



KEENE CITY COUNCIL
Council Chambers, Keene City Hall
July 7, 2022
7:00 PM

ROLL CALL

PLEDGE OF ALLEGIANCE

MINUTES FROM PRECEDING MEETING

- June 16, 2022

A. HEARINGS / PRESENTATIONS / PROCLAMATIONS

B. ELECTIONS / NOMINATIONS / APPOINTMENTS / CONFIRMATIONS

1. Nominations
Library Board of Trustees
Planning Board

C. COMMUNICATIONS

1. Cathedral Ledge Distillery - Requesting Permission for Spirits to be Tasted and Sold at the Keene Farmer's Market
2. Councilor Mitchell Greenwald - Amendment to the City Council Rules of Order - Remote Access

D. REPORTS - COUNCIL COMMITTEES

1. Charles Redfern - Request for Signage Identifying Trails
2. Councilor Jones - Unsafe Sign Placement
3. Warrant for Unlicensed Dogs - City Clerk
4. Attorney Thomas Hanna - JRR Properties - Donation of Land at 0 Ashuelot Street - Green Space

5. Fabian Friedland/Keene Island Condo Association and Keene Island Holdings - Requesting Lease of City Property for Parking - Island Street
6. Acceptance of New Hampshire Juvenile Court Diversion Network SBIRT Funding - Youth Services
7. Colony Court Sewer Replacement Project - Construction Change Order - City Engineer

E. CITY MANAGER COMMENTS

F. REPORTS - CITY OFFICERS AND DEPARTMENTS

G. REPORTS - BOARDS AND COMMISSIONS

H. REPORTS - MORE TIME

1. Attorney Michael Bentley – Agatha Fifield – Requesting the City Resume Maintenance of Blain(e) Street – Private Way

I. ORDINANCES FOR FIRST READING

J. ORDINANCES FOR SECOND READING

K. RESOLUTIONS

NON PUBLIC SESSION

ADJOURNMENT

06/16/2022

A regular meeting of the Keene City Council was held on Thursday, June 16, 2022. The Honorable Mayor George S. Hansel called the meeting to order at 7:00 PM. Roll called: Bryan J. Lake, Michael J. Remy, Gladys Johnsen, Michael Giacomo, Randy L. Filiault, Robert C. Williams, Philip M. Jones, Andrew M. Madison, Kris E. Roberts, Bettina A. Chadbourne, Catherine I. Workman, Kate M. Bosley, and Thomas F. Powers were present. Mitchell H. Greenwald was absent. Having declared a quorum physically present, Councilor Ormerod—who had the Council’s permission to participate remotely due to a health issue—stated his location and whether anyone was present with him. Councilor Johnsen led the Pledge of Allegiance.

PROCLAMATION - JUNETEENTH

Mayor Hansel welcomed Chair of the Human Rights Committee, Sofia Cunha-Vasconcelos, and Director of Parks, Recreation, & Facilities, Andy Bohannon, to receive a proclamation declaring June 18–19 as Juneteenth in the City of Keene. The Mayor recognized the historic importance of the holiday and encouraged all citizens to join in the Juneteenth events to celebrate and witness the history. Ms. Cunha-Vasconcelos invited all citizens to join in the Juneteenth events planned for Saturday, June 18 at 11:00 AM for a three-hour event with wonderful speakers and musicians to learn more about this holiday and join as a community to recognize and celebrate it.

MINUTES FROM THE PRECEDING MEETING

A motion by Councilor Powers to adopt the meeting minutes of June 2, 2022 as printed was duly seconded by Councilor Bosley. The motion carried unanimously on a roll call vote with 14 Councilors present and voting in favor.

PUBLIC HEARING – ORDINANCE O-2022-04 – ZONING ORDINANCE AMENDMENT

The City Clerk read the public hearing notice and Mayor Hansel called the hearing to order at 7:07 PM. The Mayor said the hearing was the opportunity for the public to comment on the Zoning Ordinance Change, relating to amendments affecting the Commerce District. Mayor Hansel welcomed Senior Planner, Mari Brunner, for a brief presentation.

Ms. Brunner was present representing the Community Development Department, which was the petitioner for this application. The Ordinance proposed to amend several provisions of the Land Development Code—Chapter 100 of the City Code—to create the opportunity for housing development in the downtown and commercial areas of the City, which is consistent with the prevailing scale and built form of the surrounding area. This Ordinance first went to the City Council for a first reading on April 20 and was then referred to the Joint Planning Board—Planning, Licenses, and Development Committee for a public workshop on May 9, during which there were no comments from the public. However, there was discussion at the Board level about some of the provisions. Most discussion was about height and setback requirements. Ultimately, the Planning Board voted finding that the Ordinance was consistent with the Comprehensive

Master Plan, and the Planning, Licenses, and Development Committee voted to request that the Mayor set this public hearing.

Ms. Brunner continued, restating that the petitioner was the Community Development Department and Staff viewed this proposal as an extension of the Land Development Code project, which was a long, massive, multi-year effort. With respect to zoning, Ms. Brunner said the Land Development Code was mostly just a reorganization of information, with some zoning changes to the downtown. Staff had been reviewing the zoning districts outside of the downtown— areas that were mostly untouched in the Land Development Code—to identify opportunities for reducing barriers to housing development and ways to promote other community goals in the Master Plan. Currently, within the Commerce District, there are no residential uses allowed. Staff proposed to add multi-family dwellings as a permitted use in the district, with the limitation that dwelling units could not be located on the ground floor to ensure the intent of the district is preserved. The intent of the Commerce District is to provide for an area of intense commercial development. While Staff felt that this could be a good opportunity for mixed-use, live-work type developments, they wanted to ensure they were not inadvertently allowing for significant land development in the Commerce District strictly for housing. The goal is a mixed-use scenario. Currently in the Commerce District, the maximum building height is two stories or 35 feet, which can increase to three and a half stories or 50 feet by special exception from the Zoning Board of Adjustment.

Ms. Brunner stated that Staff proposed to remove the special exception in order to increase the height to four stories or 56 feet, provided that additional building setback requirements are met. Setbacks ensure that buildings are a certain distance from the property line. The current setback requirement in the commerce district was 20 feet and if a developer wanted to go up to three stories, a 30-foot setback would be required; a 40-foot setback for four stories was proposed. The building height step back is where the building's façade above a certain point is recessed back from the front of the building in order to bring the massing of the building back away from the street. A developer could choose either the setback or step back option; both are not required.

In addition to those proposed changes to the Commerce District, Ms. Brunner said Staff also proposed a change that would affect both the Downton Growth and Downtown Core districts. A major component of these districts, which are the heart of downtown Keene, is the emphasis on pedestrian scale development and having an active streetscape and walkability. Currently, multi-family residential uses are allowed in both districts. However, in the Downtown Core, all dwelling units must be located above the ground floor if there are fewer than four units in one structure. Staff proposed to change that rule so that multi-family residential development in the downtown can occur only by right on the upper stories of buildings. The intent of this change is to ensure the City is promoting ground-level uses in the heart of downtown Keene that are appropriate for the area with a prominent level of pedestrian traffic. Ms. Brunner welcomed questions.

06/16/2022

Councilor Jones stated that he would not be at the Planning, Licenses, and Development Committee meeting on July 13 to comment, so he took this opportunity. He thought the proposed changes were very good. He recalled that when the Land Development Code was developed, it was with the caveat that more amendments would be made to improve the Code as it was implemented. He cited the housing crunch and recalled his comments on smart growth principles, which he said these changes fit. He said the fact that some bureaucratic red tape was being removed was a good thing.

Councilor Williams said he really liked this idea because more density of places for people to live is needed in Keene because there is not enough housing. He said that building more housing would bring down the prices. He was concerned about excluding the ground floor in the Commerce District, stating that such housing is important for handicapped access; it is less challenging than having to go to upper floors or having an elevator installed. Councilor Williams asked Staff to reconsider some kind of ground floor housing for disability access.

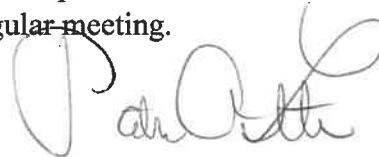
Mayor Hansel opened the hearing to public comment.

Dan Bartlett of 185 Winchester Street spoke in favor of this proposal, echoing the support already voiced. He had a client approach him with a proposal like this to have retail on the first floor and residential on the second floor in the Commerce District. However, because of the Code, that plan did not move forward. He is interested in this change and thinks it will result in more vibrancy in the Commerce District because of residential life. He hoped this would move forward favorably.

Peter Espiefs of 19 Middle Street lives in the Historic District. He commented that the City enacted the Historic District and should protect it from these sorts of changes that would change the character of the District. He urged the City to be careful about harming the District.

Hearing no further comments or questions, Mayor Hansel closed the public hearing at 7:19 PM, except for written comments, which would be accepted until 1:00 PM on Tuesday, July 12. Written comments must be signed and submitted to the City Clerk by that date and time to be included in the record. The Planning, Licenses, and Development Committee will be making a recommendation to the full Council at their July 13 regular meeting.

A true record, attest:



City Clerk

COMMUNICATION – ATTORNEY MICHAEL BENTLEY – AGATHA FIFIELD –
REQUESTING THE CITY RESUME MAINTENANCE OF BLAINE STREET – PRIVATE
WAY

A communication was received from Attorney Michael Bentley, who is representing his client Agatha Fifield, who resides at 22 Blaine Street. In October of 2020, Ms. Fifield was informed by the City that the Department of Public Works would no longer be snowplowing Blaine Street because it was not a public road. Attorney Bentley is stating in this letter that the City of Keene has maintained Blaine Street from Syd Street to a cul-de-sac just westerly of his client's property since 1945. This maintenance was discontinued in the fall of 2020. The maintenance included the plowing of snow in the winter and grading the gravel surface in warmer weather so that the road was passable throughout the year by motor vehicle. Attorney Bentley is requesting that the City resume its normal maintenance of Blaine Street because of the hardship on his client. Mayor Hansel referred the communication to the Municipal Services, Facilities, and Infrastructure Committee.

COMMUNICATION – ATTORNEY THOMAS HANNA – JRR PROPERTIES – DONATION OF LAND AT 0 ASHUELOT STREET – GREEN SPACE

A communication was received from Attorney Thomas Hanna, representing JRR Properties, which is the owner of a 3.5-acre parcel of land at 0 Ashuelot Street. This property was originally the overflow parking lot for the Colony Mill. The communication is offering 2.5 acres of the 3.5-acre parcel to the City as park space. Mayor Hansel referred the communication to the Finance, Organization, and Personnel Committee.

COMMUNICATION – KEENE HOUSING KID’S COLLABORATIVE – FUNDING ALLOCATION IN PROPOSED OPERATING BUDGET

A communication was received from the Keene Housing Kids Collaborative Board of Directors, requesting that their organization be considered for a \$10,000 level funding allocation in the proposed operating budget. Mayor Hansel accepted the communication and filed it into the record.

COMMUNICATION – COUNCILOR ANDREW MADISON – PROPOSED ADJUSTMENT TO THE OPERATING BUDGET

A communication was received from Councilor Andrew Madison, proposing two amendments to the proposed operating budget: 1) increase the allocation for the Keene Housing Kids Collaborative from \$5,000 to \$10,000 to better support programming and resources for children residing in Keene Housing properties; and 2) increase the allocation for the Conservation Commission from \$1,500 to \$2,000 to provide funding for educational events including speaker series and guided hikes. Mayor Hansel accepted the communication and filed it into the record.

COMMUNICATION – COUNCILORS KATE BOSLEY AND ROBERT WILLIAMS – PROPOSED AMENDMENTS TO THE OPERATING BUDGET

A communication was received from Councilors Bosley and Williams, proposing two amendments to the proposed operating budget: 1) increase the allocation for the Keene Housing Kids Collaborative from \$5,000 to \$10,000 and 2) increase the allocation for the Good Samaritans from \$4,500 to \$5,000. The funding increase is to ensure that both of these organizations have the resources they need to be effective in their respective missions. Mayor Hansel accepted the communication and filed it into the record.

COMMUNICATION – FABIAN FRIEDLAND/KEENE ISLAND CONDO ASSOCIATION AND KEENE ISLAND HOLDINGS – REQUESTING AN AMENDMENT TO A LEASE OF CITY PROPERTY FOR PARKING – MAP 577-LOT 34 – ISLAND STREET

A communication was received from Fabian Friedland on behalf of the Keene Island Condo Association and Keene Island Holdings, requesting an amendment to a lease of City property north of 69 Island Street for parking. Mayor Hansel referred the communication to the Finance, Organization, and Personnel Committee.

