

Approved: May 14, 2015

Posted: May 19, 2015



Town Council Meeting Minutes

Thursday April 23, 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 Vaillancourt, Town Manager Eileen Cabanel, and Assistant Town Manager/Finance Director Paul Micali.

Pledge of Allegiance

Hayden Faust and Justin Calautti, Boy Scout Troop 424, lead in the Pledge of Allegiance.

Announcements

Regular meetings of the Town Council will be conducted on Thursday May 14, 2015, May 28, 2015, and June 11, 2015 at 7:00 p.m. in the Matthew Thornton Room.

Dog licenses are due by April 30th.

The Merrimack Police Open House is scheduled for Saturday, May 9th from 10:00 a.m. to 2:00 p.m. Please attend to see what the Police Department has to offer, speak with the officers, and watch the K9, taser, and Bomb Squad demonstrations.

The Merrimack Youth Baseball Opening Day Parade will be held on April 24th on D.W. Highway. Step off will be at 5:30 p.m. at the Town Hall parking lot. The parade will go from Baboosic Lake Road to D.W. Highway to Bise Field.

Chairman Harrington informed the viewing audience the Town Council had scheduled a non-meeting for April 16, 2015 with the Town Attorney and Town Clerk to discuss property taxes. As a non-meeting with counsel, there was no requirement for posting notification of the meeting. However, legal counsel did not arrive. As a result, the meeting was stopped and no decisions were reached. The non-meeting was rescheduled, took place earlier in the evening, and decisions were reached.

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

• Informational Reports and Updates

- The Council received a copy of a letter drafted by the New Hampshire Municipal Pipeline Coalition (consortium of cities/towns) to the Governor and Delegation. Town Manager Cabanel stated the Coalition would like the Council to either approve or not approve the draft understanding time constraints that could result should each town propose amendments.

MOTION by Councilor Mahon and seconded by Councilor Boyd to authorize the Town Manager to sign the letter on behalf of the Town Council

ON THE QUESTION

Councilor Rothhaus acknowledged the difficulties that come about when a number of communities are participating in such an effort. He noted there to be aspects of the letter he had a little difficulty with. However, he would support the motion understanding the desire for an expression of solidarity. Councilor Vaillancourt requested the a copy of the letter be posted to the Town's website.

MOTION CARRIED 7-0-0

- Survey Agreement

Chairman Harrington noted the agreement has not yet been signed, and until an agreement has been reached and signed by both parties, representatives of/contractors for Kinder Morgan are not authorized to enter Town land. The Police Department is aware of this, and the Chief has reminded his officers that surveyors, etc. are also prohibited from any lands where property owners have not agreed to allow a survey to be conducted.

Kinder Morgan has requested the following amendments to the draft agreement:

Page 2; insert the words "upon proper notification of TGP's planned schedule, should the Town not be present, TGP shall not be restricted to start its survey activities on any given day."

Chairman Harrington explained one of the requirements stated by the Town Council was the necessity for an employee of the Town to be present during any and all surveys. Kinder Morgan has objected to that language. Chairman Harrington stated her opinion the Town Council should not agree to the proposed amendment. Vice Chairman Mahon remarked the Town is the property owner, and like any other property owner would want to be present. Councilor Boyd commented removal of the requirement for staff presence would cause him to change his position on allowing the surveys to take place.

Page 3; remove the requirement for Kinder Morgan to provide the Town Council with a copy of the report prior to its finalization.

Chairman Harrington commented it has been suggested the Council could require a copy be provided prior to submission. That would allow the opportunity to understand the content and issue rebuttal(s), if necessary, to the Federal Energy Regulatory Commission (FERC).

Town Manager Cabanel commented they are basically stating what they are doing is an independent report, and they wish to submit their own report without the Town having the ability to modify it. The Town would have the right to rebut any information contained in the report. However, having a copy of the report in advance of its submittal will provide the opportunity to respond quickly, if necessary.

Chairman Harrington stated she would be agreeable to that, and questioned the will of the Council. Councilor Boyd stated he would be supportive of the change in language understanding there would be the opportunity to review the document before it is submitted.

The consensus of the Council was to agree to an amendment that would require a copy be provided to the Town Council prior to its submission to FERC.

Councilor Vaillancourt remarked she has made her opposition to the surveys known. However, she understands the reasons why the Town Council is willing to allow this to occur. She does not believe they should be allowed on Town property without a representative of the Town present. She questioned the process, e.g., if a written response would be sent back to Kinder Morgan, and a further response from Kinder Morgan anticipated.

Town Manager Cabanel stated she would contact Patty Quinn, Percheron Field Services, LLC, and provide her with the revised draft agreement. They will either sign the agreement or not, and it will be forwarded back to the Town. If it is returned inclusive of the revisions the Council has approved, she will sign it. Chairman Harrington added, once that process has completed the agreement would also be posted to the Town's website.

Councilor Boyd noted the last paragraph on page 1 reads in part: "The Town will permit, at any given time, no more than four employees and consultants of the TGP the right, but not the obligation..." He questioned whether the intent is for a total of four individuals or a total of four employees and a total of four consultants. Town Manager Cabanel agreed the language, as written, is not clear, and suggested it could be further amended to read "no more than a total of four employees and/or consultants of TGP....."

The Council stated agreement with the suggested amendment.

Councilor Boyd noted the third paragraph on page 2 reads in part: "access shall occur solely between the dates of May 31, 2015 and November 30, 2015." He questioned the need to clarify whether the Council would accept holidays and weekends. Town Manager Cabanel noted Town employees would not be available on those days. She informed the Council she had taken it upon herself to include the dates. May 31st was chosen believing ground conditions would be drier, and the span would provide a six-month window.

The Council stated agreement with the inclusion of the dates as stated.

- **Action Items**

- Continue to press KM 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**
- Consider consultant to:
 - Research communities' property value effects of recent pipeline installations - **Engaged Avitar; awaiting information**
 - Evaluate impacts on the sewer line - **Engaged Wright Pierce; The Town has been informed comment cannot be provided until the plan is known.**

- Support Conservation Commission's efforts to update data for environmental impacts on HHNP and Gilmore Woods - **Ongoing**

Councilor Mahon noted the Commission has added the item to its agendas, which provided for discussion at each meeting to identify progress, etc. The consultant has been onsite. The Commission authorized the purchase of radio transmitters, which will be used to gain information on movements of species in the Horse Hill Nature Preserve (HHNP). The consultant has hired interns to assist in ongoing efforts.

The question of bats came up; however, the Commission is unclear on how that came about or if there is a suitable habitat for bats. The consultant was made aware of the question, and has stated he would keep a watch for the particular habitat required.

- Support Merrimack Village District's efforts to protect Wellhead Protection Zone and Aquifer Protection Zone -**Ongoing**
- Request KM list of abutters notified of project and requests for permission to survey - **Responded that by FERC rules they cannot provide abutter list.**

Town Manager Cabanel stated she has spoken with Ms. Quinn who informed her the list may be able to be provided by map and lot number, and that she would check with her supervisor. Chairman Harrington suggested if an individual or individuals are aware of properties/property owners that should be included on the list it would be helpful if that information could be provided to the Town Manager.

Vice Chairman Mahon questioned why Ms. Quinn would have to gain the approval of her supervisor as the information was included in the documents submitted in the March/April timeframe, e.g., it was stated they could not release names, but could release parcel numbers.

- Work with property owners to develop a list of who has been notified of the project and requests for surveys
- Maintain contacts at FERC and NH Congressional delegation - **Ongoing** (NH delegation attends Managers meetings)

Chairman Harrington stated the Council has been advised there will be a meeting at the Amherst Town Hall on April 28th at 2:00 p.m. Chairman Harrington, Vice Chairman Mahon, Councilor Boyd, and Town Manager Cabanel have already stated they would attend. It was noted the meeting would not include an opportunity for public comment. Vice Chairman Mahon noted the Merrimack Village District (MVD) would also be represented at the meeting. Town Manager Cabanel stated the recent newspaper article incorrectly identified the meeting date as April 29th. The Selectmen were quoted as saying they had alternate routes. However, the Town Manager has stated they do not.

- Consult with PSNH (Eversource) regarding where they are in the process with KM and PUC - **No response - No contract between parties (4/23/15)**

Town Manager Cabanel stated she had the opportunity to speak with one of the Vice Presidents of Eversource. He sent out information and questions to his counterparts throughout the company asking if there had been any relationship with or contact made by Kinder Morgan to Eversource regarding this project. He called this morning, and stated, as of that time, no contact whatsoever had been made to Eversource from Kinder Morgan regarding this project.

- 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**

Chairman Harrington remarked a question had been raised around the number of emails received on the Town's address. There have been two, and they have been posted to the Town's website.

With regard to the request for a scoping meeting specifically for the Town of Merrimack, the request was made and the Town has been clearly informed scoping meetings will be regional.

With regard to the request for an update on meetings of the Nashua Regional Planning Commission (NRPC), Tim Thompson, Director, Community Development Division, informed the Council the NRPC has an Energy Facilities Advisory Committee that was established in late February with representation from each of the communities along the route as well as other communities within the NRPC region. The Committee meets regularly at the NRPC. The Committee is expected to report back to the NRPC Commissioners later in the year in terms of the statutory requirement regarding regional planning and input to the Site Evaluation Committee at the State level, which he remarked he believes is a bit premature given where the process is at this point. The Committee was divided into individual sub-groups to look at different aspects of the project; environmental, construction, economic impacts, historic impacts, infrastructure and safety, and demand and need. The sub-groups gather information and report back at Committee meetings.

The NRPC is also assisting in the preparation of responses to the AECOM letter for the majority of the communities that have not responded individually. At this stage, Merrimack and Milford are the only ones that have responded directly to that letter. It may be that the NRPC comes across information through their investigation that Merrimack could utilize to supplement the information already sent.

When asked, Director Thompson stated there are approximately 15-16 members, which typically includes representation from Senator Shaheen's Office and Congresswoman Kuster's Office. That does not include the NRPC staff that is involved. The Committee is primarily made up of Town Administrators, Selectmen, Director Thompson and the Community Development Director for the City of Nashua, Sarah Marchant, and the Hudson Town Engineer. Hollis' representative is a member of their task force.

Councilor Boyd questioned the work the NRPC does with some of the smaller communities, e.g., will the NRPC be more vested with those communities based on the dynamic? Director Thompson responded from what he has seen they really are treating each community equally. They are primarily focusing on the environmental piece. As far as the sub-committees go, NRPC is handling the environmental impact piece. The Committee has seen some draft information from the NRPC about each of the communities along the route. From what he can tell, Merrimack is being included even though we have already responded.

Councilor Vaillancourt questioned if the letter of opposition that was sent to the Governor, Congressional Delegation, and local Representatives would be sent to FERC. Town Manager Cabanel responded she had not considered that; however, sees no harm in doing so. Councilor Vaillancourt stated the other towns have copied FERC, and she believes Merrimack should as well. Councilor Boyd stated part of his motion was that FERC be copied on those letters. Chairman Harrington stated that would be looked at, and if the letters have not yet been forwarded, they would be.

Vice Chairman Mahon added the Conservation Commission is gathering studies, reports, etc. that they have done over the past 10-15 years, many of which are posted on their website, Merrimackoutdoors.org, and forwarding the information to FERC.

Chairman Harrington opened the floor for public comment.

Carol DiPirro, 10 Cambridge Drive

Remarked she could not find a link to the email address on the Town's website. She had believed that to be one of the action items. Town Manager Cabanel stated the comments were put on there, but they should also include the link so that people can continue to comment. That will be corrected. Ms. DiPirro stated her recollection the letters to the Delegation, etc., were intended to be copied to FERC and placed on the Town's website. Chairman Harrington stated agreement the intent was to post the information.

