Fire Department's satisfaction.
- 4) Design of driveway not to preclude any future upgrade to South Grater Road to Class V; designed with intent of preserving Right-of-Way for current and future use.

Following the design, a second meeting was conducted. A memo from Planning Staff to the Planning Board dated 12-31-13 states the goals set during the initial meeting were met.

The project went before the Planning Board on January 7, 2014 and received a recommendation for approval with two recommendations:

- 1) The design of the driveway to conform substantially to the plans provided by the applicant to the Town, with the understanding that the applicant shall work with abutting property owners, the Public Works and Fire Departments to minimize impacts to the abutting properties as much as is practicable.

Mr. Vaughn has agreed to hold a pre-construction meeting with abutters and Town entities to discuss possible options during construction to modify the plan in a minor way so that it will continue to meet the driveway and safety intent and satisfy the abutters. That can be done by stone retaining walls or stepping some of the grading, etc.

- 2) The applicant to provide test pit information in the location of the proposed "infiltration basin 1" for review by Town staff to verify the design intent is possible with actual soil conditions.

Test pits were done the prior day. The basin is approximately 4' deep. In its deepest spot a test pit was done, which was 8' deep. In the very bottom of the test pit, seasonal water table was 48". Although the maximum cut is 48", it is on the upper slope. Being at the bottom, the seasonal high water table is 1' below the bottom of the basin; therefore, will work well and as planned.

Mr. Carr thanked Mr. Tenhave for reviewing the Planning Board meeting and agreed the proposal has moved through the process quickly. He remarked he was not aware of the Commission's concerns

with regard to access issues; however, that is something that has been addressed from the onset. It is realized the area is a public Right-of-Way and has to be maintained as such.

To address concerns raised by Mr. Tenhave, Mr. Carr noted the driveway is planned to be a gravel surface. He does not believe the owner would be utilizing de-icing salts/solvents on the driveway, which would potentially cause a pollution problem. Typically one would utilize sand.

With respect to the stone wall along the property line, it is protected by law (common property line between Town and abutter). There is no intent to impact that in any way. Should inadvertent impact occur it would be required to be restored. With respect to snow removal/storage, a good deal of the snow removed from the driveway could be placed in areas designed to hold and transfer water (swale, recharge basin, etc.). Chairman Rothhaus questioned whether the swale encroaches into the future Right-of-Way, and was informed it does not.

Vice Chairman Yakuboff suggested the biggest disconnect was with the use of the word “driveway” as opposed to stating the request to be to use a portion of South Grater Road as “access”. Mr. Carr stated the request is to upgrade 250’ of South Grater Road to driveway standards to meet fire and safety codes to access the driveway. Mr. Carr noted, if approved, Mr. Vaughn will be required to do a Waiver of Municipal Liability. If other wording is deemed necessary to acknowledge the area will continue to be a Class VI Right-of-Way, that too would be addressed.

Vice Chairman Yakuboff asked whether Mr. Tenhave’s question regarding the driveway issue has been adequately addressed. Mr. Tenhave responded he understood the delineation; however, commented it will appear similar and likely be perceived as a driveway. Councilor Mahon questioned whether this could, in any way, be construed as an improvement of a Class VI road so that it elevates it to another classification or makes it possible for someone else to make the claim that the Town has done something or allowed something to be done to that road.

Director Thompson stated that to be one of the reasons staff has been very careful about the particular width of the access way and how it is designed; to ensure it does not reach the threshold where it becomes something that could cause a problem with the classification. He agreed Class VI roads are very complex and staff as well as the Planning Board have been very clear about that when addressing this request.

