

Approved: April 5, 2012

Posted: April 23, 2012



## Town Council Meeting Minutes



Thursday, February 9, 2012, at 7:00 PM, in the Town Hall Meeting Room

Chairman Rothhaus called the meeting to order at 7:00 pm. Present at the meeting were Chairman Rothhaus, Vice Chair Boyd, Councilor Mahon, Councilor Koenig, Councilor Dwyer, Councilor Flood and Finance Director Paul Micali. Councilor Yakuboff arrived at 7:20 pm. Town Manager Eileen Cabanel was excused.

### Announcements

Upcoming meeting schedule: Regular Town Council meetings: February 23<sup>rd</sup>, March 8<sup>th</sup> and March 23<sup>rd</sup> at 7:00 pm.

Special meeting for ratification of outstanding Union contracts (if necessary): February 14<sup>th</sup> at 7:00 pm.

Public Hearing for 2012/13 proposed Municipal Operating Budget, Collective Bargaining Agreements, if any, Proposed Issuance of Debt, Petitioned Bonds, if any, other Petitioned Warrant Articles and Review of Default Budget: February 16<sup>th</sup> at 7:00 pm.

Annual Meeting – Deliberative Session: March 14<sup>th</sup> at 7:00 pm at James Masticola Upper Elementary School.

*The following announcements were made by Finance Director Paul Micali:*

- 2012 dog licenses are now available at the Town Clerk's office. Per NH state law, all dogs 4 months and older are required to be licensed annually by May 1<sup>st</sup>. Licenses not renewed by May 1<sup>st</sup> will be subject to late fees, and owners may receive fines and potential court action. If you no longer have your dog, then please contact the Town Clerk's office. For more information, please see "Dog Licenses" in the Town Clerk's section of the website.
- Filing Period for Town offices will be held February 22<sup>nd</sup> to March 2<sup>nd</sup>.
- The Merrimack Parks and Recreation Department is hosting a day trip to the Boston Flower and Garden Show on Thursday, March 15<sup>th</sup>. The motor coach will depart at 9:00 am and will return to Town Hall at approximately 5:00 pm. The cost of \$39.95 per person includes round trip motor coach transportation, ticket to the Boston Garden and Flower Show and driver gratuity. For more information, or to register for this trip, please call the Merrimack Parks and Recreation Department at (603) 882-1046.
- The 20<sup>th</sup> Annual Winter Carnival at Wasserman Park will be held on Saturday, February 25<sup>th</sup> from 12:00 pm until 3:00 pm. Enjoy a day of FREE family entertainment. Activities are planned for "snow" and "no-snow" conditions. See the model airplanes of the Southern NH Flying Eagles; enjoy a Karate demonstration by the students from the Independent School of Karate; be amazed by the dog agility demonstration given by the 4H Group - Pups R Us; and try your luck at a variety of outdoor games. Weather permitting, activities will also include a snowman building contest, Ice Fishing Derby sponsored by The Lions Club and snowmobile rides by the Sno-Buds. Join us in supporting local organizations including Merrimack Friends and Families and the Girl Scouts. Call the Parks & Recreation office if you would like to participate in hosting an activity or game or providing a refreshment.
- Merrimack resident Chris Sherman donated an Orion StarBlast 4.5-inch Astronomical Telescope to the Merrimack Public Library and it is currently on display in the Reference area. The NH Astronomical Society's Educational Outreach Committee started placing telescopes and educational materials in selected libraries in New Hampshire beginning in December 2008. Their goal: To help foster scientific literacy, stimulate an interest in astronomy, and provide people who have never looked through a telescope the chance to experience the excitement that comes from discovery. Placing the telescopes in local public libraries instead of just schools, allows greater general access to the telescope since they can be put into circulation just as a book. Merrimack's telescope can be reserved from the Library's catalog. Do a search for Orion StarBlast and place a request for Merrimack's copy.

Approved: April 5, 2012

Posted: April 23, 2012

*Councilor Mahon* reminded residents that the St. James Church will no longer be used for voting and that the voting times have changed from 7:00 am-8:00 pm to 7:00 am-7:00 pm. Those who previously voted at St. James will now vote at the James Mastricola Upper Elementary School.

