



## **Town Council Meeting Minutes**



Thursday September 10, 2015, at 7:00 PM, in the Matthew Thornton Room

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

### **Pledge of Allegiance**

Chairman Harrington led in the Pledge of Allegiance.

### **Announcements**

An Open House for the proposed Northeast Energy Direct Pipeline Project is scheduled for Thursday, September 17<sup>th</sup> from 6:00 - 8:00 p.m. at the American Legion located at 43 Baboosic Lake Road.

The 9th Annual Merrimack Fall Festival and Business Expo will be held at the Merrimack High School on Saturday September 19<sup>th</sup> from 10:00 a.m. - 3:00 p.m.; rain or shine. Admission is free, and the event is open to all. Over 100 businesses, organizations, and crafters will be on hand to show citizens from all over New Hampshire what Merrimack and the surrounding communities have to offer as they sell their goods and demonstrate their products. Food will be available from many Merrimack restaurants. Music will be provided by Bernie del Llano of Perfect Entertainment. There will also be dance, karate, K-9, and Fire Department demonstrations.

Merrimack Rocks will be conducted on September 26<sup>th</sup> at Watson Park beginning at 5:00 p.m.

Regular meetings of the Town Council will be conducted on Thursday, September 24<sup>th</sup> and October 8<sup>th</sup> at 7:00 p.m. in the Matthew Thornton Room.

Chairman Harrington spoke of the August 25<sup>th</sup> Public Forum on the Alternative Treatment Center Location. The Town awaits submission of the Site Plan to the Planning Board.

Chairman Harrington informed the viewing audience of two agenda items that would be postponed; Item #s 2 and 5 under New Business.

### **Kinder Morgan – Proposed Northeast Energy Direct (NED) Pipeline Project**

#### **• Informational Reports and Updates**

- Chairman Harrington spoke of the Special meeting of the Town Council conducted on September 3<sup>rd</sup> to address the letters to the Federal Energy Regulatory Commission (FERC) regarding the Town and Tennessee Gas Pipeline (TGP) Survey Access Agreement Negotiations and the Amherst Alternative Route 1 Impacts to the Town of Merrimack. Both letters were eFiled on September 4<sup>th</sup>.

- Chairman Harrington spoke of attending a meeting of the New Hampshire Municipal Pipeline Coalition (Coalition) earlier in the day. Governor Hassan was present as were 13 representatives from the Coalition. Mr. Tad Putney, Town Administrator, Brookline, summarized the intent of the Coalition to provide a unified voice. He informed the Governor the Coalition was reaching out to the State Delegation for support in opposition of the proposed project.

Chairman Harrington noted the Nashua Regional Planning Commission (NRPC) contacted her the prior day and made her aware of the determination, aside from the Londonderry electrical generator, there will be no other electrical generators resulting from the pipeline. The argument that the pipeline will increase the electricity and therefore the price is a moot point.

A minimal amount of the gas produced would be utilized by Liberty Utilities. It is believed the majority of the gas generated would be exported. Two export sites are already contracted; Canada and Maine. Governor Hassan was unaware of that, and commented she has heard the rumor, but understood Kinder Morgan was denying that.

Governor Hassan spoke of the Legislature's creation of the Site Evaluation Committee, which was established to review and analyze all available data and provide feedback to the Governor and the FERC.

Governor Hassan spoke of how votes taken locally and at her level have no impact on the FERC. She commented on her responsibility to hear from all parties involved, and that she has heard of the need for gas from business owners. At the conclusion of the meeting, Governor Hassan stated she would not be able to express an opinion until all information is made available to her.

- Chairman Harrington spoke of receipt of a draft letter from the Coalition addressed to the Inspector General, U.S. Department of Energy regarding "Oversight of FERC and Approval of Gas Pipelines". The letter addresses concerns regarding the FERC's handling of the Interstate Natural Gas permitting process for Kinder Morgan. It expresses frustration about the integrity of the permitting process, and by extension whether citizens' voices will be heard and considered.

The following questions were posed and responses requested: "1) Please clarify the lines of authority and oversight of FERC. What provides the regulatory oversight for FERC to protect the constitutional rights of citizens and landowners? FERC has broad powers to approve interstate pipelines, preempt state and local authority, exercise eminent domain and restrict state rights for oversight. Is this consistent with the intent of the Natural Gas Act? 2) How are we assured by your office that this eminent domain power, protected by the New Hampshire Constitution, is not abused?, and 3) We request a fully transparent analysis be required of FERC that evaluates the true "need" of the three new pipeline projects in the region: Kinder Morgan's NED, Spectra's Access Northeast, and a pipeline expansion by Portland Natural Gas." The letter is posted to the Town's website, and can be viewed [here](#).

Councilor Boyd spoke of the questions posed. He noted several changes in the Federal law as it relates to the roles and responsibility of the FERC, but at the end of the day they are an independent authority, and whatever decisions are made by the FERC are decided at a court level. He commented it is not clear to him who has oversight over the FERC. They may receive funding from Congress, but they are an independent agency operating under specific rules that were outlined in the Federal Power Act of 1938 and the Natural Gas Act of 1977. He is not sure there is any oversight of the FERC, and

questioned whether writing a letter to the Inspector General of the Department of Energy, who has absolutely no jurisdiction over the FERC, is foolhardy.

Chairman Harrington responded she spoke with Mr. Putney who stated he was provided with that contact information from the New Hampshire Delegation as the location the Senators mailed their letter to.

Town Manager Cabanel stated she found an article in newsprint that spoke of a U.S. House of Representative committee that was making changes to the rules or some other issue having to do with the FERC. Further research brought her to the Energy & Commerce Committee in the U.S. House of Representatives. Under the Energy & Commerce Committee there are sub-committees; two of which are Energy & Power and Oversight and Investigations. Listed under [jurisdiction](#) for the sub-committee Energy & Power is the FERC. Under Oversight and Investigations, their [jurisdiction](#) states “Responsibility for oversight of agencies, departments, and programs related to the jurisdiction of the full committee, and for conducting investigations.”

Chairman Harrington requested authorization to sign the letter and forward it. She stated it would be her intent to speak with Mr. Putney and suggest the letter also be sent to the sub-committee noting the advice provided was to forward the letter to the Inspector General; however, after review of the website, it appears the Energy & Commerce Committee may be the appropriate entity to receive the letter.

Councilor Boyd stated he is not pleased with the language of the letter, and if the options are to accept it as written or not affix a signature from the Merrimack Town Council, he would prefer not to participate in the sending of that particular letter. He spoke of the second question posed, which reads “How are we assured by your office that this eminent domain power, protected by the New Hampshire Constitution, is not abused?” He noted Article VI, section 2 of the U.S. Constitution reads in part: “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.”

He questioned why we would write a letter to a Federal agency inquiring about how our eminent domain powers are not going to be abused on a Constitution that, at a Federal level, is not going to be recognized when the United States Constitution is the supreme law.

