



## **Town Council Meeting Minutes**

Thursday, May 22, 2014, at 7:00 PM, in the Matthew Thornton Room

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

### **Pledge of Allegiance**

Councilor Rothhaus led in the Pledge of Allegiance.

The Council observed a moment of silence in memory of Officer Steve Arkell. Officer Arkell was a member of the Brentwood, NH Police Department whose life was lost while serving his community. Prayers were extended to Officer Arkell's family.

### **Announcements**

Town offices will be closed on Monday, May 26<sup>th</sup> in observance of the Memorial Day holiday. The Memorial Day parade is scheduled to step off at 11:00 a.m. from the Rite Aid on D. W. Highway and conclude at the Last Rest Cemetery on Baboosic Lake Road, where ceremonies will be conducted.

Regular meetings of the Town Council will be held on Thursday June 12, 2014 and June 26, 2014 at 7:00 p.m. in the Matthew Thornton Room.

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

### **Recognitions, Resignations and Retirements**

- 1. Acceptance of the Resignation of Matthew Passalacqua from the Merrimack Planning Board**  
*Submitted by Town Council Chairman David G. Yakuboff, Sr. and Vice Chair Nancy Harrington*  
The Town Council to accept the resignation of Matthew Passalacqua from the Merrimack Planning Board where he has served as a member since July 2012.

**MOTION made by Councilor Boyd and seconded by Councilor Mahon to accept, with regret, the resignation of Matthew Passalacqua from the Merrimack Planning Board. MOTION CARRIED 7-0-0**

Councilor Boyd expressed gratitude to Mr. Passalacqua for his service as a member of the Merrimack Planning Board, and wished him the best of luck in his future endeavors.

### **Appointments** – None

## **Public Hearing**

### **1. Public Hearing – Changes to Chapter 193, Welfare Guidelines**

*Submitted by Welfare Administrator Patricia Murphy*

The Town Council will hold a public hearing to consider the recommended changes to Chapter 193 – Welfare Guidelines of the Merrimack Town Code, pursuant to Charter Article V, Section 5-3.

***Chairman Yakuboff declared the Public Hearing open at 7:12 p.m.***

Patricia Murphy, Welfare Administrator, stated her recommendation to amend the welfare guidelines; make corrections on references to the Town Charter (page 4) and delete reference to New Hampshire RSA 167:27 (pages 18 and 27).

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

***Chairman Yakuboff declared the Public Hearing closed at 7:15 p.m.***

Councilor Koenig stated his preference not to remove reference to State law. He does not believe it appropriate to remove the reference based on the threat of potential litigation. He remarked if the State law is in conflict With Federal law now it has been for some time.

Ms. Murphy noted State law previously prohibited individuals who were receiving Aid to the Permanently and Totally Disabled (APTD) or Old Age Assistance (OAA) from simultaneously receiving cash assistance from local welfare offices. An amendment change became effective on January 1, 2014 allowing municipalities the option to provide assistance.

Town Manager Cabanel stated her understanding if an individual sought assistance and was already receiving either APTD or OAA, assistance at the local level was immediately denied. With the change in the law, municipalities can provide assistance taking into account income derived from APTD or OAA. Ms. Murphy stated agreement.

Councilor Koenig questioned whether or not Federal law, which disallows discriminating against individuals receiving APTD or OAA, has always superseded state and local law. Ms. Murphy responded she does not believe it was challenged. Councilor Koenig commented that is what is being threatened if the reference to State Law remains unchanged. Ms. Murphy commented there was a case two years earlier wherein the State Supreme Court upheld the decision of the town to deny benefits; however, the town could not deny if the individual was simply receiving medical under APTD; they have to have received cash under APTD. She does not believe it has been challenged on the Federal level.

Councilor Rothhaus commented taking into account income derived from either APTD or OAA to determine eligibility rather than simply denying an individual based upon receipt of those types of assistance is reasonable. What he finds annoying is the threat of litigation rather than a request for change. Councilor Koenig echoed his comments. He reiterated he sees no harm in reference to State law remaining as State law leaves it up to the municipality; Merrimack would not discriminate. He

added if believed necessary to adopt a policy stating the Town will not discriminate that can be done, but simply removing reference as a result of being threatened with litigation, in his opinion, is wrong.

