



## **Town Council Meeting Minutes**

Thursday September 12, 2019 at 7:00 PM, in the Matthew Thornton Room



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

### **Pledge of Allegiance**

Chairman Koenig led in the Pledge of Allegiance.

### **Announcements**

Regular meetings of the Town Council will be conducted on Thursday, September 26th and October 10<sup>th</sup> at 7:00 p.m. in the Matthew Thornton Room.

### **Comments from the Press and Public** - None

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

### **Appointments** - None

### **Public Hearing** - None

### **Legislative Updates from State Representatives**

Representative Wendy Thomas spoke of committee placements. She was placed on a committee, chaired by Senator Shannon Chandley, to study unprotected drinking water sources. The Report is due in a year.

On the Commission on the Environmental and Public Health Impacts of Perfluorinated Chemicals, which will study Southern New Hampshire are Representatives Murphy (her bill), Rung, and Thomas.

Representative Thomas is on a committee developing PFAS educational material for the State (formed by interested parties).

Several Representatives are working with Legislators from Massachusetts and Rhode Island regarding PFAS matters. Massachusetts is concerned with a plan to dump contaminated soil near a water source. It is hoped a New England coalition can be formed for the sharing of resources.

Representative Thomas noted her work continues on OHRV and the private property owners' rights up north and in Mink Hills. Property owners have documented 600-700 OHRVs passing by their property (summer weekends). There are safety concerns with "connector roads", one of which is 33 miles long, and can be traveled by 12-year-olds operating the machines. There are noise concerns.

The 18<sup>th</sup> and 19<sup>th</sup> are veto days for the Legislature. At last count, the Governor had vetoed 53 bills, including the budget. He has had 3 months to come to the table; the first proposal was two weeks ago. He is committed to really deep business taxes. By sticking with those, he is removing monies from fully funding public education. A Continuing Resolution would provide the Governor more time. In the absence of that, there will not be a budget.

Shannon Barnes, School Board, has agreed she and the Superintendent will meet with Representatives to discuss how the budget issue will impact the public schools. Asked if there are any immediately known impacts, she indicated it will affect free lunches.

Councilor Rothhaus commented the School Board will be faced with addressing that by utilizing funds allocated towards other areas of their budget.

The last community PFAS discussion with Senator Michael Bennet was informative. He took notes to bring back to Washington (action items).

Councilor Albert stated the need for the Representatives to start the discussion on bail laws. He spoke of having sent an email to Senator Chandley, member, Judiciary Review Board. He commented on the bail jumping that is allowed to happen. Serious felons are getting released. Representative Thomas stated she will bring it up.

Vice Chairman Boyd commented on having recently witnessed the volume of OHRVs in Berlin, NH. It is a conundrum for the North Country as they have invested a lot of time into the Jericho Mountain State Park. It is a multi-use facility. He has enjoyed the park and appreciates the need to connect. He does not see an easy way to get beyond the impasse to come up with something sensible to address private right concerns with promoting economic development, which is sorely needed in that area.

Representative Thomas remarked that is the balance sought. One of the problems is the OHRV clubs are well funded to pay for lobbyists. They have a loud voice at the State House. No one wants to shut down Jericho, no one wants to shut down the Ride the Wilds Corridor Trail. They just want to contain this to preserve the quality of life for the private property owners.

ATVs fit four people (significant machines) that are traveling on and causing damage to public roads. Towns are authorizing use of ATVs without private property owner permission on Class VI roads. Class VI roads are not maintained by towns. Have heard from property owners they are paying up to \$10,000 to repair damage caused by these vehicles. Asked what the position of the towns is, she commented the towns are gaining revenue.

Councilor Harrington spoke of there being differing opinions on the issues of vetoing and the repercussions of that. She encouraged individuals interested in understanding the issue(s) to do the research. She noted free lunch is a Federal program. She is uncertain how that would be impacted. She thanked Representative Thomas for coming before the Council to provide information for public consumption.

## **Town Manager's Report**

The monthly department reports for August will be available for the Council on Monday, and will be placed on the Town's website for public viewing.

The Library is pleased to welcome New York Times best-selling author, novelist, and human rights activist, Chris Bohjalian, to Merrimack on Wednesday, September 25<sup>th</sup>, as part of the New England Authors Series during "Banned Books Week." This event will be held at the Merrimack High School Little Theatre. Doors will open to registered attendees at 6:30 p.m.

The Library's Fall Book Sale will be held Saturday, 9/21 and Sunday 9/22, with a Friends Members-Only presale on Friday 9/20. Please visit the library's website [www.merrimacklibrary.org](http://www.merrimacklibrary.org) for details.

A letter was received from Senator Chandley regarding the correspondence she received from Commissioner Sheehan and the New Hampshire Department of Transportation referencing our request for reconsideration for the installation of sound barriers at several locations that will be affected by the proposed Turnpike widening project. It was voted down in committee.

