

Approved: February 12, 2015

Posted: February 13, 2015



Town Council Meeting Minutes

Thursday, January 29, 2015, at 7:00 PM, in the Matthew Thornton Room

Vice Chairman Mahon called the special 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 Woods, Town Manager Eileen Cabanel, and Assistant Town Manager/Finance Director Paul Micali. Councilor Harrington was excused.

Vice Chairman Mahon informed the viewing audience the work session was in regard to the proposed Northeast Energy Direct (NED) pipeline project.

Pledge of Allegiance

Vice Chairman Mahon led in the Pledge of Allegiance.

Announcements

Regular meetings of the Town Council will be held on Thursday, February 12th and February 26th at 7:00 p.m. in the Matthew Thornton Room. The Public Hearing on the proposed FY16 budget will be conducted on Thursday, February 12th at 7:00 p.m. in the Matthew Thornton Room.

Vice Chairman Mahon stated the Council scheduled the meeting to be able to discuss the various issues that are involved from the perspective of the Council and what actions the Council might take or direction it might give staff to assist in gathering information and responding to requests, etc.

He noted the Council is driven by State Statutes regarding budget preparation with regard to deadlines that have to be met, etc. That process ended with the Council's meeting on January 26th when the final recommended budget was passed. The Council now is able to expend additional time on the issue of the proposed pipeline project.

He remarked the intent of the work session was to begin the process associated with the proposed pipeline project. He commented the process itself will take a minimum of two years to reach conclusion. Administrative proceedings are lengthy and very detailed. Schedules are provided, which can be adjusted, e.g., the Council has requested an extension to the initial comment period. It was noted a response has not yet been received from the Federal Energy Regulatory Commission (FERC).

The Council is hopeful to identify all of the variables that need to be identified and examined.

Vice Chairman Mahon informed the viewing audience of an e-mail address set up for the sole purpose of allowing the citizenry to provide comment on this meeting (KMPipeline@MerrimackNH.Gov). This is something that has never been done before, and it is not yet determined how the comments will be made available. However, they will be part of the public record, and a means of making them available will be determined.

Update on Actions Taken to Date

Vice Chairman Mahon spoke of an effort to go back through public records and identify the timeline associated with actions taken by the Council. He would not attest to the timeline being completely

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accurate as to the actual steps taken. Attempts were made to reconstruct the timeline based on available documentation, which is a matter of public record and available for public inspection.

A PowerPoint presented was provided detailing the timeline (can be viewed [here](#)):

September 15, 2014 - Tennessee Gas Pipeline Company, LLC/Kinder Morgan requested authorization to use the Federal Energy Regulatory Commission's (FERC) pre-filing process for the Northeast Energy Direct Project.

October 2, 2014 - The FERC approved Kinder Morgan's request in FERC Docket #PF14-22-000.

November 3, 2014 - Proposed gas pipeline project discussed at the Conservation Commission meeting.

Vice Chairman Mahon stated his recollection, at that time, the discussion was around a smaller lateral being run up through Hollis and terminating somewhere in Merrimack on Route 101A.

November 5, 2014 - Kinder Morgan filed with the FERC the draft Resource Report 1 (General Project Description), including Alternatives and an updated stakeholder list.

November 8, 2014 - Nashua Telegraph article regarding shifting of the route through southern New Hampshire.

November 17, 2014 - Proposed gas pipeline project discussed at the Conservation Commission meeting.

Vice Chairman Mahon stated his recollection the discussion, at that time, was with regard to the route change. However, there was not much of an indication of where the pipeline would go, and the maps seen were rather large scale and didn't provide a good sense of what was planned.

November 17, 2014 - Joel Maiola, Senior Advisor with McLane Government & Public Strategies contacted the Town via e-mail requesting to set up an introductory meeting with representatives of Kinder Morgan.

November 25, 2014 - Joel Maiola sent an e-mail to the Town requesting a private meeting "keeping in mind that we all want to stay on the right side of New Hampshire's Right to Know laws."

November 26, 2014 - Town Council Chair instructs Town Manager to not hold a private meeting with the pipeline group and stated that she believes "that it is imperative that we are transparent in all of our discussions on this topic and therefore should be presented in a public forum."

Vice Chairman Mahon commented once the decision was made not to hold a private meeting with Kinder Morgan, a section was created on the Town's website where information received regarding the project was posted.

November 28, 2014 - Joel Maiola responds by e-mail stating that Kinder Morgan "looks forward to taking part in a public presentation to the Town."

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December 1, 2014 - Proposed gas pipeline project discussed at the Conservation Commission meeting.

December 5, 2014 - Robert Varney, Executive President of Normandeau Environmental Consultants stopped by the Town Hall to introduce himself to the Town Manager as the local environmental company hired by Kinder Morgan.

December 8, 2014 - Kinder Morgan submitted supplemental information to the FERC to reflect the revisions to the proposed route for the project. That filing included a full description of the revised route, proposed facilities for the project, and an updated stakeholder list.

December 12, 2014 - Received a form letter as a property owner from Kinder Morgan informing us that “one of the primary reasons that led to Kinder Morgan’s decision to adopt the New York Powerline Alternative and New Hampshire Powerline Alternative for the Project is that they will enable a very substantial portion of the proposed new pipeline construction to be adjacent to, and parallel with, existing utility corridors...” The letter also states that “In addition, the proposed route change will enable Kinder Morgan to avoid (in certain cases) and to minimize (in other cases) the crossing of Article 97 properties and Areas of Critical Environmental Concern in Massachusetts.”

