

Approved: April 12, 2018

Posted: April 17, 2018



## Town Council Meeting Minutes

Thursday March 15, 2018, 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 Albert, Councilor Boyd, Councilor Koenig, Councilor Thornton, Town Manager Eileen Cabanel, and Assistant Town Manager/Finance Director Paul Micali. Councilor Flood was excused.

### **Pledge of Allegiance**

Chairman Harrington led in the Pledge of Allegiance.

### **Announcements**

On behalf of the Council, Chairman Harrington expressed condolences to the family and friends of Carsten "Bud" Hahn who passed away on Saturday, February 24<sup>th</sup> at the age of 101. Bud resided in Merrimack for over 50 years. On August 18, 2016, he was awarded the Boston Post Cane as Merrimack's oldest citizen. As a lifelong Boy Scout and attaining the highest rank of Eagle Scout, Bud went on to become a Troop Leader and served as a Scouting Commissioner and Advisor.

*A moment of silence was observed in his memory.*

Regular meetings of the Town Council will be conducted on Thursday, March 22<sup>nd</sup> and April 12<sup>th</sup> at 7:00 p.m. in the Matthew Thornton Room. A Non-Public meeting will be conducted on Thursday, March 29<sup>th</sup>.

Tuesday, April 10<sup>th</sup> is Voting Day. Polls will be open from 7:00 a.m. to 7:00 p.m. at all three polling locations; James Mastricola Upper Elementary School (JMUES), Merrimack Middle School, and St. John Neumann Church. Please contact the Town Clerk's Office at 424-3651 should you have any questions concerning polling location. Information is also available on the New Hampshire Secretary of State's [website](#).

2018 dog licenses are now available at the Town Clerk's Office. Dog licenses are due by April 30<sup>th</sup>. The 26<sup>th</sup> Annual Easter Egg Hunt is scheduled for Saturday, March 24<sup>th</sup> from 10:00 - 11:30 a.m. Due to the significant amount of snow recently received, the event will most likely be postponed into April. A final decision will be made on Monday, March 19<sup>th</sup>. If postponed, a press release would be sent out identifying the new date.

### **PFOA Update**

Chairman Harrington noted receipt of a notification from Clark Freise, Assistant Commissioner, NH Department of Environmental Services, regarding a collaborative Town meeting with the communities of Litchfield, Merrimack, and Bedford relative to the negotiations with Saint-Gobain.

Chairman Harrington spoke of an email received from the New Hampshire Department of Environmental Services (NHDES) that included a copy of a letter from NHDES to Saint-Gobain re:

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Stormwater and Surface Water Investigation Summary Report. The letter has been posted to the Town's website.

Councilor Boyd stated the New Hampshire Drinking Water and Groundwater Advisory Commission met on Monday. Criteria has been created. There is a set of rules in place as well as an application for water authorities or municipalities to use in applying for grants/loans from the trust fund managed by the Commission. A Public Hearing will be conducted on the process and applications on April 18<sup>th</sup> at Hazen Drive, Concord. Additional information will be provided as it becomes known.

### **Highway Garage Project Update**

Assistant Town Manager/Finance Director Micali stated the group met with its consulting team to work on finalizing numbers. Information will be available for the March 22<sup>nd</sup> meeting. Groundbreaking will be delayed due to weather conditions. The desire of the group is to come before the Town Council with a final presentation once all details are known.

### **Comments from the Press and Public**

Wendy Thomas, 10 Wildcat Falls

Stated she has been trying to get PFOA blood concentration work for her entire family. They have lived in their home for 25 years, with contaminated water. She contacted NHDES and was referred to the Department of Health & Human Services (DHHS). She was told, because the residence is over 3 miles away from Saint-Gobain, it is considered outside the zone of contamination. Her well, tested by the State, tested at 45ppt and showed the chemical fingerprint of Saint-Gobain.

Ms. Thomas remarked according to several states, which have lowered their maximum levels due to scientific evidence of danger to children, our water is too dangerous to drink. Her family has purchased bottled water (approx. 25 gal./wk.). If this continues the cost would be approx. \$1,000/year. They have purchased a house filtration system with an RO POU filter at a cost of \$1,100. Replacement filters are approx. \$250. The plumber to install the system will add to the cost. Once installed, the water from the single point of use faucet will be clean.

That still leaves the Town with dirty water. She commented on no longer visiting local coffee shops, drinking water at local restaurants, her daughter brings water to school, etc. She is a private well owner who lives in a Town with contaminated water.

At the recent MVD meeting, she mentioned, as a private well owner, she still pays money to MVD, which makes her a customer. The response had been that is for the hydrants. She noted she still pays a cost. They were happy to take her money, but not to call her a customer.

PFOA concentration is most harmful at lower body weights; particularly affects small animals and affects children. Ms. Thomas stated her belief the MVD is in over their heads and the direction must be changed for the health of the community.

Laurene Allen, 16 French Court

Commented Councilor Boyd had requested the DHHS reach out to the New Hampshire Medical Association. Ms. Allen stated some were invited as stakeholders and some Moms from the Pease site were invited to meet on February 15<sup>th</sup>. Dr. Alan Woolf, Pediatric Environmental Health Unit, Children's Hospital, Boston, attended. She stated her understanding Dr. Woolf is providing consulting services to DHHS.