On behalf of the Council/Town, Senator Chandley sent a letter to Victoria Sheehan, Commissioner, Department of Transportation, requesting reconsideration. The response was negative. It was indicated "The East Ridge Condominiums was evaluated for noise impacts; however, the maximum existing noise levels do not exceed the established noise abatement criteria. As such, a barrier will not be constructed at this location. Maple Ridge Condominiums already has a noise barrier and as a result noise levels at this location do not exceed the established noise abatement criteria. As such, modifications to the existing barrier at this location will not be made. While noise ordinances were identified in the following neighborhoods; Vista Way (Ministerial Drive) and Roundtree Lane, Harris Ave, Priscilla Lane, East of the Turnpike/North of Exit 12, Back River Road, noise barriers were found not to be reasonable as they exceeded the established effectiveness criteria, which is a federal guideline. As such, a barrier will not be constructed at this location."

Town Manager Cabanel stated new Site Plan Regulations (representing a modernization and comprehensive overhaul of the previous site plan requirements) and amendments to the Subdivision Regulations (removing site plan relevant materials because of new site plan regulations) were adopted by the Planning Board at their meeting on September 3, achieving an important implementation goal of the 2013 Town Master Plan.

Also at the 9/3 Planning Board meeting, conditional approval was granted to an amendment to the previously approved mixed use site plan for Phase I of the "Merrimack Park Place" project, proposing an additional 32 multi-family residential units and removal of 84,200 square feet of office & restaurant space, specialty retail, and an event center from Phase I to be included in a subsequent phase. The first phase will now be comprised of 224 multi-family units, a free-standing restaurant, and 120-room Marriott branded hotel. Town Manager Cabanel commented on being disappointed. The hope had been that it would be a model village type design.

Councilor Albert spoke of being disturbed by the letter from Commissioner Sheehan. He recommended residents of the areas impacted reach out to their Representatives and Governor Sununu. While there are noise impacts identified in those neighborhoods, noise barriers were found not to be

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reasonable as they exceeded the established effectiveness criteria. That sounds like bureaucratic BS. He is hopeful this discussion has not concluded.

The Town Manager and Council expressed their gratitude to Senator Chandley for her efforts and continued support.

As a result of complaints/reports provided by the Police Chief relative to clientele, Woodspring Suites contacted the Police Department and arranged a meeting. The meeting took place earlier in the day, and was attended by the Chief of Police, Deputy Chief of Police, Town Manager and 4 representatives of the hotel management company; President, Regional Director of Operations, Sr. Vice President of Operations, and a hired security consultant. They had interesting thoughts that would be very productive, and are looking to institute them immediately. They seemed genuinely interested in improving the situation, and want to be a model of success for the Town.

The next step is to go to the Residences at D.W. Highway who have been unresponsive. A concentrated effort will be made, understanding clientele will move from one to another. The Town had to hire two additional Police Officers at a cost of a few hundred thousand dollars a year because of the advent of both of these hotels. Of the 189 arrests by the new Special Investigations Units that was created for this purpose, 46% came from the hotels. Thirty percent of all arrests in the Town come from the hotels.

The Council was provided information indicating the Governor's Advisory Commission on Intermodal Transportation (GACIT) has scheduled (3) public hearings in September for District 5, to receive public comments/testimony on transportation projects and priorities included in the draft 2021-2030 Ten-Year Transportation Improvement Plan.

Councilor Albert questioned if the letter from the Commissioner of the NH DOT would be posted on the Town's website, and was informed it would.

Chairman Koenig spoke of the work on Executive Drive and Amherst Street questioning if it is to improve the signal interchange. Dawn Tuomala, Deputy Director/Town Engineer, Public Works Department, stated the work to be done is to tie the 12" water line to the new development at 4 and 6 Executive Park Drive. The Merrimack Village District (MVD) had specified, as part of the approval process, that they wanted a through loop made through the property. In order to do that, they need to tie in (just past the intersection and before the bridge that was replaced several years ago). Because it is a heavily traveled area, their time has been restricted to 9:00 a.m. to 2:00 p.m. As a result, it will likely take two days for them to cross the road and get the work done. The department wished to have it done in a timely manner so that the final pavement could be put down over the patching before winter sets in. They were supposed to have done it earlier in the summer, but MVD would not allow them to do that because of the water demand. They only have until next Wednesday to have the work completed.

Chairman Koenig noted work done on the traffic lights in the area asking if that is to set the timing on the lights to work better. Deputy Director Tuomala stated her belief it is. Asked if the time of day work would be done in the area would be advertised, she stated she reached out to the Police Chief to have it put out on the NIXLE. It can be posted on the Town's website. Councilor Albert questioned

use of the electronic sign. Deputy Director Tuomala remarked it is not a Town project. She simply felt it is such an important intersection she wanted to ensure motorists are aware. She will look into whether a message board could be put up.