December 15, 2014 - Proposed gas pipeline project discussed at the Conservation Commission meeting.

December 18, 2014 - The Town Council voted to formally request a special public meeting with Kinder Morgan in Merrimack.

January 2, 2015 - Town Council Chair gets notification via e-mail that Lucas Meyer is available as the point of contact for any questions regarding the pipeline.

January 5, 2015 - Proposed gas pipeline project discussed at the Conservation Commission meeting.

January 6 & January 7, 2015 - Town Manager communicated with Kari Thurman from Senator Jeanne Shaheen’s office and requested information regarding the process that Kinder Morgan must go through with the FERC process.

January 7, 2015 - Town Manager calls Timothy Drew, Administrator, with the NH Department of Environmental Services Site Evaluation Committee (NHSEC), who stated that the NHSEC had not received any information to begin their process yet.

Vice Chairman Mahon remarked, based on the briefing he received in Milford a week later, the NHSEC’s process does not begin until they receive the formal application that Kinder Morgan provides to FERC. At this point, they are in the pre-application process.

January 8, 2015 - Town Council votes to send a letter to the Federal Delegation requesting their support in extending the public comment period for 90 days.

January 8, 2015 - Chair Harrington sends an e-mail request to Council members to participate in Amherst consortium - Tom Mahon and Bill Boyd volunteer.

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Vice Chairman Mahon noted it was also on this date that the Town Council sent a letter to FERC requesting the extension to the comment period.

January 8 - January 13, 2015 - Town Manager spoke with Lucas Meyer 4 times to request dates for a public meeting in Merrimack.

January 12, 2015 - Proposed gas pipeline project is discussed at the Horse Hill Nature Preserve Sub-Committee meeting.

January 14, 2015 - Congressional Delegation sends letter to FERC requesting extension of public comment period for NH.

January 14, 2015 - Matt Abdifar, Manager of Public Affairs for Kinder Morgan and Lucas Meyer, a private Public Affairs Consultant hired by Kinder Morgan, stopped by the Town Manager's Office to discuss a public meeting for Merrimack. In an e-mail, Mr. Abdifar states "that Kinder Morgan will be working with the Town Manager and the Town Council to schedule a Town presentation in March."

January 14, 2015 - Tom Mahon attends the Site Evaluation Process meeting. Sends e-mail to Council on 1-15-15 outlining pertinent information.

January 16, 2015 - Kinder Morgan sends letter to FERC in response to the Congressional Delegation letter requesting that the public process not be extended.

Vice Chairman Mahon commented that was in reaction to the petition that had been presented a few days after we sent our letter to FERC about the comment period. The petition (approx. 1,900 signatures) was presented to the Governor and sent to the Congressional Delegation and the FERC. They reacted to that piece, but not to our letter, yet.

January 20, 2015 - Patty Quinn from Percheron Field Services, LLC, a land agent for Tennessee Gas Pipeline Company dropped off (4) Survey Permission request forms to survey Town owned property, which were received by the Town Manager on 1/21.

A map was displayed, which highlighted the four parcels. The largest of the four is the Horse Hill Nature Preserve (HHNP), the parcel located to the right of that is the Gilmore Woods Memorial Forest, which abuts Greens Pond and flows into the area of the Aquifer Protection Zone and the Wellhead Protection Area. The Merrimack Village District (MVD) has two wells in the area. The third parcel is a small parcel on the corner of the map located near 40 Continental Boulevard, and the long thin parcel identified as Parcel 4 is the sewer connection that runs from the Wastewater Treatment Plant down to the Fidelity Investment property. In addition to where the sewer line was run, it was established as a buffer between Continental Boulevard and Camp Sergeant Road.

He remarked, if Kinder Morgan does receive the Certificate of Necessity from FERC to proceed, they will be able to survey those properties without the Town's permission.

January 22, 2015 - Merrimack Citizens for Pipeline Information presents to Council at regular Council meeting. Town Council takes public input.

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January 26, 2015 - Proposed Gas Pipeline project discussed at the Conservation Commission meeting (can be viewed [here](#)).

The Conservation Commission took action regarding retaining an environmentalist to assess the flora and fauna of the HHNP and other parcels. They will be working with that consultant to confirm or verify information relative to endangered species, significantly impacted, sensitive environmental areas that might be in that area. Noted was a Blue Heron rookery located in the area, which is of concern. In the area of Gilmore Woods Memorial Forest, are the Aquifer Protection Area and Wellhead Protection areas.

Vice Chairman Mahon commented if viewing the video of the meeting residents can see firsthand the actions taken by the Commission. He commented he can assure the public Chairman Tim Tenhave is astute, very knowledgeable, and exceptionally thorough. Nothing will be missed in that process with him driving it. Associated costs will come from the Conservation Commission Fund.

January 26, 2015 - Town Council scheduled a Work Session regarding Northeast Energy Direct Pipeline Project to be held on Thursday, January 29, 2015.

January 26, 2015 - Town Council voted to appropriate \$25,000 in the 2015/16 Town budget for legal and consulting costs, in addition to the proposed funding authorized by the Conservation Commission and the MVD to pursue their own interests in the matter.

The presentation also identified links that could be used to show support for the Council's request to grant an extension of the comment period as well as informational websites concerning the FERC process (also available on the Town's website).

