

Approved: May 26, 2016

Posted: June 3, 2016



Town Council Meeting Minutes

Thursday May 12, 2016, at 7:00 PM, in the Matthew Thornton Room

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

Pledge of Allegiance

Vice Chairman Rothhaus led in the Pledge of Allegiance.

Announcements

The Transfer Station will be closed from 11:45 a.m. - 2:00 p.m. on Thursday, May 19th to allow their staff to attend the National Public Works Week Luncheon. The Transfer Station will remain open until 7:00 p.m. every Thursday from May 12, 2016 through September 8th.

A joint meeting of the Town Council and the Merrimack School Board will be conducted on Wednesday, May 18th at 7:00 p.m. in the Matthew Thornton Room. The subject matter will be polling locations. No decisions will be reached at that meeting as it is intended for the purpose of information gathering.

Regular meetings of the Town Council will be conducted on Thursday May 26th and June 9th at 7:00 p.m. in the Matthew Thornton Room.

The Town Council will conduct its Annual Retreat on Friday, June 10th from 9:00 a.m. - 4:00 p.m. at the SERESC Conference Center, 29 Commerce Drive, Bedford, NH. The retreat is open to the public.

On Wednesday, May 25th, Merrimack High School seniors will participate in the 20th Annual Senior Service Day, also known as Seniors Helping Seniors. The students will go to various sites in the community and assist senior citizens with sweeping, raking, spreading mulch, gardening, washing windows, etc. Any senior interested in this free service should contact Trevor Knight at Merrimack High School at 603-918-4300 for further information.

Please be advised that beginning Monday, May 16th, Wallace Road will be closed for road construction. A detour will be established via Bedford Road in Merrimack, and Jenkins, Beals and Wallace Roads in Bedford. This first phase is scheduled for completion on June 24th. For more information, please look under News on the Town's website at www.merrimacknh.gov. Questions or issues related to the project should be directed to the Bedford Public Works Department at 472-3070 or the Merrimack Highway Garage by calling 423-8551 or emailing the Highway Operations Manager Lori Barrett at lbarrett@merrimacknh.gov. This project is a Bedford project. The portion of Wallace Road will be shut down from the Bedford town line and running towards 101 in Bedford.

Dog licenses were due by April 30th. As of May 5th there remained 910 unlicensed dogs. To avoid fines and late fees (set by State law) that will begin on June 1st, please get your dog licensed as soon as possible. If you had a dog in Merrimack but no longer have it or no longer live here, please contact us

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and let us know. At a cost of almost \$7.00 we don't want to be sending fine letters unnecessarily to people that no longer have their dog. You may send information to: townclerk@merrimacknh.gov or call 424-3651.

Councilor Flood commented on being surprised to learn that Wallace Road would be closed for such a long period of time. Wallace Road is a major thoroughfare, and its closure will impact a good many Merrimack residents. She stated concern with getting the word out about the closure. Assistant Town Manager/Finance Director Micali noted there is a sign that has been out for about two weeks at the four-way stop on Wire Road and Bedford Road. The Highway Operations Manager, Lori Barrett, will be hand delivering notices to Merrimack residents in that area.

Councilor Dwyer added some shoulder work, etc. on that road was started several months ago. Commuters are aware of the pending road closure. Councilor Boyd noted a sign has been on the Bedford side of Wallace Road for several weeks.

Perfluorooctanoic Acid (PFOA) Information Update

Vice Chairman Rothhaus noted the Environmental Protection Agency (EPA) had indicated a schedule of when they would be divulging the allowable number for PFOA standards would be provided the prior Friday, which did not occur. At this time, the New Hampshire Department of Environmental Services (NHDES) is only getting about 8 results returned per week. When the EPA does issue a final number, it will only be an advisory number. The individual States still have a right to set legally enforceable numbers.

The Council will consider signing a letter requesting the EPA take a stand, and give enforceable numbers for the states.

The NHDES is expanding their investigation into the Perfluorooctanoic chemicals in drinking waters into Amherst, NH. They are looking at the former location of the Textiles Coating International. Of the eleven (11) wells they have tested, four (4) came back with results of over 100 parts per trillion.

In the north Merrimack area where the Merrimack Village District (MVD) shut down well #s 2 and 5, they have kicked on well #s 7 and 8. Pennichuck had received test results on May 3rd that showed the PFOA concentration was at 14 parts per trillion going into Bedford. That dilution and the anticipated numbers have occurred.

Councilor Vaillancourt commented at the Council's last meeting Chairman Harrington spoke of a discussion she had with the MVD during which she requested an informational flyer be placed in the water bills. Having received her water bill earlier in the week, Councilor Vaillancourt noted it did not include any information relative to PFOA.

Councilor Vaillancourt informed the viewing audience the next meeting of the MVD Board of Commissioners is scheduled to take place at 4:00 p.m. on Monday, May 16th at 2 Greens Pond Road, Merrimack. The meetings are open to the public.

- **Approval of Letter Regarding PFOA Lifetime Limit Standards**

Councilor Boyd suggested numerous amendments to the draft letter. Although some were typographical such as capitalizing the word “acid” in the reference line, others were more substantive such as a recommendation to amend the second bullet point to read: “The Town of Merrimack is committed to partnering with our local, State, and Federal officials to ensure that our drinking water consumed by our community is safe, potable, and reliably available. Furthermore, the Town wants to assure our residents and our businesses that our water supply is safe, potable, and readily available for use in all households and our growing industrial/commercial business community. Absent an enforceable drinking water standard for PFOA, the Town cannot provide such assurances, and Merrimack becomes subject to the “stigma” of having a water supply with questionable quality and safety.”

The recommendation that the word “advisory” be replaced with “enforceable” resulted in a good deal of discussion. Councilor Dwyer stated the word “advisory” was provided by legal counsel based on the EPA having advisory power over the issue.

