



Town Council Meeting Minutes

Thursday October 22, 2015, at 7:00 PM, in the Matthew Thornton Room

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

Pledge of Allegiance

Vice Chairman Mahon led in the Pledge of Allegiance.

Announcements

Regular meetings of the Town Council will be conducted on Thursday, November 5th and November 19th at 7:00 p.m. in the Matthew Thornton Room.

The 23rd Annual Halloween Party will take place tomorrow night (Friday, October 23rd) from 5:00 - 8:00 p.m. in the Function Hall at Wasserman Park. There will be a wide variety of games, activities, costume contest, pumpkin carving demonstrations, music with DJ Darren Roy, and much more. For complete details visit the Parks & Recreation Department website at: www.merrimackparksandrec.org or call 882-1046.

The Parks & Recreation Department administrative offices will be moving back to Town Hall for the winter beginning Tuesday, October 27th. It is hoped once the Function Hall gets up and running, they will be able to remain at Wasserman Park throughout the year.

Trick-or-Treat will be held from 6:00 - 8:00 p.m. on Saturday, October 31st. The Merrimack Police Department will be assigning extra officers along with the Police volunteers to the neighborhoods for the safety of the children.

There being no objection, the agenda was adjusted to move Item #4 under New Business to come before Appointments.

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

● Informational Reports and Updates

Vice Chairman Mahon spoke of the Workshop conducted with representatives from Kinder Morgan, which took place at the Council's October 8th meeting.

A letter was sent to the Federal Energy Regulatory Committee (FERC) regarding the first proposed alternate route.

Notice was received indicating Kinder Morgan's intent to file a formal application with the FERC on November 20th. Once received by the FERC, they have 10 business days to act on it. If they act on it

within those ten days, that starts the clock running on the 21-day filing period for intervener status. The Town's legal counsel has been preparing the Town's request to be designated as interveners.

Vice Chairman Mahon spoke of survey crews that were out in several places on Tuesday. The Town had not been informed, but learned, after a great deal of activity, that permission had been provided by Eversource for the crews to be on Eversource properties. Town Manager Cabanel noted Eversource owns, in fee, certain pieces of property underneath the powerlines. That is what the crews have been surveying. Property underlying those easements belongs to the homeowner or the business, and Eversource does not have the ability to grant Kinder Morgan, or anyone who is not engaged in transmission work, on the rights-of-way or easements.

She provided the example of powerlines in the back of a home; in that instance the homeowner would own the land/easement the powerline goes over. In that instance, permission to be on the property would have to be gained from the home owner.

Councilor Vaillancourt commented she heard, unofficially, that Kinder Morgan had approached the Merrimack Village District (MVD). She questioned if that could be verified. She also heard the MVD responded they would only be interested in meeting with Kinder Morgan in a public session. Town Manager Cabanel stated she spoke with Ron Miner who is the Chief Executive Officer of MVD. He stated they had received a formal request from Kinder Morgan to attend one of their meetings. That public meeting date has not yet been set. Mr. Miner stated he would notify the Town Manager and/or the Assistant Town Manager, after which the Town Council would be informed.

Councilor Dwyer commented, at the onset of the workshop with Kinder Morgan we were all taken aback by the different changes in the maps. A lot of things were said and a lot of things were unsaid as he, for one, was unprepared for the changes that were presented. He commented he has had two weeks to think about what transpired at that meeting, and has not felt good about it. He stated he was not necessarily looking for a motion at the end of his dialogue, but perhaps some feedback from his colleagues.

Councilor Dwyer stated the desire to set a different tone. Two weeks ago, and almost a month ago, the Council was united in the tone relative to the survey agreement being take it or leave it. Now a month has gone by and he has had somewhat of a change of heart. The take it or leave it attitude worked at the time, and now he is unsure if that attitude and philosophy is doing any good. He wishes to have more of an open dialogue with Kinder Morgan. He commented if the Department of Energy wants this pipeline built it seems to him that it is going to be built.

Councilor Dwyer stated when he brought up the survey agreement at the meeting he got a little flak from management and was kind of taken aback because the gathering was billed as a workshop. To him everything was on the table with regard to discussion. He would like to have a different philosophy, hopefully openness. There seems to be a new team from Kinder Morgan trying to make different strides. There has been a lot of baggage over the past nearly year since this has started. He is trying not to put the past mistakes of others on those who are working on moving forward.

Councilor Dwyer remarked we are at the 11th hour of this project. They are human just like us, and when we get nasty they can get nasty back. They've got power behind them to be nasty, and they can

say well we are going to put this wherever we want it, and he does not want that to happen. He stated his hope the Council can move in a direction where we can let them in to talk to us, and end the acrimony.

Councilor Dwyer stated he was shocked and taken aback by remarks made by the citizenry during the workshop. He commented when people start using the word Nazis, and start throwing that term around, he has to remind people how inappropriate and how embarrassing that was for him. When the Nazi party in Germany, as everybody knows, was responsible for the extermination of 6 million Jews, and World War II resulted in over 30 million deaths, it is totally inappropriate, just because you don't like their company, to make references to that word and that group. It is inappropriate. He has regretted that he didn't speak up and call that person out for using that term every day. He added, you don't know what Jewish people look like. It isn't as easy as an Asian or a black person. There could have been people from Kinder Morgan of Jewish heritage sitting at that table that night. He reiterated it was an embarrassing night for him, he didn't think the meeting went that well, and he would like to move forward.

When asked if there was any further information relative to the survey agreement, Town Manager Cabanel responded the last she heard was there were two areas of concern. The real stickler is the confidentiality agreement. Town's counsel has advised the Town should simply state it will abide by State laws as it relates to that. The other issue was language within the document that states if Kinder Morgan were to access road rights-of-way they would not go beyond what looks like a road or a sidewalk and get into someone's lawn, etc. Their response was well what if someone gave us a survey agreement. They want the Town to put in writing that if they have a survey agreement that does not apply.

Town Manager Cabanel continued noting the confidentiality agreement is required by the Federal Government because there are certain things that need to be redacted from the reports, e.g., endangered species, etc. She stated her belief there could be a creative way to get around that by having them redact that information or provide it to legal counsel or the Chairman of the Conservation Commission to remove that type of information.

Councilor Rothhaus stated disagreement with the first issue based on the amount of time and effort the Council has put into that. Another change to the agreement could come at a cost of an additional \$250. He believes they have tried to accommodate just to be faced with a different issue with each rendition. As has been pointed out, the FERC makes the final decision. The job of the Council has been to point out what is seen as impediments to that project, e.g., environmental concerns, neighborhood concerns, schools, etc. By having focused so diligently on that, he believes the Council has done a good job in that regard and he believes the original proposal will be the ultimate path they will take. Had the agreement not gone back and forth so many times, he might be on board with that direction, but he believes the Council has taken that approach over and over again.

Councilor Dwyer commented up until a few weeks ago he agreed. He always thought the powerline corridor was going to be their #1 option. Now he is not sure. He actually believes they are trying not to go to the Whittier neighborhood, and that the options they have presented are realistic; options such as going behind Fidelity, up Route 3, etc. He stated his belief they are listening to us, and he would not want to shut down the opportunity for open communication and a willingness to work with them if

we can persuade them to stay out of Whittier. He stated his belief if we have a better relationship with them that mission could be accomplished. Some might say at the expense of neighborhoods on Tinker Road. Of course, that is the whole point of pitting one route against the other. The best case scenario would be the least amount of affected homes. Their process seems to indicate that they don't mind the railroads and the roads, and the business community seems to be more conducive to saying yes. The metering station is still up in the air. It could be Budweiser property, at the sewerage treatment plant, etc. There are options on the table.

He reiterated he was not looking for a motion to count votes on a change of strategy; more of just a different way to talk. If we are that close, he truly believes Whittier could be off the map.

Councilor Boyd stated he too has spent the past two weeks thinking about the last meeting. He looks at the idea of having a new approach or a greater willingness to collaborate with Kinder Morgan from two perspectives; everything hinges on what the FERC decides the route will be, and if you accept the premise they are going to use the original route they proposed, he agrees with Councilor Rothhaus that we need to stand by what we said as it relates to the survey agreement. That was crafted predicated on that original route, but he agrees if they are sincere about wanting to avoid the neighborhoods then we do need to have an open mind as to how that route impacts Merrimack. It may mean that we have to do a brand new agreement. Until a route is known, he has to accept what was proposed as the original route, and we need to stand by the survey agreement we are willing to sign.

