

Approved: September 13, 2018

Posted: September 19, 2018



Town Council Meeting Minutes

Thursday August 16, 2018 at 7:00 PM, in the Matthew Thornton Room

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

Pledge of Allegiance

Life Scout, Brigham Parker, Troop 48, led in the Pledge of Allegiance.

There being no objection, the Council went out of the regular order of business to take up item #1 under Appointments.

1. Boston Post Cane Presentation

Submitted by Town Council Chairman Finlay Rothhaus and Vice Chair Tom Koenig
The Town Council will present the Boston Post Cane to Nellie Granger, the Town of Merrimack's oldest known resident.

On August 2, 1909, Mr. Edwin A. Grozier, Publisher of the Boston Post, forwarded to the Board of Selectmen in 700 towns in New England a gold-headed ebony cane with the request that it be presented with the compliments of the Boston Post to the oldest male citizen of the town, to be used by him as long as he lives (or moves from the town), and at his death handed down to the next oldest citizen of the town. The cane would belong to the town and not the man who received it. In 1930, after considerable controversy, eligibility for the cane was opened to women as well.

Ms. Nellie Granger was born in Nashua, NH on January 19, 1921. Growing up she had two historic natural disasters affect her childhood. Her family lost their home in the great fire of 1930 in Nashua on Crown Hill. Consequently, they moved to Haverhill, MA where the historic flooding of the Merrimack River in 1936 forced her family to return to Nashua. Nellie graduated from Nashua High School in 1939. During WWII she worked in Nashua alongside other women processing radar cores used in the war. It was during this time that she was struck by lightening standing near a window while at work, but she fully recovered.

Nellie married Guy Granger in 1946 and moved to Merrimack in 1951 with her husband where they raised 6 children. Nellie has 13 grandchildren and 8 great grandchildren. Sixty seven years later, she is living on the same property in Merrimack; however, their home was lost in a fire in 2000 and they had to rebuild. Nellie is a member of the Saint John Neumann Church and the VFW Auxiliary Post 8641. Nellie says the secret to a long life is just to keep busy.

Chairman Rothhaus read the following Proclamation into the record:

"This is to certify that Nellie Granger is being recognized as the oldest living resident in Merrimack and as such is appointed the holder of the Boston Post Cane. As a token of this recognition, a replica of the cane and a lapel pin is presented to the recipient. Presented on behalf of the Merrimack Town Council and the Town Manager this 16th day of August 2018."

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Chairman Rothhaus presented the items to Nellie Granger.

The Council returned to the regular order of business.

Announcements

Regular meetings of the Town Council will be conducted on Thursday, September 13th, September 27th, October 11th, and October 25th at 7:00 p.m. in the Matthew Thornton Room.

The Parks & Recreation Department is pleased to welcome Kierstin Merlino as the new Recreation Program Coordinator.

The new Parks & Recreation Fall Activities Brochure is now available. Hard copies are available at Town Hall and the Library. An electronic version is available on the Parks & Recreation website at www.merrimackparksandrec.org.

The Parks & Recreation Department invites Merrimack families to join them for the next free movie night in the Park on Friday, August 24th at the Abbie Griffin Park. The movie will be “Boss Baby” and will begin at 7:30 p.m.

The New Hampshire Department of Health and Human Services (DHHS) is actively working on organizing a Health & PFAS Health Fair community event that they are aiming to be held in the early fall. This event will be a station style meeting consisting of different tables hosted by groups such as the Health Department or Environmental Protection Agency, where attendees from impacted areas of Southern NH can have one-on-one conversations about their questions and concerns. The date, location and time of the event have not yet been determined. The public will be notified as soon as the information is known. Councilor Harrington questioned if the information could be posted to the website.

Town Manager Cabanel stated she phoned Jake Leon, DHHS, Communications Director, who indicated the email was to be sent to the Town Managers to contribute to the planning of the event. It is not official, just an outline for discussion on how things may happen. He was made aware any document that is directed to her office is public and immediately shared with the Council. This is in the early stages, and they are seeking information on the kind of health related questions received by the communities.

Councilor Boyd indicated a desire for Merrimack to volunteer to serve as a focal point for hosting the health fair. Councilor Harrington suggested the event take place in early fall.

PFAS Update

Councilor Boyd stated the New Hampshire Drinking Water and Groundwater Advisory Commission met and went through the recommendations of the four sub-groups that were reviewing the pre-applications for grants and loans from the Trust. One of the two grants applied for by the Merrimack Village District (MVD) has been conditionally approved. It will be brought to a final vote on August 30th. It does not involve recharge but does involve improving the contamination of wells 4 and 5.

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He spoke of a groundwater well adjacent to Saint-Gobain, which is testing at 19,000 ppt and questioned the will of the Council with regard to extending an invitation to the New Hampshire Department of Environmental Services (NHDES) to present at a community meeting and provide an update on activities occurring in Concord. He would also like to request they conduct additional office hours in Town (late afternoon/evening). He spoke of the importance of educating individuals new to Town and suggested there may be people who would be more comfortable in that one-to-one setting.

Councilor Healey stated the desire to be informed of the plan for moving forward, e.g., with the well on Flatley land that is testing at 19,000 ppt. There was talk of a system being tested for stack scrubbers. She would like to know how those tests turned out, and, if successful, what the game plan is for implementation, etc.

