



## Town Council Meeting Minutes

Thursday February 26, 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 Vice Chairman Mahon, Councilor Boyd, Councilor Dwyer, Councilor Koenig, Councilor Rothhaus, Councilor Woods, Town Manager Eileen Cabanel, and Assistant Town Manager/Finance Director Paul Micali.

### **Pledge of Allegiance**

Chairman Harrington led in the Pledge of Allegiance.

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

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

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

Chairman Harrington noted the last New Hampshire Open House was held at Hampshire Hills in Milford the prior Tuesday. The Federal Energy Regulatory Commission (FERC) will be holding scoping meetings in those communities that express intent. Town Manager Cabanel stated the open houses were hosted by Kinder Morgan and attended by a representative of FERC. For those open houses, Kinder Morgan brought in their experts to provide explanations. A scoping meeting would be put on by FERC and would allow for written and verbal questions, which would be captured by a stenographer. Scoping meetings are not a requirement; however, if enough interest is expressed, FERC will conduct them. She stressed the importance of citizen participation at this level.

Chairman Harrington requested citizens utilize the online [form](#) posted on the Town's website as a means of submitting comment to FERC, and specifically that, in addition to individual comments, citizens request a scoping meeting be conducted in Merrimack. During the Open House it was stated, the greater the number of requests from Merrimack residents, the better the odds a meeting would be held in Merrimack.

A regularly scheduled meeting of the Town Council will take place on March 26, 2015 beginning at 7:00 p.m. in the James Mastricola Upper Elementary School All Purpose Room. Regular Council business will complete at 8:00 p.m. at which time representatives from Kinder Morgan will meet with the Council in public session. That portion of the meeting is expected to come to a close at 10:00 p.m.

Chairman Harrington spoke of additional ways in which meeting information could be communicated to the community-at-large, and suggested postcards be sent to all Merrimack mailboxes.

**MOTION made by Councilor Boyd and seconded by Councilor Woods that a postcard be mailed to all Merrimack mailboxes informing residents of the proposed project, encouraging residents to review the information contained on the Town's website, and informing of the meeting with Kinder Morgan scheduled for March 26, 2015. Furthermore, that staff be instructed to coordinate the wording of the postcard with the Chairman.**

ON THE QUESTION

Councilor Rothhaus questioned the cost of the mailing, which he understood to be approximately \$5,000. Chairman Harrington stated that amount would be the maximum cost. Some discussion has taken place around Town staff preparing a postcard rather than outsourcing. Assistant Town Manager/Finance Director Paul Micali noted there are mailing companies in Town that could do the mailing and hit every post office box, residential homes, and businesses. The maximum cost would be \$5,000; however, he can see it costing a great deal less. There would be approximately 11,000 mailings.

Councilor Dwyer commented he is unsure of how he feels regarding expending \$5,000. Newspapers are printing stories about the issue every day. He believes through utilization of social media and given the meeting would take place as part of a regularly scheduled Town Council meeting, it is likely those who are interested in taking an active role in the matter will be made aware. He questioned the effectiveness of a mailing.

Chairman Harrington stated her belief the Council's role in this process is to ensure the residents of Merrimack are informed. The reality is there are quite a few who are unaware. She wishes to be able to say, without any hesitation, that she did her job of ensuring residents are aware of the proposed project. Councilor Boyd commented not all residents utilize social media, e-mail, etc. as a form of communication. Councilor Dwyer commented on how \$5,000 could be utilized elsewhere in Town. Councilor Rothhaus remarked he too has had some hesitation; however, will support the motion as a means of ensuring the Council performs its due diligence in notifying residents. He spoke of the outcry that has been seen to date, and suggested this could be one last effort to ensure all residents are made aware of the proposed project.

Councilor Woods stated agreement it may be reasonable to question a proposal to expend \$5,000. However, he does not believe anyone on the Council or in the audience has any expectation beyond that of representation by the Council. The proposed project would affect the community, and he has reason to believe it affects resources a bit more than most realize. He spoke of having attended two of the open houses put on by Kinder Morgan and the benefit added to the open houses by the attendance of representatives of FERC, who are our advocates in the Federal process at this point. He stated his support of the motion to inform the citizenry which the council represents of the upcoming meeting.

Councilor Koenig questioned if there has been discussion around the difference in cost and effectiveness of postcard mailings versus letter mailings. Chairman Harrington stated her belief a letter mailing would be a greater expense strictly because of weight. The concept was to provide notification of the proposed project, that the information resource is the website, and to notify and encourage attendance at the March 26<sup>th</sup> meeting.

Councilor Dwyer remarked when the subject was first brought up to him a week ago the associated cost was \$2,500. He was taken aback with the \$5,000 maximum cost. Chairman Harrington explained the initial thought was to send the postcards to those individuals on the property tax list, which would not reach all residents.

Vice Chairman Mahon reiterated the price is a not to exceed amount. With that in mind, and understanding the intent of the information to be provided, he is supportive.

**MOTION CARRIED 7-0-0**

● **Action Items**

- Legal Memo

Chairman Harrington informed the viewing audience, the Council had contracted with an environmental attorney to help guide through the process. A request was made for guidance and recommendations.

The response received from Joanna Tourangeau , Esq., Drummond Woodsum, (can be viewed [here](#)) states in part:

*“In Brief: We recommend that the Town actively participate in the pipeline proceedings before FERC and that the Town respond, in a limited fashion, to the request that the Town identify sensitive environmental areas and that the Town allow, with conditions, the field surveys of the parcels it owns which will be crossed by the current pipeline route.”*

*With regard to the specific questions posed, the response is as follows:*

*“Questions:*

*Should the Town actively participate in the FERC proceedings regarding the NED Project?*

*Should the Town prepare a response to the AECOM request for information regarding sensitive environmental areas in Town which may be impacted by the NED Project?*

*Should the Town allow access to Town lands for field surveys of those Town owned parcels impacted by the NED Project?*

*Discussion:*

*To assist the Town’s decisions regarding the above questions we discuss herein the associated benefits and liabilities for potential answers to each of the above questions. In short, from a legal perspective, the answer to each of these questions is relative straightforward: Yes. The most significant downsides to participating in the FERC process and the associated documentation of sensitive environmental areas and field surveys on Town owned lands are the cost and the perception that participation is somehow permitting or facilitating the pipeline. While the costs are likely to be significant in terms of both staff time and consultant costs, the Town’s participation in the process will result in an outcome that is more desirable than that to be obtained by sitting silent on the sidelines.*

*At this point in time in the FERC process the Town can register in the pre-filing docket in order to receive all docket filings. The Town may also file with FERC a letter regarding its intent to participate in the FERC process as an interested stakeholder. As such, the Town may also respectfully request FERC consultation regarding the impacts of NED Project....”*

Chairman Harrington explained doing so puts the Town in a good position when requesting to be identified as an intervenor; if an active participant from step 1.