She spoke of the presentation provided, and noted it took a turn in that Dr. Woolf stated there to be no research, evidence, etc., and presented slides dating back to 2011-2012. She spoke of the knowledge she has gained over the past year, and her awareness the information that was provided in the presentation was not current. She provided examples of reputable sources of information shared over the past year.

A resident with young children reached out to her and indicated she had been referred by DHHS to the Pediatric Environmental Health Unit. Everything went well for several appointments until meeting a particular physician and things took a turn. The resident and her physicians are very informed and were unsettled by the advice, which was given to her and to the New Hampshire Medical Providers Association; since we don't really know what this does to humans, they do not recommend any additional health monitoring, screenings, etc.

Ms. Allen stated the need for someone in leadership to hear what is being said and be aware of the guidance being provided. When asked about her meetings with DHHS, and what their response has been, Ms. Allen stated they nodded. She followed up with an email and provided information, but has not received a response. Chairman Harrington stated the DHHS would be the group spearheading this. Ms. Allen reiterated the need for leadership to be involved. Chairman Harrington agreed noting that is why there are two members of the Town Council participating in the efforts of the group.

#### **Recognitions, Resignations and Retirements** - None

#### **Appointments**

##### **1. Merrimack Village District (MVD) Warrant Articles**

Submitted by Town Council Chairman Nancy Harrington and Vice Chair Finlay Rothhaus Legal Counsel to provide information about the impact of recently proposed MVD Warrant Articles.

Chairman Harrington stated when the Warrant Articles were approved for the Ballot, the Council sought a legal opinion.

Matthew Upton, Esq., Drummond Woodsum, stated he has spent quite a bit of time looking into the Warrant Articles. He has met with Secretary of State's Office on two occasions, earlier in the day he met with legal counsel for the Secretary of State's Office, and he has had lengthy conversations with attorney Gregg Michael, attorney for the MVD.

Attorney Upton stated his belief all parties substantially agree with the remarks he would make.

It is important for all to understand towns and village districts are sub-divisions of the State, and as such are restricted as to what they can do. Those restrictions are usually in the form of enabling legislation; legislation that basically gives permission to towns or village districts to do certain things (control how they operate). In the absence of specific permission in legislation, the presumption is there is no authority to do whatever it is that is not prescribed by law. That is where we run into some difficulty with some of the articles.

**Article 9:** *Shall the Merrimack Village District, effective May 1, 2018, include one Merrimack Town Councilor as a member of then MVD Board of Commissioners, in addition to those elected at the MVD annual meeting, and amend the bylaws to reflect this as applicable.*

Attorney Upton stated the way the law is written all Commissioners for the MVD must be elected at-large. The Statutes that describe the composition of the Commissioners allow for either 3 or 5 members. You cannot simply add another member, which is what the Warrant Article seeks to do. He believes the article to be unenforceable.

He commented they could encourage any Town Councilor to run or could amend the bylaws to add an Exofficio member and amend the Charter of the Town to require the appointment of a Councilor who would serve in that capacity.

**Article 11:** *Shall the district, effective immediately, require that the Merrimack Village District (MVD) cooperatively engage in a transition plan with the Town of Merrimack government (Town Council, Town Manager, and their assigns); to meet all legal and ethical requirements required to both (1.) disband the municipal entity, the MVD, and the Board of Commissioners currently managing the Merrimack, NH water system; and (2.) transfer complete oversight and management of the Merrimack NH Water Municipality, to the Town of Merrimack, NH. The dissolution of the MVD and transfer of responsibilities for, and management of the Merrimack, NH Water Municipality, is to occur on or before April 15, 2019, specific date to be determined by the Town of Merrimack.*

*The transition plan will include immediate and unrestricted access for Town of Merrimack government (Town Council, Town Manager, and their assigns) to any and all MVD sites/facilities/records/activities; and oversight of, all Merrimack water system related matters/ MVD affairs. The expectation is one of complete and thorough transparency into all business matters inclusive of those deemed non-public/ private/ confidential/ and/or any other term used to refer to protected information. This immediate transparency and oversight is to include full disclosure of the records and specifics of any and all legal matters MVD has engaged in, prior, at present, or anticipated; and for the Town of Merrimack, on behalf of its residents, to become a party to any legal proceedings related to Merrimack, NH water which they deem appropriate.*

Attorney Upton reiterated we are only allowed to do that which the Legislature gives us authority to do. There is no Statutory authority that allows the MVD to engage in transition planning with the Town.

The only options available to MVD are to establish a village district or dissolve a village district. There is no ability to engage in a transfer of assets and power to the Town. That does not mean it

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cannot happen; it would require the Town to vote to decide it wants to acquire the assets and take over the responsibility for managing the village district.

Discussed at length was the intent behind the Article. He believes, and Attorney Michael agreed, it is to dissolve MVD. They believe the Secretary of State's Office would honor that intent.

It is clear, through the remainder of the Article, that the dissolution would be contingent upon the Town agreeing to accept ownership and responsibility for operating the village district.

This would require a vote of the Town to agree to accept responsibility for the operation and maintenance.

Nowhere in the Article does it talk about the ownership of the assets of MVD. If it is dissolved, under the Statute, the assets are sold. There would probably be an additional step required; for the Town to vote to acquire the assets of MVD. That could be handled at the same time the Town would be seeking permission to accept operation, management, and control.