Councilor Dwyer stated his support of the property owner utilizing Town owned land to access his property; however, cautioned suggesting the area would be plowed to allow public access for recreational purposes, etc., as that is not occurring presently. Chairman Rothhaus noted the public is currently allowed to travel that road. Councilor Dwyer stated what was being insinuated was that an individual could drive down South Grater Road, park their car at the entrance of Mr. Vaughn’s property line, shut off the car, and walk into the woods. Chairman Rothhaus stated it is a Right-of-Way and, even within the agreement, states it has to be able to be traveled upon. He remarked individuals could not block access to Mr. Vaughn’s property; however, if there is a place to park on the side allowing for passage, it is his belief it is allowed. Councilor Dwyer stated it would be allowed if designed to allow for that; however, currently it is not designed that way.

Brett Vaughn, 123 Wilson Hill Road

Mr. Vaughn stated there to be parking (private property) in the area (old log landing). Councilor Boyd agreed approximately 150 yards up the road on the right-hand side is a large clearing. He commented he used to park in the area where the proposed infiltration basin is delineated. Councilor Dwyer stated parking in that area is not sanctioned by the Town. Councilor Mahon stated it is also not prohibited.

Deputy Director Fox stated South Grater Road is a Class VI road, which is a non-maintained public road. The public has the legal right to use the road. Town Manager Cabanel added individuals cannot impede the ability of others to pass through the road. If the project goes forward a PWD snow plow will never be seen on that road because once any portion of the road is maintained by the Town it becomes a Class V road. He stated for the properties that abut South Grater Road, that is their legal road frontage. They don't have frontage in a Class V road, but they have frontage on a Class VI road, and that is their means of access to their properties.

Director Thompson stated the primary purpose for the project to come before the Council was to authorize issuance of a building permit on a Class VI road. Under RSA 674:41, only the governing body of the community is allowed to authorize a building permit on a Class VI road. There are three things required for that to take place; 1) local governing body, after review and comment from the Planning Board, votes to permit the building, 2) the municipality assumes neither responsibility for maintenance nor liability nor damages arising out of any use of that road; and 3) prior to the issuance of that building permit the applicant has to record the limit of municipal liability and responsibility at the Registry of Deeds. Those are the three things, under Statute, the Council has to consider as part of this purpose for authorization.

The second part of what is being asked is to authorize the usage of the South Grater Road Right-of-Way for access and to be upgraded.

Councilor Boyd questioned the depth of the infiltration basin at the intersection of South Grader and Wilson Hill Roads. Mr. Carr stated the bottom of the basin is at elevation 260 and the 264 contour comes in and wraps around and goes back out. It is about a 4' deep basin. Councilor Boyd questioned whether there is protection/barrier from Wilson Hill Road into the infiltration basin. Mr. Carr stated there to be no such barrier, and noted were a motorist enter that area today he would hit trees.

Councilor Boyd spoke of the comment made that Mr. Vaughn would have the ability to plow snow into the basin, and questioned whether 4' is adequate when snow and rain will enter the area. He stated concern the infiltration basin is not adequate to handle runoff especially given the significance of the slope (60' from Mr. Vaughn's residence to the intersection). He re-stated his question; based on the type of weather experienced over the past few weeks, is a 4' infiltration basin sufficient to meet the need and keep the road safe. Mr. Carr noted there to be two basins each handling a portion of the runoff. He remarked one of the goals stated during the initial meeting with staff was that the project results in no increase in runoff onto Wilson Hill Road. The driveway has been engineered/designed according to all Town and State requirements for drainage infiltration. He stated his answer to the question to be "absolutely. Under normal circumstances, this is actually more than adequate because our soil testing that we came up with yesterday was better than what the NRCS data had suggested we use. Under frozen conditions, where these are unique conditions that we have right now where we have frozen ground, it is impermeable everywhere, so yes absolutely. In conditions right now we go into a rain event tomorrow, this is going to fail. It can't infiltrate, but this is no different than anywhere else in Town where if we have rain events on a lawn that slopes toward the road, the water is

going to go out on the road. It is a unique situation. When those situations occur it is unfortunate, but this would not be an isolated event, this would be happening all over Town and all over the State.”