**Consent Agenda** - None

*There being no objection, the Council went out of the regular order of business to take up New Business and allow for public comment.*

**New Business**

**1. Donation Acceptance for the Merrimack Police Department**

Submitted by Captain Matthew Tarleton

The Town Council to consider the acceptance and expenditure of a donation from Merrimack resident Patricia Kane in the amount of \$1,000 to the Merrimack Police Department to be used towards the purchase of R.A.D. self-defense training equipment, pursuant to RSA 31:95-b and Charter Article 8-15.

Captain Matthew Tarleton, Merrimack Police Department, spoke of the \$1,000 donation from Ms. Patricia Kane. A recent graduate of the R.A.D. program, she was overwhelmed and appreciative of what she learned. She wished to provide any sort of help she could. There are equipment needs, which is what the donation would go toward, e.g., equipping students with defensive gear.

The R.A.D. program began in 1989. ACO Haylie Gulino has been the certified R.A.D. Instructor since 2003. She had a chance to talk with the Chief who was a big proponent of pushing it forward. Haylie reached out to Amanda Groves, Patrol Officer, who was interested in the program and became certified as an instructor in 2018. The first class was held in January. The 12-hour class is conducted on Tuesdays and Thursdays at the John O'Leary Center (no cost to participate). It is a basic women's self-defense class. The feedback has been unbelievable. In the four classes conducted to date, 53 people have graduated.

Asked if the department has considered offering the program to high school seniors preparing for college or high school students in general, Captain Tarleton noted one of the most recent classes was geared toward college students. There has been contact with the school system proposing this be part of the gym curriculum. The schools seem to be on board. Two officers recently became certified as aggressors as well.

**MOTION made by Vice Chairman Boyd and seconded by Councilor Albert to approve the acceptance and expenditure of a donation from Merrimack resident Patricia Kane in the amount of One Thousand Dollars (\$1,000) to the Merrimack Police Department to be used towards the purchase of R.A.D. self-defense training equipment, pursuant to RSA 31:95-b and Charter Article 8-15 and furthermore that the Town Council ask the Town Manager or the Chief of Police to extend a letter of thanks and appreciation to Ms. Kane for this generous donation and sincerest thanks for continuing to empower women in this community. MOTION CARRIED 6-0-0**

## **PUBLIC COMMENT**

Ben Niles, 11 Fernwood Drive

As a resident since 1983, he has seen a lot of wonderful changes and improvements to the school system, physical plants, etc. At the same time he has seen deterioration of some aspects of quality of life.

Regarding the OHRV issue, if restoring the quality of life to the residents in the north country there are only a few choices; require muffler standards with decibel limits, limit the roads that can be accessed, limit the horsepower of the machines, or hours of operation.

He spoke of the Route 3 traffic congestion and the amount of apartments and hotels that have been and continue to be constructed along the Route 3 corridor in Town. The traffic in the morning and evening commute hours is intolerable. He requested the Town commission a traffic study (paid for and owned by the Town). This is impacting quality of life and will eventually impact property values as it spills over into the feeder roads. He questioned if there is the need for a building moratorium pending the outcome of a study, and stated there to be a responsibility in the government to maintain a reasonable quality of life for the residents of the Town.

Regarding the issue of density, he questioned who is responsible for town-wide housing policy/programs/regulations. Density is an issue because the higher the density the higher the volume of traffic. Lack of density is an issue because there is no affordable housing in Town. Seniors who want to downsize have nowhere to go other than leave Town because what is being constructed is cost prohibitive.

To lower the price of housing, the first, most significant impact, is density. He spoke of constructing townhomes and senior housing. When visiting websites promoting 55+ housing, they are showing you condos. They are not 55+ communities geared to the needs of seniors with the layout, appliance arrangement, cabinetry, and doorway widths for aging seniors, they are just condos built in the '80s and '90s. We're not providing, in Town growth, for our seniors.

The same thing with starter homes. Builders and developers talk about the cost of regulations. Not having impact fees is a step in the right direction, but when looking at the various building codes, etc., that can have an impact. He suggested collaboration with the NH Builders Association to lower cost of new housing. If you have cluster housing you drive down the land cost so instead of being \$125,000 - \$150,000 per unit for the land, you can cut that in half or 2/3. That does wonders for affordable housing assuming builders are willing to pass savings to the consumer. If not, then you don't approve their proposal. There is the need to find ways to keep the younger generation in Town; work and plant roots into the Town.

There are needs we should be working on; form study groups and look for volunteers to join in with the local government to start the analysis and collaboration. Mr. Niles noted he has spent his entire career in housing finance. He understands housing and financing housing. It requires some give and take by all parties.

Affordable housing is on his wish list for the future. What is most urgent is a comprehensive traffic study for the Route 3 corridor with current traffic counts. He stated a willingness to work on these issues.

*The Council returned to the regular order of business.*

## **Old Business**

### **1. MS4 Stormwater Permit**

Submitted by Deputy Public Works Director / Town Engineer Dawn Tuomala

The Town Council to receive an update on the Municipal Separate Storm Sewer System (MS4).