He commented, up until this time, they have not given him a reason to believe what they have to say. They have been in our community and 16 other communities for the past 5 months, and now they have to make a filing in less than a month. Over the last 5 months they have not collaborated with the towns, business owners, and owners of properties proposed to be impacted by that particular route. They have had 5 months to do all of this work, and, in his opinion, they have not done the work.

Councilor Dwyer suggested it may be that we have been looking at the wrong angle by saying Plan A was the powerline corridor, and then all of these changes, and we have gotten upset about Plan A, Plan B. There are 7-8 different lines. If you look at what they are supposed to do, he came to the conclusion that is the nature of their job, they are actually supposed to do that. They are supposed to come up with, when they first bought into New Hampshire versus Massachusetts, here is our Plan A, but then their due diligence was to come up with a dozen different paths. Vice Chairman Mahon stated they were ordered by the FERC.

Councilor Dwyer stated this is the nature of their business. In a way they have done what they were supposed to do. We are seeing it as they are always changing things. The more he thinks about the process and what they are supposed to do under the FERC guidelines, he sees they are supposed to offer multiple routes. At the end of the day, they will give you what they think is their best one.

Councilor Boyd remarked they have had 5 months to present those 10 different routes. They have had numerous opportunities that they have squandered to be transparent and work with the community. Councilor Dwyer suggested 5 months may not be that long in the scope of things. He reiterated all he wanted was a dialogue, to think a little differently than he has for the past 5 months. Councilor Boyd stated his feeling, it may be that some of the fears of the citizenry may have been lessened had they been communicating with the towns over the past 5 months and been transparent. If nothing else, the

public would have an understanding of how they are approaching the different routes they are proposing. Instead they attend a Town meeting at the 11th hour and present a route no one had seen previously.

Vice Chairman Mahon reminded the Council there are two issues remaining with regard to the survey agreement; the confidentiality piece and the access to adjoining properties. He suggested if they wished to turn over a new leaf they could have done that on Monday or Tuesday morning by picking up the phone to inform the Town that crews would be in the area and the authorization from Eversource to do so would be provided. Instead they simply showed up. After creating chaos they brought the authorization in. He commented it is a two-way street, and we have not seen anything coming from the other direction.

Councilor Vaillancourt stated her disagreement with remarks made by Councilor Dwyer. She believes it would be naïve to think if we agreed to those two points, they are going to sign the agreement. As was said, that opportunity has existed for months. With regard to taking a different approach and not wanting the interactions to be nasty, she believes the Council has been incredibly accommodating and willing to work with them. She does not believe it to be good faith negotiations when they come to the table with a route that had not been seen prior to the public meeting. She has no interest in revisiting the agreement.

Councilor Koenig stated he tends to lean more towards the suggestions made by Councilor Dwyer than not. However, he understands everyone's thoughts and frustrations. He is not excited about re-opening negotiations. If, for some reason, the Council heard that there is Federal law that requires that they keep certain stuff confidential that we don't have, by State law, to keep confidential, he is okay with that information being redacted from what they give us. He is willing to allow for them to make some tweak or adjustment to that affect; saying we will not make you sign the confidentiality agreement, but we will withhold the information that Federal law requires we withhold. The idea of modifying the language so they can go on someone's property that has an agreement is ludicrous, and we don't need to bother with that. He noted he is not anxious to spend a lot more money on legal counsel. If they come back sincerely with something they are willing to sign that has minor changes he would be willing to sign it, and move forward with it just so they cannot go to the FERC and say they slammed the door in our face and we can't do anything.

Town Manager Cabanel stated the last correspondence she received from legal counsel is that they have washed their hands of her and that they want to come to talk to the Council. She informed legal counsel neither the Town Council or she are attorneys, and, therefore, are not qualified to modify the agreement.

Councilor Dwyer clarified he was not looking to renegotiate the survey agreement, the crux was to have more of an impact with getting them to put the pipeline in a different location. It looked like the last few options they have provided took it out of the Whittier neighborhood. That was his focus with not wanting to be perceived as in shut down mode. Vice Chairman Mahon stated the Council has not shut down anything. Councilor Dwyer stated he would like to know that the Council would be able to communicate with them in an effort to say if you could go down that way instead that would be great. Councilor Vaillancourt stated her belief that is what the Council did during the last meeting. The Council identified issues of concern with certain locations. She does not know how she could say you

can't go near the Whittier neighborhood, but it is okay if you blast through the houses on Tinker and Thornton. During the meeting, the Council identified concerns with the original route proposed and tried to identify concerns with the alternate route presented that night.

Vice Chairman Mahon stated the Council has not asked anything more of Kinder Morgan than has been asked by other communities. Not one thing the Council has presented to them in terms of concerns was new to them. He believes one of the things Kinder Morgan wants the Town to do is say we want this route so when they go to the hearing they can say they want this one. The Council has stated no we will not give you a route we will give you our concerns, and that is what we have done.

Town Manager Cabanel commented she no longer knows what her role is. Two representatives came into her office on Friday and stated they were just dropping by and wanted to say hello and talk about whatever she wished to talk about. Someone came into the Assistant Town Manager/Finance Director's Office the other day as well. She reiterated she is unclear on her role. Councilor Vaillancourt remarked no one should be allowed to just drop in on either one of them without an appointment. They have no business doing that, and should be turned away. If they have something new, something specific they feel they need to communicate, that information should be provided in advance of agreeing to meet with them. She suggested they be directed to Chairman Harrington.

Town Manager Cabanel spoke of having an open door policy. She allows anyone interested to come into her office, but she has nothing to say. She is not authorized to say anything, and her position does not allow her to have an opinion even if she had one. She commented she assumes she will just politely have to tell them she cannot speak with them, and that they need to talk to the Council or Chairman Harrington.

Vice Chairman Mahon stated that would be the right course of action, except the Council has just stated they are not interested in meeting with them over the survey agreement. Councilor Vaillancourt stated they could request an agenda item and talk with the Council. Councilor Boyd commented on the number of emails the Council has received from the Town Manager informing that someone has stopped by and has been informed by her that the correct course of action is to request an agenda item. Vice Chairman Mahon remarked it sounds like they have been given instructions but no direction; get this done.

Councilor Boyd spoke of having a friend that resides on Thornton Road West who had concerns about the route Kinder Morgan brought forth at the last meeting. He visited with him and showed him the route. He communicated that part of the property owned by Pennichuck has an easement with the Society for the Protection of New Hampshire Forests (Society). Councilor Boyd questioned if that is accurate. Vice Chairman Mahon stated it is. Town Manager Cabanel stated she reached out to Don Ware, Chief Operating Officer, the previous day to ascertain where the easements are. When she was matching them up to the map she realized the last map received from the Nashua Regional Planning Commission (NRPC) actually shows those easements. Where you see green on the Pennichuck parcels those are the easements. That pointed piece that kind of sticks up at the bottom of Fidelity's property is all under easement and also some underneath Continental Boulevard.

Vice Chairman Mahon noted that was covered in the letter to the Attorney General. Councilor Boyd remarked he did not know to what extent they had easements in that area. Vice Chairman Mahon

commented there is a fair number. When they offered those properties to the Town, they wanted some considerations. Instead they went to the Society and made agreements with them to try and protect the land in those areas.

- **Action Items**

- Continue to press Kinder Morgan for a Public Meeting in Merrimack - **Meeting held 3/26/15**
- Place an action item on Feb 12th agenda requesting the council to take no action regarding request from Kinder Morgan to survey town-owned parcels until Merrimack Public Meeting - **Completed**
- Place NED Pipeline Update on future council agendas - **Completed 2/12/15**
- Update list of properties that directly about proposed pipeline route with a list of properties that fall into pipeline hazard zone - **Completed**
- Consider consultant to:
 - Research communities' property value effects of recent pipeline installations - **Engaged Avitar**
 - Evaluate impacts on the sewer line - **Engaged Wright Pierce**
- **Reviewed first draft. Final Report should be provided by 6-5-15.**
- Support Conservation Commission's efforts to update data for environmental impacts on HHNP and Gilmore Woods - **Ongoing**
- Support Merrimack Village District's efforts to protect Wellhead Protection Zone and Aquifer Protection Zone - **Ongoing**
- Request Kinder Morgan list of abutters notified of project and requests for permission to survey – **At the 4/28/15 meeting, Town Manager Cabanel asked Jim Hartman, Kinder Morgan Principal Land Specialist, for map and lot numbers of affected land owners and was denied the request.**
- Work with property owners to develop a list of who has been notified of the project and requests for surveys - **Completed**
- Maintain contacts at FERC and NH Congressional delegation - **Ongoing** (NH delegation attends Managers meetings)
- Consult with PSNH (Eversource) regarding where they are in the process with Kinder Morgan and Public Utilities Commission - **No response - No contract between parties (4/23/15)**
- Consult and share information with large companies (A-B/InBev, Elbit, Premium Outlets, Fidelity, PanAm, PSNH, Pennichuck, etc.) - **Meeting held 2/26/15; will be ongoing**
- Section 106 of the National Historic Preservation Act of 1966 (NHPA) - **Pending formal application**
- Council voted to stand in strong opposition to the NED pipeline - Send letter to Governor/Federal Delegation
 - Letter to Governor - **Letter sent 4/14/15**
 - Letter to Congressional Delegation - **Letter sent 4/14/15**
 - Letter to Local Reps - **Letter sent 4/14/15**
- Council to continue attempts to settle on the Survey Access Agreement with Kinder Morgan – **Ongoing (between the Town's legal counsel and Kinder Morgan's legal counsel). The agreement is being "actively worked".**
- Town Council Letter to the FERC re: Town and TGP Survey Access Agreement Negotiations - **eFiled 9/4/15.**
- Town Council Letter to the FERC re: Amherst Alternative Route 1 Impacts to the Town of Merrimack - **eFiled 9/4/15.**

