

Approved: October 13, 2016

Posted: October 17, 2016



Town Council Meeting Minutes

Thursday September 22, 2016, 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 Rothhaus, Councilor Boyd, Councilor Dwyer, Councilor Flood, Councilor Koenig, Councilor Mahon, Town Manager Eileen Cabanel, and Assistant Town Manager/Finance Director Paul Micali.

Pledge of Allegiance

Chairman Harrington led in the Pledge of Allegiance.

Announcements

Merrimack Rocks, an event to celebrate Merrimack and its citizens will be held on Saturday, September 24th from 4:00 - 8:00 p.m. at Watson Park.

The 10th Annual Merrimack Fall Festival and Business Expo. will be held on Saturday, October 1st from 10:00 a.m. - 2:00 p.m. rain or shine at the James Mastricola Upper Elementary School located at 26 Baboosic Lake Road. Over 100 businesses, organizations and crafters will be on hand to show citizens from all over New Hampshire what Merrimack and surrounding communities have to offer. Admission is free.

Regular meetings of the Town Council will be conducted on Thursday October 13th and October 27th at 7:00 p.m. in the Matthew Thornton Room. The November and December meetings will be conducted on the 1st and 3rd Thursday of each month.

Merrimack Police are hosting Coffee with a Cop on October 7th at the brand new Fig & Olive at the Residences at Daniel Webster at 246 D.W. Highway. Join them for coffee and conversation; no agendas, just an opportunity to meet, greet and speak with officers about anything you bring to the table.

Perfluorooctanoic Acid (PFOA) Information Update

Chairman Harrington read into the record the letter received from Jake Leon, Director of Communications, Department of Health & Human Services:

"I am writing to confirm that the New Hampshire Department of Health and Human Services (DHHS) has received the Merrimack Town Council's request that DHHS conduct a random blood sampling of Merrimack Village District (MVD) customers.

I am pleased to inform the Merrimack Town Council that DHHS has finalized a blood testing program to assess perfluorochemical (PFC) exposure to residents served by the Merrimack Village District (MVD) public water system.

DHHS began developing a program, to randomly sample MVD customers since it was first proposed by Merrimack Town Council Member William Boyd during a meeting convened by Governor Maggie

Approved: October 13, 2016

Posted: October 17, 2016

Hassan in April 2016. DHHS, at the request of the Merrimack Town Council and in coordination with the Governor's office, will conduct a limited community exposure assessment by testing blood (serum) of randomly selected households in the MVD public water system.

DHHS is conducting the MVD PFC Community Exposure Assessment to inform residents, State and local officials, and MVD about PFC exposure in MVD customers. Based on currently available data, MVD water supply wells are monitored for PFCs, and concentrations of Perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) in the tap water are expected to be below the Environmental Protection Agency's Lifetime Health Advisory Level of 70 parts per trillion. It is the Department's goal that the MVD Community Exposure Assessment will provide residents with information about approximate levels of PFC exposure in the community, which could partly be associated with drinking water exposure.

Attached to this letter is the final protocol for the MVD PFC Community Exposure Assessment, which outlines the sampling program, and describes the random sampling process. DHHS will begin sending letters of invitation to randomly selected MVD customers the week of October 3, 2016, to inform them about the process to participate in the random blood sampling program. DHHS will continue to send letters of invitation to MVD customers until 200 individuals are enrolled in the community exposure assessment.

Once the Merrimack Town Council has received and reviewed the attached document, DHHS representatives would be pleased to present the MVD PFC Community Exposure Assessment during a Town Council meeting."

Also received was an explanation of the assessment. The DHHS will utilize the Town's GIS system to enroll the first 100; will send out letters instructing residents if interested in participating to respond either online or call the number that will be included within 30 days. After the initial 30 days they will seek additional participants. Participants will receive individual test results at the completion of the program, and a summary of the community's results will be shared with participants and the public.

Chairman Harrington noted all of the documents would be posted on the Town's website.

Councilor Mahon questioned if the DHHS would look at other environmental variables. Chairman Harrington stated the questionnaire has not been provided as of this time. Receipt is anticipated. Councilor Mahon remarked there are a lot of items in an individual's home, car, etc. that would result in exposure to these kinds of substances.

Town Manager Cabanel stated she questioned what the questionnaire would include as it would be indicative of what they will be looking for and making allowances for. She was informed it is not yet finalized, but is being worked on.

Chairman Harrington thanked the DHHS for the quick response, and their offer to appear before the Council to provide an explanation of the assessment. A request will be made for representative(s) of the DHHS to appear before the Council to provide additional information once the questionnaire is developed.

Comments from the Press and Public - None

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, commented when last before the Council there was concern over low membership on the EDCAC. Membership was down to 3, and has increased to 6.

In the past year, one of the activities of the EDCAC was to act as a sounding board and review team for Jillian Harris, Planning & Zoning Administrator. Ms. Harris participated in the UNH Economic Development Academy, and her project for that was to start a development guide for Merrimack. It was something the EDCAC had been talking about doing. Feedback was provided on the initial draft guide. Once completed, it will serve as a great tool.

Last year the EDCAC had opted to move to a 5 meeting/year schedule adding on meetings as needed. An unscheduled meeting was conducted this month to get the next project up and running and another is scheduled for November. The current project is conducting a business survey. A survey was done in 2009 to gain a feeling of what the business community was made up of and what they saw as positives and negatives in the Town. The current survey was suggested by a new member, and will look at the level of awareness local businesses have of the tools available to them, e.g., Town's website, staff in the Community Development Department, regional resources, etc. The EDCAC will look to see what can be done to increase awareness.

The business survey is expected to go live the day of the Fall Festival. Information will be handed out at that time. Emails will be sent out as well.