*“The field surveys and identification of environmentally sensitive areas are pieces of the FERC process which illustrate how the Town’s participation is more effective than stonewalling. If the Town allows the field surveys it may propose specific terms such as access to the information collected about the property and that the property be returned to the same condition as prior to the field survey. If the Town disagrees with any information discovered then it can address those disagreements before FERC. Should the Town refuse access for the field study, then the property is not excluded from the pipeline route, it is simply included with less accurate information for FERC to consider in the EA. This does not benefit the Town.*

*Likewise, identifying environmentally sensitive areas impacted by the NED Project will allow FERC to consider, and mitigate, those impacts as part of the EA process. Refusing to provide such information will simply allow for decisions to be made regarding routing the NED Project without full information regarding sensitive environmental areas in Town. This is not in the Town’s best interest.....”*

*“In short, the Town has much to lose by not participating in the FERC process first as an active stakeholder in the pre-filing process and then as an intervenor in the application process.....”*

*“Failure to participate will mean that, down the line, the Town has no right to do so (if the Town fails to properly intervene). Once an entity has no right to be heard it is entirely without leverage to effectuate any change in the proceedings.”*

Chairman Harrington opened the floor to discussion by the Council.

Councilor Woods stated his opinion the responses provided are very succinct. He stated his support of remarks made regarding becoming an active stakeholder in the pre-filing process and then as an intervenor in the application process. He stated Kinder Morgan and the Tennessee Gas Pipeline Company have determined a route which impacts more than 4 miles of right-of-way in the Town of Merrimack. There is no question in his mind that the Town of Merrimack is a stakeholder in this project. He stated the importance of being an active participant early on, and urged the Council to take whatever action necessary to get that accomplished as quickly as possible.

Assistant Town Manager/Finance Director Paul Micali spoke of having attended the Open House conducted in Milford the prior Tuesday. When waiting for an opportunity to pose questions to a representative of FERC, there were a few gentlemen ahead of him posing questions. In a ten-minute span the representative must have repeated 10-15 times “We look at the environmental impacts of the pipeline on communities.” Assistant Town Manager/Finance Director Paul Micali questioned whether someone other than AECOM would be sent out for their environmental study, he was told “No, we take the information we get from Kinder Morgan, we review it, and send out our own field specialist to verify it.” If you don’t participate with AECOM, they will gather the information, and FERC’s review will only verify the information they were provided.

Councilor Dwyer stated his support of the proposal, and commented he is not surprised by the legal opinion provided as he had believed that would be the proper direction. He commented he feels bad for

1 Milford having learned their Board of Selectmen took a vote of 4-1 against cooperating. He remarked it  
2 is their duty as elected officials to look out for the best interest of the Town. He is of the opinion the  
3 Selectmen let emotions get in the way when saying they would not participate. After reading the legal  
4 opinion provided he understands if not taking an active part in the process you will be left out in the  
5 cold. The process is not designed for local governing bodies to participate. Unfortunately, the laws are  
6 such that the governing bodies of cities/towns don't have a great deal of power. The issue is between  
7 the Department of Energy and Kinder Morgan.

8  
9 Councilor Dwyer remarked, during open houses, many have said this pipeline gas isn't even for New  
10 Hampshire. The Department of Energy doesn't care that it is not for New Hampshire; they are part of a  
11 greater network of regional and national power. Laws have been enacted to prohibit local politicians  
12 from stopping the process. Addressing what might be able to stop the proposed project, Councilor  
13 Dwyer spoke of the importance of conducting the environmental survey stating it may be that  
14 identification of wells could stop the process, 50 miles of ledge might stop it, etc. The current proposal  
15 is Kinder Morgan's Plan B. They thought, based on an aerial satellite photo, the route was suitable.  
16 They may discover, within that 80-mile corridor there are 50 miles of ledge, wellheads, etc., which  
17 could result in construction and mitigation costs that make the proposed route no longer financially  
18 feasible.

19  
20 Councilor Dwyer stated it is not a foregone conclusion that the pipeline will follow the currently  
21 proposed route. There is a great deal of work to be done before that determination is made. There will  
22 be an outcome based upon Kinder Morgan's profit margin and FERC analyzing the data provided. In  
23 order for the Town to have any sway in the outcome it is necessary to be active participants in the  
24 procedural steps within the system.

25  
26 Councilor Koenig echoed the remarks made by Councilor Dwyer stating his belief it is important to  
27 realize taking a negative position would be harmful to the Town's overall position. While emotionally  
28 you may want to say I'm not interested don't bother me that would not move your position forward.  
29 That is what counsel has advised, that is what the Council needs to understand, and the Council needs to  
30 sit back and take a less than emotional view of what is best for the community.

31  
32 Chairman Harrington commented some of the argument she has heard is we are doing their work for  
33 them. Perhaps that argument could be made, but their work won't be accurate. The Town will be able  
34 to make sure that all resources and important information, from the Town's perspective, is on record and  
35 accurately represented.

36  
37 Vice Chairman Mahon stated if you are not going to participate at this point, it weakens your position in  
38 terms of claiming to be a stakeholder and it also may be fatal if you try to apply for intervener status. As  
39 has been said, the Council has a higher level of responsibility, and that is to take all of these factors into  
40 consideration and, based on the Council's collective judgment, to take an action believed to be in the  
41 best interest of the Town. Nothing prohibits the Town from stating objection to the proposed project  
42 and identifying the basis for the objection. He stated his preference for the other party to work off of our  
43 data/position. If our position is well stated/information provided the opposing party will have to react to  
44 that. There will be the need for Kinder Morgan to react to the information in one way or another and  
45 create that dialogue/argument. It will be up to FERC to decide which piece they will take.