- NH Municipal Pipeline Coalition Letter Re: Oversight of FERC and Approval of Gas Pipelines **(9/14/15)**
- Letter to FERC re: Additional Scoping Comments from the Town of Merrimack specific to a Meter Station sited in Town - **eFiled 9/30/15**
- Letter to FERC re: Response Request from TGP and Request for Additional Extension of Scoping Period - **eFiled 10/16/15**
- Town Council Workshop with Kinder Morgan representatives - **held 10/8/15**

Comments From the Press and Public

Gina Rosati, 15 Dunbarton Drive

Stated she is formerly from Newton, MA, which is the home to many Holocaust survivors including her Kindergarten best friend's parents who were both Auschwitz survivors. There are so many Holocaust survivors there that they designated an entire wing of City Hall to a Holocaust memorial. She stated she is very vested and concerned about the Holocaust. She stated she did not say they were Nazis, she was making comments about war, comments about the Nazi's role in the war, about bringing in poison gas, about taking things that were not theirs. She remarked if she struck a nerve, she is sorry.

Ms. Rosati stated she called the FERC, and asked about the scoping session. Even though that time period is over, people can still send in letters. They said that they have received an unprecedented amount of letters, and that they will be looking very closely at this. She questioned if the Town has a chance, and their response was yes you do; this has been the most controversial pipeline that they have ever worked on. They said to keep the letters coming. Ms. Rosati remarked one of the things she learned was that every letter you send gets put into a different pile. If you are concerned about water you send a letter about water. Every letter should address something different. There is a year, and they will listen until that time runs up.

Debra Huffman, 60 Amherst Road

Commented she thinks she had just heard that they have agreed to have a Town representative with them when they conduct surveys on Town land. Vice Chairman Mahon stated that is not the case. Ms. Huffman remarked that was the big sticking point a few months ago. We held our ground, and from what she just heard they have agreed to that now. That would be some progress.

Ms. Huffman commented it sounds to her as if legal counsel has advised the Town to have intervener status. She noted that has to happen within 21 days of Kinder Morgan filing. She remarked if you believe there is a significant chance that this pipeline will come to fruition, this might be a good time for staff to review our rules and regulations about industrial construction.

Tim Tenhave, Chairman, Conservation Commission

Noted intervener status is something the Commission will be considering. If legal counsel has provided an opinion, he would like to see that information. With regard to the alternate route proposed, a survey agreement will have to be put together with them through the Commission.

Councilor Vaillancourt stated she watched the School Board meeting this past week, and the Chairman incorrectly stated that he believed that only public entities could file for intervener status. That is not accurate. Individuals who have a vested interest have that right. Vice Chairman Mahon stated his understanding having intervener status does not give you free reign. It is very limited in what you are able to pursue.

Wendy Thomas, 10 Wildcat Falls, Merrimack

Stated agreement with the remarks made by Councilor Dwyer. In her opinion the workshop with Kinder Morgan was disgraceful. Not because a landowner stood up and was passionate about what was a threat to her land, which was presented that night for the first time, it was disgraceful because of the constant lies from Kinder Morgan. The meeting was disgraceful with the ambush of a new pipeline route at the beginning of the meeting, because of the misstatements regarding the Whittier neighborhood, and in that they did not contact the business owners. Some business owners were finding out about the pipeline at that meeting.

With regard to the route, which they stated they checked with the Department of Transportation (DOT) about, that ran up alongside the mall and Route 3 and Exit 10, if they did that, Route 3 would be shut down every time they blasted. That would be one blast after another after another. Kinder Morgan also says their best practices stipulate that they don't have a pipeline near a highway. It does not make sense that they would use that route.

If they put that in there, Exit 10 would be closed, at least temporarily, which means all of the mall traffic would be diverted to Exit 11. The Saturday morning car wash kids will be thrilled about that, but if you have been at Exit 11 during rush hour, it is a mess as it is. If all of the traffic is diverted there, there will be the need for police presence.

James Ferreira, 7 Maryann Lane

Commented what makes a good relationship is open, honest communication. He feels Town and the Council representing the Town has been more than open with Kinder Morgan. He spoke of the number of months the Council continued to invite Kinder Morgan to participate in a public meeting and the number of times they have declined. At the 11th hour we are at the point of who will blink first. The Town has stayed strong this entire time, and we need to finish it.

Mr. Ferreira stated once the FERC receives Kinder Morgan's final submission, there are other scoping meetings that will be held. He noted he spoke with Mr. Tomasi, Environmental Engineer, FERC, at length about this at the last Rindge meeting. Public comments will be opened up again, and it goes through this whole similar process again for months before that committee submits it to the FERC five board panel to make the ultimate decision. Again, there are still the Federal Courts as a last option.

Mr. Ferreira stated the bottom line is if you don't comment to the FERC as either an abutter or affected property owner, they take your silence as you are okay with this pipeline. He spoke of Kinder Morgan having promised to provide updated maps, and asked if that has occurred. He stated Kinder Morgan

did enter his property. He has 5 acres of easement with the powerlines on property he owns. They were on his property and claimed they don't know where public versus private is.

Recognitions, Resignations and Retirements - None

4. Land Purchase Approval

Submitted by Conservation Commission Chairman Tim Tenhave

Merrimack Conservation Commission is seeking Town Council approval to purchase (4) parcels of land known as Tax Map 5A/003, 5A/065, 5A/065-1, and 5B/001 located off South Grater Road, pursuant to RSA 36-A:4.

Tim Tenhave, Chairman, Conservation Commission, remarked the time and effort expended to purchase these parcels dates back to before Grater Woods was Grater Woods. Over the years, a variety of inroads were made, discussions began and came to an end. Late winter/early spring Commissioner Boisvert had a nice conversation with a member of the Nash family, and all of a sudden the door opened.

The Conservation Commission operates under RSA 36-A. RSA 36-A:4 states the Commission is able to purchase real property only with the approval of the Town Council. Before authorized to expend funds, the Commission is required to conduct a Public Hearing, which was held on October 19th. Although members of the public were present, no comment was provided.

The four parcels were identified as Tax Map 5A/003, 5A/065, 5A/065-1, and 5B/001. Three of the parcels are owned by the Conservancy Foundation, Inc. and the other by Second Generation LLC and members of the Nash Family and Trust. It was initially believed that all four parcels were owned by the Conservancy; however, a Title search revealed that was not the case. Although under different names, they are all made up of members of the Nash family.

The purchase is for approximately 152.43 acres at a cost of \$431,600 (\$2,800/acre). The Conservation Fund (Fund 53) will be utilized to cover the cost of purchase price, recording fees, attorney fees, and any other related costs. A stipulation within the Purchase & Sales is a requirement to purchase all four parcels. They are sold "as is" for conservation purposes only, which is language already included in the Deeds. The sale is contingent upon the Public Hearing and approval of the Town Council.

Mr. Tenhave commented when the Commission began looking at this property he asked the Town Manager to speak with Loren Martin, Contract Assessor, to identify the value of the parcels. As this is somewhat of an unusual situation, Ms. Martin used her closest comparable, and generated a total value that equated to \$777,500. The last parcel that was purchased for Grater Woods, Tax Map 5A/002, was valued at \$3,600/acre. In 2003, Tax Map 5A/001 (15 acres), which is in the general vicinity, was about \$9,000/acre.