Town Manager Cabanel clarified when speaking of the Village District or Town voting on matter(s) what is meant is the voters of the Village District and Town not a vote of the respective boards that represent the voters.

Attorney Upton stated it to be the collective opinion what that would mean, if it passes, there would be a dissolution contingent upon the Town agreeing to accept responsibility for the management and operation of the village district, and the Town would also have to vote to acquire the assets of MVD.

Councilor Albert stated his understanding should the Warrant Article pass, it would become incumbent upon the Town to hold a special election to determine if the Town wishes to accept ownership of the MVD.

Attorney Upton stated a special meeting could take place for that purpose. The Warrant Article, the way it is structured, requires the handoff to occur before April 15, 2019.

Councilor Albert continued the citizens would vote to acquire the MVD. He questioned, if the Town had to purchase the MVD, where the funds would go? Attorney Upton responded he had not yet thought that far ahead and would have to consider that. Normally when a corporation dissolves, the assets are sold to satisfy the debts. He is confident the MVD has some debt, and the purchase price would go to satisfy the debt.

When asked, Assistant Town Manager/Finance Director Micali stated the MVD has outstanding bonds in the area of \$6.9 million, unrestricted net position (fund balance) of about \$7.4 million. Town Manager Cabanel questioned if that includes fixed assets, e.g., current assets versus current debts. Assets are generally valued on purchase price not current value. Assistant Town Manager/Finance Director Micali stated those are not included in the fund balance. Their net investment in capital assets is about \$12 million. The \$7.4 million is in addition to that.

**ARTICLE 10:** *Shall the district require that the Merrimack Village District and any successor organization ensure (1) the delivery of safe, clean and affordable drinking water, in adequate quantity to meet the needs of present and future consumers and (2) take measure for improving water quality including a source based solution for the presence of PFAS chemicals in our water and (3) maintain a focus on minimizing the impact of PFAS chemicals on consumer health in all challenges of water management by utilizing the body of knowledge currently available regarding water standards in other states, water system management and contemporary water technologies.*

Attorney Upton remarked the Article seeks to require the Commissioners to provide better water quality. It is an Article that is trying to tell the Commissioners how to do their job. By law, they are clothed with the authority to operate the MVD, to determine water quality standards to the extent that they exceed State standards. Under the first paragraph, the delivery of safe, clean drinking water is already mandated by State law. It depends on how you define the word clean. Affordable is probably not mandated by State law. These are what is referred to normally as advisory Warrant Articles because Commissioners are not mandated to follow them. Commissioners would be well advised to listen to the people who vote and to honor their desire to improve the water quality of the district. Can you hold them accountable and mandate them should this Article pass; the answer is probably no. The real remedy, if dissatisfied with the water quality standards, is at the ballot box.

Assistant Town Manager/Finance Director Micali noted language in Article 11; “the Town of Merrimack government (Town Council, Town Manager, and their assigns)”, commenting “their assigns” is a very open phrase, and questioned if the Town Council could say we don’t want to take over MVD, but perhaps Pennichuck Water Works or Manchester Water does, and assign the rights to one of them. Attorney Upton responded he had not considered it from that standpoint, but it is a vague term. He suggested it could potentially be constructed that if the Town of Merrimack wanted to assign their interest to a water company, there could be a potential requirement to transition plan with that water company.

Attorney Upton stated it is difficult to interpret the articles because they don’t track the Statute, but he believes the courts would try to honor the intent behind the particular article that seeks to disband the MVD. The word dissolution does appear in the article. He believes they would honor the intent, it would just be subject to the Town voting to accept responsibility and acquire the assets.

He stated his belief the Article really conditions the dissolution itself on the Town taking over. If Another water company were to try to buy the assets it would not fulfill one of the contingencies of the Warrant Article.

Town Manager Cabanel noted April 15, 2019 is only a few days away from next year’s election. She personally would not know how to go about taking over a water company with their assets, liabilities, and potential lawsuits, etc. without some very strong legal advice. If it passes at the MVD someone needs to provide assistance to anticipate something like that happening at the ballot next year.

Attorney Upton commented normally when these kind of sales or acquisitions occur there are significant environmental assessments undertaken. There may even be the need for a remedial action plan to be put in place so that we know what must be dealt with regarding any contamination that

might exist in the wells. It is a lot of due diligence that would have to be done prior to anyone providing an opinion to the Town that would suggest that would be a good idea.

He suggested Petitioners consider amending the Warrant Article to push that date out another year to make it possible for the Town to look into it.

Councilor Koenig questioned what would occur if Article 11 passes the MVD and fails in a Town vote. Attorney Upton responded the MVD would continue to operate as if nothing happened. The dissolution is contingent upon the Town agreeing to take over. When asked, he indicated the State agrees with that opinion.

Councilor Koenig noted Attorney Upton's letter indicated the Secretary of State would go with the intent of the Article. Attorney Upton stated his belief they would; like any State agency they are not in the business of interpreting local warrant articles. They really deal more with elections. They were glad to talk to him about the Commissioners' Article and a bit more hesitant to talk about the dissolution article, but he believes that probably would be their interpretation.