In November David Preece, Executive Director/CEO, Southern New Hampshire Planning Commission, will provide a presentation on livable communities.

Ms. Lee remarked the EDCAC was asked to look into the New Markets Tax Credit Program, which is a program run by the Federal Government. A pool of funds is available for use in underutilized areas, designated by the results of the incomes of the last census. Merrimack just barely qualifies with a zone from the north end of Town to the south end of Town along Route 3. The program is fairly convoluted, and requires a lot of maneuvering. The amount of funds available is limited, and the competition is great. Ms. Lee noted she spoke with Jack Donovan, Executive Director, Business Finance Authority. Although he does not oversee the program, he did state, because of the competition and the fact that Merrimack just barely qualifies, it would be highly unlikely, if there were any funds available, that Merrimack would be considered. Given the fact that every time the EDCAC

Approved: October 13, 2016

Posted: October 17, 2016

membership looked at the program more questions arose, as a committee, they have decided to leave it where it stands.

Councilor Mahon stated he spoke with Mr. Donovan who provided him with the minutes from the last board meeting. He complimented Mr. Donovan on the article that appeared in the Union Leader on the program. He has had discussions with a few people regarding sidewalk issues, which tied into the opportunities available for methods of allowing pedestrian movement. Mr. Donovan informed him someone was coming in from his organization to explain this to the EDCAC in the near future. Ms. Lee stated Mr. Donovan would be attending the November 9th meeting.

Town Manager Cabanel commented she has spoken with two of the larger businesses in Town that are expanding in other communities, and was informed they are experiencing an issue with identifying the technical talent to fill those slots. She suggested making Merrimack more livable would attract individuals with the desired skillsets.

2. Annual Review with the Zoning Board of Adjustment

Submitted by Zoning Board Chairman Patrick Dwyer

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.

Patrick Dwyer, Chairman, Zoning Board of Adjustment (ZBA), stated from July 1, 2015 through June 30, 2016, the ZBA had 58 Petitions. Of those, 43 were Variances, 10 Special Exceptions, 2 Equitable Waivers, 1 Appeal from an Administrative Decision, and 2 requests for re-hearing. Of the 58 petitions, 51 were approved and 7 were denied for various reasons.

The ZBA has 1 open alternate position.

Public Hearing

1. Public Hearing – Acceptance of Donation for Merrimack Police Department

Submitted by Lieutenant Denise Roy

The Town Council will hold a public hearing to consider the acceptance and expenditure of an anonymous donation in the amount of \$14,500 for the Merrimack Police Department to be used for the purchase of tactical vests to be placed in the marked and unmarked cars that the Police Department utilizes, pursuant to RSA 31:95-b and Charter Article 8-15.

Lieutenant Denise Roy stated the request to be for acceptance of an anonymous donation in the amount of \$14,500 to be used specifically for tactical vests.

On Saturday, February 27th, Ashley Guindon, a 2005 Merrimack High School graduate started her first shift as a Prince William County Police Officer in Virginia. Shortly into her first shift, she, her field training officer, and a backup officer responded to a local residence for a domestic disturbance. Unbeknownst to the officers, the male party within the home had just shot and killed his Wife all while their small child was watching. When the officers approached the door they were met by the suspect who was armed with a rifle. Shortly after their initial contact with him, he opened fire on the officers

Approved: October 13, 2016

Posted: October 17, 2016

striking all three of them. Although Ashley received a fatal gunshot wound, she still directed the young child who was near the father away from the home, potentially saving his life.

After the funeral services for Ashley, Lt. Roy and Chief Doyle were approached by a Merrimack resident who wished to make a donation in Ashley's memory. The donor wanted to purchase some type of equipment that would help protect officers. After discussing several options, she, Chief Doyle, Lt. Tarleton, and the donor determined that tactical vests, ones which would help protect the officers against higher-caliber weapons such as the one that killed Ashley, would be the most effective tool. Although Ashley's life may not have been saved that night by the tactical vests, giving the officers more protection, more of a chance of survival in the event that they do come face-to-face with an armed assailant could mean the difference between life and death.

The tactical vests that have been chosen are meant to be in addition to the current ballistic vests worn by the patrol officers. The current vests do not protect against rifle rounds or higher caliber rounds. These vests would be placed in each one of the vehicles (15).

Lt. Tarleton provided a demonstration of how quickly the vests can be put on, and allowed members of the Council to touch the vests to better understand how it is not practical to wear them during an 8-hour shift.

The department has had vests of this type for some time, but they are older, much harder to maneuver in, harder to get on, and do not have the pouches the new vests will provide.

Lt. Roy remarked it is important for the community to understand who Ashley was and why this donation means so much to the department. Ashley graduated from Merrimack High School in 2005, attended Embry-Riddle Aeronautical University in Daytona, FL where she received a Bachelors Degree in Aeronautical Science, served in the Marine Corps Reservists where she was involved in aeronautics and the mortuary affairs office. She volunteered at a suicide prevention program and local pantries. Her high school motto in the year book was live for something rather than die for nothing. In her short years, she led a remarkable life. The donor wrote in a letter Ashley was an extraordinary individual, and her heroic service to her community will never be forgotten. She was a strong, caring, and compassionate young woman that was compelled to help people of all walks of life. Ashley had a generous heart, and knowing that I am doing something to honor her memory gives me comfort to be able to touch someone else's life in a positive way.

Lt. Roy, on behalf of the Chief, thanked the donor who believes in keeping the officers safe so that they can go home to their families at the end of their shift; something Ashley's family will never have the opportunity to know.

Councilor Flood questioned what other equipment is used to protect officers beyond the area covered by the vests. Lt. Tarleton responded with regard to the legs there is not much. They have ballistic helmets in the cars. The only other equipment they presently have in the cars is the older vests, which will be replaced with the new vests.

