

Approved: September 27, 2018

Posted: October 2, 2018



## Town Council Meeting Minutes

Thursday September 13, 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

Chairman Rothhaus led in the Pledge of Allegiance.

### Announcements

The dedication of the Abbie Griffin Walkway will be held on Thursday, September 20<sup>th</sup> at 7:45 a.m. at the Abbie Griffin Park.

Life Scout Brigham Parker, Troop 48, who will be leading the construction of an outdoor classroom in Grater Woods, will hold a pancake breakfast fundraiser on September 22<sup>nd</sup> from 8:00 - 10:30 a.m. at the Church of Latter Day Saints located at 110 Concord Street, Nashua.

Chairman Rothhaus spoke of the passing of Carolyn Disco on September 5<sup>th</sup>. Nelson Disco, Carolyn's Husband, has been and continues to be a long-time volunteer on several Town committees. On behalf of the Town and Council, he expressed deepest sympathies to Nelson and his family.

Chairman Rothhaus spoke of the passing of Paul Mondoux on September 9<sup>th</sup>. Paul was a member of Merrimack Fire Rescue Call Division. He was an EMS Lieutenant and responsible for the EMS volunteers in the Call Department. Paul also served the community as the Chairman of the Technology Committee. He extended deepest sympathies to all who knew Paul.

Chairman Rothhaus spoke of the passing of Stan Whitlock on September 3<sup>rd</sup>. Carolyn Whitlock, Stan's Wife, has been a long-time participant in the community. He expressed sympathies to Stan's family.

*The Council observed a moment of silence in memory of those lost.*

A Joint Meeting of the Town Council and School Board will be conducted on Thursday, September 20<sup>th</sup> at 7:00 p.m. in the Matthew Thornton Room.

A Public Hearing will be held regarding PFAS on Wednesday, September 26<sup>th</sup> at the James Mastricola Upper Elementary School All Purpose Room located at 26 Baboosic Lake Road.

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

The New Hampshire Department of Transportation (NHDOT) will hold a Public Hearing regarding proposed improvements to NH 101A from Craftsman Lane to Continental Boulevard and on

**Approved: September 27, 2018**

**Posted: October 2, 2018**

Craftsman Lane at Boston Post Road Intersection. This Public Hearing will be held at the Merrimack Town Hall in the Matthew Thornton Room, 6 Baboosic Lake Road on Tuesday, September 25, 2018 at 7:00 p.m.

The NHDOT will hold a Public Hearing regarding the proposed improvements (widening) to the F.E. Everett Turnpike in Nashua, Merrimack & Bedford at the Merrimack High School, 38 McElwain Street, on Wednesday, October 3, 2018, at 7:00 p.m.

The Merrimack Police Department will be hosting a Firearms Safety course on Saturday, October 27, 2018, from 8:00 - 11:00 a.m. Contact Community Services Officer Bill Vandersyde at 420-1842 for further details.

Eversource is once again offering a free Freon day event at the Transfer Station. On Saturday, October 13<sup>th</sup>, residents can bring their Freon based appliances to the Transfer Station and the normal fee for disposal will be covered by Eversource. Freon appliances include refrigerators, freezers, dehumidifiers, and room air conditioners.

Councilor Boyd stated the New Hampshire Drinking Water and Groundwater Advisory Commission approved the \$45,000 grant application of the Merrimack Village District (MVD). He thanked his colleagues for the letter in support of the application, which goes before the Executive Council in October. In total, the Commission approved nearly \$20 million in grants and loans for New Hampshire communities seeking to improve water quality through infrastructure improvements, upgrades and/or expansions.

Councilor Boyd spoke of a news article that came out of New York regarding Hoosick Falls being left off of a particular community assessment structure. The Agency for Toxic Substances and Disease Registry (ATSDR) at the Centers for Disease Control and Prevention (CDC) is proposing a comprehensive community exposure assessment to communities in the Northeast that were impacted by PFAS. One of the communities outlined in the article was Newburgh. He questioned the specific criteria that caused Newburgh to be selected as opposed to Hoosick Falls, Merrimack, or other communities.

He questioned the will of the Council relative to sending a letter to the Delegation requesting they reach out to the CDC and ATSDR and inquire if there are criteria and if Merrimack could be considered for this particular community exposure assessment. This assessment focuses on the health aspects. Based on the article he read, they are looking to obtain health data from members of the communities through this assessment. Councilor Harrington stated her belief Pease has already been identified to be included. She recalled discussion of looking to have Merrimack included, and her belief the locations have already been chosen. Councilor Boyd suggested reaching out to the Delegation inquiring as to the status of the assessment process, e.g., if communities have already been identified.

Chairman Rothhaus requested a review be done to determine if such a formal request has already occurred. Councilor Harrington suggested the information could be gained through a phone call.

Councilor Healey stated her awareness a communication was sent out by the Delegation a few weeks ago asking for Merrimack and Pease to be included. It was in newsprint. It does not hurt to reinforce

**Approved: September 27, 2018**

**Posted: October 2, 2018**

the fact that Merrimack has been dealing with this for the past three years. The Federal Government recognizes the issue at Pease because they are a Federal installation. Merrimack is not.

Councilor Boyd volunteered to make contact and look to obtain the information.

***Chairman Rothhaus informed the viewing audience the first item under Recognitions, Resignations and Retirements and the first item under Appointments have been postponed.***

### **PFAS Update**

- Confirm Date & Details for Upcoming Public Meeting

Town Manager Cabanel requested Sarita Croce, Assistant Director of Public Works/Wastewater pour through the documents and put together a tutorial on what is taking place, e.g., the status of groundwater, stormwater, smoke stacks, fish, etc. showing the areas on a map so that the story can be told with facts. She questioned if the Council would be willing to postpone the meeting until early to mid-October so that this enormous amount of data could be prepared and provided.

