

All Warwick Boards Meeting and Concerned Residents to Draft Letter to FERC Concerning KM/TGP Pipeline

November 6, 2014 7:00pm

Warwick Town Hall

Meeting called to order at 7:01 by Planning Board Chair Ted Cady

Present: Ted Cady - Planning Board, Leigh Youngblood, Andrea Woods-Secretary, Dan Dibble-Building & Energy Committee, Kasey Rolih - ConCom, Ann Kendall - ConCom, Brad Compton - Planning Board, Arthur Long - Planning Board ZBA, Rod Whipple - Forestry Committee, Helen Whipple - Board of Health, Mary Williamson - Open Space and ConCom, John Williamson - Planning Board, Sandy Renna - ZBA, Gregory Brodski - ConCom, John Bradford - Planning Board, Alan Berman - ConCom, Karro Frost - ConCom, Nick Arguimbau - Selectman, Planning Board, Elaine Reardon - Resident Quarry Road, Michael Humphries - Resident, Jared Robinson and Paula Robinson - Athol Daily News, David Young, Town Coordinator

I. Description of Maps and Invitation to View Them

3 maps provided for viewing showing the same land area in different formats. Purpose- to show sensitive and protected land areas and approximate location of proposed pipeline.

II. Announcements

Cady announced pipeline meeting November 13 at Millers River Environmental Center 7-9pm

Scheduled Kinder Morgan Open Houses which were to be held locally in Orange Dec 2 and GCC Dec. 3 have been postponed

III. Purpose of Meeting

Cady described the purpose of the meeting which is to draft a letter to the Federal Energy Regulatory Commission (FERC) about the concerns of Warwick related to the proposed pipeline. He has reviewed recent reports and filings and has not found that there is any consideration of local issues, and this letter will be an opportunity to have those concerns heard.

Discussion on whether to send a general letter of concern, not "showing our hand" too completely related to local and state laws and permit requirements, etc. or being very specific and including all topics of concern. Consensus was to "discourage them sooner rather than later", and include all matters of concern.

IV Topics to be included in the Draft Letter

a. **Are there ENDANGERED SPECIES in town?**

"Northeastern Bulrush" at Gale Pond is federally threatened. Gale Pond not currently on route. "Small Whorled Pogonia" also in town.

b. **Are there CHAPTER 61 CONSERVATION RESTRICTIONS in town?**

Yes, several and this should be a topic in the letter. Removing a CR requires 2/3 vote of legislature, hearing with BOS required. Related MGL Ch184 does have a provision for Public Utilities, but that shouldn't stop us from using this argument.

c. **Is there STATE FOREST RESERVE LAND?**

Yes, include this in letter and it was noted that at a prior meeting of the Planning Board and ConCom, Open Space, BOS, Forest Committee, it was decided that the Southern end of town should be a Forest Reserve. Pipeline will run over this area. It was suggested that we separate out each forest so they would have to be voted upon separately. This would result in a large pile of bills with more impact. Enlist help of State Representative or Senator. Along this discussion it was mentioned that an ARTICLE 97 VOTE similar to one filed by Sandisfield to Kinder Morgan would be a "second line of defense".

d. **Is there TOWN FOREST LAND?**

Discussion of whether to include this because the pipeline as shown at this time does not pass through our Town Forest. However, changes to the pipeline route may be made with "minor modifications" which could send it through. Frost estimates current location is only 1/8 miles from nearest Town Forest. Yes, include this argument in letter.

e. **What about the BLACK GUM SWAMP?**

ConCom is already drafting a letter addressing this sensitive area. Berman will share details of letter with Cady to include in this letter.

f. **What about the AQUIFER NEAR QUARRY ROAD?**

The proposed pipeline will cross an aquifer upstream of 4 houses on Quarry Rd. How will this affect drinking water? Yes, include this in the letter. Frost noted that it also crosses 4 Perennial Stream (this was later changed to 3 in discussion - will need confirmation), and the Wetlands Protection Act MGL Ch 131 §40 was cited. Youngblood noted that this is the only permit Kinder Morgan mentions in their filing.

g. **What about ZONING?**

Warwick is zoned agricultural/residential. A project would normally require a special permit from the Zoning Board of Appeals. Yes, this should be included in letter.

h. **What about the SHADE TREE LAW or the SCENIC ROAD ACT?**

STL requires a hearing for cutting of trees. SRA includes stonewalls and trees in certain areas of town. Yes, we should include this. Cady will add legal citations here.

i. What about VERNAL POOLS?

3 vernal pools were certified this past spring, maps not yet available. Black Gum Swamp and Shaw property are included. These fall under Wetlands Protection Act and Federal Clean Water Act §401 and 404. Town has no regulatory authority here, only the Dept of Environmental Protection and Army Corps of Engineers. Resources to bring to attention in letter: Wetlands, Streams, Vernal Pools, Bordering Vegetative Wetlands. Reardon asked about getting some additional vernal pools certified next spring which was encouraged. Yes, include in letter.

j. What about ENDANGERED SPECIES?

We have state listed endangered species, we should cite the Massachusetts Endangered Species Act - "MESA". Yes, include in letter.

k. What about OTHER SENSITIVE HABITATS?

Rolih and Compton volunteered to do additional research on this for inclusion if applicable.

l. What about PRIME SOILS?

The town may have prime soils. the MEPA list will need to be consulted. No one specifically volunteered to do this, although Frost brought it up.

m. What other positions should we take in the letter?

Berman thinks we should include something along this vein: Warwick is minimally developed and there is much about our wild lands that we don't know so it is hard to quantify each type of resource. We may not know about other endangered species or sensitive habitats because of this "we don't know what we don't know" limit, we could miss something priceless. Yes, try to include this in letter.