Councilor Mahon remarked in order to pursue that action the following language would have to be removed from the guidelines: “No applicant or recipient receiving Old Age Assistance (OAA) or Aid to the Permanently and Totally Disabled (APTD), under RSA 167 or 161, shall at the same time be eligible for General Assistance, except for emergency medical assistance as defined in Section 193 10 (E)(8) of these guidelines (RSA 167:27).”

Councilor Koenig remarked he can understand removing that piece of the language; however, what was indicated to the Council was the desire to remove reference to State law. Councilor Mahon suggested incorporating language such as recipients of APTD or OAA may apply for assistance; however, the income will be taken into consideration when determining eligibility. When asked if that type of language would violate State Statute, Ms. Murphy remarked if reference to State law remains, in the future, an individual not having historical knowledge of the reason for the change to the guidelines might be confused by the inclusion of reference to State law if it differs from language within the guidelines. State law allows each municipality the option to consider providing assistance. The concern was reference to State law could bring about the possibility for discrimination and/or litigation. That is what resulted in the legal opinion to remove the reference.

Councilor Koenig stated agreement with removal of the portion of the prior State law, which was written into the guidelines; however, does not believe it necessary to remove reference to State law as a result of a threat of litigation.

Councilor Rothhaus questioned whether there was a point in time when income received from either APTD or OAA were such that it would disqualify individual(s) for local aid. Ms. Murphy responded she is unclear on the history of the law. From what she has been told by others who have more historical knowledge than she is that it was considered double-dipping. She remarked the State law did not speak to other types of assistance, e.g., assistance for the blind, for families with children, etc.

Councilor Mahon commented his muddled recollection of the discussion is that part of the reason was to relieve towns of the responsibility for taking care of the people who qualified for these forms of assistance. Discussion was around how much the town was liable for and how much the county was liable for. At one point, the town was responsible for the first year of assistance, the county the second year, and then it came back to the town.

Councilor Rothhaus spoke of his frustration with the way the issue was brought forward. Councilor Mahon suggested the Council could choose to respond with a letter of its own stating the Council takes its duties seriously and acts in a responsible fashion. Councilor Boyd commented the matter could have simply been brought to the attention of the Council. Councilor Dwyer suggested by responding you give them stature that is not deserved. Vice Chairman Harrington commented the bottom line is the Council is taking this action because it is the right thing to do. Removing the language will also avoid confusion that could come about at a later date.

**MOTION made by Councilor Mahon and seconded by Councilor Boyd to move the item to a third reading. MOTION CARRIED 6-0-1**

*Councilor Koenig Abstained*

**Legislative Updates from State Representatives** - None

**Town Manager's Report**

Merrimack TV will be recording the Merrimack High School Graduation for Channel 21 on Saturday June 14, 2014. The ceremony will play immediately after it concludes and throughout the summer on the education channel. DVD's will also be made available to families of graduating seniors.

The Merrimack Police will be joining other area towns and city police departments this weekend with the "DWI Hunter Saturation" patrols in conjunction with the New Hampshire Highway safety agency. Extra patrols will be on the streets this holiday weekend to keep you safe, so please do your part and drink responsibly and do not get behind the wheel if you cannot.

**Consent Agenda** - None

**Old Business** - None

**New Business**

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

*Submitted by Captain Dudash*

The Town Council to consider the acceptance and expenditure of a donation of \$1,354.04 from Crimeline and a donation of \$500.00 from an anonymous Merrimack resident for the Merrimack Police Department's K-9 Program, pursuant to Charter Article 8-15 and RSA 31:95-b.

Captain Michael Dudash, Merrimack Police Department, spoke of receipt of two donations; one from Crimeline in the amount of \$1,354.04 and one from an anonymous Merrimack resident in the amount of \$500.00. Requests were made for the donations to go towards the K-9 Program. The Council was asked to accept the donations.

**MOTION made by Councilor Boyd and seconded by Councilor Koenig to accept and approve the expenditure of donations totaling One Thousand Eight Hundred Fifty Four Dollars and Four Cents (\$1,854.04) for the Merrimack Police Department's K-9 Program, pursuant to Charter Article 8-15 and RSA 31:95-b**

**ON THE QUESTION**

A request was made for letters of gratitude to be forwarded to those who made donations.

**MOTION CARRIED 7-0-0**

## **2. Polling Location Discussion**

*Submitted by Town Manager Eileen Cabanel*

The Town Council to determine the polling location for the September State Primary and the November general election.