Councilor Thornton stated the need for MVD to be involved and participate in spearheading the effort.

MOTION made by Councilor Boyd and seconded by Councilor Healey to request the Town Manager or her designee contact NHDES with a request to provide an update/presentation to the Town and other communities impacted by PFAS regarding ongoing examinations / investigations / inquiries surrounding the issue of PFAS in, around, and in the circumference of Saint-Gobain

ON THE QUESTION

When asked for clarification the intent was to request a presentation not additional office hours, Councilor Boyd stated the motion to be for a presentation. He would like to see both but wished to proceed based on the will of the Council.

Councilor Albert was in support of a meeting. He suggested the Town could contact the DHHS to be included. He is uncertain a health fair is the correct forum.

Vice Chairman Koenig stated support of requesting a presentation. He believes Clark Freise, Assistant Commissioner, NHDES, had agreed to conduct office hours whenever requested. Requesting he consider late afternoon/evening office hours would provide both venues for residents to take advantage of. The health fair is an interesting thing to do and would give people an opportunity to gain information, but it would not get the information out to the public-at-large.

Town Manager Cabanel commented the concept of a health fair came as a surprise to her. However, it sounded as if they were seeking any input not asking if we wanted a health fair. She is uncertain they are necessarily prepared to give an update. She has requested an email response to the issue of the high level in the wells. There is the need to understand if they are at a point where they have new information to share.

Councilor Harrington stated support of requesting office hours and her belief the health fair is in response to questions received by the DHHS. She is supportive of that; however does not believe that would address the questions regarding the well, etc. She would like to see a request that NHDES meet to report to the Council what their intention is in terms of examination and remediation.

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AMENDED MOTION made by Councilor Boyd and seconded by Councilor Healey to request the Town Manager or her designee contact NHDES with a request to provide an update / presentation to the Town and other communities impacted by PFAS regarding examination and remediation and associated timelines surrounding the issue of PFAS in, around, and in the circumference of Saint-Gobain, request additional office hours to be conducted in the evening, and contact DHHS indicating the Town's desire to host the event and that it take place in the early fall

ON THE QUESTION

Town Manager Cabanel asked for clarification that the Council wished for NHDES to appear before it to discuss their plans and timeline for remediation of the wells and any particular contaminated groundwater, what they are going to do about the air stacks, etc. She questioned if the desire was for this presentation to occur at a meeting of the Council or as a standalone meeting in the gymnasium or other large venue.

Councilor Boyd suggested a community forum at the James Mastricola Upper Elementary School as has been done previously, and that the set-up be similar, e.g., PowerPoint presentation, microphones set up for NHDES representatives and public, streamed live, and recorded to be run on community access television.

The suggestion was made that the presentation by NHDES and the health fair could run at the same time.

MOTION CARRIED 7-0-0

Councilor Boyd stated the New Hampshire Drinking Water and Groundwater Advisory Commission will meet in the next few weeks (date TBD).

Highway Garage Project Update

Despite the rainy weather of late, construction of the new Highway facility continues to progress well. The roof of the maintenance bay portion of the building is well underway and installation of the siding has begun. Underground utilities have been installed in the administrative portion of the building, and it is expected the floor slab for that part will be placed next week. Once the slab is placed, the contractor will begin placing the rough framing for the administration portion of the building. Updated progress photos and drone flyover videos located on the Public Works Facebook page.

There being no objection, the Council went out of the regular order of business to take up Recognitions, Resignations and Retirements.

Recognitions, Resignations and Retirements

1. Recognition of Town Committee Member [Tabled at the July 19, 2018, Town Council meeting]

Submitted by Town Council Chairman Finlay Rothhaus and Vice Chair Tom Koenig

The Town Council to present a certificate to the following individual for his volunteer service to the Town of Merrimack:

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- Anthony Pellegrino – Zoning Board of Adjustment

Mr. Pellegrino served on the Zoning Board of Adjustment (2009-2018), Board of Selectmen (1997-2000), Sewer Master Plan Site Committee as the Selectmen's representative, Solid Waste AdHoc Committee, Charter Commission, Ethics Committee (2005-2008), Cable Television Advisory Committee, and the Conservation Commission.

Chairman Rothhaus presented Anthony Pellegrino with a certificate in recognition of his volunteer service to the Town of Merrimack. Mr. Pellegrino expressed his gratitude for the recognition.

Councilor Albert commented back when the Merrimack Police Department was very small, Mr. Pellegrino was one of the original members of the Special Officers. He served for several years and was one of the leaders of the group.

Councilor Boyd noted Mr. Pellegrino served the Town for a number of years in Concord as a State Representative.

2. Recognition of Full-Time Years of Service of Town Employees

Submitted by Human Resources Coordinator Sharon Marunicz

The Town Council will present recognition awards to the following Town employees:

Police

Holly E. Estey; 20 year plaque - Date of Hire: 5/10/1998

Detective Scott C. Park; 30 year clock - Date of Hire: 1/31/1988

Captain Michael J. Dudash; 35 year Lamp - Date of Hire: 4/25/1983

Denise Roy, Chief, Merrimack Police Department, commented on the individuals who work behind the scenes, and of the importance of the work done in the Records Division/Dispatch. Ms. Holly Estey has been with the department for 20 years. Chief Roy thanked her for her dedication and years of service.