Councilor Koenig stated his appreciation for the donation. He questioned the likelihood an officer would take the time to put on such a vest when responding to a domestic dispute. He asked if the vests would only be useful when there is a known shooter. Lt. Roy responded to say that the vest would be

Approved: October 13, 2016

Posted: October 17, 2016

put on for every domestic call is unrealistic. However, the department does receive a lot of domestic calls where they know there are weapons inside the home. Knowing that, an officer is likely to put the vest on. She noted officers frequently go to calls of armed suspects, barricaded suspects, etc., which would be other opportunities to utilize these vests.

Councilor Dwyer stated his appreciation for the donation. He expressed concern related to the coverage area of the vests. Lt. Tarleton commented the current vests are so bulky it makes it difficult to get to duty gear, e.g., draw pistol, reload, etc. He noted the State Police just ordered 250 of the newer vests because they see the benefits. The new vests would be an upgrade from what the officers currently have.

Councilor Dwyer questioned if the wearing of vests is dictated by policy or a matter of officer preference. Lt. Roy stated all patrol officers, when in uniform, must wear a vest, which is dictated by policy.

Chairman Harrington declared the Public Hearing open at 7:53 p.m.

No public testimony was offered.

Chairman Harrington declared the Public Hearing closed at 7:54 p.m.

MOTION made by Councilor Boyd and seconded by Councilor Mahon to approve the acceptance and expenditure of an anonymous donation, with thanks and gratitude, in the amount of Fourteen Thousand Five Hundred Dollars (\$14,500) for the Merrimack Police Department to be used for the purchase of the tactical vests to be placed in the marked and unmarked cars that the Police Department utilizes, pursuant to RSA 31:95-b and Charter Article 8-15. Furthermore that the Town Manager and/or her proxy be authorized to sign any and all documents necessary to accept the donation. MOTION CARRIED 7-0-0

Legislative Updates from State Representatives - None

Town Manager's Report

The Function Hall at Wasserman Park is now available for private rentals. The Hall features a small commercial kitchen and then two different rooms that are available for use. Rentals are accepted on a first come/first serve basis. For complete details on the facility including pricing options, visit the Parks & Recreation Department website at www.merrimackparksandrec.org or call them at 882-1046.

Consent Agenda - None

Old Business - None

New Business

1. Donation Acceptance for the Merrimack Police Department

Submitted by Captain Peter Albert

Approved: October 13, 2016

Posted: October 17, 2016

Town Council to consider the acceptance and expenditure of a donation in the amount of \$5,000 from the Rotary Club of Merrimack to the Police Department to be used towards the purchase of a new Police K-9 and formation of the new team, pursuant to RSA 31:95-b and Charter Article 8-15. The Merrimack Rotary Club has further applied to the Rotary International for a \$5,000 grant to be used towards the new K-9 unit expenses.

Captain Peter Albert stated during the initial verbal discussion he had believed the grant total to be \$10,000; \$5,000 from the Merrimack Rotary Club and \$5,000 from the Rotary International, which they were applying for. He received a letter from the Rotary President indicating it is \$2,500 from the Club and they are applying for \$2,500 from the Rotary International through a grant. He apologized for the confusion.

Captain Albert remarked the Rotary Club came forward and asked what they could do with the process of the purchase of the K-9. The department is grateful, and the donation would be very helpful to the K-9 unit. When asked, he stated the new Shepherd was picked up the prior week. He is now with his handler, and they begin the Boston Police Department's Patrol Dog Academy on Monday. It is a ten-week course. Following that will be about a month off, and the dog will then go to drug detection school, which is a six-week program. The dog will then be acclimated in working with Sgt. Walters and Gunny for a period of time, and then Gunny will retire and the new K-9 will take over. The handler named the dog Dallas in honor of the officers who recently died in the line of duty in Dallas.

Derek Edry, Nashua Telegraph

Asked for clarification \$2,500 has been received from the Rotary Club and an additional \$2,500 is being sought.

Captain Albert responded the Rotary offered to make the donation of \$2,500. They are applying to the Rotary International for a grant. If approved, an additional \$2,500 would be donated.

Councilor Flood questioned the entire cost of the process of getting the new K-9 on duty, and was informed the K-9 cost was \$7,000, the handler's home had to be outfitted with a portable kennel, a kennel and a pen had to be provided at the house, and there are medical and insurance costs. The actual physical exam that was done by Mercy Hospital was at a cost of \$1,300. In addition there is the cost of training; the Patrol Dog Academy is \$1,500, the Drug Detection Academy is another \$500, and then there is a list of items that need to be purchased including equipment for the officer.

MOTION made by Councilor Boyd and seconded by Councilor Rothhaus to approve acceptance and expenditure of a donation in the amount of Two Thousand Five Hundred Dollars (\$2,500) from the Rotary Club of Merrimack to the Police Department to be used towards the purchase of a new Police K-9 and formation of the new team, pursuant to RSA 31:95-b and Charter Article 8-15. Furthermore that the Town Manager and/or her proxy be authorized to sign any documents necessary to accept and expend. MOTION CARRIED 7-0-0

2. Donation Acceptance for Merrimack Parks and Recreation Department

Submitted by Parks and Recreation Director Matthew Casparius

Town Council to consider the acceptance and expenditure of a donation in the amount of \$400 from the Merrimack Lions Club to the Parks and Recreation Department's Camp Scholarship Fund

which allows low income Merrimack families the opportunity to go to summer camp, pursuant to RSA 31:95-b and Charter Article 8-15.

Town Manager Cabanel stated a donation has been made by the Merrimack Lions Club to the Parks and Recreation Department's Camp Scholarship Fund.