The Conservation Fund has a balance of approximately \$1.192 million. The proposed purchase price of \$431,000 will lower that fund to about \$760,000.

Mr. Tenhave noted the Conservancy parcels have clean titles. There were concerns with parcel 5A/065-1. When that parcel was turned over from Mr. Nash and Mr. Tamposi to the Second

Generation LLC, the description didn't properly describe the property, and therefore it wasn't an appropriate transfer title wise. In working with the Nash family and legal counsel, the decision was reached that it was best to get all potential parties who have any claim to this one parcel to sign off on the Purchase & Sales and on the Deed that they relinquish any claim to these properties. The Deed that will result from that will be a Quit Claim Deed not a Warranty Deed. The only time this would be an issue is if, at some point in time, the decision was reached to sell the parcel. We would only be able to provide a Quit Claim Deed. The only option counsel felt could get around that would be to re-open, through probate, Mr. Nash's estate, which was not something the family wished to go through. Legal counsel for both parties is comfortable with this solution. Anyone who can lay any claim to the parcel has signed off on the Purchase & Sales and will sign off on the Deed.

Mr. Tenhave displayed a map highlighting the property area (can be viewed [here](#)). Also displayed was a map that outlined what he termed as the bigger picture. He outlined the area of the Chestnut Hill Subdivision noting, as part of that, they have agreed to provide an easement to the Commission over their open space. Assuming the Council approves the purchase of the four parcels, Grater Woods would expand by 100 acres.

The purchase expands Grater Woods, which is a critical conservation focus as defined in 2010 by the Biodiversity Conservation Plan. The Town Master Plan update of 2013 listed this as a significant parcel of land for acquisition and conservation. The parcels are within an area designated by New Hampshire Fish & Game as the highest ranked habitat.

Mr. Tenhave stated the request before the Council was to approve the purchase of these parcels and allow the Town Manager to sign all necessary documents. He noted the desire to close before November 10th, which is the date stipulated in the Purchase & Sales Agreement.

Councilor Koenig questioned the stipulation that requires all four parcels to be purchased. Michael Boisvert, Conservation Commission, responded during the negotiations when it was discovered the Title to one of the parcels was not as clean as the rest, it was point blank stipulated it is all four parcels or none. Mr. Tenhave stated if only the three were purchased the seller would have been left owning a parcel that was completely land locked to them.

Councilor Koenig requested the parcel that is landlocked be identified on the map. He commented his concern would have been if it were one of the parcels that abuts the individual properties, which is also the one that landlocks the large area of land above it. Mr. Tenhave stated discussions have taken place with the individual who owns the first right of refusal on the large parcel. He has made it clear, at this time, he is not thinking about developing any of it, but may develop a piece at the end of the cul-de-sac looking (10-30 acres of the 130 acres). He would entertain either donating or, at a very reasonable cost, selling the rest of it. The owner was informed of tax advantages of selling the property at a reasonable cost.

Councilor Koenig questioned if the previous purchases cited were values associated with commercial use values versus conservation values. Mr. Tenhave responded the cost closest to the proposed purchase was for a piece of Grater Woods. When it was deeded it had all of the conservation restrictions put on it at the same time.

Councilor Rothhaus questioned if the Conservancy properties would be able to come out of conservation and used for other purposes. Mr. Tenhave remarked the deeds state for conservation purposes only. To take that out of the deed would require a legal process to be gone through. Councilor Koenig questioned, if the purchase were not to occur, is it possible for that land to be taken out of conservation and made commercial property. Mr. Tenhave remarked conversations he had with Attorney Upton a few years back stated it would be an extensive legal activity to remove the conservation aspects placed on the deed as they are already part of the deed. He said nothing is impossible.

Councilor Dwyer questioned if the purchase would deplete the Conservation Fund to a less than desirable balance. Mr. Tenhave stated he is not concerned. He noted there are few available large parcels remaining that the Fund would be used to purchase. The Commission is in discussion with other entities regarding how the Commission might be able to leverage other people's money as well. The current structure of the land use change dollars allows the Fund to be replenished up to \$1 million with a 50/50 split with the Town as lands come out of current use.

Councilor Rothhaus commented he has always had concern with amassing a significant amount of cash for the possibility of a future purchase. He used to wage that battle, and no longer does because the Town has spoken loudly about how they appreciate these properties. He remarked it can be seen on the map how the Commission is looking towards being able to continue to add contiguous areas of land. Mr. Tenhave commented there is the need to retain a few hundred thousand dollars for maintenance.

Councilor Dwyer commented that was his concern. However, the Commission has been very diligent and hard working on that, and he would not second guess their comfort zone, but instead have complete faith if they feel the remaining balance would be adequate.

Councilor Vaillancourt stated her support for the purchase. She spoke of the amount of time and work the members of the Commission put in for the benefit of the Town, and how fortunate the Town is to have such volunteers. She touched upon the efforts that have been put forth, over numerous years, to purchase these parcels.

MOTION made by Councilor Boyd and seconded by Councilor Vaillancourt to approve the purchase of four (4) parcels of land in the Town of Merrimack known as Tax Map 5A/003, 5A/065, 5A/065-1, and 5B/001 located off South Grater Road, pursuant to RSA 36-A:4 in the purchase price amount of Four Hundred Thirty One Thousand Six Hundred Dollars (\$431,600) and furthermore that the Town Manager and/or her proxy be authorized to sign any and all documents necessary to perfect the transaction on behalf of the Merrimack Conservation Commission

ON THE QUESTION

Councilor Koenig questioned if it was necessary for the motion to include in the motion the cost of fees, etc. Town Manager Cabanel clarified the approval required of the Council is related to purchase price of the property. Mr. Tenhave added the Commission is seeking approval to make the purchase. The Commission is authorized to expend the funds.

MOTION CARRIED

6-0-0

Appointments

1. Merrimack Public Library Update

Submitted by Library Board of Trustees Chair Jennifer Jobin and Library Director Yvette Couser
Town Council to be presented with an update on the library.

Jennifer Jobin, Chairman, Library Board of Trustees, stated the Trustees held their retreat meeting following their April elections, where they discussed goal setting for the coming year. They decided this year would be a continuation of the previous year focusing on finishing up housekeeping items that had been let go for some time. Some of those tasks include reviewing and updating all library policies, reviewing and revising the staff manual, ensuring all staff reviews are done and job descriptions revised. One goal was to be able to add alternate members to the Board. The Bylaws allow for alternates; however, the Town Charter does not address alternate members.

Vice Chairman Mahon stated the need to request a change in the Charter. He commented it would be a minor change and similar to what has been done in the past for others. Councilor Boyd stated his recollection the library is governed by State law, and there are specific requirements. Ms. Jobin noted State RSA allows for alternates. Vice Chairman Mahon remarked it is easy enough to put together a proposal; however, given the lead time necessary for drafting of the language, etc., that process should begin now in order for it to be placed on the Ballot in April. Town Manager Cabanel questioned if the Board currently has alternate members, and was told it does not. She questioned the number of alternates the Board wished to have. Ms. Jobin stated the Bylaws currently identify 1 alternate member. State RSA says no more than 3. If the Charter were amended to allow for three, that would be beneficial.

Councilor Boyd questioned if alternate members would be elected positions. Ms. Jobin stated the Statute reads: "The Library Board of Trustees may recommend the appointing authority the names of no more than 3 persons who may serve as alternate members." She stated her belief the Town Council would be the appointing authority. Vice Chairman Mahon requested the Statute be reviewed for clarification, and that the information be provided as soon as possible so that the proposed language can be reviewed by counsel. Ms. Jobin noted another issue the Board is looking to address is the updating of its Bylaws.

Ms. Jobin remarked they continue to weigh expense of continued repairs versus the possibility of a new library in the future. The current goal is to continue to be good stewards of the current building, and to maintain a safe and comfortable atmosphere for patrons and staff. Current building projects include the north window, which is scheduled to be replaced next Tuesday. Quotes are underway for security cameras and a security lock system. The skylights/windows will be tested for leaks. The roof had been redone, and a water test was performed, which had good results. A few weeks ago, during driving rain, water was coming in. It is believed that is coming in through the windows. The water test will hopefully determine the origin of the leak. A slate roof patch repair will be done on the original portion of the building. Water was coming in last winter as the result of ice dams backing up. The Capital Improvement Plan (CIP) identifies a full replacement in the future.

Town Manager Cabanel questioned if the library has looked into funds generated by the moose plates. Ms. Jobin stated it has been discussed. Town Manager Cabanel stated they offer quite a bit of funding to update libraries, particularly the older parts like slate roofs, etc.