Chairman Harrington remarked the question does not say they don’t have the right to do it; it is requesting “utilizing existing pipeline rights-of-way”, which would be “completed at a much lower cost and environmental impact.”

Councilor Dwyer remarked we have all said from the beginning our best friend is the FERC; writing letters to anyone else is a waste of time. He agreed with the content of the letter, just not to who it was addressed.

Chairman Harrington suggested the Council could entertain two votes; one related to the specific draft letter prepared on behalf of the Coalition and another with regard to the suggestion to address a letter to the Energy & Commerce Committee attaching the letter composed by the Coalition.

Councilor Vaillancourt commented throughout this process, had we waited until we understood precisely who to write to and who has jurisdiction over whom, no action would have been taken to date. She suggested it was a worthwhile effort to send the letter given the address was provided by the State Delegation. She stated agreement with the questions being posed, and remarked she would not let the issues related to who the letter is addressed to prevent her from supporting the Coalition and sending the letter. She also stated support of a supplemental letter to the Energy & Commerce Committee.

Councilor Koenig stated agreement with the remarks made by Councilor Vaillancourt. He added we can do anything or nothing, and probably both provide the same net effect, so why not do something. At least at the end of the day we can say we tried our best. He commented he does not have false impressions a big impact will be achieved by any particular letter, testimony, etc. given the barriers and the insulation the FERC has from the public. They care more about businesses and endangered species than they do about people. It is written into their description of their own rules and regulations. That is understandable from one perspective in that they would never get anything done if they had to try and weave a pipeline through that didn't touch anyone's property. There has to be a situation where you can get energy where it is really needed. He does not believe the need has been identified. If the proposed project is simply railroaded through with the excuse we will let the market decide which of these three pipeline alternatives is viable and all three are constructed, etc., a lot of people will have been harmed, a great deal of money will have been spent, and nothing will be accomplished. You won't lower energy rates if the cost to bring it is great.

He suggested the good fight has to continue to put out everything and anything we can. He agreed there is no harm that can come from that. If addressed to the wrong person, it will simply be trashed, and nothing will have been lost. He stated his 100% support of signing the letter.

**MOTION made by Councilor Koenig and seconded by Councilor Vaillancourt that the Council authorize Chairman Harrington to sign, on behalf of the Council, the letter put together by the New Hampshire Municipal Pipeline Coalition. MOTION CARRIED 4-1-0 Councilor Boyd voted in opposition.**

Councilor Boyd clarified he is not against the letter, and commented he refuses "to throw mud against the wall and see where it sticks". If writing a letter such as this, he would rather it be addressed to the right jurisdiction. He suggested the recommendation of Town Manager Cabanel regarding the Energy & Commerce Committee to be appropriate.

**MOTION made by Councilor Boyd and seconded by Councilor Vaillancourt that the Town of Merrimack draft its own letter to be sent to the Honorable Ed Whitfield, Chairman of the Subcommittee on Oversight and Investigations for the Congressional Committee on Energy & Commerce**

#### **ON THE QUESTION**

Chairman Harrington questioned the rationale behind the Town of Merrimack submitting its own letter rather than trying to do it as a Coalition. Councilor Boyd stated he disagrees with at least one of the premises of the letter composed by the Coalition. He reiterated he is opposed to the 2<sup>nd</sup> question posted in the Coalition's letter, can accept the 1<sup>st</sup> question, and absolutely wishes to express #3 as it

relates to true need and a transparent analysis. That issue he believes to be worthy of a letter to a committee that has oversight over the FERC process.

Chairman Harrington requested clarification. Councilor Boyd suggested if utilizing the letter composed by the Coalition he would remove the 2<sup>nd</sup> question posed. Not wanting to plagiarize another's letter, he wishes for a new letter to be prepared.

Councilor Dwyer commented the previous discussion was that the letter is useless being sent to a useless agency regarding the problem. Now another idea is being presented to what he presumes to be another useless person that cannot help. Councilor Boyd stated his disagreement, and his belief the Subcommittee on Oversight and Investigations is the right agency. Councilor Dwyer remarked he knows who is in charge of the FERC; the FERC is in charge of the FERC. Writing letters to complain about what the FERC is or is not doing is useless. Bureaucracy at the Washington level works a certain way, and it is not complicated. He suggested the recommendation for a second letter to be a waste of time.

When asked, Councilor Dwyer stated his support of the content of the letter composed by the Coalition. Supporting that letter does no harm. Composing a second letter will result in the waste of finances, etc. Councilor Boyd suggested the letter could be written by the Council.

Councilor Vaillancourt stated she seconded the motion for the purpose of discussion as she believes every motion should have the opportunity for discussion. However, she is not in support of the motion. She does not support Merrimack doing something on its own when the letter from the Coalition was initiated in good faith. In addition, she wishes to maintain as much support and uniformity with the Coalition as possible.

Councilor Koenig remarked he is not yet on board with the concerns expressed regarding the constitutionality. If Councilor Dwyer is correct in his statement that the FERC is responsible for itself then, in his opinion, it is not a Federal agency under the Constitution. Congress makes the laws, the President enforces the laws and the courts make judgments. The FERC is not listed in any one of those three branches of the Government of the United States. He does not believe it wrong to ask how a State's Constitutional rights are going to be upheld when an organization of that sort is rung out. Councilor Boyd stated his motion is to write to the committee which he believes has the Federal oversight over the FERC. It is legislative and regulatory oversight over the FERC.

Councilor Dwyer called the question.

Chairman Harrington stated the motion to be for the Town to write a separate letter related to all of the issues identified in the Coalition letter with the exception of question #2.

#### **MOTION FAILED**

**1-4-0**

*Councilors Dwyer, Harrington, Koenig, and Vaillancourt voted in opposition.*

**MOTION made by Councilor Koenig and seconded by Councilor Vaillancourt to prepare a cover letter to be sent to the Energy & Commerce Committee forwarding a copy of the letter from the Coalition, provided the Coalition is in agreement**

Councilor Boyd called the question

## **MOTION CARRIED**

**4-1-0**

*Councilor Boyd voted in opposition.*

Chairman Harrington informed the Council, at the meeting conducted earlier in the day, she was provided a copy of a letter that was sent by the Governor's Office to the FERC, which addressed conservation land. The letter notes the current proposal crosses 6 parcels of land that were protected through the LCHIP in the Towns of Amherst, Mason, Troy, and Richmond. They add on "We would request that information submitted by KM and included in the draft Environmental Impact Statement clearly depict all protected conservation lands in New Hampshire. It is not clear, based on the information submitted by KM to date, that all protected conservation lands in New Hampshire are included. We would also request that both the Environmental Resource Reports developed by KM and the draft of the Environmental Impact Statement clearly show the location of protected conservation lands in relation to all impacts that are being proposed." In summary; "Finally, we would ask that FERC, as part of its draft Environmental Impact Statement, evaluate the need for this particular project in the context of all other projects that are being considered in the region, and whether those projects could provide the necessary capacity with less impact to protected conservation lands and important environmental natural resources."