MOTION made by Councilor Dwyer and seconded by Councilor Boyd to approve the acceptance and expenditure of a donation in the amount of Four Hundred Dollars (\$400.00) from the Merrimack Lions Club to the Parks and Recreation Department's Camp Scholarship Fund which allows low income Merrimack families the opportunity to go to summer camp, pursuant to RSA 31:95-b and Charter Article 8-15. MOTION CARRIED 7-0-0

3. Consideration of Proposed Zoning Ordinance Amendments [First Reading]

Submitted by Community Development Director Tim Thompson

The Town Council to consider the proposed Zoning Ordinance amendments regarding accessory dwelling units and signs (Sections 2.02.1 and 17), as supported and recommended by the Planning Board, pursuant to RSA 675:2 and Charter Article V.

Tim Thompson, Director, Community Development, stated the Planning Board has recommended changes to two sections of the Zoning Ordinance. The first is Section 2.02.1, which deals with accessory dwelling units. The State Legislature approved a significant change to how communities now are allowed to treat accessory dwelling units. It changes the way that we have to look at and address how they are approved here in Merrimack. Towns can no longer restrict occupancy of accessory dwelling units to family members only. They cannot be restricted based on family relationship anymore per the new Statute.

In addition, in the 2013 Master Plan, the Town also looked at accessory dwelling units as something that should be changed to make it a more attractive alternative type of housing unit that is an easy way to help address some of the requirements of the State's workforce housing laws without having to do significant wholesale changes to the Town's ordinances. What is proposed is that there be two separate processes; one for the traditional accessory dwelling unit that is attached inside the house, doesn't change the appearance of the home, looks like a single-family home; they would no longer have to go to the ZBA to get a special exception for those. They would be approved administratively by the Community Development Department and the Building Department as long as they meet certain criteria.

The other would be a conditional use permit process, which would go to the Planning Board rather than the ZBA. Those would be for any detached accessory dwelling.

Changes are also proposed within Section 17, which is the sign ordinance. The department is not looking for significant substantive changes to the ordinances. What the department is doing is reacting to and addressing the requirements from a U.S. Supreme Court case that came out of the State of Arizona, and requires municipalities to ensure they are not basing any restrictions on the content of the signs.

A comprehensive evaluation of the ordinance was conducted with the assistance of legal counsel to look at, in particular, those signs that don't require permit currently, but there were all kinds of different requirements based on what was in the signs. Significant changes have to be made to ensure any content bias is removed from within the ordinance and regulations.

Chairman Harrington requested an example of what might have been restricted, that no longer can be. Director Thompson responded there were previously about 28 different sub-sections to the section of permit not required. If the proposed amendments are approved, there will be 9. As an example, a contractor job sign; if in a residential district a particular size was allowed, if in a commercial district a different size sign was allowed.

The Supreme Court decision in *Reed v. Town of Gilbert* basically states you cannot make distinctions based on the message of the speech. In the case the Gilbert, AZ sign code placed stricter limits on temporary event signs but freely allowed ideological and political signs despite the fact all of these types of signs have the same effect on traffic safety and community aesthetics.

In the proposed amendments, the department looked to eliminate, wherever possible, anything that could be construed as a content based restriction.

Vice Chairman Rothhaus used the example of the State Farm sign on Naticook Road, and questioned if that could be restricted. Director Thompson suggested if the Council has specific concerns about particular changes to how signs are handled, that they be addressed separately from this exercise. This exercise is purely to ensure the Town is complying with the Supreme Court case. He remarked any time a sign ordinance update is done it will be controversial. To do it properly takes 12-15 months and requires involvement by the Planning Board, the Council, EDCAC, the business community, legal counsel, etc. It is a wide range of people that need to be brought to the table in order to get some agreement on what should be done.

Councilor Boyd questioned Section 2.02.1 (e), which states: "The ADU shall not exceed 1,000 square feet in area." specifically if that is a cap. Director Thompson stated that to be part of the new Statute. When asked how they arrived at 1,000', he stated they looked back at what the Town has typically looked at for special exceptions going before the ZBA (allowed to do up to 25% of the gross living area). Generally speaking they are usually on either side of 1,000 sq. ft.

Councilor Boyd questioned how the language under Section 2.02.1 (g), which states: "The property owner must occupy one of the two dwelling units" is enforced. Director Thompson stated that is part of the State law. In order to an ADU you have to commit yourself to living in one of the units. The Legislature doesn't want these to turn into absentee landlord situations where someone is renting both the house and the ADU and not living on the property. We are requiring the recording of a new restrictive covenant. Previously the restrictive covenants dealt with family relationship. Legal counsel has stated those to be invalid under the new State law, and cannot be enforced. The new covenant will say you can do an ADU, but you can't convert your property into a condominium or other form of ownership. It needs to be recorded along with the conversion that you now are committed to remaining as a single-family home with an accessory dwelling unit with an owner occupying one of the two units. The restrictions don't technically go into effect until June of 2017.

MOTION made by Councilor Koenig and seconded by Councilor Dwyer to move to Public Hearing the proposed Zoning Ordinance amendments regarding accessory dwelling units and signs (Sections 2.02.1 and 17), as supported and recommended by the Planning Board, pursuant to RSA 675:2 and Charter Article V. MOTION CARRIED 7-0-0

4. Request to Create a New Position of Assistant Maintenance Manager in the Wastewater Division of Public Works

Submitted by Assistant Director of Public Works / Wastewater James E. Taylor

The Wastewater Treatment Facility has evolved into a highly complex system of sophisticated controls and equipment. This position fills a need to repair and maintain the equipment, provide coverage in the absence of the Maintenance Manager, provide training to staff, and potential for promotion to the Maintenance Manager position.

Town Manager Cabanel spoke of significant upgrades to the equipment at the Wastewater Treatment Plant. In order to retain employees that are being trained on this very specific equipment, there is the need to have a different position that would be well-trained and more sophisticated in terms of specific types of equipment. That is what the request is about.