Councilor Harrington stated she would strongly encourage delay of the New Hampshire Department of Environmental Services (NHDES) meeting. She remarked being able to have all of that done before the meeting so that when NHDES comes we are prepared with facts, have a thorough understanding, and are focused on what our goals are, would result in a more productive meeting. Councilor Healey stated her agreement. She commented Clark Freise, Assistant Commissioner, NHDES, is still waiting for the results on the testing done on the pilot system for a scrubber for the smoke stacks to remove PFASs. She is hopeful that information will be available in time for the meeting. Having that information would allow the Council to review the data as well as formulate questions, e.g., timelines, operational workplan.

Councilor Albert stated agreement and questioned if the Town is in the process of including the MVD Commissioners and staff in this meeting. Town Manager Cabanel remarked she is looking at it from various perspectives; soil, water, groundwater, stormwater, etc. As they relate to the wells and their own interests, she would be interested in having them participate. Councilor Albert noted the Commissioners have expressed interest in being involved and wish to bring their staff in on it as well. Once the date is set, he and/or Councilor Boyd will extend the formal invitation.

*The Council will await the recommendation of the Town Manager before setting the meeting date.*

### **Highway Garage Project Update**

The Highway Garage portion of the bays has been roofed. The office space portion will be roofed next week. The cement flooring will be put in next week. The hope is to be inside within the next two weeks at which time the finish work will begin. The project remains on target for the November opening.

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

Noah Mandell, 168 Naticook Road

**Approved: September 27, 2018**

**Posted: October 2, 2018**

Remarked when he moved to Merrimack the cable company was Ameri-cable owned by Harmon White. He sold the company, and it changed hands several times before being purchased by Comcast. The Council is now considering renewal of the Cable Television Franchise Agreement.

He spoke with a well-known cable lawyer who represents municipalities around the country, and he pointed out to him there are numerous new proposals that will emasculate the already minimal abilities to regulate cable. If you don't do it now, it will be a lot more difficult in the future.

Franchise renewal has two tracks; informal and formal. He encouraged the Council to take the formal track. He spoke of strategies that could be utilized. He noted the Town has very little control over rate regulation, but does have rights regarding technical standards, legal operations, fraud, etc.

He provided an example of a violation and quoted the Commercial Advertisement Loudness Mitigation (CALM) Act, which states they are not supposed to have louder commercials than the ambient programming. They do it by quieting one stereo signal and doubling the other one, phase reversal, popping, using algorithms, which are defeating the spirit of the legislation. A common carrier who delivers that signal is also in violation of the law. You really can't refuse to renew their license, but you can say we're not going to renew it until you can demonstrate you are in full compliance with the law.

Mr. Mandell stated Thornton, Campton, Holderness, and Plymouth are among the towns in New Hampshire, which have given cable franchises to companies that didn't do the job, and then they gave him a franchise and he came in and did the job right over the other guys. He bought the holes in the wall. He does not believe he has \$100 million to spare to come in and wire over all of Merrimack, but if the Town were to issue another cable franchise, the Comcast monopoly would be gone. That would reduce their value by 50% for sale.

Mr. Mandell commented on the requirement in the law and the Franchise Agreement that there will be a copy of the Franchise Agreement in the local office and questioned where the local office is. He stated the Town has the right to enforce provisions.

Mr. Mandell offered to sit down with any member of the Council or Town staff to discuss this matter. Councilor Albert questioned if he would be willing to sit down with Nicholas Lavallee, Media Services Coordinator, and share some of his experiences.

Wendy Thomas, 10 Wildcat Falls Road

Remarked it was encouraging to hear the discussion around PFAS.

She read the following excerpt from an article that was updated on September 4<sup>th</sup> titled "Michigan says PFAS makes all fish in Huron River unsafe to eat":

*"Michigan officials now say PFAS test studies show that all fish in a 5 county span of the Huron River contain too much contamination for people to eat them. An updated warning from the Michigan Department of Health & Human Services expanded to "Do Not Eat" warnings from earlier in August now saying that all fish in the waterway from Oakland County to Lake Erie should not be consumed. It is just so disappointing and frustrating said Laura Rubin, Executive Director of the Huron River*

*Watershed Council, as she considered the expanded warning. “We’ve done so much work on the Huron and it holds up to be a high quality resource” she said of the 136-mile river. “Now we’re facing extensive cleanup. We face decades before we can eat the fish from Huron.””*

Ms. Thomas noted we’ve seen test results of 19,000 parts per trillion (ppt) in Merrimack. We have a river that runs through our Town. She has seen people fishing in it. She questioned if the Town has tested any of the fish from Merrimack, and if not, if there is a plan to. Town Manager Cabanel stated that to be part of the information that is being put together.

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

#### **1. Recognition of Full-Time Years of Service of Town Employees [Continued from the August 16, 2018, Town Council meeting]**

Submitted by Human Resources Coordinator Sharon Marunicz

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

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

*This item has been postponed.*

#### **2. Merrimack Friends and Families Appreciation Plaque Presentation**

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

The Town Council to present a plaque to Merrimack Friends and Families for their ongoing support of the Merrimack Parks and Recreation and Welfare Departments.

The group has been doing the backpacks for the Welfare Department for 16 years, and the Easter Egg Hunt for 27. This past year over \$5,000 worth of donations have been made to the community. Chairman Rothhaus presented representatives of the Merrimack Friends and Families with a plaque in appreciation of their ongoing support.