The effect of reducing our CR land to less than 10 acres could be detrimental to the town. Youngblood proposes that we should require KM to hire an environmental consultant to address Ch61 concerns, i.e. make THEM pay for this work. Yes, include this in letter.

Cady suggests that the "clear cutting" required for this project would not meet requirements of Ch61 and there is ambiguity about the "taking" of land versus the "selling" by owner that would need to be addressed related to Tax Consequences, the town's Right of First Refusal. A 120-day project delay could be imposed regarding the latter. Citations: Ch79 §13 allows the owner to sell, §5b could impact the process. Sam Lovejoy and Keith Ross may be resources for more information. Yes, include this in letter.

Youngblood mentioned "Maintaining Integrity of Connectivity" of the state forests (Erving, etc.). Breaking them apart causes harm. She will look into any legal citations or more information on this.

V. Discussion about formulation of the letter.

a. Cady suggested reformulating our concerns into queries for FERC. Brodski has concerns about mixing questions with suggestions/concerns/problems with their plan. Will it dilute the letter. Perhaps there should be more than one letter? Arguimbau agreed that questions can be ignored, demands under law cannot. Consensus seemed to be, regarding environmental concerns, to tell them what we want them to do based on the law.

VI. Other issues

a. Youngblood read from Northern Merrimack COG letter which concisely sums up the concerns Kinder Morgan has in their project planning:

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| <i>1. Project Impact on Pipeline Competition</i> | <i>2. Overdeveloping Pipeline Capacity</i> |
| <i>3. Avoiding unnecessary use of Eminent Domain</i> | <i>4. Subsidization of Existing Customers?</i> |
| <i>5. Safety</i> | <i>6. Environmental Impact</i> |

Discussion addressing these items:

#1 - Using other routes would require less #1 Project Impact and #6 Environmental. It is proposed that the route they are planning has the MOST environmental impact. Youngblood will research facts on this point.

#2 - Capacity problems could be solved by fixing existing leaks - the contention is that if all the leaks were fixed we would not need a new pipeline. Energy Conservation measures would reduce the need for capacity - Warwick has just become a "Green Community" and trends throughout the state are moving towards increased energy efficiency. KM only has firm commitment for 1/2 billion cubic ft./day but wants capacity for 2.2 billion cubic ft./day. Appears they are not building for what is needed. Logical explanation is exportation, but they deny this. Agreed we should point this out in the letter - ask for commitment not to export out of New England

#3 - There are other routes which would require far less use of Eminent Domain

#5 - Brodski points out that fixing of leaks / safety issues harder to maintain on very rural route. FERC Resource Report mentions the State has the right to inspect for corrosion. The

local ConCom should have the right to make that inspection on a local level. Include this in letter.

#6 - Compton points out that there is much more environmental impact on pristine land versus next to a highway. Berman mentioned Invasive Species - Construction equipment, if not washed between uses, could bring unwanted invasive species to our forests/pristine areas. How will KM prevent this?

Additional items in the Resource Table (1.6.1) to be addressed by Cady in draft letter.

b. Cultural and Historic Resources

Is there any property that is on the National Historic Register which is federally controlled? Check §106 of National Historic Preservation Act. No one volunteered to research this.

Historic Dams - there is one at Hubbard Pond/Orange Road and one at Quarry/Flag Road. Are they eligible for Historic Register? Berman cited this, will he research?

c. Arguimbau presented list of federal laws and arguments related to them:

1. Cannot cross National Park Service Land: New England Scenic Trail (old M&M Trail) because it is considered part of the Natl Park System.

2. US Code §717f(e) allows for certificate to be issued if "required by the present public convenience and necessity" He believes there are several areas to be addressed under this including a clause in the certificate requiring them not to sell gas abroad. Contends that climate impact of fracked gas be established by FERC before issuing a certificate. Concern about going outside Warwick issues here. Consensus is to stick to citing the SCIENCE JOURNAL article related to fracking and climate change as a reference in our letter, but leaving out excessive discussion of this argument.

3. Arguimbau suggests letter demand that KM must "abide by all provisions of Warwick (local) and state law". It was agreed this should be in the letter. Youngblood suggests that the NATURAL GAS ACT pre-empts state and local laws, and they likely have the "authority", but we should ask that they respect state and local laws.

4. Arguimbau suggests we ask specifically why the existing routes along Rt 2, Rt 90 or railroad corridors are not possible related to "public convenience and necessity". Law says you can't exercise Eminent Domain unless you have to.

5. Youngblood suggests following up with Trust for Public Lands efforts to value our pristine lands - how much is a pristine forest or water aquifer worth in \$\$\$. Try to make this as expensive as possible.

6. ***Arguimbau suggests we use the 2 degrees C limit "imposed worldwide" which would translate into a moratorium on any new fossil fuel development. Consensus NOT to include this in the letter.***
7. ***Arguimbau suggests noting the Quabbin to Cardigan species migration corridor. Youngblood says she will include in her argument related to Integrity/Connectivity .***
8. ***Performance Bonds - Decommissioning Bonds, do we want to demand them? We have learned lessons from the cell tower project regarding bonds and their limited effectiveness if not closely monitored. Frost suggests funds in Escrow. Concern is that the pipeline has a fairly short lifespan - 30-40 years, then what?***
9. ***Arguimbau suggests noting Native American Lands Protection Act requires the "identification and protection of all American Indian historic or religious sites" along the entire pipeline corridor. We were populated by Native Americans here, this could potentially delay or halt construction. Yes, consensus to include this in the letter.***
10. ***Arguimbau cites the 5th Amendment that the pipeline serves no public use within the meaning of the Constitution. There was not consensus to include this in the letter.***

MEETING ADJOURNED AT 9:04 PM

Respectfully submitted,

Andrea Woods, secretary