

Law Office of James A. Dumont, Esq., P.C.

15 Main St., P.O. Box 229, Bristol VT 05443
802-453-7011; Toll Free: 866-453-7011; fax 802-505-6290
email: jim@dumontlawvt.com; website: dumontlawvt.com

Caroline F. Engvall, Legal Assistant
Kit D. Donnelly, Legal Assistant

James A. Dumont, Esq.

July 17, 2018

Peter Coffey, Chair
and Members Bouvier, Heffernan, Lylis and Perlee
Bristol Select Board
Town Hall
Bristol VT

Re: Proposed Conveyance In Perpetuity to Vermont Gas Systems, Inc.

Dear Chairman Coffey and members of the Select Board:

I am writing to you on behalf of Sally Burrell, Rebecca Kodis, Alice Leeds and Gary Smith to ask that the Select Board comply with 24 V.S.A. § 1061 prior to signing the proposed conveyance to Vermont Gas Systems, Inc.

The proposed conveyance grants Vermont Gas Systems, Inc., the right “in perpetuity” to place its gas distribution lines within town-owned highway rights of way. It is a conveyance of an interest in real estate.

This is an extremely important decision that will affect the property values, safety and environmental integrity of Bristol – in perpetuity.

Natural gas distribution lines, if damaged by forces of nature, digging, or aging, can produce explosions with catastrophic effects on people and property. Within the past week a Verizon subcontractor accidentally damaged a gas distribution line in Wisconsin. A half a block was destroyed. A firefighter was killed. These accidents occur all across the country.

An expert report commissioned by the federal agency which regulates gas distribution pipeline safety (the Pipeline and Hazardous Materials Safety Administration, or “PHMSA”), reported that 93 percent of fatal pipeline accidents and 73 percent of injury pipeline accidents were caused by third parties, such as building contractors -- like the recent Wisconsin fatality. No amount of good will or safe practices by the gas company can prevent these accidents. They are inevitable. And they are common. For the years covered by the report, 1985-2003, the average number of all gas distribution pipeline incidents per year (including both property damage incidents and death/injury incidents) varied from 170 to 124. Of these, there were an average of 11 fatal accidents per year and 43 injury accidents per year. Again, this is just for distribution lines, like the proposed distribution line to Bristol, not transmission lines. Accidents involving transmission lines are calculated separately.

Natural gas also is highly damaging to the climate. The current scientific literature, by leading scientists in the world, estimates that burning natural to heat homes is far more damaging to our atmosphere than burning oil to heat homes. This is because methane (natural gas is methane) is an extremely potent greenhouse gas, and because so much methane leaks out of the system during gas extraction, transmission and distribution. The effects of natural gas are so severe that even the use of coal would be less harmful. It is irresponsible for any of us, or our leaders, to participate in the devastation of the atmosphere if reasonable alternatives are available to reduce heating costs. Reasonable alternatives are available, including installation of cold climate heat pumps and weatherization of homes, both of which produce greater savings to homeowners than installation of natural gas facilities.

The proposed perpetual lease will diminish property values in Bristol. A homeowner may elect not to purchase gas, but if there is a distribution line running across the homeowner's front yard, their property value will be affected anyway. Many prospective homebuyers choose not to raise families next to natural gas lines.

The draft that is on the Town's website obviously is not final. It has yellow highlighting with questions about terms to insert.

Once the Select Board does reach the point that it knows the terms that it would accept, at that point the statute will require notice to the public and the opportunity of the public to file a petition requiring a vote of the public.

There can be no doubt that the statute applies. The statute says:

§ 1061. Conveyance of real estate

(a)

- (1)** If the legislative body of a town or village desires to convey municipal real estate, the legislative body shall give notice of the terms of the proposed conveyance by posting a notice in at least three public places within the municipality, one of which shall be in or near the municipal clerk's office. Notice shall also be published in a newspaper of general circulation within the municipality. The posting and publication required by this subsection shall occur at least 30 days prior to the date of the proposed conveyance. Unless a petition is filed in accordance with subdivision (2) of this subsection, the legislative body may authorize the conveyance.
- (2)** If a petition signed by five percent of the legal voters of the municipality objecting to the proposed conveyance is presented to the municipal clerk within 30 days of the date of posting and publication of the notice required by subdivision (1) of this subsection, the legislative body shall cause the question of whether the municipality shall convey the real estate to be considered at a special or annual meeting called for that purpose. After the meeting, the real estate may be conveyed unless a majority of the voters of the municipality present and voting vote to disapprove of the conveyance.