Kyle Fox, Director, Public Works Department, remarked that is the primary focus for the request. An additional component, much like the larger companies in Town that are having trouble attracting and retaining specialized skill help, the wastewater plant has the same problem losing help to Nashua, Manchester, and other larger communities. We train them and then they leave to go elsewhere.

James Taylor, Assistant Director, Public Works/Wastewater, stated the treatment plant began in 1970. In the beginning it was a very basic three-shift facility with 28 employees. Over time, through automation, computerization, that changed to a single shift with 21 employees.

Mr. Taylor spoke of having worked with Town Manager Cabanel and the Human Resources Manager, Sharon Marunicz, to identify an appropriate labor grade that is believed will attract someone with the skill level being sought. The position would be a bridge between the Maintenance Manager and the Maintenance staff so that it is primarily a working position, but would have the ability, if the Maintenance Manager is on vacation, etc., to fill in to order parts, provide training to the existing staff, etc.

MOTION made by Councilor Mahon and seconded by Councilor Boyd to adopt the creation of a new position of Assistant Maintenance Manager in the Wastewater Division of Public Works as presented. MOTION CARRIED 7-0-0

Councilor Dwyer noted the recommended labor grade for the position is grade 13 with a salary range of \$21.36/hr. to \$30.33/hr.

MOTION made by Councilor Mahon and seconded by Councilor Boyd to reconsider. MOTION CARRIED 7-0-0

MOTION made by Councilor Mahon and seconded by Councilor Boyd to adopt the creation of a new position of Assistant Maintenance Manager in the Wastewater Division of Public Works at a grade 13 and a salary range of \$21.36 to \$30.33/hour. MOTION CARRIED 7-0-0

5. Drought Press Release

Submitted by Town Council Chairman Nancy Harrington and Vice Chair Finlay Rothhaus
Town Council to consider proposed press release related to further water restrictions.

Chairman Harrington spoke of a State-wide phone conference conducted on September 16th with participation from representatives of the Town, MVD, and state officials to discuss the drought emergency across the state. During this conference the State of New Hampshire recommended increased water conservation measures.

There have been and will continue to be major financial issues with farmers; especially dairy farmers. A 20-80% crop loss is projected. Dairy farmers have been particularly hit because they are using up all of their feed. They normally have a second growing season, which they have not been able to do. They will have to purchase feed for the winter months. Some private wells have already run dry and some fire departments have been trying to help fill them. The State is warning against that citing the possibility for cross-contamination. The National Weather Service sees no changes long-term, and foresees continued drought. At present the State is 16" below normal precipitation for the year. Even if the precipitation occurs during the winter after the ground is frozen, the drought conditions will not be resolved.

Towns are encouraged to establish lawn watering restrictions and emergency water supplies, primarily for private wells. There are State and USDA funds available for those in need to be able to drill their wells deeper.

Chairman Harrington remarked the Council should begin discussions of emergency plans in case the drought continues through the winter, particularly for the private well owners. Another concern discussed during the phone conference was that of wildfire occurrences and the impact of the drought on firefighting capacity and increased labor time and cost.

Following that was a discussion with MVD, which highlighted the desire for the same outcome and methodology. A draft press release was prepared. Chairman Harrington attended the prior Monday's meeting of the MVD Board of Commissioners during which additional wordsmithing was done. Chairman Harrington commented one of the things she learned during that meeting was that bids for the booster to attach to Pennichuck were in. A vendor was chosen, the construction was approved, and it is projected the booster should be installed by the beginning of December. Councilor Mahon noted that is intended to be an emergency source only.

Chairman Harrington read the press release into the record, and noted, if approved, the Press Release would be released the following day:

"On September 16th, Town of Merrimack and Merrimack Village District (MVD) personnel participated in a state-wide phone conference with state officials to discuss the drought emergency across the state. During this conference the State of New Hampshire recommended increased water conservation measures. In support of this recommendation, the Town and the MVD encourage all residents, businesses and industries to use personal water conservation measures."

Approved: October 13, 2016

Posted: October 17, 2016

In addition, the MVD will be instituting further restrictions on outside watering beginning Monday, September 26th, from twice daily to ONCE daily, 5:00-8:00pm ONLY, odd/even days. All Town properties and facilities will abide by these restrictions and recommendations.

The New Hampshire Department of Environmental Services (NHDES) has developed a link for drought information at: <http://des.nh.gov/organization/divisions/water/dam/drought/index.htm>.

Residents are also alerted that continued drought conditions may create supply shortage concerns for winter water availability, especially for users of private wells. The Town of Merrimack and the MVD are strongly encouraging all private well owners to also limit their external watering uses. Private well owners need to be aware that if the drought continues, their well levels may be limited and may create a concern as the winter progresses. We also strongly encourage all businesses and industries to establish water conservation efforts in order to assist the community in meeting their water needs through the winter.

This notice, as well as the NHDES “Drought Emergency in New Hampshire Recommended Measures for New Hampshire Residents” and “2016 Drought Guidance for Homeowners on Private Wells” documents will be placed on the Town of Merrimack (<http://www.merrimacknh.gov>) and Merrimack Village District (<http://www.mvdwater.org>) websites. Updates will be posted as they become available.”

Councilor Dwyer remarked when he first heard of this he felt it was his property, his well, and the State could not tell him he can't water his grass. State Statute RSA 41:11-d I states: “The local governing body may establish regulations restricting the use of water from private wells or public water systems for residential outdoor lawn watering when administrative agencies of the state or federal government have designated the region as being under a declared state or condition of drought.”

Chairman Harrington noted what was being discussed was “strongly recommended” not an actual ban. Councilor Dwyer spoke of the difficulty involved in enforcement. He remarked if a homeowner continues to water his lawn on his private well and it goes dry, that is on him.