### **Appointments**

#### **1. Annual Review with the Conservation Commission**

Submitted by Conservation Commission Chair Gage Perry Per Town of Merrimack Charter Section 6-6, at least annually, there should be an annual review with the Conservation 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.

*This item has been postponed.*

### **Public Hearing**

#### **1. Public Hearing - Consideration of Changes to Chapter A198, Administrative Code**

Submitted by Town Manager Eileen Cabanel

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

**Approved: September 27, 2018**

**Posted: October 2, 2018**

Town Manager Cabanel explained 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 proposed changes are of a housekeeping nature.

Chairman Rothhaus noted a question was raised concerning the position that had been removed. Councilor Boyd commented on having no recollection of the prior discussion. Vice Chairman Koenig apologized for having questioned whether or not it was set up correctly noting Councilor Albert went through the meeting minutes and was able to portray the discussion that had in fact occurred exactly the way it was planned.

*Chairman Rothhaus declared the Public Hearing open at 7:39 p.m.*

No public comment was offered.

*Chairman Rothhaus declared the Public Hearing closed at 7:40 p.m.*

**MOTION made by Councilor Boyd and seconded by Councilor Thornton that the Recommended changes to Chapter A198, Administrative Code, of the Merrimack Town Code, pursuant to Charter Article V, be moved to the Consent Agenda. MOTION CARRIED 7-0-0**

### **Legislative Updates from State Representative**

Representative Richard Barry stated he had hoped to arrive in time to hear the PFAS update but was unable to. He informed the Council of a meeting scheduled for the following week at Pease with the ATSDR. He contacted them seeking information on what they are doing, how they are doing it, and whether Merrimack is included. Merrimack is included. They are going to a Community Action Program first over at Pease, which has contaminants because of the firefighting foam for the jets that landed over there.

He spoke with Assistant Commissioner Freise earlier in the day who indicated he was waiting to hear from the Council regarding when it would like to receive the next update from him. Representative Barry encouraged the Council to get in touch with him.

He spoke of a meeting conducted earlier in the day regarding the utility assessment process. He was told they are close to an agreement. The concept is to have a consistent assessment value across the State. It will more than likely be monitored by the State entity that reviews assessment values. There will be a phase in period for those who are going up fairly rapidly. The concept is to ensure all utilities are assessed in a similar fashion throughout the State. He remarked you should feel comfortable that that is going to happen.

Councilor Albert commented we are approaching the time when the tax rate is set for the coming year and questioned if Representative Barry sees this having an impact this year or next. Representative Barry stated there will be a phase in period (5 years or 10 years). It certainly won't be in law for next year. They turned the Bill into a Study Committee. They will turn the Study Committee into a Bill. He will sponsor it and go through with it. Then it will go through the House process before it gets signed. Then it will go through what is called Administrative Services. It will be at least 2 years.

Town Manager Cabanel questioned if the methodology being considered would result in the loss or gain of revenue. Representative Barry was uncertain. He acknowledged it makes a big difference across the State. They don't yet know which methodology will be chosen. There are five options and they are in the process of evaluating them. The concept is it needs to be consistent so that you are not being taxed without representation. Today you are because it impacts the electricity rates.

Town Manager Cabanel stated it also very strongly affects the taxes. She stated her desire to ensure Merrimack's representatives are representing the Town and are aware of what our Assessor is doing for her methodology and understanding why she is using that particular methodology.

Representative Barry stated he would have to assume the Town's Assessor is speaking with the Assessing Standards Board because they are contacting all of the cities and towns finding out what specific ones they are going to now, which ones have the significant variations from 2-3 years ago.

Town Manager Cabanel commented she understands there is the need to be concerned with the entirety of the State, but we have to be concerned with Merrimack as we have had situations where the Town has had to pay large amounts back to Fairpoint, etc.

Representative Barry stated understanding. He commented you may not like the final result. He hopes it turns out that almost no one likes the final result because then it will be fair. When you look at the concept and how it impacts the electricity rates and keeps driving the cost of electricity up, at least this way you will be taxed similarly across the State. It may be up or down. It might help that it will come back to his committee.

Chairman Rothhaus remarked he imagines the assessment by the communities isn't really the major driver of electric rates. Representative Barry commented it never used to be. What is happening is there is some significant increases in assessment of utility properties in different towns and that goes right onto your rate plus 10%. You pay for some other town that has decided that the assessment rate should be considerably higher.

Vice Chairman Koenig asked for clarification of remarks made as Representative Barry approached the microphone. Representative Barry stated Merrimack's State Senator Gary Daniels passed a Bill, which turned into a committee. He is chairing the committee, which looks at getting rid of the tolls at exits 11 and 10. Supposedly that is the focus of it. As is known from past experience, that will not be the final focus.

Vice Chairman Koenig rephrased, there was a Bill passed by the Legislature, signed by the Governor that established a committee that is looking into it. Representative Barry stated that to be correct. When asked, he stated the committee to be the Committee to Study the Removal of the Tolls at Exits 10 and 11 on the F.E. Everett Turnpike in the Town of Merrimack (HB2018).

Councilor Albert commented if something came across inadvertently that could potentially impact property taxes for homeowners in Merrimack, he is assuming he and the rest of the Delegation would not support something like that if the town made them aware it could result in a negative impact to Merrimack. He spoke of having had the discussion that if the evaluation goes through, our property

**Approved: September 27, 2018**

**Posted: October 2, 2018**

taxes might go up, but our electric bill will go down. He does not believe the electric bill would go down to the same amount. That is a concern for him.

Representative Barry stated if you raise the assessed valuation on a utility property your electricity bills will go up.

