



Town Council Meeting Minutes

Thursday August 20, 2015, at 7:00 PM, in the Matthew Thornton Room

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

Pledge of Allegiance

Chairman Harrington led in the Pledge of Allegiance.

Announcements

On behalf of the Merrimack Town Council, Chairman Harrington extended condolences to the family and friends of Ann D. Burrows. Ms. Burrows passed away on Monday, August 10, 2015 at the age of 90. Ann was extremely dedicated to the community in which she served on many committees to include a Board Trustee and Secretary to the Merrimack Town Library. She was also the founding President of the Merrimack Garden Club and a member of the Merrimack Historical Society. She also worked as a Library Aid in the Merrimack school system. Ann will be sorely missed.

GZA GeoEnvironmental, Inc. (GZA) will be conducting wetland delineation marking for the wetlands around and near the Amherst Road parking lot for the Horse Hill Nature Preserve (HHNP) either later this week or in the coming weeks. In addition to wearing clothing identifying themselves as GZA employees, the individuals will have business cards and identification. They will leave behind tags, flags, stakes, and other markings so that they can visually be sure where wetlands exist even in the current dry conditions. These markings will assist the Conservation Commission, the HHNP Sub-Committee, and Public Works staff as they make plans to safely and appropriately expand the parking lot to avoid parking along the roadside.

Town Hall Offices will be closed on Monday, September 7, 2015 in observance of the Labor Day holiday.

On Tuesday, August 25th at 7:00 p.m. in the Matthew Thornton Room, the Town Council will conduct a Public Forum on the Therapeutic Cannabis Dispensary Location. Regular meetings of the Town Council will be conducted on Thursday, September 10th and September 24th at 7:00 p.m. in the Matthew Thornton Room.

Merrimack Police are hosting their "Coffee with a Cop" at Starbucks on Premium Outlets Boulevard on August 26th from 9:30 to 11:00 a.m.

Kinder Morgan – Proposed Northeast Energy Direct (NED) Pipeline Project

• Informational Reports and Updates

- Two scoping meetings were recently conducted by the Federal Energy Regulatory Commission (FERC). At the first, held on July 29th in Nashua, testimony was supplied by the Town Council (can be viewed [here](#)). The second was held on July 30th in Milford (can be viewed [here](#)).
- Tennessee Gas Pipeline Company, L.L.C. (TGP) has scheduled an Open House from 6:00 - 8:00 p.m. on September 17th at the Merrimack American Legion located at 43 Baboosic Lake Road.
- With regard to the Survey Agreement, Chairman Harrington stated the latest update to be that they are “actively working on it”.

Town Manager Cabanel spoke of receiving a call earlier in the day from Mike Lennon, TGP Right-of-Way Manager. Mr. Lennon wished to discuss facilitating getting the Survey Agreement signed. Town Manager Cabanel commented, although it appears they are very close, she has not had the opportunity to speak with legal counsel to determine if that perception is shared.

During the course of the discussion with Mr. Lennon, he broached the subject of a public meeting or work session between the Town Council and Kinder Morgan to talk about alternate routes much like the Town of Amherst did. Mr. Lennon stated Kinder Morgan is going to be submitting their formal application soon, and they have been reading the docket and would like to try and accommodate Merrimack’s concerns that they have read there. They would like to meet with the Council to discuss these areas of concern. When asked what his expected outcome was, Mr. Lennon did not respond.

Town Manager Cabanel informed Mr. Lennon she had been advised by the Town Council they would not be proposing any alternate routes, and that she would pass the request along to Chairman Harrington.

Chairman Harrington stated the Town Council has agreed she should contact Mr. Lennon and inform him if Kinder Morgan wishes to submit a request to appear on the agenda for a Town Council meeting the Council is open to that. The Town Council stands by its previous decision there will be no private meetings.

● Action Items

- Continue to press Kinder Morgan for a Public Meeting in Merrimack - **Meeting held 3/26/15**
- Place an action item on Feb 12th agenda requesting the council to take no action regarding request from Kinder Morgan to survey town-owned parcels until Merrimack Public Meeting - **Completed**
- Place NED Pipeline Update on future council agendas - **Completed 2/12/15**
- Update list of properties that directly about proposed pipeline route with a list of properties that fall into pipeline hazard zone - **Completed**
- Consider consultant to:
 - Research communities’ property value effects of recent pipeline installations - **Engaged Avitar**
 - Evaluate impacts on the sewer line - **Engaged Wright Pierce****Reviewed first draft. Final Report should be provided by 6-5-15.**

- Support Conservation Commission's efforts to update data for environmental impacts on HHNP and Gilmore Woods - **Ongoing**
- Support Merrimack Village District's efforts to protect Wellhead Protection Zone and Aquifer Protection Zone - **Ongoing**
- Request Kinder Morgan list of abutters notified of project and requests for permission to survey – **At the 4/28/15 meeting, Town Manager Cabanel asked Jim Hartman, Kinder Morgan Principal Land Specialist, for map and lot numbers of affected land owners and was denied the request.**
- Work with property owners to develop a list of who has been notified of the project and requests for surveys - **Completed**
- Maintain contacts at FERC and NH Congressional delegation - **Ongoing** (NH delegation attends Managers meetings)
- Consult with PSNH (Eversource) regarding where they are in the process with Kinder Morgan and Public Utilities Commission - **No response - No contract between parties (4/23/15)**
- Consult and share information with large companies (A-B/InBev, Elbit, Premium Outlets, Fidelity, PanAm, PSNH, Pennichuck, etc.) - **Meeting held 2/26/15; will be ongoing**
- Section 106 of the National Historic Preservation Act of 1966 (NHPA) - **Pending formal application**
- Council voted to stand in strong opposition to the NED pipeline - Send letter to Governor/Federal Delegation
 - Letter to Governor - **Letter sent 4/14/15**
 - Letter to Congressional Delegation - **Letter sent 4/14/15**
 - Letter to Local Reps - **Letter sent 4/14/15**
- Council to continue attempts to settle on the Survey Access Agreement with Kinder Morgan – **Ongoing (between the Town's legal counsel and Kinder Morgan's legal counsel). The agreement is being "actively worked".**

Comments From the Press and Public

Debra Huffman, 60 Amherst Road

Spoke of attending a scoping meeting and having had the opportunity to share with a representative of the FERC (Environmental Engineer) concerns regarding the metering station Merrimack is scheduled to get. The representative took the time to talk with her about that and the importance of the scoping comments.