Chairman Rothhaus presented Ms. Estey with a plaque in appreciation and recognition of her outstanding performance and dedication to duty.

Chairman Rothhaus noted Detective Scott Park was unable to be in attendance and would be recognized at a future meeting.

Chief Roy stated Captain Dudash holds the record for the longest standing Police Officer in the Town of Merrimack. Thirty five years is thirty five years of being away from your family. Your family knows what it is like to be without you on Thanksgiving, Christmas morning, and that is a lot to ask of a person. Captain Dudash has always been 150% committed to this Town. Chief Roy remarked he comes to work every day and makes the public his #1 priority. She thanked him for his dedication.

Chairman Rothhaus presented Captain Dudash with a lamp in recognition of his 35 years of dedication and service to the residents of the Town of Merrimack.

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Captain Dudash commented in the 35 years of serving the Town it is all about family, the guys you work with, and the Council, Town Manager, and Assistant Town Manager always being behind you. He will continue serving this community.

Councilor Albert commented on having had the opportunity to work with both Ms. Estey and Captain Dudash. Captain Dudash embodies community policing. He is a hometown kid who grew up, has made himself accessible to everyone in the community, has personally handled a lot of issues in the community, and a lot of people continue to reach out to him for that personal touch. He stated it to be his honor and privilege to work with him. Ms. Estey is one of the original founders of the Shark Tank; she and a number of the other ladies always had the officers' back, always helped out when things were needed in the last minute, etc. Their work is invaluable.

Public Works Administration

Rebecca E. Starkey; 35 year lamp - Date of Hire: 6/27/1983

Ms. Starkey was unable to be in attendance and will be recognized at a later date.

Town Clerk/Tax Collector's Office

Nancy M. Deslauriers; 20 year plaque - Date of Hire: 6/1/1998

Diane Trippett, Town Clerk/Tax Collector, stated Ms. Deslauriers began her employment as an Account Clerk II with the Town on June 1, 1998. She spoke of the experience Ms. Deslauriers brought with her having worked for the City of Nashua. She is 1 of only 3 individuals Ms. Trippett has hired in her 29 years that came to the Town with municipal experience.

There is a large learning curve in the job, and it is not easy to be one of the faces in the Town dealing with the public day in and day out. Every day Nancy puts a smile on her face, is out at the window, and is greeting customers. She is one who will do what needs to be done to get the customer serviced happily and with a smile.

During the years Nancy has developed a relationship with the customers and receives regular accolades from residents. Things have changed a lot since she started in her position. The motor vehicle department has changed a great deal as well. She possesses a great wealth of information on the laws, rules, and regulations on the State, County, and Town level.

The cover letter Ms. Deslauriers provided when applying for her position states in part: "I enjoy working in this field and may prove to be an asset to the Town of Merrimack." Ms. Trippett remarked Nancy is not only an asset to her but to the entire staff and the Town as a whole.

Ms. Deslauriers spoke of how she continues to enjoy her role.

Chairman Rothhaus presented Ms. Deslauriers with a plaque in recognition of her 20 years of dedicated service to the Town of Merrimack.

The Council returned to the regular order of business.

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Comments from the Press and Public

Steve Brulett, 2 Suncook Terrace

Spoke of having just moved back into Merrimack. When speaking with residents one of the first things he found were issues individuals have encountered with Comcast.

He does not like the fact that they are a monopoly. He spoke of the responsibility of each participant to adhere to the terms of a contract entered into, and of how Comcast has not been adhering to the terms of the contracts to provide the service it agreed and is being paid to provide. Although they are legally bound, they have not been adhering to their contract.

He questioned how this situation could be addressed. Understanding the Council is considering the possibility of bringing on another provider, he requested Councilors take a close look at this. He stated a desire for the residents to be asked to make their positions known.

To allow this to continue is basically allowing them to operate in impunity, which is not right. He spoke of the sense of hopelessness and powerlessness he gets when speaking with residents about this issue.

Carol Dipirro, 10 Cambridge Drive

Thanked the Council for seeking to bring NHDES back to update the Town on its efforts.

There being no objection, the Council went out of the regular order of business to take up Item #1 under New Business.

1. Consideration for Eagle Scout Project at Grater Woods

Submitted by Boy Scout Brigham Parker

Boy Scout Brigham Parker from Troop 48 is proposing to construct an outdoor classroom in Grater Woods directly behind the Merrimack Middle School, replacing the previous one which has weathered with time.

Life Scout, Brigham Parker, stated his project to be the Outdoor Classroom located in Grater Woods directly behind the Merrimack Middle School. The Outdoor Classroom would replace the previous one, which has decayed over time. The project includes a teaching platform (8'x10' with a bench on either side and a ledge for teaching materials, etc.), which would be located in the area where the first bench was previously located, and 12 benches (2 rows of 6; 15" wide and 5-10' in length). Pressure treated wood would be utilized.

The footing for the benches and the teaching platform will be a circular cement footing with a 4x4 put directly in the cement wrapped in tar paper. The 6 footings for the teaching platform and 2 each for the 12 benches will be placed 2' deep. Project cost is estimated at \$1,900; \$1,700 for material, \$100 for supplies and \$100 for other needs.

Materials and supplies would be sought from local merchants at a lower cost or donation. Cash contributions will be sought from friends, family, and residents. Additional fundraising will include a

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pancake breakfast (mid-September at 110 Concord St.). Project completion is anticipated by October 20, 2018.