Assistant Town Manager/Finance Director Micali stated because of the new way we would assess the utilities the Town's assessed values would go down. Our numerator would still be there so our tax rate would be higher causing residents to pay more in taxes. By having this utility funded this way, which would be lower in the case of Merrimack (value wise), they would see less of a tax burden on real estate taxes, and that savings that Eversource saw would come back to the taxpayers of the State and reduce their electric bill by X amount. What he believes Councilor Albert to be saying is it is not going to be a one for one offset. It will affect Merrimack because we know that our utilities are taxed at a higher rate than what the committee is looking at.

Representative Barry responded the issue is we don't know what the final numbers will look like. There are some who have raised the property assessment on the utilities considerably (200-300%), which requires that utility to pay that much more in taxes plus 10% because they are going to get a return on the investment, which drives the electricity rates up for everybody in the State. What they are trying to do is make certain the method to assess the utility properties is consistent statewide.

Councilor Healey stated she agrees with the statements and is glad this is being looked at because what she thinks the people are really experiencing, which does not make sense to folks, is the fact that their electric bill is one thing and the delivery charge is more than the actual electricity that is being charged. We need to do something that lowers that without impacting the physical intake of the Town from a tax base.

Representative Barry agreed adding the other components are distribution, transmission, the cost we have to pay ISO to manage the grid, we have a forward capacity market we spend billions of dollars on to make certain there is electricity ready to go if a generator dies, etc. We have the 4<sup>th</sup> highest rate in the country and spend about \$5 billion/year in electricity. He spoke of businesses and how they pass their overhead on to the consumer through the cost of their products and how these businesses will look to locate in areas where utility and other rates are lower. There is a group of representatives that is trying to drive the total cost down. Some is within our control, some within the control of the Federal Government and some with ISO.

Councilor Harrington stated concern with the clarity of the criteria by which they will make the determination on what that assessment will be based on and who will be making that determination. Representative Barry responded it will ultimately come through his committee. The group that met earlier in the day is gathering the data on the impacts for the different methodologies across the State. The representative from the DRA already has something that he is going to try to lock in and say here is the impact of A, B, C. Councilor Harrington questioned if there is the possibility of towns being notified as to the options being considered and what impact that would have. Representative Barry stated currently it is the reverse; they have asked the towns to give them their impact. Town Manager Cabanel stated she would have to check with the Assessor to see if that has occurred.



Councilor Harrington commented each town, whatever their criteria, would have to do an assessment of the validity of that assessment. Our Assessor based it upon something as does the other communities. The factors might change town to town. All of that has to be taken into consideration. She would like to understand if the Town has the opportunity to know the possible impact and what the process is by which they are thinking about changing it. She questioned if Eversource has influence as to the criteria. Representative Barry responded no, and he doesn't want them to have influence. Might they by talking to someone else, sure. They don't want to. They would like to keep the assessed valuation low. The more you assess the higher the rate goes.

Representative Barry stated awareness the DRA was seeking information from towns, whether they have contacted the Town or the NH Municipal Association. It was noted Merrimack is not affiliated with the NH Municipal Association. The comment was made the only lobbyists the Town should have is its Representatives. She encouraged Representative Barry to ensure critical analysis of the methodology that would be used.

Representative Barry stated there are currently at least 5 different methodologies being used. They are fair to some towns and not others. What he is trying to do is get one methodology used across the board so that you don't have to worry about your neighbor using a different one driving up tax rates.

Councilor Harrington responded she understands the general argument. Her concern would be that, as a Representative from Merrimack, he looks at the information received from Merrimack in terms of assessment, and make sure the Town is being treated fairly.

Councilor Boyd stated he and Senator Daniels attended a function earlier in the day. He was asked if the Town entertain taking Industrial Drive and the section of Continental Boulevard that runs from Dunkin Donuts down to 101A at Pennichuck Square. He said it was not the first time the Town has been offered to take control of those particular roadways. He commented if there is any conversation regarding removing the tolls at exits 10 and 11 he would hope the Town's Representatives would come before the Council to ask if the Town would be interested in taking those sections of roadway. The Town has no idea what responsibility it would assume. Chairman Rothhaus stated there would need to be a good deal of work before the Town could have a full understanding of what that would entail.

Town Manager Cabanel stated she would get information from the Town Assessor as to what the five methodologies are and what hers are so that the numbers can be compared and contrasted for the Town. That information will be provided to the Council. Representative Barry requested a copy.

Representative Barry stated the Governor vetoed six Bills earlier in the day. House Bill 143 would allow the Adult Parole Board to shorten the recommittal of parole violators who enter into substance abuse treatment programs. Current law requires a recommittal of at least 90 days in most cases. That veto was overturned.

House Bill 314 relative to licensing requirements for autonomous vehicle testing and establishing an automated and connected vehicle testing and deployment commission. Level 5 vehicles (driverless). The veto was overridden. The Bill will go through to help people come here and test out the vehicles.

Approved: September 27, 2018

Posted: October 2, 2018

House Bill 1736 would double the threshold for Governor and Council approval of expenditures from the dam maintenance fund. Currently there is a \$75,000 maximum the DOT can use when repairing bridges and dams in an emergency. That was increased to \$150,000. The Veto was overridden.

Senate Bill 365; Representative Barry remarked they passed a Bill last year to give a significant amount of funding to the biomass plants to make them whole. It is not efficient and not working right for them, but it does help the logging and trucking industries. The House and Senate overturned the Veto. This will drive electricity costs up.

Senate Bill 446 aims to increase net metering, allowing electric customers to sell back to the grid solar and wind power they don't use. Residents would be paid the full retail rate even though the electric company could buy at the wholesale rate elsewhere. The Senator and House overturned the Veto.