Councilor Vaillancourt stated the Town Council and the Conservation Commission have received an electronic communication dated September 1, 2015 from Allen Fore, Vice President, Public Affairs, Kinder Morgan, which was addressed to Tim Tenhave, Chairman, Conservation Commission. The letter requests a meeting. In the letter, Mr. Fore mentions the Town of Merrimack representatives. Chairman Harrington and Town Manager Cabanel were copied on the letter. The subject matter Mr. Fore wishes to discuss is a compensatory mitigation plan. Councilor Vaillancourt stated Mr. Tenhave did write back to Mr. Fore stating he is welcome to request to be placed on a future agenda, and attend a meeting.

Councilor Vaillancourt noted the document the Conservation Commission put together for the Scoping meeting specifically addressed mitigation efforts. Should the pipeline go through, the Conservation Commission has specific requests regarding what it wishes the FERC force on Kinder Morgan with regard to mitigation requirements.

The Conservation Commission meets next on September 14, 2015 at 6:30 p.m. Mr. Tenhave has stated the letter will be discussed during that meeting. Councilor Vaillancourt was unsure if Mr. Fore would respond to Mr. Tenhave. How efforts are coordinated between the Conservation Commission, the Town Council, and the Town Manager regarding mitigations plans is not yet clear. Councilor Vaillancourt stated she would do her best to ensure open communication continues.

### ● **Action Items**

- Continue to press Kinder Morgan for a Public Meeting in Merrimack - **Meeting held 3/26/15**
- Place an action item on Feb 12th agenda requesting the council to take no action regarding request from Kinder Morgan to survey town-owned parcels until Merrimack Public Meeting - **Completed**
- Place NED Pipeline Update on future council agendas - **Completed 2/12/15**
- Update list of properties that directly about proposed pipeline route with a list of properties that fall into pipeline hazard zone - **Completed**

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Posted: October 26, 2015

- Consider consultant to:
  - Research communities' property value effects of recent pipeline installations - **Engaged Avitar**
  - Evaluate impacts on the sewer line - **Engaged Wright Pierce****Reviewed first draft. Final Report should be provided by 6-5-15.**
- Support Conservation Commission's efforts to update data for environmental impacts on HHNP and Gilmore Woods - **Ongoing**
- Support Merrimack Village District's efforts to protect Wellhead Protection Zone and Aquifer Protection Zone - **Ongoing**
- Request Kinder Morgan list of abutters notified of project and requests for permission to survey – **At the 4/28/15 meeting, Town Manager Cabanel asked Jim Hartman, Kinder Morgan Principal Land Specialist, for map and lot numbers of affected land owners and was denied the request.**
- Work with property owners to develop a list of who has been notified of the project and requests for surveys - **Completed**
- Maintain contacts at FERC and NH Congressional delegation - **Ongoing** (NH delegation attends Managers meetings)
- Consult with PSNH (Eversource) regarding where they are in the process with Kinder Morgan and Public Utilities Commission - **No response - No contract between parties (4/23/15)**
- Consult and share information with large companies (A-B/InBev, Elbit, Premium Outlets, Fidelity, PanAm, PSNH, Pennichuck, etc.) - **Meeting held 2/26/15; will be ongoing**
- Section 106 of the National Historic Preservation Act of 1966 (NHPA) - **Pending formal application**
- Council voted to stand in strong opposition to the NED pipeline - Send letter to Governor/Federal Delegation
  - Letter to Governor - **Letter sent 4/14/15**
  - Letter to Congressional Delegation - **Letter sent 4/14/15**
  - Letter to Local Reps - **Letter sent 4/14/15**
- Council to continue attempts to settle on the Survey Access Agreement with Kinder Morgan – **Ongoing (between the Town's legal counsel and Kinder Morgan's legal counsel). The agreement is being "actively worked".**
- Town Council Letter to the FERC re: Town and TGP Survey Access Agreement Negotiations - **eFiled 9/4/15.**
- Town Council Letter to the FERC re: Amherst Alternative Route 1 Impacts to the Town of Merrimack – **eFiled 9/4/15.**

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

James Ferreira, 7 Maryann Lane

Thanked the individuals associated with the Merrimack Dog Park Committee and Milford Pumpkin Committee for publicly declining money from Kinder Morgan.

Mr. Ferreira questioned if the Council would be in attendance at the Open House and the final Scoping meeting in Rindge. Chairman Harrington responded she attended an open house in Amherst, and would not be attending the next Open House. With regard to the Scoping meeting, Chairman Harrington stated the Council provided testimony at the recent Scoping meeting conducted in Nashua. She may attend, but would not plan on providing any additional testimony.

Mr. Ferreira spoke of the Northern Pass project, and stated that will equate the replacement of Vermont Yankee. With the Northern Pass coming, he suggested that to be a better route, and questioned if Governor Hassan and the Legislature could be pushed to look outside the box to consider this and whether there is a need for the pipeline.

Mr. Ferreira stated the FERC is fully funded by the group that they are supposedly overseeing and approving projects for. Kinder Morgan and its subsidiaries are the second largest group that the FERC receives funds from; something he sees as a major conflict of interest. There is one group that ultimately has power of the FERC, and that is the Federal court system. It states that right on the FERC's website. Any of the documents can be taken to Federal Court. It is ultimately the Federal court's decision whether they support the FERC's decision or not.

Mr. Ferreira questioned, if the pipeline project is approved, is the Town and/or Coalition ready to go to Federal court. Chairman Harrington responded the Council posed that question of legal counsel. When the final submission is complete, the Town could apply for intervenor status. That determination will be made by the Council when the time is appropriate. Town Manager Cabanel remarked you can apply for intervenor status, which means you are an interested party who can participate and gather information from everyone who is also an intervenor. The Council would need to decide whether or not to enter into an actual lawsuit.

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

### **Appointments**

#### **1. Annual Review with the Technology Committee**

*Submitted by Technology Committee Chairman Dustin Liukkonen*

Per Town of Merrimack Charter Section 6-6, at least annually, there should be an annual review with the Technology Committee. This agenda item is to highlight the committee's significant actions, current projects, anticipated actions, and to raise any concerns the Council should know or could act on.

Mr. Dustin Liukkonen spoke of changes in the makeup of the Committee, and noted the Committee has met twice since the last review. Most of the work done last year was related to the NH-GAP software for the Welfare Department. In addition, a few email issues were resolved. The Library moved over to the Town's Microsoft Exchange server. The Fire Department's software was upgraded. A part-time I.T. person was hired to help with the needs.

The current issues being addressed include categorizing/inventorying all I.T. infrastructure, e.g., network, backups, internet connections, software licenses, etc. He spoke of options that are available such as Cloud hosting, which could result in a cost savings and increased security. Mr. Liukkonen provided the example of housing all software backups in a single building posing a threat in terms of potential loss. One idea to address redundancy was to utilize the Police Station and the fiber optic connection. Also being looked at is reducing software costs, e.g., licenses. He spoke of open-source and free options that are available without sacrificing security. He committee will likely appear before the Council in the near future to discuss that further. Beyond that, there are no pending requests.