Councilor Boyd noted Mr. Vaughn is proposing to improve the South Grater Road portion to access his driveway. He questioned what needs to occur, from a grading perspective, to bring that portion of South Grater Road up to Town standards so that he can access his property. Referring to the graphic scale provided on the plan, Mr. Carr stated there to be an approximate 3’ maximum cut in the area of 1+20. That is due to the need to come off the road and drop away from the road edge so that water does not shed onto Wilson Hill Road. At approximately 2+00 or 200’ it is at existing grade. It is 200’ where the grades work with the driveway regulations in Town.

Councilor Boyd questioned whether the road would have to be dug up in order to be leveled out. Mr. Carr stated an area will be deforested, the loam and subsoil will come out and be sub-graded and built to a driveway specification for stability all the way to the house. When asked how much would have to be excavated to accomplish that, Mr. Carr stated it to be 3’ at its maximum point.

Councilor Boyd stated a 90 degree angle would be created; when traveling west heading south a motorist is traveling up a steep hill. He questioned whether there would be enough of an egress point at that location to provide adequate site for motorists traveling up Wilson Hill Road heading to Amherst. Mr. Carr responded there would be increased site distance.

MOTION made by Councilor Yakuboff and seconded by Councilor Harrington that the Council grant the applicant’s request for authorization of a building permit for a lot accessed via a Class VI public road, pursuant to RSA 674:41, I(C), and further grant the applicant’s proposed use of approximately 275 linear feet of the South Grater Road right-of-way to be utilized for access to Map 4A, Lot 015 with the following conditions:

- 1. Prior to the issuance of the building permit, the applicant shall record the required notice of the limits of municipal responsibility and liability with the Hillsborough County Registry of Deeds;**
- 2. Prior to the issuance of the building permit, the applicant shall develop, in conjunction with the Town’s Attorney, an appropriate agreement outlining the parameters of the applicant’s usage of the South Grater Road right-of-way which shall not preclude or deter any public use of the right-of-way over the proposed access improvements, which shall be signed by the applicant and the Town of Merrimack; and**
- 3. The design of the access-way to conform substantially to the plans provided by the applicant to the Town, with the understanding that the applicant shall work with abutting property owners, the Public Works Department, and Fire Department to minimize impacts to the abutting properties as much as is practicable.**

There being no objection, Chairman Rothhaus opened the floor for public comment.

John Eldridge, 101 Wilson Hill Road

Stated his opinion the proposal is a good use of the property. Mr. Vaughn has agreed to work with him to ensure the access point on the corner remains open as it is the only access to his backyard and necessary to service is well, etc. He stated there to be ledge along the road, which will have to be dealt

with. Speaking to an earlier comment regarding future upgrade to a Class V road, he noted in 2007 a developer brought forward a proposal, which included 10 lots, development to a Class V road, drainage, etc. That proposal was rejected by the Town as it would have resulted in the construction of an 11' high retaining wall in front of one of the residences. He suggested if such a proposal were brought forward in the future that would be a problem the Town would have to address.

He remarked the section of road where the retaining basin is proposed is where all of the accidents occur. The area where the trees are is where people come too fast around that corner. Although there have not been fatal accidents on that corner, the corner further up the road has had two. He suggested consideration be given to placement of signage in the area.

Beth Bullerwell, 103 Wilson Hill Road

Stated a concern with the area identified as the Right-of-Way (near small retaining wall) as she does not believe it to be accurate.

She identified the area that serves as her only access to her septic system (steep grade), and stated a concern the area is the section of road intended to be upgraded to driveway standards. She is concerned that blasting will be necessary or a reduction in grade, which would increase her grade even more. She reiterated her main concern to be access as she believes the grade will be 2-1.

She stated another concern to be safety related. She is concerned with line of site from the bottom of her driveway and noted motorists utilizing the road travel at a high rate of speed. She is also concerned with the potential for snow storage in the area between the two driveways (plowed area), which would further reduce line of site. Ms. Bullerwell stated the vegetation in the area is along the path of the proposed upgrade area.