### **Recognitions, Resignations and Retirements**

None

### **Appointments**

#### **Annual Review with the Heritage Commission**

*Submitted by Heritage Commission Chair Anita Creager*

Per Town of Merrimack Charter Section 6-6, at least annually, there should be an annual review with the Heritage Commission. This agenda item is to highlight the commission's significant actions, current projects, anticipated actions, and to raise any concerns the Council should know or could act on. Ms. Creager stated that the Commission now has 4 full members, 1 alternate member and 1 liaison, enabling them to activate several projects that were on hold. Walking tour brochures are being updated and a new Thornton's Ferry brochure is being created. A display case is now outside the Town Hall Meeting Room and the displays will be maintained by the Historical Society. The first display is *World War II, Merrimack on the Home Front*. Plaques are being made for Seaverns Bridge and Chamberlain Bridge. The Commission is researching getting portraits made of several famous Merrimack people to hang in the meeting room. Historical signs are being made for signs and businesses. The Commission had booths at the Business Expo and Knights of Columbus Craft Fair. New Christmas cards will be made this year. There are openings for 1 full member and 2 alternates on the Commission. Councilor Dwyer asked if the Commission would reconsider getting a bronze plaque for Chamberlain Bridge by doing a fundraiser.

*Chairman Rothhaus called a 5 minute recess.*

#### **Rotary Club Fourth of July Midway Presentation**

*Submitted by Peter Giacapuzzi*

The Rotary Club of Merrimack provided the Town Council with their presentation of the Fourth of July Midway. Pete Giacapuzzi and Steve Russell spoke on behalf of the Rotary Club of Merrimack. The event will be called Merrimack Rotary July 4<sup>th</sup> Family Day and will be more like an Old Home Day type of event. The Town would provide Police, Fire & Safety and would front the Rotary \$10,000, which will be paid back to the Town. Signage would be coordinated with the Town and portable toilets will be provided by the Town. The venue will be at the Mastricola School fields (exact location to be determined). Mr. Russell discussed the different festivities the Rotary is considering and how they plan to raise money.

#### **Land Valuation Update - The Commons Condominiums**

*Submitted by Town Manager Eileen Cabanel*

Avitar Associates President of Assessing Operations Loren Martin presented the Town Council with an update on the valuation of land at the Commons condominiums. Ms. Martin stated that for the first time since its inception, the land at the Commons, which includes Essex Green, the Commons and London Court, has been assessed to the landowner. In the past, it appears that some nominal value had been added to the unit owners for that land. In the last reassessment in 2006, nothing above market value was added to the land. The unit owners had a breakdown of land and building on their assessment on their record, so it was believed it was for the value of the land, when in reality the unit owners have rights to use the land but not ownership. In a typical condominium, unit owners have a fractional interest of ownership in the land. At the Commons, Dana Patterson Revocable Trust retains ownership of the land. The unit owners pay a monthly rental fee for the land to the Trust and they also pay a condo fee for their rights (known as a leasehold interest). The rights have always been that way, but have never been assessed in that manner. Previous records show that all of the unit owners received letters in 1984 and 1994 after values were updated from the revaluation companies informing them that they would be charged an additional fee for the use of the land. Ms. Martin stated that the way it was being done in the past was problematic for several reasons, but the biggest is because of liening and deeding. Since the land wasn't individually assessed and if that's the case and someone doesn't pay for their portion of the taxes, there was nothing tangible to lien.

Approved: April 5, 2012

Posted: April 23, 2012

Ms. Martin was forwarded a letter that went to the unit owners from Dana Patterson, Inc. effectively telling them they were responsible fractionally for a portion of the tax bill. She stated this is an agreement between a landlord and a tenant and not a management issue for the Town to collect tax for a taxpayer. She stated she doesn't know if the unit owners are required to pay the tax or not, but again it is a landlord/tenant issue. The letter that went out did have an error in that it stated the tax bill was divided by 172 unit owners, rather than the actual 316, which does include the London Court apartments. London Court are actually individual condominiums rather than apartments and they do pay the land lease fee to the Trust. Determining market value for the Commons is difficult because there are no valid sales transactions. All the transactions that have occurred are distressed – foreclosures, short sales, bank resales. Councilor Dwyer wanted it to be clear that it wasn't the Town that sent the unit owners a bill. Loren Martin stressed the fact that if anyone is aggrieved with their assessment, taxpayers have until March 1<sup>st</sup> to file an abatement with the Assessor's office.

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

*Roy Tilsley*, an attorney with Bernstein Shur on behalf of Attorney Greg Michael for Dana Patterson Inc. and Dana Patterson Revocable Trust 1991. He stated one big piece missing from the previous discussion is that in 1984, all 172 unit owners filed consents to be taxed under RSA 73:10. He stated that his client wants to go back to how it had been done for years.