Senate Bill 593 is with regard to the penalty for capital murder. The proposed Bill would remove language relative to the death penalty and would identify the penalty for capital murder as life imprisonment without the possibility for parole. The Senate sustained the Veto.

**Town Manager's Report** - None

**Consent Agenda** - None

*There being no objection, the Council went out of the regular order of business to take up Item 4 and 3.*

#### **4. Donation to the Merrimack Police Department**

Submitted by Captain Michael Dudash

The Town Council to consider the acceptance and expenditure of a donation in the amount of \$5,000.00 from Digital Federal Credit Union to the Merrimack Police Department to be used to offset expenses for the PACT Program, National Night Out and benefit our community, pursuant to RSA 31:95-b and Charter Article 8-15.

Michael Dudash, Captain, Merrimack Police Department, noted this is the 5<sup>th</sup> year in a row DCU has made a cash donation. In 2014, they sent a check for \$2,500. This past August they sent a check in the amount of \$5,000 from the Public Relations Department. They asked that it be put towards a worthwhile program that benefits the community. The department identified the PACT Program, National Night Out and the department's Open House. Contributions by DCU total \$16,500.

**MOTION made by Councilor Boyd and seconded by Councilor Albert to approve the acceptance and expenditure of a donation in the amount of Five Thousand Dollars (\$5,000.00) from Digital Federal Credit Union to the Merrimack Police Department to be used to offset expenses for the PACT Program, National Night Out and benefit our Community, pursuant to RSA 31:95-b and Charter Article 8-15 and further that the Town Manager or her proxy be authorized to sign any and all documents necessary to accept and expend. MOTION CARRIED 7-0-0**

#### **3 Four Seasons Homeowners Association Request for Letter of Support**

Four Seasons Homeowners Association President Sharon Hickey

**Approved: September 27, 2018**

**Posted: October 2, 2018**

Town Council to consider the Four Seasons Homeowners Association's request for a letter of support from the Town of Merrimack to be included with the Association's pre-proposal application for a Watershed Assistance Grant to support local initiatives to restore impaired waters or protect high quality waters.

Sharon Hickey, President, Four Seasons Homeowners Association, remarked Four Seasons is located on the shores of Baboosic Lake (89 homes). They have a very severe, continual, annual erosion problem that creates large gullies (largest is 3' wide/6" deep). Sand ends up in the lake. They are applying to NHDES for a 319 Watershed Assistance Grant. They have done a good deal of research regarding the Baboosic Watershed plan. She stated Four Seasons has a 20-year history of providing projects with the idea of reducing phosphorous load and stormwater to the lake. Over the past 20 years, they have, with their own funds, regraded the parking lot. It was on a slope, and they created two tiers where water, instead of rushing down into the lake, is able to percolate into the ground. They have a long standing partnership with the Baboosic Lake Association. Together they have installed berms that run from north to south on the property. They have also installed infiltration trenches. All of that work, while exemplary, is uphill of the beach. The beach is on a continual slope. All of that work that has been done falls short of about 50' between the last retaining wall and the beach.

Requested through the Watershed Assistance Grant are funds that would help them build a perch beach. They would create a level beach area. A retaining wall would be constructed a distance from the water's edge. They will rely on engineers to provide guidance with plan design. The perch beach will stop stormwater from going into the lake. The lake is on the verge of coming off the EPA impaired water list. They are proud of that and would like to continue the momentum. The grant application is due September 21<sup>st</sup>.

The grant is 60/40 meaning the State would cover 60% and the remaining 40% would fall on the homeowners. It is not yet understood what the total cost will be although the belief is the match would likely be in the area of \$20,000. They currently have approx. \$13,000 in the budget. At their October meeting, she will propose an increase to the Homeowner's Association dues, which would more than cover the remaining amount.

The application requires letters of support. She has acquired one from Camp Young Judaea, the Baboosic Lake Association, and several from the homeowners. She has personally written a letter of commitment, which not only explains the problems and details a solution, but also commits funding.

Councilor Boyd commented this particular area has been a concern for him since 2012 when the Town was forced to deal with the EPA regarding our stormwater permits and new requirements and regulations that were potentially being imposed. We still don't know what that MS4 Stormwater Permit will look like. One of the issues discussed in the application concerns reducing Phosphorous into the lake and alludes to how Baboosic Lake is on the EPA impaired water list. As alluded to in the application, the level of Phosphorous accounts for 30% of the lake's total predicted Phosphorous load. If the lake is to get off the EPA impaired list, then that is one less thing the community has to be concerned with as it relates to the MS4 permit.

A request was made for the Public Works Department (PWD) to weigh in on the matter. An email from Dawn Tuomala, Deputy Director/Town Engineer, states "The proposal should help with water quality issues that still remain on Baboosic Lake. I would recommend that the Town Council support

**Approved: September 27, 2018**

**Posted: October 2, 2018**

the Four Season Homeowners Association outlined plan and provide them with a letter of support.” Councilor Boyd followed up to confirm that this action would reduce some of the potential burden in the future regarding MS4. The response was affirmative.

**MOTION made by Councilor Boyd and seconded by Councilor Albert that the Town Council provide a letter of support from the Town of Merrimack to be included with the Association’s pre-proposal application for a Watershed Assistance Grant through the Department of Environmental Services, to support local initiatives to restore impaired waters or protect high quality waters as it relates to Baboosic Lake**

#### **ON THE QUESTION**

Councilor Boyd thanked the members of the Four Seasons Homeowners Association for their willingness to consider raising their dues to address this particular problem.

**MOTION CARRIED 7-0-0**

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

#### **Old Business**

##### **1. Traditional Cable Television Franchise Renewal Discussion [Continued from the August 16, 2018, Town Council meeting]**

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

Nicholas Lavallee, Media Services Coordinator, provided a PowerPoint [presentation](#) stressing the presentation is relative to traditional cable television not internet services and also a look towards the future of traditional cable television.