COMMUNICATION – COUNCILOR PHILIP JONES – UNSAFE SIGN PLACEMENT

A communication was received from Councilor Jones, requesting the City prohibit the placement of signs in any City right of way that is not safely accessible without permission of the City. Mayor Hansel referred the communication to the Municipal Services, Facilities, and Infrastructure Committee.

PLD REPORT – PABLO FLEISCHMANN – KEENE MUSIC FESTIVAL – REQUEST FOR USE OF CITY PROPERTY – SEPTEMBER 3, 2022

A Planning, Licenses, and Development Committee report read, recommending that The Keene Music Festival be granted a street fair license to use downtown City rights-of-way for purposes of conducting merchant sidewalk sales, as well as use of downtown City property on Central Square, Railroad Square, and designated parking spaces on Main Street to conduct the Keene Music Festival on Saturday, September 3, 2022 from 9:00 AM to 10:30 PM. In addition, the applicant is permitted to close off a portion of Railroad Street, from Main Street to the westerly entrance of the Wells Street Parking Garage, and a portion of Church Street from Main Street to the entrance of the Selman Company parking lot. This permission is granted subject to the following conditions: the signing of a revocable license and indemnification agreement; that the petitioner provide a certificate of liability insurance with the City of Keene listed as additional insured in the amount of \$1,000,000; submittal of a signed letter of permission from City Tire for use of their property, and compliance with any recommendations of City staff. In addition, the petitioner is granted use of the requested parking spaces free of charge under the provisions of the Free Parking Policy. Petitioner agrees to absorb the cost of any City services over and above any amount of City funding allocated in the FY 23 Community Events Budget. Said payment shall be made within 30 days of the date of invoicing.

A motion by Councilor Bosley to carry out the intent of the Committee report was duly seconded by Councilor Giacomo. The motion carried unanimously on a roll call vote with 14 Councilors present and voting in favor. Councilor Greenwald was absent.

FOP REPORT – WASTEWATER TREATMENT PLANT LABORATORY RENOVATION –
ENGINEERING CHANGE ORDER 3 – WWTP OPERATIONS MANAGER

A Finance, Organization, and Personnel Committee report read, recommending that the City Manager be authorized to do all things necessary to execute Change Order 3 with Underwood Engineers to perform engineering services for the Laboratory Renovation Project for an amount not to exceed \$4,000 for contract 04-21-22. A motion by Councilor Powers to carry out the intent of the Committee report was duly seconded by Councilor Remy. The motion carried unanimously on a roll call vote with 14 Councilors present and voting in favor. Councilor Greenwald was absent.

FOP REPORT – ACCEPT AMERICAN RESCUE PLAN ACT (ARPA) FUNDS &
CONTRACT SERVICES TO PERFORM SLUDGE DRYER FEASIBILITY STUDY – WWTP
OPERATIONS MANAGER

A Finance, Organization, and Personnel Committee report read, recommending that the City Manager be authorized to do all things necessary to accept and execute an American Rescue Plan Act (ARPA) grant from the New Hampshire Department of Environmental Services (NHDES) in the amount up to \$100,000 for the Sludge Dryer Feasibility Study. Further, the Finance, Organization, and Personnel Committee recommended that the City Manager be authorized to do all things necessary to negotiate and execute a professional services contract with Brown & Caldwell to perform a Sludge Dryer Feasibility Study for an amount not to exceed \$99,400.00. If a contract cannot be negotiated, the City Manager is authorized to negotiate with the next ranked firm. A motion by Councilor Powers to carry out the intent of the Committee two recommendations was duly seconded by Councilor Remy. The motion carried unanimously on a roll call vote with 14 Councilors present and voting in favor. Councilor Greenwald was absent.

FOP REPORT – SOLE SOURCE APPROVAL FOR SLUDGE PUMP REPLACEMENT
PROJECT – WWTP OPERATIONS MANAGER

A Finance, Organization, and Personnel Committee report read, recommending that the City Manager be authorized to do all things necessary to sole source Seepex for the sludge pump replacement project at the Wastewater Treatment Plant. A motion by Councilor Powers to carry out the intent of the Committee report was duly seconded by Councilor Remy. The motion carried unanimously on a roll call vote with 14 Councilors present and voting in favor. Councilor Greenwald was absent.

FOP REPORT – UTILITY REIMBURSEMENT AGREEMENT WITH LIBERTY UTILITIES
– CITY ENGINEER

A Finance, Organization, and Personnel Committee report read, recommending that the City Manager be authorized to do all things necessary to negotiate and execute a project reimbursement agreement with Liberty Utilities related to the Winchester Street Reconstruction Project. Further, the Finance, Organization, and Personnel Committee recommended that the City Manager be authorized to do all things necessary to negotiate and execute a design Change Order with McFarland Johnson in an amount not to exceed \$25,000, subject to the execution of a Project Reimbursement Agreement. A motion by Councilor Powers to carry out the intent of both Committee recommendations was duly seconded by Councilor Remy. The motion carried unanimously on a roll call vote with 14 Councilors present and voting in favor. Councilor Greenwald was absent.

FOP REPORT – CONSTRUCTION CHANGE ORDER – 2022 SEWER MAIN LINING CONTRACT – CITY ENGINEER

A Finance, Organization, and Personnel Committee report read, recommending that the City Manager be authorized to do all things necessary to negotiate and execute a construction Change Order with Insituform Technologies, Inc. in the amount of \$57,393.00 with funding provided by Project Cost Center 08066. A motion by Councilor Powers to carry out the intent of the Committee report was duly seconded by Councilor Remy. The motion carried unanimously on a roll call vote with 14 Councilors present and voting in favor. Councilor Greenwald was absent.

FOP REPORT – CLEAN WATER AND DRINKING WATER STATE REVOLVING FUND – AUTHORITY TO BORROW AND ACCEPT GRANTS – CITY ENGINEER

A Finance, Organization, and Personnel Committee report read, recommending that the City Manager be authorized to do all things necessary to apply for, accept and execute loan agreements with the New Hampshire Department of Environmental Services (NHDES) Clean Water and Drinking Water State Revolving Funds for the following projects: Main Street Flood Management at \$951,100; Drainage Lining Program at \$920,800; Main Street Sewer Rehabilitation at \$710,500; Sewer Manhole Lining at \$1,083,600; and the Sewer Repair and Lining project at \$1,081,395. Further, the Finance, Organization, and Personnel Committee recommended that the City Manager be authorized to do all things necessary to accept and execute any and all American Rescue Plan Act (ARPA) grants offered by the New Hampshire Department of Environmental Services (NHDES) for City Capital Improvement Program projects. A motion by Councilor Powers to carry out the intent of both Committee recommendations was duly seconded by Councilor Remy. The motion carried unanimously on a roll call vote with 14 Councilors present and voting in favor. Councilor Greenwald was absent.

CITY MANAGER COMMENTS

The City Manager reported that this week, the City hosted the SBDC as a part of their resiliency academy (three sessions) hosted by them and the UNH Cooperative Extension. This year, the academy included in-person tours of three NH communities—Littleton, Somersworth, and Keene—to highlight and celebrate what each community has done to be more resilient and vibrant. The City Manager thanked Director of Economic Development/Special Projects, Med Kopczynski, the Director of Parks, Recreation, & Facilities, Andy Bohannon, Alec Doyle of The Colonial, Sarah Powell of Hannah Grimes, and Peter Poanessa of the Walldogs project for their help hosting this large group from municipalities all over NH. It was a two-hour tour, during which several community projects were highlighted. It was a nice opportunity to highlight good work happening in the City.

Next, the City Manager reported that it would be necessary to suspend online credit card property tax payments temporarily while transitioning to the new Tyler Technologies software program for property taxes. Preliminary tax bills were mailed on June 10 as the first step in the new system and there had been some issues to work through. The next step is to migrate online payments into the Tyler Technologies credit card processing service, which is why service would be suspended. People could still pay with their credit cards in person at City Hall. This will not impact any other online bill payments; the rest of this system would be transitioned over time. The portal is expected to work again on June 24. Updates would be posted on the City website.

The City Manager also reported on an email she received regarding Congressionally directed funding requests to projects that the City submitted to Senator Shaheen's office that are advancing to the next step. Of the proposals submitted, two are moving forward: the Heritage Trail project at \$1.9 million and a multi-use parking facility on Gilbo Avenue at \$1.2 million. She hoped these two projects would be successful.

The City Manager concluded reporting that the NH City Manager's group of 40 was touring Keene on June 15–17. She thanked the following for their help: Mayor Hansel for a welcome introduction, the Library, Beth Fox, Med Kopczynski, Mari Brunner, Andy Bohannon, and Kurt Blomquist.

CITY OFFICER REPORT – WARRANT FOR UNLICENSED DOGS – CITY CLERK

A memorandum read from the City Clerk, recommending that the City Council issue a warrant for unlicensed dogs pursuant to NHRSA 466:14, and the Keene Police Department be directed to issue a civil forfeiture to those dog owners who have failed to license their dog by April 30, 2022. Mayor Hansel referred the memorandum to the Municipal Services, Facilities, and Infrastructure Committee.

The City Clerk said that the standard warrant was for 442 dog owners with 565 dogs that have not renewed their dog licenses. However, this year the warrant would also include those dog owners who have not responded to required periodic notices about their dogs receiving rabies shots—this information is forwarded from vet offices—and have chosen to not register their

dogs. Thus, there would be an additional 276 owners and 321 dogs on the warrant. The City Clerk said there were a substantial number of unlicensed dogs this year, but the Clerk's office would go through the process and hope that by end of it all, the numbers would only be a few dozen.

ORDINANCE FOR SECOND READING – ZONE CHANGE – 19 WHITCOMB'S MILL ROAD – RURAL TO LOW DENSITY-1 – ORDINANCE O-2022-02

A Planning, Licenses, and Development Committee report read, recommending the adoption of Ordinance O-2022-02. Mayor Hansel filed the report. A motion by Councilor Bosley to adopt Ordinance O-2022-02 was duly seconded by Councilor Giacomo. The motion carried unanimously on a roll call vote with 14 Councilors present and voting in favor. Councilor Greenwald was absent.

ORDINANCE FOR SECOND READING – RELATING TO CLASS ALLOCATIONS & SALARY SCHEDULES – ORDINANCE O-2022-05

On June 2, 2022, this item was tabled until the next regular meeting. Mayor Hansel tabled the item again until the Council had acted upon the Operating Budget.

ORDINANCE FOR SECOND READING – RELATING TO PERSONNEL SYSTEMS AND PROCEDURES – ORDINANCE O-2022-06

A Finance, Organization, and Personnel Committee report read, recommending the adoption of Ordinance O-2022-06. Mayor Hansel filed the report. A motion by Councilor Powers to carry out the intent of the Committee report was duly seconded by Councilor Remy. The motion carried unanimously on a roll call vote with 14 Councilors present and voting in favor. Councilor Greenwald was absent.

ORDINANCE FOR SECOND READING – RELATING TO LICENSES AND PERMITS – PARKLETS ORDINANCE O-2022-07-A

A Planning, Licenses, and Development Committee report read, recommending the adoption of Ordinance O-2022-07-A. Mayor Hansel filed the report. A motion by Councilor Bosley to adopt Ordinance O-2022-07-A with an effective date of July 1, 2022 was duly seconded by Councilor Giacomo. Discussion ensued.

Councilor Jones thanked Councilor Bosley for Chairing the PLD meeting well and keeping it focused. Councilor Jones said there were some good discussions. He wanted to clarify that this is only for establishments with liquor licenses, per the State. Councilor Jones understood there was some reluctance because it is a big change, but he urged everyone to keep in mind that this is seasonal, revocable, and amendable. He said it was worth trying to see if it could work in Keene. Mayor Hansel echoed the Councilor's sentiment about Chair Bosley, stating that Staff and the

PLD Committee worked well to find a good solution that will hopefully help the vibrancy of businesses in downtown Keene.

Councilor Giacomo wanted to emphasize that this Ordinance was allowing the idea to move forward, but there would still be review of any parklet application by the Public Works Department before anything could be constructed. This Ordinance takes into account things like fire escapes, any design considerations, and building materials. He recalled that some buffer zones are required on either end of the parklets. While not all details are outlined in the Ordinance, things like restrictions on blocking fire hydrants and drainage are included. By not including further specifics, things can still be fixed and restricted per Staff guidance during the application process. These were the details he wanted to provide for those who had not read the Ordinance. Relative to the motion on the floor to adopt Ordinance O-2022-07-A with a July 1 effective date, the motion carried unanimously on a roll call vote with 14 Councilors present and voting in favor. Councilor Greenwald was absent.