Chairman Harrington stated her belief the responsibility of the Council is to do whatever it can to inform the public.

Councilor Flood stated her belief it should be explained to people that it isn't their well. She commented she has an artisan well on her property, but she is drawing from an aquifer. Councilor Mahon commented in order to enforce something like that there would have to be some kind of mechanism in place. With no enforcement mechanism in place, there would be the need for an Ordinance to address this issue.

Councilor Mahon questioned the interest of the Council in banning all outdoor watering at Town facilities and properties, including fields. He commented it was disheartening to arrive at Town Hall to find the parking lot being watered. Councilor Dwyer remarked mid-September most people shut off irrigation systems. If the Town's was on that has to be an oversight.

Councilor Dwyer remarked he would request of the Town Manager that the sprinklers are shut off for the rest of the year. Chairman Harrington stated she has spoken with Shannon Barnes, Chairman,

Approved: October 13, 2016

Posted: October 17, 2016

Merrimack School Board and Director Fox to make them aware of the discussion that would occur, the press release, and to gain feedback. The school had concerns around their fields, and the damage that would be done if they could not maintain them. Director Fox mentioned they already have an agreement with MVD that because their fields are used from 5:00 - 8:00 p.m. in the evening they can water from 8:00 - 11:00 p.m. Chairman Harrington suggested that type of arrangement for the schools as well, which was approved by the MVD. Those would be two exceptions the MVD would be fine with.

Vice Chairman Rothhaus stated agreement with prohibiting watering of Town properties such as the Town Hall complex, Police Department, etc. He agreed it could be detrimental to stop watering playing fields.

Councilor Dwyer questioned the number of ballfields in Town that have sprinkler systems. Director Kyle stated the Town owned fields that have irrigation are Bishop Field, Veterans' Park, Bise Field, Gibson Field, and Reeds Ferry fields. Veterans' Park draws off of Naticook Lake. The lake is pretty low at this point. He could not speak regarding the school fields.

Chairman Harrington stated she spoke with Ron Miner, Superintendent, MVD who provided her assurance if there were an increased concern with water supply he would contact the Council immediately.

Councilor Flood stated her hope those utilizing the fields would minimize watering.

Chairman Harrington stated the MVD would be sending out notices to businesses that are on MVD informing of restrictions. He commented the south end of Route 3 is all Pennichuck.

Vice Chairman Rothhaus remarked should the point come where a ban is necessary, he is not interested in policing that to a hard core extent. Those on private wells should be made aware, and he believes the vast majority will do the right thing. Getting the information out is very important.

Chairman Harrington noted the Town could utilize Nixle to get the word out as well as electronic signs. Town Manager Cabanel noted the new electronic sign has been received. The Town now has two electronic signs that are movable.

MOTION made by Councilor Boyd and seconded by Councilor Mahon to release the Press Release as written. MOTION CARRIED 7-0-0

Town Manager Cabanel noted what is occurring is a State-wide drought emergency situation, and residents need to understand complying with the recommendations is in their own best interest.

Town Manager Cabanel questioned if there was any sense as to how much longer there will be the need to water the fields. Director Fox stated they typically water deep into October. One of the difficulties they have with the ballfields is because they are used so heavily they get very stressed, and the fall season is really the only time they have to get new grass to grow. Given the conditions he understands if that cannot be done this year. He stated the department is prepared to react to whichever direction the Council wishes.

Approved: October 13, 2016

Posted: October 17, 2016

Vice Chairman Rothhaus stated it to be the investment that he is concerned with. He provided the example of his neighbor who has invested in his beautiful lawn, and should water when allowed to during this time. That is the way he sees the Town fields as well, and it is the investment he is concerned with.

6. MS-434 Review

Submitted by Town Manager Eileen Cabanel

Town Council will be presented with the details of the undesignated fund balance as it relates to the 2016 MS-434.

Town Manager Cabanel remarked every year there are several forms that have to be submitted to the State in order to set the tax rate. What was before the Board was the MS-434. Town Manager Cabanel stated the need for a decision to be reached by the Town Council with regard to undesignated fund balance. The communication provided with the agenda identified some of the purposes for an undesignated fund balance. During times when interest is earned on bank accounts, this fund can be a source of revenue that could be used to help offset taxes in terms of interest income.

Bond rating agencies believe it a good guideline that the fund balance be anywhere between 8 and 15% of your annual revenue. The Town has adopted a policy that states the balance will fall within 4 - 8% of the annual revenues or expenditures. That includes the Town's budget plus the net school budget, and the County's budget. All of those figures are added together and multiplied by 4% or 8% to identify where the fund balance should be for the Town.

At one point, the balance was dangerously low (in the 2% range). Over the past 5 years the amount has been gradually increased. This year there were anomalies in the revenues and expenditures whereby some of the revenues came in significantly higher than anticipated and some expenses significantly lower than expected. When there is excess revenue beyond what was budgeted or unexpended appropriations/expenditures, the two of those things come together and are added to the fund balance. The MS-434 provides the opportunity for the Council to make some choices about the level of fund balance that should be retained.

At the start of the last fiscal year, the fund balance was \$5,176,186.68 (approx. 6.6%). During the current fiscal year, because of the anomalies, there were additions to the fund balance. Revenues exceeded budgeted amounts in the areas of Motor vehicle revenue (approx. \$800,000), building permit revenue (approx. \$80,000), Highway Block Grant (\$15,000), interest on investments (\$60,000), and overlay had been budgeted as an offset to expenditures at \$375,000, and it came in \$190,000 less than had been expected to be granted in abatements. That totals approx. \$1.1 million in excess revenues.