When asked if the teaching platform or other structures would obstruct the view, Life Scout Parker responded there would be some obstruction; however, that has been minimized by the open design.

Councilor Boyd questioned the amount of clean-up needed of the previous structures, and when that would occur. Life Scout Parker commented he has spoken briefly and should continue the discussion with the Conservation Commission; however, if needed, it will be part of the preparation process. When asked if he has spoken with the School Board, Life Scout Parker indicated that to be his intent.

Councilor Albert commented on the timing of the project noting the Conservation Commission is actively seeking different presenters to cover issues related to the property. Councilor Harrington requested an announcement be made at the Council's September 13th meeting reminding the public of the breakfast fundraiser.

MOTION made by Councilor Boyd and seconded by Councilor Healey that the Council enthusiastically endorse and support the proposal of Life Scout Brigham Parker, Troop 48, to construct an Outdoor Classroom in Grater Woods directly behind the Merrimack Middle School replacing the previous one, which has weathered over time, and furthermore, that the Council authorize the Chairman, Town Manager or her proxy to sign whatever documents are necessary to approve the project. MOTION CARRIED 7-0-0

The Council returned to the regular order of business.

Appointments

2. Annual Review with the Zoning Board of Adjustment

Submitted by Zoning Board of Adjustment Chair 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, Chair, Zoning Board of Adjustment (ZBA), spoke of the 2017 Annual Report; the ZBA granted 43 variances, denied 9, and had 2 withdraw. There were not many special exceptions and 1 equitable waiver. Merrimack continues to have some very unique properties in neighborhoods that were developed prior to the zoning ordinances being put in place. Variances on setbacks for sheds, pools, fences, etc. have come forward and continue to.

The Council will be considering two appointments to the ZBA, which would result in a full Board of 8.

The ZBA is a quasi-judicial board charged with hearing appeals of decisions rendered by the Zoning Administrators, interpret unclear provisions in the zoning ordinance and decide on applications by landowners to permit buildings or land use which vary from the zoning regulations. The ZBA works in conjunction with the Planning Board and Conservation Commission to assist residents and

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businesses accommodate to the laws that are established in reviewing them in both legitimacy as well as their effect on the Town, property values, etc.

Public Hearing - None

Legislative Updates from State Representative - None

Town Manager's Report

The Library's Summer Reading Challenge has officially ended as of August 15th with 646 participants across all age groups, reading for a total of over 15,600 hours during the 8-week program. Because we surpassed our 8,000 hour goal, the Friends of the Library will be donating \$400.00 to the United Way of Greater Nashua on behalf of our readers. Thank you to everyone for supporting such a great cause in our community.

Consent Agenda - None

There being no objection, the Council went out of the regular order of business to take up Item #s 2 and 3 under New Business.

2. Committee Appointments

Submitted by Town Council Chairman Finlay Rothhaus and Vice Chair Tom Koenig
The Town Council to consider appointing the following individuals to Town committees, pursuant to Charter Article 4-8:

Kathleen Stroud - Zoning Board of Adjustment (Alternate to Full member)

Drew Duffy - Zoning Board of Adjustment (Alternate member)

MOTION made by Councilor Koenig and seconded by Councilor Boyd to appoint Kathleen Stroud as a Full member of the Zoning Board of Adjustment. MOTION CARRIED 7-0-0

Oath of Office administered to Kathleen Stroud by Chairman Rothhaus

MOTION made by Councilor Koenig and seconded by Councilor Boyd to appoint Drew Duffy as an Alternate member of the Zoning Board of Adjustment. MOTION CARRIED 7-0-0

Oath of Office administered to Drew Duffy by Chairman Rothhaus

3. Committee Appointment Recommendations

Submitted by Town Council Chairman Finlay Rothhaus and Vice Chair Tom Koenig
The Town Council to consider appointing the following recommended individuals to the Parks and Recreation Committee, pursuant to Charter Article 6-1:

Brandi Nunez - (School Board Representative)

Shannon Barnes - (Alternate School Board Representative)

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MOTION made by Councilor Boyd and seconded by Councilor Albert to appoint Brandi Nunez as the School Board Representative and Shannon Barnes as the Alternate School Board Representative to the Parks and Recreation Committee. MOTION CARRIED 7-0-0

The Council returned to the regular order of business.

Old Business

4. Watson Park Fencing Proposal [Continued from the July 19, 2018, Town Council meeting]

Submitted by Town Manager Eileen Cabanel

The Town Council to discuss and consider fencing options for the Watson Park parking lot. Kyle Fox, Director, Public Works Department, stated the purpose of the fence is to cordon off the parking lot area of the park thereby protecting the rest of the park. There have been a number of issues in the past where people have driven their vehicles down to the pavilion and other parts of the park.

At the previous meeting information was provided on a number of design and cost options. Since that time, an intern has made calls and visited a few fence companies. The pricing information that was provided was stated to be fairly accurate and a few companies provided catalogues. There are numerous options in both vinyl and wood.

The location and challenges of the project were reviewed with the fencing companies. They questioned the durability of all of their alternatives in this type of setting. With vinyl, they recommended utilizing a rectangular beam that would address the issue of sagging (4 x 4 sections can sag). Their experience with those kind of products in a public setting is, being a flat rail, people tend to sit on and break them. With wood, there are a number of alternatives. All of the wood connections on their styles are the slide in types. The area that is slimmed down to fit into the post hole is the weakest part. Were someone to sit or stand on it, repairs would be needed.