Krista Bradshaw, 54 Whittier Road

Stated the New Hampshire Municipal Pipeline Coalition letter the Council approved should be amended to identify there to be 18 affected towns as opposed to the 17 listed. She questioned the action landowners should take if surveyors are witnessed on their private land after having appropriately posted no trespassing signs and denied access to survey. Chairman Harrington stated the action should be to call the Police Department. Ms. Bradshaw questioned if land owners should approach the surveyors. Town Manager Cabanel stated the Police Department is aware this type of activity could occur, and they should be contacted. Ms. Bradshaw spoke of signs having been ripped off of their posts and mutilated.

Ms. Bradshaw questioned the statement Wright Pierce cannot evaluate impacts on the sewer line until the plan is known. Chairman Harrington explained without understanding where the pipeline is crossing there is no means of understanding the full impact. Ms. Bradshaw spoke of the need to be able to provide factual data as to impacts that would result from the pipeline, e.g., where it is intended to go. Chairman Harrington responded she is sure they are doing some rudimentary thinking on it, but probably cannot comment officially until they know where it would intersect.

Vice Chairman Mahon stated it is because of the way the cycle works with Kinder Morgan not submitting their information until September when they will provide a more definitive route. It may be that Wright Pierce is waiting for that to determine if it would move within the right-of-way that has been identified on the preliminary reports.

Ms. Bradshaw commented that would result in the information being provided in a timeframe outside of the scoping meeting phase and the pre-filing stage. From what she has heard this appears to be the time to have an impact on the route. Vice Chairman Mahon remarked during the scoping meeting it could be pointed out that despite best efforts we are unable to state the impact on the sewer line because a definitive response was not provided as to where the proposed pipeline would cross the sewer lines.

Town Manager Cabanel stated the Director of Public Works and the Superintendent of Sewers have been speaking to the contractor. It is her belief the contractor is probably a purest and wants to provide answers that are technical in nature, e.g., depth in certain sections, etc. She stated she would go back to them and request a more generalized response going over the section being discussed and down 3' which is what has been stated.

Councilor Vaillancourt commented everyone is working off the currently proposed path, and all concerned will have to explain what the anticipated effects would be. She cannot see why that department would be any different.

Councilor Dwyer clarified they are working on the corridor, which is huge. His understanding is when the survey work is complete is when they will identify the exact route. Currently it is a very broad concept. Until the survey work is done for dozens of miles, the exact route will not be known.

Ms. Bradshaw responded we should not be waiting for Kinder Morgan to tell us who the affected homeowners are. We know what the proposed route is. We are able to take the GIS maps, overlay the proposed route, and look at a 200' corridor on either side. Those are the affected properties. She stated the Town needs to come up with that number, and she had believed those homes were being identified by the Town. She stated her belief there will be a large disparity in the numbers Kinder Morgan is reporting, and what the Town can identify. When asked, Ms. Bradshaw stated she utilized the GIS maps and did not have the ability to add an overlay to identify the 200' corridor. She was looking at any property that abutted an intersected piece of land, which is more than 200' for areas such as those abutting the Horse Hill Nature Preserve (HHNP). She came up with approximately 135 where Kinder Morgan is citing 61. She noted Whittier Place was counted as a single impact; however, there are 64 landowners impacted there.

Town Manager Cabanel stated the Town has created that list. However, there is a stumbling block with the parcel in Whittier Place. Ms. Quinn has stated it is listed under the name of an attorney. The Town's list does not have all of the homes either because they don't touch that 200'. Ms. Bradshaw stated the Town's list should have all of the homes because they are land owners, and the discussion is of affected landowners. Town Manager Cabanel stated Kinder Morgan is saying the corridor consists of those that are touched within the 200'. Ms. Bradshaw stated it does not matter where her home is, if she is an owner of a piece of land that is affected she is an affected landowner. Town Manager

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Cabanel responded what Kinder Morgan is saying is if you are not within the 200' corridor you are not an abutter for their purposes.

Ms. Bradshaw interrupted stating she is not an abutter she is an owner. She remarked she feels very strongly about this. Chairman Harrington stated the common land abuts the corridor and the common land is owned by the 64 residents. Town Manager Cabanel stated she has asked Ms. Quinn to notify the landowners, and she has hit a stumbling block because no one will tell her who belongs to that Association. Ms. Bradshaw responded there isn't an association. When asked how Ms. Quinn would determine who the individual landowners are, Ms. Bradshaw stated there are 64 homes in the neighborhood, and every home owns 1/64th interest in that piece of common land. Chairman Harrington suggested the need to locate documentation that reflects that. Town Manager Cabanel stated she would be happy to do that. It had been her understanding the neighborhood was going to start thinking about putting together their group again, and that a list would be provided. Ms. Bradshaw stated they have been advised not to. Ms. Bradshaw remarked even if her neighborhood is taken out of the equation, the number of affected landowners is still greater than 61.

Town Manager Cabanel stated the Assessing Department has been asked to create a list as has the GIS professional (from a width perspective), and they are coming up with the same list. Ms. Bradshaw questioned when that list would be made available, and was told she could pick up a copy the following day. It was noted the current list does not identify the Whittier Place landowners. Ms. Bradshaw stated it is the number of properties she is interested in knowing, not the names of the owners, etc.

Councilor Boyd commented absent a condo. association, generally when a developer subdivides a piece of property, if there is common area, there is usually a Declaration of Covenants. That information is included on the Deed.

Gina Rosati, 15 Dunbarton Drive

Commented the Merrimack Citizens for Pipeline Information is on Facebook. One of the recent postings was with regard to FERC's new Chairman, Norman Bay. He was appointed by President Obama, and does not like protestors.

Ms. Rosati spoke of having reviewed the Amherst re-route possibility. One of the things suggested was that they come down 101A and a straight shot down Continental Boulevard. Keeping in mind there is the Community Hospice house, several neighborhoods, Thorntons Ferry School, a water protection area, etc. She stated a desire to be assured the Town Council will stand in unity to oppose any change in the pipeline. Chairman Harrington remarked it is not the route the Council is opposed to it is the pipeline. The only thing that would change is the environmental issues would shift to that site.

Vice Chairman Mahon remarked the route is not as trouble free as they may believe it to be; there are several wells that supply the strip malls, and because they supply water for more than 20 people they are considered public water supplies. There is a different set of rules that apply and the radius around them changes. If they are running down the railroad right-of-way they will run right into the Wellhead Protection Area for the two wells that we have in Hollis.

Comments From the Press and Public

Hayden Faust, 5 Lilac Court

Last fall the Council approved his Eagle Scout project to build a WWII Memorial at Veterans Park to honor Merrimack WWII Veterans. Now that the ground has thawed, his project is on track to be completed in a few weeks. He stated the desire to formally invite the Council to the dedication ceremony planned for Memorial Day following the parade, and requested guidance on where invitations could be sent, e.g., State Representatives. Chairman Harrington asked that he be provided with the list of State Representatives.

Wendy Thomas, 10 Wildcat Falls

Spoke of the selective wood harvest that occurred in her neighborhood. She spoke of the project having been discussed at the recent meeting of the Conservation Commission, and of statements made that sometimes residents think the land is their own private land, and they have to remember it is Town property. She stated the Commission dismissed an entire neighborhood's concern by saying I think this is just an education thing. She added she heard a similar statement from the Forester, Mike Powers. When she pointed out that he left a buffer of dead trees, some that are very tall and will be falling down soon, that he hadn't protected the nests, that the land had been overcut in the John Lane area, and the wetlands had been invaded, he threw up his arms and told her she needed to read some books on forestry management. She obtained a copy of the Guide to New Hampshire Timber and Harvesting Laws and Good Forestry, and the Granite State Recommended Voluntary Forest Management Practices for New Hampshire, both of which are located at the UNH Cooperative Extension website. She learned a lot of things.

She spoke of the length of time the residents of that neighborhood have lived with the woods; many for decades. She remarked if standing on her property and looking to the left no one is arguing what was done there was done poorly. When you look to the right behind John Lane is where they are all aghast. This all started when a resident approached the Town Council and stated he purchased his home this past August and quickly realized he would not be able to use solar panels because of the tall Pine trees located in the back of his property. He asked to have approximately 15 trees removed from his property. Ms. Thomas stated she is not aware of anyone in her neighborhood that has not paid to have trees cut down. Had they known all they had to do was come before the Town Council and the trees would have been cut for them they would have saved themselves thousands of dollars.

In order to do this the Town sent each of the abutters a letter informing of the selective harvest. The letter was dated March 25th. She received hers on April 10th. They receive their mail at 2:30 p.m. leaving only 2.5 hours until the business office closed. She was out of town. The cutting started on Monday morning.

Ms. Thomas spoke of conflict of interest stating the Forester serves two masters; is paid by the Town and gets a percentage from the wood that is cut. That is a direct conflict of interest. She spoke of having photos of heavy machinery in the wetlands. She remarked when she first met the Forester he said there were no violations. He is not qualified to make that statement. Because he stands to gain financially from the tree cut he should not be the person to make that assessment. That is the responsibility of a New Hampshire Forest Ranger. The Forester told her "It is not my job to take binoculars into a property and find nests." Yet best practices, as indicated by the State of New

Hampshire state it should be his job. When she sent him an email alerting him to several large raptor nests his reply was I have not seen any nest trees and if there was a nest tree I would certainly want to save it.

In New Hampshire, best practices state if there is a raptor nest you are supposed to leave an area of 1 chain, which is an archaic measuring system (66') around an active nest. Landing areas are not supposed to be located near or under nests. Neither of those best practices was followed.

Residents located two large nests, which were eventually marked and saved. Another nest on the Atherton side survived, and a fourth that they were not able to bring attention to was cut down. Wetland and surface water are regulated under RSA 482, which was enacted in 1969. Best practices recommend you only cut near wetland area when the ground is frozen or dry. The month of April is probably one of the most wet we have. You are not supposed to take heavy machinery into the wetland area. You are not supposed to take trees that shade the wetland area because it is a very fragile ecosystem. The other reason we protect that area is that is aquifer land. Many in this neighborhood have wells. If you destroy that water system the wells go dry.

Before they got to her end of the lot she was walking with the Forester pointing out the number of dead trees in the buffer of her yard. He asked her if she wanted them cut down. They were not on her property, but in the buffer. She stated she could not make that decision as a resident. The property is not hers. If up to her she would leave them up; they have holes for Woodpeckers, etc. She stated that to be one of the problems; solid judgments should be made not work done based on what the residents want.

She spoke of a basal area, which is covered under RSA 227-J:9. Within 150' of a town road only 50% of the board lumber is supposed to be harvested. If you are a man and you stand to the tree at breast height is the way that is defined. It is a measurement of board lumber. There are actual equations involved. She stated her belief it is very clear this RSA was not adhered to.

Ms. Thomas stated, at the last Conservation Commission meeting, Councilor Mahon stated the landing zone was 100' x 30'. She stated her impression that is not accurate. She believes it to be much larger, and will be measuring it.

With regard to re-growth, she has heard from several people that in 5-10 years we won't even notice the cutting occurred. She questioned if tree cutting would occur again in 5-10 years so that the property owner with the solar panels is able to use them again.

She questioned if the Town has such obvious disregard for best forestry management practices, how the Town's land will be protected when an entity like Kinder Morgan comes in for surveying or clear-cutting for a pipeline. The damage has been done in this area, but it can be prevented from happening again. She remarked wildlife and public land are an important part of our Town and New Hampshire, and we have an obligation to protect what we have been put in charge of.