Councilor Boyd questioned which Town organization utilizes SQL. Mr. Liukkonen responded no one uses it in terms of an interface, but it is used for data storage for several applications, in more of a backend way. Councilor Boyd spoke of his prior experience utilizing SQL in a backend function. He questioned, if the Town were to explore using an open-source, what level of risk it would assume. Mr. Liukkonen stated open-source does increase the level of risk in terms of vulnerability somewhat, but it is commonly used by government agencies, large corporations, etc. He does not believe it would result in much of an increase in risk. If changing to an open-source there would be the need to consider expenses that would incur with hiring consultants to support that kind of software. The additional costs would have to be compared with current licenses. Councilor Boyd remarked if going in that direction, it would likely be a one-time expense to do the evaluation and setup. Mr. Liukkonen commented, considering the cost of the licenses, it may be worth consideration.

Councilor Vaillancourt questioned the status of membership, and was informed the committee is currently at full compliment. When asked if a schedule of meetings for the coming year has been established, Mr. Liukkonen commented the committee typically meets based upon need. When asked, Town Manager Cabanel remarked the committee is relied upon to evaluate the effectiveness of communications equipment, software changes, etc.

Mr. Liukkonen commented on the need to gain consensus regarding the feasibility of making a change in software given employee familiarity and the level of resistance such a change might be met with. That will be discussed at the next meeting. Chairman Harrington stated her desire for emphasis to be placed on creating redundancy for the system.

Mr. Liukkonen stated one of the requests that will be made of Chuck Miller, Technology Coordinator, is a review of the utilization of the fiber link between Town Hall and the Police Station. That would be the area where you would physically put the drives. If utilization is slow, it would provide an immediate solution. It may be that a long-term solution is looking at the Cloud level.

Town Manager Cabanel spoke of utilizing the expertise of the committee to perform a review of any new software, etc. being considered.

Councilor Koenig spoke of having attending a meeting where the committee went over a lot of information and background with Mr. Miller, who is highly supportive of the committee. He is not driving the committee; it is not his responsibility to do that, but it is his responsibility to support it and provide answers. He took the committee on a tour of the server area, etc. so members could see the type of equipment he is working on. Councilor Koenig commented most of the members have a good deal more knowledge around technology, hardware, and infrastructure than he does.

He commented there are a few issues the committee has to fight with. For example if switching to open source, there is the need to provide your own maintenance and support whereas if you go with a classic Microsoft or something similar, they come with the maintenance and support or it is an easily purchased capability. There is a big trade-off. We might be paying \$100,000 for licenses and support, but we might end up paying \$50,000 - \$80,000 for maintenance and support if we go some other way. That coupled with the discombobulation of people when you change software is a big balancing act. That is a significant challenge to go forward with, but because it is a fairly significant amount of money, it is worth looking at on a regular basis.

Mr. Liukkonen remarked the clearer picture the committee can be provided with in regard to how information flows within all of the entities of the Town the better they can identify possible solutions.

Councilor Koenig commented the redundancy issue is a matter of timing. There is offsite storage capability, but there may be ½ a day or a day's delay between the time it gets written to tape until you can get those tapes out. The situation is not that everything is stored in one space and completely at risk. The question of being able to do a fiber link to some other building in Town would give somewhat instantaneous redundancy backup.

## **Public Hearing**

### **1. Public Hearing – Acceptance of Donated Funds for the Merrimack Dog Park**

*Submitted by Town Manager Eileen Cabanel*

The Town Council will hold a public hearing to consider the acceptance and expenditure of up to \$30,000 of donated monies for the Merrimack Dog Park, pursuant to RSA 31:95-b and Charter Article 8-15.

Town Manager Cabanel remarked, at its last regular meeting, the Council voted to accept and expend the \$25,000 grant that was awarded to the dog park efforts. Donated funds have come in sporadically, and there is the need to ensure the total of the funds received are accepted and authorization granted to expend. The amount is in the area of \$26,000, and donations continue to be received. The desire is for approval to accept and expend up to \$30,000.

*Chairman Harrington declared the Public Hearing open at 8:03 p.m.*

*No one from the public addressed the Council.*

*Chairman Harrington declared the Public Hearing closed at 8:04 p.m.*

**MOTION made by Councilor Boyd and seconded by Council Dwyer that the Town Council cheerfully authorize the acceptance and expenditure of an amount up to Thirty Thousand Dollars (\$30,000) of donated monies for the Merrimack Dog Park, pursuant to RSA 31:95-b and Charter Article 8-15, and furthermore that the Town Manager and/or her proxy be authorized to sign any and all paperwork necessary to accept and expend said funds. MOTION CARRIED 5-0-0**

**Legislative Updates from State Representatives** - None

## **Town Manager's Report**

Town Manager Cabanel spoke of reports received from Matt Casparius, Director, Parks & Recreation. One related to test pits that were dug along the proposed route for the waterline at Wasserman Park. The outcome was there is no ledge to the level desired until the area near the Theatre building.

Town Manager Cabanel spoke of the impressive nature of the Fall [Recreation Programs](#) Director Casparius has put together. She encouraged all residents to visit the website to view the many events, tours, etc. that are available. Councilor Koenig named a few; The Big E trip on Sunday September

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27<sup>th</sup>, the Maine Lighthouse Tour on Saturday, October 3<sup>rd</sup>, Blue Man Group and lunch on Saturday October 24<sup>th</sup>, and Patriots vs. Giants weekend, Sunday November 15<sup>th</sup> through the 16th.

## **Consent Agenda**

### **1. Proposed Zoning Ordinance Amendments [Final Reading]**

*Submitted by Community Development Director Tim Thompson*

The Town Council to consider final approval of the proposed amendments to the Zoning Ordinance (Sections 1, 2 and 17), pursuant to RSA 675:6 & 675:7 and Charter Article V, Section 5-4.

**MOTION made by Councilor Boyd and seconded by Councilor Koenig to move the Consent agenda.**

## **ON THE QUESTION**

Councilor Boyd noted the State Legislature really didn't give any New Hampshire community any say about having an Alternative Treatment Center (ATC) in place. Once the Town became aware Merrimack was chosen as a location, Tim Thompson, Director, Community Development Division, Town Manager Cabanel, Vice Chairman Mahon, and Mark Doyle, Police Chief, stepped up and drafted language for the Ordinance. He expressed his gratitude for the creation of an Ordinance that works for this community and reflects the business need of the ATC, while reaffirming Merrimack's commitment to maintaining and preserving its quality of life.

Councilor Vaillancourt echoed Councilor Boyd's remarks. She spoke of having attended the information session and learning quite a bit. She had heard concerns regarding security and safety to school buildings; however, was surprised at the lack of public comment regarding those concerns. Mr. John Begin, Director of Security for the ATC, was in attendance. Councilor Vaillancourt remarked Mr. Begin is a retired Troop Commander from the State Police, and is a very impressive individual. Although the issue was not brought up by the public at the informational meeting, Mr. Begin spoke to those issues very thoroughly. Councilor Vaillancourt reminded the viewing audience the video of the meeting is available for viewing on [Merrimack TV](#).