Vice Chairman Mahon commented there were likely a few dozen other calls and inquiries made by Town staff from various departments regarding other impacts.

Councilor Boyd noted the HHNP is under the auspices of the Conservation Commission, and questioned if it would fall under the authority of the Commission to determine whether or not the HHNP is surveyed, and how that relates to the other three parcels in terms of jurisdiction.

Town Manager Cabanel stated the HHNP is under the auspices of the Conservation Commission as is the Gilmore Woods Memorial Forest. Councilor Boyd asked for clarification the decision of whether or not to allow surveys to be conducted would be that of the Commission. Town Manager Cabanel stated that to be correct. Councilor Boyd requested clarification the other two parcels would be under the Council's jurisdiction. Town Manager Cabanel stated that to be correct. Vice Chairman Mahon remarked the other two are of minimal environmental concern.

Councilor Boyd commented the FERC website is horribly slow, and requires patience. Vice Chairman Mahon noted in order to comment, users are required to register. Councilor Boyd added if registering for updated e-mails through the website (www.FERC.Gov), every single communication/document related to Docket # PF14-22-000 would be sent directly to your e-mail address. Vice Chairman Mahon noted requests can also be made of the NHSEC to be placed on their procedural docket. Once the application is filed, the NHSEC will provide notification of their timeline/process.

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Councilor Woods spoke of the NHSEC and the request of Kinder Morgan at FERC, and questioned which of the two entities the Town would have the most force and effect with should the application move forward. Vice Chairman Mahon responded during the workshop conducted in the Milford Town Hall on January 14th, Attorney Michael Iacopino, counsel for the NH Site Evaluation Committee, stated Kinder Morgan regularly discounts the impact of a State agency because under the Federal Natural Gas Act almost all other entities are preempted by the Federal level. However, they do agree to go through the process. The question was asked what if the State agency says no will that carry any weight with the FERC. The impression given was it is strictly up to the FERC whether they accept that information or not.

Vice Chairman Mahon commented this is an administrative process not a judicial process. There are no rules of evidence. The State and Federal body are the sole arbiters of the weight of the evidence and the credibility of the witnesses. The burden of proof is the least restrictive; preponderance of the evidence. It is not clear and convincing evidence, and it is not beyond a reasonable doubt. It is merely whether or not either one of the parties made the case that there is necessity or no necessity for this, and in their sole judgment they have made the decision it is or is not necessary. That is the standard they will use at FERC and at the NHSEC. Vice Chairman Mahon reiterated the hearing process is extensive.

He reminded the public of the importance of tracking schedules, hearing dates, etc., and understanding what type of information would be considered at each.

Councilor Koenig requested clarification FERC is the entity that will make the final decision, and may or may not take into account what the NHSEC has to say. The reason for tracking both is should the NHSEC process result in a different position than that of the Town, it will not be of any assistance. There is the need to provide any influential information attainable to FERC by every method possible. The NHSEC is one such method, but not, by any means, a final determination. He questioned whether FERC reports to another entity having greater authority. Vice Chairman Mahon responded it is possible they report to the Department of Energy.

Vice Chairman Mahon noted Peter Roth, Senior Assistant Attorney General, has to consider the entirety of the State and the impact of the proposal on the entire State. He can be contacted at (603) 271-3679 or peter.roth@doj.nh.gov. Vice Chairman Mahon reiterated that process has not begun and cannot begin at the NHSEC level until an application is received from Kinder Morgan.

Vice Chairman Mahon remarked there are two levels to be dealt with when both State and Federal entities are involved; State Statutes (<http://www.gencourt.state.nh.us/rsa/html/nhtoc/nhtoc-xii-162-h.htm>) and Rules. The Rules are technically interpretations of the Statute and have the same force as the Statute once adopted. The State website contains the Rules for the NHSEC (http://www.gencourt.state.nh.us/rules/state_agencies/site.html).

Vice Chairman Mahon apologized for not stating earlier that Chairman Harrington has been absent due to a recent surgery. She is home recovering, and is doing well. He spoke of Chairman Harrington's experience with this process having gone through it with the Outlets, and noted a great deal of what has been done has been as a result of her council.

Discuss and Develop Future Actions

Vice Chairman Mahon spoke of the handout provided outlining potential actions the Council could take:

- Continue to press Kinder Morgan for public meeting in Merrimack

Council agreed: Action Item for Town Manager and Council Chairman

- Place an action item on the February 12, 2015 agenda requesting the Council to take no action regarding request from Kinder Morgan to survey Town-owned parcels until Merrimack public meeting

Council agreed: No action will be taken, e.g., grant or deny.

- Place NED Pipeline Update on future Council agendas

Council agreed: It was suggested the item appear at the top of agendas (before new and old business).

- Update list of properties that directly abut proposed pipeline route with a list of properties that fall into pipeline hazard zone.

Vice Chairman Mahon noted his receipt of a list of properties that directly abut the route (approx. 68 properties). The desire is to also identify those that fall within hazard zone(s), e.g., explosive zone, incineration zone, buffer zone, etc.

Councilor Boyd noted properties that may not be direct abutters; however, may be within a hazard zone, e.g., properties along Fields Farm Road. He requested consideration be given to those neighborhoods. Vice Chairman Mahon remarked the list will not be “perfect”, but it will provide an idea of the area that requires attention to be paid.

Council agreed.