Town Moderator Lynn Christensen, stated her opinion the September Primary Election be conducted at the James Mastricola Upper Elementary School and the November General Election at the High School. When asked, she stated the locations will be able to accommodate the elections.

Councilor Dwyer remarked he is in favor of maintaining the consistency of having elections at the middle school, although he believes it reasonable to conduct general elections at the High School given the larger turnout. Ms. Christensen responded with the way it is being proposed it will be known the November election is always at the High School. She commented the first year a second polling place was utilized was due to size restrictions of the upper elementary (challenging with a voter turnout of 6,000). The last few mid-term elections have seen a voter turnout of roughly 9,000. Councilor Rothhaus remarked given the proximity of the two buildings, it is just a matter of signage to ensure voters are aware of the polling place.

**MOTION made by Councilor Mahon and seconded by Councilor Rothhaus to accept the recommendation of the Town Moderator to conduct the September Primary Election at the James Mastricola Upper Elementary School and the November General Election at the High School**

### **ON THE QUESTION**

Town Manager Cabanel noted there to be a formal process whereby the Council establishes the boundaries. She noted RSA 658:10 states in part: “at least 30 days before the next following general election, determine the boundaries of the voting district to be served by each such additional polling place.” As the last polling place was the High School, it would be necessary to address the change. Town Moderator Christensen stated the RSA is intended to address additional polling place(s). Unless there are to be additional polling places, it is not necessary to formally determine the boundaries as the boundaries are the entire town.

**MOTION CARRIED 7-0-0**

## **3. Proposed “Tiered” Sewer Access Fee Structure**

*Submitted by Community Development Director Tim Thompson, Public Works Director Rick Seymour, and Wastewater Treatment Facility Assistant Director Jim Taylor*

To consider a recommended proposed revision to the existing Sewer Access Fee Structure.

Town Manager Cabanel informed the Council this issue has been discussed for some time in relation to new, larger businesses coming to town. Specifically, the topic came to light during discussions of a potential hotel on the pad site of the Merrimack Premium Outlets. Upon review of sewer access fees for such a project, it was felt they would be onerous and may exclude some businesses from coming in. A request was made for Timothy Thompson, Director, Community Development, Rick Seymour, Director, Public Works, and Jim Taylor, Assistant Director, Wastewater Treatment Facility to work collaboratively to devise a tiered approach to the fee structure.

Assistant Director Taylor stated the original \$10/gallon connection fee was approved by the Council in 2009 as part of an overall rate study. That fee was developed based on industry standards, and is assessed based on the value of the complete wastewater plant sewer system and the design flow. It is essentially a system development charge. People connecting are basically paying for a system that others have already paid for (buying into the system).

Currently a homeowner connecting to the sewer system incurs a \$2,000 cost. All other users pay \$10/gallon, e.g., if a 100/gallon/day connection the cost would be \$1,000. The recommendation for a tiered structure is that all entities incur a baseline (connection) fee of \$2,000. The second tier (1,001 to 5,000 gallons) would be at a cost of \$5/gallon, and the third tier (5,001 up) at a cost of \$2.50/gallon.

As an example, a request for 5,200/gallon/day, under the current structure, would incur a connection fee of \$52,000. Under the proposed structure, that same request would incur a fee of \$30,500. The differential would be \$21,500. As the full allocation request increases, the differential becomes greater.

Assistant Director Taylor explained part of the rationale for the recommendation is that when a high volume user comes to town it will incur a much higher sewer fee, e.g., a 5,000/gallon/day user would incur a cost of \$5,372 whereas a 10,000/gallon/day user would pay close to \$11,000. Given the fact there is a relatively small connective base it would be advantageous, e.g., ability to spread cost over a larger base.

Assistant Director Taylor noted the consultants that assisted with the original rate study are working on a tiered system for the Town of Newington, which is similar to what is being proposed here. He noted RSA 149 allows the Council to set rates from time to time and in a fair and equitable manner. When asked, he stated the average gallons/per/day for a household to be 200, which is based on evidence that has been acquired through flow analysis.

**MOTION made by Councilor Mahon and seconded by Councilor Rothhaus to move the proposed tiered sewer access fee structure to a second reading/Public Hearing. MOTION CARRIED 7-0-0**

#### **4. Repurchase of Tax Deeded Property**

*Submitted by Town Manager Eileen Cabanel*

To consider the repurchase of recently tax deeded property tax map parcel 5C/472-21 and the Town Council deems that this shall include all back taxes, interests and costs, pursuant to RSA 80:80 III and Article 66-1 of the Merrimack Town Code.