Councilor Boyd commented Trooper Begin was born in New Hampshire, raised in New Hampshire, educated in New Hampshire, and is still here in New Hampshire. This is an individual who served with honor with the New Hampshire State Police for over 25 years. Councilor Boyd remarked Mr. Begin is obviously committed to the State, and based on remarks made that evening, Councilor Boyd believes there to be a good relationship between Mr. Begin and the Merrimack Police Department.

**MOTION CARRIED 5-0-0**

## **Old Business**

### **1. Legal Fees Associated with Kinder Morgan [Follow-up from June 25, 2015 Town Council Meeting]**

*Submitted by Town Councilor Dan Dwyer*

The Town Council to review the total cost of legal fees paid to date in association with the proposed Kinder Morgan pipeline project.

Councilor Dwyer stated, at the end of July, monies expended on legal fees totaled slightly under \$43,000. He questioned the will of the Council with regard to identifying a point at which these expenditures would stop. Although not certain of how he would vote on such a motion, he suggested the time may be right for a motion to put any future legal work on hold until the NED pipeline project is officially proposed.

Town Manager Cabanel spoke of having reviewed the bills submitted, and noted a lot of the ongoing work involves the review of information placed on the docket. She commented she often receives that information from multiple sources. Councilor Koenig remarked there are residents in Town who are reviewing that information at no cost to the Town.

Councilor Boyd questioned if the letter received from Kinder Morgan relative to a Mitigation Plan would be under the jurisdiction of the Conservation Commission, which would result in associated legal fees being paid out of their budget. Councilor Vaillancourt responded it would depend on whether the discussion is of conservation land, and noted the Town owns land that could possibly be involved. Town Manager Cabanel stated the practice has been and would continue to be that legal fees are split.

Councilor Boyd stated the Survey Agreement is a moot issue. He spoke of receiving the daily FERC filings, which he scans on a regular basis. He believes the value will come about in November/December when Kinder Morgan does the actual filing. That is when a decision needs to be reached regarding whether we go to the next round and if a cap is placed on legal fees expended.

Town Manager Cabanel spoke of her judicious use of legal counsel, performing the work herself when possible, and the desire to retain the ability to call upon counsel when she believes it prudent. She provided the example of the letter Ms. Huffman is proposing regarding the metering station. Ms. Huffman has conducted a great deal of research. The desire is to ensure all information included in the letter is accurate, complete, not redundant, etc.

Chairman Harrington spoke of trusting the judgement of the Town Manager, and stated the desire to allow the flexibility she has had with regard to the ability to reach out to legal counsel, to continue. She suggested legal counsel could be asked if it is perceived activity will slow until the submission.

Councilor Vaillancourt stated appreciation of the discussion and of the Town Manager's frugal use of legal counsel. She commented the State Delegation, which has been listening to the businesses, has to understand the amount of funds expended on this issue by the municipalities involved. She stated she would not be in support of drawing a line in the sand so to speak. With so many unknowns she would not want to tie the Town's hands when legal counsel is needed.

Although individuals are reviewing the FERC filings on a daily basis, that is not the same as legal counsel reviewing documents, calling attention to deadlines, etc. She suggested legal counsel could be asked how often review of the docket results in identification of information that is really pivotal and how important that process is believed to be. She stated her concern with requesting legal counsel discontinue that practice of review. Chairman Harrington stated agreement with that approach.

Town Manager Cabanel commented October is right around the corner, and the time when decisions could be made. Councilor Koenig stated agreement with remarks made regarding the level of confidence the Council has in the Town Manager. He stated understanding of the tremendous amount of additional work that has been put upon her in this regard, and his appreciation of her work. He believes the Town Manager needs to have access to legal counsel when believed necessary, and he trusts her judgement to decide when that is.

Knowing there are major things just down the road, he would not be comfortable identifying a particular figure at which to stop expending funds on legal fees. He reiterated the need to go forward and maintain, and commented he believes the Council is putting its trust in her to guide the ship so to speak as far as the finances are concerned.

## **2. Application and Membership Agreement with HealthTrust**

*Submitted by Town Manager Eileen Cabanel*

The Town Council will consider the amendments to and the adoption of the Application and Membership Agreement between the Town of Merrimack and HealthTrust, Inc.

Town Manager Cabanel noted the document was before the Council at its July 16<sup>th</sup> meeting. At that time she proposed amendments to the boilerplate agreement that had been provided. She had taken exception to the language within the Bylaws that stated if the Town were to leave the Trust, any monies remaining from previous years' surplus (of our own experience) would be forfeited. Her recommendation had been to modify the language noting the matter is currently being adjudicated and the Town would accept the court's final decision on the matter.

Having discussed the concerns with the insurance carrier, the following amended language is proposed for consideration: Under #4, Governing Provisions, add the following to the end of the first sentence: “, except as provided in Section 8 of this Membership Agreement.” and Under Section 8, Surplus, add the following language to the end of the first sentence: “, unless a court of competent jurisdiction rules that such terms are in violation of New Hampshire statute/regulation or are otherwise unenforceable”.

**MOTION made by Councilor Koenig and seconded by Council Boyd that the Town Council approve the Application and Membership Agreement between the Town of Merrimack and the HealthTrust, with amendments in Sections 4 and 8. MOTION CARRIED 5-0-0**

The following Certificate of Authorizing Resolution was read into the record:

“I hereby certify to HealthTrust, Inc. (“HealthTrust”), that the following is a true copy of a resolution adopted by the Governing Body of Town of Merrimack at a meeting duly held on September 10, 2015:

**RESOLVED:** That Town of Merrimack shall participate as a Member in the HealthTrust pooled risk management program for the provision of group medical and/or other benefit plans in accordance with the “Application and Membership Agreement” and NH RSA 5-B.

**RESOLVED:** That Eileen Cabanel, Town Manager, is hereby authorized and directed to execute and deliver to HealthTrust, on behalf of Town of Merrimack, the “Application and Membership Agreement” in substantially the form presented to this meeting.

I further certify that the foregoing resolution remains in full force and effect without modification.”

**MOTION made by Councilor Boyd and seconded by Councilor Koenig to adopt the Certificate of Authorizing Resolution as read and authorize and direct the Town Manager to execute and deliver to HealthTrust a certificate of this resolution. MOTION CARRIED 5-0-0**

**New Business**

**1. Committee Appointment**

*Submitted by Town Council Chairman Nancy Harrington and Vice Chair Tom Mahon*

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

**Vincent A. Russo, Jr.** (Planning Board- *Full Member*)

Chairman Harrington noted she, Vice Chairman Mahon, and Robert Best, Chairman, Merrimack Planning Board, were present during Mr. Russo’s interview. Mr. Russo was a member of the Hudson Planning Board for ten years, and Chairman for four of those years. Councilor Boyd requested a copy of Mr. Russo’s letter of interest be provided.