- (b) As an alternative to the procedures set forth in subsection (a) of this section, the legislative body may elect to have the voters decide, at an annual or special meeting warned for that purpose, whether the real estate should be conveyed. If a majority of the voters of the municipality present and voting vote to approve the proposed conveyance, the real estate may be conveyed.
- (c) Notwithstanding the provisions of subsections (a) and (b) of this section, the legislative body of a town or village may authorize the conveyance of municipal real estate if the conveyance:
 - (1) Is directly related to the control, maintenance, construction, relocation or abandonment of highways.
 - (2) Is directly related to the control, maintenance, operation, improvement or abandonment of a public water, sewer or electric system.
 - (3) Involves real estate used for housing or urban renewal projects under chapter 113 of this title.

If the town were to grant a homeowner an easement for the use of the edge of a town road, for parking, in perpetuity, surely all would agree that the statute applies. If a right to install a gas line were granted for the same location, the effect on the public and on adjoining landowners would be much greater:

- a. Federal regulations require that distribution pipelines be subject to regular testing and inspection; in some situations, excavation is required. The pipeline and the areas immediately around it will be subject to excavation, and re-excavation, in perpetuity. Public rights to use the road, and private property rights held by the adjoining landowners, will be affected.
- b. All town water and sewer lines would have to be excluded from the right of way within a specified separation distance from the gas pipeline, in perpetuity.
- c. All private water and septic lines would have to be excluded -- even if outside of the right of way -- within a specified separation distance from the gas pipeline, in perpetuity. Private property rights will be affected.
- d. Otherwise legal uses of the land would become impossible in perpetuity. For example, the proposed lease prohibits growing any trees in the affected area, a use that is otherwise lawful. Natural gas lines cannot have trees growing over them, for safety reasons. A landowner who is growing Christmas trees within the right of way would have to cease. A landowner whose front yard is separated from the road by beautiful trees may see them cut to the ground. This is particularly troubling in those areas where the Town has a right of way but not a fee interest. The fee owners' rights to use their own land are being taken away – which we all accept if the purpose is road safety, but not if the purpose is benefit to a private corporation.

Subsection (c)(2) explains why Select Boards generally have not had to comply with this statute when dealing with utilities – the legislature exempted electric utilities from the statute (and most telephone utilities are co-located on electric poles). Since Vermont Gas

Systems, Inc., is a gas utility, not an electric utility, however, no lease, license or other interest in the town's roads can be conveyed to the company without compliance with the statute.

Subsection (b) of the statute grants the Select Board the option of setting this for a vote without awaiting a petition. That option lies within your discretion. However, posting of public notice, including notice in the newspaper, of the terms (once you have decided on the terms) is not optional.

Finally, I think it may be useful to explain how the so-called "curb cut statute," 19 V.S.A. §1111, applies to the proposed agreement. Section 1111 does not supersede 24 V.S.A. § 1061. To the contrary, subsection (a)(1) of § 1111 states that other statutes may apply, and that the § 1111 requirements are in addition to those in other statutes.

Likewise, subsections 1111 (f) and (g) state that § 1111 permits are subject to *revocation or suspension* by the town. The proposed agreement prepared by Vermont Gas Systems is not revocable and cannot be suspended. It will be in effect *forever* once the Select Board signs it. This distinction should remove any doubt that the agreement that awaits your approval is much more than a § 1111 permit. It is a conveyance of an interest in land.

I hope you will provide this letter to the town's counsel. I am cc'ing a copy to Vermont Gas System's lawyer, Deborah Bouffard, Esq. I ask that any emails, correspondence or letters sent by Vermont Gas Systems to the Select Board or its lawyer be provided to me as well. (These all would be public documents under the Public Records Act.) I would then appreciate the opportunity to respond.

Thank you for your attention in this matter.

Sincerely,

James A. Dumont

James A. Dumont, Esq.

cc: Ms. Valerie Capels
Deborah Bouffard, Esq.