Yvette Couser, Library Director, remarked when she came on board in 2009 she was made aware of a study done by the Building & Marketing Committee where the challenge was put to staff to weed out 10% of the collection. As a result, the Lowell Room has become a reading room and a second meeting room, they have freed up seating area for patrons in the children's room, and in June, with the help of the Trustees, they created a dedicated teen area. The previous teen area was located at the north window and was somewhat tight. Director Couser spoke of increased traffic by the teen population. The Youth Services Librarian took a closet that wasn't being utilized and made it more of an attraction; manga closet. Grant funding was received and used to purchase teen furniture to continue with the momentum of reinventing the teen space. Magazines were relocated to the north window. That collection has been weeded. There is now a seating area near the window.

Next on the list is to rearrange the main floor from circulation to the magazine area so it includes the reference desk, circulation desk, patron computers, etc. (December/January timeframe). She commented they were experiencing difficulties with lack of privacy when patrons at the reference desk could be overheard. There are instances where the information gathering the staff member is assisting with is of a personal/private matter. This will also free up space at the circulation area where the tile is so that more patron seating can be created.

Covered drinks are currently allowed in the library, and the question will be asked of allowing certain types of food as well. They will be creating a self-hold shelf. Currently when a book is requested from another library, a hold is placed on it, it is placed on the shelf behind the circulation desk, and patrons have to ask staff to retrieve it. With a self-hold shelf the patron can grab the book off the shelf and check it out themselves.

Director Couser stated the new website went live on Columbus Day. It was paid for by the Merrimack Public Library Development Fund Committee. A web developer, who is also a Librarian, came to New Hampshire from Rhode Island to train staff. Several employees have had some training on how to update the site. The old site was not user friendly or visually pleasing, and could only be updated on a single employee's desk using File Transfer Protocol (FTP), which is outdated. The current site can be updated from anywhere, including outside of the building. It was noted there is an opening on the Development Fund Committee.

Director Couser stated the library recently worked with the Parks & Recreation Department, the Public Works Department, and the Friends of the Library group to purchase a little free library that was installed at Wasserman Park by the playground.

The Annual Turkey Shoot - Night of Raffles Fundraiser will be conducted on the Thursday before Thanksgiving. Funds raised will be utilized to purchase a 3D printer, which is made in Merrimack by Turnkey Industries. The company is new to Merrimack, and approached the library a few weeks ago to do a presentation on 3D printing. Demonstrations will also take place during the Turkey Shoot at the high school.

Vice Chairman Mahon spoke of how pleasing it is to see the activities that are taking place at the library.

Councilor Vaillancourt questioned how one would be kept apprised of the capital projects, e.g., results of leak tests, etc. Town Manager Cabanel spoke of the CIP, which is produced on a yearly basis, and identifies projects planned for the next 5-6 years. Councilor Vaillancourt questioned if the repairs being conducted at this time were unanticipated. Ms. Jobin responded they were projects smaller than those identified on the CIP. The window issue has been known for some time. It was known the slate roof would have to be repaired/replaced at some point in time, and after dealing with water coming in last winter, it became apparent it has to be addressed sooner rather than later. She suggested anyone interested join the library email list to be kept apprised. It was noted board meetings are televised, and after each meeting the Trustees take turns writing reports to go into emails.

Director Couser stated recent submission for the CIP includes the security cameras and passcards. That was done as a way of planning ahead for a large expense.

Councilor Boyd noted the library has come before the Council in the past when situations arose that were an emergent need such as the roof issues that were addressed within the past year or two. Ms. Jobin stated they came before the Council last December when the cost of the roof had gone beyond original estimates. The additional funds were identified in Trustee monies, eliminating the need to make a request of the Town.

Legislative Updates from State Representatives - None

Town Manager's Report

The Department of Revenue Administration finalized the tax rate. The new tax rate is \$24.72. This represents an increase of 63 cents from last year. The Town's portion of the tax rate is \$5.49, an increase of 3 cents from last year. Please anticipate that tax bills will be mailed within the next week or two.

The Town will be accepting bids for the Bean Road and McGaw Bridge Road bridges. Estimated completion date is scheduled for November 2016 for both.

The Town of Merrimack is accepting applications for Public Works Director. This position has come about with the retirement of Richard Seymour. More details can be found on the Town's website.

The next Household Hazardous Waste collection will be held on Saturday, November 7, at the Nashua Public Works garage at 9 Stadium Drive from 8:00 a.m. - Noon. For a list of acceptable materials please check out the Merrimack Solid Waste Division site on the Town website. There is a fee of \$10, which covers 10 gallons or 20 pounds of materials.

Consent Agenda

1. Proposed Changes to Chapter 183, Vehicles and Traffic [Final Reading]

Submitted by Police Chief Mark E. Doyle

The Town Council to consider the proposed changes to Chapter 183 - Vehicles and Traffic, of the Town Code, to add a section restricting through traffic on Valleyview Drive to "Emergency Vehicles Only" between tax map parcel 5C/142 and 5C/148, pursuant to Charter Article V, Section 5-4.

MOTION made by Councilor Boyd and seconded by Councilor Koenig to move the Consent Agenda. MOTION CARRIED

6-0-0

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 individual to a Town committee, pursuant to

Charter 4-8:

Amanda Yonkin (Agricultural Commission - *Full member*)

Vice Chairman Mahon stated he, Chairman Harrington, and Bob McCabe, Chairman, Agricultural Commission, interviewed Ms. Yonkin. He spoke of the long association the Yonkin family has had with agriculture and animals.

MOTION made by Councilor Boyd and seconded by Councilor Rothhaus to appoint Amanda Yonkin as a full member of the Agricultural Commission. MOTION CARRIED 6-0-0

2. Heritage Commission Programs / Merrimack Historical Society Discussion

Submitted by Heritage Commission Chair and Merrimack Historical Society President Anita Creager

To update the Town Council and discuss matters concerning the Heritage Commission and the Merrimack Historical Society.

Anita Creager, President, Merrimack Historical Society/Chairman, Heritage Commission, noted the Bylaws for the Historical Society identify the requirement for an annual audit, and stated, to her knowledge, that has never occurred. She questioned how to go about having that done.

Assistant Town Manager/Finance Director Micali responded they are really too small to have an audit. An audit would run at a minimum cost of \$10,000. That does not even represent 1/5 of what they have. He stated his recollection the Heritage Fund has a balance of \$25,000, and that is audited along with the Town portion. The Historical Society is different in that they are given \$3,000 to \$5,000. They spend maybe \$10,000 - \$12,000 a year in expenses.

Ms. Creager questioned if the right course of action would be to remove that language from the Bylaws. Vice Chairman Mahon stated that is an option. Assistant Town Manager/Finance Director Micali suggested they could have someone do a compilation. He stated if the desire of the Council, he and/or his staff could perform that task. Vice Chairman Mahon responded the desire would simply be to ensure reasonable practices are being followed. Assistant Town Manager/Finance Director Micali stated a review could be conducted of the internal controls, meeting minutes to ensure they are voting on expenditures, etc.

Ms. Creager stated they are ready to work towards putting a budget together. Assistant Town Manager/Finance Director Micali stated his availability in the following week.

Ms. Creager remarked for about 15 years, the Historical Society has been looking for a better home. For some time, they have discussed the hope they could identify and acquire, hopefully through gifting, a historical property along Route 3. Their dream is sometime in the future, if such a place were to be available, to be able to pick up and move the schoolhouse to that location. That could be possible based on the fact the church has been trying hard to acquire the Society's land. The deed says if it ceases to be the Historical Society it goes back to the School Board. The hope of the Society would be that a location could be identified and acquired and that the church purchase the land at a price sufficient to cover the cost of moving the school house.

A possible location that has been discussed for the past 10 years is the old fish hatchery. It is a separate lot. Ms. Creager spoke of the efforts put forth five years prior that did not result in any response. The house that is currently on that particular piece of land has been leased to St. Gobain. There is also a storage shed located on the property, which would be convenient for storage. Ms. Creager questioned who the Society should reach out to at the Flatley Corp. to discuss the possibility of acquiring the land.

Vice Chairman Mahon suggested Ms. Creager speak with Tim Thompson, Director, Community Development Division. Mr. Thompson would be able to show her the proposal that was submitted for the development of that property. Councilor Koenig commented when the Planning Board conducted a site walk on that property, there was a lot of discussion about trying to incorporate the fish hatchery into the development of the property to make it a picnic area/destination area for people to visit to see the waterways and things of that nature, and to preserve the barn. He stated his understanding the house was up for removal. He reiterated Director Thompson would be the correct person to speak with to gain contact information.