*Martha Wagner of 1 Parker Drive* spoke as a representative of the Board of Trustees for the Merrimack Public Library. Ms. Wagner spoke about the Town Council's budget cut of \$75,000 and how it will affect the library. She expressed the Trustees desire to meet on a regular basis with the Council. She stated that the library is not moving forward with their warrant article to request funds to hire an architect to begin preliminary work to develop a new library. She asked the Council to consider adding \$14,846 back into the library's budget. She said the library has reduced department heads by 1 full time and 1 part time.

*Loren Martin, Avitar Associates President of Assessing Operations*, stated that the Consent to be Taxed forms (mentioned by Roy Tilsley) are from 1984 and original unit owners at that time. An agreement to be taxed from a unit owner in 1984 would not be legally binding on a current owner today. The Consent to be Taxed form also specifically addresses the lease hold interest, not a land valuation.

*Matthew Conley of 15 Clinton Court* is the president of the Commons Condo Association and has been a unit owner since 1984. He questioned the change of taxation for unit owners at the Commons.

*Steve Patterson of 18A Parker Drive* stated that until 2011, unit owners at the Commons have had land and building on their tax cards and have thus been paying the property tax all along. He feels that the Assessing Department and Avitar was not willing to work with him on the situation.

*Ron Beaulieu of 9 Essex Green* stated that his father was the original owner of the unit and he purchased it from his father's estate when he passed. He stated that as unit owners, they always paid the land portion of the tax bill directly to the Town. He was surprised to see the land portion of his tax bill at \$0 when he received his last bill.

### **Public Hearing**

*Chairman Rothhaus opened the public hearing at 8:33 pm*

#### **Amusement Device License Request**

*Submitted by Mike Brown*

The Town Council considered the approval of an application for a new amusement device license for Pizzaroma Restaurant located at 280 DW Highway, pursuant to Chapter 92 of the Merrimack Town Code. Mike Brown stated that he would like to put an arcade game at his business. Vice Chair Boyd commented that he supports issuing a license.

Chairman Rothhaus opened the floor for public input. No one from the public addressed the Council.

*Chairman Rothhaus closed the public hearing at 8:34 pm*

Approved: April 5, 2012

Posted: April 23, 2012

**MOTION was made by Vice Chair Boyd and seconded by Councilor Mahon to approve the application for a new amusement device license for Pizzaroma Restaurant located at 280 DW Highway, pursuant to Chapter 92 of the Merrimack Town Code, and to authorize the Town Manager and/or Finance Director to execute any and all applicable documents associated with said license.**

**MOTION CARRIES 7-0-0**

*Discussion on the Motion*

Councilor Mahon stated that he feels the Town Council should get out of the business of approving amusement device licenses. He requests the Town Manager be tasked with researching how the Town Council can get out of it. He stated the ordinance needs to be amended to make the change.

*Chairman Rothhaus opened the public hearing at 8:37 pm*

### **Consideration of Changes to Chapter 183 – Vehicles and Traffic**

*Submitted by PWD Deputy Director Kyle Fox, Police Chief Mark Doyle and Tim Tenhave*

The Town Council held a public hearing to consider the recommended changes to Chapter 183 - Vehicles and Traffic of the Merrimack Town Code, pursuant to Charter Article V, Section 5-3. Councilor Mahon questioned Police Chief Doyle about Chapter 183-7:C and whether the Police Department issued the permits mentioned for thru trucking. Chief Doyle said in all his years in the Department he has never issued the permit. Councilor Mahon asked Chief Doyle to research this and come back to the Council when the final reading is done. He stated if it has never been done or isn't necessary, it should not be in the ordinance. Councilor Koenig agreed in principle but stated you never know if you are going to do it until it happens. Councilor Mahon expressed a concern about Chapter 183-15. He thinks the definition of Public Streets and Highways is vague. There was clarification made. Councilor Mahon asked about why some of the action dates in the street tables are blank. Chief Doyle stated he will look into it. Councilor Mahon stated the header should carry over on subsequent pages. Vice Chair Boyd questioned why under Chapter 183-9:A, #11 was repealed. He could not find the answer in Town Council meeting minutes. Chief Doyle will research it. Councilor Mahon asked about Chapter 183-4 and the last word "police officer" and questioned whether it should read "flagger" since it may not always be a police flagger controlling traffic. Chief Doyle suggested changing it to "anyone who has the authority to direct traffic".