RESOLUTION – RELATING TO THE 2022/2023 FISCAL YEAR BUDGET – RESOLUTION R-2022-09-A

A Finance, Organization, and Personnel Committee report read, recommending the adoption of Resolution R-2022-09, as amended to include an additional \$5,000 to the Senior Citizens Center to reflect a level funded allocation of \$15,000 and to include an allocation of \$10,000 to the Monadnock Diversity Equity Inclusion and Belonging Coalition, with the disbursement of funds contingent upon further approval by the City Council of the Coalition's plans for operation once finalized. Mayor Hansel filed the report. A motion by Councilor Powers to adopt Resolution R-2022-09-A was duly seconded by Councilor Remy.

Mayor Hansel recognized any of the Councilors who submitted notice of their intent to offer an amendment to the budget.

A motion by Councilor Madison to add \$500 to the Conservation Commission budget (cost center 61000-62179) was duly seconded by Councilor Filiault. Councilor Madison stated that this money would be used for further public outreach and educational events, which the Conservation Commission has increased, like a speaker series, guided hikes, and pulling invasive species. These funds would allow for paying guest speakers an honorarium. Currently, most of the Commission's \$1,500 budget goes to paying dues to the NH Association of Conservation Commissions and to the Ashuelot River Local Advisory Committee monitoring for e-coli. Councilor Madison believed this proposed increase was reasonable and respectful to the taxpayers. He believed the funds would bring significant value back to the citizens of Keene. Councilor Williams echoed Councilor Madison about the great outreach the Conservation Commission does, with volunteers supporting their work. These funds would help promote that support.

The motion to add \$500 to the Conservation Commission budget (cost center 61000-62179) carried unanimously on a roll call vote with 14 Councilors present and voting in favor. Councilor Greenwald was absent the vote.

A motion by Councilor Bosley to increase the allocation to the Keene Housing Kids Collaborative by \$5,000 (cost center 00002-62187), and to increase the allocation to the Good Samaritans (cost center 00002-62189) by \$500 was duly seconded by Councilor Filiault.

Councilor Bosley noted that she has worked in social work for a long time. She first addressed the Keene Housing Kids Collaborative, stating that kids are where we can really affect change in our community. She has personally seen generational homelessness and this program offers an opportunity to create an environment that could change a child's future. She said the Collaborative is only limited by its resources, which are fundraising and grant applications. They plan to provide transportation for those children for which it is an obstacle. Councilor Bosley cited the importance of involvement and activities for children's self-esteem and sense of community, so she urged support for this amendment to give these kids opportunities they would not have otherwise that could open doors for them.

Next, Councilor Bosley spoke about the amendment to the Good Samaritans budget, stating that they requested to be level-funded but they were allocated \$500 less. She continued that suicide is one of the biggest mental health crises and while new resources are in the works, they are not available now, and Keene has a proven group of people who build community awareness and support. She thought this was a time to stand behind this organization.

Councilor Williams said he was impressed with both organizations, citing that the Kids Collaborative has a very innovative model that has not been seen in many other places. He said the City should give them room to grow and help some of the most vulnerable children in the community. He continued that programs like the Good Samaritans bring great attention to the cause, like their cross country bike ride. He said that Covid-19 has been a difficult time for many people, with increased stress in schools. He said this is the time to be funding suicide awareness because it touches a lot of people's lives.

Councilor Jones recalled past discussions on the original purpose of funding outside agencies and said that many of these did not meet the purpose. He said this was discussed again during the fiscal policies workshop, when he mentioned again that there were no guidelines. Thus, he said the City Council was again paying for a charity that is a favorite of certain City Councilors instead of having guidelines.

A motion by Councilor Jones to split the question on the table was duly seconded by Councilor Workman. The motion carried on a roll call vote of 10-4. Councilors Williams, Madison, Chadbourne, and Bosley opposed. Councilor Greenwald was absent. Thus, the question was split and the Commission continued on the topic of the Keene Housing Kids Collaborative.

Councilor Ormerod said he did some research on the Keene Housing Kids Collaborative. He wanted to explain to his fellow Councilors that the Collaborative creates unique community programs for youth that are more accessible. They conduct significant outreach regarding case management and navigating the educational and medical systems, for example. They help parents get the aid they need, provide awareness, and perform this type of case management for stressed out parents who are going through hard times. He said some parents are on the other side of the tech-divide, without access to online grant and other applications for assistance. The Kids Collaborative provides funds for children to attend community funding and they help people with these application processes. Councilor Ormerod recalled comments about they are bringing \$100,000 cash into the community for these programs. He also pointed out that there are integrative and re-integrative programs for parents to make connections to others like them in the community and get needed counseling. He said this program also helps to prevent juvenile delinquency and reduces recidivism, which he said the City usually celebrates opportunities for because they lessen the need for IAPs and other programs in schools, making it a much better experience for kids. He said certain behavioral and other programs can be preempted by programs like this. He said this is also a savings to taxpayers because approximately 30% of the School budget is related to special needs services that the whole community is paying for in some way. Councilor Ormerod saw this as in-line with the City goals of serving the youth and saving long-term costs.

Councilor Workman recalled that she has been a social worker for 20 years, supporting the most vulnerable in the community. As a child, she was one of those most vulnerable, so she respects the Kids Collaborative's work. However, she struggled with the fact that the Collaborative only serves those kids with subsidized housing vouchers in Keene and they also service people outside of Keene. Councilor Workman was concerned that they were not serving all low-income kids in the community with these Keene taxpayers' dollars that should be serving the whole community.

Councilor Roberts agreed with Councilor Workman, stating that he had seen the benefit as a member of the School Board, but said that is for children lucky enough to be in subsidized housing. However, he said that if you walk around town in the morning, you will see women who have been couch surfing with kids to be somewhere safe, who could benefit from this program even more. He said it is a messed-up system where kids get extra access to services because they had they are housing secure. He said there are an extremely high number of homeless children in the Keene School District and one group of kids should not be punished when they really need the services. He said he would vote in favor of this amendment this year but going forward said the City needs to take care of all kids, no matter their housing. He could not advocate keeping a group of people invisible. Councilor Roberts said as many should be saved as possible.

Councilor Bosley responded to some comments she heard. She said she discussed some of these concerns outright with the Board President of the Collaborative. She recalled that the Collaborative developed from the Keene Housing Authority. She said the Collaborative Board

has worked tirelessly to increase its budget and raise money, allowing them to work with children in Southwestern Community Services last year in their affordable housing units. The Councilor spoke with her husband—Housing Stabilization Director for Southwestern Community Services—and then asked the Collaborative Board President whether she would reach out to her husband about helping kids in transitional programs and homeless shelters; her response was yes. Councilor Bosley thinks the Collaborative’s ambition is only limited by the funds they can raise, which cannot all come from the City. Still, she said this is a group doing a good job and trying to grow their mission to reach more kids. She agreed that she wanted to see every child whose parents are on a limited budget to have access to this program but not all the support could come from the City government, the community needed to support them. Still, she thought standing behind them this year would go a long way to showing their value to the community.

Councilor Filiault said he would support this amendment because it would not make much of an impact on the tax rate, calling it miniscule compared to the overall budget, but important. He recalled in years past when the budget adoption would take until midnight and it always came down to non-profit agencies, which is why Mayor Lane appointed him to a Committee looking at outside agencies. That Committee established criteria, most of which are still used now by City Staff to determine funding. He could cite why each agency that requested money this year was important and worthy, which is why the criteria were established, to avoid this deliberation over charities at the budget decision. He said this is not because the Council does not care, but that it cares too much. Councilor Filiault said he was not trying to sound cold, but said there is a reason the City Manager and Staff make this budget with all of the Council goals and the Master Plan in mind. He would vote in favor of these amendments but suggested looking back at the criteria to see if they need tweaking.

The City Manager offered some clarifications. She said there is a Committee involving two City Councilors that review these non-profit applications, which are all scored based on the preset criteria. Second, she clarified that the Keene Parks & Recreation Department has a lot of programs for kids and there are scholarships for any resident of the City to participate, regardless of housing development; this does not cover all of the programs that the Kids Collaborative provides but the City’s option has been in place for some time.

Councilor Giacomo echoed some of Councilor Filiault’s points about arguing the merit of all these special services. He said the one criterion that comes up consistently is that a service also serves other towns than Keene in the region. He said that if they are reaching out to Keene for funds, they should be seeking those funds from every town they serve, and that information is not always forthcoming. He said the Kids Collaborative is a great organization, but they also serve other towns. While the Councilor would not vote in opposition, he wanted to ensure this matter is addressed in the future.

Councilor Madison echoed some of Councilor Giacomo’s points on agencies not approaching every town they serve for funds. He did some research to see how much other towns were

allocating to outside agencies and in some towns like Chesterfield, the agencies get more than Keene provides, while towns like Dublin fund zero outside agencies. He said it was disappointing to see some neighbors not supporting charities in their towns, and equally disappointing to not see nonprofits putting in the effort to approach all those towns they serve. Councilor Madison also supported this increase in his communication to the Council, despite hearing the concern in the room, and would vote favorably on this amendment.

Councilor Ormerod suggested that it was time to review the criteria for funding outside agencies because it is a different world than it was five years ago. He liked the work of aligning those criteria with the City goals. Still, he said the Kids Collaborative had expanded their reach and coverage during the last year and he did not understand the proposal to reduce their funding. He supported the amendment.

The motion to increase the allocation to the Keene Housing Kids Collaborative by \$5,000 (cost center 00002-62187) carried on a roll call vote of 13–1. Councilors Jones opposed. Councilor Greenwald was absent.

The motion to increase the allocation to the Good Samaritans (cost center 00002-62189) by \$500 carried unanimously on a roll call vote of 14–0. Councilor Greenwald was absent.

Mayor Hansel heard remaining comments on the amended Resolution. Councilor Johnsen applauded the Finance, Organization, and Personnel Committee for working hard on a challenging budget. Mayor Hansel echoed that sentiment.

Councilor Jones requested the updated numbers after these two votes. The Finance Director, Merri Howe noted that with the changes made at the Finance, Organization and Personnel Committee, and the amendments this evening, the budget increased by \$21,000, and the City's portion of the tax rate has gone from \$12.30 to \$12.38.

The City Clerk read Resolution R-2022-09-B in its entirety.

Councilor Filiault reminded the Council that the State of NH owes the City \$11 million in Rooms and Meals Tax, which would have significantly reduced the tax rate this year.

On a roll call vote of 14–0, Resolution R-2022-09-B was unanimously adopted. Councilor Greenwald was absent.

ORDINANCE FOR SECOND READING – RELATING TO CLASS ALLOCATIONS & SALARY SCHEDULES – ORDINANCE O-2022-05

Earlier in the meeting, this item was tabled until after the vote on the operating budget. A Finance, Organization, and Personnel Committee report read, recommending the adoption of Ordinance O-2022-05. A motion by Councilor Powers to adopt Ordinance O-2022-05 was duly

seconded by Councilor Remy. The motion carried unanimously on a roll call vote with 14 Councilors present and voting in favor. Councilor Greenwald was absent.

RESOLUTIONS – RELATING TO THE APPROPRIATION OF FUNDS FOR MUNICIPAL BUILDING ROOFS; RELATING TO THE APPROPRIATION OF FUNDS FOR ROAD REHABILITATION; RELATING TO THE APPROPRIATION OF FUNDS FOR THE SALT SHED REPLACEMENT; RELATING TO THE APPROPRIATION OF FUNDS FOR THE WELLS STREET PARKING STRUCTURE MAINTENANCE; AND RELATING TO THE APPROPRIATION OF FUNDS FOR THE 3MG WATER TANK REPAIR – RESOLUTIONS R-2022-10, R-2022-11, R-2022-12, R-2022-14, R-2022-15

One June 2, 2022, this item was tabled until the next regular meeting.

A Finance, Organization, and Personnel Committee report read, recommending the adoption of Resolution R-2022-10, Resolution R-2022-11, Resolution R-2022-12, Resolution R-2022-14 and Resolution R-2022-15. Mayor Hansel filed the report.

A motion by Councilor Powers to adopt Resolutions R-2022-10 was duly seconded by Councilor Remy. The motion carried unanimously on a roll call vote with 14 Councilors present and voting in favor. Councilor Greenwald was absent.

A motion by Councilor Powers to adopt Resolutions R-2022-11 was duly seconded by Councilor Remy. The motion carried unanimously on a roll call vote with 14 Councilors present and voting in favor. Councilor Greenwald was absent.

A motion by Councilor Powers to adopt Resolutions R-2022-12 was duly seconded by Councilor Remy. The motion carried unanimously on a roll call vote with 14 Councilors present and voting in favor. Councilor Greenwald was absent.

A motion by Councilor Powers to adopt Resolutions R-2022-14 was duly seconded by Councilor Remy. The motion carried unanimously on a roll call vote with 14 Councilors present and voting in favor. Councilor Greenwald was absent.