Ms. Huffman remarked the Council's comments provided at the scoping meeting did not specifically address the metering station. The representative emphasized to her what the Town asks for the Town will get and no more. It was stated it would not be unreasonable for the Town to ask for a one-mile radius for noise sensitive areas (metering stations make a high pitched whine). If a local residence, it is endured, but if in an area of a childcare establishment, nursing home, etc., they need to be identified if requesting a one-mile radius for noise sensitive areas.

Ms. Huffman noted, in addition to the noise, metering stations have blow-off; pollutants that come out. In the scoping comments she submitted, as an individual, she requested a 1,000' radius relative to air and water pollution because of the proximity of the river.

Ms. Huffman recommended the Council consider another round of questions for items to submit as written comments. The representative from FERC emphasized the Town does not need to have the answers to questions, but if the request is not made for the issues to be addressed in the study, they will not be. Ms. Huffman spoke of literature that is available on metering stations.

Town Manager Cabanel requested approval from the Council for her to work with Ms. Huffman in identifying/phrasing questions pertaining to metering stations, which she could then bring forward to the Council for consideration/approval. The consensus of the Council was the Town Manager to move forward in that regard. Ms. Huffman noted it is only until the deadline for submission of written comments for scoping that the FERC will address questions. After that time, they may or may not, but are not required to.

Chairman Harrington noted the deadline has been extended. The last information she received was that the last scoping meeting would not occur until the middle of September. That would automatically extend the comment period until that time.

James Ferreira, 7 Maryann Lane

Stated he attended and spoke at both of the scoping meetings. There were requests made for additional scoping meetings. The last proposal filed by a Town Council member of Brookline, counted over 10,000 TBDs in the filings. Mr. Ferreira requested the Town Council write a formal letter to the FERC requesting an extended scoping period and another scoping meeting. Chairman Harrington responded a request for an extension was included in the testimony she provided.

Mr. Ferreira commented on the number of homes in his neighborhood that are up for sale as a result of concerns with a transmission line running through their backyards. He commented the 13 towns affected by this are uniting. That effort needs to continue.

Mr. Ferreira spoke of having watched an interview on Late Night with Lenette conducted with a member of the Town Council. He was disappointed with the 4 minutes that was spent on this issue. He stated his opinion some of the comments made during that interview were misleading and inaccurate. He spoke of the Council having taken a stand at the first Town Hall meeting and his hope the Council will continue to stand together and fight the proposal. He remarked he is unsure if some members of the Council are wavering, but he found it disheartening that it was joked about during the interview.

Mr. Ferreira spoke of New Hampshire ranking 40th in terms of energy costs. He noted New Hampshire has a surplus of energy that is shipped out of the State, and questioned what would happen if some of that was kept here; what that would do to our electricity costs. He stated the only anchor on the pipeline to be a Kinder Morgan subsidiary that will only take 4% of the pipeline, which does not qualify enough for their anchor 20-year agreements under the FERC.

Chairman Harrington assured Mr. Ferreira and the viewing audience the Council stands united against the proposed pipeline. There has been no wavering on the Council's opinion against it. The Council has determined not to offer an alternate route. Kinder Morgan has implied it is willing to negotiate and the Council is not.

Mr. Ferreira requested anyone doing these types of interviews have their facts straight. It is 7 miles per shut off valve not 1. It is a big deal. It is a 30" pipe not a 1.5" - 2" pipe that is a distribution to someone's house.

Carol DiPirro, 10 Cambridge Drive, Merrimack

Spoke of having heard remarks made by a member of the Conservation Commission, and questioned if he has submitted any information to the FERC. Chairman Harrington responded Tim Tenhave, Chairman, Conservation Commission has made multiple submissions. Ms. DiPirro commented he had expressed concern about poachers, and the FERC was advising him how to make the information hidden.

Councilor Vaillancourt stated, in Merrimack, there are some endangered species as well as species that were believed to no longer exist in the State. Mr. Tenhave's question was how to make the FERC aware of concerns without actually identifying the species and location as they could leave them vulnerable. The Commission is working with the Town Manager and Legal Counsel to ensure the information that needs to remain privileged, but the FERC needs to be made aware of, is handled appropriately.

Vice Chairman Mahon spoke of having attended a meeting with the Coalition towns and Congressman Guinta. In that meeting, most of the items of concern were brought forward, particularly the compressor station. At one point during the meeting, the Congressman commented I have heard about all of the opposition, is there anyone in favor. Vice Chairman Mahon reminded him both the Manchester and the Nashua Chambers of Commerce are in favor of the proposal, which came as a surprise to the Congressman. Vice Chairman Mahon also noted Merrimack has many large corporations that have not openly opposed the placement of the pipeline. Congressman Guinta will be meeting with some of those companies in the coming weeks.

Vice Chairman Mahon stated his impression it was very informative for Congressman Guinta to get caught up on what was going on back home, he was concerned about it, and said he will be continuing to do his research. He wanted to make sure he felt he had an accurate painting of the facts. He will be talking with his colleagues from the Congressional Delegation on the issue.

Vice Chairman Mahon reminded Congressman Guinta that Merrimack has Anheuser Busch, BAE, Fidelity Investments; all of these large corporations in Town. In comparison to the other towns in the Coalition, Merrimack is unique because of the fact it has those large industrial facilities in the community.