**MOTION made by Councilor Boyd and seconded by Councilor Koenig to appoint Vincent A. Russo, Jr. as a Full Member of the Merrimack Planning Board, pursuant to Charter Article 4-8. MOTION CARRIED 5-0-0**

*Oath of Office administered by Chairman Harrington.*

**2. Liberty Utilities Proposal – Metering Station**

*Submitted by Town Council Chairman Nancy Harrington and Debra Huffman*

Town Council to consider document related to the proposed metering station.

***Chairman Harrington reminded the viewing audience this agenda item has been postponed.***

**3. Proposed Changes to Chapter 183 – Vehicles and Traffic [First Reading]**

*Submitted by Police Chief Mark E. Doyle*

The Town Council to consider the proposed changes to Chapter 183 – Vehicles and Traffic, of the Town

Code, to add a section restricting through traffic on Valleyview Drive to “Emergency Vehicles Only” between tax map parcel 5C/142 and 5C/148, pursuant to Charter Article V.

Mark Doyle, Police Chief, stated the need for the signs currently posted to be authorized in such a way that they are enforceable. The proposal is for language to be included within Chapter 183 that will give the Police Department enforcement authority. If passed, the language would restrict through traffic on Valleyview Drive to emergency vehicles only.

It became evident when the subdivision plan was passed (2012) that it was conditional upon the erection of signs at both ends of that section of Valleyview Drive (new section) that would restrict access to emergency vehicles only. In order for the Police Department to enforce that, there is the need to add language to the ordinance.

Director Thompson stated the signage was part of the two-lot subdivision on Valleyview Drive, which has quite a history. The Town called the bond to complete the site work after the developer did not complete the improvements within a timely fashion. The Town has completed the paving associated with the project. Additional site work and erosion control measures are being finalized over the next few weeks.

The original application was for a three-lot subdivision that would have been a full roadway connecting both ends of the dead ends of Valleyview Drive. In order to make the roadway work conform to the Town's regulations the Applicant would have had to gain easements for slope and drainage from some of the abutters.

Director Thompson commented the original Valleyview Drive subdivision goes back to the 1950s. It was always intended to be a full loop connection; however, the actual site conditions prevented that from ever happening. Based on the way the regulations were back in the 1950s we don't have the same engineering review and detail that are currently required for a Planning Board application.

Failing to obtain those easements, the Applicant then had proposed, and the Planning Board accepted, that the connection between the two should still be made, but for emergency vehicles and plowing access only by the Town. The signage was part of that condition. The effect of that is that we have a full 24' wide roadway for the public portion of the road, which then narrows down to about 12' for this emergency access way that connects the two and will be accessible, per this ordinance, and enforceable by the Police Department for only emergency vehicles and the Town plow.

Chief Doyle suggested the proposed language include detailed identification of where the locations should be, e.g., identified by corner of parcel, etc.

Councilor Koenig commented the Statute does not identify plows. It states, in part, all vehicles authorized by the director, yet does not identify who the director is. Chief Doyle stated it is the Director of the Department of Transportation. When asked, Chief Doyle stated "vehicles that are involved in the removal of snow" are considered emergency vehicles. Councilor Koenig noted that was not included in the proposed language. Chief Doyle responded State law specifically identifies vehicles that are involved in the removal of snow as emergency vehicles. Director Thompson stated agreement.

Councilor Koenig remarked are there not already some restricted access roads defined in Town. Chief Doyle used the example of the section off of O'Gara Drive that is restricted by a gate, which is defined in the Chapter 183 relative to restricted to emergency vehicles; however there is no definition of what an emergency vehicle is. He stated his belief it is understood it would fall back on State RSA.

Councilor Dwyer spoke of visiting the area and seeing the slope. He can understand why, by today's standards, they wouldn't make that connection. He spoke of the remote nature of that neighborhood, and suggested there may not be harm in leaving the road open. He asked if the intent is to plow that road, and was told it is. He remarked he is not sure where he stands on the proposal; it may be that the residents in that area would find the ability to utilize the road a convenience.

When asked, Chief Doyle stated the residents are not pleased with the through traffic. Councilor Vaillancourt questioned if it is the fact that there is through traffic or if there is a problem with the through traffic. Chief Doyle stated the vehicle speed monitoring device was placed in the area for that purpose. Over the course of a day and a half, during the month of July, they counted 71 vehicles that had traveled the road. That does not mean that they actually violated the restriction and went through. The speed was an average of 23 mph. The road certainly is being used, but they don't have a definitive idea of how those vehicles are driving into or out of that area. The Department has not had complaints about vehicles driving erratically, driving off the road, excessive speed, etc. They have had a complaint or two about vehicles driving through against the restricted access. Director Thompson noted it is not a road, it is an emergency access way; one lane not designed for two-way traffic.

Councilor Dwyer remarked the one thing that would lean him in the direction of supporting the restriction is the fact if you do drive it, it is a single lane. Two cars might be able to squeeze by but a large truck and average car could no; one would force the other down the slope side, which could result in a rollover.

Councilor Vaillancourt questioned the recommendation for the language to include specific location identifiers. Chief Doyle stated that to be his recommendation, and noted the proposed language includes those identifiers.

Town Manager Cabanel remarked it is not an accepted road. Not putting up the signs or giving the police the ability to monitor it puts the Town in a situation of liability. When asked for additional clarification, she responded in the absence of signage indicating the road is not open for use by the general public, even though it is not an adequately sized road and the slopes do not conform to what is required for public roadways, an individual whose vehicle is damaged, etc. while utilizing the road could look to hold the Town liable. Director Thompson stated the signs are up and do exist today. Town Manager Cabanel reiterated they are not enforceable.

Councilor Boyd questioned paving of that section of road. Director Thompson replied the paving to actually complete the work that was uncompleted by the developer has been completed by the Town's contractor this past week. Councilor Boyd commented the 24' road goes down to 12'. Councilor Koenig stated there is only a 12' road through there. Director Thompson stated it is a 12' emergency access way. It was additional paving. When asked, Director Thompson stated all of the lots that were created have proper frontage.

Councilor Boyd questioned the condition of the road from the southerly edge of Valleyview Drive on the Baboosic Lake side of the road to the northerly edge of Valleyview Drive, which is running perpendicular to Courtland Drive. Director Thompson stated it was an unimproved section of the road. There wasn't even a dirt road before the development.

Councilor Boyd commented by improving it to a paved road we have created our own nuisance as a consequence. Director Thomson responded this was a requirement that was requested by the Fire Department in order to provide appropriate emergency services through that section as a compromise that the Planning Board accepted in order to allow for the development of those lots. Councilor Boyd remarked the improvement could have gone to the edge of the third lot on the southerly side of that subdivision. They did not have to pave that whole road. Director Thompson agreed they did not. Councilor Boyd questioned why he should be looking to restrict the road that previously was



unimproved and likely not traveled. Anyone who would have chosen to drive that portion of unimproved road would have had the liability placed upon them.