A motion by Councilor Powers to adopt Resolutions R-2022-15 was duly seconded by Councilor Remy. The motion carried unanimously on a roll call vote with 14 Councilors present and voting in favor. Councilor Greenwald was absent.

RESOLUTION – RELATING TO STATE REVOLVING FUND LOANS – RESOLUTION R-2022-22-A

A Finance, Organization, and Personnel Committee report read, recommending the rescission of Resolution R-2009-08 and the adoption of Resolution R-2022-22-A relating to Delegation of Authorities to State Revolving Fund Loans. A motion by Councilor Powers to rescind Resolution

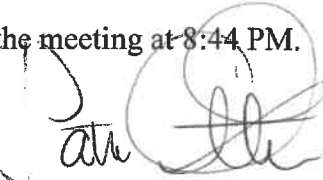
06/16/2022

R-2009-08 was duly seconded by Councilor Remy. The motion carried unanimously on a roll call vote with 14 Councilors present and voting in favor. Councilor Greenwald was absent. A motion by Councilor Powers to adopt Resolution R-2022-22-A was duly seconded by Councilor Remy. The motion carried unanimously on a roll call vote with 14 Councilors present and voting in favor. Councilor Greenwald was absent.

ADJOURNMENT

There being no further business, Mayor Hansel adjourned the meeting at 8:44 PM.

A true record, attest:



City Clerk



CITY OF KEENE NEW HAMPSHIRE

ITEM #B.1.

Meeting Date: July 7, 2022
To: Mayor and Keene City Council
From: Mayor George S. Hansel
Through:
Subject: **Nominations**
Library Board of Trustees
Planning Board

Council Action:
In City Council July 7, 2022.
Tabled until the next regular meeting.

Recommendation:
I hereby nominate the following individuals to serve on the designated Board or Commission:

Library Board of Trustees
Justin Somma, slot 6
57 Mayflower Drive
Term to expire June 30, 2025

Pamela Russell Slack
260 Beaver Street, slot 5
Term to expire June 30, 2025

Planning Board
Randyn Markelon, alternate, slot 11
123 Roxbury Street
Term to expire Dec. 31, 2026

Attachments:

1. Somma, Justin_Redacted
2. Slack, Pamela_Redacted
3. Markelon, Randyn_Redacted

Background:

From: [Patty Little](#)
To: [Heather Fitz-Simon](#)
Subject: FW: Interested in serving on a City Board or Commission
Date: Thursday, June 16, 2022 2:28:31 PM

From: helpdesk@ci.keene.nh.us <helpdesk@ci.keene.nh.us>
Sent: Tuesday, June 14, 2022 11:15 AM
To: Helen Mattson <hmattson@keenenh.gov>
Cc: Patty Little <plittle@keenenh.gov>; Terri Hood <thood@keenenh.gov>
Subject: Interested in serving on a City Board or Commission

<p>Submitted on Tue, 06/14/2022 - 11:15</p>
<p>Submitted values are:</p>

First Name:

Justin

Last Name:

Somma

Address

57 Mayflower Drive
Keene NH

How long have you resided in Keene?

10 years

Email:

[REDACTED]

[REDACTED]

Employer:

Gathering Waters Chartered Public School

Occupation:

Business Manager

Retired

No

Please list any organizations, groups, or other committees you are involved in

I am not currently holding a position with any committees, however I am transitioning out of my role as Business Manager with the organization to also serve in a volunteer capacity on committees related to strategy and finance.

Have you ever served on a public body before?

No

Please select the Boards or Commissions you would be interested in serving on:

Library Board of Trustees

Please share what your interests are and your background or any skill sets that may apply.

My skill set centers around operations, facilities and finances, developed over 15 years of managing operations in a small business environment. For 7 years prior to moving to Keene I owned a hardware store in rural New York. After moving here I joined the management team of the Monadnock Food Co-op for their startup, worked another local foods startup for a year and a half with several area investors, worked with C&S for 3 years, after which I got into non-profits, working as the Business Manager for the Monadnock Waldorf School and now for Gathering Waters Charter School. I am departing that post at the end of the month and am planning to relax this summer while I map out my next venture.

My interests are all things Keene. I enjoy hiking from all over town from my jumping-off point on Mayflower Drive, shopping at the Farmer's Market on weekends, enjoying the many local events and activities downtown offers, and raising two wonderful sons (one is a junior at Keene High, the other in 8th grade at my aforementioned school).

Why are you interested in serving on this committee

I have been a passionate about Keene's Library since moving to the area in 2013 to help start up the Food Co-op. My family uses it on a regular basis and we enjoy not just the expected amenities but also the book sales, events at Heberton Hall, and the Library's Writers Group, of which my spouse is an avid member going on 7 years (I believe). In speaking with the current trustees, I feel as though my focus on facilities and finance marries with the needs of the Board.

Please provide 2 personal references:

Gabrielle Schuerman

gabrielle.schuerman@gatheringwaterscharter.org

603-852-2718

References #2:

Steve D'Alessio

steve@dlaessio.com

603-352-1000

Heather Fitz-Simon

Subject: FW: Interested in serving on a City Board or Commission

From: helpdesk@ci.keene.nh.us <helpdesk@ci.keene.nh.us>
Sent: Wednesday, June 29, 2022 8:31 PM
To: Helen Mattson <hmattson@keenenh.gov>
Cc: Patty Little <plittle@keenenh.gov>; Terri Hood <thood@keenenh.gov>
Subject: Interested in serving on a City Board or Commission

<p>Submitted on Wed, 06/29/2022 - 20:31</p>

<p>Submitted values are:</p>

First Name:

Pamela

Last Name:

Slack

Address

260 Beaver St.
Keene NH
03431

How long have you resided in Keene?

Most of my life

Email:

[REDACTED]

Cell Phone:

[REDACTED]

Employer:

U S Senate

Occupation:

Senior Special Assistant for Constituent Services

Retired

No

Please list any organizations, groups, or other committees you are involved in

Chair of the Planning Board
Keene Housing Board Commissioner your

Have you ever served on a public body before?

Yes

Please select the Boards or Commissions you would be interested in serving on:

Library Board of Trustees

Please share what your interests are and your background or any skill sets that may apply.

I have been involved with City Government for many years. Previously as a City Councilor and Chair of the MFSI committee, and also the Finance, Personel and Organization Committee.

Chair of the Partner City Committee.

I have the pleasure of working for Senator Jeanne Shaheen for over 13 years on her constituent services team, attending events on her behalf, and some policy work.

Why are you interested in serving on this committee

I have always been interested in serving as a Trustee but my prior commitments did not allow me the time needed to serve. I was born and raised in Keene and have watched the Library grow and continue to grow. I was a Library Aid in Illinois at an elementary school for four years and enjoyed learning the inner workings of the Library. I still am.

Please provide 2 personal references:

David Orgaz

dorgaz@masiello.com

References #2:

Lee Mosbaugh

From: [Heather Fitz-Simon](mailto:Heather.Fitz-Simon)
To: [Heather Fitz-Simon](mailto:Heather.Fitz-Simon)
Subject: FW: Interested in serving on a City Board or Commission
Date: Wednesday, June 8, 2022 9:26:12 AM

From: helpdesk@ci.keene.nh.us <helpdesk@ci.keene.nh.us>
Sent: Tuesday, June 7, 2022 3:31 PM
To: Helen Mattson <hmattson@keenenh.gov>
Cc: Patty Little <plittle@keenenh.gov>; Terri Hood <thood@keenenh.gov>
Subject: Interested in serving on a City Board or Commission

<p>Submitted on Tue, 06/07/2022 - 15:31</p>

<p>Submitted values are:</p>

First Name:

Randyn

Last Name:

Markelon

Address

123 Roxbury St Keene

How long have you resided in Keene?

Less than a year; previously I was here for 8 years

Email:

[REDACTED]

Cell Phone:

[REDACTED]

Employer:

N/A

Occupation:

I'm not currently working

Retired

No

Please list any organizations, groups, or other committees you are involved in

I was previously on my local land trust board, various professional committees, oversaw condo board meetings, and was heavily involved with many small to mid-size non-profits while managing the Connecticut Non-Profit Center building in Hartford, CT. I am currently looking for opportunities to donate my time locally.

Have you ever served on a public body before?

Yes

Please select the Boards or Commissions you would be interested in serving on:

Planning Board

Please share what your interests are and your background or any skill sets that may apply.

My professional background is in commercial and residential real estate management. I was heavily involved at site-level with planning, budgeting and marketing new developments as well as repositioned assets. I am interested in land conservation and recreation in rural areas aligned with strong planning in developed areas to encourage a balanced environment.

Why are you interested in serving on this committee

I grew up in Keene and have recently moved back to the area. Keene has always been quaint and family-friendly; I'm happy to see the city has also become more diverse in both population and offerings. I look forward to helping serve Keene's long range goals for development and fiscal growth while maintaining a strong sense of community and small town feel.

Please provide 2 personal references:

Pam Russel Slack

[REDACTED]

References #2:

Armando Rangel

[REDACTED]



CITY OF KEENE NEW HAMPSHIRE

ITEM #C.1.

Meeting Date: July 7, 2022

To: Mayor and Keene City Council

From: Christopher Burk

Through: Patricia Little, City Clerk

Subject: Cathedral Ledge Distillery - Requesting Permission for Spirits to be Tasted and Sold at the Keene Farmer's Market

Council Action:

In City Council July 7, 2022.

Voted unanimously to Suspend the Rules of Order to allow action on the request to have permission for spirits to be tasted and sold at the Keene Farmer's Market.

Voted unanimously to grant permission to Cathedral Ledge Distillery to provide spirits to be tasted and sold at the Keene Farmer's Market.

Recommendation:

Attachments:

1. Communication_Distillery_Keene_Farmers Market
2. Communication_Keene Farmers Market

Background:

The Cathedral Ledge Distillery is requesting permission to allow spirits to be tasted and sold at the Keene Farmer's Market.

July 6, 2022

City of Keene
3 Washington Street
Keene, NH 03431



To Whom It May Concern:

I am reaching out to you on behalf of Cathedral Ledge Distillery located in North Conway. We are New Hampshire's first and only certified organic distillery. All of our production is done within our North Conway, NH facility. We are a grain to glass distillery, meaning we complete the entire process of handcrafting spirits from milling out grains to hand bottling finished products. We opened our doors in December of 2020, but in that time frame we have already won four gold medals (Aquavit, Gin, Barrel-Rested Gin, and Vodka) and been named both "New Hampshire Gin Distillery of the Year -2021" and "New Hampshire Liqueur Distillery of the Year -2022".

Governor Sununu recently signed SB212 allowing us to participate in NH farmers' markets effective July 1, 2022. This is an exciting opportunity for us to connect with people that value locally produced, organic products such as ours. The timing of this legislation is challenging for us given that the farmers' market season is underway, but we are actively looking for opportunities to participate in them throughout the state. We have been in contact with the Keene Farmers' Market and they have added us to their approved vendor guest list. The next steps include having the city of Keene grant permission for spirits to be tasted and sold at the Keene Farmers' Market within the town. If approved, an authorized representative will need to sign the attached form and return it to us. We will then return the form to the NH Liquor Commission for final approval.

If you have any questions please feel free to contact me to discuss further. Thank you for your time and consideration.

Best,

Christopher Burk, Owner and President
Cathedral Ledge Distillery
info@CathedralLedgeDistillery.com
603-730-5696

Patty Little

From: Keene Farmers' Market <keenefarmersmarket@gmail.com>
Sent: Tuesday, June 28, 2022 9:29 PM
To: Patty Little
Subject: Farmers Market Vendor Confirmation

Hello,

I am writing on behalf of the Farmers Market of Keene to confirm with the city that we are allowing Cathedral Ledge Distillery to attend the market as a guest vendor. Please let me know if you have any questions or need anything else from me. Thank you,

Kirsten Anderson
Co-Coordinator

--

The Farmers' Market of Keene
PO Box 425
Keene, NH 03431
<http://facebook.com/keenefarmers>



CITY OF KEENE NEW HAMPSHIRE

ITEM #C.2.

Meeting Date: July 7, 2022
To: Mayor and Keene City Council
From: Councilor Mitchell H. Greenwald
Through: Patricia Little, City Clerk
Subject: Councilor Mitchell Greenwald - Amendment to the City Council Rules of Order - Remote Access

Council Action:
In City Council July 7, 2022.
Tabled until the next regular meeting.

Recommendation:

Attachments:

1. Communcation_Greenwald

Background:

Councilor Greenwald is requesting a further amendment to the Rules of Order that would provide that a member could be allowed to participate remotely for personal reasons up to two meetings per year. This maximum of meetings would not apply to being remote for serious health issues, disability, or out-of-town employment responsibilities.