Ms. Thomas stated in the future, abutters need to be notified in a reasonable amount of time with a clear explanation of the project. They should be provided with maps, definitions, and copies of filings as should the Conservation Commission. Communication is imperative so that residents are aware of what is happening and can ensure rules are followed. She stated the Town Council must never acquiesce to one resident's demands again. A dangerous precedent has been set. If not changing the system then

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a member of the Town or the Conservation Commission should be assigned to every future selective cutting, surveying or clear-cutting to ensure best practices are followed and Town land and wildlife is being protected.

Assistant Town Manager Paul Micali noted Mike Powers was in the audience. Mr. Powers is a Forester with Bay State Forestry. Bay State is contracted through the Conservation Commission, as the Town Forester.

Lori Streeter, 2 Wildcat Falls Road

Echoed the comments made by Ms. Thomas. She added the abutter notification was very vague. She called the Town Manager's Office, and was not able to be provided with much information about the selective harvesting. What she was told was they were sure they were being responsible. There is not much that can be done about it now. All they can do now is make sure they are responsible, inform the Town Council that they care about the environment, and if they have to attend meetings they will as a means of being a bit more responsible going forward.

Sally Beede, 7 John Lane

Stated her family has been directly impacted by this. She moved here from Nashua where she had no trees in her yard to a nice forested area where she could raise her kids. She commented her house is baking in the sun now. She spoke of the impact this will have on her electricity bill with her air conditioner running longer. She suggested it would have been better to just take the trees the resident wanted down instead of coming in and decimating that forest.

Kerry Snell, 2 ½ Edwards Lane

Stated the neighborhood is pretty devastated. It is a sore spot and a sore eye as you are coming down the road. She stated her hope the resident who requested the trees come down does not reap the benefits of being able to landscape the public land behind his home now that they have to look at this big hole in the woods.

She remarked, she understands it is Town property, but the neighborhood takes a lot of pride in it; they pick up the trash on the road, deal with the nuisance of the ballparks, etc. Nobody thought this is their home and what they look at every day.

Ms. Snell suggested it will be just another tossing ground for trash as people are leaving the ball field. They will park their cars up there. Now the lights are on at the ball field so the activity in the evening has been cut down, which the neighborhood appreciates, but now you have a dark spot in the woods where people can park their cars and party.

Debra Vaughn, 15 Christopher Road

Stated she is not an abutter and, therefore, was not notified. She drove down and saw the after effect of the cutting and later saw the short brief letter that was sent to the abutters that made it seem like a normal tree thinning, which she would have agreed to. She is very disappointed in those who agreed to

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have this done without follow through and an understanding of what would actually happen there. Going forward, she is hopeful, when there are bigger decisions to be made, more thought is given to the proposal and the people that live in the area.

Mike Beede, 7 John Lane

Mr. Beede stated concern for wildlife. He remarked after the first night of cutting he noticed a hole that was left where a woodpecker lived. They cut out about 20' of the tree and left the nest. The next day that was gone. They had to have known the nest was there. He stated he had spoken with those doing the cutting. They did know about the raptor nests; they pointed them out to him. From noon until the end of the day his home will now be baking in the sun.

Mark Gazel, 10 Wildcat Falls

Remarked a lot of the trees left in the buffer zone are dead. It is only a matter of time before they are falling down leaving no buffer. Additionally, the area that was dramatically cut on John Lane now opens up a large area where wind will just be blowing towards the dead trees and knocking them down, potentially onto his house and/or property.

Mike Beede, 7 John Lane

Stated when he received the letter he walked out into the woods and looked at all of the trees that were marked with blue paint. It seemed to be a lot; however, they took down an ever larger amount. He questioned if the trees that were marked were what was intended to be taken down, and more were actually removed.

Tina Shields, 17 Christopher Road

Stated she is not an abutter, but has played in those woods since she was 10 years old. In there she has seen cranberry bogs, wild species of lady slippers, and also a mole that was found in New Hampshire never before in the northern climate. It was known as a southern plant. This habitat has been destroyed. You cannot put the lady slippers back because they require full filtered sun, they are an orchid and need full sun coming through at various stages. This habitat had deer, bear, and woodpeckers. Starlets have been seen in there.

She stated concern with the water level in the bog, and the fact the habitat will never be the same. She stated her belief Beede's Grandfather left the land to the children of Merrimack in his will so that it would be protected. If that is the case, why is the revenue being given to others when it should be going into the school system, perhaps to the Boy Scouts, etc. She stated her desire to track where the money is going because she does not believe it belongs to the Town.

Gina Rosati, 15 Dunbarton Drive

Questioned what would be done with the land. Chairman Harrington responded, at this time, the Council was taking public comments.

Chairman Harrington stated her opinion an apology is owed in terms of not making the abutter notification clear enough. Had she received that letter, not knowing anything about logging, she would not have expected the staging area. One of the things learned for the future is there is the need to include much more specificity, e.g., provide a definition of selective cutting, discuss the likelihood of a staging area, etc. Chairman Harrington commented on being at an event where she was able to strike up a conversation with an Arborist. They talked about the standard practice of doing a selective cut. He stated utilizing a Forester is standard practice versus Forest Rangers. When asked, he stated an Arborist could be utilized, but that would be overkill. Foresters have licenses that define their qualifications and what they are capable of doing. When asked about staging and selective cutting, the Arborist stated there is the need to keep dead trees as that is part of the balance of the forest; in fact, there is the need to get some of the big trees out of the way because some of the canopy needs to be removed to let sunlight in. However, there is a balance. That is what Foresters are capable of doing. When asked about payment systems, he stated what Merrimack had agreed to is what every town does. Foresters are paid through the logging.

Chairman Harrington commented, from her perspective, she believes 70% of the angst is a result of people just not having enough information to understand what was to be expected.

Wendy Thomas, 10 Wildcat Falls

Remarked just because it has been done that way doesn't mean we have to continue. It is clearly an inefficient system. It is not balanced. The Forester did not follow best practices as identified by the State of New Hampshire. She suggested it is time to make a change.

Chairman Harrington remarked, in her opinion, the intention is being questioned. She stated her belief all best intentions have always been followed. The Conservation Commission is very protective of their properties and how they are taken care of, and they have always used a Forester. In the future, that can be discussed, but up until this point there needs to be an understanding it was not outside the bounds of normal practice.

Councilor Dwyer commented he feels bad that so many in the neighborhood were hurt by this. That was not the intent of the Council. He stated his opinion the resident came to the Council with a reasonable request. The Council heard the request, and it was granted. The Council then went through the proper procedures, and got what we got.

Councilor Dwyer stated concern and commented those who have been in that neighborhood for decades, understood that was Town land and that it has been earmarked for a ball field. He takes it for granted they don't want all of the trees to be taken down and have a baseball field in their backyards. There seems to be a disconnect where they were aware it is Town land, they already live next to the ball fields and the complex, and yet that parcel had been earmarked for a ball field. The Council at any given time could have had an agenda item and had a request to clear all of the land for a ball field. He suggested, in the future, the residents come forward with a plan to purchase the land from the Town. That is the only way he can see to ensure the residents of that neighborhood could be happy. He reiterated having been on the Council for the past five years and having the understanding that land was technically earmarked for a future baseball field, when the resident appeared before the Council and posed the question, on face value his request didn't seem unreasonable. That is why he voted in favor.

An unidentified female speaker was away from the microphone and made a comment that was somewhat inaudible. Chairman Harrington called for order.

Councilor Dwyer reiterated he feels sorry so many were surprised by the activity. He stated the Council would speak with the Forester regarding numerous mention of wetlands, raptor nests, comments made to residents, etc.

Councilor Vaillancourt remarked she was not a member of the Council at the time the request was made. When the concern was brought to her attention she watched the videos of the meetings and read the minutes. She also walked the property. She stated her personal opinion a dangerous precedent is being set. She understands the issue of the ball fields, and is aware the Athletic Field Deeds Committee has earmarked that property for ball fields, but at the same time there are people directly connecting this gentleman's request for his own personal solar panels with the Town taking action, and she personally thinks that is setting a dangerous precedent, and one she never would have supported.

She commented hindsight is 20/20, and she understands the Chairman's apology is sincere, and she appreciates that. She stated she personally does not think this is something the Town does that frequently. It is something the Conservation Commission is more involved with. She would have liked to have seen some conversation with the Conservation Commission occur before the project moved forward. She also stated notification to be an issue. She suggested had abutters been provided additional time to pose questions and the Council the opportunity to educate residents, it would have been a better way to proceed.

Assistant Town Manager Micali clarified when these types of cuts are done, it is not on a contract plus percentage price; it is a contract price. The contract with Bay State Forestry was for an amount not to exceed \$1,500. That does not mean \$1,500 plus \$.10 for every board foot, etc. The Conservation Commission started the precedent with Bay State Forestry of a fixed price for the contract. Whether we cut a tree or don't, they still get paid their \$1,500 for surveying the land and looking at the trees. Chairman Harrington asked for clarification the number of trees cut does not influence the contract, and was told "not at all".

Councilor Dwyer requested the Forester be offered the opportunity to address the Council. Chairman Harrington reminded the audience there would not be dialogue back and forth. If members of the public wished to comment further the opportunity to do so would be made available towards the end of the agenda.

Mike Powers, Bay State Forestry Service

Mr. Powers stated he is a licensed Forester in New Hampshire and Massachusetts. He has worked as a licensed Forester in New Hampshire for roughly 10 years, and has been working in the forestry industry for about 20 years. Addressing concerns regarding violating the basal area law along the road and the wetlands, he stated the law allows for the removal of 50% of the total basal area within 150' of any public right-of-way. If contacted and asked to review what was cut, the State Forester would find absolutely no violation. The same is true with the issue of wetlands. There are wetlands at the corner of Atherton Road and John Lane. You can cut up to the wetlands. You cannot work within the

wetland area. He stated his belief they had a very light touch along the wetlands. They did cut some trees, but you can cut up to the wetlands. That is not a violation.

Mr. Powers stated he did make a comment to Ms. Thomas that he regrets when he said that his job doesn't entail walking through the forested parcels with binoculars looking for hawk nests. He does not do that. He works for the Conservation Commission, which has ecologists that go out there and do natural resource inventories and that type of work. When working for towns the policy, when coming across a nest, has been to leave that tree intact. There were quite a few rumors going around that the nest that was found onsite was an Eagle's nest. It absolutely was not. Sgt. Szewczyk, Conservation Officer, visited the site and looked at the nest trees. He provided an email confirming the appearance of a hawk's nest, and stating it was not in fact an eagle's nest. He didn't see any activity with the nest. Acknowledging he is not a Wildlife Biologist, Mr. Powers stated some species of hawks will return to their nests and some will not. The species of hawks that do return to their nest don't always return. There is no certainty the nest is an active nest. It is possible, but one would think hawks would have returned to their nests by this time. Mr. Powers remarked when setting up the project no activity was heard, which would be expected.

There was concern with other nest sites on the property. Mr. Powers had flagged one of the trees as he was unsure if there was a nest high up in the tree. Sgt. Szewczyk informed him he had walked the property and reviewed that particular tree as well as a few other areas where nests could be seen, and believed them to be squirrel nests. There are no regulations either State or Federal that offer protection to hawk nests, it is purely a voluntary protection. He reiterated the policy when working with municipalities has been when finding nests, they will leave the nest. Mr. Powers commented although easier to see after the forest was thinned, the particular tree where the hawk nest was located was not marked and was not cut; however, he does not believe he saw the nest when walking the site marking trees.