After some discussion, Assistant Town Manager/Finance Director, Paul Micali stated the EPA will only give an advisory standard. That advisory standard will then be taken under advisement by the NHDES. The NHDES then will set the enforceable level. Until the NHDES receives the advisory standard from the EPA, they cannot set the enforceable level. What the letter is stating is we need the advisory level from the EPA in order for our State regulatory agencies to set an enforceable level.

It was noted the advisory level of 400 is related to short-term exposure, and what is being sought is a standard for long-term exposure.

Councilor Koenig questioned why the EPA advisory is necessary, and remarked if Vermont has already set a number at 20 and they are being sued over that, presumably that is an enforceable number they are trying to stick to. He questioned why the Council didn’t just set a number. If the EPA is going to set a number that doesn’t drive anything he is confused as to what the Council is waiting for, Councilor Dwyer commented that is a good question, but he thinks it relates to how much power or muscle the NHDES wants to bring to the question, which he is unsure of.

It was suggested the language could simply state “development of a drinking water standard”

It was noted the word “(advisory)” has to remain in the sentence that reads in part: As of today New Hampshire is relying on a preliminary (advisory).....” as the NHDES is presently relying on the advisory standard that is in place.

The consensus reached by the Council was that the best approach for addressing the numerous changes Councilor Boyd wished to make to the initial draft would be for him to discuss his recommendations with the Town Manager who could determine if further discussion with legal counsel was necessary in order for a revised draft to be brought before the Council for consideration.

Northeast Energy Direct (NED) Pipeline Update

Councilor Boyd spoke of the 30-day stay, which was granted to Kinder Morgan by the Massachusetts Department of Public Utilities (DPU) and expires on May 26th. Councilor Vaillancourt noted groups in opposition to the piping have been submitting letters to the Federal Energy Regulatory Commission (FERC) requesting Kinder Morgan either move forward or withdraw the application.

Councilor Koenig clarified that deadline is for the Massachusetts DPU and has nothing to do with the FERC. Councilor Vaillancourt stated agreement, and noted she has not heard anything from the FERC regarding the suspension other than the information relayed to the Council regarding the Town Manager's phone call to Eric Tomasi, Project Manager, FERC, which did not provide any real answers.

Comments from the Press and Public - None

Recognitions, Resignations and Retirements

1. National Public Works Week (May 15–21, 2016)

Submitted by Public Works Director Kyle Fox

Town Council to proclaim the week of May 15–21, 2016, as National Public Works Week, and to recognize the contributions that the qualified and dedicated personnel of our Public Works Department make every day for the health, safety and comfort of this community.

Vice Chairman Rothhaus read the following Proclamation into the record:

“Whereas, public works services provided in our community are an integral part of our citizen’s everyday lives; and

Whereas, the support of an understanding and informed citizenry is vital to efficient operation of public works systems and programs such as wastewater collection and treatment, street and bridges, buildings and grounds, transfer station/recycling, equipment maintenance, park and cemetery maintenance, and engineering; and

Whereas, the health, safety and comfort of this community greatly depends on these facilities and services; and

Whereas, the quality and effectiveness of these facilities, as well as their planning, design, construction, is vitally dependent upon the efforts and skills of public works officials; and

Whereas, the efficiency of the qualified and dedicated personal who staff public works departments is materially influenced by the people’s attitude and understanding of the importance of the work they perform,

Now, therefore, We, the Town Council of the Town of Merrimack, do hereby proclaim the week of May 15-21, 2016 as

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“National Public Works Week”

in the Town of Merrimack, and we call upon all citizens and civic organizations to acquaint themselves with the issues involved in providing our public works and to recognize the contributions which public works officials make every day to our health, safety, comfort, and quality of life.

Given under our hands and Seal of the Town of Merrimack this 12th day of May, 2016.”

MOTION made by Councilor Boyd and seconded by Councilor Koenig to proclaim the week of May 15-21, 2016, as National Public Works Week, and to recognize the contributions that the qualified and dedicated personnel of our Public Works Department make every day for the health, safety and comfort of this community

ON THE QUESTION

Vice Chairman Rothhaus thanked the employees of the Public Works Department for their dedication and commitment to the Town of Merrimack.

MOTION CARRIED 6-0-0

Appointments

1. Annual Review with the Planning Board

Submitted by Planning Board Chairman Robert Best

Per Town of Merrimack Charter Section 6-6, at least annually, there should be an annual review with the Planning Board. 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.

Robert Best, Chairman, Merrimack Planning Board, informed the Council in 2015 the Planning Board met 22 times and approved 7 residential subdivisions, which added a total of 78 new residential building lots. In years prior, working backwards, there were 34, 21, and 7 new lots created. Seventy eight in 2015 represents a significant increase. To date, in 2016, there have been 7 subdivisions creating, 11 new lots, and conceptual discussions on 2 others adding a potential for 83 more residential lots.

For industrial and commercial development, in 2015 there were 9 commercial site plans reviewed, 5 industrial site plans, and 1 mixed-use site plan. Among the most notable was the expansion at Anheuser Busch, a retail establishment called Boomer Nashua, AutoFair Volkswagen, and Phase I of the Flatley development, which includes an additional 240 multi-family residential units.

In 2016, there have been 3 commercial and 5 industrial site plans reviewed including an even larger addition over at Anheuser Busch, LaTerrasses restaurant, Prime Alternative Treatment Center, Pennichuck Waterworks, College Bound Movers, and BAE.

Mr. Best commented while preparing his notes he noted the Planning Board has seen quite an increase over past years as the economy improves, but he also believes Merrimack to be well positioned for developers and individuals that are interested in living and doing business in Merrimack. To validate

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that observation he reviewed the annual reports for some of the neighboring towns to see what their planning boards had seen for activity. It fully supports the idea that Merrimack is seeing quite a good bit of development, probably more than our share particularly on the residential side.

In the last year, the Planning Board held a joint meeting with the Conservation Commission during which a presentation was provided by Pete Gagnon about soil science and the importance of understanding soils in terms of loading on a site, e.g., what is too much development, not enough, and the appropriate amount. Mr. Best commented he is not sure he fully grasps all of that science just yet, but it was an important thing to do to understand more about that as well as the priorities and sequencing for how the regulatory process proceeds. The Planning Board has broader authority to have peer review involved in studying those kinds of things than does the Conservation Commission or the Zoning Board of Adjustment (ZBA).