Director Thompson informed the Council one of the items he brought before the Planning Board was a suggestion the concerns regarding Wilson Hill Road and the curve be brought to the attention of Chief Doyle for discussion by the Highway Safety Committee and consideration of signage warning motorists of the curve.

Mr. Vaughn stated the actual design has been done with an emphasis on improving site distance. He stated the reason he was before the Council was to seek authorization to drive over the area. He stated the engineers draw an unarguable case; it will drain, it is better site distance, etc. Assuming approval is granted to utilize the road, as the Planning Board has recommended, discussions can be had with abutters and safety personnel with regard to the size of cuts, etc. He noted his desire to be able to do the proper road surface and not change much of anything. He suggested the size of the basin or the angles taken, with a little more discussion, may not have to change as much as indicated or may not require removal of as many trees, etc. It is his preference not to disturb the area any more than necessary.

Town Manager Cabanel stated a desire to make it clear the Planning Board will not revisit the easement issue. The Planning Board will not be scheduling a public hearing for the abutters to voice opinions/concerns regarding the easement. The decision of the Council is the last step in the approval process.

Director Thompson stated agreement. He also stated the issue not to be that of an easement but usage of the Town's Right-of-Way for the access. He added because it is an existing lot of record that is not being sub-divided, the sub-division regulations do not apply; there is no reason for the request to go back before the Planning Board for further approvals. Authorization by the Council would be for the usage of that portion for access and the authorization for the Building Department to issue permits. Town Manager Cabanel stated it to be her intent to ensure it is understood the project is engineered for the benefit of the Planning Board, but they don't have the authority to make it happen, only the Council does. There will be no further discussion of the proposal.

Councilor Boyd stated his appreciation of Mr. Vaughn's willingness to work with the abutters, that he was satisfied with what Mr. Carr presented, and noted his support of the project.

Councilor Dwyer questioned who was requiring the basin be put in place, and how enforcement would take place. Councilor Koenig stated there to be a number of issues that are related to Town regulations such as water runoff off of developed property and things of that nature. He noted Mr. Vaughn is not allowed to increase the water runoff of his property through any of his development. As a result the retention basins at his driveway and underneath the road, etc. are designed to try and improve the area. There is in fact a problem with water that runs off Grater Road and goes under Wilson Hill Road.

The project has a good many aspects that would result in improved safety of the intersection as far as fire and police and concerned. Site distances are better for motorists on Grater Road coming onto Wilson Hill Road. The water runoff is controlled by the design and managed. The road is being upgraded to a driveway standard not a road standard. It is 16' wide not 25' wide. There is nothing being done that would preclude future expansion of the road. If left ungraded and a road put in at a future date there would be a 2-3' difference between the end of the driveway and the road. All of the grading of the driveway and Grater Road up to it is to make it possible for that road to be upgraded to a Class V should the need arise.

Councilor Dwyer commented he is being requested to accommodate for potential future use. Director Thompson's response was that condition #3 within the motion is what the Planning Board has recommended to the Council.

Mr. Carr reiterated the design stems from the initial meeting where the Planning Department and other entities got together to determine goals. Those goals have been met. The intent is to work with the abutters and try to minimize impact. He stated his belief all of that is covered in the third recommendation within the motion. The motion depicts that there can be construction modifications made to accommodate the abutters as long as the general intent of the plan is met.

MOTION CARRIED 7-0-0

4. Bridge Project Schedule Changes

Submitted by Public Works Deputy Director Kyle Fox

The Town Council will be presented with changes in the bridge project schedule due to fiscal constraints in the State Bridge Aid program and other factors requiring a schedule change.

Deputy Director Fox provided a PowerPoint presentation (copy attached), which recapped information detailed in a previous presentation on the Capital Improvement Plan (CIP), and noted changes to the scheduling of bridge projects have come about since that time.