Councilor Dwyer spoke of the wellheads and the critical area the proposed route would take. He suggested it to be one of the most important arguments for relocation.

**MOTION made by Councilor Boyd and seconded by Councilor Woods to accept recommendations provided by in the legal memorandum dated February 12, 2015 and to have the memorandum placed on the Town's website**

**ON THE QUESTION**

Councilor Boyd stated his agreement with comments made by his colleagues.

**MOTION CARRIED 7-0-0**

- Letter to FERC

**MOTION made by Councilor Mahon and seconded by Councilor Boyd that the Town Council formally request, in writing to the Federal Energy Regulatory Commission, that a scoping meeting take place in the Town of Merrimack**

**ON THE QUESTION**

Vice Chairman Mahon suggested the letter include signature lines for each of the Councilors.

**MOTION CARRIED 7-0-0**

Chairman Harrington spoke of the draft letter provided with the [agenda](#), which reads in part:

*"The Town hereby notifies both the Commission and TGP of its intention to actively participate in Docket No. PF14-22 in order to preserve its rights as an interested stakeholder.*

*The NED project as currently proposed would include over 4.49 miles of new pipeline in Town, capable of transporting up to 2.2 billion cubic feet per day of natural gas. This pipeline crosses municipal wetlands including the aquifer that supplies more than half of the Town's water, municipally owned and privately protected conservation areas which areas protect identified endangered species and their habitats, permanent open space and recreation lands, residential properties, and may have impacts to the NH Plating Site (a federal Superfund Site). The Town is in the process of working with TGP to identify sensitive environmental areas impacted by the proposed route and to complete surveys of Town owned lands.*

*Given the unprecedented scale of the project and associated impacts, the Town respectfully requests that the Commission provide a fulsome public process, including comprehensive public outreach, public scoping meetings and active engagement of stakeholders like the Town in this pre-filing process in order to ensure that such significant stakeholder concerns are fully addressed in any future certificate application to the Commission for this project. The Town will actively participate in this pre-filing process in order to achieve this end. Accordingly, the Town anticipates submission to the Commission of Town compiled sensitive area and field survey information in order to ensure full transparency in this process."*

***The following amendments were recommended:***

1 *Second paragraph, second sentence; add “and crosses one of the Town’s major sewer interceptor lines*  
2 *and two major protected rivers” after “the Town’s water”.*

3  
4 *Third paragraph, first sentence; replace “fulsome” with “full open and transparent” and replace*  
5 *“meetings” with “meeting in Merrimack,”*

6  
7 *Add the appropriate signature blocks for the letter to be signed by all members of the Council.*

8  
9 **MOTION made by Councilor Boyd and seconded by Councilor Mahon to approve the letter, as**  
10 **amended. MOTION CARRIED 7-0-0**

11  
12 - Response to AECOM

13  
14 Chairman Harrington spoke of the draft letter provided with the [agenda](#), which read in part:

15  
16 *“Given that the NED Project as currently proposed impacts multiple conservation areas,*  
17 *wellhead protection areas including the aquifer that provides more than half of the Town’s*  
18 *water, scenic areas, habitat for identified endangered species, recreational areas, schools,*  
19 *hospitals, and the residences and water supplies of many of the Town’s citizens, it is vital to the*  
20 *Town that all such areas be accurately assessed and identified so as to ensure that all impacts to*  
21 *such sensitive receptors are avoided and/or mitigated. To this end the Town is highly motivated*  
22 *and willing to assist in accurate identification of these areas.”*

23  
24 ***The following amendments were recommended:***

25  
26 *Second paragraph, first sentence; add “and crosses one of the Town’s major sewer interceptor lines and*  
27 *two major protected rivers” after “the Town’s water”, add “and may have impacts to the NH Plating*  
28 *Site (a federal Superfund Site)” after “Town’s citizens”; and delete “schools, hospitals,”*

29  
30 It was noted there are residents further west of the aquifer area whose properties would be impacted,  
31 which is why the language is included that states “and the residences and water supplies of many of the  
32 Town’s citizens,”

33  
34 Chairman Harrington questioned whether the Merrimack Conservation Commission (Commission) and  
35 Merrimack Village District (MVD) should be included in the letter, e.g., consolidated response. Town  
36 Manager Cabanel remarked the Town received only one letter. If so desired, the Commission and MVD  
37 could be included in the response. Councilor Woods stated at the MVD meeting on February 23<sup>rd</sup>, a  
38 letter was drafted to be sent to FERC. He is of the belief there is action occurring in concert. Town  
39 Manager Cabanel stated if the Council does not include responses back relative to this letter from  
40 AECOM with our responses, it will appear that the questions on the letter are not fully answered. She  
41 clarified the single letter directed to the Community Development Department posed a great deal of  
42 water related questions. The answers should go back to AECOM together. Councilor Woods stated the  
43 MVD would also be forwarding its response to the Community Development Director, Tim Thompson.

44  
45 It was suggested the response be signed by Tim Thompson, given the letter was addressed to him.  
46

As a means of providing additional information to the viewing audience, Chairman Harrington read the remainder of the response into the record:

*“Unfortunately, the Town’s resources are limited and the TGP request imposes a significant burden with regard to both staff and financial resources. The Town, must, therefore request additional time and assistance from TGP to supplement these materials. We look forward to a public meeting with TGP to discuss how to best establish a process that will allow these areas to be fully identified and addressed.*

*The Town also asks that TGP provide the Town with an opportunity to review and comment upon any such materials prepared for submission to the Federal Energy Regulatory Commission in the above captioned matter in advance of such filing.”*

Councilor Koenig noted, as was stated in the legal opinion provided, making the request for the opportunity to review and comment upon any materials prepared for submission to FERC by TGP provides the Town the opportunity to rebut anything the Town may not agree with, and to ensure the information is complete and accurate.

Councilor Woods stated his hope the process allows the Town to look to Kinder Morgan to assist with expenses. Town Manager Cabanel commented a limited number of Town Managers have begun meeting. At a recent meeting, a representative from the Nashua Regional Planning Commission (NRPC) was in attendance and indicated in Massachusetts many of the communities wrote back that they would like to provide the information, but it would be at a cost. The result was they never heard back from AECOM, and were basically discounted because of that requirement. She remarked there is no harm in asking for financial assistance; however, in her opinion, it should not be the deciding factor.