In the last year, Jeffery Sebring was added as an Alternate Member of the Planning Board and Vincent Russo, Jr. was added as a full member. Tom Mahon is the Council representative. At present, the Board has 1 open alternate slot.

Mr. Best noted this year his term and those of Alastair Millns and Nelson Disco are up for reappointment. All three are willing to be reappointed if the will of the Council.

Master Plan implementation is the activity the board needs to do more of, outside of the regular site plan and subdivision review. Mr. Disco looked through the Master Plan, which was adopted at the end of 2013, to see where we are supposed to be at this point. There are quite a few areas needing attention, some of which are questions for the Town Council.

Some of the ones the Planning Board should look at, most of which are concepts that would be incorporated into the Planning & Zoning regulations, Site Plan and Subdivision regulations or the Zoning Ordinance: 1) consider allowing mixed-use in the D.W. Highway corridor, 2) allowing higher density in the north and south ends of the D.W. Highway, 3) adopt zoning for access management on the D.W. Highway, 4) develop village nodes on D.W. Highway, 5) improve design standards for landscaping and site design, 6) develop access to the Merrimack River, 7) consider accessory apartments, 8) encourage mixed-use infill on D.W. Highway, 9) consider architectural design standards in the Town Center, 10) amend the subdivision checklist for stormwater recharge, 11) consider open space residential development, 12) consider minimizing disruption of natural vegetation, 13) consider limiting removal and export of top soil, 14) consider encouraging the use of native plantings, 14) consider limiting the use of salt and deicing compounds, 15) review ordinances for allowing mixed-use, and 16) develop Town-wide pedestrian and bike plans.

Matters for consideration by the Town Council include: 1) consider property tax exemptions for certain energy systems, and perhaps 2) to establish a process for a different kind of capital reserve planning.

There have been some zoning ordinances the Planning Board has looked at adopting. There was a U.S. Supreme Court decision dealing with signs and the regulations of signs. Our ordinances, along with most municipalities, regulate signs based on what they are for. You might say that a sign for selling plants in the springtime by the Garden Club has certain rights and permissions and a sign for the Boys

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Scouts or signs for elections are treated a little differently. The Supreme Court's decision basically determined that all of that is regulating speech based on its content and all of that is impermissible. The Director of Community Development, Tim Thompson, has received advice from the Municipal Association and other sources to figure out what we do about that, and has proposed some ordinance changes, which will eventually make their way to the Council.

There is also a new State law that deals with accessory dwelling apartments (in-law apartments) and doing those a little differently. Merrimack has been pretty free and open with allowing those with a Special Exception by the ZBA in most situations with some standards. The law doesn't necessarily dig too deeply into what we have been doing, but there are some changes that had to be adopted one of which is we had previously required an in-law apartment to be occupied by family members of whoever is occupying the main house. That is one thing the Statute will not allow; you can't restrict who occupies that apartment. There are some other standards about the relative size of the two buildings, whether they are attached, etc.

Director Thompson has been working for a long time considering ideas of what can be done with the Zoning Ordinance to encourage redevelopment in redevelopment zones. That is an idea that is only in its infancy at this time.

Separate from the Planning Board, the Nashua Regional Planning Commission (NRPC) has adopted a regional bike and pedestrian plan. Their bike plan includes suggested routes along the D.W. Highway and secondary routes along Continental Boulevard. They are working to inventory the usability of those areas as they are configured today. It is believed they will bring forth ideas to share with the Planning Board that would then be shared with the Town Council. Mr. Best remarked with respect to pedestrian plans he has been told the NRPC defers to the Town since pedestrian travel or lack of pedestrian travel is more of a local and less of a regional town-to-town issue.

There are also a few legislative changes at both the State and Federal level that reflect some of the planning issues we have in Merrimack. The State Senate has adopted a Bill, which creates a study committee to consider whether the State's Ten Year Transportation Plan needs to include what are called complete streets, which is a function that allows the streets to be used by vehicular traffic, bicycles, and pedestrians. Complete streets is a little bit of a hard thing to wrap your mind around in a brief period of time because there isn't a fixed design to say this is what one looks like. It is what it needs to be based on the situation, but it is intended to create safe ways for the roads to be used by everyone that needs to use them.

There is a Federal law called the Fast Act, which is reauthorization of their transportation plan, which also includes funding to add pedestrian and bicycle ways into federally funded street projects.

The Planning Board continues to have somewhat of a dysfunctional approach to sidewalks because the subdivision and site plan regulations require them virtually everywhere unless the applicant requests a waiver. That has created some problems albeit manageable ones; the applicant has to request a waiver and the Planning Board has to determine whether there is sufficient reason to support a waiver based on the statutory criteria allowed to be used. The Planning Board would prefer to scale back the approach so that the Town is not requiring sidewalks everywhere, and create a more rationale plan. However, sidewalks as a concept haven't enjoyed the support of the Council in the past. There hasn't

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been any progress on the front to reshape the approach to regulating sidewalks. If the will of the Council to revisit that decision at some point, the Planning Board would be glad to bring that issue before the Council formally and provide additional details.

Councilor Flood commented when an exemption is provided for sidewalks there is often a payment in lieu. She questioned how the amount is determined. Mr. Best responded the way the regulations are currently written, the Planning Board can allow an applicant to deposit some money in a fund in exchange for not building sidewalks along the front of their property. The regulation suggests the Planning Board is somehow the nexus of making decisions about how to put that money to use for pedestrian functions within the general area impacted by that developer's project.

Mr. Best commented part of what the Planning Board was looking to determine was what does it mean when the regulation says the Planning Board makes decisions because the Planning Board doesn't expend money, doesn't appropriate money, doesn't have projects, hire contractors, etc. When asked, he stated the funds are held by the Town, and then after a period of time because there aren't any sidewalk projects going forward and there hasn't been support for the sidewalk projects from the Town Council, the money is returned to the developer. One of the projects has had their funds returned and another probably will very shortly.