Director Fox contacted the guardrail company. One of his concerns is the installation. There are complications with Watson Park and the soils. What would make the project simpler and quicker would be if a guardrail company were brought in to pound posts. There would be no need to worry about the soil management plan at that point. However, the posts would be larger than some have wanted and not really in the style of what the Parks and Recreation Committee was hoping for.

When asked about the size of the posts, Director Fox stated he has posed that question and not yet received a response. The typical guardrail post is 6 x 8. Posts at other parks are 6 x 6. He has questioned if a 6 x 6 could be utilized.

Town Manager Cabanel commented she is uncertain what the downside to that would be, noting the posts would not be metal. Director Fox stated the posts would be wooden. When asked for clarification, he indicated were the Council to utilize the wooden posts (6 x 6 or 6 x 8) and then utilize the typical 2 x 8 rails bolted onto the face, could locate a connection to utilize the diagonal 4 x 4s in between. He has had difficulty finding any hardware. All three companies talked to could only suggest going to the granite company that does the granite posts.

Councilor Albert questioned, if utilizing a regular wooden post, how difficult it would be given the soil management plan. He stated his belief that has been addressed given the work planned for the other

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activities at the park. Director Fox spoke of the Approval Use Required (AUR), which is the NHDES requirement that places restrictions on the activities on the site (one of which is excavating below 2'). There is an approved soil management plan that allows this work to be done. There are a number of key things that would have to be done; need a contractor that is 40 hour OSHA certified, air meters at all times to check air near workers and if readings are heard all work has to stop, employees need to move away from site, and monitoring continues. Given the depth and quantities being discussed, he does not believe that will be an issue.

The first 2' of soil has to be dug out and placed on plastic so it doesn't mix in with the other soils. The next 2' of soil has to be placed on a separate piece of plastic so that it doesn't mix in. The bottom 2' has to go back in the hole. The top 2' needs to be taken away to make room for some concrete. It would be a lengthy task because you are doing everything twice.

Councilor Harrington questioned if the posts in the other parks were poll-driven and was informed they have all been augured. Councilor Harrington was supportive of the wooden poll-driven option.

Director Fox noted the information provided to date identifies costs for materials only.

Councilor Albert commented the Parks and Recreation Committee discussed this, understood there are mitigating circumstances and it is likely vinyl would not be the most suitable option.

Councilor Thornton agreed power driving is the most efficient means of getting the poles in. He suggested utilizing wood and perhaps consider the diamond design to provide aesthetics. Councilor Harrington and Vice Chair Koenig stated agreement. Vice Chairman Koenig suggested if the brackets are utilized allowing a single diamond board to be replaced when needed, maintenance will be a lot easier. He also agreed with utilizing the larger sized fencing to allow for additional parking. When asked for an estimate, Director Fox indicated it to be in the ballpark of \$15,000.

MOTION made by Councilor Koenig and seconded by Councilor Thornton to authorize the Public Works Department to move forward with the concept discussed of a pressure-treated wooden fence at Watson Park with poles pile driven in and diamond shaped rails between posts bracketed as necessary

ON THE QUESTION

Director Fox noted, when painting pressure-treated wood, the PWD will wait a year to allow the wood to season.

MOTION CARRIED 7-0-0

New Business

4. Donation to the Parks and Recreation Department Camp Scholarship Fund

Submitted by Parks and Recreation Director Matthew Casparius

The Town Council to consider the acceptance and expenditure of a donation in the amount of \$210.00 from OVP Management, Inc. (building Merrimack 360 Shopping Plaza) to the Parks and Recreation Department for the Camp Scholarship Fund, pursuant to RSA 31:95-b and Charter Article 8-15.

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Paul Micali, Assistant Town Manager/Finance Director, indicated 360 Shopping has made a second donation towards the Camp Scholarship Fund.

MOTION made by Councilor Harrington and seconded by Councilor Thornton to approve the acceptance and expenditure of a donation in the amount of Two Hundred Ten Dollars (\$210.00) from OVP Management, Inc. (building Merrimack 360 Shopping Plaza) to the Parks and Recreation Department for the Camp Scholarship Fund, pursuant to RSA 31:95-b and Charter Article 8-15. MOTION CARRIED 7-0-0

5. Donation to the Parks and Recreation Department Camp Scholarship Fund

Submitted by Parks and Recreation Director Matthew Casparius

The Town Council to consider the acceptance and expenditure of a donation in the amount of \$1,050.00 from Merrimack Friends and Families to the Parks and Recreation Department for the Camp Scholarship Fund, pursuant to RSA 31:95-b and Charter Article 8-15.

Assistant Town Manager/Finance Director Micali spoke of the generosity Merrimack Friends and Families has shown to the Town. The consensus of the Council was that a plaque be presented in appreciation of their support of the community.

MOTION made by Councilor Albert and seconded by Councilor Boyd to approve the acceptance and expenditure of a donation in the amount of One Thousand Fifty Dollars (\$1,050.00) from Merrimack Friends and Families to the Parks and Recreation Department for the Camp Scholarship Fund, pursuant to RSA 31:95-b and Charter Article 8-15. MOTION CARRIED 7-0-0

6. Consideration of Changes to Chapter A198, Administrative Code, of the Merrimack Town Code [First Reading]

Submitted by Town Manager Eileen Cabanel

The Town Council to consider the acceptance of recommended changes to Chapter A198, Administrative Code, of the Merrimack Town Code, pursuant to Charter Article V.