**MOTION made by Councilor Boyd and seconded by Councilor Mahon that the Town Council authorize the Town Manager to request the Director of Community Development put his signature to and forward the letter to AECOM as amended. MOTION CARRIED 7-0-0**

### Field Survey Access Agreement

Chairman Harrington spoke of the Draft Access Agreement re Field Surveys (Agreement) provided with the [agenda](#). She noted additional clarification is needed with regard to property description. Once accepted by the Council, the final version of the Agreement will be posted to the Town’s website for public viewing.

### ***The following amendments were recommended:***

*Page 1, last paragraph; replace “advance notice no less than 24 hours” with “advance notice no less than 48 hours”.*

When asked about the section that reads: “TGP shall also provide the Town with reasonable advance notice of the name and contact information for each and every individual exercising rights under this Agreement. Notwithstanding anything contained herein to the contrary, seven (7) days advance notice given by TGP to the Town shall constitute reasonable advance notice for purpose of this Agreement.”, Town Manager Cabanel responded when speaking with Counsel about that, she was informed the

1 meaning is there is a minimum of 48 hours, but a reasonable period of time would actually be 7 days in  
2 every circumstance. Town Manager Cabanel questioned if it would be acceptable to request counsel  
3 amend the language to provide clarity, and was informed it would be.

4  
5 Councilor Rothhaus requested clarification on terms used in the second paragraph on the first page;  
6 specifically the meaning of the words “nonintrusive” and “limited vehicular access”. Town Manager  
7 Cabanel stated certain parcels have access by gate and allow vehicular traffic. When access is  
8 requested, Town staff will accompany them, and provide an explanation of the type and means of  
9 access.

10  
11 **MOTION made by Councilor Mahon and seconded by Councilor Boyd to approve the Agreement,**  
12 **as amended, authorize the Town Manager to sign on behalf of the Town, and, once finalized, that**  
13 **the Agreement be posted to the Town’s website. MOTION CARRIED 7-0-0**

- 14  
15 - Continue to press Kinder Morgan for public meeting in Merrimack - **Complete**  
16  
17 - Place an Action Item on February 12, 2015 agenda requesting the Council to take no action  
18 regarding request from Kinder Morgan to survey Town-owned parcels until Merrimack public  
19 meeting - **Complete**  
20  
21 - Place NED Pipeline Update on future Council agendas - **Complete**  
22  
23 - Update list of properties that directly abut proposed pipeline route with a list of properties that fall  
24 into pipeline hazard zone.

25  
26 Town Manager Cabanel stated the Town has done its part. Kinder Morgan has been asked to include all  
27 residences in Whittier Place area as they collectively own a piece of common land that abuts the  
28 property.

29  
30 Vice Chairman Mahon noted in the draft environmental report the Council received, Kinder Morgan  
31 states that will be done. He stated his belief it will be part of the application process. Town Manager  
32 Cabanel stated she would contact FERC.

- 33  
34 - Consider consultant to:  
35 - Research communities property value effects of recent pipeline installations - **Engaged Avitar**  
36 - Evaluate impacts on sewer line - **Engaged Wright Pierce**  
37  
38 - Support Conservation Commission’s efforts to update data for environmental impacts on HHNP and  
39 Gilmore Woods Memorial Forest - **Ongoing**  
40  
41 - Support Merrimack Village District’s efforts to protect Wellhead Protection Zone and Aquifer  
42 Protection Zone - **Ongoing**  
43  
44 - Request Kinder Morgan list of abutters notified of project and requests for permission to survey - **No**  
45 **Response from Kinder Morgan**  
46

**Approved: March 12, 2015**

**Posted: March 16, 2015**

1 - Work with property owners to develop a list of who has been notified of the project and requests for  
2 surveys.

3  
4 Town Manager Cabanel stated her intent to utilize her list as a comparison to ensure everyone has been  
5 notified. She is not yet in possession of Kinder Morgan's list.

6  
7 - Maintain contacts at FERC and NH Congressional Delegation - **Ongoing (NH Delegation attends**  
8 **Managers meetings)**

9  
10 - Consult with Public Service of New Hampshire (PSNH) regarding where they are in the process  
11 with Kinder Morgan and the Public Utilities Commission (PUC) - **No Response**

12  
13 - Consult and share information with large companies (Anheuser Busch/InBev, Elbit Systems,  
14 Premium Outlets, Fidelity, PanAm Railways, PSNH, Pennichuck, etc.) - **Meeting conducted earlier**  
15 **in the day.**

16  
17 - Section 106 of the National Historic Preservation Act of 1966 (NHPA) - **Pending Formal**  
18 **Application**

19  
20 Councilor Woods remarked at the Open House conducted in Londonderry he was shown a list of  
21 abutters Kinder Morgan has identified in Merrimack. He requested a copy, and was told what they had  
22 was one that they bring to open houses. He questioned why there has been no response from Kinder  
23 Morgan. Town Manager Cabanel questioned where the individual he spoke with was from, and was  
24 informed he was likely from Tennessee Gas. Town Manager Cabanel commented one of the biggest  
25 problems throughout the process has been being able to get in touch with someone who is not the lowest  
26 individual on the Kinder Morgan totem pole. Having a better contact at FERC she believes that list can  
27 be provided. She noted the information has to be submitted as part of Kinder Morgan's application.

28  
29 Vice Chairman Mahon stated within the draft environmental report it references, under Landowner  
30 Consultation Public Participation (Page 1-85): "An updated list of names and addresses of landowners  
31 whose property will be crossed by the project is provided in Volume III, Appendix AA", which they list  
32 as privileged and confidential. The following paragraph states: "After Tennessee submits the  
33 certification application for the project in September 2015, in accordance with Section 157.6(d) of the  
34 Commission's regulations, 18CFR Section 157.16, 2014, Tennessee will provide notification of the  
35 project to affected and abutting landowners, towns, communities, , and local, state, and federal  
36 government agencies within three business days following the date that the Commission issues a notice  
37 of a Certification Application for the project."