Chief Doyle stated in that instance, the only opening for emergency services would be that one way in and that one way out on the far end up on Valleyview Drive. They would have to circle all the way around, maybe up on Joppa Road to get in the back side. This gives emergency access both ingress and egress from both sides. It gave the developer an opportunity to provide for the folks that would ultimately be moving into those homes down there an opportunity to get emergency access when they needed it, as quickly as possible. You still could have left that section of road open; however, in the middle of the winter we don't want police cars, fire engines, and ambulances driving over snow, rocks, and ice, and certainly not on an unimproved road. It would be a horror show for the Public Works Department (PWD) to try to clear snow off of it as well. That was probably part and parcel the reason of making sure that if it is going to be improved to a certain point, get it improved as far as it possibly can be so that it is accessible for the residents that are living down there. If we can't improve it all the way through because the conditions don't allow for it engineering wise, let's get it to a point that we can at least get emergency vehicles through.

Councilor Boyd responded he does not disagree with the sequiturs argument but he would contend while it would be one way in one way out, Valleyview runs off of Patten Road, which is what he would consider to be not major, but a significant road that is traveled through Town, and Baboosic Lake Road, which is probably a major artery in Merrimack, that emergency vehicles had access to to gain access onto Valleyview Drive. Director Thompson responded he does not dispute the points made, but the decision was already made and the access way exists, it is a matter of do we have the ability to enforce those signs or not.

Councilor Dwyer commented it could have been two cul-de-sacs, but it did not happen that way. They built the road, and it is too late. Councilor Koenig remarked, realistically there is not room in that area to put in cul-de-sacs. The Planning Board reviewed this in conjunction with the Fire Department's requirements for access and things of that nature a long time ago, and came up with this resolution given that they couldn't put in a full roadway. They gave approval to have this built to satisfy the Fire Department and Police emergency access. What is before the Town Council now is a request for the requirement that it is an emergency access road to be codified.

Councilor Boyd stated his assumption the radius would have been tight had some type of a T or cul-de-sac been attempted. Councilor Koenig commented the plans show there is currently an L at the end of the original Valleyview Drive with an easement on the individual's property in order to have that so that someone could theoretically turn around, but it is not a very good hammerhead for access to that, and it still doesn't give us the speed of access we would like to have through there for emergency vehicles. It allows a fire truck to turn around and get out of there if it needs to, but it doesn't address the need to get to that location. Clearly the other side where the road comes up and would have dead-ended at that point, has no room for that because of slopes and things of that nature.

Chief Doyle stated he would provide the Council with the information identifying emergency vehicles is provided to the Council.

**MOTION made by Councilor Boyd and seconded by Councilor Vaillancourt that the item be moved to a Public Hearing to be conducted on September 24, 2015. MOTION CARRIED 5-0-0**

#### **4. Designation of Economic Revitalization Zone (ERZ) for SolidScape**

*Submitted by Community Development Director Tim Thompson*

Request Town Council authorization to submit an application to the NH Department of Resources & Economic Development to designate the parcel located at 316 D.W. Highway as an Economic Revitalization Zone.

Director Thompson stated this to be the second time he was before the Council in the past 6 months for a request to establish an additional Economic Revitalization Zone (ERZ). He was last before the Council for both the Anheuser Busch and the Space Optics Research Lab (SORL). At the time the memorandum was written that decision was pending. As of the 20<sup>th</sup> of August, the State did approve both of those locations. They have now been added to the roster of ERZs. SolidScape at 316 D.W. Highway has had conversations with him and representatives of the NH Department of Resources & Economic Development (DRED) regarding their interest in also being designed as an ERZ.

SolidScape is one of the largest 3D printer developers and manufacturers in the world. They operate in over 80 countries. The primary consumers of their printers are those in the jewelry industry, consumer electronics, bio-medical, dental prosthetics, orthodontics, etc. The company is growing, and they would like to take advantage of the ERZ program when they do add additional employees in the future.

This is in an area that is in the census tract that essentially automatically qualifies given the income levels of that census tract from the F.E. Everett Turnpike to the river. It is just under the threshold for 80% of the population at the median income. There is no need for the Town to designate this as a blighted or underutilized site. It is obviously not, but it does meet the qualifications in the same manner that both SORL and Anheuser Busch did.

Director Thompson explained an ERZ is a State tax credit program. There is no impact to the local property tax or anything on the local level. Being in an ERZ authorizes those businesses to proceed and request credits to both the business profits and business enterprise tax. Those are based on either addition of new employees, capital investment in the facility or projects associated with the development. There is a deadline of February of each year where businesses have to submit their application to the State. If successful they are given a credit to their business profits or business enterprise tax.

**MOTION made by Councilor Boyd and seconded by Councilor Dwyer that the Town Council authorize Tim Thompson, Director, Community Development Division, to submit an application to the New Hampshire Department of Resources & Economic Development (DRED) to designate the parcel located at 316 D.W. Highway as an Economic Revitalization Zone. MOTION CARRIED 5-0-0**

#### **5. 4 Executive Park Drive Realty, LLC Request for Town Council Letter of Recommendation [Postponed at the August 20, 2015 Town Council meeting]**

*Submitted by Robert Singer, Thomas Prieto & James Prieto*

The Town Council to consider a request to support the removal of trees and berm to increase the visibility from the F.E. Turnpike for the revitalization and/or redevelopment of the property located at 4 Executive Park Drive.

Approved: October 22, 2015

Posted: October 26, 2015

***Chairman Harrington reminded the viewing audience this agenda item has been postponed.***

## **Minutes**

Approve the minutes from the regular Town Council meeting of August 20, 2015 and the Special Town Council meeting of August 25, 2015:

### **August 20, 2015**

*The following amendments were offered:*

Page 11, Line 48; add clarifying language indicating the offer from Kinder Morgan to provide funds to the Dog Park was turned down.

Page 15, Line 34; replace “until” with “unit”

Page 15, Line 45; remove “and”

Page 17, Line 17; add “year round” to the end of the sentence

**MOTION made by Councilor Boyd and seconded by Councilor Vaillancourt to approve the minutes of the August 20, 2015 Town Council meeting as amended. MOTION CARRIED 5-0-0**

### **August 25, 2015 (Public Forum- Alternative Treatment Center Location)**

It was noted it is not necessary for the Council to formally accept the minutes. They will be posted for public viewing.

**Comments from the Press** - None

## **Comments from the Public**

Shauna Amick, 11 Valleyview Drive

She remarked she is one of the obscure neighbors who lives in the tucked away neighborhood. She stated she cannot imagine why the Council would not want to have the emergency access road enforceable as it is a safety issue. It is not simply the inconvenience of cars driving by.