When asked about the timeframe, he stated it is a very compelling set of circumstances. Normally something like this could take 3-5 years. It is more about ensuring everyone understands what the ramifications are. It is the gathering of information that is time consuming. Much of that information may be available right now because of the extensive testing that has already been undertaken. Without seeing those documents and understanding the depth of the inquiry, he is uncertain a year would be sufficient.

Town Manager Cabanel stated this investigation would require not only a good deal of time, but also a great deal of money. The Town would have to take over the entity, their employees, etc. Attorney Upton added there would be the need to hire a forensic auditor to audit all their books, environmental engineers to synthesize all the information that is out there, etc.

Vice Chairman Rothhaus stated his belief if the vote is in the affirmative at the MVD meeting, the matter would likely be on the ballot for the Town's next annual meeting. If the Town vote is in the affirmative, that is when the Town would incur costs.

Chairman Harrington noted information would have to be obtained and presented to educate the public as to the ramifications of the vote. There would be a cost to that.

Councilor Koenig stated his belief it would be difficult to wait until the next election to take any action. Although he agrees the Town should not invest any great amount of funds, he believes the Town would be compelled to at least work with them and understand what is going on. In which case, the Council should probably have something on its agenda relatively soon.

Town Manager Cabanel agreed with the need for factual, detailed data to present to the voters prior to any Town vote. The gathering of that data would be costly. Vice Chairman Rothhaus questioned if a Warrant Article for next year's ballot, if necessary, provide authorization to spend the funds needed to gather that data.

Attorney Upton stated the funding would have to be lined up. That likely means a warrant article to bond the acquisition of the MVD. He stated he would have to look further into how the titles to those properties are held, etc. It is a good deal of work to unravel these situations and determine what needs to be done.

***Chairman Harrington opened the floor for public comment.***

Wendy Thomas, 10 Wildcat Falls

Stated she is with the group that submitted the articles. Regarding the question of the definition of clean water in Article 10, she asked if the Town Council could set a limit for PFOAs in the water, independent of the State.

Attorney Upton responded it is a complicated question because in the State we have the Doctrine of Preemption, and any time the State has what they call a comprehensive legislative scheme, local government is preempted from trying to occupy that same territory. But in certain cases, they have allowed towns to be more restrictive. He stated he would have to look into it to provide better ideas about that.

Town Manager Cabanel stated she wished to be very clear that the Town Council, at this point in time, cannot determine the PFOA limit in the water because it does not own the water company.

Ms. Thomas stated that to be the issue. Regarding Article 11, she requested a definition of the relationship between MVD and Town Council. Attorney Upton stated the MVD and the Town are completely separate legal corporations.

Ms. Thomas stated all that is desired is clean water for the Town, yet it seems to be an impossible situation because one corporation is not working with the other.

Chairman Harrington commented “not working with” is an inaccurate way to describe the relationship. When asked to clarify she stated the two entities are in two different rooms and are not allowed to be in the same room at the same time. It is not as if the two entities are not trying to cooperate. There is no ability to be able to tell MVD what to do and vice versa.

Ms. Thomas stated that is what needs to change. Chairman Harrington stated that to be a different issue. Ms. Thomas stated that to be what the group was trying to get at with the warrant articles.

Attorney Upton stated it is a complicated issue and MVD is working through legal channels to try to resolve it. If not of the belief the Commissioners are adequately representing her concerns that can be addressed at the ballot box.

Councilor Koenig stated his belief the voter list for the Village District and the list for the Town are identical. Any voter in the Town of Merrimack can vote in the MVD.



Wolfram Von Schoen, 4 Conservation Drive

Commented there was talk of budgeting for things that may or may not need to be invested into this transition if there were to be one. He also heard multi-million-dollar numbers for both debt and assets. He stated his understanding the assets exceed liabilities and questioned what would need to be budgeted for beyond legal fees and environmental consultants.

There are expenses that will be incurred for the investigative work, which is an expense that is understood. There is a monetary value the MVD represents which is the total of the assets minus the liabilities. As part of the transition would the Town need to budget for the value of the assets or just the difference between assets and liabilities. Attorney Upton responded whatever the fair market value of the assets is subject to whatever encumbrances exist.

Town Manager Cabanel stated the question to be how does a Town or another entity acquire an entity like MVD. Attorney Upton stated it would be based on the fair market value of the assets. That will take into consideration debt associated with the asset, the asset can be devalued if there is contamination associated with it, the functional value, life of the wells, etc.

Mr. Von Schoen stated at the end there is a certain dollar amount remaining that the MVD, as it is being disbanded, would not own any longer. There is money on the table.

Attorney Upton stated this to be the area where he cannot answer the question as he does not know that. He does not know how they value their assets, if they have taken into consideration some of the issues that might affect the overall value of the enterprise. Until he looks at those figures and understands how they are derived he cannot say there is a positive value there. Based on the balance sheet it sounds like there is, but he cannot say that for certain or that the Town would have to pay that amount to acquire it.

Mr. Von Schoen questioned if any remaining dollars would revert back to the Town. Chairman Harrington stated this to be the kind of discussion that should follow a vote.

Town Manager Cabanel stressed the figures being discussed are derived from a balance sheet and are intended for initial discussion only.

Don Provencher, 6 Wasserman Heights

Questioned if the Town needs to raise money to purchase the assets who receives the funds. Attorney Upton stated it to be a good question, and beyond the scope of what he was asked to look into with regard to the articles.