Mitchell Greenwald
Chairman, Municipal Services, Facilities & Infrastructure Committee
Ward 2, City Councilor

July 5, 2022

To: Mayor and Council

Re: Amendment to Rules of Order

Prior to the last Council meeting, I requested to be allowed to participate by "Zoom".

Permission was not granted, I assume because according to our recently adopted "Rule", Zoom may be allowed by the presiding chair (Mayor) if the reason is health, or business travel.

I was away on a previously planned vacation.

As a result, I was unable to participate and vote on the Budget, and also a matter that I had significant interest in. The residents of Ward 2 were deprived of representation.

My requested amendment to the rules of order would allow a member to participate remotely, for a personal reason, up to a maximum of 2 meetings with or without permission from the chair. The maximum of 2 meetings would not apply to serious medical issues, disability or out of town responsibilities.

I wish to discuss this at the next PLD meeting.

Thank you,

Mitchell Greenwald



CITY OF KEENE NEW HAMPSHIRE

ITEM #D.1.

Meeting Date: July 7, 2022
To: Mayor and Keene City Council
From: Municipal Facilities, Services and Infrastructure Committee, Standing Committee
Through:
Subject: Charles Redfern - Request for Signage Identifying Trails

Council Action:
In City Council July 7, 2022.
Voted unanimously to carry out the intent of the report.

Recommendation:
On a vote of 5 – 0, the Municipal Services, Facilities, and Infrastructure Committee recommends the City Manager be authorized to negotiate and execute a Right-Of-Way Usage Agreement with the NH Department of Transportation (NHDOT).

Attachments:
None

Background:
Chair Greenwald asked to hear from the petitioner, Charles Redfern. Mr. Redfern stated that his letter requests signage identifying the trails to be placed on either side of the North Bridge and South Bridge, so people coming from any direction know of the identity of the rail trail. He continued that many people drive underneath and think it is a railroad bridge or a regular, one lane bridge, or they just wonder about it. Other states have bridges identified so people know what trails they represent. In this case, they are talking about the bypass highways. These trails are known as the Cheshire Rail Trail, north and south.

Mr. Redfern read from his letter:

“My inquiry started in the year 2020 with the NH Department of Transportation (NHDOT), which indicated an interest in assisting me with navigating the proper channels for the fabrication and installation of the signs. However, before I reached my second milestone within NHDOT, COVID-19 hit and the state’s highway sign shop was closed until further notice.

Accordingly, I turned to the City of Keene Public Works Department for advice and consent. After providing Kürt Blomquist with details provided as exhibits to this letter, I was told the City could do the work but only after the end of winter. He stated this matter could be re-addressed in the coming spring.

After the ground thawed, I re-approached the Director and requested that the City begin the sign process anew, either through NHDOT (as Windham had done for the Granite State Trail) or Keene Public Works.”

Mr. Redfern stated that he was the one who informed the leader of the Granite State Trail group that they could have signs by the highway to identify the trails. He continued that this person thought that was a great idea, and called Bill Watson of NHDOT.

He continued reading his letter:

“However, replied that the operating budget took a hit and turned flat. I noted that all four signs could be fabricated and installed by the state for less than \$900 (in 2021 dollars).”

Mr. Redfern stated that he has copies of the invoices for the Committee, so they can see they are inexpensive signs. The two were \$360.54.

He continued reading:

“Also, asked who would be responsible for the signs’ maintenance and repairs.

Please note that a citizen of the Town of Windham, who advocated for such signs, did not appear to encounter the same pushback. The signs were installed by NHDOT in less than six months.

It should be noted that the traffic volume passing under these two bridges every day.”

Mr. Redfern stated that according to the Southwest Regional Planning Commission (SWRPC), it is over 20,000 vehicles a day on any given day that pass under the trail.

He continued reading:

“It is reasonable to assume that many folks could revisit our city as tourists, and may be interested in our growing trail system.

For this reason, I am turning to a collectively wise and honorable group of citizens who practically volunteer their time to the advancement of our community. As you ponder this simple request, I hope to be able to answer any questions you may have at the appropriate committee level.”

Mr. Redfern stated that he enclosed exhibits showing the signs’ appearance and dimensions. He has copies for staff, and copies of the emails with the NHDOT’s Sign Maintenance Supervisor so they can retrace the steps if they choose to go the NHDOT route. It seems inexpensive; for Windham, installation was free. If the PWD chooses to do it, so be it. Lastly, he wants to note that in Windham, although the Town requested that the signs be placed before the bridge so people can glance up and see it and know what it is for, for whatever reason, NHDOT put them after the bridge. Mr. Redfern stated that he will give these materials to the City Manager for the record. He continued that he is happy to answer questions.

Chair Greenwald asked Mr. Redfern how many signs he is requesting. Mr. Redfern replied four. Chair Greenwald stated that the wisdom of the State wanting to put the signs on the backside of the bridge baffles him. He asked if the Town of Windham’s budget was about \$900 for the signs. Mr. Redfern replied that two signs were \$364.54. Chair Greenwald stated that where he is going with his questions is: those signs in Windham seem like boring traffic signs, and the bridge means so much more. He asked if Mr. Redfern had inquired whether if additional funding were

provided, perhaps from Pathways for Keene, would a different sign be allowed. Mr. Redfern replied that the party who owns the land the signs will sit on is the NHDOT. Chair Greenwald asked if the NHDOT would allow a nicer sign, or if it has to be a standard roadway sign. Mr. Redfern replied that he talked informally with Bill Lambert at the NHDOT, and asked about a recreational-type sign, which is brown with a lighter lettering, and attractive. It is not quite like the green traffic signs on highways. Mr. Lambert said that in MA the sign has to be a standard, uniform-type sign, according to the Federal Highway Administration.

Chair Greenwald asked if the signs have to be done way even if the signs include none of money. Mr. Redfern replied that the signs would have to be put on Keene property, and he does not know if there is any adjacent real estate from which the signs would be readable.

Councilor Williams stated that a brown sign would be a great idea. They are usually for recreational amenities or parks, which this is. He continued that a green sign would also be nice. He commends Mr. Redfern for recognizing this need and bringing this to the Committee.

Mr. Redfern replied that MA had the brown signs for their rail trails, but then someone higher up made them change to the green signs with the small brown emblem embedded to announce the name of the trails. He continued that people driving by cannot read the trail names, because the writing is so small.

Chair Greenwald asked what the MSFI Committee is being asked to do. He asked if the request is for them to recommend that the City Manager be authorized to negotiate and execute a right-of-way agreement.

Mr. Redfern asked if there is a timeline for this so that it is not two years from now. He continued that NHDOT has conveyed, "Look, this has been going on back with you folks since 2020." It started with a citizen, not a municipality. The clock will start, once the municipality goes to the NHDOT, if they choose to do so. The municipality may choose to do it themselves, but it is a good price with NHDOT. He knows the City has its own sign shop. He does not know how this will be handled, and it is not his business, but he would hate to see another winter freeze happen before the signs go up.

Chair Greenwald asked to hear from Mr. Blomquist. Mr. Blomquist stated that he does not think that the making of the signs will be the issue; it will be getting the agreement, for the two locations. He continued that it will probably take several months to go through the processes. Whether the signs come from the City or the NHDOT is something staff will look at. These are standard signs and the Manual on Uniform Traffic Control Devices (MUTCD) will govern their appearance. If the City Manager is authorized, staff will start a discussion with them and put something in place by the end of the summer.

Councilor Workman stated that she supports this initiative, but wants to put on record that she has heard from other constituents that there is an "overabundance of signs" throughout the City. She continued that the Committee should thus keep in mind that there is such a thing as too much signage and sign fatigue. The more signs the City has, the less likely it is that people will actually pay attention to them. This does not mean she will not support this request; she thinks it is a great idea. They should just be mindful of placements of and frequency of signs.

Chair Greenwald replied that Councilor Workman is right. He continued that at some point a letter will be coming in asking for a sign inventory and elimination of unnecessary signs.

Chair Greenwald asked for public comment.

Councilor Jones stated that he, along with Mr. Redfern, is on the Board of Directors of Pathways of Keene. He continued that North Bridge and South Bridge are very important to this community. The community raised money for North Bridge; it was not just that the State came along and put these bridges up. Behind the North Bridge is a list of all of the local people who sponsored it. . He chaired the dedication ceremony committee and remembers it well. The byline on the plaque is “bridging the community.” He thinks it deserves some recognition. He agrees with Councilor Workman that the City has many signs. However, the North Bridge deserves some recognition, because it was a community effort. Mr. Redfern stated that Councilor Jones came up with the “bridging the community” byline, which is very true.

Councilor Roberts stated that as he has mentioned before, on some of the other projects, and as Councilor Jones and Mr. Redfern brought up, they have asked a lot of the community. He continued that the City has many assets, but they ask the community to fund or come up with a lot of the money to create those assets. He will support this, but his view is that this should not even be in front of the MSFI Committee. This is something the City should have taken on its own to do. Mr. Redfern has done a lot of work on this, but to him, it is normal for the City to take responsibility to take the initiative to do this. The City has many good people who volunteer and give money, like Pathways, which has done a great deal of work and contributed a great deal of money. He thanks former Councilor Redfern for being here, but as they go forward talking about projects like the skate park, dog park, and the disc park - which again, Keene citizens have given a lot of work and time to - “we cannot keep going to the well.”

Chair Greenwald stated that he hears what Councilor Roberts is saying, but what is even more frustrating to him is what they have heard from Mr. Redfern and the Public Works Director – even if the City, Pathways, and others, as a group, came up with some attractive signs, they cannot do it, because it is a State highway.

Mr. Redfern stated that Councilor Roberts makes a lot of sense, but he wants the Committee to know that people in the Summit Ridge area asked for signage on the trail to emphasize speed limits for the safety of the hikers going up the Ammi Brown Road, to minimize potential conflicts between bicyclists and pedestrians. Thus, Pathways is chipping in some money for that effort. They are also chipping in money for a kiosk, to be completed not to the NHDOT’s specifications, but in a way that gives Peter Poanessa the freedom to come up with an attractive kiosk that will emphasize safety and education. The same person from the seacoast who got the bridge signs, for his idea, gave Pathways a grant for \$2,500, and Pathways kicked in an additional \$1,000.

Councilor Workman made the following motion, which was seconded by Councilor Filiault.

On a vote of 5 – 0, the Municipal Services, Facilities, and Infrastructure Committee recommends the City Manager be authorized to negotiate and execute a Right-Of-Way Usage Agreement with the NH Department of Transportation (NHDOT).



CITY OF KEENE NEW HAMPSHIRE

ITEM #D.2.

Meeting Date: July 7, 2022
To: Mayor and Keene City Council
From: Municipal Facilities, Services and Infrastructure Committee, Standing Committee
Through:
Subject: **Councilor Jones - Unsafe Sign Placement**

Council Action:

In City Council July 7, 2022.

Voted unanimously to amend the intent of the report to recommend the item to be referred to the City Manager and to report back to Council.

Voted unanimously to carry out the amended intent of the report.

Recommendation:

On a vote of 5-0, the Municipal Services, Facilities, and Infrastructure Committee accepts the communication regarding unsafe sign placement as informational.

Attachments:

None

Background:

Chair Greenwald asked to hear from Councilor Jones. Councilor Jones stated that the two words he wants to talk about are “safety” and “consistency.” He continued that his letter asked the City Council to prohibit the placing of signs in any City right-of-way that is not safely accessible without permission of the City. The prohibition of signs for safety reasons would be similar to the already established prohibition of panhandling in those same locations for the same reason. The prohibition would include all roundabouts, rotaries, traffic circles, medians, and dividers. The purpose is to prohibit the unsafe placing of all signs, including political campaign, business promotion, help wanted, event notification, yard sale, and so on and so forth. Maple Ave. is a dark street with medians, including one between Pako Ave. and Melody Ln. One night when he was driving there, he saw someone placing a sign and wondered what the person was doing. The next morning he drove by in the daylight and saw that the person had put a “bus drivers wanted” sign up. There was no crosswalk or any safe crossing to that median. At one point last fall, the roundabout in front of the hospital had 23 signs in the center of it, and there is no crossing there.

Councilor Jones stated that regarding the word “consistency,” about six years ago when there was a petition to stop panhandling in the city, the City Council was advised by the City Attorney that they could not do that, but they could stop it in those unsafe crossing places. He asked if that is correct. The City Attorney replied that the bottom line is that the City cannot prohibit individuals from panhandling, but the City and the KPD have the right to make sure people are not in unsafe

locations. Regarding signs, moving back and forth to an unsafe location to place a sign is something that a Police Officer would probably interrupt if they saw.