Recognitions, Resignations and Retirements - None

Appointments

1. Annual Review with the Economic Development Citizen Advisory Committee

Submitted by EDCAC Chair Susan Lee

Per Town of Merrimack Charter Section 6-6, at least annually, there should be an annual review with the Economic Development Citizen Advisory Committee. This agenda item is to highlight the

committee's significant actions, current projects, anticipated actions, and to raise any concerns the Council should know or could act on.

Susan Lee, Chairman, Economic Development Citizen Advisory Committee (EDCAC), remarked the last time she was before the Council was in October of 2014. She commented the EDCAC has had a very light year as a result of medical issues and personal and family obligations. Since the last review, the EDCAC has had a total of 4 meetings. The committee has experienced a significant loss in membership, which she hopes will soon be rectified.

When last before the Council the EDCAC was asked to look into the New Markets Tax Credit Program (Federal program). Merrimack qualifies based on the latest census data. The income levels along Route 3 would allow certain types of development to occur, and be eligible for tax credit for operating in that area. It is a very complex issue. The three members of the committee reviewed the information briefly and reached the conclusion current membership is not sufficient to support the research necessary. Members also felt it may be a project too complex for them to do more than come up with a list of good questions townspeople would want asked and that identified someone to come and do a formal presentation.

Ms. Lee stated Timothy Thompson, Director, Community Development Division, had asked the EDCAC to assist him in putting together a development guide to make things a little clearer for people coming in Town, e.g., to answer basic questions they may have. The EDCAC looked at a few of the recommendations Director Thompson had provided as well as development guides put out by other communities to get a feel for how user-friendly they are. Some are more like looking at a set of ordinances where others are a bit more user-friendly. The committee will propose the Town have two styles; a starter, user-friendly, question/answer setup and one that has more detail for someone with a project in Town that would require further information. The committee has not gone too far beyond evaluating the available examples and contemplating how an individual/organization not aware of the ins and outs would want information presented.

In June, the EDCAC voted to reduce the number of meetings to 5/year; quarterly with a June meeting to wrap up the year and a July meeting to start the next year. That was temporary based on the size of membership.

Merrimack will be hosting the Fall Festival on September 19th at the High School from 10:00 a.m. - 3:00 p.m. David Shaw, EDCAC member, is the lead organizer of the event. Members that are available will assist with setup, etc.

Councilor Rothhaus remarked the brochures will be a good tool for the Community Development Department, and stated his appreciation for the efforts of the committee in that regard. The Council expressed its gratitude for the work of the committee.

2. Annual Review with the Zoning Board of Adjustment

Submitted by Zoning Board Chairman Fran L'Heureux

Per Town of Merrimack Charter Section 6-6, at least annually, there should be an annual review with the Zoning Board of Adjustment. This agenda item is to highlight the board's significant

actions, current projects, anticipated actions, and to raise any concerns the Council should know or could act on.

Fran L'Heureux, Chairman, Zoning Board of Adjustment (ZBA), stated, over the past year, the ZBA has had before it forty four (44) items; 28 variances, 2 appeals of Administrative Decisions, 3 requests for re-hearings, and 11 special exceptions.

One of the items that came before the ZBA was the New Hampshire Motorplex, which is looking to take over the vacant Shaws site and perhaps also part of the CVS facility for an indoor go-kart venue. They have a period of up to two years to begin work on the project. Another was the construction of a Lebanese French style restaurant at the site of the former Pizza Man. Again, there is a two-year timeframe during which the project could begin.

Tony Pellegrino, Vice Chairman, spoke of policy work underway. He commented on the need for volunteers to fill the two open Alternate Member positions. Ms. L'Heureux spoke of the skillset and historical knowledge of those currently on the ZBA, and commented on those members who learned the ropes by starting out as Alternate Members.

The Council thanked the members for their commitment to serving the Town in this capacity.

Public Hearing

1. Public Hearing – Zoning Ordinance Amendments

Submitted by Town Council Vice Chair Tom Mahon

The Town Council will hold a public hearing to consider amendments to the Zoning Ordinance (Sections 1, 2, and 17), pursuant to RSA 675:6 & 675:7 and Charter Article V.

Timothy Thompson, Director, Community Development Department, spoke of having appeared before the Council at its July 16, 2015 meeting for the first reading and introduction of the Ordinance. The Ordinance was posted for Public Hearing on July 17, 2015. On Tuesday, August 18, 2015, the Planning Board held their Public Hearing and made recommendations on the proposed Ordinance language.

The Town was made aware that an Alternative Treatment Center (ATC) was looking at Merrimack as a potential location for a medical cannabis dispensary. At that time, staff consulted with legal counsel to determine what the current ordinance language would do for that. The response received was, failing to have any specific definition and criteria for what an ATC is in our zoning ordinance, we would have to fall back to the nearest, closest, similar use, which would be a retail pharmacy. If we do nothing, wherever we allow a retail pharmacy, we would also have to allow an ATC.

In recognition of that and at the behest of the Town Manager and Vice Chairman Mahon, he met with them to develop language utilizing ordinances that have been adopted in other communities in New Hampshire to address these situations. Ultimately what has been put together and which was posted for the Public Hearing is a combination of ordinance language from the cities of Concord, Dover, and Laconia.

There are three (3) sections of the Ordinance that are being proposed for amendments. The first is

Section 1 – Definitions. Being proposed is the addition of a definition of what an ATC is, and two sub-definitions for both a cultivation location and a non-cultivation location. In Section 2 – Establishment of Districts, the proposed language sets up a conditional use permit process in both the commercial and industrial zones for ATCs and sets up conditional use permit criteria; five different criteria the Planning Board will need to consider should an ATC be proposed. It would allow a non-cultivation location in both the commercial and industrial districts and cultivation locations would be allowed by conditional use permit in the industrial district. Section 17 – Signs; the posted Public Hearing has some language that was adopted by the City of Laconia regarding signs.