Dawn Tuomala, Deputy Director/Town Engineer, Public Works Department, provided a presentation (can be viewed [here](#); tape counter 1:05).

The Municipal Separate Storm Sewer System (MS4) is driven by the EPA, which determined which communities would be subject to the MS4 permit. They determined the urbanized areas (1,000 people within 1 square mile) from the 2000 and 2010 census.

There are 60 regulated communities in the State; 16 have waivers (did not meet criteria of urbanized), 3 are non-traditional (UNH, DOT, Veterans Center). Remaining are 47 regulated communities.

Coalitions have been set up over the years; Seacoast Stormwater Coalition (15 communities), NH Lower Merrimack Valley Stormwater Coalition (18 communities). Both groups are assisted by NHDES; attendance at all meetings, keep meeting minutes, keep a blog for information sharing, and have created templates.

Deputy Director Tuomala spoke of the volume of work required under the permit and the benefits of the coalition in regard to participants contributing towards the work. They are preparing for the second year. In two weeks' time the annual report on the first year's activities is due (each town has the requirement). Several templates have been made, and each community will utilize the one that best fits their individual community.

A Notice of Intent (NOI) was created (last October 1st). The Town received a letter in May notifying of approval. There were no changes to the NOI. The coalition worked collectively on the NOI. They all submitted something very similar.

This past year the coalition has been working on the Stormwater Management Program. There are many parts to the program. The document is what will be used to describe the activities and measures that will be implemented to meet the terms and conditions of the permit. It can be modified however needed. There is the need to comply with the schedules set forth, but the NOI will be the document they are heading towards as it has the schedules. As part of this, they had to create Minimum Control Measures (MCMs). There are 6 MCMs:

### Public Education and Outreach

Targets 4 audiences:

- Residents & homeowners
- Commercial and business properties
- Developers/construction/reconstruction
- Industrial properties

Have to do two pamphlets for each one of the four target areas (2 within a 5-year period)

The first task the interns were given this summer was the creation of these documents. NHDES created the templates for the pamphlets. The templates were used and adapted. They have been in distribution since May; handed out with dog registrations, at Town events, laminated copies were posted at all trail heads, etc. It was suggested pamphlets be posted at the Dog Park and provided to the schools to be used in the curriculum.

### Public Involvement and Participation

Discussed was the need to change some of the Town codes, meet with the Planning Board to discuss regulations, etc. There will be opportunities for public hearings and public comment periods.

### Illicit Discharge Detection and Elimination (IDDE) Program

Code 167 will have to be changed significantly. The IDDE has to be included within the Code and provide authority to different people to be able to detect these and help eliminate them. It will have to include definitions, prohibitions, how to eliminate non-stormwater discharges; there are certain things we cannot accept in the drainage system no matter what, e.g., floor drains. Pre-existing instances will have to be located and addressed. Sanitary sewer overflows are dealt with by Wastewater (don't usually have). There is a waiver in the Town's permit so that the Town does not have to address those.

Councilor Albert questioned if complaints have been received regarding illicit discharges/dumping, and was told they have occasionally received such complaints. The building officials address that and contact NHDES.

Stormwater mapping (Phase I and II) is included as part of MCM3.

Kyle Fox, Director, Public Works Department (PWD) noted MCM 3 is one of the most difficult. The Stormwater Program started for the Town in 2003 with the first permit. The IDDE Program has been part of the permit since then. When the stormwater standards were created, this was a roadblock they ran against. They never did make a final draft of the IDDE portion of it because of the complications. It is not just who the Town wants to dictate who controls it, it is also governed by the RSAs. Currently, outside of the wastewater folks, Public Works has no enforcement capabilities whatsoever. When having an IDDE instance, they get involved from an investigation standpoint. The Police Department, Building Inspector, Health Officer, and Planning & Zoning Administrator have enforcement capabilities. The rules vary whether it is a private or public system. Private systems



don't affect the MS4, but is still part of the IDDE program because it is a Town code not an MS4 code. There is a great deal to this.

The outfall inventory and interconnections initial ranking was done, but has to be modified (great deal more work).

Dry weather outfall screening and sampling began over the summer (interns). They had to create the forms to be able to sample to ensure the chain of custody for testing is done properly. A tablet was used in the field. The outlets were located and ensured the identification/location was identified correctly. The next step is to have the paper form put in there so that the information can be put into the GIS system in order for a complete list to be generated. Dry weather sampling is done at certain times. Eighty-eight were looked at; only 6-8 were flowing. If no water, there is no need to test. Asked about the numbers, Deputy Director Tuomala indicated there are over 500 outfalls and over 5,000 catch basins.

Follow-up rankings need to be done and catchment investigations. Every outfall has a certain area it is taking and draining; they have to be defined. Employee training has to occur.