Assistant Town Manager/Finance Director Micali stated the language regarding how long funds will sit is written in by the Planning Board. Councilor Flood questioned if there is an inventory of those funds. Mr. Best stated there have been only 2 projects (Dunkin Donuts and Atrium Medical on Continental Boulevard). He believes one to have been in the ballpark of \$50,000 and the other a lesser amount. He stated his belief the smaller amount has been returned.

Councilor Flood questioned if it would be too cumbersome to notify the stakeholders, e.g., boards, commissions, committees, when funds are about to expire. Mr. Best responded he does not believe that would be too cumbersome; however, what is really needed is some mechanism to do something other than that with the funds. Since the money hasn't been able to be spent the Planning Board just doesn't approve those anymore, and the applicant isn't able to even ask for payment in lieu of because the answer from the Planning Board is that would just be an exercise in futility.

Vice Chairman Rothhaus asked for clarification the reason the Planning Board wouldn't have the Maquet Getinge Group or at the time, Atrium, do the sidewalk was just because there was not, in the foreseeable future, a connection. Mr. Best responded some of it was the lack of a foreseeable connection and with Maquet they have some topographical challenges with where a sidewalk would be placed, how much of that is the State's Right-of-Way, how far back from the road it would be, etc. Also with that one, if you are looking at Continental Boulevard and you start by Shaws and head towards the Outlet mall, there is a sidewalk that runs down the south side until about the address of 25 or 30, which is about half way to the Outlet Mall. If you were able to utilize funds you could start continuing that along and eventually have a full connection from that Exit 11 to Exit 10. When the Outlet Mall's second phase comes through part of what the Planning Board has told them is not only do they have to have internal sidewalks, but they would have to have connections between their internal sidewalks and away for people to get out of their site to go wherever it is they want to go. Those sidewalks would be connectable there. But again from the Planning Board's standpoint if the

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Outlet Mall were to say why don't we give you the money and you do it, we don't pursue that anymore.

Alastair Millns, Secretary, Merrimack Planning Board, commented there is the minor problem of if you build a sidewalk, after a short period of time the Town has to plow it. He stated past Liaisons from the Council have indicated a concern regarding the investment necessary for the equipment used to clear sidewalks.

Mr. Best stated there is an inventory of existing sidewalks (26 miles in Merrimack), which is more than Bedford and other neighboring towns. Vice Chairman Rothhaus commented he has learned through previous discussions that if you have a sidewalk you are supposed to plow it, which surprised him as he believes the Town has a policy that dictates which sidewalks would probably be neglected all winter because they were of lesser importance than areas around the schools, downtown, etc.

Mr. Best stated there is a U.S. Supreme Court decision, which people tend to believe is a State Supreme Court decision that deals with the Americans with Disabilities Act, and governs this notion of plowing sidewalks. He suggested it would be worthwhile to get some feedback from legal counsel or the Municipal Association. Councilor Boyd requested and Mr. Best agreed to provide the Supreme Court citation.

Councilor Boyd questioned if the NRPC's bike and pedestrian plan is more conceptual or if they have offered any specific design or engineering for configuring our roadways for such access along the D.W. Highway or Continental Boulevard. Mr. Best responded they have not presented any engineering concepts to the Planning Board. They have created this regional plan, which has tried to lay out where bike lanes ought to be. They are treating sidewalks and bike lanes differently. The perception is that establishing bike lanes is a matter of striping on the roadway rather than actual construction of various things. Generally speaking if you ride up D.W. Highway you will see quite a bit of area where there is a lot of pavement width, a great deal of which is not used. It wouldn't be very difficult to create the width needed for a bike lane. Councilor Boyd remarked he would agree with that as far as Continental Boulevard and outside of the urban compact on the D.W. Highway. Inside the urban compact on the D.W. Highway there would be an issue. Mr. Best noted the NRPC doesn't do anything other than plan and share ideas, e.g., they don't have any regulatory authority to do anything themselves or to make communities do anything.

Councilor Vaillancourt stated an interest in hearing the Planning Board's ideas regarding sidewalks. She stated her support of planning for sidewalks and bicycles. If the Town does not study and plan for such things it won't move forward with any of that work.

Councilor Vaillancourt spoke of the amount of work that went into the Master Plan. She commented in her years of volunteering, it has been her experience a lot of times an incredible amount of work will be done in the creation of a plan that ends up being shelved. That discourages people from participating in such endeavors. She thanked Mr. Best for reminding the Council of the work needed on items called out in the Master Plan. Mr. Best noted it was Mr. Disco who spurred that activity.

Mr. Best questioned how the Council would like the Planning Board to proceed with regard to Councilor Vaillancourt's request to bring forward information relative to sidewalks. Councilor

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Vaillancourt stated she would speak with the Town Manager and the Chairman of the Town Council, and someone would get in touch with the Planning Board.

Public Hearing - None

Legislative Updates from State Representatives - None

Town Manager's Report

Assistant Town Manager/Finance Director Micali stated the water line project to the Function Hall at Wasserman Park is now complete. New insulation will be put on the exterior walls of the basement next week. Twenty two windows will be installed in the building in the next few weeks, which will make the Function Hall much more energy efficient. This work will be completed before the end of June. The last remaining piece of the Function Hall renovations is the sprinkler system. A vendor has been identified, and the Finance Department is in the process of negotiating a contract. It is hoped that work will also be completed by the end of June.

Consent Agenda - None

Old Business

1. Wasserman Park Function Hall Rental Discussion [Follow-up from the March 24, 2016 Town Council Meeting]

Submitted by Parks and Recreation Director Matthew Casparius

Town Council to review, discuss and consider the approval of the application / fee structure for the use of the Function Hall at Wasserman Park as a rental facility.