38  
39 Councilor Boyd commented because it is still a pre-application process and they are still figuring out the  
40 route, they could be talking to other landowners. They are trying not to tip their hand until they have to  
41 submit the actual route for the application. Councilor Dwyer remarked the easy route was PSNH  
42 corridor; however, they have easement rights to land that doesn't belong to them. There are many  
43 different Deeds. Just because they have 80 miles of the corridor, they are not the majority land owner,  
44 which is why the process gets bogged down and the Deeds take longer than anticipated as they are trying  
45 to determine who the deeded landowners are.

1 Councilor Rothhaus questioned attendance at the meeting conducted earlier in the day with the large  
2 companies in Merrimack. Town Manager Cabanel responded she would prefer not to identify who was  
3 in attendance; however, stated good representation was available.  
4

5 Assistant Town Manager/Finance Director Paul Micali stated in talking with FERC, the biggest thing he  
6 heard regarding scoping meetings was if you want a scoping meeting to be conducted in Town you need  
7 to show interest from the people of your Town. The more Merrimack residents that request a scoping  
8 meeting the better chance there is that one will be conducted in this community.  
9

10 *Chairman Harrington opened the floor for public comment.*  
11

12 Kim Dinsmore, 4 Whittier Road  
13

14 Stated her appreciation of fiscal conservativeness; however, she is very grateful the Council is willing to  
15 reach out to every citizen in the Town with regard to the upcoming meeting. She stated her belief not  
16 only are there many that are unaware of the proposed pipeline, but there is a prevalent attitude that if it is  
17 not going through your backyard then it really doesn't affect you. She questioned if it would be possible  
18 for the postcard to include bullet points of some of the highlighted information expressed by the  
19 Council, e.g., could impact the wellheads, that it is going through conservation land, etc. so that it brings  
20 the message home that it would impact the Town as a whole.  
21

22 Wendy Thomas, 10 Wildcat Falls  
23

24 Questioned Councilor Dwyer's remarks about the wellheads and his statement "they care about water".  
25 She asked for clarification of who "they" are. Councilor Dwyer responded FERC and Kinder Morgan.  
26 If Kinder Morgan were to have to move wells or create new wells there is a cost point at which they will  
27 say the route is no longer financially feasible.  
28

29 With regard to field surveys, she questioned the lack of language around non-compliance. Chairman  
30 Harrington stated they would not be allowed on the land unless in line with the Agreement. When asked  
31 who would enforce that, Town Manager Cabanel stated the Town would require Town employees or  
32 members of the Conservation Commission accompany individuals conducting the surveys to ensure  
33 what is taking place is in line with the Agreement. When asked specifically what the consequence of  
34 flagrant non-compliance would be, Chairman Harrington stated the police would become involved.  
35 Town Manager Cabanel stated she would look into the matter. Vice Chairman Mahon stated behavior  
36 such as going on the land without advance notice, etc. could constitute trespassing.  
37

38 Ms. Thomas questioned if the Police Department would create a procedure for following up in the event  
39 of non-compliance. Chairman Harrington responded that is something that could be looked into.  
40

41 Ms. Thomas spoke of instances where private citizens have refused surveys and despite that surveys  
42 were conducted. The local Police Department responded by stating no further surveys could be  
43 conducted until they meet with the Police Department and the department is confident the surveyors  
44 understand the procedures in the Town. She questioned if the Town of Merrimack has anything like that  
45 in place.  
46

Assistant Town Manager/Finance Director Paul Micali spoke of an incident that occurred earlier in the week where there was a surveying crew in Town, a resident contacted Town Hall, the Town contacted the Police Department, and a patrol unit was dispatched. The surveying crew was informed of the need to provide the Police Department notice when they are in Town.

Donald Miner, 82 Peaslee Road

Stated his belief Councilor Rothhaus' question about the language in the survey agreement was not fully answered. Specifically, in the sentence that reads: "The Town will permit, at any given time, no more than four (4) employees and consultants of the TGP the right, but not the obligation, of ingress to, egress from, and access under, above, and through, the Property by foot and limited vehicular access for the purpose of allowing TGP to conduct nonintrusive field surveys.", does "under" imply the right to dig? He remarked the survey they wish to do involves digging. He questioned; where the Horse Hill Nature Preserve (HHNP) and the Gilmore Woods Memorial Forest are sensitive areas are we allowing digging?

Town Manager Cabanel stated the need to understand concerned individuals such as members of the Conservation Commission, Town employees, and members of the MVD will be on hand. When asked specifically about the HHNP, she stated the Conservation Commission has jurisdiction over the HHNP. A member of the Commission will accompany surveyors and would restrict activities not permitted.

Mr. Miner noted language that states "nonintrusive" and commented when you dig a hole you cannot put it back to its original state. Town Manager Cabanel noted language within the agreement states: "After completing the activities contemplated by this contract, TGP will ensure removal of their equipment and shall restore any part of the Property that was affected by its activities to a condition that is substantially similar to the condition of the Property at the time immediately preceding the commencement of said activities." She added her thought is yes there will be digging. There won't be any boring or anything intrusive in that way.

Mr. Miner stated his opinion boring would be less intrusive than a backhoe. Town Manager Cabanel stated they would not be allowed to use a backhoe. Mr. Miner stated he owns an excavator and has dug test pits. He believes that is what they will be using. Town Manager Cabanel stated they will not be using it on Town property. He remarked reference has been made to utilizing a shovel, which is what the bucket on the excavator is called. Town Manager Cabanel provided the example of a surveyor contacting the Conservation Commission to survey a piece of property. In that instance 1 or 2 of the Commissioners will accompany the surveyors. If they come with a backhoe they will be told they cannot utilize it. If they have a shovel they will be allowed to use it. They will be watched the entire time.

Mr. Miner spoke of his familiarity of the area of the HHNP and stated you would have to dig about 3' before finding ledge and bedrock. He does not believe the surveyors would invest the time with a hand shovel to dig that deep. They will want to put a piece of equipment in there to get the test results they are looking for. Town Manager Cabanel stated that information may very well already be in the Town's possession from the environmental studies that have been done on that property. Studies were completed previously and are in the process of being updated. She stated she would ensure the information Mr. Miner has provided is brought to the attention of the Commission.

1 Mr. Miner commented the MVD held a meeting on February 23<sup>rd</sup>, and determined they would follow the  
2 recommendations of their geologist. He commended them for that action.

3  
4 Mr. Miner commented he understands the reasoning for cooperating with the request to survey Town  
5 lands, and that the meeting with Kinder Morgan has been scheduled.