In terms of the cut itself, he marked every tree to be cut on the property (blue paint). He selected the trees he believed to be suitable for removal; usually based on overall health of tree. He tried to select trees that had weakening crowns, that were being out competed by other trees, and that may have showed signs of some sort of disease or rot characteristics, and then some that were mature. White Pine, when reaching 24-26" in DVH can develop rot characteristics which degrade the tree over time and makes it susceptible to blowing down or snapping off, etc.

He understands there are some that are upset by the appearance. But in terms of silviculture, forestry, it is basically, in his view, a well thinned out White Pine stand. He stated his belief if third-party individuals were contacted they would concur with that. One suggestion would be to contact the Hillsborough County Extension Forester, Jon Nute. He works with the UNH Cooperative Extension. He visits private landowners that have questions regarding trees or forestry operations, and is a good resource for questions about forest or logging operations, etc.

The landing site was a pretty contentious issue. Mr. Powers stated his belief measurements were taken of the site. He has come up with a size of 7,800 sq. ft. An acre is 43,560 sq. ft. The plan for that landing site is what is called close-out; they will bring in a bulldozer to grade off the landing site, remove debris, block landing with logs to prohibit vehicle traffic, and seed, lime, and fertilize the landing site to try to get it to green up as quickly as possible. Over time, what will probably be seen is

small White Pine seedlings starting to grow. Although it looks very raw at this point, it will fill in over time.

An unidentified female speaker called out from the audience stated she had a question. Chairman Harrington reminded the viewing audience of the opportunity for public comment later in the agenda.

Reorganization of the Town Council

- **Pursuant to Charter Article IV, 4-2, Organizational Meeting**

Chairman Harrington called for nominations for the position of Chairman.

Councilor Dwyer nominated Councilor Harrington

Councilor Dwyer commented Councilor Harrington has done a nice job as Chairman, and he would like the continuity to continue. He stated appreciation for the work involved, and her willingness to take on the responsibility.

Councilor Rothhaus echoed Councilor Dwyer's comments, and remarked during this time of discussion of the proposed pipeline, what Councilor Harrington brings to the table is both strong and consistent, and he would like to see that continue on over the course of the next year.

Vote on the election of Councilor Harrington to the position of Chairman of the Town Council **6-0-1**

Councilor Harrington Abstained

Councilor Harrington declared Chairman of the Town Council.

Chairman Harrington called for nominations for the position of Vice Chairman.

Councilor Boyd nominated Councilor Mahon

Councilor Boyd echoed comments around continuity and leadership. He stated his belief it is important to know what Councilor Mahon brings to the table in terms of institutional knowledge. Having held the position of Administrator in Pelham, he has given the Council depth and perspective of issues. His role on the Conservation Commission and current role on the Rail Transit Authority is also illustrative of the skillset he brings.

Councilor Dwyer remarked he is aware Councilor Mahon personally finds the position gratifying. With the unfortunate passing of Dave Yakuboff, Councilor Mahon stepped up and filled the position. Councilor Boyd stated appreciation for him having done that and for the experience he brings to the Council.

Vote on the election of Councilor Mahon to the position of Vice Chairman of the Town Council **6-0-1**

Councilor Mahon Abstained

Recognitions, Resignations and Retirements

1. Boston Post Cane Presentation

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

The Town Council to present the Boston Post Cane to Mr. Roy Ingerson, the Town of Merrimack's oldest known resident.

Chairman Harrington read the following into the record:

“On September 17, 2014, Madeline Bennett, the holder of the Boston Post Cane since 2011, passed away at the age of 100. The Boston Post Cane tradition started in 1909 when the Boston Post Newspaper delivered the gold headed ebony canes to 700 towns in New England and requested the canes be presented to the oldest citizen in town and passed on to the next oldest when he/she dies. To qualify as a resident one must be a physical resident of Merrimack and have resided in Merrimack for 25 years. After conducting a search and receiving several nominations, Roy Ingerson has been chosen as the next recipient. He was born on May 30, 1914, and has been a resident of Merrimack since 1970. Roy will be presented with a replica of the original Boston Post Cane.”

Chairman Harrington congratulated Mr. Ingerson. Mr. Ingerson was unable to be in attendance for the meeting. The Town Council will visit him at his residence to make the presentation.

Appointments - None

Public Hearing

1. Public Hearing – Proposed Zoning Ordinance Amendments

Submitted by Community Development Director Tim Thompson

The Town Council will conduct a public hearing to consider the Planning Board's recommended amendments to the Zoning Ordinance (Sections 1, 2, 3, 5, 6, 7, 8, 9, 14 and 17), pursuant to RSA 675:2 and Charter Article 5.

Director Thompson stated his department was requested by staff within the Town Manager's Office, to make changes to the junkyard section of the Ordinance, e.g., update it concurrent with updated State statutory language. In doing so, it was noted there were several references to the former Board of Selectmen. A decision was reached to amend that reference throughout the Ordinance. During that process, and at the encouragement of the Planning Board, staff determined they would examine the entire Ordinance to amend any outdated references to State law, sections of the Ordinance where references had not been updated, and make corrections that related to the current departmental structure.

He remarked what was before the Council was a series of housekeeping amendments to clarify and update the references to Ordinances, regulations, State Statutes, and Merrimack's current form of government. There have been a couple of minor substantive changes to the junkyard section; additional language has been added to the definition of junk, and, based on the first reading, changes were made to the language around the appointment process of the Building Inspector.

Vice Chairman Mahon questioned the language in § 7.02 - Duties; specifically what would occur if more than one agent were needed. He suggested it is limiting in its current form. Director Thompson

responded he tried not to make any significant substantive changes. The duly authorized agent in actuality is the Director of Community Development. When the Planning & Zoning Administrator is not available to make interpretations of the Zoning Ordinance he takes on that responsibility as the Director of the Department. Under his job description, in his absence and the absence of the Planning & Zoning Administrator, he has the ability to further delegate that authority to the Assistant Planner. There is a procedure in place, which he does not believe needs to be within the language of the Ordinance. He further stated he is relatively comfortable with the current language.

Vice Chairman Mahon questioned why the Five Points of Law were removed from § 8.06 - Statutory Criteria for Granting of Variances. Director Thompson responded over the course of his time in this professional the Legislature and Courts have repeatedly updated the criteria for zoning boards to consider, and the desire was to avoid the necessity to seek amendments every time the Legislature makes a change to those sections. He felt it more efficient to refer specifically to the Statute that delegates those powers to the Zoning Board.

Vice Chairman Mahon questioned if information is provided to an Applicant. Director Thompson stated the criteria is listed in the application.

Chairman Harrington declared the Public Hearing open at 8:46 p.m.

Chairman Harrington opened the floor for public comment. No one from the public addressed the Council.

Chairman Harrington declared the Public Hearing closed at 8:47p.m.

MOTION made by Councilor Boyd and seconded by Councilor Mahon to move the proposed Zoning Ordinance amendments to the Consent Agenda. MOTION CARRIED 7-0-0

Legislative Updates from State Representatives – None

Town Manager's Report

Beginning July 1, 2015, the New Hampshire Hands Free Law take effect. In addition to barring adult drivers from holding their cell phones and talking, drivers under the age of 18 will be barred from all mobile phone use. Fines will begin at \$100, increase to \$250 for second offenses and \$500 for a 3rd offense within 2 years.

The Merrimack Youth Association (MYA) has not submitted their financial statements since October 2014. As per the contract, two payments have been withheld totaling \$36,000. The fiscal year ended June 30, 2014. The MYA had until October 31st to submit their financial statement.

Chairman Harrington questioned if communication has taken place with the MYA, and if they are aware payments have been withheld and why. Councilor Rothhaus questioned if any communication has been received from the MYA. Assistant Town Manager Micali stated he received a phone call at the end of March from the former Secretary who was in Florida. She stated, upon her return at the beginning of April, she would gather the information needed for the auditors. He followed up with the

auditors to determine if they were in receipt of the information, and was informed, as of April 8th, they had not received the information. He stated the MYA is fully aware that payments have been withheld.

Councilor Rothhaus commented, although he cannot read their minds, what he senses is a total collapse of the MYA. Although he is disappointed, it is what it is.

Vice Chairman Mahon requested a discussion of the matter be placed on the Council's next agenda. He noted language within the contract that requires a 30-day notice for termination of the agreement, and stated his desire for a discussion of the overall issue, particularly given what occurred last year over the condition of their books, the police investigation into the operations of the baseball program, and their promises to put in place a more unified accounting system.

Councilor Dwyer remarked he takes a slightly less harsh view in the sense he believes the organization is a great one and does a lot in Town. His simple approach is he does not feel the money is that important to them. They do fundraising, and perhaps it has reached the point where the Town's funding is not necessary. He suggested if they truly wanted the funds, the required documentation would have been provided by this time. Councilor Vaillancourt requested MYA Officers be informed of the intent to discuss the matter to provide every opportunity for their attendance.

Consent Agenda - None

Old Business - None

New Business

1. Committee Appointments

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

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

Julie Poole – *Parks and Recreation Committee* (Full)

Melissa Kowalewski – *Parks and Recreation Committee* (Alternate)

Mathew Fortin – *Planning Board* (Alternate)

MOTION made by Councilor Boyd and seconded by Councilor Rothhaus to appoint the following individuals; Julie Poole as a Full member to the Parks and Recreation Committee, Melissa Kowalewski as an Alternate member to the Parks and Recreation committee, and Matthew Fortin as an Alternate member to the Planning Board, pursuant to Charter Article 4-8.

ON THE QUESTION

Councilor Boyd commented it is exciting to see three new individuals step up and volunteer in this way. Having two new people serve on the Parks and Recreation Committee is a sign of things to come with acquiring new eyes and faces involved in what is happening in that area. He noted he and Chairman Harrington had the privilege of interviewing Mr. Fortin. He is new to the community, a

Navy Veteran, and very eager to learn, serve, and be part of the process here in Merrimack. **MOTION CARRIED 7-0-0**

2. Eagle Scout Project Proposal

Submitted by Parks and Recreation Director Matthew Casparius

Eagle Scout Candidate Justin Calautti is proposing to build a Canoe Storage Rack at Wasserman Park.

Justin Calautti, Senior Patrol Leader, Troop 424, informed the Council he is currently at the rank of Life scout within the Boys Scouts of America. The next and final rank within the organization is Eagle. One of the requirements to attain the rank of Eagle Scout is to complete a project benefiting a non-profit organization, other than scouting, that is of a nature other than general maintenance and demonstrates strong leadership. For his project he selected one that would benefit the Parks and Recreation Department of Merrimack.

Specifically, he wishes to construct an additional boat rack at Wasserman Park where the kayaks, canoes, and other boats the Town owns can be stored during the summer season. There is an existing boat rack that can hold a maximum of 6 boats. However, there are at least 9 Town owned boats at Wasserman Park; three of which cannot be used due to lack of space, and, therefore, take up storage that could be used several other ways whether as an additional cabin for the summer camp or storage space for something more weather sensitive.

The proposal entails constructing an additional rack with the same capacity as the original rack (6 boats). That would allow the three additional boats to be stored during the summer. Should the Town obtain additional boats the rack could be used for that purpose as well.

The rack itself would be enclosed within a fence. The rack and fenced enclosure will be constructed from pressure treated wood designed specifically to withstand the winter weather. To prevent the rack from scratching the boats as they are taken on and off, the beams the boats rest on will be covered in indoor/outdoor carpet. The carpet is the only aspect of the entire project that will require maintenance albeit minimal. Excess carpet that will be purchased as part of this project will be given to the Parks and Recreation Department along with any additional funds, which could be used to purchase additional carpet (estimated to need replacement every 4-5 years).