**MOTION made by Councilor Mahon and seconded by Councilor Boyd that the Town Council approve the repurchase of recently tax deeded property tax map 5C/472-21 and deem that this shall include all back taxes, interests, and costs, pursuant to RSA 80:80 III and Article 66-1 of the Merrimack Town Code. MOTION CARRIED 7-0-0**

## **Minutes**

Approve the minutes from the May 8, 2014 Town Council meeting.

*The following amendments were offered:*

Page 4, Line 39; delete the “s” from “swww.walkscore.com”

Page 11, Line 45; replace “HIPPA” with “HIPAA”

Page 20, Lines 8-12; replace with “Councilor Mahon and Councilor Koenig commented on challenges involved.”

Page 20, Line 14; add the words “that he” after the word “stated” and delete the word “had” before the word “believed”.

**MOTION** made by Councilor Boyd and seconded by Councilor Mahon to approve the minutes of the Town Council meeting conducted on May 8, 2014 as amended. **MOTION CARRIED 7-0-0**

**Comments from the Press** - None

**Comments from the Public** - None

**Comments from the Council**

Councilor Boyd stated, in honor of Public Works Week, he wished to commend the students of the Reeds Ferry School, Thorntons Ferry School, and the Masticola Elementary School for the wonderful color drawings they have decorated the Town Hall with.

Councilor Boyd remarked the Parks and Recreation Committee, through the Dog Park Sub-Committee, applied for a grant. The top five communities receiving the most votes on the website ([www.petsafe.net](http://www.petsafe.net)) qualify for grant funding. The grand prize is \$100,000. Four runners up will receive \$25,000. The Director of Parks & Recreation has added to the challenge, if Merrimack is in the top five, he will participate in the dunk tank. Councilor Boyd has offered to take a polar plunge into Naticook Lake should Merrimack come in the top five.

Councilor Boyd reminded the Council and viewing audience Hannah Vaccaro is putting on her third annual Race To Lace 5K on May 31<sup>st</sup> at 10:00 a.m. Ms. Vaccaro raises funds for an orphanage in Haiti. Additional information can be found at [www.feedtheneed5k.com](http://www.feedtheneed5k.com).

Councilor Boyd spoke of receiving a certified notice regarding a proposed cell tower. The application will be before the Zoning Board of Adjustment on May 28, 2014 at 7:00 p.m. AT&T is proposing to construct a 150' cell tower on a residential property. He stated he has grave concerns and believes it absolutely impacts the character of the community. He encouraged those living in the vicinity of Joppa Road, Bedford Road, Patten Road, Ridgewood Drive, and the surrounding area to attend the meeting and allow their voices to be heard. Councilor Boyd remarked Merrimack is the 23<sup>rd</sup> Best Community in the Country and #1 in the State of New Hampshire, which is something to take pride in. He does not wish to set precedent by allowing cell towers to be placed in residential neighborhoods.

Approved: June 26, 2014

Posted: June 30, 2014

Vice Chairman Harrington stated a concern with utilizing the opportunity provided Councilors to address the public as an avenue for personal opinion/public appeal on personal and/or neighborhood issues. She commented she has taken great pains to avoid doing that, asked to be informed if other Councilors believed her to be reacting inappropriately, and offered to apologize if that were the case. Councilor Boyd stated there to be no reason to apologize.

Councilor Rothhaus spoke of the Public Works barbecue that took place, and commented of the drawings submitted, 6 were chosen (2 from each grade K-2) and the artists given a street sign with their name on it as well as a hard hat. He spoke of how he enjoyed the event, and appreciated the effort put forth to recognize the work performed by these employees.

Chairman Yakuboff displayed one of the challenge coins that can be purchased (\$10.00) to support the construction of the Fraser Square Veterans' Memorial. The coins can be purchased in the Finance Department at Town Hall. Also available for purchase are bricks that can be used to memorialize a family member who served in the armed forces. Director Micali noted the items are also available to be purchased at the Legion and VFW.

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

*The May 22, 2014 meeting of the Town Council was adjourned at 8:02 p.m.*

Submitted by Dawn MacMillan