- Consider consultant to:
 - Research communities property value effects of recent pipeline installations
 - Evaluate impacts on sewer line

Vice Chairman Mahon remarked the Town Manager has suggested the Town retain the services of an assessing company to conduct that research. Town Manager Cabanel stated she spoke with the assessing company the Town utilizes earlier in the day, and was informed they have someone whose field of expertise is utility assessments. Vice Chairman Mahon commented the desire is to assess properties that abut the utilities not the utilities themselves. He suggested clarification be sought as to that individual’s ability to conduct the research and make a determination as to impact. Town Manager Cabanel stated her anticipation the work the individual would be asked to do would be to assess the change in value from another community where a similar pipeline went through.

Vice Chairman Mahon questioned if it would be accurate to describe this as more or less a survey. Town Manager Cabanel stated it would be the gathering of data from other communities identifying assessment values prior to and after pipeline installations. She commented hopefully it would not be at that peak point where property values increased and decreased because of the market.

Councilor Koenig wished to clarify the Council is not looking to make an assessment of any individual property on the list. The effort would be to identify a trend/judgment as to what impact could result. He suggested the need for the impact to look at both the gas pipeline value as well as community values. There is the need to understand both sides of that equation. He commented there was discussion at the last meeting that the Council was wringing its hands looking at potential revenue resulting from taxing the gas pipeline. Although he presumes it will be taxed, he has no indication it will be any significant amount of revenue, and even if it were, he does not believe it would be allowed to impact the Council's judgment on what would be best for the community. He stated his desire for the individual contracted to look at the whole impact.

Council agreed: The item will be placed on a future agenda

With regard to evaluation impacts on the sewer line, Town Manager Cabanel stated she has spoken with James Taylor, Assistant Director, Wastewater who has someone on staff; however, is also in touch with a professional consultant who can provide additional information. Being so early in the process, it is difficult for anyone in that area to take a look at potential impacts as there are no specific drawings available, e.g., how deep it will be, where it will be, etc. Mr. Taylor is engaging the company so that their services can be secured when needed.

Councilor Boyd suggested the Council consider a line item appropriation within the Wastewater budget. Vice Chairman Mahon noted it is an Enterprise Fund (sewer user fees) and would not be applied to the tax rate.

Council agreed: The item will be placed on a future agenda

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

Council agreed.

- Support Merrimack Village District's efforts to protect Wellhead Protection Zone and Aquifer Protection Zone

Council agreed.

Councilor Woods remarked in anticipation of MVD's interest in this regard, he requested staff at MVD put together a Tennessee Gas Pipeline Chronology (can be viewed [here](#)). The MVD Commission began its awareness of the proposed project in April of 2014. He, the Superintendent, and representatives from Underwood Engineering attended a meeting in Hollis on April 21st. MVD has been involved with action and inaction from Kinder Morgan ever since. There was a point in August where the MVD was told they were not interested in the property in Hollis.

Councilor Koenig clarified Councilor Woods was speaking as a member of the MVD Commission not as a member of the Town Council.

Councilor Woods made that distinction, and stated the information he is presenting the Council comes from the MVD Commission, and is public knowledge.

He remarked the Town Council should know the MVD Commission was very much aware of the project, have had requisite meetings, not in private. In Hollis the MVD Commission met with the Superintendent and another Commissioner met with a representative who sort of pointed out a proposed route for a pipeline, which was going right through the sanitary protection areas of both wells 7 and 8. That was dead on arrival at that point; you don't do that, and they understood that.

Subsequently, something happened and Kinder Morgan decided to change the entire route. At that point, they informed the MVD it was not of interest. Suddenly the MVD property is of interest and activity picked up from September. At the January 26, 2015 Board of Commissioner's meeting, the MVD added to its budget the sum of \$5,000 in legal fees and \$10,000 in engineering/consulting fees dedicated specifically for MVD's efforts to protect the wellhead protection areas and wells 2 and 3.

The MVD has been in contact with Tim Tenhave, Chairman, Merrimack Conservation Commission and assured him the MVD stands shoulder to shoulder with him. He had asked if the MVD is interested in utilizing the Commission's consultant with regard to environmental issues on some of MVD's properties. Councilor Woods stated his understanding an agreement was reached earlier in the day to utilize those services.

- Request Kinder Morgan list of abutters notified of project and requests for permission to survey

Councilor Koenig requested clarification; the intent is to ask Kinder Morgan to provide the Town with the list they are using to contact people. Vice Chairman Mahon stated that to be the intent.

Council agreed: Action Item for Town Manager

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

Councilor Koenig commented this would result in a list with three check marks next to each name identifying the Town has the property owner identified, Kinder Morgan has the property owner identified, and the property owner has been contacted.

Council agreed: Action Item for Town Manager

- Maintain contacts at FERC and NH Congressional Delegation

Council agreed: Action Item for Town Manager

- Consult with Public Service of New Hampshire (PSNH) regarding where they are in the process with Kinder Morgan and the Public Utilities Commission (PUC)

Town Manager Cabanel stated she contacted Northeast Utilities. She spoke with a Vice President in the distribution section. The issue relates to the transmission section. Although it was not his area of expertise, he has had experience with the FERC process and the PUC in a project that occurred about 10 years ago that came into New Hampshire through Newington and went back out into Maine. His experience, as it related to the PUC, was that the PUC did not get involved in negotiating with the utility. In this case, the PUC does not go in and engage in negotiations with them to allow the pipeline to exist under their transmissions lines or not. They have no say in it. That was his experience ten years ago.