When the position of Deputy Police Chief was removed from the chain of command in 2010 it was also removed from the Code. Having been authorized to reinstate the position, Police Chief Roy has requested the position be put back into the Code.

The Deputy Police Chief would assume the responsibility for the operation of the administration of the entire department in the Chief's absence. The Chief has requested the Legal Division move from the Administrative and Support Services Division, making it a separate stand-alone division, supervised and managed by the Deputy Police Chief.

The one addition is the Deputy Chief position. A Lieutenant position has been eliminated. Vice Chairman Koenig spoke of his recollection one of the Captain positions would be eliminated. Chief Roy noted prior to July of 2018 there as an Administrative Services Lieutenant position, which was eliminated.

Chief Roy stated the Prosecutor handles things from the Patrol Division when the officers make the arrest on the street. The Prosecutor is also responsible when the Detectives have their questions, which

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is on the Administrative side. The Patrol Division and Detectives are on two different sides of the building, both responsible to two separate Captains. To streamline it, it will be put under the Deputy Chief eliminating any question of who the Prosecutor goes to. They go directly to the Deputy Chief.

Councilor Boyd stated his recollection was also that a Captain position would be eliminated. There is a communication gap.

MOTION made by Councilor Boyd and seconded by Councilor Harrington to move to Public Hearing the recommended changes to Chapter A198, Administrative Code, of the Merrimack Town Code, pursuant to Charter Article V. MOTION CARRIED 7-0-0

7. Cable Franchise Renewal Discussion

Submitted by Town Council Chairman Finlay Rothhaus and Vice Chair Tom Koenig
Town Council will review and discuss cable television franchise renewal.

Nicholas Lavallee, Media Services Coordinator, stated the current ten-year agreement is with *any* cable operator that chooses to do business in Merrimack. The franchising authority is the Town Council. The Franchise Agreement is a non-exclusive contract with Comcast. Any cable provider can do business and provide cable services to the Town as long as they are adhering to the Franchise Agreement that the Council has approved and set up.

The common misconception is that it is a monopoly. It is really not, it is just the way the industry was set up and reflective of what the industry has become. The Franchise Agreement is only relative to cable services. It is not relative to internet services. Although Comcast provides internet services to residents in Merrimack, the Franchise Agreement is only relative to the cable television portion of those services.

A draft agreement, provided by Comcast, was included with the [agenda](#) packet. In the agreement, the franchising authority (Town Council) does not have the ability to set the cable companies' rates.

The draft agreement includes much of the language contained in the current agreement: cable services are available to all residents within the Town, any potential subscriber located in Merrimack without service may request a line extension to enable cable TV services, basic services are provided at no cost for municipal buildings including school, police and fire, franchise must respond to service calls within 24 hours of the original call, 3.75% franchise fee that is traditionally used to fund Merrimack Public, Education, and Government TC (PEG TV, Media Division).

Councilor Albert questioned whether monitoring occurs relative to the required response time for service calls. Mr. Lavallee stated uncertainty. Chairman Rothhaus commented if the public is aware, he suspects they would monitor and respond accordingly. Councilor Albert questioned if it also covers instances of bad weather. Mr. Lavallee noted it is listed in the agreement as interruption of service. He is of the belief that would be anything that could interrupt service. Councilor Albert questioned who residents would report an instance of non-compliance to.

Councilor Harrington noted the agreement contains a Complaint Resolution Procedures (Section 13.5), and suggested the procedure be made more readily available to the public. She questioned if a procedure could be posted on the website; contact Comcast first and if, within a certain amount of

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time, a response is not received, contact Mr. Lavallee. Mr. Lavallee was pleased with the suggestion. Assistant Town Manager/Finance Director Micali stated his belief something could be added under the media section of the website.

Mr. Lavallee commented on the good relationship the Town has with Comcast noting whenever a resident has contacted the Town complaining of an issue, he puts them in touch with Bryan Christiansen, Comcast Senior Manager of Government and Regulatory Affairs, right away. Most who have gone that route have had their issues resolved quickly.

Mr. Lavallee stated the timeline he would like to see; Public Hearing scheduled for September with an invitation extended to Comcast. That would allow the draft agreement to be posted to the website for a month's time allowing for public review/feedback. From there, the Town's draft could be sent to legal counsel for review.

Vice Chairman Koenig asked for specifics about the requirement for a 24-hour response time.

Justin Slez, Assistant Media Services Coordinator, stated the FCC chapter referenced, 76.309, includes a list of different requirements laid out by the FCC. The one specifically referenced is (c)(2)(ii), which reads in part "The cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known."

Vice Chairman Koenig remarked that does not indicate that the interruption will be resolved within 24 hours, it merely states they will work on it within 24 hours.

Mr. Slez responded he is uncertain if that timeline is laid out. It is not in the FCC wording. That might be something to consider putting in. Vice Chairman Koenig commented he thinks some started to believe that meant that a problem would be resolved in 24 hours and if not resolved they should escalate it. Maybe they should escalate it, but in Section 13.5 it states it could be as much as ten (10) days for the franchisee to submit the complaint to the cable company. The language simply indicates that we will be responsive not that we will have responded in 24 hours.