Ms. Creager commented the Society has considered several other buildings along Route 3 where they would be visible and where parking would be available. Although there are a lot of historical buildings along there, most would never be donated.

The memorial to John Cromwell, which is located on the Anheuser Busch property has deteriorated due to weather conditions. It is going to be removed, repaired, and replaced. It doesn't appear the plaque itself will need to be replaced; it just needs to be refurbished. It is on a flat bolder and accumulates ice, snow, fertilizer (in middle of flower garden), and the black portion background has deteriorated. The intent is, when replaced, that it be put on a slanted bolder.

Ms. Creager stated, at the last meeting of the Heritage Commission a proposal came forward, which the Commission would like to continue with. In the north and south ends of Town there are Welcome to Merrimack signs, which were put there about 30 years ago. Their current condition is an embarrassment. Discussion has taken place around acquiring new signs. The signs were originally placed by the Chamber of Commerce. This afternoon she received a proposal that included two possibilities. The first choice is two upright granite posts with slots in them and a 60x30x2 granite sign into the slot that would say "Welcome to Merrimack; four villages, one Town". The second choice is a solid base into the ground with a slot in it to place the same signage on.

Ms. Creager stated her belief funding is available through the Heritage Commission (estimated at \$1,400-\$1,800 each with a maximum of \$3,000 for two). Another option considered was to approach the Chamber of Commerce to see if they would be willing to support the cost of the signs. Ms. Creager stated the intent to move forward regardless of the funding mechanism. When asked who owns the property the signs are placed on, Ms. Creager stated one is on the property that formerly housed Nashua Corp. and the property on the north end of Town she is unsure of. Councilor Rothhaus suggested it might be in the right-of-way as he believes the road veered off to the west a little as it came up there decades ago. Ms. Creager commented, if necessary, they could consider another location. Vice Chairman Mahon stated the need to research how the signs came to be placed there and who authorized their placement. It could be that they are in the State right-of-way.

Ms. Creager remarked two years ago they were offered a corn crib, which is on private property on Gauthier Road. The man who has it received it from Mr. Kent who wanted it off of his land before he sold it. It is in excellent condition, and is a very interesting corn crib. The request was made to move it over to the Historical Society. The offer was declined as there was no available space for it. Since that time, she has been approached by individuals on Farmer Road that have an ice house on their property, and are thinking of selling their property and getting rid of the ice house. It is also in excellent condition. These items are old historic things that many people don't know about. If the Historical Society were to accept them, they would have to have a place to put them.

Councilor Dwyer suggested the items could be moved to the Highway Department and stored for the Historical Society until a future site is acquired. Ms. Creager was pleased with that suggestion. She noted mention has been made of the possibility of storing them at Weston Park by the river. There is land behind where the trails are. That could be a location to place them where they could be watched by the Police. Vice Chairman Mahon noted the option of Wasserman Park. He suggested Ms. Creager work with the Parks & Recreation Department to determine a suitable location.

Ms. Creager when an electrician was hired to install a new light, he climbed up into the attic, and spoke of how full it was. She had been unaware it was even an attic rather than a crawl space. Everything was taken down, and practically nothing that had been stored up there had anything to do with the Town's history. The decision was made to conduct a yard sale, which generated about \$1,000 in revenue. An individual who does estate sales will be coming in to review what remains. Some of the items remaining include a 1920 typewriter, a 1910 Singer sewing machine, 1880-1940 fiction books, the signs from the Merrimack Bike Shop, etc. Anyone interested in purchasing any of these items before they go elsewhere should contact Ms. Creager.

3. MS4 Update & Request to Withdrawal from Infrastructure Capital Reserve Fund

Submitted by Public Works Deputy Director Kyle Fox

The Environmental Protection Agency (EPA) recently reissued several sections of the 2013 draft MS4 permit for Public Comment Period. Public Works requests to withdraw up to \$5,000 from the Infrastructure Capital Reserve Fund to rejoin the MS4 Coalition of Towns that was formed in 2013 to comment on the draft permit.

Kyle Fox, Deputy Director, Public Works Department (PWD), stated MS 4 stands for Municipal Separate Storm Sewer Systems. In 2003, Merrimack became an MS4 Town under the National Pollutant Discharge Elimination System (NPDES) permit as part of the Clean Water Act.

When initially implemented, it was a five-year permit. We are now on year 12. In 2008, the Environmental Protection Agency (EPA) issued a draft permit for public comment. There were many comments, and the final permit was never issued. In 2013, the EPA issued another draft permit. Merrimack became part of a 20 town coalition to submit comments on that permit.

In September, based on all of the comments received in 2013 for that draft permit, the EPA reissued certain sections of the 2013 permit for public comment. That public comment period is currently open and closes November 2nd.

Deputy Director Fox stated the desire to gain the Council's approval to re-join the coalition. A meeting was conducted last week with some of the towns that previously made up the coalition and the legal counsel who represented the coalition, to discuss how to move forward. Legal counsel out of Manchester is working with an attorney, John Hall, from Washington, DC who is an expert on EPA issues. They recommended a three-pronged approach. The first step would be to submit comments, as a coalition, to the EPA for the newly released sections. As was done in 2013, the PWD would also issue comments specific to Merrimack. The second step would be to work with the New Hampshire Department of Environmental Services (NHDES) to try and foster some changes in their protocols. The job of the EPA is to enforce the Clean Water Act. The Clean Water Act itself does not have water quality standards, so the standards they are enforcing are created by the NHDES. Many of the towns, Merrimack included, believe the NHDES standards are derived from unreliable data, outdated data, and some standards that simply do not make sense.

During the 2013 process, there was a 20 town coalition, five of which formed an executive committee, which Director Seymour was on, to work with the NHDES to try and make some of these changes. It was believed there were a lot of good inroads and discussions, and that progress was being made. There was a departure at NHDES, time went by, comments got submitted, and nothing ever changed. The approach this time would be to get legal counsel involved in the discussions with the NHDES to make it a more formal record in working with both NHDES and hopefully the political environment as well.

The third step would be to work with the New Hampshire Congressional Delegation in Washington to try and work with the national EPA to try and correct some of the issues the coalition has with the permit prior to it being put into effect. Once it is put into effect the options are fairly limited and would be expensive.

Given the relative short timeframe, an exact cost of Merrimack's share to join the coalition will be I unknown. The range provided at the meeting last week was between \$2,500 and \$5,000. Deputy Director Fox noted, in 2013, the Town Council authorized \$5,500 to join, and the Town's share ended up being \$4,919.

Councilor Rothhaus questioned why there would be the need to challenge this. Having previously had 20 towns join a coalition to address the issue, why would it not be easier to get our own State to see the problem. Deputy Director Fox responded the answer they get from EPA is it is all about water quality. The coalition agrees water quality is important, but at what cost. That is where working through NHDES is really a critical component. Getting the standards in line with other parts of the country would lessen the financial burden of what the municipality will be asked to do.

One of the chief areas legal counsel noted is the bacteria TMDL, total maximum daily load allowed of a nutrient or something else into the water body. The bacteria TMDL has many flaws. It was created a long time ago by folks at NHDES, and was never intended to be an enforcement tool; it was invented to be a guide tool to how to clean up some water in the State. The EPA, being the enforcement agency, does not necessarily recognize the intent. They just see it as their job to enforce the State standard. He added he cannot answer the question as to why NHDES hasn't worked with the towns.

Councilor Rothhaus stated his recollection Manchester was one of the cities that had a huge potential financial impact. Councilor Dwyer stated \$60 million was reported. Councilor Rothhaus reiterated he does not understand the difficulty when we have communities the size of Manchester and 19 other towns that have joined the coalition. He commented with those numbers we should be able to get someone's attention at the State level. Five thousand dollars compared with what it would ultimately cost if we didn't put up a reasonable battle, pales, but he simply does not get it.

Vice Chairman Mahon commented he began reviewing the information and found it to be bureaucrats run amuck; doing things that were never intended or authorized under the law and trying to finagle it into the regulations under guides of some enforcement proceeding that they didn't have the authority to enforce anyway.

Deputy Director Fox commented the other big problem is they are trying to create a one size fits all fix to water issues, and you just can't do that. Although we have a fairly good population, our density is quite rural.