In terms of appropriations/expenditures; the Police Department, with a significant number of retirements and new hires coming onboard at lesser salaries, had a savings of \$235,000 \pm , the Fire Department with what has already been taken out for roads, etc. still has another \$18,000 in savings as a result of staff turnover. There was a significant period of time when the position of Director of Public Works went unfilled, which resulted in a savings.

Total added to the fund balance as a result of excess revenue and unexpended appropriations is \$1,498,171.03. The total estimated fund balance as of June 30, 2016 is \$6,674,357.71.

Approved: October 13, 2016

Posted: October 17, 2016

During the budget process, the Council identified \$225,000 of the undesignated fund balance to be utilized for the one-time 53rd week payroll. The projected fund balance for June 30, 2016 is \$6,449,357.71 or 7.19%.

Provided in the communication was information related to the fund balance retention policy and lists of items that have been discussed in the past for which the Council may determine monies from the fund balance could be utilized.

Town Manager Cabanel advised if the Council wished to utilize fund balance for tax relief it should be spread out over a number of years to avoid spikes in the tax rate. Councilor Mahon stated the Town is not permitted, under State law, to have a rainy day fund. The Town cannot set this aside and specifically designate it for property tax relief.

Town Manager Cabanel stated the Council is the body that makes the decision of whether or how to utilize fund balance. She reiterated the fund balance could be utilized to reduce the tax rate or could be utilized on projects that were already planned. Typically the types of expenditures the funds are used for would be one-time costs.

Vice Chairman Rothhaus commented he fully embraced the Ordinance that identified a level of 4-8%. He believes 6% is a reasonable level. He stated agreement with the recommendation that a small portion be utilized to offset taxes for a period of several years. He suggested any decisions to expend funds on planned projects should be discussed during the next budget cycle when it is more likely to become known to the public through multiple discussions, Public Hearing, etc.

Chairman Harrington commented were the decision made to utilize some of the funds to offset a bond for the Highway Garage for example, a Warrant Article would be required. Town Manager Cabanel stated in the absence of formal action by the Council, the year-end fund balance would automatically become part of the fund balance. Were a decision reached at a later time that funds should be used for a project such as the Highway Garage, that item would be brought up to the public with the expenditure to be coming from fund balance.

Town Manager Cabanel noted it is important to understand that many many communities don't have an adequate fund balance. The greatest source of revenue is property tax revenue, which comes in two chunks each year. Meanwhile monies have to be provided to the school. What other communities have to do in order to keep up with the uneven revenue stream is borrow on the short-term (tax anticipation notes). A fund balance can provide a revenue source from interest as well as prevent from having to borrow on the short-term to fulfill financial obligations.

When asked if the fund balance could be drawn upon to cover expenses such as payroll obligations, Town Manager Cabanel stated fund balance is basically determined once a year. You have revenues and expenditures and the cash can be expended, but at the end of the year it all has to come out even.

Councilor Dwyer stated when the law was passed for a range of 4-8% he felt it was too high. When approaching over 7% and keeping \$6.4 million on the sidelines is a number he is not comfortable with. He would like the balance to fall between 5% and 6%.

Approved: October 13, 2016

Posted: October 17, 2016

Councilor Dwyer stated he disagrees with using the fund to reduce the tax rate over a period of several years. Through no fault of anybody, the Town took in a lot more money than was needed from the taxpayers. Part of him thinks it needs to be given back. Were he to make a motion to use \$700,000 or \$800,000 to offset the tax rate, it may have the result of only \$15/mo. on the taxes. To him the important issue is the philosophy behind why he would propose such a motion; we took in more than what was really needed from the taxpayers. Therefore, they deserve to get it back this year not \$300,000 now and \$300,000 next year, etc. He stated he would be in favor of discussing putting the money towards reducing the tax rate over a period of two years, but not beyond.

Vice Chairman Rothhaus stated for him it has always been about stabilizing the tax rate. He would rather not see the spikes. It was noted \$1 million equates to roughly \$0.30 on the tax rate. He had anticipated a discussion of putting \$50,000 - \$100,000 towards offsetting the tax rate.

Town Manager Cabanel commented were someone, such as a bond rating agency, to come in and look at our books, they would be looking for a range of say 8-15% not 4-8%. Eight percent would be considered borderline in terms of a healthy fund balance. She stated she would feel comfortable with putting as much as \$300,000 per year towards offsetting the tax rate.

Assistant Town Manager/Finance Director Micali remarked the big thing is the stabilization of the tax rate. He provided the example of a year when the tax rate was lowered to \$2.42 from \$5.24, and the next year it went back up again. There were residents coming into the office complaining that screwed up their escrow; dropped the tax rate and now the person owes \$1,000 at the end of the year. Stabilization is what he sees as the most important factor.

Councilor Mahon stated the Town did not over collect on the taxpayers of the Town. It was a matter of significant revenues beyond what had been anticipated. Councilor Dwyer remarked he had not intended for his comments to sound that way. Councilor Mahon stated the Town collected exactly what was needed to be collected from the taxpayers in terms of what was needed to operate the Town. What happened at the end of the year was there were other issues that came about, e.g., budget lapses discussed previously and a million dollars in additional revenues.

Councilor Boyd stated his comfort with a fund balance of 6%. The question remains of how to address the additional \$1.5 million. He commented he is of the mindset that the Town has projects in place that should be considered in the January and February timeframe, but there is also an opportunity to stabilize the tax rate. His initial thought was to return \$300,000 - \$500,000 to lower the tax rate, which is anywhere from \$0.10 to \$0.16 off the tax rate.

Town Manager Cabanel stated the addition to fund balance to be approx. \$1.5 million, but \$225,000 was identified for the one-time 53rd week payroll. The remaining balance is approx. \$1,275,000.