Mr. Provencher commented if the MVD is in a net positive, it doesn't seem like there would be a cost to the Town.

Chairman Harrington stated the need to separate the two issues; being able to obtain and present the information on how to conduct the process and costs associated with that step and the cost of the entity itself.

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Town Manager Cabanel commented normally if a Town was to take over a utility there would be different constituencies. In this case, they appear to be the same constituencies.

Mr. Provencher spoke of the cost of future improvements and stated his belief there are funds set aside in capital reserve accounts at the MVD. He stressed, if this does pass the MVD, he would like to see the Town hold a special election to address the issue quickly. It was noted permission to hold a special meeting would have to be received from the Superior Court. Under the circumstances, it might fulfill the requirements of the Statute (meets the definition of emergency).

Mr. Provencher stated his belief Pennichuck is a for-profit company. He would prefer to keep the water system in either the Town's interests or that of MVD as it is basically a non-profit.

Dennis Odesse, 9 Forsythia Lane

Asked for clarification if the Town takes over the MVD, the Town then becomes the public utility, and would be under the auspices of the Public Utilities Commission (PUC). Assistant Town Manager/Finance Director Micali stated the Town would not have to go to the PUC, it would be done through the DRA and NHDES.

Mr. Odesse commented if it becomes a Town department, it would have to get in line with the other departments fighting for the same dollars every year.

Town Manager Cabanel stated there to be different kinds of funds. The utility would not have to compete for funding. It would have to come to the Town, but from an accounting perspective it has nothing to do with the property taxes. It is a self-funding entity.

Wendy Thomas, 10 Wildcat Falls

Remarked MVD serves the village not just the Town. She questioned if those customers have a say in this. Attorney Upton stated it depends on whether they are actually part of the district or they are selling water under a private purchase agreement.

Councilor Koenig stated they are not allowed to vote at the MVD meeting. They are customers. Assistant Town Manager/Finance Director Micali stated his understanding there is a meter right at the Town line. Pennichuck owns the rights in Bedford, and Pennichuck buys the water from the MVD.

Chairman Harrington reiterated MVD voting is on Tuesday, March 27, 2018 at JMUES.

## **2. Annual Review with the Highway Safety Committee**

Submitted by Highway Safety Committee Chair / Police Chief Denise Roy

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

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Michael Dudash, Captain, Merrimack Police Department, stated the purpose of the Committee to reduce motor vehicle accidents in the Town. The Mission includes investigating, educating, giving advice and suggestions, taking concerns from the public, and passing on suggestions to the Town Council when needed.

The Committee met last on May 10, 2017. Captain Dudash identified the members of the Committee, which are listed on the Town's [website](#).

Over the past year, there were four matters reviewed by the Committee. One was a complaint made from a resident from Glenwood Drive. When taking Glenwood Drive and using a quick shortcut to Joppa Road there should be a streetlight in the middle of the neighborhood. The Committee reviewed the issue, and felt it did not fit the criteria, e.g., lights at major intersections but not at the middle of the neighborhood.

A second concern was brought by a resident of the Wildcat Falls area. The request was for the Town to erect a stop sign on W. Chamberlain Road near Rutherford Street. The Committee felt the area did not fit the criteria for a stop sign. The Committee understood the concern that it is a blind corner. A request was made of the Public Works Department to look into the potential for placing a double yellow line. The response received was the area did not fit the criteria for that.

Another issue reviewed was more for the Planning Board, and related to the school bus company moving from the south end of Town down to behind the old Zylas. There was some concern expressed by citizens that it could cause backup and blind corners. The concerns were forwarded to the Planning Board via a letter from then Chief Doyle. The Planning Board has since approved that plan.

The last issue, which continues to be reviewed, is exit 13. There is a blind section as you come off the Turnpike, both north and southbound (as the two merge). The Committee continues to request assistance from the State and continues to receive the response that the State has done what it can.

Captain Dudash remarked he met with the State approx. a month and a half ago. They are still listening, but there has not been a lot of action. He stated his belief the State put up a sign coming in from Litchfield to provide advisory and direction into Merrimack. The big push is to get some rumble strips so that if you are coming off the Turnpike northbound traffic can be warned as approaching merge. This issue has been going on since 2013.

Vice Chairman Rothhaus stated Representative L'Heureux met with representatives from the State at the site about a month ago. The State has indicated there is nothing they will do. Councilor Boyd stated that to be contradictory to the information relayed to him that the DOT was contemplating putting signage in that area to get people to slow down getting into that intersection. As far as scaling back the berm or rumble strips, they were not enthralled about that. Signage is still on the table. Vice Chairman Rothhaus remarked a yield sign for the northbound traffic would work. The yield for changing lanes does not do anything. If northbound getting off, you own both lanes north and south.

Captain Dudash stated Chief Roy has acknowledged because of the transition from Chief Doyle, it is important for her to set the next meeting date and readdress some of the concerns of the residents to ensure they are addressed properly; Rutherford Street area and Rutherford Drive.

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Councilor Albert remarked over the years he has continued to ask the question regarding the intersections of Turkey Hill and Baboosic Lake Road, Wire Road and Route 3, and Pearson and Bedford Road. They are angled, almost fork like intersections.