Councilor Healey commented she is used to seeing in these types of contracts something that gives out service agreements. She stated her belief Article 13 is trying to allude to what the service standards are. It is not very clear exactly what the service standards are. She questioned how that compares with the contract that the individual citizen signs; are they remotely alike.

Councilor Healey commented while speaking with Comcast recently she learned she was still being charged for high definition. The new contracts they were coming out with included the charge for high definition. She questioned what would have happened had she not called, e.g., would they have kept charging her for the high definition, and was informed they would have. There is a need to review the pricing schedule.

Mr. Lavallee noted the current and the draft agreement include the fee structure as well as a requirement for notification of changes to the bill.

The current agreement includes the language "The Franchisee, Comcast, shall maintain and operate a customer service office in an adjoining town for the purpose of receiving and resolving all complaints

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including, without limitation, those regarding billing, service and installation, and equipment malfunctions, accepting return of converters, and answering general inquiries.” That provides a place to go and a person to talk to. That language is omitted from the draft agreement, and in its place a customer call center open 24 hrs./day, 7 days/week, including holidays.

Mr. Lavallee stated his opinion there should be a place for Merrimack residents to be able to go to try to resolve problems. Councilor Boyd stated agreement as did Councilor Healey.

The Town currently receives 3.75% franchise fees from the gross annual revenues from cable TV subscribers. The Council has traditionally dedicated those fees to the department to provide public access to residents and be able to record the meetings. A portion of that occasionally goes into the general fund to offset property taxes. Comcast has changed how they compute the percentage of their bundle packages attributed to cable television. This past year the Town has seen a drop in the quarterly revenue from franchise fees. If you are subscribing to a package that includes cable and internet, Comcast is saying well more of that cost is going towards internet and less for the cable television portion.

Mr. Lavallee commented the way the industry has gone is more people are streaming content and not relying on cable television to watch programming. He was not suggesting the Council raise the franchise fee to offset that, but one did note the language in the current contract that provides the ability to raise the franchise fee (up to 5% with a notice of 90 days) during the life of the franchise agreement has been omitted from the draft agreement. Now is the time for the Council to either raise the franchise fee or ensure the ability to raise the fee is included in the next franchise agreement.

Chairman Rothhaus stated his interest in sending out an RFP. Although not a monopoly, there is no real competition. He stressed the agreement is that of the Town/Council. Mr. Lavallee stated his opinion with the changing industry the Town may want to look more into an RVP for an internet provider.

Councilor Thornton questioned if internet service could be added to the franchise agreement. Mr. Lavallee stated his understanding the internet infrastructure is not regulated the same way the cable television portion is.

Mr. Lavallee proposed requiring an HD channel. Bedford was recently successful in obtaining that. Merrimack is overdue for that. On our end there is infrastructure that would require updating at Town Hall (head-end). Funds are available (approx. \$800,000 in Cable Television CRF) to perform the upgrades. For other communities that have asked to have a channel on the HD tier, Comcast usually has fired back with well your head-end isn't up to code. He stated confidence Merrimack would have the ability to do that. That process was stated years ago with the HD cameras in the studio and the equipment used to produce content.

Councilor Albert requested a PowerPoint presentation be provided during the Public Hearing. He questioned the possible other providers if not Comcast. Mr. Lavallee stated there are a number of smaller cable companies and large conglomerates. Another cable provider doing business in Merrimack is an expensive endeavor. There is a lot of infrastructure required. We are situated between Manchester and Nashua, you would hope that a cable provider would want to gain those

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subscribers. There are roughly 8,000 homes in Merrimack. He is uncertain a cable provider would come to Town to do business with 8,000 homes.

Councilor Albert questioned the reasoning behind a ten-year agreement particularly given the changing industry.

Councilor Harrington spoke of efforts undertaken ten years ago to get other cable companies to come to Town. Those efforts were unsuccessful.

Mr. Lavallee commented there are more options today in terms of how you receive content. It is dependent upon an internet or cellular data connection, and then you are choosing the different content providers, e.g., YouTube TV, Hulu, Amazon, Netflix, etc.

Vice Chairman Koenig noted the introduction page (page 6) of the draft agreement indicates this is an agreement between the Town and Comcast. If the document is placed online he does not want that page included. This agreement is not granted by the Town Council on these dates. Although the watermark indicates it is a draft document, the Town Council has nothing to do with what was written here except to say they sort of measured it to the previous agreement they are currently operating under.

He indicated when he reviewed the document he was of the belief it was something the Town was promoting only to learn this is a document Comcast is promoting and we are now reacting to it. If put on the website, he wished for it to be made *very* clear this is a draft from the cable company. The current Franchise Agreement could be posted.

Councilor Healey suggested a draft be provided that includes Mr. Lavallee's proposed language. She stated the desire to see a separate page for service level agreements on what the customer can expect as well as the earlier remarks around the HD tier channel. She would like that to be presented to the public as well so that they can receive it all in a single package.

Councilor Boyd stated agreement programming is a la carte. At a previous Retreat, he broached the subject of the Town providing internet service to the community, although somewhat of a pipedream. There are communities such as Hollis who is provided internet by a cooperative in Cheshire county. There is another in the Boscawen area. The crux of the issue is internet. He suggested the community consider options for internet providers. He stated that would provide more choice, e.g., if residents have better access to the internet at a more affordable price it allows them to decide they can afford Netflix or Hulu, etc.