MOTION made by Councilor Boyd and seconded by Councilor Dwyer that the Town Council allocate the sum of Four Hundred Thousand Dollars (\$400,000) from fund balance for rate relief

ON THE QUESTION

Councilor Boyd stated that to represent a reduction of \$0.12 on the tax rate. He believes that would provide the level of tax stability the Town Manager and Assistant Town Manager have stressed during

Approved: October 13, 2016

Posted: October 17, 2016

previous budget discussions. Councilor Dwyer stated that to be an amount he believes to be reasonable. Councilor Flood commented in good times you do things that you perhaps can't afford to do when the economy turns. There are projects that are under consideration such as the Highway garage, and she believes it would be a mistake to put some of it back to the taxpayers when it was not an overpayment of taxes that resulted in the fund balance. She commented on the fact the Town is lightly bonded. The Town is a cash-in-hand Town, which is something she believes the community should be very proud of. She stated she would be supportive of putting the entire amount into the fund balance.

Assistant Town Manager/Finance Director Micali stated there to be one taxpayer in town whose tax bill is \$1.7 million. If the instance occurred where that taxpayer did not pay, the fund balance could be looked to as a means of offsetting that shortfall. He commented that taxpayer is the 3rd largest taxpayer in Town.

AMENDED MOTION made by Councilor Mahon and seconded by Councilor Dwyer that the Town Council allocate the sum of Three Hundred Thousand Dollars (\$300,000) from fund balance for rate relief

ON THE QUESTION

Vice Chairman Rothhaus reiterated the funds being discussed were gained through unanticipated revenue. He commented a year down the road when revenues may be less, the offset will be the property tax. That would make it more difficult to maintain the level of fund balance he would like to see. He stated he would not be supporting the amended motion or the main motion as he would like to see a sum closer to \$200,000 be identified for use to lower the tax rate. He added that if he is able to, he would look to follow through with the same thought process in the following year.

Councilor Koenig stated he would be supportive of an amount in the \$200,000 - \$250,000 range.

Councilor Dwyer commented it may be that during this next budget cycle the anticipated revenues from motor vehicle registrations should be increased.

Councilor Mahon commented the way the budget laws in New Hampshire are written and the way they manage the setting of the tax rate and the other issues involving how you handle your money, it is near impossible to do any kind of reasonable projection on revenues.

Town Manager Cabanel stated this past year the Town under-budgeted for revenues on the motor vehicle side in an attempt to be cautious understanding those revenues had gone up significantly and it was unknown if that would continue. For the current budget, Councilor Koenig had suggested an increase in revenue estimate for motor vehicle permits to be closer to actuals. She commented in a situation with an unpredictable number like that, which is based on the economy, the type of deals being offered, etc. it is best to budget cautiously because if those revenues are not achieved it becomes necessary to cut expenditures.

Approved: October 13, 2016

Posted: October 17, 2016

Vote on the amended motion

MOTION CARRIED

4-3-0

Councilors Flood, Rothhaus, and Boyd voted in opposition

Vote on the main motion

MOTION CARRIED

4-3-0

Councilors Koenig, Flood, and Rothhaus voted in opposition

Minutes

Approve the minutes from the Town Council meetings of September 8, 2016.

The following amendments were offered:

Page 2, Line 25; correct the spelling of “Sergeant”

Page 10, Line 22 and Page 11, Line 7; replace “beer” with “bear”

Page 10, Line 27; replace “Boyd” with “Dwyer”

Page 12, Line 46; replace “individuals” with “bureaucrats”

Page 13, Line 1; insert commas around “at no time”

Page 13, Line 9; delete “tell”

MOTION made by Councilor Boyd and seconded by Councilor Koenig to accept the meeting minutes of the September 8, 2016 Town Council meeting of as amended. MOTION CARRIED
6-0-1

Councilor Flood Abstained

Comments from the Press - None

Comments from the Public - None

Comments from the Council

Councilor Boyd spoke of the meeting of the Nashua Regional Planning Commission (NRPC) conducted the prior evening noting one of the developments discussed was a Strategic Plan for the future of the NRPC. Two of the things incorporated into their strategic planning were ideas on promoting economic development and combining transportation monies and working with the Department of Transportation (DOT) and the Southern New Hampshire Regional Planning Commission to create a new body, which would meet to decide each year how those specific monies would be allocated.

Whether or not the DOT buys into this will be contingent on the outcome of a meeting scheduled for September 26th. The NRPC was looking to memorialize the Strategic Plan as presented and he argued successfully that they ought to reach out to the donor communities to have a discussion with the local

Approved: October 13, 2016

Posted: October 17, 2016

legislative bodies about what the Strategic Plan means especially where they would potentially be creating a new body that would have a level of fiduciary responsibility.

There are exceptions to this. The Federal Bridges Program would not be impacted nor would the Federal Highways Program. He was uncertain what monies would be available that would actually impact Merrimack, but has asked Tim Roache, Executive Director to present the Strategic Plan to the Merrimack Town Council in October. He suggested the October 27th meeting date. He remarked it is not that he is against strategic planning, but he did not feel comfortable exercising a vote one way or the other without the Council having an understanding of what the NRPC is trying to accomplish. If you take Nashua out of the equation, Merrimack is the second largest community member.

They are trying to get the Commissioners to report back to their own legislative bodies on the activities of the NRPC. Vice Chairman Rothhaus questioned the number of members Merrimack has on the NRPC, and was informed there are 5. He agreed the Council should receive updates regarding the activities of the NRPC.

Councilor Mahon questioned if the discussion had anything to do with trying to coordinate more local projects through the Ten-Year Plan. Councilor Boyd responded it did not. In fact, it would pull monies from the Ten-Year Plan.

Adjourn

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

The September 22, 2016 meeting of the Town Council was adjourned at 9:47 p.m.

Submitted by Dawn MacMillan