The current agreement (expires January 2019) is non-exclusive. It authorizes the Franchisee (Comcast) to construct, upgrade, install, operate and maintain a Cable Television System within the Town of Merrimack. He noted Comcast owns all traditional cable television infrastructure in Merrimack. Per the Cable Act of 1984, the Franchisee has control over the amount to bill.

Since the last time the renewal process was undergone (2008), consumers have more options relative to how they view programming, e.g., internet connection.

With the current Franchise Agreement (Agreement), traditional cable television services are available to all residents within the Town, any resident may request to have traditional cable television services brought to their home, free basic traditional cable television services for municipal buildings including police, fire, and schools, a customer service center in neighboring town. There is also a section relative to complaints and resolution procedures; Comcast receives a service request and within 24 hours it is expected there will be a response and where possible a resolution shall occur within 48 hours. If the Franchising Authority (Town Council) determines it to be in the public interest, they may investigate multiple complaints. If there is a pattern of multiple unresolved complaints, the Franchising Authority and the Franchisee may discuss appropriate amendments to the Agreement.

Additionally, the Franchising Authority may hold a performance evaluation hearing once during each year of the renewal franchise.

Mr. Lavallee recommended the current terms remain, and that the following be added:

- Service Availability; meaning if a subscriber is without service and would like to request service. In the current agreement the distance between the pole and potential subscriber's home would have to be less than 150' before there is a cost to the potential subscriber. An increase such as 250' could be negotiated.
- Include language to provide service to current and future municipal and school buildings.

Chairman Rothhaus questioned if all municipal buildings are covered, e.g., transfer station. Mr. Lavallee stated his belief they all have basic service. Existing language does not address the possibility of new construction.

- A fourth public, education, and government channel on the high definition tier.

The desire is for at least one of our channels/content to be included on the high definition tier.

- Senior citizen's discount.

Bedford recently went through a franchise renewal and not in the agreement itself, but in the two side letters they received, is a promise to the Town they will have \$2 off a digital starter package. Also, they will be the first public access channel in the State to have a channel on the high definition tier. It is expected that Manchester will follow.

- Franchise fees

Currently the Town receives 3.75% from gross annual revenues from traditional cable television subscribers. The Town Council has typically used these funds to cover the media division, the public education and government television channels, and staff. Per the Cable Act of 1984, up to 5% is allowed.

Mr. Lavallee commented on more and more households changing their viewing habits from traditional cable services to internet streaming. As a result, there is the potential for the Town to experience a reduction in the franchise fees it currently receives.

Mr. Lavallee noted the question raised during the last discussion of whether the agreement has to be for a period of ten years stating it does not; however, that is his recommendation. He is of the belief that would protect the consumer in this changing industry.

With regard to the timeline, he suggested posting an open opportunity beginning September 14<sup>th</sup> (through October 10<sup>th</sup>) for residents to submit questions, concerns, and suggestions. Schedule a Public Hearing for September 27, 2018. Town Council finalize Agreement suggestions in October, have legal counsel review the proposed agreement, and present Comcast with the finalized Agreement from the Town Council in December for an agreement to be in place for January.

He suggested next steps also include inviting Bryan Christiansen, Comcast Senior Manager of Government and Regulatory Affairs, and other representatives from the cable company to the Council meeting.

Councilor Healey spoke of having compared the proposed Agreement against the agreement the Town of Bedford has put in place. She recommended the following additional changes: Article 5, where the language addresses a specific minimum number of dwelling units, the number be changed to “20”. The formula at the top of page 17 needs to be completed. Under Section 5.5, the Bedford agreement quotes RSA 236.9. She would like it referenced in Merrimack’s Agreement as well.

Under Article 8 - Franchise Fees, Bedford’s agreement calls for 5%. Councilor Healey noted the Franchise Fee is charged to the consumer. She suggested that could once again be lowered to provide relief. Under Section 7.4 of Bedford’s agreement they receive \$250,000 for equipment and maintenance, which is not included as part of Merrimack’s Agreement.

Mr. Lavallee stated the Town could negotiate for capital funds. What Bedford uses those capital funds for is the buildout of their community TV studio. The Town does have a reserve fund and Bedford does not. He spoke of how frugal the Town has been in terms of budgeting for this department. For a while those funds were being saved in the event a building had to be constructed. Cable Franchise Fees were used to renovate the meeting room, studios and offices.

Vice Chairman Koenig stated his belief that dollar amount is passed on to the ratepayers.

Chairman Rothhaus commented, for him, when it comes to the Franchise Fee, if the Town is starting to run short and not able to run the operations, then he would be interested in raising it. At this time, he is inclined to leave it where it is understanding the amount of revenue may be lower given the change in viewing habits.

Councilor Healey suggested the area of the agreement that addresses where and what buildings should have cable access, should include a listing.

Councilor Boyd questioned if the Town continues to have a TV studio at the High School and was informed it does not. That reference should be removed from Section 7.3. Mr. Lavallee noted not only should notation be made that the TV studio is located at Town Hall, but also the head end, e.g., channel originates from the Town Hall building.

Councilor Albert suggested it may be desirable to leave the high school location in the agreement. He suggested input be sought from the School Board as to what they see occurring in the future. Councilor Harrington noted the recommendation by Mr. Lavallee that the Agreement language include “provide service to current and future municipal and school buildings”.

Councilor Boyd questioned the meaning of the title for Section 4.3, which reads “Parental Control Capatown”. Mr. Lavallee stated his belief “Capatown” is a typo and should be “Capability”.