She stated they do not live on Baboosic Lake Road, but what she knows about Baboosic Lake Road is that it is visible and it is a two-lane road. They don't have that on Valleyview Drive. It is a one-lane road; two cars cannot go by. What also cannot happen is if the one car is going through and there happens to be a pedestrian in the area, there is nowhere to go. She agreed with the remarks that the Town has created a real nuisance. She added it has created a potential liability. She spoke of speaking before the Planning Board and stating it is not a matter of if someone is going to get hurt, it is a matter of when someone is going to be hurt or killed on that road.

Ms. Amick stated the grade and the curve of the hill going up to that one lane make visibility zero. She spoke of the transformation of what was a forested area to a paved road, which she described as a kid magnet. She spoke of concern for the safety of the children and others in the neighborhood.

Chairman Harrington questioned the option of a gate. Councilor Koenig stated that was debated to a large extent at the Planning Board. Ms. Amick stated her opinion using gates is the only wise thing to do. Town Manager Cabanel stated there are gates that are easily broken down for emergency vehicles to gain access or ones where keys could be made available. She stated that could be looked into with the PWD. Councilor Dwyer commented on the need for plows and that gates are not the best alternative during times of snow. The suggestion of chains was made. Chairman Harrington remarked it may be that the answer received is that gates are not conducive to plowing. Councilor Dwyer questioned why the road was not left alone; why it was felt necessary to finish the roadway.

Councilor Koenig responded, as was stated previously, there was a desire to have emergency access capability to that area. It was originally designed and intended to have a full road. When they couldn't get easements and proceed down that path, the alternative was to put in a single lane emergency access only road. That was all pretty heavily debated by the Planning Board, Fire Department, etc.

Ms. Amick reiterated it is important to discuss. As with anything, discussion can very easily get into why we did it in the first place, what is the liability, etc. She requested the situation not be viewed as this was a bad decision made by someone else or they created the nuisance, let them deal with it. The people of Merrimack did not create the nuisance, but they are the ones who are suffering, and really waiting for tragedy to happen while this keeps getting pushed off to another agenda. She implored the Council to think of the people when making a decision.

James Ferreira, 7 Maryann Lane

MR. Ferreira noted he sold I.T. for a number of years at PC Connection, and is aware Microsoft offers a free program to any companies or State run organization where they come out and do an assessment of the licenses and ensure you are buying the appropriate licenses. There are government licenses, education licenses, non-profit licenses, etc. It is a free service that Microsoft offers, and something that might be worth looking into.

With regard to the funds expended on legal fees associated with the proposed NED Pipeline project, he stated understanding of the sensitivity around the funds being expended and appreciates the support of the Council. He questioned if there is anything that the large groups that are against this proposed project could do in terms of fundraising. He stated a willingness to do such fundraising. Town Manager Cabanel suggested he visit her office where staff could provide information on licensing, etc.

Mr. Ferreira spoke of the issue on Valleyview Drive, and commented if it is something that was done that cannot be undone, there is always the option of placing cement cinder blocks at both ends and cut it off.

Dick Barry, State Representative, Merrimack

Stated he is a member of the Finance Committee. It was known the Governor was going to veto the budget. Knowing that, a Continuing Resolution was put in so that Government would not shut down. That Resolution is for a six-month period at 50% of last year's budget numbers (FY15). That means about \$22 million/month less spending. There are three areas of disagreement. The Governor wanted a continuation of the Medicaid Expansion. There was a Bill that was put in when that Medicaid

Expansion occurred, which included a Sunset Clause. The Governor repealed that Sunset Clause in her budget and the Finance Committee took it out, which means Medicaid will sunset at the end of '16 unless we do something positive. It is only the expansion piece that will sunset. Another area of disagreement relates to the Business Profit Tax/Business Enterprise Tax. The Finance Committee recommended a decrease for those. The third area was the employee pay raise; the Governor negotiated a contract with the State employees (approx. \$12 million), which was not included in the budget the Governor vetoed.

In the meantime, they have had several negotiations. The House and the Senate agreed to put the pay raise for the employees back in. There are three subsets (working groups) that are looking at the significant impacts that are happening. One is for cities and towns. If you look at the numbers in the budget; both the one that is passed and the previous budget it is about the same thing for cities, towns, and schools. The difference in numbers is minimal. He stated his belief there is more money for cities and towns and more money for roads and bridges in the vetoed budget, but not significant enough to start worrying about.

There is a work group looking at the Sununu Center in Manchester. That was set up to accommodate 144 kids that were classified as difficult cases (have been averaging less than 50). As it is significantly underutilized, they are looking for ways to utilize that space.

The third working group is Health & Human Services. There are numerous things going on there. The State was sued for the mental health case. They put together, in the new budget, mobile reaction teams so that a hospital can call up and say I have a tough case and no place to put them. They can send a team there with the kind of people that can provide the help needed.

The six-month Continuing Resolution is about \$140 million less than the budget that was passed. What that means is, going forward, the baseline is going to be at least \$140 million lower.

Representative Barry commented we are in a hole and trying to get caught up. The latest revenue estimates and latest forecast for the economy are being looked at.

Chairman Harrington commented on discussion around the State pension. Representative Barry stated there is an underfunded pension benefit. There are generally accepted accounting practices going on, and "they" have decided that the Governments can and should report their liabilities for pensions in their balance sheet. Councilor Dwyer commented he thought "they" was the State Legislators three years ago. Representative Barry stated it is at the Federal level. Councilor Dwyer commented according to the newspaper, the State Legislature, in 2012, passed the law to change the accounting method so three years later it came home to roost. That is how the Union Leader wrote it today. Representative Barry responded "I'll take that, I did it." Councilor Dwyer added they could be wrong, but that is what he read today. Representative Barry continued somewhere in the \$20-30 million, which means that the surplus they thought was going to be up in the \$50 million range for carryover because of all of the things that didn't happen last year will be less than expected, and whether or not that impacts significantly the budget negotiations going forward he is not sure. He reiterated cities, towns, and schools are probably held harmless, but what we are in is such a strange thing, he has no clue. There are 5-6 other bills in addition to the budget that were vetoed. Perhaps they will get to them all and perhaps they will not.

Approved: October 22, 2015

Posted: October 26, 2015

Councilor Koenig thanked Representative Barry for bringing the information forward. He remarked he wishes we could make a comment, but it almost would be “watch out for us” because we have bridges to repair, roads to cover, and all of that, and we don’t want to lose whatever potential aid we could get. That sounds very selfish in light of everything. He thanked him for the hard work.

### **Comments from the Council**

Councilor Boyd informed the viewing audience the 6<sup>th</sup> Annual Erica’s 5K Run/Walk will take place at the High School on Saturday, September 26, 2015 in memory of Erica Pombrio. Additional information can be found at [www.ericasrun.com](http://www.ericasrun.com).

Chairman Harrington spoke of the 14<sup>th</sup> anniversary of September 11<sup>th</sup>.

### **Adjourn**

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

**MOTION CARRIED** 5-0-0

*The September 10, 2015 meeting of the Town Council was adjourned at 9:26 p.m.*

Submitted by Dawn MacMillan