Matthew Casparius, Director, Parks and Recreation, spoke of having been before the Council at the end of March. At that time, questions were asked that required further review. The first was in relation to whether or not the Function Hall could be rented during evening hours. The Town's Administrative Code, Chapter 142, §142-2 states: "No person may occupy, remain, stay or loiter upon any restricted recreational areas prior to ½ hour before sunrise or ½ hour after sunset, except under the direction of or with the written permission from the Town Council, the Town Manager or his designated agents. (This provision shall in no way be intended to preclude authorized and regularly scheduled activities or events from occurring outside of the prescribed times)." Director Casparius stated when he met with the Town Manager on this issue, they were of the opinion a rental would qualify as an authorized or scheduled activity.

He suggested all that would be required is an affirmative vote of the Council that Function Hall rentals are considered an authorized activity. He noted when the facility was previously rented it was rented at night; however, there were never any hours identified with the rentals.

The second question related to alcohol and whether the desire was to allow alcohol consumption in rentals. Chapter 142, §142-7 states in part: "With prior written permission of the Town Council or its designee, alcoholic beverages may be consumed in predesignated areas."

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If the will of the Council to allow for this, what would be needed is an affirmative vote that alcohol may be consumed inside the Function Hall with the Town Manager serving as the person to grant that approval for alcohol at an event given the likelihood such approval may be needed outside of the Council's regular meeting schedule. As mentioned at the last meeting, an event with alcohol would be required to hire a licensed caterer or bartender who is authorized by the New Hampshire Liquor Commission to serve alcohol at an offsite venue, and that caterer or bartender must also provide the Town with a Certificate of Liability Insurance naming the Town as an additional insured.

Assistant Town Manager/Finance Director Micali stated alcohol would only be allowed in the Function Hall, and could not leave the building. Director Casparius stated the Police Department would be notified of any rentals where alcohol was involved.

Vice Chairman Rothhaus questioned if a bartender would have to be hired for the instance of a family get together where the desire was to bring a cooler of the local beverage. Director Casparius stated that was the feeling. Councilor Flood noted she was a member of the committee, and it is her impression the committee felt the bartender would be aware of the laws. She commented people are used to remaining indoors at an event where alcohol is served. Director Casparius stated that requirement to be similar to the policy the O'Leary Center has in place. Councilor Dwyer stated the same types of restrictions are placed on events conducted at the VFW. He added many felt this was a little controversial, but the fact is if you want to rent it for weddings, etc. you would have to allow for this use. However, it is a privilege, and if someone does not want to rent under the restrictions imposed then they don't rent the facility. The rules are in place for the safety and wellbeing of everyone.

Councilor Boyd questioned if the Function Hall has a deck, and was informed there is an attached porch, which is enclosed and has a locked door. Councilor Boyd noted the language in Chapter 142, §142-7 states "...may be consumed in predesignated areas", and questioned how you go about predesignating areas, e.g., is signage posted, etc. Assistant Town Manager/Finance Director Micali responded there are two things that will happen; we will ensure the bartender is aware alcohol is not supposed to leave the four walls of the Function Hall, and Director Casparius will make it known when the renter signs the application that the Town is allowing alcohol to be served at the Function Hall under the identified conditions; however, alcohol is not to leave the Function Hall, and should that occur more than once, the Police would be asking the bartender to pack up and leave. He reiterated use of the Function Hall is a privilege, and that privilege is located in a public park.

Councilor Boyd suggested it would be worthwhile to place signage internally and externally stating no alcoholic beverages beyond this point. Assistant Town Manager/Finance Director Micali stated that could be done. Vice Chairman Rothhaus commented that would imply you are allowed to have alcoholic beverages. If signage is to be used, it has to also include language pertaining to proper authority for alcoholic beverages on the premises.

Councilor Flood commented on the proposed \$50 fee for the use of the kitchen, and stated the O'Leary Center does not permit use of the kitchen. It is a catering kitchen; you bring the food there. She suggested the opportunity to utilize the kitchen at the Function Hall is a huge advantage for that facility. Director Casparius commented the thought behind a separate fee for use of the kitchen was for the turning on of the freezers, using propane gas, etc.

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Councilor Vaillancourt commented liquor liability is not something we, as a municipality, want to be dealing with. Having the licensed bartender is absolutely the way to deal with that. She suggested the possibility of putting signage up before and taking it down after events. With regard to the kitchen, she noted allowing that use does open the Town up to liability.

Director Casparius remarked all renters, regardless of whether or not alcohol is being served, are required to have general liability insurance. They can get that through their own insurance carrier or through Primex.

Councilor Koenig stated Director Casparius' notes clearly indicate a \$50 security deposit is not believed to be sufficient, and questioned if that amount should be increased when use of the kitchen is involved. Director Casparius stated the \$50 fee for use of the kitchen is in addition to the cost of renting the Function Hall itself. There is language within the application regarding replacement of damaged property, etc. The \$50 would cover minor damages. He questioned, if the rental cost for a three-hour period is \$125.00 do you then also ask for a \$300 deposit. The Committee went back and forth with regard to that knowing any damages would be billed. Councilor Koenig commented billing the individual(s) for the damages and having the money on hand to cover those expenses are two different things. He suggested \$50 for the kitchen and an additional \$50 for the security deposit might be reasonable.

Director Casparius remarked in the community he worked previously, they had an outdoor picnic pavilion that would be rented out 96 times a year or so, and perhaps once a year there was the need to retain the security deposit. Councilor Vaillancourt commented the \$50 security deposit will probably ensure the key is returned. Councilor Boyd stated his opinion a \$50 security deposit is too low.

MOTION made by Councilor Boyd and seconded by Councilor Dwyer that rental of the Function Hall is an authorized event for evening hours, and that the Town Manager or his/her designee be authorized to sign the Rental Agreement on behalf of the Town.

MOTION CARRIED 6-0-0

MOTION made by Councilor Boyd and seconded by Councilor Dwyer to authorize the Town Manager to grant approval for alcoholic beverages to be served at the Function Hall

ON THE QUESTION

Councilor Flood questioned if the Town Manager's approval would be required for each instance, and was informed it would.