The estimated project cost is \$485.00. The project will be funded through donations or through fundraisers Life Scout Calautti will attend with his fellow scouts and families of scouts. Three fundraiser dates have been tentatively scheduled. Construction of the rack will be completed over the course of 2-3 work days at Life Scout Calautti's residence before final installation at Wasserman Park. The estimated completion date is early to mid-August at the latest. Life Scout Calautti stated he has already presented his proposal to the Parks and Recreation Committee, which unanimously approved it.

Councilor Boyd commented on the number of Eagle Scout projects that come before the Council from Troop 424. He expressed his gratitude and congratulations to all involved. He questioned if any digging would be necessary as part of the project. Life Scout Calautti responded there will be a minimum of ten (10) holes dug. There is the need to accommodate six (6) posts for the enclosure and

Approved: May 14, 2015

Posted: May 19, 2015

four (4) for the rack itself. The size of the holes will not require excavation equipment, but rather Scouts and shovels. When asked, he stated he has been working closely with Director Casparius.

Councilor Koenig asked for additional information around how the project would fit into the park, e.g., will the new and existing racks both be included in the same enclosure, etc. Life Scout Calautti stated his proposal includes the construction of an additional enclosure and additional rack that will be constructed approximately 28' from the end of the existing rack. Vice Chairman Mahon commented the existing rack was also an Eagle Scout project.

When asked, Life Scout Calautti stated the tentative fundraising efforts to include a bake sale at the Tractor Supply Co. on Saturday, April 20th, a car wash on Saturday, June 27th at the Exit 11 Gulf Station, and on Saturday July 11th a bake sale at the Exit 12 Shaws.

MOTION made by Councilor Boyd and seconded by Councilor Rothhaus that the Town Council endorse the proposed canoe storage rack at Wasserman Park as proposed by Eagle Scout Candidate Justin Calautti, and that he continue to coordinate his efforts with the Parks & Recreation Department for a successful completion of the project.

ON THE QUESTION

Councilor Rothhaus stated his appreciation for the efforts put forth.

MOTION CARRIED 7-0-0

There being no objection, the Chairman called for a five-minute recess.

The Council recessed at 9:04 p.m.

The Council reconvened at 9:09 p.m.

3. Agricultural Commission Bylaws

Submitted by Agricultural Commission Chairman Bob McCabe

The Town Council to consider the approval of the recommended Agricultural Commission Bylaws.

Chairman Harrington stated the recommended Bylaws have been reviewed by counsel, and additional amendments recommended have been incorporated.

Bob McCabe, Chairman, Agricultural Commission, informed the Council the Bylaws have been a work in progress, and believed to be in final form at this time.

Town Manager Cabanel informed the Council Mr. Currier had contacted her office and requested a copy of the Bylaws. Ms. Thompson had responded she had never seen Bylaws for the Commission. Mr. Currier brought over a copy he had in his possession that hadn't been adopted. It was sent over to Attorney Upton's office, and reviewed to ensure compatibility with other ordinances and bylaws completed for other Town Committees.

Councilor Boyd questioned the language on page 4, Section 11, under the heading of Removal of Members; paragraph 2 seems to be in conflict with the Volunteer Appointment Policy. When asked

for further clarification, Councilor Boyd stated the Volunteer Appointment Policy does not include language such as “shall file with the Town Clerk a written statement of reason for any cause enumerated above for removal under this section.” Chairman Harrington suggested the second paragraph could be removed. Councilor Boyd was in agreement. Councilor Koenig noted the minutes of the Town Council would still reflect the action the Council took and discussions that took place.

Mr. McCabe responded it was legal counsel’s recommendation. Councilor Dwyer stated his opinion the language should remain in the Bylaws. He commented there could be instances where such language would be helpful such as several committee members being of the belief a single member is causing harm. This would provide a mechanism for addressing that. When asked why the paragraph would be considered offensive, Councilor Boyd responded it would open up a situation of he said/she said. It was noted the first paragraph would lead to that as well. Vice Chairman Mahon reiterated the reasons for removal would be reflected in the meeting minutes, and the Town Clerk is responsible for maintaining those records. It is duplicative in nature. Councilor Rothhaus questioned if what was being proposed would be used in Bylaws moving forward. Town Manager Cabanel stated the Agricultural Commission is the only one that does not have an established/adopted set of Bylaws. Councilor Rothhaus questioned if there are removal clauses in the Bylaws of other boards/committees/commissions. Councilor Rothhaus stated his belief the Council has not, in the past, had the ability to remove.

Vice Chairman Mahon remarked some of the boards/committees/commissioners are covered by State Statute, which has provisions for removal, which are similar to what was proposed. He stated his recollection it has never been utilized. Councilor Dwyer commented the Agricultural Commission is not formed by State Statute. Vice Chairman Mahon stated there to be language that enables the establishment of an Agricultural Commission, but is not as detailed as others.

Councilor Koenig commented he believes the language appropriate. Councilor Rothhaus suggested if including the language the Council should contemplate reflection in other Bylaws. Councilor Boyd stated the Council cannot, as each committee is responsible for creating its own set of Bylaws. Councilor Rothhaus questioned why the Bylaws for the Agricultural Commission were before the Council if that was the case. Councilor Boyd responded that was going to be his next question.

Chairman Harrington stated her opinion the second paragraph is not necessary as the first paragraph addresses removal.

Councilor Boyd remarked removal was one of the pieces contemplated when the Volunteer Appointment Policy was being crafted. It was removed at the end for the simple fact if you enunciated a reason why you were removing a particular person it opened another door that would need to be considered. Councilor Koenig asked, and was informed the Commission has been working on the Bylaws for 7 or 8 years. When asked if the Commission has operated under Bylaws, Mr. McCabe responded “on a limited basis”. There is reference to them in the meeting minutes. With the change in Chairman, what is being addressed now is more of a housekeeping matter. Chairman Harrington questioned if there would be any harm in the Council approving the Bylaws. The response was no.

Councilor Boyd questioned language on page 4, Section 13, #2; what the section is stating as it relates to the authorization of the Town Council. Mr. McCabe remarked from time to time there is the need for advisors, etc. in the form of volunteers, which is why he believes the language was included.

Councilor Boyd stated the language to read “under contract with the authorization of the Town Council”. Mr. McCabe suggested it was to show expertise, experiences, knowledge, etc. Councilor Rothhaus questioned if what was meant was we might be hiring an individual for his/her expertise. Mr. McCabe responded not necessarily as the NH Cooperative Extension, for example, is free to the Commission, but they are experts in their field.

Chairman Harrington stated a review of the Charter identified the Town Council does not need to approve the Bylaws. The recommendation was that #2 under Section 11 may not be necessary.

4. Pennichuck Water Works – Request for PILOT for Solar Project

Submitted by Pennichuck Corporation Chief Operating Officer Donald Ware

Pennichuck is requesting that the Town consider accepting a payment in lieu of taxes for a proposed 1 Megawatt Solar field that it is considering constructing in Merrimack.

Mr. Donald Ware, Chief Operating Officer, Pennichuck Corporation, commented three years ago one of the charges for the Board of Directors was to look at alternative sources of energy/sustainable sources of energy. In 2012 the potential of building a solar field was investigated. At that time, electrical costs were nearly twice what could be purchased off the grid. It was decided the time was not right to pursue this. Solar cells have gone from about 18% to 22% efficiency, cost of production has come down, and the Federal tax break is still good through December 31, 2016. It was decided the potential for constructing the solar field should be reviewed again to determine whether it is cost effective. Proposals were received from a number of vendors. Grant monies were also pursued through the Public Utilities Commission (PUC). The result was the offer of a \$375,000 grant. These solar cells are subject to a local property tax. The value of the field, with the land, is estimated at roughly \$3 million. Annual property taxes takes the project from being one where it would be beneficial to the customers out of the gate to negative to the customers.

State RSA allows the Town to consider payment in lieu of taxes for renewable energy projects. That being said, if the Town were to grant the request, it would also be required to treat other such requests similarly.

Mr. Ware commented what makes this project unique is its location. The land it sits on is watershed land, and development and watershed land are typically not compatible except for the fact the EPA and NHDES have recommended, in the pursuit of sustainable energy, the use of watershed land for solar cells. It is the one compatible development use for watershed land. The land is owned by Pennichuck, which helps keep the cost of the project competitive in terms of what the power purchase provider could provide on a 20 year basis.

Mr. Ware questioned whether there is any interest in the Town considering a pilot in order to make the cost to customers neutral out of the gate. The facility would produce roughly 25% of the power for Pennichuck Water Works. The need would be for a pilot at 15% of the valuation in order for the project to break even based on current pricing and with the \$375,000 grant.

Mr. Ware stated, unless traveling in a plane, the facility would not be visible. Town Manager Cabanel had asked about the percentage of customers that reside in Merrimack. There are 295 customers in Merrimack, the largest of which is Anheuser Busch. Of total revenue Merrimack accounts for 4.1% to Pennichuck Water Works, about 9.6% of the usage, and about 1.1% of the customers.

The Power Purchase Agreement is a 20-year agreement. Over time, this would result in a flat power price. This provides a stable platform for electricity for the customers for the next 20 years. It is a savings or cost avoidance that gets passed directly to the customers.

Mr. Ware reiterated this is a unique project and if another were to come in with a similar scope, they would have to acquire the land first, which would be significant. Additionally the project is unique in that it does not have to go through net metering. The water treatment plant would utilize 100% of the power that is produced from the solar field. Also the Federal tax credits that would make this work are going away December 31, 2016. The Federal tax credits are what helps the power purchase provider to be able to produce the power at a price that becomes competitive.

From the Town's perspective it would result in this property going from current use to an industrial use, which would bring in, depending upon the valuation, on the order of about an upfront payment of approx. \$120,000 - \$121,000. Currently, on a pro rata basis, Pennichuck is paying about \$1,087/year. If they were to pay 15% of what they believe the valuation would be it would equate to approx. \$10,900/year in property taxes or a net increase to the Town of about \$9,800.

If someone else comes in with a similar project there is the risk of having to give that up as well.

Chairman Harrington stated her understanding if the Council accepts the proposal, all future solar will have to abide by the decision the Council makes on this request. Mr. Ware stated that to be his understanding from Pennichuck's attorneys.

Vice Chairman Mahon stated there to be two distinctions; one being the household solar, which is defined differently, and this, which is generation. There are two distinct classes that the law talks about. There are two distinct treatments for them.

Councilor Vaillancourt questioned if another project were to come forward would the Council still have the option of approving or not approving. Chairman Harrington stated it would not. Councilor Vaillancourt asked for clarification, if this project is approved any project coming in after the fact has to be approved. Chairman Harrington stated that to be her understanding; providing it falls in the category of generation.

Town Manager Cabanel stated the Council would have to approve the reduced tax amount. The project would still be required to go before the Planning Board. Mr. Ware stated the plan requires site plan approval. The intent was not to move forward with the project until understanding whether the Town would support the concept of a pilot. Town Manager Cabanel stated there would be the requirement to accept a 20% value payment for any future projects. Councilor Vaillancourt questioned if an applicant wished to put a project on a piece of land that was deemed as inappropriate, would the Council have the opportunity to deny the request citing the reason as the location. Town Manager Cabanel stated the decision of the Council is not one of zoning. Vice Chairman Mahon stated there are a few steps; one is the site approval, which would either be an issue for the Zoning Board of Adjustment (ZBA), depending on the location, and the Planning Board. That is one step. That is where the approval or non-approval would occur for the siting of something on a piece of property in Town.

Councilor Vaillancourt questioned is it that technically the Town Council is only approving the tax issue, not the project and its location. Vice Chairman Mahon stated that to be correct, and added once the Council issues a pilot anyone else coming before the Council with a generation project would have to be offered similar terms.