#### Construction Site Stormwater Runoff Control

This is in place, but needs to be updated for the new regulations. The objective of MCM 4 is to minimize or eliminate erosion and maintain sediment on construction sites. Deputy Director Tuomala spoke of having worked with Tim Thompson, Director, Community Development Division, in completing the site plan. Another set of regulations has to be done for stormwater for erosion control and for the IDDE. The IDDE and stormwater will have not only Chapter 167, but will also have their own regulations. There are templates that have been created for the Town.

#### Post Construction Stormwater Management in New Development and Redevelopment

Objective is to minimize the water quality impact from new development and reduce the water quality impact due to stormwater runoff from a redevelopment area.

Some of this is already set up. There is currently stormwater management of anything over 20,000 square feet. A third party reports weekly and after a ¼" of rain.

There is a requirement for operations and maintenance plans for each development and reporting requirements to the Town. These have always been required. There is work to be done to ensure the requirement is complied with. This would relate to a bigger site plan/industrial place where they need to report back whether all of their detention basins, swales are working, etc.

#### Good Housekeeping and pollution Prevention for Permittee Owned Operations

Related to Town facilities; have to inventory our parks and open spaces. Identify what we do for pesticides, herbicides, fertilizers, and set up plans for all of those. For all facilities, e.g., school, town offices, police, fire stations, pools, etc., we have to find out if any materials are stored onsite that could be hazardous. We have to know all of this and have plans for all of it. We have to know where our

vehicles and equipment are stored, how we address spills, what we do with wash water. These are all part of the overall plan for MCM 6.

The second part is infrastructure operations and maintenance. Our street sweeping, catch basins, winter maintenance. All of this is already being done, but there is the requirement for more documentation on quantities, and be able to prove in the future that we are doing it in such a manner that we are actually reducing. The Town is and the Legislature is working towards getting towns certified in the Green SnoPro program.

The stormwater pollution prevention plan must be in place for each Town owned facility; spill avoidance, record keeping, etc.

It is understood additional employee(s) are required to be able to comply with all of the requirements.

It has become very apparent what is also needed is someone having GIS knowledge to be able to change the Town's GIS system, input all of the information, and be able to deal with it. Although she has had some of the training, Deputy Director Tuomala stated time does not permit her to take on that task. That position would be 40 hr./week.

The next full-time position needed would be highway department/stormwater foreman. Seventy percent of the time would be spent on MS4 tasks (remaining on highway duties). This position would be under the MCM 6; taking care of catch basins, ensuring records are accurate. Because the Highway Department received a tablet this year, while cleaning catch basins, they were able to complete the necessary form using the tablet. All of that information is sitting there waiting until we can extract the information, which is needed to complete the annual reports.

Information was provided relative to the projected cost of hiring employees versus contractors; \$174,200 anticipated savings if hiring (over the four years).

Town Manager Cabanel spoke of appreciation for the work the Deputy Director has done on the MS4. She noted her displeasure with the fact NHDES is not taking care of this like is done in nearly every other state. New Hampshire is one of the only states that has had this requirement imposed upon it. Because of that, the Town was hit by the EPA rules. She spoke of the onerous nature of the requirements. The Town is fortunate to have the professional staff employed to guide it through this process and conduct the necessary work. Smaller municipalities are fortunate to be able to belong to a coalition.

Were the Town to hire a contractor, meeting the requirements of the MS4 would cost \$1,230,000. It may provide some results; perhaps cleaner water, but it is so over the top in terms of regulations, reporting, sampling, etc. because it is coming from a federal source rather than State. At best, the Town's cost would be \$1,056,600. This goes on forever. It will even out at some point, but doesn't end after the four years.

Town Manager Cabanel questioned where NHDES stands on the proposal that they take over this role and why, with all of the efforts in Washington to gain relief from this, no progress was made. She asked if all legal avenues for some reasonableness in the approach to this permit have been exhausted.

Deputy Director Tuomala responded Director Fox went before the Legislature. She went 2-3 times. Vice Chairman Boyd went as well. The last time she went it was before the Financial Committee. They would not hear comments, and threw them out. They did not supply the money required to have NHDES investigate how to set up the program. She does not believe anything has been done (has not followed it since then).

In regard to legal avenues, she stated the matter to be with legal counsel and something she cannot discuss publicly.

She commented the first five years are basically setting up the programs and standards, getting the results of the testing from the 5 years to 10 years, and then setting up any mechanical type systems that might be needed or other treatment areas.

Town Manager Cabanel questioned the anticipated benefit to the environment for the \$1.2 million over four years. Deputy Director Tuomala stated it will identify problem areas. Asked what the result would be if the Town has no problem areas, she indicated it would have proved there are none. Deputy Director Tuomala stated one of the things she had interns working on was to find the areas within the rivers and brooks that were tested to put us on that impaired waters list. It only takes 1 to put it on the list, but it takes years to get off.