6  
7 Mr. Miner questioned why there appears to be a level of secrecy around which Merrimack businesses  
8 participated in the meeting conducted earlier in the day. Town Manager Cabanel responded some of the  
9 larger businesses were invited; mostly those abutting the property. There are companies that are on the  
10 New York Stock Exchange and they don't want their opinions about various issues to be publicized, etc.  
11 Mr. Miner clarified he was not asking what was said, but rather who was represented. Chairman  
12 Harrington stated if the businesses were asked if they minded their presence being made public, she  
13 would be inclined to respond to the question. However, as the question was not asked of them, she  
14 would not divulge that information.

15  
16 Town Manager Cabanel stated her opinion it would be acceptable to state which companies were  
17 represented. That being said, she responded representatives were present from Anheuser Busch, the  
18 Merrimack Premium Outlets, Elbit Systems, and Fidelity.

19  
20 Mr. Miner questioned if any member of the Council or the Town Manager's Office has been contacted  
21 by anyone from the Clean Energy area. Town Manager Cabanel stated they have not.

22  
23 Vice Chairman Mahon stated he contacted the Conservation Law Foundation three weeks ago to see if  
24 they are interested in the proposed project, and what they might want to do.

25  
26 *Vice Chairman Mahon suggested the Agreement to survey lands include language requiring the*  
27 *Police Department to be notified; either the Town Manager's Office informs the Police Department*  
28 *when notified or the requirement be placed on the surveyors. When the Town is notified, the*  
29 *surveyors should be required to provide detail of the scope of work that will be conducted during that*  
30 *particular visit.*

31  
32 Mr. Miner commented in his dealings with Kinder Morgan, he has found they do not follow protocol.  
33 He expressed his pleasure with the Council requiring a detailed scope of work, e.g., types of equipment  
34 to be used, etc. Councilor Rothhaus commented the question he had posed was answered for him  
35 understanding that representatives of the Town would be present.

36  
37 Gina Rosati, 15 Dunbarton Drive

38  
39 Thanked the Council for approving the postcard mailing. She spoke of the \$5,000 being well spent  
40 when considering the amount of people that would be affected. She remarked those who may feel, at  
41 this time, the issue is not in their backyard, could find that it is if the route were to once again change.  
42 She stated her opinion it is of great importance for all residents to be informed of the issue.

43  
44 Ms. Rosati noted information regarding requesting a scoping meeting has been posted to the Facebook  
45 page; Merrimack Citizens for Pipeline Information.

Ms. Rosati questioned if the Town has documentation of where its Native American burial sites are. Vice Chairman Mahon commented he has said it is too bad we do not know of one on the route because it would stop the proposed project in its tracks. Ms. Rosati stated her belief there have to be some particularly near the river. Chairman Harrington suggested the Merrimack Historical Society (Society) may have information.

Anita Creager, Chair, Heritage Commission stated she is aware of where the battle took place, but not of any burial areas. Ms. Rosati questioned what would occur if, during the course of digging, signs of a burial site were discovered, and was informed by State and Federal law the work would have to cease.

Michele Watson, 21 Whittier Road

Expressed her appreciation for the progress being made. She noted Town Manager Cabanel mentioned a request to Kinder Morgan to include Whittier Road in their list, and noted Scott Road was not notified. They are abutters (small portion of common land) and have an active Association.

Ms. Watson suggested the postcard mailing identify the route as a proposed route and the possibility for change. With regard to the Town meeting, she stated her assumption members of other towns may attend, and questioned what the rules would be with regard to non-residents participating in public comment.

Councilor Boyd commented at the Milford Board of Selectmen meeting the Chairman exercised his prerogative to recognize Milford residents first and then non-residents in attendance.

Debra Huffman, 60 Amherst Road

Expressed her gratitude for all of the progress that has been made. She spoke of the confusion around the date previously announced relative to pre-filing. She remarked she feels very badly about that as she was one of those who stated that date. She has tracked that down, and believes the problem with the date came from the fact it is the applicant who decides when pre-filing ends. That is in writing from FERC.

Ms. Huffman remarked she respects the fact that some companies don't want their opinions publicized. She requested an overview of what took place, e.g., were FERC, Kinder Morgan, etc. represented? Town Manager Cabanel stated the meeting was intended to update local businesses on what we all know. Those in attendance were provided a copy of the flowchart of what has occurred to date, where we are in the process, the environmental issues being reviewed, dates for meetings, etc. It was intended to be informative in nature only. No representatives of FERC or Kinder Morgan were in attendance.

Donald Miner, 82 Peaslee Road

With regard to the time being set aside at the Council's March 26<sup>th</sup> meeting for discussion with representatives of Kinder Morgan, he questioned whether 10:00 p.m. would be a hard stop time. Assistant Town Manager/Finance Director Paul Micali stated it would be.

Mr. Miner spoke of the likelihood attendance would be great, and questioned what would occur if reaching the 10:00 p.m. hour and 50 people remained who wished to speak. Town Manager Cabanel remarked Kinder Morgan is having these meetings in almost every town. The Kinder Morgan meeting

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is a public meeting where they will make a short presentation followed by a question/answer period. She stated Kinder Morgan has indicated they will depart at 10:00 p.m.

### **Announcements**

The Deliberative Session, the first session of the Annual Meeting, will be conducted on Wednesday, March 11<sup>th</sup> at 7:00 p.m. in the James Mastricola Upper Elementary School All Purpose Room.

A regular meeting of the Town Council will be conducted on Thursday March 12<sup>th</sup> at 7:00 p.m. in the Matthew Thornton Room. On Thursday, March 26<sup>th</sup> at 7:00 p.m. a regular meeting of the Town Council will be conducted at the James Mastricola Upper Elementary School All Purpose Room. The agenda will include a discussion with Kinder Morgan between the hours of 8:00-10:00 p.m.

**Comments From the Press and Public** - None

**Recognitions, Resignations and Retirements** - None

*There being no objection, the Council went out of the regular order of business to take up the first item under New Business.*

### **1. Girl Scout Cookie Sales at Watson Park**

*Submitted by Parks and Recreation Director Matthew Casparius*

To consider the Merrimack Girl Scout's request to sell Girl Scout cookies at Watson Park on weekends starting March 1<sup>st</sup> -April 12<sup>th</sup>.