Councilor Dwyer questioned what benefit the proposal would bring to Merrimack. Mr. Ware stated there are three basic things; \$121,000 payment for current use penalty tax, an additional nearly \$10,000/year in property taxes, and support of sustainable energy; a project that, with help from local government, State government, and the current market, makes sense economically for customers some of which are in Merrimack.

Councilor Dwyer spoke of the amount of voltage the field would produce, and questioned if it would be powerful enough to be running pumps and motors or more for the facility for lights, computers, etc. Mr. Ware stated it would produce about 900 kilowatt hours per hour if the sun is bright and shining. The projected production over a period of a year is 1.5 million kilowatt hours. When asked if that is enough to run the pumps, Mr. Ware responded at times it would run the pumps. The plant uses about 4.5 kilowatt hours/year of power. It will produce about 33% of the plant's requirements.

Councilor Rothhaus commented he recognizes the difficulties in making something like this work. The place he would imagine something like this would normally be seen is an industrial zone. He spoke of the town being very limited in its commercial/industrial space. Taking it out and allowing a 15% payment as opposed to what the property would normally bring in for property tax revenues is his concern. Listening to the comments made earlier, it appears unlikely another project would find such a venture financially feasible.

Councilor Koenig stated he did not have a clear enough understanding of the payment in lieu. He questioned, if granted, does that require the Council to grant future projects for anyone requesting such a project under any circumstances. He questioned if some restrictions could be made, e.g., placed on watershed land, 500' from the borders, only using 25% of property, etc., and questioned if those kinds of restrictions could be identified, and stated as the criteria under which the Council would provide approval so that future projects would have to meet the same conditions.

Town Manager Cabanel stated RSA 72:74, V states: "If a municipality enters into a voluntary payment in lieu of taxes agreement with an owner, or a lessee responsible for payment of taxes, of a renewable generation facility, the municipality, upon the request of the owner, or a lessee responsible for payment of taxes, of any other renewable generation facility located within the municipality, shall offer a comparable agreement to the owner or lessee of such facility."

Councilor Koenig questioned if the agreement could include limitations or distinctions on how much of the property is covered, etc. Town Manager Cabanel responded she does not believe so. Vice Chairman Mahon stated that is not known. Councilor Dwyer remarked that would likely fall under the site evaluation or the Planning Board or ZBA questions, but it is the money and the formula that must be equal treatment is how he would interpret it. That being said, with the deadline and credits vanishing soon you have to wonder if there would be another one coming down the pike soon.

Director Thompson remarked relative to the role of the Planning Board and the Town in terms of Zoning, under RSA 672:1, which is the general provisions for municipal land use regulation, 672:1, III-a reads: "Proper regulations encourage energy efficient patterns of development, the use of solar

energy, including adequate access to direct sunlight for solar energy uses, and the use of other renewable forms of energy, and energy conservation. Therefore, the installation of solar, wind, or other renewable energy systems or the building of structures that facilitate the collection of renewable energy shall not be unreasonably limited by use of municipal zoning powers or by the unreasonable interpretation of such powers except where necessary to protect the public health, safety, and welfare;"

In essence, the State has limited the municipality's ability to use zoning to control these types of facilities. Regardless of zone in Town, if someone were to come forward with this type of facility it would have to be considered permitted under our Ordinance.

Councilor Rothhaus questioned if that would be the case in a residential neighborhood, and was informed it would. Chairman Harrington stated her concern to be the setting of precedent; it is giving blanket approval for all future projects. She suggested it may be necessary for the Council to conduct further research whether that be sought from legal counsel or the ZBA and/or Planning Board. She stated she was not prepared to approve something where she did not fully understand the potential future implications.

Councilor Koenig stated his appreciation for the responses, and asked for clarification of how the 15% number was derived. Mr. Ware spoke of a formula that identifies plant usage, current cost of electricity, and assumptions behind the number, noting property taxes is one of the figures (as you adjust property taxes that is a driver to the annualized cost for the power). He remarked you have to keep in mind you are producing 1.5 million kilowatt hours. If paying on a full \$3 million valuation that would be about \$75,000/year or about \$.05 a kilowatt hour. As that comes down progressively that is what starts to make it attractive. You have a fixed amount of power, that 1.5 million kilowatts. As property taxes go up you are adding a cost per kilowatt hour to it.

Councilor Koenig stated the desire to understand the \$3 million valuation number. Mr. Ware responded when they went out and sought proposals they sought them in two ways; one to be if Pennichuck were the owner and a contractor came in and built the facility to be maintained and operated by Pennichuck. Because they have no tax appetite, could not use the Federal tax benefit, the power purchase agreement was the only one that worked out. A price was provided per kilowatt hour assuming Pennichuck paid the local property taxes, bought all of the power from them, and provided them the land at \$1. That is one of the things that makes this unique is that anybody else who builds, would not find land for \$1. This is 12.5 acres, which would add another 33% to the cost of any project that goes of this magnitude just to purchase the land.

Councilor Koenig reiterated he is not clear on the \$3 million figure. Mr. Ware responded they are saying the cost of building the facility would be about \$2.2 million and then add in the value of the land; some place between \$800,000 and \$1 million. He used \$3 million. Councilor Koenig remarked the annual income from power generated times 8-15 years, whatever number used for valuation, and questioned if that even comes close to \$3 million or does it really say this is not a practical thing to build from a business perspective. Mr. Ware responded, from a business perspective what we are comparing is our expenses. Our expenses in this case would be the property taxes and purchasing the power from the power purchase provider as opposed to from the grid.

Currently Pennichuck is buying power from the grid from the supply generation side. You are also avoiding the transmission cost in this case, at a rate of about 12.2 cents/kilowatt hour. If you can buy

from the power purchase provider at something less than that and then take the property taxes and divide the 1.5 million kilowatt hours into that you will end up with the cost per kilowatt hour for that 1.5 million kilowatt hours. That is what they are looking at for comparison purposes.

Councilor Koenig remarked you are saying it will cost \$3 million to build and equip this based on land, etc. Is the Assessor going to come in, not knowing anything about what it cost you to buy it, and just say the value of that property with that plant on it is \$3 million or are they going to say it is the revenue of the plant times 8 or 10 or something like that? They are going to look at the income generation potential of the building to create the valuation not necessarily what it cost you to build it.

Mr. Ware remarked valuation in this case, he believes, would not be an income approach but an asset approach. It could be an income approach. All they could do was make an assumption. Ultimately there is risk for Pennichuck should someone come in and say they think it is worth \$5 million, they proceed and pay a 15% pilot on that. They believe the valuation is about \$3 million based on other communities. The Town of Peterborough built a facility similar in size, etc. When asked if it was valued or a pilot, Mr. Ware stated Peterborough was the owner. Councilor Koenig remarked that is not a comparable measurement of the value. He stated his preference to see it valued at \$2 million and take 25-30% pilot instead of \$3 million and 15%. He stated a desire to gain a real understanding of how you would value, and his guess is it would be based on the value of the property not on the asset because the asset has no value if you look at it from an income perspective of a business.

Councilor Dwyer questioned if there is concern the Assessor could come in and says it is worth \$4.5 million. Would that not change the model drastically? Is there a legitimate fear on the company's part that the site might be valued higher? Mr. Ware stated it to be a risk. He remarked they have had a preliminary valuation done. Valuations are based on comparables, and also, in this case, as a utility they are valued by the State. They pay taxes to the Town for the pipes that feed Anheuser Busch and into the area, and that valuation is based on a replacement cost, new less depreciation valuation. They look at the pipes and say what would they cost to put in today and how much depreciation has occurred. That is the method of valuing utility property. It used to be original cost less depreciation, which was an income approach like what Councilor Koenig suggested. That would result in a substantially less value. If you look at the method of valuing utilities; right now the State values 95% replacement cost new less depreciation. They are looking at the actual cost to construct the asset in today's dollars less depreciation on the asset. Solar cells depreciate very slowly; about 7/10 of a percent loss in efficiency per year. Over the 20 years they will lose about 14% of their efficiency hence their value.

Chairman Harrington stated the main question to be whether the Council is willing to accept the option of payment in lieu of taxes. Vice Chairman Mahon remarked RSA 72:74 II states in part: "A renewable generation facility subject to a voluntary agreement to make a payment in lieu of taxes under this section shall be subject to the laws governing the utility property tax under RSA 83-F." RSA 72:74 VI reads in part: "no voluntary agreement entered into under this section shall be valid for more than 5 years". This would be considered again in five years.

Vice Chairman Mahon remarked the issue is complex, and more than he believes the Council should undertake on its own in a single meeting. He questioned the timeline associated with the proposed project. Mr. Ware stated the timeline to be driven by the PUC. The PUC contacted Pennichuck in early March and said we want to work out a contract with you and again in early April stating they had

a contract, and a decision needs to be made by April 29th. He does not believe there to be time to properly digest the proposal. He stated understanding of the Council's hesitance, and suggested it to be a case where they should just assume shutter the doors and look and to see where this is in a year or two. It is something Pennichuck will continue to revisit. He remarked perhaps the 30% tax credit will continue on. Efficiency of solar cells is sort of bottoming out, and there will likely not be a lot of reduction in cost there, but what will happen to electrical cost? An ongoing discussion of the Council could have a great impact on that.

Mr. Ware stated this started with the Board's interest and a lot of promotion by NHDES and the EPA to the fact that wastewater and water treatment plants are some of the largest energy users in the country. Water utilities typically have a lot of land because they own watersheds. You can have the land at essentially very low cost in order to construct a large field. They have encouraged that and said it is the compatible use. Pennichuck investigated it. From their perspective it is about a right decision for the customers. They will not make a decision for their customers that says we should do this and it will cost you \$20,000 more a year for electricity but that is good because we are building a sustainable infrastructure; it has to work economically. By the same token, a lot of valid concerns have been raised by the Council, and unfortunately Pennichuck was given a very limiting timeframe. The grant application was submitted back in October and they basically got the go ahead some 3-4 weeks ago. He had hoped there would be more time, but there is not.

Councilor Dwyer suggested the formation of an Ad Hoc committee of the Council that could meet with Mr. Ware to discuss the matter in more depth. Mr. Ware stated Stephen Eckberg, Analyst, NH PUC, is the one who provided him with the deadline of April 29th, and then there was a caveat there may be a little extra time. They are hoping to go to the Governor and Council with a recommendation. He stated his belief they have to provide information by May 5th to be included for the end of May meeting. Their concern is the availability of funding. They want to get it committed before it is gone.

Mr. Ware stated a willingness to meet with members of the Council. Councilor Dwyer reiterated although the decision would have to be made by the Council, an Ad Hoc committee of the Council or even a single member of the Council with the support of staff could meet to iron out some of the details, and bring the issue back before the Council. Chairman Harrington acknowledged the need for a more in depth discussion and a greater amount of information provided to the Council. However, stated a concern with the available timeline. Councilor Dwyer suggested the committee meet next week and come back before the Board on May 14th. If the timeline doesn't work out then it wasn't in the cards.

Town Manager Cabanel remarked she is not confident she can identify a source that could provide additional information regarding potential implications in such a short period of time.

Councilor Koenig reiterated his opinion the proposal is a great idea, and he is excited about the possibility of something like that. He believes that use of the land is great, taking it out of current use and giving it a little bit more value is a great thing. His only concern is the 15% number and 15% of what relative to turning around and giving that same offer to anybody else that comes along. He remarked he does not think there is a great chance of someone coming along wanting to take a massive chunk of industrial property and turn it into a solar farm. Councilor Rothhaus remarked it was stated any type of property could be utilized for such a facility.

Approved: May 14, 2015

Posted: May 19, 2015

Councilor Koenig commented if the Council could be provided a better understanding of the implications and have a stronger feeling of what the valuation could be he would be more comfortable.