Chairman Koenig commented presumably what the Town gets out of 4-5 years of effort, is we know where sources are and have regulations and enforcement in place to try to clean up those illicit outfalls, etc. that are creating the problem. He commented on the one hand you can't argue that doing anything to clean up is a bad thing, but the fact that it is being dumped on us as an unfunded mandate is extremely difficult.

Councilor Rothhaus questioned how Concord managed to dodge this. As the third largest city in the State they have to have an impact on the Merrimack River. He questioned if we have to prove it is coming from up north. Deputy Director Tuomala stated "No, we only have to prove what is coming out of our outfalls that we own. If they are privately owned, we don't deal with it, if it is upstream, we don't deal with it, but we can't impair any more than what comes in."

Concord is not within the urbanized area as it has been defined by the EPA and the census. The requirement for 1,000 people in a square mile is only one of the criteria.

Councilor Albert suggested, as part of the public education piece, consideration be given to creation of a presentation to be aired on public cable television. He also suggested pamphlets be distributed on voting days.

Councilor Albert questioned if the Council writing a letter would be helpful toward efforts to have NHDES take over the oversight responsibilities. Deputy Director Tuomala stated her belief the last time it started with Senator Andy Sanborn, Bedford. Sending letters to Representatives could start the ball rolling again. Councilor Albert suggested a letter be crafted.

Councilor Harrington spoke of the amount of testimony provided by Town staff, etc. She suggested the effort would be moot. Chairman Koenig commented he is uncertain there is appropriate timing at

the moment other than just to add to the noise clutter. Vice Chairman Boyd stated agreement. This issue has been known since 2012. The Director and Deputy Director had set amazing expectations to the Council as to what this would be. It is being seen now with this unfunded mandate.

The real issue talked about when we were first trying to attack the problem and keep the original permit in place, is the level of phosphorous. Now we will be in the unsavory position of telling people they cannot use phosphorous in their lawn fertilizer. There have been a lot of smaller things as it relates to stormwater discharge that are gradually being built up to drive us to this point in time where we are looking at expending over a million dollars over the next 3-5 years trying to figure out if we can clean what the Feds are asking us to clean.

Vice Chairman Boyd questioned if the EPA has lowered the phosphorous number that is required to be cleaned in the stormwater discharge. Deputy Director Tuomala stated a response could be provided. Asked whether the Town could engage the Nashua Regional Planning Commission (NRPC) or the New Hampshire Municipal Association she stated they actually meet at the NRPC. They have been involved along with NHDES. The NRPC is who started the coalition. A lot of training comes from the UNH T2 program. That is a road scholar program. Another area of training comes from Primex (insurance carrier). The Municipal Association has some classes.

Asked about the environmental GIS position and whether it is fair to say there will be an enforcement capacity, Deputy Director Tuomala stated there could be. Who will have enforcement capability remains to be determined?

Vice Chairman Boyd remarked he does not disagree with composing a letter to legislators. He commented on the PFAS problem experienced in Town and how engaged the Legislature is. He finds it difficult to believe they don't want to be engaged on this issue as well. They kind of work hand in hand. Testimony has been provided the Council there is an indirect correlation to the discharge of PFAS going into our stormwater that we will have to assume responsibility for. He would think NHDES would want to be engaged on this issue, if anything to ensure there is uniformity as to how communities address this. Deputy Director Tuomala stated her belief there are currently no standards for the testing of stormwater for that. The permit does not say anything about that. If our drains do not have it then we are okay. We don't have to deal with Saint-Gobain's direct drains; they are not ours and we are not responsible for them.

Chairman Koenig remarked as long as it doesn't show up in our wastewater, which it does today. Director Fox commented currently NHDES has drinking water and groundwater standards. They have new standards set to go in at the end of the month. Those don't affect the MS4 Program (stormwater outfalls). Once NHDES does set a surface water standard, that is when it will impact the MS4 program. If the drinking water standards and groundwater standards are any indication, it will hit every one of the MS4 communities very hard. The way the program is currently set up, EPA writes the permit, NHDES sets the standards.

## **PFAS**

### **a) Commission on the Environmental and Public Health Impacts of Perfluorinated Chemicals**

The Town Council to consider appointing a representative from Merrimack to serve on the Commission on Environmental and Public Health Impacts of Perfluorinated Chemicals, established by HB 737.

Chairman Koenig remarked Representatives Murphy, Rung, and Thomas along with Senator Chandley are on the commission. The Bill calls for a representative from each of the 3 communities that are impacted most at the moment. He stated the desire to appoint a member of the Council or someone that can be in close contact and communication with the Council.

**VICE CHAIRMAN BOYD NOMINATED COUNCILOR HEALEY**

**COUNCILOR ROTHHAUS NOMINATED COUNCILOR HARRINGTON**

Councilor Albert questioned the possibility of appointing a representative and an alternate.

Chairman Koenig stated his uncertainty with whether an alternate position was written into the law. Vice Chairman Boyd stated the language to indicate “appoints a representative”. It does not designate the type of representative coming from the community.