Vice Chairman Rothhaus stated work is planned (90 degree turn). It is just a matter of timing for all three of those areas. Assistant Town Manager/Finance Director Micali stated both Turkey Hill Road and Wire Road are on the Capital Improvement Plan. One is coming up in 2019-2020 and another 2020-2021. The Wire Road intersection has been delayed and the Turkey Hill Road intersection moved up because of the work on the Route 3 bridge.

Councilor Albert spoke of the school bus office and questioned if the Police Department would put together some type of plan for when the office opens on Williams Street to monitor the operation to see if there is an issue. Captain Dudash believed it to be a good idea and suggested it would be a good job for the midnight shift to see how the process works.

Councilor Albert questioned if the Committee is involved in what is occurring with the intersection at Executive Park Drive and Amherst Road. Captain Dudash stated that to be more of the State. However, during his recent meeting with the State, that intersection was discussed at length and the importance of a study being done to look at the impact that will have.

Councilor Koenig noted the Planning Board approved the apartments to go back in that area, which was done after an extensive discussion with the developer who is planning to put in a peer-to-peer signaling system with the assistance and cooperation of the State. The State is very interested in seeing how this particular system functions. It is in operation around the country, but there are none in New Hampshire. The State DOT has asked specifically of the developer to go ahead and install this as they believe it will in fact help this intersection and others in the State. All the reviews done by traffic engineers have indicated this peer-to-peer system will in fact improve the situation even with the apartments planned for the area.

Captain Dudash stated he was assigned by the Chief to express concerns of the development, which included the walking public, bicyclists, etc. A lot of concerns were passed on to the Planning Board.

Councilor Boyd spoke of a letter dated September 23, 2017 from the DOT to Chief Roy that was submitted to the Town Council. The DOT has agreed to configure the lighting system at Executive Park Drive with the rest of that interchange at Greeley Street and Continental Boulevard.

When asked how a citizen goes about contacting the Committee, Captain Dudash suggested contacting Chief Roy.

Councilor Koenig commented the restrictive signs on Woodbury Drive and D.W. Highway were recently taken down. He questioned how that intersection is behaving. Captain Dudash responded, from what he can see, everything is working very well.

## **Public Hearing**

### **1. Public Hearing – 2018 Milfoil Grant Funds for Horseshoe Pond & Naticook Lake**

Submitted by Planning and Zoning Administrator Robert Price

The Town Council will hold a public hearing to authorize the acceptance and expenditure of up to \$9,587 of the grant from NHDES for milfoil control via Diver Assisted Suction Harvesting (DASH) and Herbicide Treatment in addition to the Town's matching share of \$28,761 this fiscal year for DASH and Herbicide for variable milfoil control efforts in portions of Horseshoe Pond and Naticook Lake, pursuant to RSA 31:95-b and Charter Article 8-15.

Robert Price, Planning & Zoning Administrator, stated the Town has been managing Milfoil on both waterbodies annually since 2012. Last year Horseshoe Pond required a pond-wide herbicidal treatment, which brought about positive results. NHDES recommends a second herbicidal treatment be done this coming year as two consecutive years is what is necessary to target the plant. It would be followed up by a hand removal and/or the DASH treatment.

Naticook Lake has been responding well each year to DASH treatment alone. There is a very active group there that monitors. The same course of treatment is recommended there again this year.

NHDES has selected SOLitude Lake Management for the herbicide treatment at Horseshoe Pond and Aqua Logic for the DASH management at both water bodies.

The grant awarded this year is at a 25% matching level, which is down from 30% last year due to an increasing number of applicants as well as rising treatment costs. Merrimack has been awarded \$9,587, which places the Town's share at \$28,761 to be expended from the Milfoil Capital Reserve Fund.

Councilor Albert questioned if this would be an ongoing process or if an end can be seen. Mr. Price stated his understanding from NHDES that it would be an ongoing process as it is an invasive species and adapts very well. Chairman Harrington stated the Town has been told it will never go away; will just be controlled.

Chairman Harrington read the following email from Representative Chris Christensen into the record:

*"Being a member of the New Hampshire Exotic Aquatic Weeds and Species Committee since 2003, I write in support of the expenditure of Town funds and the acceptance of grant funds from the New Hampshire Department of Environmental Services for the purpose of the aquatic invasion species management in Horseshoe Pond and Naticook Lake. These two water bodies are available to all Merrimack residents for recreational purposes, and every effort should be made to maintain the quality of these waters. As a Trustee of the Trust Funds, I note that the Capital Reserve Fund for Milfoil Management as of February 28, 2018 had a balance of \$34,594.06.*

*The New Hampshire House of Representatives is scheduled to meet on March 8<sup>th</sup> to make deadlines so I do not know if I can be at your meeting to personally address this Public Hearing. In my absence, I ask that the thoughts expressed in this letter be entered into the record. Thank you."*

Vice Chairman Rothhaus questioned if a period of reprieve is anticipated following the two-year consecutive treatment. Town Manager Cabanel stated it appeared to her, because of her observations

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of the requests, that you do a couple of years of the herbicidal treatment and then a year or so of just the DASH. She also believes the State determines the processes through the evaluations conducted.

Vice Chairman Rothhaus commented on the fund balance noting an additional \$10,000 would be allocated through the budget process.

*Chairman Harrington declared the Public Hearing open at 8:34 p.m.*

No public comment was offered.