Director Thompson stated, in the interim period between the original posting of the Ordinance on July 17th and the Planning Board's Public Hearing last week, he had an opportunity to review the Ordinance with legal counsel. Counsel has recommended two changes, which are also part of the recommendation of the Planning Board. In addition, State law regarding ATCs has been amended by the Legislature and signed by the Governor (effective 8-11-15). There is a third modification from the posted Ordinance that was also recommended by the Planning Board.

The recommendation from the Planning Board is that the Council adopt the regulations as they were posted with the three following modifications:

- In Section 2.02.2.D 2; delete the sentence that reads: "It is neither the intent nor the effect of this Section to condone or legitimize the use or possession of marijuana except as allowed by NH State Law.",

This amendment was based on advice from legal counsel. The Planning Board recommends this phrase does not need to be included because the express purpose of the Ordinance in that section is specifically for medical cannabis, and is limited to such.

- In Section 2.02.2.D 3a; amend the sentence to read: "An Alternative Treatment Center shall not be located within a pre-existing designated drug free school zone; and"; and

This was a modification based on Senate Bill 2. That replaces language that previously referenced pre-existing elementary, primary, secondary schools, and drug free school zones. You had to be outside 1,000' of that. The correction to the law really is because a drug free school zone is a 1,000' buffer already so it was redundant and actually created a 2,000' buffer, which was not the intent of the Legislature. That was clarified through the amendment made during this past week.

- Section 17.10.12; the section has been completely re-written, and now only refers to the Department of Health & Human Services (DHHS) advertising restrictions (part of their regulations).

This was based on a concern raised by the Town's legal counsel, at Director Thompson's request given language concerns. There were Constitutional questions about whether or not the Town could safely restrict advertising the way that the language previously read. The recent U.S. Supreme Court case, *Reed vs. Town of Gilbert, Arizona*, really solidified the strict scrutiny criteria that the court system uses when you get into content based advertising. Ultimately the First Amendment and the courts have consistently over time interpreted that you cannot treat commercial speech differently. You cannot

differentiate one type of commercial speech over another. That would be a violation of the applicant's First Amendment rights.

The language was taken out of the Ordinance and reference is made to State regulations. The State regulations aren't a zoning ordinance power. That puts us in a much better position legally so that if something is challenged it would be the State's requirements that are challenged and not the Town's.

Vice Chairman Mahon commented, as the Liaison to the Planning Board, he was present when the Planning Board addressed this earlier in the week. He noted there was no public input provided during that meeting.

Vice Chairman Mahon noted the hearing was not on the site/facility itself, but only on the zoning ordinance, which is a mechanism used to provide the Town some latitude and protection of the community for different types of commercial and industrial uses in Town.

Chairman Harrington declared the Public Hearing open at 7:51p.m.

No one from the public addressed the Council.

Chairman Harrington declared the Public Hearing closed at 7:52 p.m.

Councilor Rothhaus questioned why the Town would treat this type of use differently than a pharmacy. Director Thompson responded his understanding from his limited conversations with individuals at the DHHS and in looking over the variety of different ordinances and regulations that went into the drafting of the proposed ordinance, is State regulations go so far to put the general guidelines in place, and these conditional use permit criteria are really based off of that. However, it goes a little further particularly because the issue of marijuana is still a political hot button. Out of an over-abundance of confidence, particularly in the area of security, the communities he has researched recommend and he recommends Merrimack include a good set of criteria that requires the Police Department, Fire Department, and Emergency Services personnel to have a good crack at the security items that are associated with this type of use.

He acknowledged retail pharmacies have similar issues, but because this is a drug that was previously illegal, there is an over-abundance of caution out there. He added, when drafting ordinance language like this he always starts on the very conservative side of things because it is easier to loosen requirements if you find them overly onerous and not effective than it is to put more strict requirements in place.

Councilor Rothhaus commented it seems to him the Legislature really doesn't believe in this. He remarked he cannot imagine pharmacies with hardcore narcotics are not secure and wouldn't go through a similar process.

Councilor Boyd noted the use of the word cannabis throughout the document with the exception of Section 2.02.2.D 2a. He recommended the words "medical marijuana" be replaced with "therapeutic cannabis" and later in the same section that "marijuana" be replaced with "cannabis".

The consensus of the Council was for the amendments to be made.

Councilor Boyd referred to Chapter 143 where it states “An alternative treatment center shall not be located in a residential district or within pre-existing designated drug free school zones.” He questioned how that would impact daycare centers or other schools that may be nearby, e.g., what is considered to be and not to be grandfathered. Director Thompson responded the State law designating only pre-existing drug free school zones means there is a list that should be on file with every police department in the State that lists each community’s drug free school zones.

In the area the potential location is looking at, the former DCU building, that only includes the Gate City Charter School that is located on Henry Clay Drive. It does not include the preschool or the daycare facilities. It only includes those drug free school zones under the revised ordinance. His assumption is that would have been interpreted in the same manner in the previous ordinance. He noted he was unable to get a straight answer out of the DHHS because they knew the law was being changed. He added, it all depends on, at the time this ordinance is adopted, what are the existing drug free school zones in the community at that time.

Chairman Harrington commented she believes the Legislators were overly cautious, but that there was concern about unintended consequences. She remarked there are other states who started with medical cannabis, and have gone haywire. The law itself is very specific related to the medical conditions it can be prescribed by, and the process by which an individual obtains an I.D. card is amazing.

Councilor Dwyer commented on remarks made around the security aspect stating the issue stems from the banking industry not being able to process; cash business. A lot of the security issues are about the coming and going of armored cars. The business is not treated like a pharmacy for the cash reasons.

MOTION made by Councilor Mahon and seconded by Councilor Boyd to move the amendments to the Zoning Ordinance to a third and final hearing on September 10, 2015

ON THE QUESTION

Director Thompson requested clarification the amendments include those recommended by the Planning Board and those suggested by Councilor Boyd. Vice Chairman Mahon stated that to be correct.