Asked if she is aware of the time commitment, Representative Thomas was uncertain. It is a four-year commission.

Members of the Council spoke of support for both nominees.

Councilor Albert spoke of Councilor Harrington as the senior member of the Council, and stated his support for her to be the representative and Councilor Healey the alternate.

Councilor Woods stated his support of Councilor Harrington as the representative. He commented during the 40 some odd months the Town has been aware of particular contaminants, he has seen Councilor Harrington at various forums; in a leadership position on the Council, her participation in the early discussions with the MVD, etc. He stated appreciation for her forthrightness and politeness.

Councilor Rothhaus stated agreement with Councilor Wood’s assessment. He remarked both would represent the Town well and are very well versed. He spoke of Councilor Harrington having chaired the Council during the time of this issue.

Vice Chairman Boyd commented on having two nurses sitting on the Council who are able to speak of the medical issues that are potentially impacted by the toxins. He stated his support for both individuals.

Councilor Harrington commented Councilor Healey is as qualified as she.

Chairman Koenig called for the vote.

*Councilors Rothhaus, Albert, Woods, and Chairman Koenig voted to support the nomination of Councilor Harrington.*

*Vice Chairman Boyd voted to support the nomination of Councilor Healey.*

*Councilor Harrington abstained.*

Vice Chairman Boyd requested reconsideration to make the vote for Councilor Harrington unanimous.

***There being no objection, the vote was deemed unanimous.***

**5-0-1**

***Councilor Harrington appointed as the representative to the Commission on the Environmental and Public Health Impacts of Perfluorinated Chemicals.***

**b) Communication with the State**

The Town Council to request that all correspondence on DES matters impacting the Town of Merrimack include a carbon copy to the Town Manager.

Vice Chairman Boyd spoke of a soil sampling work plan Saint-Gobain has. They applied for a deferment that was approved by the DES. The deferment was put off until March of next year. The Town was copied on the decision by DES to grant approval of the deferment. The Town never received any notice that this particular request was being sought.

Vice Chairman Boyd drafted a letter addressing the fact the Town was not notified of the request, and that moving forward, the Town should be notified of any and all environmental impacts, whether resident or commercial properties in Town. He spoke of PFAS being an issue the Town has been dealing with for the past 7 years and development being proposed along that particular corridor. It behooves the Town to be engaged with things being sought at the State level. In the particular situation cited, the Council could have had an opinion on the process. NHDES has collaborated with the Town/Council, but being copied on all matters would provide a unique opportunity to add a level of transparency to this process regarding environmental concerns.

Councilor Albert remarked, as stakeholders, the Town should be kept apprised. Councilor Rothhaus stated his support of the letter. Councilor Harrington stated agreement with the letter. There is the need to set the expectation of notification. Noted were minor changes to the language.

**MOTION made by Councilor Harrington and seconded by Councilor Woods to send the letter as modified**

**ON THE QUESTION**

Chairman Koenig spoke of his appreciation for the letter being drafted and provided the Council for consideration. He thanked Vice Chairman Boyd for his effort.

**MOTION CARRIED**

**6-0-0**

**c) Public Meeting with the New Hampshire Department of Environmental Services (NHDES)**

A public meeting is tentatively scheduled for Tuesday, November 5, in the All-purpose Room at

The Public Meeting has been scheduled for Tuesday, November 5<sup>th</sup> at 5:30 p.m. in the All-purpose Room at the James Mastricola Upper Elementary School.

Town Manager Cabanel spoke of the impression she got that people want to know what it means that NHDES has lowered the levels. She requested that type of meeting from Clark Freise, Assistant Commissioner, NHDES. He responded that MVD is responsible for the public water and this does not apply to private wells. She stated she was talking about DES lowering the standard and people wanting to know how it impacts them regardless of the source of their water. He indicated there is no way he could do that.

What it will be is what they want to present. DHHS will not be in attendance. They will not talk about MCLs or health at all. They will have a public hearing on the Saint-Gobain air permit, and they are going to have an update briefing on the overall investigation and mitigation efforts. It is a presentation only.

Chairman Koenig stated understanding to get into all of the details of their presentation would get way too deep in the weeds. What is really desired is for them to state what the impact is to an individual.

Town Manager Cabanel stated that is where she began the discussion. She had communicated: "As you can see below, the Town Council would like to have a public information meeting to explain to the public what the new MCLs mean to them. It would probably be a good idea to have representatives from DHHS there to explain why the numbers are so low and how it relates to current and future health concerns. Is that something you are able to do?" He responded: "MCLs don't go in effect until September.": "If you are looking for a briefing on the entire Saint-Gobain investigation response, we should engage other impacted towns." She responded: "The way the request was made at the meeting where presented to the Council relates specifically to the lower MCLs and how they relate to all drinking water sources, not private or public. I realize the new MCLs do not relate to private wells and/or what MVD intends to do to bring their public wells into compliance. Your study indicates that MCLs below a certain number are dangerous (my word) to people's health, and people want to know how it applies to them regardless of the drinking water source. For instance, if I have a private well that tests at 15 ppt for PFOA, what do I need to do to protect my family (filtration systems, etc., and who pays for them)?" His response was: "As for health impacts, the MCLs were chosen to be fully protective against all known health risks for all populations. There is no table that says drinking water at X percent over the standard of your risk of Y conditions increase by Z percent or anything close to it. As for who is paying for the home treatment, we don't know."