The larger concern he has is the issue regarding net neutrality. There has been a lot of discussion nationally about our internet providers now going to franchise specific sites and including that as a part of their package. Comcast provides easy access to Netflix, but it could be that Comcast could charge X number of dollars to provide that access. Absent net neutrality it is opening it up for providers to be able to charge for access to specific sites. He questioned if there is any language that could be incorporated into the franchise agreement that allows people in the community to have unfettered access to the internet.

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Mr. Lavallee stated agreement with the remarks made. He stated his belief with net neutrality being killed what was just described he feels is going to happen where the internet service provider can then choose a premium for you to be able to access any sort of streaming content or throttle your speeds. The franchise agreement is only relative to cable television services.

He suggested it could be that it is wise to have a ten-year cable franchise agreement now to protect consumers in Merrimack from that very possibility in the future. The internet portion isn't very regulated. In fact, they are changing the regulations for internet by killing net neutrality. The cable television portion is something the Council does regulate.

Councilor Boyd commented on the cost involved were the Town or another cable company to consider providing internet services, e.g., all streets in Merrimack would have to be lined with cable. Infrastructure is critical and comes at a cost.

He stated the desire for the discussion to be continued at the next meeting and that the Media Services Coordinator be asked to provide, for the agenda packet, a copy of the current agreement and proposals for amendments to the draft agreement.

When asked is there would be sufficient time to meet that request, Mr. Lavallee stated the current Franchise Agreement is readily available on the Town's website now. His notes were provided as was the draft agreement. He believes if a Public Hearing were to be conducted it would just provide an opportunity for the public to provide feedback on what they would like to see in the agreement.

Town Manager Cabanel suggested a flowchart on how the different pieces and parts work. She spoke of the age of the population in the State commenting it is difficult for some to follow when not familiar with Hulu, Netflix, etc.

Mr. Lavallee stated he would be able to provide a PowerPoint presentation on September 13th. He is also comfortable with giving a presentation on the 27th during the Public Hearing. Assistant Town Manager/Finance Director Micali suggested he and the Town Manager could work with Mr. Lavallee to bring something back on the 13th.

Vice Chairman Koenig noted it was very carefully pointed out that this is a cable television franchise renewal. He stressed what is being discussed is the television access that is franchise renewable. We need to make it exceedingly clear that we are talking about television access across the cable and not internet access across the cable.

Councilor Healey spoke of the public speaker who indicated a number of residents are having trouble with Comcast. When we present this to the public we need to realize that some of that may come through. We will need to consider how those will get resolved or set up a process in the future so that the complaints come into Town Hall and are sent back out again.

Councilor Albert stated the desire for Comcast to be present for the Public Hearing.

Vice Chairman Koenig stated uncertainty with whether residents are having difficulties with the internet service or cable television services. His understanding is this Franchise Agreement only deals with the television portion, and we really don't have any control over the internet service. Mr.

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Lavallee stated that to be correct. Vice Chairman Koenig remarked if the problems people are having with Comcast is with internet service, there is nothing the Town or Council can do to help.

Minutes

June 20, 2018 (Facilitation Report)

MOTION made by Councilor Boyd and seconded by Councilor Thornton to table acceptance of the Facilitation Report of the June 20, 2018 Town Council Retreat until the Council's next regularly scheduled meeting. MOTION CARRIED 7-0-0

July 19, 2018

MOTION made by Councilor Harrington and seconded by Councilor Boyd to accept the meeting minutes of the Town Council meeting of July 19, 2018, as presented. MOTION CARRIED 7-0-0

Comments from the Press - None

Comments from the Public

Laurene Allen, 16 French Court

Spoke of the minutes of the Council's meeting of July 19th. She commented on the discussion of the property of 11 Depot Street. She spoke with an employee of the Wastewater Division of NHDES regarding that property after it came to her attention the water has been running for quite some time. She was contacted and asked if that water has been tested. The issue that individual was concerned about was runoff onto their property and their pet. The response she received from NHDES was that they would review maps and determine if the well is MVD owned, a capped well that hadn't been done properly, etc. The last she heard they were unclear as to what it is. They assured her they would look it up, identify the owner and make contact. They would go out and conduct testing. She suggested the Town determine whether that water was ever tested.

This year in legislative session there was a bill passed that requires property owners, municipalities, etc. to not only disclose anything about chemical issues with property, but also to be aware of them. She reiterated the importance of checking with NHDES to determine if that water has been tested for PFAS.

Ms. Allen spoke of the YMCA property and the fact that NeighborWorks is coming forward to put something on it. She questioned how the Town will address the issue; this is one of the properties that NHDES wrote to last fall stating there are vapors intrusion from TCE. There is no doubt that TCA is a hazardous chemical. The NHDES had requested the property be tested. She questioned if this would come under the new law.

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Assistant Town Manager/Finance Director Micali noted where the housing development is being constructed is on the other side of Horseshoe Pond down towards the Thornton Cemetery, which is on the other side of the YMCA property. The property NHDES wants tested is next to the old EPA site, which is off of Wright Ave.

Comments from the Council - None

Adjourn

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

The August 16, 2018 special meeting of the Town Council was adjourned at 10:00 p.m.

Submitted by Dawn MacMillan