MOTION CARRIED 6-0-0

MOTION made by Councilor Boyd and seconded by Councilor Dwyer to approve the application for the use of the Function Hall at Wasserman Park and the Rules and Regulations surrounding rental of the facility

ON THE QUESTION

Approved: May 26, 2016

Posted: June 3, 2016

Councilor Koenig noted the third bulleted item under Rules and Regulations states the need for a Certificate of Liability Insurance naming the Town of Merrimack as additionally insured; however, does not identify an amount; whereas the bullet addressing general liability does.

Assistant Town Manager/Finance Director Micali stated the need to repeat the language relative to limits. When asked if there could be insurance policies that encompass both, he responded the first policy would be provided by the individual(s) renting the facility and the second from the bartender/caterer.

Councilor Koenig questioned if a number should be identified prior to the vote or if that should be left to the Town Manager to describe what the best number should be. Assistant Town Manager/Finance Director Micali stated that they could look to Primex to identify the proper limits.

AMENDED MOTION made by Councilor Boyd and seconded by Councilor Dwyer to approve the application for the use of the Function Hall at Wasserman Park and the Rules and Regulations surrounding rental of the facility with the understanding that the Rules & Regulations will be amended to include language regarding the limits of liability coverage for the Licensed Caterer or Bartender for events wishing to have alcohol present, in accordance with the advice of the Town's Liability Insurer, Primex
MOTION CARRIED 6-0-0

Director Casparius informed the Council, without any advertising, he has 7 people waiting to rent the facility.

New Business

1. Merrimack Rocks [Rescheduled from the April 28, 2016, Town Council meeting]

Submitted by David McCray

To review 2015 Merrimack Rocks and to update the Town Council with the details of the upcoming 2016 Merrimack Rocks event.

Mr. David McCray stated on September 24, 2015 the 3rd Annual Merrimack Rocks event was conducted. Phil Straight and Chief Joe Devine were honored. The event featured music, bungee trampoline jumping, and a good deal of food. Attendance at the fireworks exceeded 5,000. It is during the time leading up to the fireworks that attendance tends to increase. Efforts to bring people to the event earlier in the day consisted of giveaways, e.g., glow sticks, footballs, flashlights, etc. That definitely brought in more children than previous years.

Mr. McCray remarked his least favorite aspect is when contributors either are unwilling or unable to follow through with promised contributions. The budget for the 2015 event was \$16,000. Pledges totaled \$16,000, the majority of which have been paid. There were a few miscommunications. When all of the dust settles total contributions received should be in the area of \$15,000. Mr. McCray commented the event has had years that resulted in overages and years where there were shortages. They will look to gain back this year what was anticipated but not received for last year's event.

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Mr. McCray spoke of there being both repeat and new contributors for last year's event. It is a very safe family event, and the Police have indicated they don't run into issues. He thanked the Merrimack Business Association whose members perform the necessary work of putting this event on.

This year the event will recognize an individual who is not a politician or former Police Chief; however, is someone who has helped the community.

The Shotz Band will not be able to make it this year. Mr. McCray will be reaching out to the Miners, a band he has heard of for years, to see if they have an interest in performing.

The 2016 event will be conducted on September 24th, and have a budget of \$12,000 - \$16,000. The majority of the budget will be expended on fireworks and entertainment.

Councilor Koenig questioned the date of the Business Expo. Mr. McCray spoke of 2016 being the 10th year of that event. He stated his belief the move to the High School may not have been the best idea as less attendance was seen. Mr. Shaw has stated a plan to bring the event back this year. Traditionally both events are conducted on the same day. Last year a commitment by the organizer that required him to be out of the State was the impetus for holding the events on different weekends. Mr. McCray stated his opinion, overall, having both events on the same day works out well. However, he has not had the opportunity to speak with Mr. Shaw regarding his plans for this year's event.

2. Donations to the Parks & Recreation Department Scholarship Fund

Submitted by Parks and Recreation Director Matthew Casparius

Town Council to consider the acceptance and expenditure of a donation in the amount of \$550.00 from the American Camp Association and a donation in the amount of \$200.00 from the Merrimack Sno-Buds for the Parks and Recreation Department to allow low income Merrimack families the opportunity to go to summer camp, pursuant to RSA 31:95-b and Charter Article 8-15.

MOTION made by Councilor Boyd and seconded by Councilor Koenig to accept and authorize the expenditure of a donation in the amount of Five Hundred and Fifty Dollars (\$550.00) from the American Camp Association and a donation in the amount of Two Hundred Dollars (\$200.00) from the Merrimack Sno-Buds for the Parks and Recreation Department to allow low income Merrimack families the opportunity to go to summer camp, pursuant to RSA 31:95-b and Charter Article 8-15

ON THE QUESTION

Councilor Boyd thanked the American Camp Association and the Merrimack Sno-Buds for their generous donations to the summer camp program, and voiced his hope Director Casparius will follow-up with a letter of appreciation.

Councilor Koenig questioned if the Camp Participation Agreement from the American Camp Association is a standard form the Town has been signing, and was informed it is.

MOTION CARRIED 6-0-0

3. Donation Acceptance for Parks and Recreation Department

Submitted by Parks and Recreation Director Matthew Casparius

The Town Council to consider the acceptance and expenditure of a donation of \$600 from the Merrimack Lions Club to the Parks and Recreation Department to sponsor two free movie nights in the park this summer for the community, pursuant to RSA 31:95-b and Charter Article 8-15.

MOTION made by Councilor Boyd and seconded by Councilor Dwyer to approve the acceptance and expenditure of a donation in the amount of Six Hundred Dollars (\$600) from the Merrimack Lions Club to the Parks and Recreation Department to sponsor two free movie nights in the park this summer for the community, pursuant to RSA 31:95-b and Charter Article 8-15

ON THE QUESTION

When asked if the program is new, Director Casparius responded it is. The Parks and Recreation Department had two movies nights on its own last summer. Michelle from the Lion's Club contacted him, and asked if the department would be putting on movie nights again. When informed there was money in the budget for 1 movie night, she stated her belief the Lion's Club would be interested in helping the department do more than 1. She got back to him with a donation of \$600, which would cover the cost of two additional movies. When asked what \$300/night covers, Director Casparius stated it covers the cost of the movie's licensing fee, which is required for a public performance.