Chairman Rothhaus opened the floor for public input. No one from the public addressed the Council.

*Chairman Rothhaus closed the public hearing at 8:57 pm*

**MOTION made by Councilor Mahon and seconded by Councilor Dwyer to move Chapter 183 - Vehicles and Traffic of the Merrimack Town Code, pursuant to Charter Article V, Section 5-3 to a final reading. MOTION CARRIES 7-0-0**

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

None

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

- The Public Works Department will be hosting a public informational meeting for replacement of the Amherst Road culvert (just west of Meetinghouse Road) that takes flow from an unnamed brook. The meeting is scheduled for Thursday, February 16<sup>th</sup>, from 6:00 to 7:00 pm in the Town Hall conference room on the first floor past the Town Clerk's office. The Department and the consultant (Quantum Construction Consultants) will be reviewing the project purpose, schedule and costs.
- The Highway Division's change over to a natural gas heating system and improvements in insulation to the overhead doors at the Highway Department are complete.
- As an FYI, the Solid Waste Division continues to take in home cooking oil for disposal at the Transfer Station. Oil should be placed in a marked container for cooking oil located at the back side of the Recycling Building near the motor oil container. The Town sells the cooking oil to a vendor that uses the material for making biodiesel.

Approved: April 5, 2012

Posted: April 23, 2012

- The Wastewater Facility has received the New England Water Environment Association George W. Burke Safety Award. Each year this award recognizes excellence in safety practices and safety records. The award was presented to the staff on January 25<sup>th</sup> at the annual NEWEA conference in Boston. Currently, the Wastewater Facility has gone 952 consecutive days without a loss time accident.

### **Consent Agenda**

None

### **Old Business**

None

### **New Business**

#### **Consideration of Tentative Agreement with the NEPBA Local 112**

*Submitted by Town Manager Eileen Cabanel*

The Town Council considered ratifying the Tentative Agreement for a one year contract with the New England Police Benevolent Association Local 112. The union covers dispatchers and office staff. Some highlights of the contract are employees will pay 10% of their health insurance premium and dental premium, copay changes to \$10 from \$15, and prescription benefit changes to 0/20/30. Uniform allowances are \$400 for full-time dispatchers, \$200 for part-time dispatchers and \$400 for the animal control officer. There is a 1% wage adjustment for all members and annual sick leave buyouts and sick leave buyouts at separation change from 66% to 50% of hours over 240. Sick leave accruals change to 1.54 for those hired after July 1, 2012. Time paid but not worked is not included in overtime calculation, except holiday, and overtime is paid after 40 hours worked in a week instead of 8 hours worked in a day. The union agreed to bi-weekly pay once all unions have agreed. Part-time dispatchers have been added to the union at the same wage scale as full-time members and shall not work more than 32 hours per week unless an emergency or extenuating circumstance arises. Ratification of these cost items will total an additional \$2,921 to the budget presented to the Council.

#### **MOTION made by Councilor Mahon and seconded by Councilor Yakuboff to ratify the cost items of the Tentative Agreement with NEPBA Local 112, subject to the parties resolving concerns over the language of the agreement by June 30, 2012 to the satisfaction of the Town Council and the membership of the NEPBA Local 112 Union.**

*Discussion on the motion*

Councilor Mahon stated the intent of this item is to meet the statutory requirement for the contract submission date, which is required by law to be the second Tuesday of February, so that the article can be moved forward with the cost items. RSA 273:A requires voters to vote on the cost items on the contract; if the Council had not ratified the cost items by the 14<sup>th</sup>, it would not be allowed to be on the ballot for voter consideration. Councilor Mahon stated there are concerns and several inconsistencies in the language. The intent of the motion is if there is no agreement on the language by June 30<sup>th</sup>, then the contract has no force. Therefore, even though the \$2,921 was appropriated, the Council would not be obligated to make those adjustments in the pay under the terms of the contract because there would in effect, be no contract.