When asked if they had any input as far as FERC was concerned with regard to it be located along their pipelines, the response was no, when FERC decides it is going in, it is going in, and you will make it work, if you have to move your transmission lines you move your transmission lines.

Town Manager Cabanel stated she expects to receive a call from the proper department (transmission dept.) within the next few days to confirm, and see if anything has changed over time.

- Consult and share information with large companies (Anheuser Busch/InBev, Elbit Systems, Premium Outlets, Fidelity, PanAm Railways, PSNH, Pennichuck, etc.)

Vice Chairman Mahon commented at one time Pennichuck talked about an intake over Anheuser Busch land into the river. He is unclear as to whether that was done.

Nelson Disc, Vice Chairman, Lower Merrimack River Local Advisory Committee (LMRLAC), stated his understanding that intake has been built, and it is his belief it was constructed on Anheuser Busch property with a proper easement from them, and it does supply additional water to the Pennichuck in times of low flow in the Pennichuck Brook itself. Vice Chairman Mahon commented there may be impact there depending on the placement of the pipeline.

Councilor Boyd stated a desire for an item to be placed on the Council's agenda to identify steps to be taken relative to the legal process; specifically the intervener process, e.g., whether an attorney represents the Town at the intervener level or that the Town be represented as part of the consortium effort. He stated his opinion it would be prudent to get the early jump on that process. He commented energy law is very specific, and he has concern with the availability of counsel well versed in that area.

Vice Chairman Mahon suggested the Council consult with legal counsel to see if a recommendation can be made for someone who can explain the intervener process. He commented the way he read it (from FERC's site), it was very specific about the issues and appeared as though it did not allow for a consortium. He remarked he is not saying it cannot, simply that the way it was worded/put on the page, left him desiring clarification.

Councilor Boyd stated his desire for the Town's interest to be represented passionately with bias to our community. He reiterated the quicker we gain information as to how that process best works for the Town, the sooner the Council will understand more clearly which direction it should pursue. He

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questioned whether it would be prudent to meet with Attorney Upton or his proxy within the next several months. Vice Chairman Mahon responded it would be. Councilor Woods stated agreement; however, recommended that action take place sooner than a few months.

Councilor Koenig stated any and all information received regarding this issue will continue to be posted to the Town's website. Vice Chairman Mahon added the list of future actions to be taken is a living document, and will continue to be updated as the process proceeds.

Councilor Koenig stated his belief the Town of Amherst is working towards putting together a group, to which Councilors Mahon and Boyd have volunteered to represent the Town on. Vice Chairman Mahon stated no meetings have been called as of yet.

Town Manager Cabanel stated there to be a Brookline group that has representation from 5-6 other towns. She spoke with the Town Manager earlier in the day and questioned why they would not simply join all groups together. He responded he would work towards that goal. The Brookline group is meeting prior as there is the desire to take actions and share information before Amherst has their meetings. It appears as though the groups will join together. Vice Chairman Mahon noted the NRPC has also put a working group together, and have asked for representation. Chairman Harrington has stated if anyone is interested, she will forward their name along (by the 6th of February). Councilor Koenig noted the NRPC's effort is to try to gather representatives from each of the towns they represent, and work to gather information. Vice Chairman Mahon added the NRPC has created a GIS overlay of the pipeline route by town (link is available on the Town's website).

Councilor Woods stated his appreciation of the discussion of other groups, and understands the more minds and ideas the better; however, he would not want to diminish our own good effort at counsel and advice to ourselves in terms of Merrimack's efforts.

Councilor Dwyer remarked of the roughly 12 miles of private land involved, half is in Merrimack.

Comments from the Press - None

Comments from the Public

Stacey Megalaitis, 8 Scotchpine Lane

Remarked she has lived in Merrimack for 18 years. One of the reasons she moved here from Massachusetts was because of the safety it provides her family. She is opposed to the proposed pipeline primarily because she believes it unsafe for many of the residents. She spoke of friends who reside in the incineration zone. Although not in her backyard, it is in theirs. She requested the Council strongly consider the residents who reside in Merrimack because of the safety it provides. She commented Kinder Morgan is a large company that stands to make millions off of utilizing Merrimack as the location of their pipeline.

Ms. Megalaitis stated Kinder Morgan was associated with an Enron executive; one is now in jail and the other should be, but is currently with Kinder Morgan. She stated her belief the company is not one of integrity. She requested the Council do its due diligence in identifying all reasons why Kinder Morgan is without integrity. She stated there to have been many recent explosions with Kinder

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Morgan pipelines constructed only a year ago. She stated concern for the potential of explosions that could result in loss of property and life.

Clayton Lennartz, 2 Haines Terrace

Remarked a comment was made that this is a three-year process; however, Kinder Morgan has said they plan to have gas flowing through that pipeline in 2017. This decision will be made in months, perhaps a year. Construction may last until 2017. There is not a lot of time.

Mr. Lennartz stated Richard Kinder (former President, Enron) was mentored by Kenneth Lay (former CEO and Chairman of Enron) from 1990 to 1996, formed Kinder Morgan with William B. Morgan in 1997, who was also mentored by Kenneth Lay.

He stated his belief the Town has requested a public meeting 6+ times, and they are saying it will be sometime in March. He remarked given they are pushing back hard about not extending the comment period, March 19th is probably the day they will choose.