Last summer's events were at the Abbie Griffin Park. With power available onsite and increased visibility, Watson Park is being considered for this summer's events. The following schedule is planned: Friday, June 17th, Star Wars, The Force Awakens, on Friday, July 15th Finding Nemo, and on Thursday, August 25th Minions.

MOTION CARRIED 6-0-0

4. Sponsorship Acceptance for Parks & Recreation Department Movie Night

Submitted by Parks and Recreation Director Matthew Casparius

Town Council to consider the acceptance of an offer from I Heart Media to sponsor our Community Movie Night in the Park planned for Thursday, August 25, 2016. They would provide for all of the costs associated with this event including movie screen, movie, station personality and all marketing materials, pursuant to RSA 31:95-b and Charter Article 8-15.

MOTION made by Councilor Boyd and seconded by Councilor Dwyer to accept an offer from I Heart Media to sponsor our Community Movie Night in the Park planned for Thursday, August 25, 2016. They would provide for all of the costs associated with this event including movie screen, movie, station personality and all marketing materials, pursuant to RSA 31:95-b and Charter Article 8-15

ON THE QUESTION

Director Casparius stated the event was already planned and budgeted for. About a week after the Department was contacted by the Lion's Club, I Heart Media, which is also part of Kiss 108 out of Boston, called the Department and said they're sponsoring movies throughout their listening area this

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summer on Thursday nights in Massachusetts and New Hampshire, and they would love Merrimack to be one of the ones they come to. I Heart Media is not making a monetary contribution, but instead will provide all of the supplies, popcorn, etc. The end result is the Town gets to have three movie nights this summer without incurring the cost of any.

When asked, he stated the personality is not yet known. Vice Chairman Rothhaus commented the event will be marketed in a larger area, which will likely result in greater attendance. He questioned if police details should be contemplated. Director Casparius stated the conversation can take place. If the cost of a police detail were not covered as he suspects it would not be, that could be paid for out of the Department's budget for the event.

When asked if the August event were being planned for Watson Park given the possibility of larger turnout, increased traffic, etc., Director Casparius stated that to have been his plan. When asked he stated the event dates would have to be rescheduled in the event of inclement weather. Councilor Koenig spoke to the issue of a police detail noting a concern with large crowds and pedestrian traffic across the D.W. Highway. Director Casparius suggested another option would be for the August event to be held at Abbie Griffin, which would be tighter in terms of space, but would provide for additional parking.

Vice Chairman Rothhaus stated he is in favor of the offer and is appreciative of it, but is not sure what type of crowd to anticipate. He suggested once the Director has a better idea of the level of participation that has been seen in other communities putting on similar events with similar media coverage, the appropriate location for the event and whether or not a police detail is necessary can be better understood.

MOTION CARRIED 6-0-0

5. Third Quarter Financial Update

Submitted by Finance Director Paul T. Micali

Finance Director Paul Micali will review the key financial information of the quarter ending March 31, 2016.

Assistant Town Manager/Finance Director Micali provided a PowerPoint presentation. He spoke of the significant vacancies the Town has had in the Police Department, Fire Department, and the position of Director of Public Works all of which correlates into savings in salaries, health insurance benefits, etc. Neither the snow nor sand and salt budgets were depleted in FY16 as was the case in prior years.

The Town experienced another strong year in motor vehicle registrations. Building permits have increased in FY16. Projected revenue will be exceeded in both areas. The Town may also see some interest income for the year.

With regard to health insurance, the current FY16 expenditure is \$2,314,964.33. The comparable period in FY15 was at \$2,281,496. These numbers are well within the projection for the fiscal year. Due to the vacancies experienced in FY16, a savings is expected at fiscal year-end.

With regard to costs associated with the New Hampshire Retirement System (NHRS), FY16 is the first year of the new rate. For Group 1, Police, and Fire, the cost, as of 3/31/16, was \$1,486,233.92. The

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comparable period for FY15 was \$1,448,567.88. Despite the savings in personnel dollars, the NHRS had a significant increase in FY16. The rates for FY17 will level off. Every two years the rates are set. This year is the first year of the new rate. Next year the rate will remain the same. New rates will be in place in FY18.

When asked, Assistant Town Manager/Finance Director Micali stated in FY16 the Town is paying approx. 29% of salary for employees of the Fire Department, about 27% for employees of the Police Department, and for all other employees in Town (Group 1) approx. 11.77% of salary. There was an approx. 25% jump in rates from the prior year. There looks to be another significant increase in FY18. That information will be known by October of 2016.

The overtime comparison showed an increase in the overtime of the Fire Department, which was discussed at length during the budgeting process. There is a slight increase in the overtime in the Police Department (due to being short staffed); seven officers have been hired this year and three are currently in the Academy. Until those officers are trained and let out on their own, there will be an increase in overtime.

Vice Chairman Rothhaus stated a desire to be provided with information pertaining specifically to the amount of overtime incurred because of those empty positions. Councilor Koenig requested information be provided regarding savings resulting from positions going unfilled so that the difference between salary savings and overtime can be identified. Assistant Town Manager/Finance Director Micali stated he reviews that very information, and stated there is a significant salary savings in comparison to what has been paid out in additional overtime.

The amount of overtime in the Highway Department significantly reduced due to the more favorable winter conditions. The Solid Waste Department has an overtime expenditure of \$41,268.35 (as of 3/31/16) in comparison to the expenditure for the same period in FY15 of \$44,505.51. Assistant Town Manager/Finance Director Micali noted if the department brings anyone in on a Saturday (from the Highway Department), which is their busiest day of the week, they are paying 100% overtime for that individual. The overtime reflected is not necessarily overtime they are expending on their staff, it is supplementing staff hours due to vacation, sick, personal leave, etc. He noted there was a vacancy in the department for a period of lengthy illness.