He stated there to be three bridges currently listed in the CIP for replacement through the State Aid Bridge (SAB) Program. The SAB Program provides 80% reimbursement of cost. The three bridges listed are Bedford Road over Baboosic Brook, McGaw Bridge Road over Baboosic Brook, and US 3 over Baboosic Brook. The current schedule identifies the Bedford Road project in FY14 at an estimated cost of \$860,221 and McGaw Bridge Road in FY17 at an estimated cost of \$460,000. The US 3 bridge has not yet been programmed. The engineering study has been completed for the first two projects. Actual costs were identified as \$3,074,649 and \$1,420,916 respectively, which results in sizable budget shortfalls. In addition, the consultant has provided an estimate for the US 3 bridge of \$2,520,000.

The SAB Program has an annual budget of approximately \$6.8 million to expend statewide. Typically program managers at the New Hampshire Department of Transportation (NHDOT) look for projects to be \$1 million or less. For that reason, the Bedford Road bridge and the US 3 bridge don't fit into the SAB Program. With regard to current conditions, the McGaw Bridge Road is listed on the State's Red List and has a posted weight limit of 20 tons. The Bedford Road bridge and the US 3 bridge are on the Near Red List.

Deputy Director Fox explained, when in the SAB Program each bridge is looked at on its own. With the Bedford Road bridge hydraulics were reviewed and a concept designed. The concept was forwarded to the State for comment. The concept was approved. At that same time, the Town Council approved the start of the design of the bridge at McGaw Bridge Road (nearly 3 miles downstream of the Bedford Road bridge). During the review, the consultant began wondering whether the two structures just downstream of McGaw Bridge Road had any impact. One of the structures is a twin box culvert that carries the F.E. Everett Turnpike and the second is the US 3 over Baboosic Brook. It was determined the US 3 bridge was very constricting and significantly affected the flood level upstream.

Permission was sought and granted for a supplemental study of the three bridges. What resulted was the knowledge the profile of Bedford Road and McGaw Bridge Road could be lowered if the US 3 bridge were replaced. Lowering of the profiles would result in an approximate cost savings of \$500,000.

Part of the SAB Program is a requirement to design to 50-year storm and have enough freeboard (distance between 50-year storm and bottom of superstructure, e.g., bridge beams, etc.) to meet the 100-year storm. For Bedford Road, in the 100-year storm, if US 3 were not replaced, elevation would be 179.1 and by replacing US 3 the bridge could be designed 3' lower. At the same point, McGaw Bridge Road could be quite a bit lower, to the point where the road profile would not have to be changed, which would result in savings in right-of-way and engineering construction costs.

The Wire Road intersection improvement project (scheduled in CIP for FY17) overlaps with limits of the US 3 bridge project. Potential cost savings could be achieved by constructing the projects at the same time. Replacement of the McGaw Bridge Road bridge would allow the road to be used as a detour route during the US 3 project; possibly saving money on temporary bridge costs.

Deputy Director Fox spoke of a meeting with NHDOT staff on December 12 during which a discussion took place regarding fiscal and scheduling issues as well as the Town's desire to maintain

its place in the program. A possible solution discussed was for the two more costly projects to be moved into the Federal Aid Municipal Bridge Program, which is similar to the SAB Program; 80/20 cost share. Instead of coming from the State gas tax, funds are from the Federal Government. Although requirements are greater, in projects of this size, not overly significant.

The take away from the meeting was a tentative agreement to move the McGaw Bridge Road project up in the SAB Program (FY15), taking the place of the Bedford Road bridge, and moving into the federal aid bridge program the US 3 bridge (FY18) and the Bedford Road bridge (FY19). As the US 3 bridge is the area of bottleneck for the brook, moving it up in the schedule reduces the risk to the other bridges (constructed at the lower profile to accommodate the savings associated with replacing the US 3 bridge).