MOTION CARRIED 7-0-0

Chairman Harrington informed the viewing audience Item #2 under New Business had been postponed.

2. Public Hearing – Acceptance of the Bark for your Park Contest Winnings

Submitted by Finance Director Paul T. Micali

The Town Council will hold a public hearing to consider the acceptance and expenditure of the winnings in the amount of \$25,000 received from the PetSafe Bark for your Park Contest, pursuant to RSA 31:95-b and Charter Article V. Financial reports will also be presented.

Paul Micali, Assistant Town Manager/Finance Director, spoke of the Friends of the Merrimack Dog Park (Dog Park) pursuing fundraising efforts. As part of that, they entered the Bark for your Park Contest. One of the contest rules is “approval by Sponsor of the community’s plan for the project,

which shall include the site information, concept plan, plans and specifications, budget, cost estimates, and construction time....”.

He spoke of the conceptual plan, and projected a map highlighting the area of the dog park at Wasserman Park. Because of its proximity to the waterways, there is the need for drainage. There is also the need for fencing, groundcover, etc. The trees were removed last year as part of the Wasserman Park project. For that 1 acre of land, the quote was separate as was the associated revenue (resulting from selective cut).

Town Manager Cabanel remarked, although the agenda item is to address acceptance and expenditure of a \$25,000 grant, the desire is to provide background information to allow for an informed decision. Chairman Harrington agreed, and reiterated the item being addressed by the Council is acceptance and expenditure of the \$25,000 grant only.

Assistant Town Manager/Finance Director Micali stated the cost of building the dog park has been quoted, based on the preliminary design. In May of 2013, the cost of completing the necessary work for the dog park was estimated based on utilizing a private vendor (\$67,000) and the Public Works Department (PWD) (\$53,577); does not include labor (estimated at \$32,000)). Fundraising efforts have resulted in \$29,000 to date. There are expenses associated with the fundraising efforts, e.g., the marketing team hired to assist with fundraising efforts (approx. \$1,600). The approximate balance, as of 8-21-15, is \$26,254.

Should the Council accept the \$25,000 grant, on September 1, 2015, a Public Hearing would be conducted to accept the \$29,000 in donations and the offsetting expenditures. Revenue gained as a result of the clearing that was conducted on the one acre of land totals \$2,847. The Council has the option of allocating those funds to the Dog Park. Eleven thousand three hundred and ninety dollars (\$11,390) was received for the remaining 12 acres of clearing at Wasserman Park. Also noted was the \$6,500 that was previously put aside at Watson Park.

Total available from fundraising efforts is \$54,101, which falls short about \$13,000 if utilizing a private company to construct the park. If utilizing the PWD, the project can get done. Assistant Town Manager/Finance Director Micali reiterated the figure identified for the PWD does not take into account the cost of labor, which would result in other work being put off.

Councilor Boyd stated his recollection the Council previously voted to expend monies. Assistant Town Manager/Finance Director Micali responded the group appeared before the Council last year to discuss monies needed for fundraising efforts (approx. \$8,900). When asked if those figures were included in the amounts discussed this evening, he stated they were.

Mr. Jack Rothman stated PetSafe is a nationwide pet supply company. They conduct a contest each year, which culminates in the donation of \$200,000 (to five towns throughout the country). The contest has categories for small, medium, and large towns. There is an overall winner, most votes, and what they call the heart, which is the largest percentage of votes. Merrimack was in the medium category. The biggest competition was a town in Jackson, IL. They received enough votes and became the major winner of \$100,000. Because that pushed them out of the medium category, Merrimack was next. There were two rounds of voting that started in May and ran through June. It

was required that you make the top 10 to stay in the race. After that, a video had to be prepared and sent in. Round two started on June 17th and finished on July 22nd. On July 31, 2015 they were notified Merrimack was the winner of the medium category for \$25,000.

Mr. Harvey Bloom reiterated the overall winner was Jacksonville, IL. They had approx. 54,700 votes. Watkinsville, GA was the winner in the large town category with over 30,000 votes. Merrimack was the winner in the medium category with 16,582. Fort Gratiot, MI won the small town category with 31,000± votes. Epworth, IA won with 27,000 votes. They had the largest percentage relative to their population. Mr. Rothman spoke of the support provided by Town departments, the Rotary, radio and newsprint coverage, etc.

Next steps include declaring eligibility, which involves accepting the funds, agreeing to be bound by the official rules, permanently include PetSafe in the signage at the park, include PetSafe in the ribbon cutting, and provide PetSafe with a budget for the operation of the park for the first three years. To receive the check requirements include providing site information, concept plan, specific plan, budget, cost estimates, construction timeline, and issuance of permits, if necessary. The other caveat is that the park has to be constructed within three (3) years. The turnaround for PetSafe, once the information is provided, is in the area of 2-3 weeks.

Fundraising efforts continue. Bertucci's will donate 15% of the bill of anyone who visits their establishment on August 28th and states they are from the Dog Park. There is a coupon associated with that, which will be available in locations throughout the Town. On August 26th another table will be set up at Shaws at Exit 11 to provide information and collect donations. At the end of September, they will be working with Savers in Nashua. They do a lot of promotions to help non-profits raise money; for items such as clothes, jewelers, and other personal items collected and dropped off, Savers will donate \$.20/pound. A t-shirt sale will be conducted. Outreach to local businesses will continue.

It was noted one of the requirements associated with acceptance of the funds is "make the dog park available for use by the general public at no charge, subject to reasonable rules and regulations concerning such use" meaning the park cannot be limited to Merrimack residents. Mr. Bloom commented on having been approached by Kinder Morgan during a discussion at the Rotary and they declined. They stated a desire to see what they could do to help out. They responded stating it is the desire for local companies to support the dog park. It was also noted fundraising efforts will continue at Town events, e.g., Merrimack Rocks.

Councilor Dwyer expressed his gratitude for the efforts.