Councilor Dwyer commented the topics being discussed of the Walmarts and the 3-4 acre roofs, and the collection of rain water, this is EPA run amuck and then the State being just incompetent and lazy and not wanting to care. Those figures that came out a few years back identified the cost to implement all of the sewer work and collection of all of the rain water to not divert into the rivers and have to go directly to sewer treatment plants. Merrimack's estimated cost would be about \$6 to \$10 million in comparison to Manchester's \$60 million. It is literally the collection of water from the sky is no longer allowed to just run down the streets and into drains and local streams. The overall policy stems from the collection of rain water, which needs to be collected and placed into the proper water recycling facilities.

Deputy Director Fox stated the major problem with the permit, from their standpoint, it is a municipal separate storm sewer system. Merrimack is different from Manchester. Manchester has combined

storm sewer. This is a blanket permit that regulates how stormwater discharges into waters of the United States. Our Wastewater Treatment Plan has a permit with the EPA to discharge into the Merrimack River. It is a standalone permit for that one pipe that comes out of the plant. This permit is a general permit that allows us to discharge out of all of our pipes under one permit. It is a blanket permit. The intent is good as it saves all of the work of individually permitting our discharges.

Councilor Dwyer remarked it is the infrastructure cost getting it to the plant. Deputy Director Fox agreed. He continued, one of the biggest problems is stated in the first line of Section 2.1.1, which is part of the re-released section. The language didn't change from the 2013 version. It states: "The permittee shall reduce the discharge of pollutants such that the discharges from the MS4 do not cause or contribute to an exceedance of water quality standards." That is a really loaded statement. That means if we have any minimal phosphorous that goes into Horseshoe Pond, we are causing or contributing; we are in immediate non-compliance. If we have any E.coli. that comes from one of our pipes and goes into the Merrimack River, we are in immediate non-compliance.

Councilor Boyd remarked the cost just to cleanup Horseshoe Pond alone was \$2.5 million. He stated his recollection there was no guarantee that resulted in ridding Horseshoe Pond of the percentage of phosphorous we had to get rid of. Deputy Director Fox remarked this is one of the difficult parts of this, the cause or contribute to cause. Using the Horseshoe Pond as an example, there are 3 pipes that discharge into Horseshoe Pond, but there is a whole neighborhood of houses that fertilize their lawns, have pets, etc. There are impairments coming from areas that the municipality doesn't own or control. It is staggering to put that cost onto the municipality.

Deputy Director Fox commented the Nashua Stormwater Coalition met a few weeks ago. The lead person from the EPA, Region 1 in Boston came to answer questions on the new permit. There were also NHDES representatives present who talked about how they don't have money or manpower. Because the Town can generate revenue from the tax base they see us as the pot of money to accomplish their goals.

Deputy Director Fox spoke of the monies expended by the Town/Coalition in 2013, and noted the re-issued sections, from what they were in 2013 and what they are currently, the Town saved magnitudes of money from that \$5,000 investment and the larger \$75,000 investment from the whole coalition.

Councilor Boyd questioned if the revisions, which were based on feedback provided, got better or worse, and was told they got better. They are still onerous, but did get better.

Deputy Director Fox stated between 2013 and now there was legislation change on the State level that allowed compliance schedules. Back in 2013 that was not allowed so all of the costs were in that five year permit period. Now the costs are spread out over 15 or 20 years (depending on which phosphorous). That is a big win. That resulted from the feedback. It also allows for more testing up front versus having to go by old data that may or may not be reliable. One of the great examples they continue to point out to NHDES and EPA is Baboosic Lake. The Baboosic Lake Association has done a number of small projects on the Merrimack side, some with the help of the PWD, trying to control the sediment runoff into the lake. In Amherst they put in the combined sewer septic system/community septic. If you look at the charts of the phosphorous content in Baboosic Lake they have plummeted to just barely above the non-compliance level. But the list that EPA is using is what

is called the 303D List of Impairments. This permit recognizes the 2012 list. We're already 3 years of old data at minimum. The 2014 303D was just presented, and there is no way to know how long it will be before that is approved.

One of the discussions had with the EPA representative from Boston was if something falls off of the 303D list do we come out of the permit requirement, and the answer was no. But if something gets added to the list the Town is getting added. It is a one-way street.

Councilor Boyd commented one of the things the Council discussed two years ago was because of being in the Souhegan River Watershed we are the last point of demarcation on the entire stormwater runoff route. No matter what the towns do above, it will still filter down to Merrimack. If you were to eliminate outside influences and totally purify people's properties in the area of the Horseshoe Pond and mitigate the risk, it will still have runoff.

Deputy Director Fox commented one of the great points made in the comments by counsel during the last round was, for new stormwater discharges particularly, say we did a project that had a new discharge and there was the smallest fraction of phosphorous in it that was going to Horseshoe Pond, we wouldn't be allowed to connect that pipe even though the dilution from the added flow with the very small amount of phosphorous would actually help the pond.

Councilor Vaillancourt stated her support of rejoining the coalition, and commented she does not see that there is a choice.

MOTION made by Councilor Vaillancourt and seconded by Councilor Dwyer that the Town Council permit Kyle Fox and the Public Works Department to rejoin the MS4 Coalition at a cost of up to Five Thousand Dollars (\$5,000)

ON THE QUESTION

Councilor Dwyer stated he does not support the motion as he believes it is one big bureaucratic mess. It is \$5,000 down a rat hole. He stated his objection to be his rebellious stance against the EPA, Washington, and the NHDES. He suggested no good would come of it, and the Council would be revisiting this year after year. He stated they can never enforce the requirements that are being put forth.

Councilor Vaillancourt commented she appreciates the comments made by Councilor Dwyer. However, she believes the towns that join the coalition see the value, and it is likely an information gathering opportunity as well.

Councilor Rothhaus stated he agrees. However, people will comply, and because everyone else will comply we would be an easy target. Councilor Dwyer stated it is impossible to comply. The laws were written in such a way that you cannot comply. Councilor Rothhaus commented on Deputy Director Fox's remarks relative to savings achieved with changes that have already been made.

MOTION CARRIED

5/1

Councilor Dwyer voted in opposition.

There being no objection, the Council recessed for five minutes at 10:04 p.m.

The Council reconvened at 10:09 p.m.

Town Manager Cabanel informed the Council of having attended the Saint-Gobain 350 Year Anniversary Celebration the prior week. What she found fascinating was the story told about how they began. They were a glass maker in Italy in the 1600s. They had come up with a method by which to make mirrors, which nobody could do at that time. The King of France kidnapped them and brought them to France. They made mirrors for the Queen to see her dress and also built all of the mirrors in the Hall of Mirrors at the Palace of Birsei.

5. Direction for 2016/2017 Budget

Submitted by Town Manager Eileen Cabanel and Finance Director Paul T. Micali

To ask the Town Council to contemplate budget parameters for the 2016/2017 budget season, which will be discussed at a future meeting.

Town Manager Cabanel commented each year the Administration looks to the Council for guidance on the upcoming budget. Certain cost items are known at this time. The Guaranteed Maximum Rate (GMR) for health insurance has been provided (6.4% or \$88,000). This cost increase is not as substantial as it might otherwise have been based on the types of plans current employees have elected, e.g., single versus family, etc. It had been anticipated that percentage would be more favorable, based on changes to health insurance (began June 1st). However, the GMR is based on data for the past several years not simply the prior year. There is no increase to costs associated with the New Hampshire Retirement System as it is the second year of the two-year increase. The increase in Property & Liability is at 9% (\$19,617). The increase in Workers Compensation is at 9%. There are six union contracts set to expire on June 30, 2016.

There will not be an increase in either electrical or natural gas rates due to long-term contracts. In FY17 there will be a 53rd week of payroll (approx. \$173,197). The insurance rebate received in prior years has ended (\$300,000). There is no new staffing proposed at this time.

One of the areas the Administration seeks direction on is the Highway garage. From the way the goals were written up, there was no clear direction as to whether the Council wishes for the matter to be placed on the ballot.

Town Manager Cabanel remarked in terms of State revenue, there is activity taking place around the Rooms & Meals and Highway Block Grant funds, which are really the only revenue received from the State every year. Almost every year the Highway Block Grant revenue is identified and inserted in the tax rate calculations. In the 4th quarter they send in the notice saying it was dropped by some amount. The State has required the Town to raise the money for it, and then in the last quarter they reduce it. FY17 will see a Town-wide property revaluation (every five years).

There is the need for discussion to take place around funding for the Town's commitment to paving and the Capital Reserve Funds (\$184,000).

The sum of those known figures is an addition of \$0.26 on the tax rate.