Beth Selby, Product Manager, Merrimack Girl Scouts, informed the Council the Girl Scouts are interested in having girl scout cookie sales at Watson Park. Their desire is for a location of high traffic. In the past, sales were conducted at the Outlet Malls; however, they have been informed there would be a charge for doing so this year.

The desire is for 1-3 cookie booths at Watson Park on Saturdays through April 11<sup>th</sup>.

Councilor Rothhaus requested clarification the Merrimack Premium Outlets have stated they would charge the Girl Scouts to sell cookies on their property. Ms. Selby stated that to be correct. Rules have allowed for such sales to occur one weekend a year provided you do nothing else, e.g., cannot go to the site for other purposes, e.g., wrap Christmas packages, etc.

**MOTION made by Councilor Dwyer and seconded by Councilor Boyd that the Town Council allow the Merrimack Girl Scouts to sell Girl Scout cookies at Watson Park during weekends from March 1<sup>st</sup> through April 12<sup>th</sup>**

### **ON THE QUESTION**

Councilor Dwyer commented he believes Watson Park to be a good location for such an activity, and wished the Girl Scouts luck. Councilor Boyd wished the Girl Scouts luck. Councilor Koenig noted the request submitted identified Saturdays and Sundays.

Ms. Selby stated she would happily utilize both days of the week if permitted. Councilor Koenig questioned where the scouts would be set up, and expressed safety concerns. Ms. Selby stated the requirement for two adults to be present for each cookie booth. She stated her assumption something would be placed in the snow and the booths set up so that patrons would have to drive into the park to purchase the cookies thereby eliminating any hazard to the road and/or scouts. Councilor Koenig clarified it would be down in the parking lot or off the edge of the parking lot so that people can come in and use the parking lot. Ms. Selby stated agreement.

Vice Chairman Mahon questioned if the Transfer Station has been reserved, and was informed Ms. Selby has reserved it. When asked, she stated the girl scouts would be all over Merrimack. There are about 28 Girl Scout troops in the Town of Merrimack. Ms. Selby schedules all of the cookie booths for all troops in Merrimack. There will be locations in Town like the Transfer Station, Shaw's provides for two days at each location, they are at Sam's Club in Hudson, the WalMart and Lowe's in Amherst, etc.

Councilor Rothhaus asked, and was informed the troops that would be utilizing Watson Park are Merrimack Girl Scout troops. Councilor Koenig clarified sales would occur between the hours of 10:00 a.m. and 2:00 p.m.

**MOTION CARRIED 7-0-0**

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

**Appointments**

**1. Annual Review with the Heritage Commission**

*Submitted by Heritage Commission Chair Anita Creager*

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

Anita Creager, Chair, Heritage Commission, stated during 2014 the Heritage Commission (Commission) consisted of four (4) full members and a Liaison. The Commission is actively seeking another full member and three (3) alternate members.

The Commission met ten (10) times during 2014. It did not meet in the months of July or December. Town brochures have been completed by a youth, Justin Calautti, will be posted on the Town's website, and will be printed in the spring.

The display case located at the old Town Hall currently has a display by the Heritage Society (Society), and features the New Hampshire liquor bottles Mr. L'Heureux has loaned. The hope is that the display can be changed out every 3-4 months.

The plaque from Pennichuck Water Works regarding the history of the Village Dam has arrived. The dam was removed in 2008 under a lot of duress. The plaque is brass, relatively large, and very heavy. It is very well done, and is currently located in the Town Manager's Office awaiting its placement. When the canal pass goes under Route 3 the plaque will be mounted on a wall in the area where the canal portion passes through.

1  
2 Signage for the Chamberlain Bridge will be completed; currently on hold although the design is  
3 complete (will say Chamberlain Bridge). On one side it says Town of Merrimack. This sign will be on  
4 the opposite side/across from that, in the granite (by the sidewalk). When the sidewalk is done some of  
5 the wall will have to come down temporarily. It will be engraved and put back.

6  
7 The Commission is currently evaluating the repair and replacement of a plaque honoring John  
8 Cromwell, which is located on the Anheuser Busch property. The plaque is located in one of the flower  
9 gardens, and because it was put in flush to the ground, water, ice, snow, etc. has resulted in  
10 deterioration. The intent is to either replace or refurbish. Come Spring the Commission will work with  
11 Anheuser Busch to remove the plaque and evaluate whether it can be refurbished or has to be replaced.  
12 She suggested the plaque should be mounted on a rock that is angled and not flush to the ground to  
13 avoid future deterioration. The location of John Cromwell's trading post was on the river, wherever the  
14 bank of the river was in 1655. The Commission is in possession of a map (dated 1657), which identifies  
15 the trading post. The original is in the Massachusetts State archives. It shows 7,000 acres given to the  
16 Town of Billerica, MA in order to settle up here, and it shows the location of Cromwell's Trading Post.

17  
18 The portraits to mounted on the walls in the Matthew Thornton Room are framed. The Commission is  
19 working on the plates that will be placed on the frames. There will be a total of six (6). Town Manager  
20 Cabanel stated she would work with Ms. Creager on the placement of the photos.

21  
22 Historical signs will be made to present to owners of businesses and homes on roads with names  
23 beginning with E through M. Letters have gone out to those considered eligible for the signs, and the  
24 Commission awaits responses.

25  
26 The Matthew Thornton Scavenger Hunt project was completed prior to the 4<sup>th</sup> of July. There were 14  
27 different stations and 50 passports (pamphlets) available. Twenty nine were returned completed. As the  
28 4<sup>th</sup> of July festivities were changed due to weather conditions, a good many participants did not attend to  
29 turn in their completed passports. Prizes were awarded. There is the expectation another project,  
30 although not yet determined, will be conducted for this 4<sup>th</sup> of July.

31  
32 The Commission manned booths at the 4<sup>th</sup> of July festivities and at the Knights of Columbus Craft Fair.  
33 They were sponsored by the Society along with the Commission. A set of 16 greeting cards were made.  
34 Sales were lower than anticipated. The remaining greeting cards are available for sale at the Town  
35 Manager's Office.

36  
37 The Commission has supported the framing of several portraits to be mounted in the Memorial Room.  
38 Ms. Jackie Flood came to the Society to acquire photos and to the Commission to support funding of  
39 their framing. The Commission and the Society have worked jointly on a number of projects. All  
40 members of the Commission are also members of the Society.