Mr. Blomquist stated that protocol was developed between the KPD and the PWD. They looked at spaces and agreed upon what traffic spaces in the opinion of Public Works staff – as the people who design and maintain them – would be unsafe. For example, the median on lower Winchester St. by Key Rd. is not designed to have pedestrians, so the KPD was comfortable saying, “No one should be panhandling there.” They ran into some issues regarding some of the off ramps, because someone there is not necessarily unsafe, because in some ways pedestrians are allowed on those. The KPD and the PWD went through that process of determining which locations the KPD could ask someone to move away from.

Councilor Jones replied that from what he is hearing from staff, the consistency is there. He continued that he is asking for the same exact thing regarding signs, for the same exact reasons. He knows staff is asking the Committee to accept this as informational, but he thinks this is a safety issue that should go to the City Council for a vote. If they approve his request, the matter will return to the Committee. He does not know if it is a sign ordinance or a traffic safety one, but he assumes this would be an amendment to an ordinance. Thus, the Committee will have a second chance at this, and so will the City Council.

Chair Greenwald stated that in speaking with the City Clerk, he can say that the City does have regulations as to where signs can and cannot go. He continued that the State has their own such regulations. He thinks it is already in Code. He wonders if there could be a document explaining to candidates or businesses where their signs can and cannot go, and explaining that someone can stand and hold a sign anywhere they want because a handheld sign is part of freedom of speech. This an educational issue. The information is already here.

Mr. Blomquist stated that staff does not disagree with Councilor Jones’s safety concerns over the proliferation of signs. The topics of the proliferation of signs, the tools that are available, and the resources, all have to come together. As Chair Greenwald indicated, City Code sections say where signs can and cannot go. For example, if a sign is advertising a Main St. business but the sign is on West St., it is an Off Premise Sign and is prohibited. In general, none of those signs are permitted in the right-of-way. The PWD and the KPD have the authority to remove signs in that instance, and they do.

Councilor Jones asked if he is talking about business signs. Mr. Blomquist replied no, he means all signs, like “bus drivers wanted” or anything else. He continued that political advertising is addressed by RSA 664:17. Theoretically, the City Council is supposed to vote to give permission for political signs to go within the public way, for any street in the city. They have never done that. Most entities have not, because it gets a little tricky. The important question is, what do we do? Yes, it is the PWD’s practice to remove signs from the middle of the roundabout, on shoulders, and so on and so forth, because people are not supposed to be going there. Passing an ordinance will not stop people from placing signs there, because the KPD is not going to go out and try to ticket someone for that. The Police Chief has talked with the City Council about how there are already many things the KPD is challenged to do. When the PWD learns of or sees signs in the roundabout, they pull them, hoping that hints to other people that they should not be putting signs there. He pulls them out on Central Square all the way down Main St., because they want to keep that space clear, and there are safety concerns. In areas where the PWD does roadside mowing, they try to pull the signs out beforehand. If they see or get a complaint about an intersection with a proliferation of signs that limit one’s view, PWD staff goes out and removes the signs.

Mr. Blomquist continued that he removes any unsafely-placed signs, regardless of

content. Sometimes someone calls him to ask why he removed a sign about a child who has cancer, for example, and he explains that signs are not allowed there, and invites the person to come to the office to get the sign back. The PWD does not have the resources to get to all locations in the city, so they pull in the areas they can. There are a couple spots in which signs proliferate, that the City does not have control of – for example, the ramp by the car wash on West St., which is State property. All they can do is notify the State about the signs and ask the State to come remove them, but the NHDOT is as constrained as the PWD and it is low on their priorities. That area gets many signs because people know the City pulls them from other locations.

Mr. Blomquist stated that his opinion, as staff, is that the City has the rules allowing them to go out and pull the signs, and they are doing it. He continued that the help he asks for is for people to call the PWD if they are concerned about a space. He hopes people realize they should not be putting signs in unsafe locations, but unfortunately, many people do not follow the directions. The PWD re-educates political entities every election year. They get upset with him and come to his office, and scream at PWD staff when they are pulling the signs out, saying staff does not have a right to do that. PWD staff hands them the State statute. He does not think they need another ordinance; he thinks they need to educate people more. It would be great to educate candidates about this, but it might not help with the person who is so excited about the candidate they are trying to put out as much information about the candidate as they can and putting signs up in unsafe locations. However, if people tell the PWD where the signs are, staff can pull them. When Councilors get the phone calls from people upset that their signs are gone, the Councilors can educate people that way, too, and encourage them to go pick up their signs at the PWD. He keeps them out in the foyer for about 30 days, which he does not *have* to do, but chooses to do in recognition of the funds people spend on their signs.

Chair Greenwald stated that he agrees with Councilor Jones that there are many more business-oriented signs showing up, and thinks it will only get more intense, as people figure out this is a way to market things. His question to the City Attorney is whether an easy to understand, friendly memo can be given to the candidates when they come in, the violators at the companies, and so on and so forth.

The City Attorney replied that anyone who has tried to decipher RSA 664:17, which is The Placement of Political Signs on Public Property, knows that we have to be very careful about that. If the City wanted to, if someone came in and filed for an election, they could at least be handed the statute. He would be reluctant to try to give them advice with respect to what to do about it. He would be reluctant for the Committee to request the City Manager or the City Clerk to try and put together a statement saying what people can and cannot do with signs, especially in a political context.

Councilor Jones stated that it sounds like an ordinance is not necessary, but he thinks they should do something, to be proactive instead of reactive when someone gets hurt. He continued that they do not have to do it tonight, but he asks Councilors and staff to think about future ways of educating people, or any other way to prohibit signs in unsafe locations and prevent an accident from happening.

Mr. Blomquist replied that he agrees, and what he always finds challenging is that people are paid to put up signs and paid based on the number of signs they put up. They will try to educate people the best they can, but this is a difficult situation. The best the PWD can do is pull the signs, and people get the idea that if they put a sign, it will go away. It is similar to how the City attacks graffiti. Their goal is to get it cleaned before it stays too long, because otherwise someone sees it and thinks, "Oh, the City hasn't done anything, so I guess I can put my graffiti here now." It is the same thing with signs. Yes, the signs are a safety concern to the PWD, but it comes down to resources. They have

specific areas they focus on, from a safety standpoint, but with the rest of the areas, it is extremely difficult.

Councilor Jones stated that it is fine to accept this as informational, on paper, and the Committee should do that, but he thinks the safety aspect of this should be on their minds and they should be thinking of this down the road.

Chair Greenwald asked if there was further comment from the Committee or public.

Councilor Williams stated that the safety aspect is important, but they should not forget the clutter and pollution aspect. He continued that he has problems with those as well.

Councilor Workman made the following motion, which was seconded by Councilor Roberts.

On a vote of 5-0, the Municipal Services, Facilities, and Infrastructure Committee accepts the communication regarding unsafe sign placement as informational.



CITY OF KEENE NEW HAMPSHIRE

ITEM #D.3.

Meeting Date: July 7, 2022
To: Mayor and Keene City Council
From: Municipal Facilities, Services and Infrastructure Committee, Standing Committee
Through:
Subject: **Warrant for Unlicensed Dogs - City Clerk**

Council Action:

In City Council July 7, 2022.

Voted unanimously to carry out the intent of the report.

Recommendation:

On a vote of 5-0, the Municipal Services, Facilities, and Infrastructure Committee recommends that the City Council issue a warrant for unlicensed dogs pursuant to NHRSA 466:14, and the Keene Police Department be directed to issue civil forfeitures to those dog owners who have failed to license their dog by April 30, 2022.

Attachments:

None

Background:

Chair Greenwald asked to hear from the City Clerk. He asked if she has the list of offenders.

City Clerk Patricia Little replied no, it is about 50 pages long, and she chose to save a few trees and not print it for the Committee's agenda packets. She continued that this is the annual request for the Committee to authorize the KPD to issue civil forfeitures, which are essentially \$25 fines, to dog owners who failed to renew their dog licenses by April 30. This year there is a different twist to this. When Barry Hilton, the City's animal control officer retired, they had an opportunity to talk with Chief Russo about the dog registration program, to educate each other about what Barry Hilton was doing for the City Clerk's Office and what the City Clerk's Office was doing for the KPD. One of the things that came out of that conversation was the fact that although they are very diligent about the warrant of dog owners who failed to renew their dog's license; there is another group of dog owners who are also not as responsible as they should be. This group of dog owners are those who fail to respond to the rabies notification letters that the office sends out monthly. The City Clerk continued that veterinarians are required to report to the City any vaccinations that they have administered. State law also requires that the Clerk inform dog owners of the requirement to license their dog. Throughout the year, every month, the Clerk's Office gets these notifications from vets and sends out letters to these dog owners about the requirement to license their dog.

The City Clerk continued that they met with the new Assistant City Attorney shortly after she arrived,

and she explained that administratively they cannot use the normal civil forfeiture process unless it is included in the warrant authorized through the City Council. Thus, this year the Committee has two groups of dog owners: those who failed to renew, and those who failed to respond to rabies letters. The number is less than a thousand, but certainly more than the Clerk's Office would typically have in a year. With the civil forfeiture, if the Council authorizes the warrant, the Clerk's Office will send out a civil forfeiture notice on behalf of the KPD, through regular mail. They will get several hundred responses. Most people will say they left town or that their dog died. Over the next several months, because this probably will take until September or October, this list of nearly a thousand dogs will be whittled down to, hopefully, a few dozen. At that point, they turn it over to the KPD and ask if they want to do any further enforcement action. The State Law allows for a summons to court. Historically, issuing a summons has not been a very cost effective because the judge typically requires that the dog owner pay the forfeiture, and license their dog." Prior conversations with Chief Russo have indicated that the Police Department would probably not want to issue summonses in these situations; however, she thinks the KPD can assist the Clerk's Office informally through a personal contact with the remaining dog owners. The Clerk's Office intends to get this list of nearly a thousand names down to a few dozen over the next several months.

Chair Greenwald asked if the City gets any of this money. The City Clerk replied yes, certainly. Chair Greenwald replied that he thought it all went to the State. The City Clerk replied that a portion of the dog license fee goes to the State.

Chair Greenwald asked if the Committee had any questions. Hearing none, he asked if the public had questions or comments. Hearing none, he asked for a motion.

Councilor Filiault made the following motion, which was seconded by Councilor Roberts.

On a vote of 5-0, the Municipal Services, Facilities, and Infrastructure Committee recommends that the City Council issue a warrant for unlicensed dogs pursuant to NHRSA 466:14, and the Keene Police Department be directed to issue civil forfeitures to those dog owners who have failed to license their dog by April 30, 2022.



CITY OF KEENE NEW HAMPSHIRE

ITEM #D.4.

Meeting Date: July 7, 2022
To: Mayor and Keene City Council
From: Finance, Organization and Personnel Committee, Standing Committee
Through:
Subject: **Attorney Thomas Hanna - JRR Properties - Donation of Land at 0 Ashuelot Street - Green Space**

Council Action:

In City Council July 7, 2022.

Voted with 10 in favor and four opposed to carry out the intent of the report.

Recommendation:

On 4-0 vote, the Finance, Organization and Personnel Committee recommends that the City Manager be authorized to do all things necessary to negotiate and execute an agreement on terms and conditions acceptable to the City to accept the land donation offer of a portion of 0 Ashuelot Street for use as a city park conditioned upon the successful completion of any regulatory approvals necessary for JRR properties to complete the proposed development of the proposed adjacent property.

Attachments:

None

Background:

Attorney Tom Hanna representing JRR Properties, LLC addressed the Committee first. Attorney Hanna stated the reason he is before the Committee is in part because of a letter he sent to the Mayor and City Council on June 10. Appended to that letter was a schematic plan which he called the Committee's attention to.

He indicated what they are asking for is that the Manager be authorized to do all things necessary to negotiate and execute an agreement on terms and conditions acceptable to the City, to accept the land donation offer and for purposes of a City park of a portion of 0 Ashuelot Street conditioned upon the successful completion of any regulatory approvals necessary for JRR Properties to complete the proposed development of the adjacent property.

City Attorney Mullins stated Attorney Hanna captured most of what is being requested and added the Committee has the proposed motion.

Attorney Hanna went on to say the proposal by his client is to gift a lot, which lot has not yet been surveyed, but the schematic plan is based on prior surveys. The gift of lot 1 (2.5 acres) to the City is

to be used as a playground and City park as well as access to the river for kayaks and canoes. Lot 2 (1 one acre plot) is proposed to be the site for the headquarters of the Monadnock Conservancy.

A solar array would be located to the west of the parking lot for the headquarters. Attorney Hanna stated his client's intention is that solar array would furnish all the electrical needs for the Conservancy as well as for the City Park. The size of the solar array would require a variance – this will be addressed before the Zoning Board of Adjustment.