Mr. Lennartz noted concern about what is in it for Merrimack. He stated “you guys are talking about money coming and going. It sounds more like you are running a business than running the Town for the citizens.” He stated negligible taxes would be paid by Kinder Morgan. It is an infrastructure project, and when it depreciates that will go away. The gas flowing through that pipeline won’t. It will run through people’s backyards. He has seen a gas pipeline running through an industrial property drop the value by 50%. He questioned if anyone would buy a house with a gas pipeline in the backyard. He suggested the value of those residences will drop to zero. The Town will experience a drop in property values and Kinder Morgan paying next to nothing, which will result in the need to raise the tax rate.

He stated the need for the Council to act in the best interest of the citizens of Merrimack, and make it clear to Kinder Morgan that they either talk to the Town, provide ample time to deal with this in a rational fashion or we will fight. He stated his belief if Kinder Morgan realizes there will be planned resistance maybe they will deal with it in a more rational fashion.

He added it needs to be made clear to the citizenry of Merrimack if Kinder Morgan doesn’t want to play nice, we will have to not play nice; specifically force them to take land by eminent domain. He stated if property owners force the taking by eminent domain, it relinquishes them of any responsibility if it does blow up. If instead they sign an agreement, they could be held liable.

Gina Rosati, 15 Dunbarton Drive

Questioned, if the proposed pipeline were unable to go through the HHNP, are there other planned areas that have been discussed. Vice Chairman Mahon responded that is Kinder Morgan’s plan, and they would have to redo the plan to try and get around that particular issue.

Ms. Rosati stated she has heard of a few routes being discussed, and questioned if they have mentioned anything to the Council or sent word to the Council. Vice Chairman Mahon responded he would like to know what those other routes are because he has not seen anything. Councilor Boyd echoed those remarks.

Ms. Rosati commented this is not a firm route, this is something that can change. In other words, it could potentially affect not just the 56 homeowners, it could affect everybody in Merrimack. Vice Chairman Mahon remarked probably not everybody in Merrimack. Ms. Rosati responded, but people that don't think it concerns them right now. The route could change and other people could be affected.

Vice Chairman Mahon responded he cannot speculate on that. He stated his belief it probably could change. Ms. Rosati suggested there are others who may want to consider getting involved. Vice Chairman Mahon remarked that is up to them. Currently, this is the plan that has been submitted to the FERC. That is the plan we are going to deal with. If we start dealing with speculation as to which way it might jump, if it is going to jump, we will be spending enormous amounts of time and money on something that may not happen.

Ms. Rosati stated she was just curious if he had heard about any other route. Vice Chairman Mahon stated he has not heard of any other route.

Don Miner, 82 Peaslee Road

Stated his understanding from reading paperwork he has received from Kinder Morgan in regard to surveys is if you don't act they take that as a yes, and will survey. He reiterated no action is acceptance. That is in their paperwork.

He stated he had a woman from Kinder Morgan show up at his residence last Friday, the day after the Town Council meeting, knowing exactly who he is despite the fact he is not listed on the Deed to his home or mortgage. He commented Kinder Morgan pays attention to these meetings. Although he had not provided permission one way or another with regard to surveying, earlier in the day he saw a survey crew in the snowbanks on his front yard. He called the woman from Kinder Morgan leaving her a message stating she had half an hour to return his call or he would call the Merrimack Police Department. He called the Police Department around 6:00 p.m. and spoke to a woman by the name of Erica at Dispatch who said, at that point in time, there was nothing in the log saying that anybody called notifying of a survey crew in Town.

Mr. Miner stated he did speak to the female representative of Kinder Morgan. She called him back and said they were supposed to be surveying in Amherst. He lives at 82 Peaslee Road; a fair distance from the Amherst town line. He has since provided his definitive no to the request to survey the property.

Mr. Miner stated his belief the Council should not allow Town property to be surveyed, and use that as leverage to get a public meeting. He remarked the comment period is when you will have the most influence.

Nelson Disco, LMRLAC

Read the following statement into the record:

"The local advisory committees for the Lower Merrimack River and the Souhegan River are charged by the State of New Hampshire with responsibility for overseeing the management and protection of

designated river sections in southern New Hampshire. In that regard, we note with satisfaction that, as reported by the PHMSA, the nationwide incidence of fatalities resulting from gas transmission line ruptures, when normalized per mile of installed pipe, has steadily declined in recent years. However the data for significant gas line problems occurring at river crossings is not as readily available.

The prospective installation of new gas pipelines under our protected NH rivers raises some specific questions;

- 1. We ask for further information and details on the method of installation of the pipeline under our protected rivers and their tributaries, including methods of boring, lubricants used, etc. Where else have these methods been used and with what results?*
- 2. What has been the history of significant gas transmission line accidents associated with river crossings in recent years? Have there been any in NH?*
- 3. How many natural gas transmission lines already cross under Designated Protected Rivers and where are they? Have there been any problems in the last two decades? Any in New Hampshire?*
- 4. The threat of scouring on pipelines buried under rivers has been well documented and minimum burial depths specified, along with the requirement for monitoring and operating procedures that would shut down pipelines during periods of high river flow that could threaten the pipelines through scouring. To what extent does Kinder Morgan intend to exceed the minimal burial depth specified, to ensure that the intended burial depth is maintained over time, and establish continual monitoring and contingency shut down capability and procedures during periods of high flow?*
- 5. What special actions does Kinder Morgan propose to take to ensure the safety of these protected rivers should this project proceed?"*

Mr. Disco respectfully requested the questions be forwarded to Kinder Morgan in the Council's discussions with them, and that answers be received that will give some assurance to the Town and the committees that our rivers are being protected as well as all other concerns raised.