*Chairman Harrington declared the Public Hearing closed at 8:35 p.m.*

**MOTION made by Councilor Boyd and seconded by Councilor Albert to accept and authorize the expenditure of up to Thirty Eight Thousand Three Hundred and Forty Eight Dollars (\$38,384) for the Milfoil Treatment Program at Horseshoe Pond and Naticook Lake of which Nine Thousand Five Hundred Eighty Seven Dollars (\$9,587) is from a grant from the NHDES for milfoil control via Diver Assisted Suction Harvesting (DASH) and Herbicide Treatment and the Town's portion is Twenty Eight Thousand Seven Hundred Sixty One Dollars (\$28,761) to be funded from the Milfoil Expendable Capital Reserve Fund, and furthermore, to authorize the Town Manager or her delegate to execute any and all documents which may be necessary pursuant to RSA 31:95-b and Charter Article 8-15. MOTION CARRIED 6-0-0**

**Legislative Updates from State Representative** - None

### **Town Manager's Report**

The Planning Board granted conditional approval for the site plan of the mixed-use development at Merrimack Park Place near the Merrimack Premium Outlets on March 6<sup>th</sup>. The site plan calls for 372,800 sq. ft. of development including retail, hotel/event center, restaurant, office, and multi-family residential uses in accordance with the mixed-use development Conditional Use Permit (CUP) approved by the Planning Board in 2017.

**Consent Agenda** - None

**Old Business** - None

### **New Business**

#### **1. Sponsorship Donation of Parks & Recreation Department Summer Movie Nights**

Submitted by Parks and Recreation Director Matthew Casparius

Town Council to consider the acceptance and expenditure of a donation in the amount of \$600 from the Merrimack Lions Club to the Parks and Recreation Department to sponsor two Summer Movie Nights in the Park, pursuant to RSA 31:95-b and Charter Article 8-15.

Assistant Town Manager/Finance Director Micali stated this to be the third year that the Parks and Recreation Department is conducting Movie Nights in the park. This year there will be two movies

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sponsored by the Lions Club; Murder on the Orient Express on Friday, June 8<sup>th</sup> and The Lion King on Friday, June 27<sup>th</sup>. The movies will be shown at the Abbie Griffin Park. The \$600 donation covers the licensing fee that must be paid for publicly showing outdoor movies.

**MOTION made by Councilor Albert and seconded by Councilor Thornton 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 Summer Movie Nights in the Park, pursuant to RSA 31:95-b and Charter Article 8-15. MOTION CARRIED 6-0-0**

## **2. Town Treasurer Appointment**

Submitted by Town Council Chairman Nancy Harrington and Vice Chair Finlay Rothhaus  
Town Council to consider appointing the Deputy Finance Director as Town Treasurer, in accordance with RSA 41:26-e, RSA 669:17-d and RSA 37.

Assistant Town Manager/Finance Director Micali stated the Town Charter was changed in April 2017 to allow the Town Council to appoint a Town Treasurer. The elected Town Treasurer's term ends April 10, 2018. He stated the Deputy Finance Director has extensive knowledge having worked with him and the banks in acquiring the best interest rates, etc. Town Code states the Town Council must ask the appointee if he/she is interested in the position, and if that is the case, he/she can be appointed to the position. The recommendation was that the \$1,300 that is paid to the current Town Treasurer be offered as compensation to the appointed Treasurer.

Councilor Albert questioned if the appointment has been discussed with the Deputy Finance Director. It was noted Mr. Tom Boland, Deputy Finance Director, was in attendance.

Councilor Koenig noted the packet includes a new description of the position of Deputy Finance Director. He questioned how much of the responsibilities associated with Town Treasurer is new work the individual would be asked to do above and beyond what the individual already does in oversight of the current elected Town Treasurer.

Assistant Town Manager/Finance Director Micali highlighted the second item listed under duties (if appointed as Treasurer); "Establish and maintain controls on all Town bank accounts, including online access for various users." noting the individual's name would be added to the bank accounts. Signing of checks would be a new function of the position, the individual would have the larger responsibility for forecasting cash flows and increasing the ability to forecast for the purpose of investing excess cash.

Councilor Koenig commented one of the thoughts behind moving to an appointed position was that the Finance Department is already overseeing all the things the elected official did because we didn't necessarily have an elected official who had specific financial background. If appointing the Deputy Finance Director to the position, it does not feel as if there is any added burden on the position. He questioned why the salary would be increased.

Assistant Town Manager/Finance Director Micali stated the individual would be taking the functions away from the Director and would be responsible for them.

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Councilor Koenig stated his belief the responsibilities would be an extension of the job that has been done all along. It had been previously indicated persons holding the position of Treasurer (in the past) didn't do a whole lot and didn't necessarily even come in and look at the books. Previous individuals in that position were paid \$1,300 because that is what the program was. They wrote their name once and it was stamped on every check and things of that nature. It is his understanding that was the extent of the involvement.

Councilor Boyd remarked when the discussion occurred prior to the matter going on the Ballot, there was a consensus for the need to professionalize that position; that by having someone appointed to that position we would have that level of expertise necessary for the person to execute the job as Town Treasurer. We would be increasing the duties of the Deputy Finance Director position, and he does not believe the compensation is unreasonable.