This is a project the applicant has been discussing with City staff for a long time.

Parks Recreation and Facilities Director Andrew Bohannon added the City has had many conversations about this piece of property. Of the many proposals one thing that has been a consistent component of the plan is a kayak area, which would be on City property but provide some access through this parcel so people wouldn't have to carry kayaks as far. The proposed space being discussed today would become more of the active space if that were to come to fruition. Ultimately this park would differ from the Ashuelot River Park Arboretum, which is more for a reflective and passive space.

Councilor Chadbourne asked once this gift is accepted whether there will be conversations with the community to get their input of what the community would like to see in this space or would it be strictly a City staff decision. Mr. Bohannon stated the City can certainly make that happen. The applicants have been working with a landscape architect for the development to complete their portion and get some broader ideas and he felt it could be fine-tuned through a public process. He added one of the popular ideas is for a dog park and the answer has always been no. Councilor Chadbourne asked whether there is any space for parking or for cars to back up to launch boats. Mr. Bohannon stated the current lot is all grass and it is gated private property.

Chair Powers asked about the timing for this item. Attorney Hanna stated they are hoping for year-end which does feel ambitious. He indicated they hope to address the zoning issues maybe in August with the hearing in September. If a surveyor was to be hired, that time period would be around September into October for a subdivision and then the item would have to go before the Planning Board. He added the firm they are using for the solar array is Revision.

Councilor Remy felt this would be a great addition for the City.

Councilor Lake made the following motion, which was seconded by Councilor Remy.

On 4-0 vote, the Finance, Organization and Personnel Committee recommends that the City Manager be authorized to do all things necessary to negotiate and execute an agreement on terms and conditions acceptable to the City to accept the land donation offer of a portion of 0 Ashuelot Street for use as a city park conditioned upon the successful completion of any regulatory approvals necessary for JRR properties to complete the proposed development of the proposed adjacent property.



CITY OF KEENE NEW HAMPSHIRE

ITEM #D.5.

Meeting Date: July 7, 2022
To: Mayor and Keene City Council
From: Finance, Organization and Personnel Committee, Standing Committee
Through:
Subject: Fabian Friedland/Keene Island Condo Association and Keene Island Holdings - Requesting Lease of City Property for Parking - Island Street

Council Action:

In City Council July 7, 2022.

Voted unanimously to carry out the intent of the report.

Recommendation:

On 4-0 vote, the Finance, Organization and Personnel Committee recommends that the City Manager be authorized to do all things necessary to negotiate and execute a lease agreement for the proposed parking and other uses of the City-owned Island Street property.

Attachments:

None

Background:

City Attorney Tom Mullins stated this is a proposal made by the Keene Island properties. He indicated this entity had a lease agreement with the City back in the nineties for use of this space, adjacent to the bike trail which is now parking for buildings located in the Condominium Association that occupies most of the building. The property transferred not too long ago and it was discovered the lease had expired and needed a new one as a result of a Planning Board site application. There was an amendment to the site plan as Corning Specialty Materials wants to put a generator on the property, which required them to go to the before the Planning Board to get a site plan. This item is currently pending before the Planning Board and an agreed upon extension would be obtained while the parties work out the details that were necessary for the parking.

There are also some underground propane tanks at the property which were installed back in the nineties. The attorney explained this is really an effort to clarify their rights to use the property under a lease for the parking for the propane tanks and to satisfy the Planning Board site plan condition.

Councilor Lake asked for clarification for this location of this property and inquired whether it was a sliver of parking on the north side of the property and south of the rail trail. Public Works Director, Kurt Blomquist agreed and added it is about 11,000 square feet and it is about 20 spaces along the north side of the building and as you continue down past the parking is where the propane tanks are located.

Attorney Mullins explained the motion is to allow the negotiation and execution to happen. He indicated the City has been talking with the parties, but nothing has been finalized yet.

Councilor Remy made the following motion, which was seconded by Councilor Chadbourne.

On 4-0 vote, the Finance, Organization and Personnel Committee recommends that the City Manager be authorized to do all things necessary to negotiate and execute a lease agreement for the proposed parking and other uses of the City owned Island Street property.



CITY OF KEENE NEW HAMPSHIRE

ITEM #D.6.

Meeting Date: July 7, 2022
To: Mayor and Keene City Council
From: Finance, Organization and Personnel Committee, Standing Committee
Through:
Subject: **Acceptance of New Hampshire Juvenile Court Diversion Network SBIRT Funding - Youth Services**

Council Action:

In City Council July 7, 2022.

Voted unanimously to carry out the intent of the report.

Recommendation:

On 4-0 vote, the Finance, Organization and Personnel Committee recommends that the City Manager be authorized to do all things necessary to accept and expend funds provided by the New Hampshire Juvenile Court Diversion Network for Youth Services programs.

Attachments:

None

Background:

Youth Services Manager, Alicia Bender addressed the Committee next and stated the New Hampshire Juvenile Court Diversion Network is the governing body of all Juvenile Court Diversion Programs in New Hampshire. The program in Keene is more commonly known as the Juvenile Conference Committee. The Governor's Commission on Alcohol and Other Drugs Prevention, Intervention, and Treatment has granted the City a second funding of \$5,600 for this next upcoming fiscal year. As a result, the City will be able to continue more prevention and intervention work with this extra funding.

Councilor Chadbourne made the following motion, which was seconded by Councilor Remy.

On 4-0 vote, the Finance, Organization and Personnel Committee recommends that the City Manager be authorized to do all things necessary to accept and expend funds provided by New Hampshire Juvenile Court Diversion Network for Youth Services programs.



CITY OF KEENE NEW HAMPSHIRE

ITEM #D.7.

Meeting Date: July 7, 2022
To: Mayor and Keene City Council
From: Finance, Organization and Personnel Committee, Standing Committee
Through:
Subject: **Colony Court Sewer Replacement Project - Construction Change Order - City Engineer**

Council Action:

In City Council July 7, 2022.

Voted unanimously to carry out the intent of the report.

Recommendation:

On 4-0 vote, the Finance, Organization and Personnel Committee recommends that the City Manager be authorized to do all things necessary to negotiate and execute a contract change order with J.A. McDonald, Inc. for an amount not to exceed \$850,000 on the Colony Court Sewer Replacement Project.

Attachments:

None

Background:

City Engineer Don Lussier stated back in January, staff was before the Committee talking about the Colony Court Sewer Replacement Project. This project was replacing sewers along Wright Street and the sewers that run cross-country through private properties behind the houses on Colony Court. Mr. Lussier stated this has been a source of ongoing problems for a number of years. When the utilities work was done on Washington Street, the City planned for this project to come up, and by lowering the sewer line in Washington Street by a couple of feet, the contractor was able to locate on Colony Court and Wright Street sewers with a greater pitch, faster flow, and less hang up. Since January, when the Committee approved the change order with the design engineer, there has been some additional geotechnical exploration work done and design work completed. The consultants reviewed a number of different options, including improving the soil where it is and rerouting sewer lines so it is not in people's backyards. However, the rerouting would have required re-plumbing everybody's houses. However, it was decided to keep the sewer where it is with the trench protection would be the most cost effective way of getting the job done.

This engineering work was completed in April. During the last couple of months, staff have been negotiating with the construction contractor. Mr. Lussier stated there should be a contract agreed upon very shortly, which would be fair to all parties and the ability to restore the site, so residents on Colony Court can have the use of their backyards by the end of the summer.

He indicated what the staff was asking for is a change order of \$850,000. He noted the project was originally budgeted and the design and construction contracts both came in under the original budgets, so there is some cushion to begin with. There have also been a number of projects over the last several years, specifically the work on Silent Way and Perham Street. Both those projects came in a lot cheaper. If the Committee and Council ultimately approve this change order, no additional money needs to be appropriated. Funding is available within the sewer improvement program. However, by the end of this year, the City would have basically drawn down all of those old project balances, which were being used to pay for some of the overruns.

Attorney Mullins asked for clarification of what the Engineer had said about services going through private properties. It was explained that the City city has had an easement dating back to the thirties for the existing sewer line. The sewer main runs through a City sewer easement and the private properties tie into the sewer main.

Councilor Lake made the following motion, which was seconded by Councilor Remy.

On 4-0 vote, the Finance, Organization and Personnel Committee recommends that the City Manager be authorized to do all things necessary to negotiate and execute a contract change order with J.A. McDonald, Inc. for an amount not to exceed \$850,000 on the Colony Court Sewer Replacement Project.



CITY OF KEENE NEW HAMPSHIRE

ITEM #H.1.

Meeting Date: July 7, 2022

To: Mayor and Keene City Council

From: Municipal Facilities, Services and Infrastructure Committee, Standing Committee

Through:

Subject: **Attorney Michael Bentley – Agatha Fifield – Requesting the City Resume Maintenance of Blain(e) Street – Private Way**

Council Action:

**In City Council July 7, 2022.
More time granted.**

Recommendation:

On a vote of 5 – 0, the Municipal Services, Facilities and Infrastructure Committee recommends placing the communication on more time.

Attachments:

None

Background:

Chair Greenwald asked to hear from Attorney Michael Bentley. Attorney Bentley introduced Agatha Fifield. He continued that his letter from June 8, 2022, tells the story of why they are here tonight. The house that Ms. Fifield owns at 22 Blaine St. was built in 1945. Both he and Ms. Fifield do not think there is any question that from 1945, through and including the winter of 2019-2020, the City of Keene plowed Blaine St. Numerous ownership changes occurred between 1945 and when Ms. Fifield bought the house in 2015, and for the first five years that she was there, there was no question that the City plowed the road in the winter and did some maintenance during better weather. They think, but do not know for certain, that what got them here tonight is that Ms. Fifield called the PWD a couple of times in the winter of 2019-2020 when some trees came down. The first time, City staff came and cleaned it up and everything was fine. She called a second time, and here they are tonight. They do not know for certain that that is what started the investigation by the PWD about Blaine St. and the City's ownership or non-ownership of it and what the City had done in the past. They understand that 75 years is a long time. Who knows what happened in 1945. They do know that the City was maintaining the road at least through October 2020 when Ms. Fifield received a letter from the City saying the City was not going to do it anymore.

Mr. Bentley continued that of course, this has created problems for Ms. Fifield. She has had to arrange for winter maintenance so that she is able to get in and out from her property. Currently, the road is due some grading to make it more passable. She has had more difficulties since the City is no longer involved. He and his client think it is grossly unfair and highly improper for, after such a

period of time, the City to just turn and run from Ms. Fifield, the owner of 22 Blaine St. They tried to figure out what to do and thought the appropriate thing to do, at least for the first instance, was to put their cards on the table with the MSFI Committee. That is what prompted his letter, and why they are here tonight. They think that as a matter of equity and of fairness, the City should recognize what it has done, and what its actions have caused for both Ms. Fifield and the former owners, who came to rely on what has actually been done and for the City to continue that going forward. The City has now made a 180-degree turn on the owner of the property after such a long period of time. They think this is very unfair. Their request is straightforward; they are asking the City to resume the maintenance of Blaine St. to Ms. Fifield's residence. A truck turnaround is just beyond her residence. They are not asking for something new and different; they are asking simply for a resumption of what had gone on for three quarters of a century.

Chair Greenwald asked to hear from the Public Works Director. Mr. Blomquist stated that he has graphics to show as he talks about Blaine St. and will offer what history he can. He continued that to orient people to the location, on the right of the graphic is Meadow Rd., which goes back to Pearl St. On the left is the retention pond area across Route 9 for the Monadnock Marketplace. The circled area is 22 Blaine St., which is currently owned by Ms. Fifield. He pointed out Lee St., and stated that it was petitioned in 1957 for public way, and the City Council accepted it in 1957. He pointed out Syd St. and its relation to Blaine St. He continued that this area has an interesting history. It was originally proposed for development in 1927. He showed the plot they filed in the Registry of Deeds, and continued that this was the more traditional plot layout from that era; they were 20-40 feet wide and 100 feet deep. Many deeds in the area refer back to this particular drawing of this particular plot. He showed Lee St., Syd St., and Blaine St. He continued that another street there was called Gillis St. Several other streets were indicated on this particular plot at that particular time. Their deeds referenced plot numbers 163 through 167 and 218 through 220 as the land areas that are associated with this particular property.