Councilor Dwyer remarked the comments made and questions posed by Councilor Koenig were not lengthy, and he does not see them requiring a great deal of time to address. Chairman Harrington reiterated a concern with the timeline. Councilor Dwyer suggested the Council gamble with the timeline; provide a response when one can be provided and if the dates are extended then it is in everyone's benefit, and if the timeline has passed, at least we gave it the best shot we could. Mr. Ware stated he could contact the PUC the following morning and notify them some sort of decision could be made by May 15th. If that doesn't work for them then there is no sense spending any time on it.

From a valuation perspective, Mr. Ware suggested the State Department of Revenue Analysis, which is responsible for the implementation of RSA 83-F could probably provide a valuation. Councilor Vaillancourt stated she is pleased with the idea of not saying no outright at this time, but instead looking to see if additional information can be obtained within the timeframe and the possibility of it working.

Vice Chairman Mahon noted the Chairman could always call a special meeting.

MOTION made by Councilor Dwyer and seconded by Councilor Boyd to table the item until the Council's May 14, 2015 meeting

ON THE QUESTION

Chairman Harrington noted Councilors Dwyer, Boyd, and Rothhaus would sit on an Ad Hoc Committee. Vice Chairman Mahon stated the need for meetings to be posted, minutes taken, etc. in accordance with the Right-to-Know Law.

MOTION CARRIED 7-0-0

Councilor Dwyer suggested Assistant Town Manager Micali and Director Thompson participate in the committee. Councilor Dwyer commented the intent had been for staff to actively participate. Vice Chairman Mahon suggested the Town of Peterborough be contacted and asked about the analysis that town went through.

Mr. Ware stated his appreciation of the Council's time and consideration, and stated he would follow up with the PUC the following day, and notify the Town Manager of the response received.

5. NRPC Route Bicycle and Pedestrian Corridor Plan Proposal

Submitted by Assistant Planner Donna Pohli

To ask the Town Council to accept and authorize NRPC's proposal dated January 22nd, 2015. This proposal does not require any additional funding and would help the Bicycle and Pedestrian Master Plan Work Group with implementation of the adopted 2014 Master Plan Update.

Donna Pohli, Assistant Planner, stated receipt of the proposal from the NRPC was due to the Town's Master Plan, which was updated in January, 2014 and included several action steps regarding bicycle and pedestrian travel. The Town also received a letter from the NH Department of Transportation (NHDOT) a few months before the Master Plan was adopted in response to a project in their

jurisdiction on the D.W. Highway for which the Planning Board had required a sidewalk, which is a typical requirement in the site Plan and Subdivision Regulations.

The NHDOT has stated support of sidewalks in their jurisdiction; however, not until there is a plan for Route 3. A Sub-Committee of the Planning Board was established and has begun working on the establishment of a procedure for inventory, identifying the gaps in sidewalks, and determining if there is a need for additional sidewalks. The NRPC provided a proposal to assist in this process. There is no additional cost associated with the proposal as the work would be considered one of the services provided as part of the Town's membership within the NRPC.

Desirea Falt, Member, Planning Board, stated the request to be for approval by the Town Council to proceed with the NRPC proposal to get the first phase completed to unlock the D.W. Highway corridor for potential sidewalk development. She noted there were holdups on some projects coming through there as a result of the NHDOT stating approval would not be provided piecemeal until a complete plan is in place.

When asked for clarification, Ms. Falt stated the concern on the part of the NHDOT is with their Right-of-Way. If a project were approved and included a sidewalk to be constructed on private property the only control NHDOT would have is over the entrances and curb cuts onto their Right-of-Way.

Town Manager Cabanel spoke of having prior experience with sidewalks on another Route 3, and the State requiring an agreement be signed that the sidewalks would be maintained and kept free of snow. Vice Chairman Mahon stated those agreements are already in place. The State Supreme Court, back in 1898/1899 ruled against the City of Concord because they were putting in a sidewalk ordinance requiring the property owner to clear the sidewalk. The Supreme Court declared that to be a tax. It was unfair and unequitable, and therefore was invalid. Now the Town is required to clear those sidewalks and maintain them. It is the way it is in New Hampshire. It is difficult, and something he has raised before the Planning Board in the past, that the State is passing down an unfunded mandate. That was further reinforced some 4-5 years ago when a gentlemen on a scooter up in Tilton complained he could not get to Market Basket. He took the State to court because they said they don't have to maintain the sidewalks all the time. The court's response was you put them in you have to maintain them. Vice Chairman Mahon remarked there are a lot of little cities and towns across the country in financial trouble because they have these little piecemeal areas that were put in over time, and they are required to maintain them.

Chairman Harrington asked for clarification the request is to allow the NRPC to perform an assessment and strategize as to where sidewalks should and should not be. Ms. Falt stated that to be correct. The NRPC would be creating a base map; going through and doing a windshield survey.

Chairman Harrington asked if the question raised by Vice Chairman Mahon was whether we would in fact utilize the plan once it is created because of the restrictions. Vice Chairman Mahon responded the Town Council has no control. The Planning Board controls the whole thing. When the street is accepted the sidewalk is as well. Chairman Harrington remarked that would suggest what the NRPC would create could be implemented without any further input from the Council. Councilor Dwyer stated that to be accurate.

Director Thompson stated what was being sought as part of the proposal is simply to do the inventory work. The NRPC will not prepare the plan. That plan will be put together through the Sub-Committee from the Planning Board, and then brought to the full Planning Board for final action and determination of whether or not the Planning Board would adopt the Route 3 corridor.

He added, depending on what the Planning Board recommends, it would very likely be brought before the Council because there would be decisions involving finances and expenditures. There would be the desire for the input of the Council. When asked, he clarified it would not be required, but he would certainly recommend it to the Planning Board.

Councilor Dwyer stated his opposition, and remarked by implementing their request to go down this road, it takes us to the Master Plan implementation of their designs for sidewalks. There has always been the subject of sidewalks or no sidewalks, but you inadvertently are subjected to that future plan. He spoke of the yearly cost to maintain sidewalks, e.g., several snow machines at roughly \$120,000 each, cost to operate, etc. It could be a \$1 million/year cost. He touched upon businesses being required to provide payment in lieu of constructing sidewalks, and noted a recent instance where those funds were returned to the property owner. He reiterated he cannot support it for that reason.

Ms. Falt remarked the Master Plan does speak to creating a master plan for sidewalks. More importantly is to reach out to the citizens of Merrimack to determine their interest. She commented she has seen a 50/50 response from those utilizing the Merrimack forum (about 50 residents). The majority of Planning Board members do not want to put sidewalks in all of Merrimack. There are some condensed areas where it makes sense to put sidewalks in and lots of areas where it does not make sense. They regulate sidewalks in the regulation for Merrimack. If that is something that isn't supported by the community then we should look at the laws for that and the requirements we are placing on people.

She spoke to the payment in lieu issue noting some projects opt to put funds in an account rather than put in sidewalks. There are steps involved in utilizing payment in lieu funds, which are not really in place. The Sub-Committee is working on identifying how those funds could be applied. Currently those funds have been returned. Councilor Dwyer stated his impression, as a small businessman, that is legal extortion. That is what the community did to a business. They got their money back, but there was a chance they might not. We extort money for grand plans of sidewalks to force businesses to put money into a kitty and this time it didn't work and we had to give it back.

Director Thompson stated he stopped recommending payment in lieu after the most recent project where the funds had to be returned for the simple reason there is no plan in place and the funds would be returned because of that. Currently, the way our regulations are written, every project, regardless of size or location, is required to provide a sidewalk. It makes no sense. If we get nothing else out of this Master Planning effort than regulation amendments that target the areas where sidewalks are appropriate and where they are not appropriate that would be a successful outcome to him.

Councilor Dwyer responded that regulation could be changed without approval of this proposal. Director Thompson stated agreement; however, added if we want to find out where it is appropriate for sidewalks to be located and where the community wants to see them that is where the value is in this effort.

Councilor Vaillancourt stated her understanding of the concerns relative to maintenance obligations and associated costs. Although putting sidewalks in all of Merrimack cannot be done, and is not something she would even consider supporting, some sections of Route 3 desperately need sidewalks. Having sat on the Master Plan Steering Committee she is aware of the very good discussion that took place around sidewalks. She remarked there is a very small population commenting on the issue. She reiterated there are sections of Route 3 that need sidewalks. There are sections that are dangerous where currently, and all winter long, there is pedestrian traffic. She stated her belief there is the need for sidewalks in this section of road. Whether the amendment is the proper way to go she is unsure, but she does believe it appropriate to look to install sidewalks on that section of road.

Councilor Rothhaus remarked he agrees with sidewalks in many areas of Town. When we get to the extreme is when it goes out into the DOT section. He believes there would be use, but he would rather see a painted line on the shoulder of the road to accommodate that for all of the reasons stated. For him, the focus on sidewalks would be the immediate location, which we have a number of, e.g., the intersection upgrade on Wire Road, the new bridge will have the sidewalk built into it. Those areas make a lot more sense to him than those further in the distance.

Councilor Rothhaus stated his belief the Town has a policy identifying which sidewalks will and will not be maintained. Assistant Planner Pohli remarked they had the same question about maintenance. Legal Counsel has stated as long as we have a policy and a plan that gives the priorities, which we do, we are covered. We would just be adding to that plan. Case Law states if the Town is not able to get to all of the sidewalks before the next storm, that was understood and the Town was not faulted. Councilor Rothhaus stated if the Town is required to maintain all sidewalks it would be cost prohibitive.

He stated he can appreciate the NRPC reviewing the situation and making suggestions, but it locks him into a situation where he is not confident it will come back before the Council, and, because of the cost component, he is uncomfortable with that.

Ms. Falt questioned if a presentation could be made to the Council once the NRPC has concluded its work. She noted there would be community weigh in sessions as part of the process. The presentation could be made before anything is made final. Chairman Harrington suggested a motion that would provide limitations, e.g., if the assessment is done, the committee could take no action until reviewed by the Council, etc. Town Manager Cabanel stated that would not be an appropriate motion. She commented the only issue is accepting this grant would facilitate a process that could end up with something that is totally under the Planning Board's jurisdiction related to sidewalks.

Councilor Boyd spoke of the communication provided the Council, which referenced a letter that dated back to a November 22, 2013 Planning Board meeting where the NHDOT invoked jurisdiction on prohibiting the construction of sidewalks. Assistant Planner Pohli clarified that was within their specific Right-of-Way. Councilor Boyd questioned if a private property owner were asked to construct a sidewalk on his/her property, why the NHDOT would invoke jurisdiction. Assistant Planner Pohli stated they would not in that case. She added, in the NHDOT section of D.W. Highway if a site plan showed the sidewalk would be in their Right-of-Way, they would have to grant approval.

Councilor Boyd questioned where the Urban Compact area begins and ends along Route 3, and was informed it is from Bedford Road to Greeley Street. That is Merrimack's jurisdiction. Anything north of Bedford Road is DOT and anything South of Greeley is DOT.

Councilor Boyd questioned the proposal for bicycles in Merrimack. Assistant Planner Pohli responded that was going to be addressed after the Route 3 project is resolved. Route 3 was prioritized because of the NHDOT's letter. Councilor Boyd remarked the bicycle pedestrian corridor plan is really focusing on sidewalks, and questioned if there has been any discussion at the Sub-Committee level regarding creating appropriate ways for bicycles to traverse through the Town of Merrimack. Ms. Falt responded that is the point of the study. If you look at Bedford's bicycle and pedestrian master plan, they go through complete streets where they are talking about handling bicycle traffic, pedestrian traffic, and identifying routes where it made sense for bikes and sidewalks to go in. They are not connecting everything with sidewalks or even bicycles in their district, but looking at what the citizens are interested in and putting it down as a hot spot to study. That is the task of the committee. At this point, the thing that was most driven is dealing with the DOT problem with that corridor and going from there to the full master plan, which absolutely includes bicycles.