Town Manager Cabanel stated she kept pushing this is the meeting we want, and he said that the public will not be satisfied with what he is able to tell them. When he said that she responded maybe you don't have a formula, but maybe you could at least give us the science so that people can discern for themselves what their own public health risk is, and he said he wasn't doing that either.

Councilor Albert suggested Dr. Benjamin Chan, State Epidemiologist, would be the appropriate person to represent that type of information. Town Manager Cabanel stated she has asked Assistant

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Commissioner Freise, and he has said no. Asked if Dr. Chan can make the decision of coming to speak, Town Manager Cabanel commented Assistant Commissioner Freise seems to be running the whole show. The Town's desire is to put together a meeting for a particular purpose. There are people concerned about health risk and what the new numbers mean for them. He is not going to do it.

Chairman Koenig questioned if the Town should reach out to DHHS directly and challenge them to come. Town Manager Cabanel stated she can, but can guarantee Assistant Director Freise is running the show on who will come.

Councilor Rothhaus stated agreement the contact should be made, and an invitation extended.

It was suggested there could be a separate meeting not under the auspices of NHDES.

Town Manager Cabanel stated her belief it was the new toxicologist that put together the data that was the driving force. Councilor Albert stated the desire to understand the data used. It may be that there is a representative from the source of information used that could attend a meeting. Town Manager Cabanel remarked, the State's numbers are lower than the Minnesota model. It is up to our State to be able to answer to the public.

Councilor Albert suggested, given NHDES does not intend to address the issue, perhaps the meeting should be cancelled. Chairman Koenig requested the issue of impacts and how to address them be pushed further.

Vice Chairman Boyd remarked there is a reason they went from 70 ppt to 12. Chairman Koenig noted Assistant Commissioner Freise points to a PowerPoint (30-40 pages) that describes all of that in detail; a document he could not understand. He complains that there was a voluminous report that was given to the Legislature when MCLs were accepted. That should be reviewed.

## **Minutes**

June 17, 2019, Goal Setting Session

**MOTION** made by Councilor Woods and seconded by Councilor Albert to approve the meeting minutes of the Town Council Goal Setting Session of June 17, 2019, as presented. **MOTION CARRIED 6-0-0**

August 15, 2019

*The following amendments were offered:*

Page 1, Line 4, replace "electronically" with "telephonically"

Page 7, Line 1, "electronically" with "telephonically"

Throughout the document where it appears; remove "Viva Voce"

Page 9, Line 39; replace "form" with "forum"



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**MOTION** made by Councilor Albert and seconded by Councilor Harrington to approve the meeting minutes of the Town Council meeting of August 15, 2019, as amended. **MOTION CARRIED 5-1-0**

*Councilor Albert voted in opposition*

**Comments from the Press** - None

**Comments from the Public** - None

**Comments from the Council**

Councilor Albert commented on the condominium project on East Chamberlain noting they have paved a sidewalk down. Tim Thompson, Director, Community Development Department has advised him they will also do a section in front of their land. Although he believes there is not the need for sidewalks in all areas, the Council has discussed sidewalks on the westerly side. He questioned if it is time to utilize fund balance to tie that section in down to the gas station while the other work is being done.

Chairman Koenig questioned if what is desired is to reach out to the contractor conducting the work to see if they could be paid by the Town to take it further. Councilor Albert stated that could be done if the cost is reasonable. Town Manager Cabanel stated that could be done if the desire of the Council. Chairman Koenig requested that be done if at a reasonable cost.

Councilor Rothhaus stated appreciation for the representatives of Woodspring Suites who visited and took the situation seriously.

Councilor Rothhaus spoke of the recent situation of a child missing from Kids Kove. Jen Twardosky, a resident, found the child. She had not realized the Police Department, through their social media, etc., had asked that people wait. Her instincts said I have to go to the river, and sure enough she found the child walking the railroad tracks. He wished to publicly thank her for that. That had to be a very scary thing for the family. As a parent and grandparent the whole thing scared him. He stated appreciation that she had that intuition to head that way and kept that child from any further potential danger.

Vice Chairman Boyd noted Erica's Run taking place on September 30<sup>th</sup> at the High School. The LoVerme 5K will be on October 6<sup>th</sup>.

**Adjourn**

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

*The September 12, 2019 meeting of the Town Council was adjourned at 10:00 p.m.*

Submitted by Dawn MacMillan