Councilor Koenig provided the example of an issue the Council has been addressing with the School Board over tennis courts; grant funds were accepted from the State to help build the tennis courts, and as a result the Town is responsible, in perpetuity, to maintain those. He questioned if there is an obligation, under acceptance of these funds, to have a dog park in perpetuity in Merrimack open to the general public at no charge. Mr. Rothman responded the information received states an obligation to maintain and operate the dog park for at least three years.

Councilor Koenig commented on the prior mention of the responsibility to permanently include the name of the sponsor in the name of the dog park. He questioned if semantically that means for at least 3 years. Chairman Harrington stated her opinion the language indicates that the requirement would

exist for as long as the dog park exists. Mr. Rothman stated his interpretation the sponsor's name would not necessarily have to be in the name of the dog park, but that it would have to be on signage somewhere.

Christine Lavoie, Parks and Recreation Committee / Friends of Merrimack Dog Park

Stated those clarifying questions were asked early on in the process. There is no requirement for PetSafe to be included as part of the name of the dog park. They would simply include the PetSafe logo on several of the signs such as is planned for the sponsorship sign. She stated the name of the dog park would be Merrimack Dog Park.

Councilor Koenig asked if there is an understanding of what would be included as part of the requirement to "coordinate the opening of the dog park with Sponsor and participate in promotional activities related to the contest and the dog park as reasonably requested by Sponsor." Mr. Rothman stated his thought they might want to have someone present to film the event to be used in their promotional materials.

Chairman Harrington declared the Public Hearing open at 8:30 p.m.

No one from the public addressed the Council.

Chairman Harrington declared the Public Hearing closed at 8:31p.m.

MOTION made by Councilor Boyd and seconded by Councilor Mahon to accept and expend the winnings in the amount of Twenty Five Thousand Dollars (\$25,000) received from the PetSafe Bark for your Park Contest, pursuant to RSA 31:95-b and Charter Article 8-15, and furthermore that the Town Manager and/or her proxy be authorized to sign any necessary paperwork to perfect the transaction

ON THE QUESTION

Councilor Koenig noted the funds will not be provided until after the expenses have been incurred. The language states: "Each \$25,000 Runner-up Prize can only be used for Approved Expenses and will be paid and disbursed to the Community in one (1) installment upon the following conditions: approval by Sponsor of the Community's plan for the project, which shall include the site information, concept plan, plans and specifications, budget, cost estimates and construction timeline; and issuance of all required construction permits and commencement of construction by the Community."

Mr. Rothman stated the monies would not be received until permits are issued and construction commences. It is the intent that other monies raised would be expended to start the project.

MOTION CARRIED 7-0-0

Legislative Updates from State Representatives - None
Town Manager's Report

The Parks & Recreation Department's new Fall Activities Brochure is now available. Printed copies can be picked up at Town Hall, Merrimack Public Library, and the John O'Leary Adult Community Center. They are also available through Parks & Recreation website. The department is also pleased to announce that we now have the ability to accept credit cards. Residents can now register for programs online through the website (www.merrimackparksandrec.org).

The Community Development Department staff is currently in the interview process for the vacant Assistant Planner position, and will be conducting follow-up interviews in the coming weeks.

Community Development has received preliminary notification that the Economic Revitalization Zone (ERZ) applications for both Anheuser-Busch and Space Optics Research Labs have been approved by the New Hampshire Department of Resources & Economic Development (DRED). Formal notification is expected early next week.

Just a reminder that the "Hands-Free" law is in effect.

Vice Chairman Mahon complimented Matthew Casparius, CPRE, Director of Parks & Recreation, for the artwork used on the front of the brochure. He commented that sort of thing is something we have not seen a lot of in Town, and it makes the brochure jump out and much more inviting for people.

Consent Agenda - None

Old Business

1. Friends of the Merrimack Dog Park Update

Submitted by Holly Morales

The Friends of the Merrimack Dog Park would like to give the Town Council an update on the PetSafe Bark for your Park contest victory and fundraising efforts for the dog park fund.

The item was addressed during discussion of acceptance of the Bark for your Park contest winnings.

New Business

1. Committee Appointments

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

The Town Council to consider appointing the following individuals to Town committees, pursuant to Charter 4-8:

Matt Caron (Conservation Commission - *Full member*)

Ken Asai (EDCAC – *Full member*)

Joshua Schiavone (EDCAC – *Full member*)

Nicholas Kropelin (Parks & Recreation – *Alternate member*)

Desirea Falt (Planning Board - *Full member*)

Dustin Liukkonen (Technology Committee - *Full member*)

Tony Pellegrino (Zoning Board of Adjustment – *Full member*)

MOTION made by Councilor Boyd and seconded by Councilor Mahon to appoint the following individuals as full members for a three-year term; Matt Caron to the Conservation Commission,

Ken Asai and Joshua Schiavone to the Economic Development Citizen Advisory Committee, Desirea Falt to the Planning Board, Dustin Liukkonen to the Technology Committee, Tony Pellegrino to the Zoning Board of Adjustment, and as an Alternate Member, Nicholas Kropelin to the Parks & Recreation Committee

ON THE QUESTION

Vice Chairman Mahon thanked those who sought re-appointment. He noted four of the individuals appointed are new to their respective positions. He spoke of the Council's efforts to generate interest in the community to serve in this capacity. He commented on the skills and experience the individuals bring to their positions.

Vice Chairman Mahon spoke of having been asked to help the Merrimack Friends & Families kick off their Volunteer Night (end of September) by providing information on volunteer opportunities at the Town level.

Councilor Boyd stated his pleasure with the individuals who have sought re-appointment noting their particular skillsets have served their committees well, and commented on the business background the individuals appointed to the Economic Development Citizen Advisory Committee bring to the table.

MOTION CARRIED 7-0-0

Oath of Office administered by Chairman Harrington to Tony Pellegrino.