Town Manager Cabanel noted union contracts are not listed. New construction value is typically included. In an attempt to avoid inflating the amount of money because someone's house is worth X this year and because the market changed it is worth Y next year. New construction value is identified and quantified with a dollar amount.

Town Manager Cabanel remarked when she first came on board the Capital Reserve Funds (CRF) were depleted. Discussions centered around making a commitment to put a minimum amount of money into the CRFs. For some time, monies were being put into the CRF and spent in the same year. The intent is to save money for future expenditures. In FY14 \$1.060 million was the minimum for the General Fund. What is being estimated for FY17 is \$1,575,000.

When asked, Assistant Town Manager/Finance Director Micali stated he and Director Casparius have been working on language for a revolving fund for the Parks & Recreation Department. When complete, the language would be brought to the Town Manager for review. Vice Chairman Mahon stated the establishment of the fund would require a vote. Once established, monies that are allocated can be removed without further action or inclusion in the budget. One of the things the Council wanted Director Casparius to do is to develop programming that could be as close to self-funding as possible. That cannot be done without the revolving fund.

Councilor Vaillancourt questioned staffing, specifically at the Fire Department. Town Manager Cabanel responded that is being looked at. A good deal of data has been accumulated (# of calls, etc.). However, she has not yet had the time to analyze it. She has assigned that task to Assistant Town Manager/Finance Director Micali and the Fire Chief. Town Manager Cabanel remarked she spoke with the Chief earlier in the day and relayed her belief there likely is not sufficient time to gather enough convincing data to move it forward this upcoming year, but that she would be willing to increase his overtime budget to make up for that.

Assistant Town Manager/Finance Director Micali has been trying to get an answer as to the actual cost that could be saved in overtime by adding a firefighter. They say nothing, but that is not so. They have 8 firefighters on a shift, and if given a 9th firefighter, they now think there is mandatory minimum of 9, and that is what they staff to.

Councilor Vaillancourt questioned if additional information would be available for consideration during the budget process. Town Manager Cabanel stated if information is available it is something she is considering bringing forward. The request the Chief is making is for four (4) people.

Councilor Rothhaus commented several years prior the Chief had brought in charts depicting the 24 hour need, etc. He questioned if that type of information would be taking into account when considering staffing, and if that might be helpful for negotiations, etc. Assistant Town Manager/Finance Director Micali stated the Chief provided him with that data. There is the need to review the data and discuss it further with the Chief and Assistant Chiefs. Councilor Rothhaus reiterated he would appreciate the opportunity to review the information in the format presented in 2010.

Councilor Dwyer commented, the recommendation is already indicating no staffing increases in order to come in at a \$0.26 increase. Town Manager Cabanel remarked she did not intend to indicate a hard and fast stance. Her comments were, at this time that is the recommendation.

Councilor Dwyer suggested if the belief is the department is undermanned, and in a contract year, the ballot is always a good place for that decision to be made. Councilor Vaillancourt remarked she brought the issue forward because it was specifically discussed at the Council Retreat. She does not yet have personal knowledge of their staffing, and whether or not they are adequately staffed. Councilor Dwyer stated it is not adequate based on the Federal guidelines, and neither is the Police Department.

Councilor Boyd spoke of the difficult winter endured last year. Assistant Town Manager/Finance Director Micali stated he does all of the calculations for staffing, insurances, etc. In doing so he reviews overtime for the past several years. That information is sent out to the departments for their review. When he sent out the Highway Department's budget he increased the overtime line because it has been overspent in the past few years for snow. When the PWD and High Division do their budget, if they believe additional funds are necessary, they will incorporate that into their budget.

Town Manager Cabanel stated the budget the Council will receive will include several years' worth of information on actual expenditures as well as the current budget year, the department's budget, and Town Manager's budget. The department requests will be clearly identified. Department heads have always been instructed to make their pitch to the Council for what they believe their needs to be.

Councilor Koenig questioned if there were any estimates on revenue for the coming year. Town Manager Cabanel stated a small amount of revenue change could be anticipated in motor vehicle revenue. Assistant Town Manager/Finance Director Micali stated they would review the first quarter numbers for auto registration and compare them to prior years. If continuing to grow monies could be added to revenue predictions. Town Manager Cabanel noted the budget had included an anticipated \$3.9 million, and actuals were \$4.4 million. Although a large increase, it was the first seen in several years.

Vice Chairman Mahon questioned when the values of properties that come out of revaluation would be used, and was told it would be used for December 2016. In November, the Contract Assessor will be before the Council to discuss the revaluation. The process will begin in January and continue through the year. Those values will be used for the MS1 that is filed with the State in September.

Town Manager Cabanel noted the tax bill received in the June/July timeframe is an estimate. The new values go into effect as of April 1, 2016. When the MS1 is filed with the State the calculation is made for the December, 2016 tax bill (new value times new tax rate less what has already been received). Vice Chairman Mahon commented that process adds another level of uncertainty when trying to contemplate a tax rate as you don't know where those values will end up.

Town Manager Cabanel remarked when done previously the total value for the Town was at 115% (supposed to be at 100%). Values went down approximately 15%. It was noted the Town is currently at 94%. There is the potential for some values to go up. It was also noted, when the revaluation was done five years prior, we were in the midst of a recession.

6. Review of 2016/17 Budget Schedule

Submitted by Town Manager Eileen Cabanel and Finance Director Paul T. Micali

The Town Council to review the 2016/17 budget schedule.

Assistant Town Manager/Finance Director Micali spoke of the budget schedule provided with the agenda. During the first December meeting, the presentation on the proposed FY17 budget will be provided. Budget presentations, by department, will begin on January 7th and conclude on January 21st. Deliberation on the budget will begin the following Monday.

The Deliberative Session will be conducted on Thursday, March 10th with a snow date of March 11th.

Minutes

Approve the minutes from the September 10, 2015 and September 24, 2015 Town Council meetings.

September 10, 2015

The following amendments were offered:

Page 1, Line 34, Page 11, Line 5, and Page 14, Line 18; replace “delayed” with “postponed”

Page 8, Lines 30 and 32; replace “Sequel” with “SQL”

Page 17, Line 43; replace “Council” with “Councilor”

MOTION made by Councilor Koenig and seconded by Councilor Boyd to approve the minutes of the September 10, 2015 Town Council meeting as amended.

MOTION CARRIED

5-0-1

Councilor Rothhaus Abstained

September 24, 2015

The following amendments were offered:

Page 2, Line 31; replace “Kilkelly” with “Killkelley”

Page 7, Lines 7 and 8; replace “Vaillancourt” with ‘Rothhaus’

Page 9, Line 21; replace “Town’s counsel” with “Town Council”

Page 10, Line 2; replace “Body” with “Boyd”

Page 10, Line 27; replace “moving the route” with “suggesting or supporting a route that moves it away from”

MOTION made by Councilor Boyd and seconded by Councilor Vaillancourt to approve the minutes of the September 24, 2015 Town Council meeting as amended. MOTION CARRIED 6-0-0

Comments from the Press - None

Comments from the Public - None

Comments from the Council

Councilor Rothhaus requested his colleagues join him in welcoming James Christian Alukonis into the world. James arrived at 7:30 a.m., and is Councilor Rothhaus' second Grandson.

Councilor Vaillancourt thanked the departments for the updates they provide on a regular basis.

Councilor Vaillancourt noted, at its October 5th meeting, the Conservation Commission was presented with the detailed Environmental Impact Studies (EIS) from Moosewood Ecological. The studies received were for the Horse Hill Nature Preserve (HHNP), Gilmore Hill Memorial Forest, and the Merrimack Village District property. The meeting was recorded and can be viewed [here](#).

Some of the properties are similar in the things they contain. However, there are a few unique/rare species that exist in Merrimack. Were the proposed NED pipeline to go through these properties, there would be great impacts.

Councilor Vaillancourt spoke of information received regarding a discussion the Superintendent of Schools had with Assistant Town Manager/Finance Director, Micali, with regard to the School Resource Officer at the Middle School. Knowing the subject was going to be on their agenda this past Monday, she watched the meeting. The grant that funds that position includes specific stipulations. What she believes to be driving some of the conversation is language that states in year 7 of the grant the Town has to have some kind of a sustainability plan in place. During the School Board's discussion the desire of having a discussion with the Town Council came up; whether at a Joint meeting or placed on a future agenda of the Council.

Adjourn

MOTION made by Councilor Rothhaus and seconded by Councilor Koenig to adjourn the meeting. MOTION CARRIED 6-0-0

The October 27, 2015 meeting of the Town Council was adjourned at 10:44 p.m.

Submitted by Dawn MacMillan