#### **MOTION CARRIES 7-0-0**

#### **Consideration of Changes to Chapter A198 – Administrative Code [First Reading]**

*Submitted by Police Chief Mark Doyle and Town Manager Eileen Cabanel*

The Town Council considered the presentation of proposed changes to Chapter A198 by the Town Manager and the Police Chief that reflect a recommended reorganization of some command positions in the Merrimack Police Department, pursuant to Charter Article V. Finance Director Paul Micali explained that Police Chief Mark Doyle feels there is a significant need for a prosecutor position. Chief Doyle brought it to Town Manager Eileen Cabanel as a cost savings measure because he has an open Deputy Chief position. Chief Doyle discussed the changes that would have to be made to the Administrative Code. They include changing the Administrative Services Division to the Administrative and Support Services Division. He

Approved: April 5, 2012

Posted: April 23, 2012

explained why he felt the changes were necessary. He explained that after some retirements in the past year, the position of Deputy Chief remained unfilled because they wanted to see if it was really needed or could they see if they could do something better with that opportunity. The idea that they came up with was to get an attorney. He stated that the current organizational chart is lopsided, with most of the functions being under the Operations Division. By moving the Criminal Investigation Division under the Administrative and Support Services Division, it is a far better balanced span of control and it would allow for better supervisory oversight. Chief Doyle discussed the benefits of bringing in an attorney to include allowing the Captain to exercise command over his division rather than spending time in court, bringing a wealth of legal knowledge and expertise to the position that the Department does not currently possess, and lessening the retirement burden to the Town compared to that of another full-time officer. He discussed the Department's court activity review. He stated that most of the Department's overtime comes from court time. Officers get a 4 hour minimum for every court appearance, per contract. The Division Captain has done a detailed analysis of court appearances over the past year. The Department is looking to reduce it by 400 hours this year and more savings will come with an attorney. The reorganization will also free the Support Services Captain up to do much more that he is unable to do now. Overall, the Chief feels that the reorganization will provide broader supervisory oversight across two divisions, a significant cost savings to the Town, more refined and more focused span of control, a better ability to tap into legal resources and increase operational efficiencies. Vice Chair Boyd asked about a contingency plan if the hired attorney needs to be absent. Chief Doyle stated that every command staff officer in the Department is trained as a prosecutor.

**MOTION made by Vice Chair Boyd and seconded by Councilor Mahon move Chapter A198 – Administrative Code of the Merrimack Town Code, pursuant to Charter Article 5 to Public Hearing. MOTION CARRIES 7-0-0**

Chief Doyle expressed his condolences to the family of retired police sergeant Rick Dumont.

*Discussion on the motion*

Councilor Mahon asked Chief Doyle what he sees as a timeline for the reorganization. Chief Doyle stated that as soon as they get the blessing that the Code is ready, he would expect to have an offer on the table within about two months for a prospective candidate.

**Minutes**

Approve the minutes from the following Town Council meetings:

**MOTION made by Vice Chair Boyd and seconded by Councilor Mahon to approve the minutes of the January 12, 2012 Town Council Meeting with the following corrections. MOTION CARRIES 7-0-0**

- Page 2, 2<sup>nd</sup> paragraph under Appointments, last sentence should read “activities in the area have curtailed”
- Page 2, 3<sup>rd</sup> paragraph under Appointments, 1<sup>st</sup> sentence: replace “contacting” with “connecting”
- Page 7, under Motion second paragraph, 4<sup>th</sup> line, should read “office cited them for an unsafe location.”

**MOTION made by Vice Chair Boyd and seconded by Councilor Mahon to approve the minutes of the January 16, 2012 Town Council Meeting as presented. MOTION CARRIES 7-0-0**

**MOTION made by Vice Chair Boyd and seconded by Councilor Yakuboff to approve the minutes of the January 19, 2012 Town Council Meeting as presented. MOTION CARRIES 7-0-0**

**Comments from the Press**

None

**Comments from the Public**

None

**Comments from the Council**

Approved: April 5, 2012

Posted: April 23, 2012

*Councilor Mahon* mentioned that he, Vice Chair Boyd and Town Manager Eileen Cabanel attended hearings last Thursday before the NH House in Concord regarding the tolls in Merrimack. Councilor Mahon discussed the toll situation and mentioned that State Senator White and Senator Bragdon spoke on Merrimack's behalf. He said the three bills that were before the House were essentially dead.

*Vice Chair Boyd* mentioned an article in the Union Leader about Ryan Workman who was presented an award as one of the 15 most accomplished air traffic controllers in the United States.

*Councilor Koenig* thanked the Council and legislature that took the time to support the toll bills.

### **Adjourn**

**MOTION was made by Councilor Mahon and seconded by Councilor Dwyer to adjourn the meeting.**

**MOTION CARRIES 5-2-0 Councilor Yakuboff and Vice Chair Boyd voted in the negative**

Submitted by Kristin Wardner