2. 4 Executive Park Drive Realty, LLC Request for Town Council Letter of Recommendation

Submitted by Robert Singer, Thomas Prieto & James Prieto

The Town Council to consider a request to support the removal of trees and berm to increase the visibility from the F.E. Turnpike for the revitalization and/or redevelopment of the property located at 4 Executive Park Drive.

Postponed.

3. Financial Update

Submitted by Finance Director Paul T. Micali

Town Council to be updated and presented with the year-end financial details.

Assistant Town Manager/Finance Director Micali spoke of preparation underway for the upcoming audit. He presented information on 2014-2015 activity. With regard to revenues, other than interest and building permits, all revenues were up; some significantly. Insurance premium rebates were \$195,525 over projections, sale of property was up \$105,185, the State Meals & Room was \$44,365 above what was identified in the budget. Ambulance revenue was up \$119,462 and auto registrations \$493,619 above what was budgeted. This year during tax overlay there was a savings of \$249,107; the reason being a small number of abatements. Areas where actual revenue was less than what had been budgeted include interest (\$25,000) and building permits (\$16,000). Overall revenue exceeded the budgeted amount by \$1,166,263.

With regard to appropriations; legal expenses were \$36,000 over what was budgeted (majority due to pipeline issue), Fire Salaries represented \$169,442 in savings (retirements, etc.), Fire PT Salaries

\$27,700 in savings, Fire Health Insurance \$84,000 in savings, Fire Retirement \$55,000 savings, Fire Vehicle Maintenance was \$50,000 over budget (rebuilt ladder portion of ladder truck), Fire AED \$32,000 over budget, Police Salaries represents \$109,335 in savings (departures, etc.), Police Guns & Rifles \$29,000 over budget, Police Health Insurance \$114,000 in savings, Police Maintenance Bld. \$17,000 over budget (dispatch center), Communication Upgrade \$62,559 over budget, Overtime Solid Waste \$35,000 over budget, Solid Waste Truck \$30,000 over budget, Solid Waste Vehicle Maintenance \$28,500 over budget (due to age of trailers and metal wearing out; 2 of the 4 trailers were rep paneled), Highway Vehicle Maintenance \$29,000 over budget and Highway Overtime \$35,000 over budget. Total unexpended appropriations \$175,418.

As of 6-30-15; undesignated fund balance (audited as of 6-30-14) \$3,258,677, fund balance increase due to revenue \$1,166,263 (revenue that exceeded budget estimates for year ending 6-30-15), and fund balance increase due to appropriations \$175,418. Estimated increase to undesignated fund balance pre-audit \$4,600,358.

Assistant Town Manager/Finance Director Micali noted, at the Council Retreat, there was discussion of Wasserman Park and setting funds aside for a project at the park. Taking that (\$100,000) into account, the estimated undesignated fund balance would be \$4,500,358. Estimated tax commitments as of 12-31-14 (last numbers audited by DRA) is \$82,169,416. The percentage of undesignated fund balance to tax commitment is 5.48%. There was a warrant article put on the books several years ago that put the target between 4-8%. Two years ago we were in the low 3s. Over the past few years, the Town has been steadily and responsibly increasing that percentage.

Assistant Town Manager/Finance Director Micali spoke of the desire to bring water to the Function Hall at Wasserman Park from the existing fire hydrant located where the old pool used to be at Wasserman Park (on the other side of Merrimack Gardens). The existing line would be brought down the road by the tennis courts. Being proposed is placement of a hydrant either at that corner or a little above that area near the trees (depending on how much ledge is involved). That hydrant would run the line right over to the Function Hall. That would allow for installation of a fire suppression system (sprinkler both floors), heating (replacing unit from the '70s and changing to propane or forced hot water), and minor repairs to the basement. Currently the heating system is forced hot water/ The baseboards were left in the building with the last demolition of the basement. However, the furnace was in a separate building/shed at the back of the Function Hall. The desire is to move that inside the building. That would require renovations (boiler room).

To run the water pipe from the existing fire hydrant would require trenching through ledge. Kyle Fox, Deputy Director, PWD was not in favor of utilizing a berm. Given the location and the way water runs off, a berm would take sediment and run it down to Naticook Lake. He recommended trenching. The number of feet was identified and a bid recently obtained in connection with the sewer project was used to estimate the cost (approx. \$15,000). A site visit will be conducted next week with a company that will perform test trenches to determine if the ledge is up and down the distance.

Installation of a water line from the Merrimack Village District (MVD) is priced at \$10,000 (materials alone). That would be provided at cost. All connection fees would be waived. Backfill and minor plumbing for the project is estimated to cost \$6,000. Total cost for the project is estimated at \$100,000.

Councilor Rothhaus questioned where the water entered the building from previously, and was told it came from a small irrigation pipe from the Wasserman House. Councilor Rothhaus commented, after natural gas, the next best choice is oil. Assistant Town Manager/Finance Director Micali spoke of the volatility of oil over the past few years. The Town just signed a favorable contract for gasoline at \$1.82/gal. Two years ago it was up to \$3.50/gal. and oil was \$4.00/gal. When asked, he stated LP is not always substantially more because of contracts the Town has.

Councilor Vaillancourt commented, at the Council's Retreat, the Council set goals for what members would like to see happen with regard to policy, budget, etc. over the coming year. A good deal of discussion was had around the great work that has been done on some of the capital projects/infrastructure at Wasserman Park. One of the topics discussed was what it would cost to bring heat and water to that function hall and whether it would allow the hall to be utilized year-round, etc. During those discussions the Town Manager and Assistant Town Manager/Finance Director were tasked with providing funding estimates for consideration should there be funding available to consider allocating to such a project.

When asked to explain the urgency around reaching a decision, Assistant Town Manager/Finance Director Micali stated the deadline for a decision would be 10:00 a.m. the following day. The auditors will be in-house on Monday. At that time, they have to be provided with a final budget, all general ledgers, all accounts, account for the unreserved fund balance, etc. If the Council were not to reach a decision during this meeting, funding for the project would have to be identified during the budget process for the FY17 budget. That would delay the project to the 2016/2017 year. With additional surplus in appropriations (\$175,000), \$100,000 can be used to do this project to beautify Wasserman Park, to get the building up to speed, and begin being able to use it for rentals, etc. If the Council were not to take action at this time, the funds would go back into the fund balance, and the fund balance would be \$4,600,358.