Councilor Boyd noted Section 5.1 (a) questioning if 15 days is the standard in terms of the timeframe for making cable system service available to all residents of the Town following a request for same. Councilor Healey stated that to be the same language included in the Bedford agreement.

Section 8.1 (b), the language reads “Said Franchise Fee payments shall be made to the Access Provider on a quarterly basis.” He questioned why the Town would allow Comcast to collect interest on a Franchise Fee. He suggested language that indicates “quarterly” should be amended to read “monthly”. Councilor Albert questioned whether it is burdensome to be done on a monthly basis. Assistant Town Manager/Finance Director Micali stated it is not. Quarterly payments are approx. \$90,000.

Councilor Boyd asked for clarification of the language in Section 8.1 (d), which reads “The Franchisee shall not be liable for a total financial commitment pursuant to this Renewal Franchise in excess of five percent (5%) of its Gross Annual Revenues; provided, however, that said five percent (5%) shall include any other fees or payments required by applicable law....” Mr. Lavallee stated his belief it is intended to identify 5% as the cap, unless there is some other law that requires them to pay more; perhaps relative to a promise of capital funds. Vice Chairman Koenig noted Bedford’s agreement includes language around the cap being 5%, but also states “and shall in no case include the PEG access equipment required from Section 7.4 or any other fees or payments required by applicable law.” Several members of the Council stated agreement language that serves the best interest of the Town should be what is utilized.

Chairman Rothhaus stated agreement with the proposed timeline/schedule and an interest in feedback that could be provided by Mr. Mandell.

Mr. Lavallee reiterated public comment is encouraged. During the input Mr. Mandell provided he indicated there is only so much that we can do, and that is not to discourage us from getting the things we want. He reiterated this Agreement is only relative to traditional cable television services. It gets confusing because we also rely on Comcast for internet service. The good news is that there is now competition to view content (wireless connection from cellphone provider). Comcast knows this, sees the competition, and has changed the way they bill their cable television and offer services.

Chairman Rothhaus commented on a conversation regarding the Town setting up internet access to the community. He is hopeful the Council will agree to establish a group to conduct the research, e.g., research communities that have already done that to determine if it is a viable option. He is of the belief if that opportunity were available for our community it would have an impact.

Councilor Thornton stated the desire to see the Franchise Fee lowered. Mr. Lavallee pointed out if the amount of funding received from cable subscribers were to be reduced, there could potentially come a time when the services the Town provides will impact property taxes, which would be significantly greater than the impact of the cable bill. Town Manager Cabanel stated an analysis could be prepared identifying what the financial impact would.

Councilor Harrington commented it needs to be made clear the Agreement is with *any* cable operator that chooses to do business in Merrimack. The 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

**Approved: September 27, 2018**

**Posted: October 2, 2018**

adhering to the Agreement. As it stands, Comcast owns the infrastructure, which is essential and costly.

Mr. Lavallee suggested public input be via email to [MerrimackTV@MerrimackNH.gov](mailto:MerrimackTV@MerrimackNH.gov). Those emails would be available under the Right-to-Know Law.

Councilor Healey noted the Agreement allows the Town to have some kind of remediation if complaints are received. She has the sense a process has never been set up and the public has not been informed they have the right to come to the Town to try to resolve any issues. She suggested a process be established and advertised.

Assistant Town Manager/Finance Director Micali suggested written public input also be permitted.

**MOTION made by Councilor Koenig and seconded by Councilor Thornton to affirm the timeline promoted with the addition of the option of mailing input to the Town Manager's Office located at 6 Baboosic Lake Road and, through affirming the timeline, schedule a Public Hearing for the Council's September 27<sup>th</sup> meeting with an invitation extended to representatives of Comcast to attend**

#### **ON THE QUESTION**

Councilor Albert requested the presentation be placed on the Town website and played on the Cable channel.

Councilor Healey requested a notation be included regarding the non-exclusive nature of the Agreement.

Chairman Rothhaus stated the desire for the formal RFP process to be conducted after the Franchise Agreement is completed.

**MOTION CARRIED 7-0-0**

**MOTION made by Councilor Koenig and seconded by Councilor Boyd to request the Town Manager go out to bid for other potential cable franchisees via a formal RFP/RFQ process**

#### **ON THE QUESTION**

Chairman Rothhaus commented he is uncertain any responses will be received noting the Town has gone this route before.

**MOTION CARRIED 7-0-0**

#### **New Business**

##### **1. Committee Appointments**

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

The Town Council to consider appointing the following individual to Town committees, pursuant to Charter Article 4-8:



Steven Perkins - Conservation Commission (Full member)

**MOTION made by Councilor Boyd and seconded by Councilor Albert to appoint Steven Perkins as a full member of the Conservation Commission**

**ON THE QUESTION**

Vice Chairman Koenig commented Mr. Perkins was interviewed. He has a great deal of interest and is expected to be a tremendous asset to the Conservation Commission. Councilor Albert remarked Mr. Perkins had quite an impressive resume. Based upon the conversation, it appears he will be a great addition to the Commission.

**MOTION CARRIED 7-0-0**

**2. Souhegan River Local Advisory Committee (SoRLAC) Nomination**

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

The Town Council to consider the nomination to appoint James Taylor as a member on the Souhegan River Local Advisory Committee.

**MOTION made by Councilor Koenig and seconded by Councilor Healey to appoint James Taylor as a member on the Souhegan River Local Advisory Committee**

**ON THE QUESTION**

Chairman Rothhaus noted, for this appointment, there is no residency requirement.

**MOTION CARRIED 7-0-0**

**5. Joint Town Council / School Board Meeting Topic Discussion & Date Confirmation**

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

Town Council will discuss the potential topics of discussion and confirm the date of the upcoming joint meeting with School Board.