Deputy Director Fox stated the recommendation to be to move forward with all three projects. The Bedford Road and McGaw Bridge Road projects both have completed engineering studies. The next phase for those is final design and approvals, Dredge & Fill Permit process, cultural resources requirements, and readying for bid. He stated the desire to move forward with the design of the US 3 bridge as it would allow flexibility should an instance arise such as the SAB Program receiving an influx of cash, another town's inability to fund their project, which could result in the project being moved up in the schedule, etc.

The request before the Council was to authorize the expenditure of up to \$190,000 from the Infrastructure Capital Reserve Fund to hire a consultant to perform the engineering study for the US 3 over Baboosic Brook bridge replacement project.

When asked about his experience with the Federal program and the likelihood Merrimack would be able to participate, Deputy Director Fox responded speaking with NHDOT, they are ready to put the Town into that program. It is his belief, with the approval of the Council to move forward with the proposed changes, the projects will be viewed favorably. He commented NHDOT has expressed appreciation for the work that has been done in viewing the three bridges together, identifying a savings of \$500,000, the bulk of which is a savings to the State.

When asked, he clarified, NHDOT administers the program; however, the funding source is Federal. He noted the greatest differences between the State funded program and the federally funded program are requirements such as the Davis-Bacon Act, which requires the review of payroll during the construction projects, the cultural, historical and archeological studies have to be done to a greater extent, any Right-of-Way acquisitions have to be done to a greater extent, etc. Councilor Boyd remarked the parallel is the State managing the Federal requirement of the Town managing phosphorous growth in the ponds.

Councilor Mahon stated the agenda item listed to be the presentation of projects, not a request for withdrawal of funds from the Capital Reserve Fund. Director Micali stated there to be two options; approve the plan presented by Deputy Director Fox and include on the agenda for the next meeting a request for withdrawal of funds or table this agenda item and take up both during the next regular meeting.

MOTION made by Councilor Boyd and seconded by Councilor Yakuboff to table until the Council's meeting of January 23, 2014

ON THE QUESTION

Approved: January 23, 2014
Posted: January 24, 2014

Director Micali noted the agenda item would have to be re-posted as a request to withdraw monies from the Capital Reserve Fund; therefore, would be a different topic..

MOTION WITHDRAWN

Deputy Director Fox was thanked for his presentation.

Minutes

Approve the minutes from the December 19, 2013 Town Council meeting:

MOTION made by Councilor Boyd and seconded by Councilor Yakuboff to approve the minutes of the December 19, 2013 Town Council Meeting as presented. MOTION CARRIED 7-0-0

Comments from the Press - None

Comments from the Public - None

Comments from the Council

Councilor Boyd informed the Council and viewing audience the Merrimack YMCA is sponsoring an Indoor Farmer's Market on Saturday, January 25th from 8:00 a.m. – 12:00 p.m. Proceeds will support the Y CARES Financial Assistance Program, which provides scholarships to local kids and families in need so they can experience the programs and services that are offered through the Y. For further information visit www.nmymca.org.

Councilor Boyd welcomed Zach Rand, Jim Wilson, Carl Soderberg, and Mike Frizzelle to Merrimack. They are the owners of the Able Ebenezer Brewing Company, which received approval Tuesday evening at the Planning Board. Mr. Soderberg was quoted in the Patch as saying "Merrimack is very pleased that they chose to bring the Able Ebenezer Brewing Company to town. Merrimack has been the most amendable. Everybody is pretty excited about having a new microbrewery here." Councilor Boyd thanked Director Thompson and his staff for helping this entrepreneurial kind of business come to Merrimack and get settled. The story of the origin of their name can be found on their website; www.ableebenezer.com.

MOTION made by Councilor Mahon and seconded by Councilor Dwyer to adjourn the meeting. MOTION CARRIED 7-0-0

The January 9, 2014 meeting of the Town Council was adjourned at 9:58 p.m.

Submitted by Dawn MacMillan