Councilor Rothhaus stated, at some point, there will be a discussion on the possibility of utilizing some of that fund balance to offset the tax rate. Assistant Town Manager/Finance Director Micali responded he would be coming before the Council, once a solid number is provided by the auditors (likely 2nd meeting in September).

Councilor Dwyer commented it is fortunate this was a subject that was discussed during the Council Retreat, but it is also something the Council has been discussing for quite some time; investing in Wasserman Park after years of neglect. Those efforts have been ongoing over the past couple of years. He stated he is pleasantly surprised with the stated costs given previous estimates of \$50,000 or \$60,000 just for a sprinkler system.

Councilor Dwyer stated he wished to make a motion to allocate the \$100,000 for Wasserman Park. He stressed it is kind of ironic that nothing can happen to a year-round public facility without water. It seems water is the key step. If not willing to spend the monies associated with bringing water to the site, it cannot become a year-round function hall. The water brings the sprinkler system. You cannot have a public building without a sprinkler system.

Vice Chairman Mahon complimented the staff on the way the budget has been managed. It is reflected in some of the projects the Town has been able to address over the past few years, in the ability to build the unreserved fund balance to a much more comfortable level, and even in being able to talk

Approved: September 10, 2015

Posted: September 14, 2015

about the possibility of using it to offset taxes, which is something that has not been able to be done for the past 8 years.

MOTION made by Councilor Dwyer and seconded by Councilor Boyd to authorize the expenditure of up to One Hundred Thousand Dollars (\$100,000) for the waterline extension project to include the fire suppression system and heating system projects at the Wasserman Park Function Hall

ON THE QUESTION

Councilor Dwyer commented it is a proud moment to see what \$150,000 has done to that park. He commented, over the past few years it has been recognized there is the need to take care of the things we have. Chairman Harrington stated her belief there is an appreciation by the public.

Councilor Vaillancourt commented with the golf park, disc golf, new parking lot, and now this, there is a lot happening at Wasserman Park, and she is excited about it. She commented she has heard, for years, people wanting to be able to use this Function Hall year round.

MOTION CARRIED 7-0-0

Assistant Town Manager/Finance Director Micali stated now that the \$100,000 appropriation has been moved to the Parks and Recreation Department, there is the need to move monies from another department to cover this cost. Prior to the appropriation of the \$100,000 the Parks and Recreation budget was basically at break-even. He suggested monies be moved from the Fire Department budget. He informed the Council he spoke with the Fire Chief earlier in the day. He was excited about utilizing the funds to gain a fire hydrant and a fire suppression system at Wasserman Park.

MOTION made by Councilor Boyd and seconded by Councilor Mahon to transfer the sum of One Hundred Thousand Dollars (\$100,000) from the Fire Department budget to the Parks and Recreation Department budget

ON THE QUESTION

Councilor Rothhaus asked for additional clarity, and was told the transfer is to cover the cost of the purchase orders awaiting approval (\$100,000).

MOTION CARRIED 7-0-0

Minutes

Approve the minutes from the July 16, 2015 Town Council meeting.

MOTION made by Councilor Mahon and seconded by Councilor Boyd to approve the minutes of the July 16, 2015 Town Council meeting. MOTION CARRIED 6-0-1 Councilor Vaillancourt Abstained

Comments from the Press - None

Comments from the Public - None

Comments from the Council

Councilor Vaillancourt informed the Council, at its last meeting, the Conservation Commission received a preliminary draft of the Environmental Impact Study (EIS) from Jeffrey Littleton, Moosewood Ecological LLC. It is expected Mr. Littleton will be present at the Commission's next meeting, at which time the Commission will review the final draft.

The preliminary draft was requested to provide information to allow the Chairman, Tim Tenhave, to compile additional comments for submission to the FERC during the scoping period. Although the initial submission was all encompassing, it was very general in nature. Mr. Tenhave would like to submit comments that are very specific. Mr. Tenhave encourages anyone having specific concerns regarding any of the Conservation properties to send him an email outlining the specific concerns. He is planning on having the next submission complete for the August 31st deadline. If formal notification of an extension to the deadline is provided, he will take advantage of that.

Councilor Boyd questioned if Councilor Vaillancourt is happy with the level of the report to date. Councilor Vaillancourt responded "oh yes, absolutely". She continued the Commission has spent a good deal of money on the EIS. She noted the Commission has studied all of the conservation land, not simply the areas that could be impacted by the proposed pipeline project. The EIS will be of great value to the Commission and the Town likely for another 10+ years. She reiterated Mr. Tenhave has asked that everyone do their due diligence, and if having specific items they wish him to address to make him aware. Councilor Vaillancourt commented on the amount of time and effort Mr. Tenhave has put into this issue and, in fact, all issues he handles on behalf of the Commission. She expressed her gratitude.

Councilor Boyd commented this past Saturday he had the opportunity to visit Grater Woods and check out the two new bike trails that have been created just south of Grater Road; Millipede Trail and Salamander Trail. They are single track trails, are brutal, and a lot of fun. When asked, he clarified they are brutal in terms of physical exertion. They are extremely challenging for people that like to do technical mountain biking.

Councilor Vaillancourt informed the viewing audience on Saturday, August 22nd and Sunday August 23rd the Grater Woods Sub-Committee will conduct work days at Grater Woods. Volunteers are sought to assist in the process. Anyone interested in volunteering should contact Tim Tenhave, Matt Caron, or Councilor Vaillancourt via email.

Adjourn

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

The August 20, 2015 meeting of the Town Council was adjourned at 9:23 p.m.

Submitted by Dawn MacMillan