Chairman Rothhaus noted the date of the joint meeting is September 20<sup>th</sup>. Councilor Albert suggested discussion items include the skateboard park and potential locations for ballfields.

Councilor Boyd spoke of a presentation on potential locations for ballfields provided by Tim Tenhave at a joint meeting of the Council and School Board in the 2012-2013 timeframe and asked if that presentation could be located and included as part of the packet for the September 20<sup>th</sup> meeting.

Assistant Town Manager/Finance Director Micali commented, with regard to the school fields, it is his belief the fields are being utilized by the MYA with the exception of the high school football field. Councilor Thornton stated the previous discussion to have been around new fields on school owned land. He stated the desire to discuss the potential of a turf field. Assistant Town Manager/Finance Director Micali stated his belief the School District is looking at a turf field as part of the Capital Improvement Plan.

Councilor Albert suggested the agenda include discussion of trail connectivity along the high school property. Chairman Rothhaus noted that is planned for at this time.

**Approved: September 27, 2018**

**Posted: October 2, 2018**

Councilor Thornton reiterated the desire to discuss the Cable Television Franchise Agreement.

The subject of the grant for the School Resource Officer(s) will be added with the expectation the Council will notify the School Board funding for the position is intended to be the Town's general operating budget.

**6. Review of the MS-434 Revenue Report**

Submitted by Finance Director Paul T. Micali

The Town Council to confirm the Undesignated Fund Balance to be used to offset the tax rate.

Assistant Town Manager/Finance Director Micali requested the Council confirm its request to utilize \$450,000 of the Undesignated Fund Balance to offset the tax rate. With that action, the estimated tax rate is \$5.10.

**MOTION made by Councilor Boyd and seconded by Councilor Thornton to allocate the sum of Four Hundred and Fifty Thousand Dollars (\$450,00) of the Undesignated Fund Balance to the general fund to offset the tax rate. MOTION CARRIED 7-0-0**

**Minutes**

June 20, 2018 (Facilitation Report)

**MOTION made by Councilor Harrington and seconded by Councilor Thornton to take from the table the Facilitation Report of the June 20, 2018 Town Council Retreat. MOTION CARRIED 7-0-0**

**MOTION made by Councilor Harrington and seconded by Councilor Thornton to accept the Facilitation Report of the June 20, 2018 Town Council Retreat, as amended**

*The following amendments were offered:*

Page 4; insert "organized sports" before "fields" in the third bullet under "Watson Park"

*Town Manager Cabanel stated she would look to the original agreement to ensure the same verbiage is utilized.*

Page 4; replace "most of cabins" with "cabins not being used" in the third bullet under "Wasserman Park"

Councilor Albert stated he would bring the discussion up at a future meeting of the committee.

Page 8; replace the sentence under "Employee Recognition" with "Discussion ensued about other types of employee recognition including employees picking out their own gifts from catalog based upon years of service. No tax implications."

Councilor Harrington suggested the summary should have been more detailed in terms of reflecting the discussion that took place.

Approved: September 27, 2018

Posted: October 2, 2018

Councilor Healey commented what was not clear to her in this document was the takeaways. She suggested the takeaways be identified/listed along with their status.

**MOTION WITHDRAWN**

**MOTION made by Councilor Harrington and seconded by Councilor Thornton to table until the Council's October 25, 2018 meeting. MOTION CARRIED 7-0-0**

August 16, 2018

*The following amendments were offered:*

Page 13; replace "Chairman Harrington" with "Councilor Harrington"

**MOTION made by Councilor Koenig and seconded by Councilor Healey to accept the meeting minutes of the Town Council meeting of August 16, 2018, as amended. MOTION CARRIED 7-0-0**

**Comments from the Press** - None

**Comments from the Public**

Steve Brouillette, 2 Suncook Terrace

Spoke of municipality owned WiFi/Broadband. Noting the need to identify a means of making it more attractive for another provider to come into Town, stated the solution to be in the Town owning it. Although a great deal of cost, there are towns and cities throughout this country doing this themselves. He is interested in participating on a committee that would conduct the research; reach out to communities that have done this to ascertain what was learned during the process. What he has found is they get somewhere around 15%, they own it and sell it to the other ISPs that are now motivated to come in and would be competing for all the right reasons.

Senate Bill 170 is mainly set up for rural regions. Although he found they were getting low quality out there because there wasn't enough competition, Keene, in particular, wasn't happy with the service.

**Comments from the Council**

Chairman Rothhaus noted Channel 9 came out with information regarding a return of West Nile and EEE. The conversation that ensued on the forum was that the Town had sprayed before. He mentioned he does not recall the Town ever spraying. Assistant Town Manager/Finance Director Micali stated "not in my 14 years".

Chairman Rothhaus has asked Rick Jones, Building Official, Building & Code Enforcement Division, to look into it and advise the Council.

Councilor Healey commented last month when they began to find mosquitos that were positive for West Nile and EEE on the coast she questioned if Merrimack does its own testing, and, if so, what the

**Approved: September 27, 2018**

**Posted: October 2, 2018**

protocol is that follows. According to the Fire Chief, Merrimack does not do its own testing unless it is warranted because the way it is with mosquitos if they are positive in Nashua and positive in Concord, they are probably positive in Merrimack as well. His answer was that they continually monitor the test results coming back from around the area and then decide based on that. The problem with any kind of spraying for mosquitos is some of the population will love it and some will not.

### **Adjourn**

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

*The September 13, 2018 special meeting of the Town Council was adjourned at 10:03 p.m.*

Submitted by Dawn MacMillan