Assistant Town Manager/Finance Director Micali provided information on natural gas usage. He noted earlier in the week PSNH identified their rates for the upcoming fall; 10 cents/kw for municipalities. Prior to December of 2015, the Town signed up for a two-year contract at 7.3 cents/kilowatt. That rate is locked in until December of 2017.

With regard to electrical, kilowatt usage is down in part because of the favorable weather conditions of this past winter. Assistant Town Manager/Finance Director Micali noted the cost associated with street lights has increased. He and Kyle Fox, Director, Public Works Department, are looking at an LED project. PSNH has offered a rebate, and other costs associated with LED streetlights are being looked at. Some of the surrounding communities have switched to LED streetlights. The experiences of these other communities are being reviewed. The difference between high pressure sodium lights and LED lights is high pressure sodium lights hit up and reflect back down (lose wattage by the reflection coming back down) where an LED light can be placed where desired and the kilowatt usage

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is a lot less. The downside is the Town would own the fixture. There is the potential for significant savings.

It was noted when considering options such as solar power, the rate could be impacted, and the contract for the locked in rate could be nullified. The reason the Town currently receives such a favorable rate is due to the wastewater department's kilowatt usage and the amount of natural gas used in the composting facility. The question was asked, and the answer provided that the School District has its own contract.

Expenses associated with natural gas have reduced from the same period in FY15 due to the calm winter. In addition, the Town has a favorable contract for natural gas (\$0.89 - \$0.90/therm range). Councilor Koenig clarified the charts identified actual usage not dollars.

The revenue comparison chart identified an increase in revenue generated from auto registrations, building permits, and interest-pooled cash. Assistant Town Manager/Finance Director Micali commented the increase in auto registrations is related new and used car purchases.

Assistant Town Manager/Finance Director Micali stated his expectation there will be a surplus in appropriations as well as a surplus in revenue at fiscal year-end.

Councilor Koenig requested clarification on the stated increase in contributions to the New Hampshire Retirement System noting the chart provided does not indicate a large increase particularly in comparison to this time two years ago when a very large increase was seen. Assistant Town Manager/Finance Director Micali noted the increase was lessened by savings resulting from vacancies in both the Police and Fire Departments.

Minutes

Approve the minutes from the Town Council meetings of April 28, 2016.

The following amendments were offered:

Page 4, Lines 19 and 40; add "No other nominations were offered."

Page 8, Line 7; replace "follow" with "to file"

Page 8, Line 11; add quotation marks around the word "road"

Page 12, Line 31; replace "is" with "if"

Page 12, Line 33; delete "their" and add "of the MVD" after "behalf"

Page 16; replace "Quinby" with "Quimby"

MOTION made by Councilor Boyd and seconded by Councilor Dwyer to accept the meeting minutes of the April 28, 2016 Town Council meeting of as amended. MOTION CARRIED 6-0-0

Comments from the Press - None

Comments from the Public - None

Comments from the Council

Councilor Boyd commented on having received an invitation from the Reeds Ferry School PTO to attend their Annual Art Exhibit and Ice Cream Social on May 26th at the Reeds Ferry School between the hours of 5:15 p.m. and 7:30 p.m.

Councilor Boyd commented during the conversation around the rules for the use of the Function Hall, it dawned on him that when he joined the Council in 2011 he doesn't think he ever would have thought he would see the day that Wasserman Park would have grown as it has in such a short period of time. He spoke of the amount of time, effort, and money the Council has expended from a policy perspective, and, with the hiring of Matt Casparius as Director of the Parks and Recreation Department, what has come to fruition in terms of quick progress.

He commented the fact the Council was having a healthy discussion of how the facility should function was a great moment not only for Director Casparius, but for the Council and the community as a whole.

Councilor Vaillancourt stated during the Conservation Commission's meeting of May 2nd, the Commission engaged in discussion of the NED Pipeline. The Commission was in the process of writing a letter to the FERC regarding the lack of need. Legal counsel had indicated those types of letters from conservation commissions were having an impact. The Commission will seek legal advice on how to proceed, e.g., actions to be taken moving forward. Councilor Vaillancourt stated her expectation that advice will be available for presentation to the Commission at its meeting on May 16th.

Councilor Flood noted she and her husband had the opportunity to drive by Camp Sargent the previous week, and noticed a large number of cars parked in the area. They decided to investigate further, and went into the camp to find 150 volunteers from Fidelity painting, staining, refurbishing, repairing, raking, erecting a teepee, etc. These people volunteer each year. She commended them for the hard work and contribution to the community.

Councilor Flood spoke of the volunteer efforts of Pete Gagnon who visits Watson Park from time to time to prune the shrubbery. She thanked him for volunteering his time and energy to perform that activity.

Councilor Koenig stated the Planning Board met on May 3rd. There were only 2 minor subdivisions on the agenda. The ZBA had granted waivers on density and things of that nature. One of the projects is on the border with Amherst. Neither was overly significant except that one adds three housing units onto a lot, which might not normally have been allowed; however, the ZBA had approved it, and the Planning Board did its best to ensure it was as good as it could be.

The Planning Board will not meet in the coming week as there were no agenda requests. Councilor Koenig remarked there was so much activity last year that he is curious as to the impact things like the proposed NED pipeline and the PFOA issues are having on future development in Merrimack. Approval has been gained for the development up near St. Gobain, but he is not sure those 240

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apartments will get shovel in the ground any time soon given the current state of affairs. He stated his belief the PFOA is reaching in many different aspects of our lives.

Adjourn

MOTION made by Councilor Boyd and seconded by Councilor Koenig to adjourn the meeting.

MOTION CARRIED 6-0-0

The May 12, 2016 meeting of the Town Council was adjourned at 9:34 p.m.

Submitted by Dawn MacMillan