Richard Barry, State Representative

Spoke of ISO New England, a group that manages and controls energy flow. He stated they have a designation called critical for certain infrastructure development such as the proposed pipeline project. If, when before the NHSEC, ISO has not designated the project as critical to the infrastructure, he believes there to be a 99% chance they cannot use eminent domain when trying to site the pipeline.

Representative Barry noted the Council has written to the Congressional Delegation as have the Representatives and Senator. What they have asked for is a delay in the requirement for public comment. He questioned whether the Council has already submitted public comment, e.g., minutes of all meetings, etc. He asked when that would occur and why the Council would be waiting.

Vice Chairman Mahon responded something will be sent. Not all of the Council's materials have been pulled together.

Judy Pierce

Stated a desire to speak for those who cannot speak for themselves; specifically the wildlife in Merrimack who have no say, but whose lives would be impacted forever.

Kathleen Rose, 83 Peaslee Road

Stated her opposition to the proposed project noting her belief it is not a service to Merrimack or New Hampshire. She remarked the gas pipeline is very limited; Nashua/Concord corridor, and she does not believe any of the utility companies have any plans to extend beyond Milford and into the western part of the State.

She remarked most of the gas will be liquefied and sold. From what she has read only 30% will be used in the New England area. She remarked Kinder Morgan stands to gain a huge monetary advantage at our expense. She commented we don't seem to have the same pull as Massachusetts, but hopefully with a consortium of communities and help from the State House we can push back a bit, and see if this can be stopped.

She spoke of a negative energy flow; we have the pipeline from the frack gas in Pennsylvania, which will be going through this line, we have the potential for clean energy with the Northern Pass, although she understands going through the White Mountains, but at least the Northern Pass, the energy is hydro-electric, it will go right into the grid, and will service all of New Hampshire and parts of Vermont, Maine, and Massachusetts. She stated she has no problem sending money to Canada based on the environmental issues involved.

Her home is one of the oldest in Town, and her barn is right on the power line. She stated she has a Public Service Easement to use part of that land for agricultural purposes. That concerns her. If they blast, her barn, on its stone foundation, will not survive. She stated her hope the Town will take a proactive resistance stance to the proposed project.

Ms. Rose stated dissemination of information is an area where she has concern. She stated, had she not watched the replay of the Council's last meeting, she would not have known to look to the website to see if anything new had been posted. She believes a lot of citizens would be interested in attending meetings concerning this issue, but simply do not have the information. She suggested the Town consider sending out a notice to all residents/taxpayers noting the action proposed by Kinder Morgan.

Elizabeth Grunewald, 15 Cota Road

Has lived at her current address for the majority of her life. She stated her understanding of what she has heard and read is that regardless of what stance the Town takes on the pipeline, if the Federal Government or FERC says that it needs to go in, it goes in. She asked for clarification. Vice Chairman Mahon stated that to be correct.

Ms. Grunewald questioned whether there is a Town Ordinance that protects the citizenry from a foreign/corporate entity coming in and overriding the consent of the Town. Vice Chairman Mahon stated there is not. When asked what the process to do that would be, Vice Chairman Mahon explained it would have no weight. The process would require either an action by the Council or a Petition to the Council or a Petition for a meeting where the issue would be considered and voted on. Ms. Grunewald questioned why such a local law would not have weight. Vice Chairman Mahon explained it would be superseded by Federal law. Local governments are entities of the State. We live and die by what the State tells us we can and can't do. The Federal Government can preempt and supersede State action

and local action as long as there is no violation of issues of the Constitution. The Natural Gas Act is the controlling Statute. Congress passed it some 50-60 years ago. They have not delegated the authority to do this to the States. What they have not delegated to the States to do, the Federal Government retains authority over. In this case, they retain the authority to deal with the placement of these kinds of public utilities.

Comments From the Council

Councilor Koenig remarked there were comments made about potential revenue and a feeling the Council was almost selling the Town out. He remarked if that was a reflection on his earlier comments, he wished to state, for the record, that he has been sitting on the Planning Board most of his time on the Council, and one of the things the Planning Board does is evaluate projects that come before it that want to come into Town. The Planning Board would not evaluate this project because it is preempted by State and Federal law. They don't give a whit about this Town's Planning Board. The Planning Board looks at projects extensively and from all sides. He stated the importance of looking at pros and cons. The Board considers negative impacts on property values, which the Board cares about significantly. The Board also looks at what other impacts might happen in Town. If there happens to be a tax income because of Kinder Morgan having infrastructure in our Town, that is part of the process. That is what he was alluding to; it is part of the process. You have to know the entire process.

Councilor Koenig stated he was not trying to make any suggestion that this Council, he, the Town Manager, or staff are looking at this project as if it is going to bring money into our coffers and fill up our bank accounts. He does not believe that will happen. Even if it did, all sides of the project would have to be evaluated to gain an understanding of what it is.

While he understands it is very personal to a great many people, as it is to him, it is important to remain rational and look at the entire process.