41  
42 Ms. Creager spoke of the assistance provided the Commission by David Yakuboff prior to his passing,  
43 and that which was provided by Assistant Town Manager/Finance Director Paul Micali. Councilor  
44 Woods has been very active as the Council Liaison.

45  
46 Vice Chairman Mahon noted the Abbie Griffin House is within the range of the proposed NED pipeline  
47 project (1/2 mile distance). The Council has been provided with information on the canal lock, which is

covered by trees, and is either the last remaining lock in Merrimack one of the last two that exist. There is the need to understand where it is. Ms. Creager stated the lock on Anheuser Busch is there, and she has gone through it in a canoe several times. Vice Chairman Mahon stated the need to identify the location. In the area of the Horse Hill Nature Preserve is the foundation for the Spaulding House. Ms. Creager stated they cannot guarantee the trail going in front of it was the actual King's Highway because there have been so many new roads put in, but the Spaulding House foundation is there, and is identified. She stated there were no villages, settlements or Native Americans on Merrimack property anywhere the Commission is aware of. They came as visitors, particularly during the fishing season. The islands out in the river were twice granted to Chief Passaconaway by the State and then taken back when the settlers wanted to put sheep on them.

She spoke of numerous studies having been performed, e.g., Anheuser Busch had to conduct a study before building their plant, etc. No sign of any Native American settlements has been found. If they did not settle they would not have had burial sites.

**Public Hearing** - None

**Legislative Updates from State Representatives** - None

**Town Manager's Report** - None

**Consent Agenda** - None

**Old Business** - None

**New Business**

## **2. Second Quarter Financial Review**

*Submitted by Finance Director Paul T. Micali*

Finance Director Paul Micali will review the key financial information for the second quarter of the 2014/2015 fiscal year.

Assistant Town Manager/Finance Director Paul Micali spoke of the financial information provided with the agenda. The information identifies spending for the quarter ending December 31, 2014. Key areas reviewed were health insurance, retirement, overtime comparisons, and revenues. The comparisons for quarter ending December 31, 2014 to the same quarter last year (ending December 31, 2013) indicate a decrease in the cost of health insurance (approx. \$12,000). One of the major factors is vacancies in the Fire and Police Departments. Costs associated with the New Hampshire Retirement System have increased in the Police Department and decreased in the Fire Department. Overall costs in this area have increased by approximately \$35,000 (overtime being a factor). Overtime costs have decreased (approx. \$2,000); however, the Fire Department is running at the same rate (\$219,000), the Police Department has increased by approximately \$17,000, and the Highway Department decreased by approximately \$20,000.

He spoke of increased overtime costs in the Highway Department during the month of February. The overtime budget is currently about 20% over; however, there are savings gained through position attrition, etc., which will help offset the overage. The salt shed is at about 25%. Having spoken with

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Adam Jacobs, Operations Manager, prior to last week's storm, he was informed an order was placed for sand and a purchase order is on the books ready to go if salt is needed.

With regard to revenues, auto registrations have increased by approximately \$100,000 over this time last year (ahead of projections). Building permits have decreased by approximately \$28,000. If looking at prior years (2011, 2012, 2013), the revenue is up by about \$4,000. It is anticipated the projected \$100,000 is attainable. Interest has increased by about \$3,000.

Assistant Town Manager/Finance Director Paul Micali remarked an eye is kept toward new ways to invest monies to achieve the best return. He noted the New Hampshire Public Depository Pool (Pool) will meet on Monday. It appears Cutwater Investor Services Corp., the company that manages the money markets and assets for the State, has given notice they will not be renewing their contract. The contract will be going out to bid. The Town of Merrimack does not have a great deal of money in the Pool (less than \$50,000). After meeting with the Banking Commission on Monday, there may be less than that in the Pool, and it may be that we request it be withdrawn.

The Town has sufficient appropriations. The audit was received. The unreserved fund balance is approximately \$3.2 million (up from last year, and nearly 4% of the budget).

All required paperwork was submitted for Federal funding associated with the large snow event that occurred in January. The State had sufficient expense to qualify. Backup data from other communities is being reviewed. It is anticipated a response will be received by spring.

Councilor Dwyer expressed gratitude to the Highway Department. He spoke of the small overtime costs incurred given the weather experienced over the course of the last month and in comparison to expenses incurred by surrounding communities. He stated he is proud of the work the employees do plowing the streets, etc.

## Minutes

February 12, 2015

*The following amendments were offered:*

Page 6, Lines 11; replace "GIS" with "Geographic Information Systems (GIS)"

Page 11, Line 1; replace the semi-colon with a colon

Page 4, Lines 46 and 47; verify the times the Council recessed and reconvened

**MOTION made by Councilor Dwyer and seconded by Councilor Woods to approve the minutes of the February 12, 2015 Town Council Meeting as amended. MOTION CARRIED 7-0-0**

**Comments from the Press** - None

**Comments from the Public** - None

**Comments from the Council**

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Councilor Woods requested citizens opting to utilize the [form](#) posted to the Town's website to communicate with FERC regarding a request for scoping meetings take note of the footnote at the bottom, which reads: "The Commission encourages electronic filing of comments." He remarked during conversations with FERC representatives at each of the open houses he attended, it was emphasized that electronic filing is the best means of gaining FERC's undivided attention. The procedure for that is outlined at the bottom of the form. Vice Chairman Mahon noted the link to file electronic comments is located on the Town's website.

Town Manager Cabanel requested those communicating electronically to request a scoping meeting keep their remarks focused on that purpose. If wishing to make additional comments please do so on a separate submission.

Councilor Rothhaus commended the staff at the Public Works Department.

Councilor Koenig requested the Council consider placing discussion of the proposed NED Pipeline after Announcements on future agendas. By doing so the Council would be able to consolidate comments from press and public into one comment period. Chairman Harrington stated agreement with the proposed change. The consensus of the Council was to place the subject matter Kinder Morgan – Proposed Northeast Energy Direct (NED) Pipeline Project, after Announcements on future agendas.

### **Adjourn**

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

*The February 26, 2015 special meeting of the Town Council was adjourned at 9:33 p.m.*

Submitted by Dawn MacMillan