Councilor Boyd commented if there is a location along D.W. Highway, it is at Wire Road and at the MYA where Baboosic Brook is. This has been discussed. He remarked he sees sidewalks viable within an urban compact. He commented he struggles to embrace the request for the grant because, to him, the real need is within that urban compact.

Councilor Koenig stated the grant would study all of D.W. Highway not just the DOT jurisdictional area. One of the reasons for looking to the NRPC to do this evaluation and study is to understand a master plan for the entire length of the corridor. It would definitely include the urban compact area. One of the drivers had been that initial DOT statement that a master plan would be required to do further work. With a good master plan you could make a decision as to whether or not single pieces or pieces that if ultimately connect could be appropriate.

There are properties, e.g., the Flatley property up north, where it may be critical to have sidewalks whether they are internal to the property or not. In order to get a property like that to work you need to be able to get pedestrians around as well. To just say that because it is in an urban compact we don't need sidewalks is maybe a little blinded. Councilor Boyd responded he was saying they are needed in an urban compact area. Councilor Koenig referred again to the Flatley property, which is outside of the urban compact, and is an area where sidewalks would be a benefit. Councilor Koenig stated the need for sidewalks to be evaluated on a case-by-case basis and understood. What the NRPC is offering to do is help look at that.

Councilor Boyd stated his understanding of that, and remarked he would have thought this would have been addressed during the whole master plan process the Sub-Committee just went through. Councilor Koenig stated the master plan process says put together a sidewalk and bicycle master plan, which is what they are attempting to do.

MOTION made by Councilor Koenig and seconded by Councilor Vaillancourt that the Town Council vote to accept and authorize NRPC's proposal for the Route 3 Bicycle and Pedestrian Corridor Plan to assist the Bicycle and Pedestrian Master Plan Work Group with implementing the 2014 Town Master Plan and addressing DOT's requirement of creating a comprehensive plan for Route 3 prior to any further sidewalk construction in the DOT jurisdiction, and that the Town Council authorize the Town Manager or her delegate to execute any and all documents which may be necessary to implement the NRPC's program.

ON THE QUESTION

Councilor Boyd requested clarification of a windshield survey. Assistant Planner Pohli responded a camera is mounted on a car's windshield, and the car drives the corridor to provide video of the corridor as well as streetscape.

Councilor Koenig commented he is aware there is a lot of angst about the project and whether or not the Town Council would lose authority and control over requirements for sidewalks. He stated the need to keep in mind the fact that while they are antonymous to some degree, members of the Planning Board are appointed by the Town Council and are not, in his opinion, folks that are out there to try and do things contrary to what the Town Council is willing to support and approve. He spoke of the offer from Director Thompson to bring the final Master Plan project back to the Town Council for approval, and stated his belief, if merely asked, the Planning Board would be more than happy to bring it before the Town Council for approval.

He requested the Council's support to gain further study and information with the confidence and understanding the Planning Board will continue to work with the Town Council in the future to implement the right things for the Town of Merrimack.

MOTION FAILED

3-4-0

Councilors Rothhaus, Harrington, Mahon, and Dwyer voted in opposition

6. Amendment of Town Council Rules of Procedure

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

The Town Council to consider amending the Rules of Procedure to meet once a month in the months of July and August and to meet on the first and third Thursdays in the months of November and December.

Chairman Harrington commented every year the Council is placed in the position of making a decision regarding conducting meetings in the months of June, July, November, and December. She recommended Section 100 - Council Meetings, §101 - Regular Meetings, be amended by adding the following language "During the months of July and August the Council shall meet once each month to be determined by Council consensus, and in the months of November and December will meet on the 1st and third Thursday."

MOTION made by Councilor Boyd and seconded by Councilor Mahon to amend the Town Council Rules of Procedure, under Section 100 - Council Meetings, §101 - Regular Meetings by adding the following language "During the months of July and August the Council shall meet once each month to be determined by Council consensus, and in the months of November and December the Council will meet on the 1st and 3rd Thursday. MOTION CARRIED 7-0-0

Chairman Harrington recommended the following dates for 2015: July 16th and August 20th.

The consensus of the Council was to set the dates as recommended.

7. Town Council Retreat / Goal Session

Approved: May 14, 2015

Posted: May 19, 2015

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

Town Council to decide when their Retreat / Goal Session will be held.

Assistant Town Manager Micali informed the Council he reached out to the Facilitator who has provided three possible dates: May 15, 2015, June 5, 2015, and June 19, 2015.

The consensus of the Council was to conduct the Retreat/Goal Session on Friday, June 5, 2015.

Town Manager Cabanel offered to look into potential forums, and bring forth options for consideration at the Council's next meeting.

8. Town Council Committee Assignments

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

The Town Council will determine committee assignments for the current year.

The following committee assignments were made:

Adult Community Center Representative; Councilor Harrington
Conservation Commission; Councilor Vaillancourt
Economic Development Citizen Advisory Committee; Councilor Boyd
Heritage Committee; Councilor Rothhaus
Highway Safety Committee; Councilor Rothhaus
Parks & Recreations Committee; Councilor Dwyer
Planning Board; Councilor Mahon
Planning Board, Alternate; Councilor Boyd
Nashua Regional Planning Commission; Councilor Mahon
Technology Committee; Councilor Koenig
Town Center Committee; Councilor Rothhaus

Councilor Vaillancourt remarked she previously chaired the Merrimack Safeguard Committee, and had come forward, with the Police Department, requesting the Town Council provide representation to that Committee. The Committee had previously met on the same evening as the Town Council meetings; however, changed their meeting night to the alternate Thursdays. When the request was made for Council representation Councilor Rothhaus began attending meetings. She requested the Council continue to provide representation, and suggested it be someone new to the Committee.

Councilor Rothhaus commented many groups are represented on the Committee. He participated and is willing to continue to do so. The Committee meets monthly to bring to a positive light things that would be beneficial to the children of the community in making good decisions, and to work towards maintaining the grant that funds the School Resource Officer position.

Councilor Rothhaus will continue to serve in that capacity.

Minutes

Approve the minutes from the following Town Council meetings:

Approved: May 14, 2015

Posted: May 19, 2015

MOTION made by Councilor Boyd and seconded by Councilor Dwyer to table the March 26, 2015 and April 9, 2015 meeting minutes until the Council's May 14, 2015 meeting. MOTION CARRIED 7-0-0

Comments from the Press - None

Comments from the Public

John Sauter, 9 Elizabeth Drive

Noted he is a member of the Technology Committee, and welcomed Councilor Koenig to the Committee. Mr. Sauter remarked with Mr. McCarthy's departure, the Committee is without a Chairman. He requested the Council appoint him Chairman. He noted a meeting cannot be called to order without a Chairman.

MOTION made by Councilor Koenig and seconded by Councilor Boyd to assign John Sauter as the Chairman Pro Tem of the Technology Committee until such time as the Committee elects a new Chairman

ON THE QUESTION

Assistant Town Manager Micali noted the Council cannot take action on an item not identified on the agenda. He stated a Town employee, Chuck Miller, sits on the Committee and could request the Town Manager ask Mr. Sauter to call a meeting. Mr. Sauter noted Mr. Miller is not a voting member of the Committee but rather the Town's representative to the Committee. He also noted the committee is without Bylaws.

Chairman Harrington suggested a meeting could be called to elect a new Chairman. Town Manager Cabanel was asked to orchestrate a meeting for the purpose of electing a Chair.

MOTION WITHDRAWN

Debra Vaughn, 15 Christopher Road

Stated her hope the ball field is off the table for her small neighborhood as the residents already endure two of them. With the wetlands and what the area has gone through, it would be quite an eyesore and detriment to the small neighborhood. She spoke of Councilor's Dwyer's comments regarding the possibility of the neighbors getting together and purchasing the property, which is something that had never occurred to her as an option. She stated if the issue remains on the Planning Board's agenda, and the Town is considering selling the property for some use that is not part of the neighborhood, the abutters would like to be made aware of that.

Chairman Harrington spoke of an evaluation that was performed a few years ago of land owned by the Town, which resulted in a lot of the land being sold off. In some instances, neighbors purchased pieces that were landlocked. One of the reasons that particular parcel was not put out for auction was because the property was identified as a potential location for a field.

Approved: May 14, 2015

Posted: May 19, 2015

Ms. Vaughn questioned if the Council anticipated that piece of property being available for sale or if the possibility remains for it to be utilized as a ball field. Chairman Harrington stated that has not yet been determined.

Wendy Thomas, 10 Wildcat Falls

Remarked there were three occasions during the discussion where Assistant Town Manager Micali stated the Forester received a \$1,500 contract regardless of the number of trees cut. She questioned the percentage received from the amount of board cut, and was informed he received zero. Ms. Thomas stated the Forester informed her that he received a percentage.

Ms. Thomas stated the logging company has to bring the logs to the lumber scales and fill out a form that then has to be mailed to the Town. She questioned when that would be available for public viewing. Assistant Town Manager Micali stated they would be sitting with Mr. Powers, and the Town is awaiting receipt of the scale receipts. They will be matched up and a report provided. When asked, he stated the process could take a few weeks to complete.

Ms. Thomas stated both Assistant Town Manager Micali and the Forester both told her the Town stood to gain about \$7,000 from the cut trees. In a letter to Ms. Vaughn the Town Manager stated the Town would receive \$3,000. She questioned when the final number would be known. Assistant Town Manager Micali stated the figure is dependent on the total number of board feet that was sent to the mill and the price they received per board foot.

Comments from the Council

Councilor Boyd welcomed Councilor Vaillancourt to the Council.

Councilor Boyd remarked, as has been noted, the Police and Fire Departments have been busy over the past few weeks. The Police had a very interesting and dangerous situation involving a domestic dispute; woman was detained against her will, crawled out of her window, and eventually the police were able to arrest the individual who was carrying a dangerous weapon. He thanked the Police Department for their continued diligence in maintaining public safety in our community and also the Fire Department for doing the job they have done over the past few days citing several instances of fires.

Councilor Boyd commended the ten (10) individuals that represented Merrimack at the Boston Marathon: Ryan Comerford, Brian Kane, Alexander Linke, Katie Loignon, Steven Vargo, Leeann Ward, Michelle Wheeler, Adrian Wong, and extended a special shout out to Officer Mike Marcotte from the Merrimack Police Department and his Wife Katherine who also ran the race.

Councilor Rothhaus spoke of the questions raised around the potential use of the property on John Lane/Atherton Road/Wildcat Falls and the possibility of selling the property. He suggested that to be a topic the Council discuss at some point. He remarked what was brought to the Council's attention a few years back was a severe shortage of field space. He is unsure if that has changed, and he is not aware of any decision coming up for discussion in the near future.

Approved: May 14, 2015

Posted: May 19, 2015

Councilor Dwyer remarked his comment was an off-the-cuff remark. If the field study has suggested the site, that does not mean it is etched in stone. If the neighborhood vehemently does not want a ball field then he cannot see the Council, no matter how badly a field might be wanted, putting it there. He suggested the neighborhood could make a request for the Council to consider selling that property.

Councilor Koenig stated he would not support a ball field in that area as he does not believe it appropriate for that neighborhood particularly given the ball fields already located in the area.

Adjourn

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

MOTION CARRIED 7-0-0

The April 23, 2015 meeting of the Town Council was adjourned at 11:00 p.m.

Submitted by Dawn MacMillan