Councilor Koenig commented something that has been brought up multiple times is that the Federal Government will be looking at this proposed project from an impact perspective not based on what individuals want or care about. It will be on the impact it would have on the environment and the overall region. We have to find out why it should or shouldn't go through the Town of Merrimack and make that a clear presentation to the committees that are making those decisions.

Councilor Dwyer stated everybody probably now realizes who the biggest benefactor of tax money or any fees is; Public Service of New Hampshire. They are the biggest winner financially in this issue; the 72 mile corridor belongs to them.

With regard to comments made about the route being changed, there isn't a Plan C. They had Plan A, which was a route in Massachusetts and a Plan B, which is a route in southern New Hampshire. With regard to the question raised of are there other routes, the answer he has known is there is no other route.

He suggested the surveying crew should not be seen as an enemy. Being allowed to survey land is completely different from will you give me permission and here is a check for an easement to allow the pipeline to go through your property. They are asking you if they can survey your land. Why is it

good for you; it is good for them to see that barn, that pond. What is seen on the GIS map is the route. It is the detail the surveyors on the ground will see, e.g., the pond, ledge, etc. That is when the opportunity arises when you can say hey there is my well, my barn, etc. The surveyor is there to witness your dilemma. That is when the survey moves a line because they see rock ledge, a pond, your well, etc. When the question was asked of could the route go around something, etc., yes, that is why the surveyors are there. The surveyors, by their very nature, aren't in the pocket of Kinder Morgan. They are private companies that get hired by a big company. They are there with boots on the ground surveying the land.

Councilor Dwyer remarked many have expressed the desire for the Council to deny the request to survey the HHNP; however, he is not convinced that is the end game the Council might have. If Kinder Morgan continues to ignore the requests for a public meeting perhaps, out of spite, we will fight it. However, he would not want to deny them the opportunity to survey where they may find four miles of the hardest ledge, etc., which could cause them to seek another zone. If he were a homeowner in that area he would want a surveyor to come on his land to provide the opportunity to identify where his concerns are.

Vice Chairman Mahon noted the open house in Milford has been rescheduled for February 24, 2015. There is an open house in Hudson on February 19, 2015 and one in Londonderry on February 18, 2015. They are not public hearings or public meetings, they are essentially trade shows. Issues such as those brought up by Mr. Disco will be addressed. The contractors that are doing the drilling, blasting, digging and laying the pipe in, etc. will be there. If you have questions about those technical issues and the environmental impact of that work, e.g., what they will do to address runoff, etc., that is where those questions can be asked/answered.

That is what they are required to do as part of this process that is dictated by the FERC.

The meeting the Town is hoping to have conducted is a public meeting. Kinder Morgan has been asked to send representatives to Merrimack to talk about what they would like to do, how they plan to do it, and provide the public the opportunity to ask questions.

An unidentified female questioned the process Hollis took in getting the project out of its Town, and if Merrimack has looked to them for guidance in doing the same. Vice Chairman Mahon responded what was utilized were identification of environmental issues. He commented that is the hook on this process; identifying the endangered species, sensitive habitats, e.g., wetlands, etc. that makes it prohibitive for them to mitigate those. That is what pushed them out of Massachusetts; environmental issues. He spoke of the memo from Tennessee Gas Pipeline Company L.L.C. dated December 12, 2014 (posted on website), which reads in part: "In addition the proposed route change will enable Tennessee to avoid (in certain cases) and to minimize (in other cases) the crossing of Article 97 properties and Areas of Critical Environmental Concern in Massachusetts."

Vice Chairman Mahon noted his receipt of an e-mail from a resident of Hollis who said the reason they left that area is because of environmental issues involving the Beaver Brook area. He reiterated the Conservation Commission is undertaking an extensive review to update information that was gathered a few years back when they had an environmental assessment on the HHNP prepared. Current efforts will identify any changes and areas that are sensitive, species involved, etc.

Approved: February 12, 2015

Posted: February 13, 2015

Kathryn Pitten, 8 Rimmon Court

Commented if the environmental approach is successful and Kinder Morgan determines not to go through the HHNP, we wouldn't want the route to be changed to another area of Merrimack. The message should be that we don't want them anywhere in Merrimack. Vice Chairman Mahon commented what they are saying is by going the utility route they are trying to avoid private property. It would likely not be to their advantage to change the route.

Unidentified Male Speaker

Stated his understanding none of the pipeline is going underneath the power lines, nor is it going to be on any of the public service property. The co-location is a new word they have come up with that means it will run in a separate corridor on private property the whole way.

He remarked his property abuts PSNH property. It took him two years to acquire permission to use his farm. Regardless that Easement, which he researched prior to PSNH purchasing the property adjacent to his, is the width of which they own now. It never went on his property. The Easement is 150' ±. He cautioned the entire route will be on private property.

Wendy Thomas, 10 Wildcat Falls Road

Stated one of the things she noticed at the last Town Council meeting is that a member from Kinder Morgan was sitting in the back corner on the floor. She suggested if Matt Abdifar, Lucas Meyer or any other representatives of Kinder Morgan attend future meeting(s) they introduce themselves to the Council and the residents of Merrimack.

MOTION made by Councilor Woods and seconded by Councilor Boyd to adjourn the meeting.
MOTION CARRIED 6-0-0

The January 29, 2015 special meeting of the Town Council was adjourned at 9:12 p.m.

Submitted by Dawn MacMillan