Councilor Koenig stated he would agree if going out and finding someone who wasn't already part of that department because it would give the individual a completely new and different job requirement. He is hesitant to increase the salary of an employee in the Town when he/she would be doing the job that was normally done.

Town Manager Cabanel remarked she often looks at these kinds of things as relating to additional responsibilities. This would put the responsibility on the Deputy Director where previously the ultimate responsibility was on another (such as the Director). She believes it appropriate to compensate the position for the additional responsibilities.

When asked again how many of the 6 responsibilities listed as being associated with the Town Treasurer would be new responsibilities of the Deputy Director, Assistant Town Manager/Finance Director Micali stated #s 2, 3, part of #s 4 and 5, and #6 would be.

**MOTION made by Councilor Boyd and seconded by Councilor Rothhaus to appoint the Deputy Finance Director as Town Treasurer, in accordance with RSA 41:26-e, RSA 669:17-d and RSA 37**

#### **ON THE QUESTION**

Chairman Harrington asked Mr. Tom Boland if he was interested in serving as the Town Treasurer. Mr. Boland stated he was.

**MOTION CARRIED 6-0-0**

**MOTION made by Councilor Boyd and seconded by Councilor Albert that an additional Thirteen Hundred Dollars (\$1,300)/year be added to the salary for the position of Deputy Finance Director assuming the responsibilities of Town Treasurer to compensate for the additional responsibilities. MOTION CARRIED 5-1-0**

*Councilor Koenig voted in opposition*

#### **Minutes**

January 25, 2018



**Approved: April 12, 2018**

**Posted: April 17, 2018**

*The following amendment was offered:*

Page 9, Line 17; replace “addition” with “addiction”

**MOTION made by Councilor Boyd and seconded by Councilor Albert to accept the meeting minutes of the Town Council budget meeting of January 25, 2018, as amended**

**ON THE QUESTION**

Councilor Boyd requested the test results referred to on page 3 be attached to the minutes and was informed that would occur.

**MOTION CARRIED 4-0-2** *Councilors Harrington and Koenig Abstained*

January 29, 2018

**MOTION made by Councilor Boyd and seconded by Councilor Thornton to accept the meeting minutes of the Town Council budget meeting of January 29, 2018, as presented. MOTION CARRIED 6-0-0**

February 8, 2018

*The following amendment was offered:*

Within the discussion of the letter of support of Senate Bill 309-FN, reference to Article VIII was later stated to be incorrect; should be stated as Article 28-a. He requested “Article 28-a” be placed in parenthesis following the references to Article 8.

**MOTION made by Councilor Boyd and seconded by Councilor Thornton to accept the meeting minutes of the Town Council budget meeting of February 8, 2018, as amended. MOTION CARRIED 6-0-0**

Councilor Koenig commented the minutes of January 25<sup>th</sup> address discussion of PFOAs and concern over whether the Planning Board should or should not have sent a letter to Flatley regarding the contamination issues and in support of the NHDES letter. The minutes include a quote from Planning Board minutes, which reads in part “*Tom Koenig stated that PFOA contamination is a controversial subject. It is not known how much impact low levels cause. He is concerned about unnecessarily raising red flags.*”

It was his opinion, at the time, because the plan had already been approved, it was no longer a part of the Planning Board’s function to send a letter of that nature. The NHDES had done it. Consequently, the Town Council was requested, and did so as well. He believes those to be the appropriate boards to try and approach a developer in Town to make a decision having already gone through the process and received approval.

**Comments from the Press** - None

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**Comments from the Public** - None

**Comments from the Council**

Vice Chairman Rothhaus spoke of having attended the School District Deliberative Session. During the budget process, they added \$6,500 to the School Resource Officer (SRO) position. He stated his desire to ensure everyone understands the SRO is an employee of the Town, and that probably should have come out of the Town's budget if the Chief is supportive of the action, which he believes would be the case. Chairman Harrington noted the addition was to cover the cost of additional training.

Town Manager Cabanel stated her belief it does no harm. However, would be contingent upon approval by the Chief after determining the officer is available to attend without interfering with his SRO and other duties. She stated agreement it probably isn't appropriate for the monies to be budgeted in that manner, but there is no harm.

Assistant Town Manager/Finance Director Micali noted it was the Budget Committee that added the additional funds.

Councilor Koenig reiterated the Planning Board approved the Merrimack Park Place CUP development where they are planning to put in a hotel, residential buildings, and a fair amount of retail and office space over time. That is Phase I split into 3-5 segments. There was a lot of work and discussion going on and a lot of commitments made by the developer/owner of the land to work with the Town and neighbors to do the best they can to shield that piece of commercial/industrial property from the residential property that abuts it, and to do the best they can to avoid damaging any of the trees or buffer zone between the existing homes and the development.

He commented from a perspective of the Town itself, it will be a nice addition to the Town. He believes in conjunction with the Premium Outlets, the hotel being a name brand hotel, the residential units being managed not sold, and things of that nature, that we will see a nice quality product. The developer also desires working with the Town to try and arrange their parking issues to do the best benefit to both the neighborhood and the project itself.

**Adjourn**

**MOTION made by Councilor Koenig and seconded by Councilor Thornton to adjourn the meeting. MOTION CARRIED 6-0-0**

*The March 15, 2018 special meeting of the Town Council was adjourned at 9:11 p.m.*

Submitted by Dawn MacMillan