Mr. Blomquist continued that that gives the Committee an idea of what all of this was based on. Blaine Street was never accepted by the City, as far as staff can find. There are a couple of ways streets become public. First is the layout process, which is a statutory process that the City Council has adopted. It involves someone petitioning the City Council to lay out a public way. Second is an acceptance process, which means someone saying, "We are going to dedicate this as a public street, and we want you to accept it." Usually that is through the Planning Board or the governing body, and there will be some type of act where a dedication or acceptance occurred. The third way a street can become public is prescription, which means that if the community maintains the street for general, public access - meaning, the general public used it, the general public felt they could use it, and so on and so forth - it is public. A number of court cases over the years have defined what prescription is. It is very clear that prescription-only applies if you can *demonstrate* that public access occurred for that 20-year period between 1968 and 1948.

Mr. Blomquist showed an aerial photograph from 1949. He stated that the petitioner's house was constructed in approximately 1945. He showed Meadow Rd., Pearl St., what is referred to today as Lee St., Syd St., and Blaine St. He showed a set of buildings that he assumes in 1949 represented the house and something like a barn. He continued that this image shows what was there in 1949 and questioned whether that would have met "general public access." When the PWD looks at something like this to make a final determination as to whether a street is public, they look for layouts, or dedications and petitions, and for both Syd St. and Blaine St. they have never found anything that has demonstrated that those acts ever occurred. In 1957, Lee St. was laid out by a petitioner to construct houses along the northern side. Then in 2004 or 2005, a petitioner wanted to construct additional housing there, and a section of Lee St. had fallen into Class VI status, City-owned but not maintained. The City Council went through a process, which was necessary to be able to extend the active part of the street.

Mr. Blomquist showed an image from the City's files from 1949. On the survey plans, Blaine St. is called "private," as is Lee St. At that particular time, at least from a legal standpoint or a standpoint of filing of plots, they were still labeled as private streets.

Mr. Blomquist continued that in 1997, owners of property off Meadow Lane requested that the City pave Syd St. At that point, the PWD sent a letter indicating that the City could not pave Syd St. because it was a private street. He is not doubting that over the years, operational staff has done work out there. In most cases, it was probably the result of calls from the property owners asking them to come to take care of something. The operational staff does not always know what has been designated as a private street. They probably have plowed it and probably have done limited maintenance during his time here. He cannot speak for what happened before he was here. Clearly in the City's records, at least before he was here, Blaine St. and Syd St. were determined to be private streets. Whether the PWD and the City performed limited maintenance activities for those periods, he cannot speak to, and unfortunately, the folks who were around then are no longer with the City.

Mr. Blomquist continued that this goes to the question of whether there was City maintenance in the 20 years prior to 1949. Again, he has not found anything that would suggest the City actively did continuous maintenance on it from that period, because the information the City has does indicate that Blaine St. and Syd St. are private.

Mr. Blomquist showed an image of today's property mapping, to show how the properties are configured today. He showed Meadow Rd., Lee St., Blaine St., and the property in question. He continued that the next property down is 68-80 Lee St. That property owner owns the sections across Blaine St. to the other side. The next set is 121-127 Meadow Rd., the apartments accessed off Key Rd. That property owns all the property over to Lee St. In 1927, some people had an idea for development, but that never came into being. Properties were bought and sold combined, and this is what exists today. The last property is 47 Meadow Rd., owning all of what Syd St. is on and a portion of Blaine St.

Mr. Blomquist continued that the Committee might be asking what rights Ms. Fifield has. Information suggests that, again, this is a private street. The deeds for 121-127 Meadow Rd., 68-80 Lee St., and 47 Meadow Rd. all have sections that deal with this issue. To give another note, this particular property does not have a sewer; he believes it is off a leach field. The water is a private service that runs all the way down Syd St. to Lee St. It was first installed in 1959 and then repaired in 1987. The City's files indicate that. It is a one-inch line, so it is not a main. It is a private service. An example of why this is important is that the deed of 47 Meadow Rd. has a section that says, *"The premises hereby conveyed are subject to any easements or rights-of-way of record, or law, to lay and maintain a private water service to the land now or formally known as the Forciers, and for passage and re-passage to and from land to said Forciers."* This says that the property owner of 47 Meadow Rd. said they have a right to have that private water service across their property to go down to; they have a right to access it. They also have a right to pass and re-pass over their property to get out to Lee St., a public way. It goes further to say, *"This is also subject to the rights of the public, if any, and the rights of the private property owners, if any, to use Gillis St., so-called; Blaine St., so-called; and Syd St., so-called."* The properties at that point in time did not recognize that there was a public way here. These were "so-called" streets, again, reflecting back to the 1927 deed.

Mr. Blomquist continued that the other deed for 121-127 Meadow Rd. has a similar clause, *"Subject to any rights which may exist in the strip of land formerly shown as a street in the plan entitled Pearl St. Gardens, Keene, NH,"* dated August 1927, Planning Board of Cheshire County Deeds. This is again recognizing that there are rights of other property owners across what was formerly known as

Blaine St., in this case; that “strip of land” titled as Blaine St. The other deed, because of the occupancy for 68-80, has similar language: “*Subject to any rights-of-way that may exist.*” This implies that there are some rights-of-way and if they exist, this deed is subject to those particular ones that a property owner would have to exert their standing as saying “This is a right-of-way that I have.” This all continues to suggest that Blaine St. and Syd St., which are connected together, are private streets that the public does not have any specific interest in.

Mr. Blomquist stated that there is the issue of expending public funds on private property. He continued that that is the reason why the PWD sent notification that they need to stop doing , because in doing so they are not following the law. They were spending public money on a private way. They did the notification and let know that the PWD would be ceasing any operations. Unfortunately, over the years, the City and the PWD has done these types of work, primarily snow removal, and probably some light maintenance like filling in a hole here or there. He knows his staff did this work probably in response to property owners, because they are very focused on responding to and taking care of customers’ complaints, but sometimes the operational staff does not realize that they are performing work on a private road or they believe that they can do the work they are doing. Clearly, in 1997, the PWD notified the Meadow Rd. property owner that the PWD would not pave their street, because they *could* not, because it was a private street at that time.

Mr. Blomquist stated that that is the background on the street. He continued that he would be happy to answer questions.

Chair Greenwald asked if the property in question involves 68-80 Lee St. also. Mr. Blomquist replied that they own across Blaine St., and they actually own the frontage in front of the property, so they are involved, and that is one of the deeds they have here – “subject to any rights-of-way.” Chair Greenwald asked if 68-80 Lee St. is Ms. Fifield’s property also. Mr. Blomquist replied no.

Chair Greenwald stated that Google Maps shows a foundation out there. Mr. Blomquist replied that if there is one, it would have to have been performed by one of these property owners. He continued that he will pull up Google Maps to see what Chair Greenwald is talking about.

Councilor Williams asked if this was ever paved by the City or anything like that. Mr. Blomquist replied that Blaine St. is unpaved. He continued that he does not know how Syd St. got paved, but if you actually go down it, it looks like it is part of the parking lot. The aerial image shows it is all pavement from one side to the other. The City did not put it into any paving program because it is a private street.

Councilor Filiault stated that Mr. Bentley’s letter states that the City was maintaining Blaine St.]since approximately 1945 until the City sent the letter out in approximately 2020. He asked if that is correct. Mr. Blomquist replied that he does not believe that is correct. He continued that he cannot say what happened between 1948 and 1968; all he has is the records he has, which indicate that in 1949 that street was considered private. He has to assume that at that particular time the City would not have been maintaining it. He has no evidence, from any of the City’s records, that the City was maintaining it at this point in time.

Councilor Filiault stated that he takes pride in trying to know where every street in Keene is, but he had no idea where Blaine St. was, until he drove it the other day. He continued that he likes to go with precedent and history, and that is why his question – although he does not want to get into a ‘he said/she said’ situation – is whether the City has been maintaining it for years. Going back to 1945, who knows. As they talked about the other day, just finding records from the 1980s can be difficult. He just wants to see if they can obtain a history showing that the City did maintain this for a certain amount of years. Mr. Blomquist replied that unfortunately, by law, you cannot use

prescription unless you can demonstrate it from 1968 back to 1948. He continued that if the City has been mistakenly maintaining it since then, it does not make it a public way. The issue is spending public funds on private property. Everything the City has at this point, as he has demonstrated tonight from deeds and other documents, indicates that this is private property. It is not a public way. If the City has been mistakenly maintaining it, including during his time here, they have been mistakenly doing it.

Councilor Filiault stated that he has been researching the property, and saw old MLS listings that showed the road as public. Mr. Blomquist replied that real estate agents are sometimes not accurate. He continued that the City has 28 private streets, and he knows that some of those have been said by real estate agents. Councilor Filiault replied that he is not saying that real estate agents define the law, but he is trying to get the history. Has the City been maintaining it, has it been listed as a public road, did the previous owners think it was a public road, and so on and so forth. Mr. Blomquist replied that he understands, and that would be all good if Councilor Filiault was trying to demonstrate that from 1948 to 1968. It does not matter what they are doing today, by the law. To make it a public street, there are two ways to do that, but in the City of Keene there is just one way: you would have to do a layout. You would have to determine that there is a public necessity, to lay a highway out.

Mr. Blomquist continued that one of the issues here is there is only one property. Chair Greenwald replied that that is why he was asking about across the road.

Mr. Blomquist stated that he now sees the Google Earth image. He asked Chair Greenwald where he was looking (when he saw the foundation), and zoomed in. He continued that he could check with Code Enforcement. It would have to be work that is being performed by one of those other property owners. Chair Greenwald replied that it is okay; he was just wondering. He asked if there are any other dirt roads in the city that are plowed. Mr. Blomquist replied public ways, yes. He continued that there are about two miles of unpaved roads, mostly dead end.

City Engineer Don Lussier stated that the foundation Chair Greenwald saw in the photo was the 68-80 Lee St. developer; that was under construction just in the last few years. He continued that access to that site is off the end of Lee St. Visible in the aerial photo is the bridge they installed to get into that development. They do not access that property through Blaine St., and it is the same with Princeton Apartments to the south. Their access is off the end of Key Rd.

Chair Greenwald asked if the Committee had more questions. He stated that this seems like a very technical, legal situation. Hearing no further questions, he asked for public comment.

Mr. Bentley asked Mr. Blomquist if, at the end of Blaine St., there is a City sign like the ones Mr. Redfern was just talking about, saying "Blaine St." Mr. Blomquist replied yes, but there are street signs on all private streets, just to indicate that there is a street.

Mr. Bentley asked Mr. Blomquist if there is any evidence in the City's records to the effect that the City has *not* maintained Blaine St. for 75 years. Mr. Blomquist replied that he cannot find anything for that, but that is a decision a judge has to make. Mr. Bentley replied that he understands; he just wants to make sure that there is nothing in the City's records to indicate one way or the other. Mr. Blomquist replied not in the research he has done to date, but that does not mean he has completed all of his research. He continued that there are other avenues to pursue, such as going through old annuals from that era. At this point, what he has been able to find suggests that the City has not maintained it.

Mr. Bentley asked Mr. Blomquist to tell the Committee what things he found to indicate that the City

has not maintained it. Mr. Blomquist replied that he has only been able to find records going back 30 years. Mr. Bentley asked if Mr. Blomquist can tell the Committee what records he saw within that 30-year period to indicate that the City has not maintained the road. Mr. Blomquist replied that he has not seen that, and as he said, during his time here, the City has done some maintenance on it.

Chair Greenwald stated that he would like to pause the conversation, which is sounding quite legal. He continued that the more he hears, the more legal confusion he feels, and he is not a judge.

Mr. Bentley asked Chair Greenwald to ask Mr. Blomquist, who spoke of the deeds of the surrounding properties, whether he looked at the deed for 22 Blaine St. He continued that the reason for his question is that some of Mr. Blomquist's commentary indicated what was in the abutters' deeds to indicate private issues. His question is whether there is anything in the deed for 22 Blaine St. to come up with the same conclusion.

Mr. Blomquist replied that there is nothing in the 22 Blaine St. deed, but it references back to the other deeds he previously referred to. In July 1970, a Council action from the Bills, Lands, and Licenses Committee - "*the Forciers' petition to purchase the old land on Blaine St., the Committee agrees the City has no use for this parcel.*" Mr. Blomquist noted that he has not figured out what parcel it is yet. He continued reading, "*the Committee recommends that the established procedure be followed to obtain bids from abutters for the minimum being set at assessed value. This is a 100x200 foot lot on a private way.*" Thus, back to at least 1978, it was still considered a private way by the City.

Councilor Roberts stated that maybe this is something the City Attorney can answer, but from what he heard, if the City maintained that road for the last 40 years and did everything according to the law, all that would have been illegal. However, if the City had maintained it from 1948 to 1968, that would have been legal.

City Attorney Tom Mullins stated that he and Mr. Bentley disagree on this issue. He continued that from the City's perspective, maintenance is just *one* element of whether you can create a way as a public way. There are two other elements. The first is that whatever happened had to have happened for 20 years prior to 1968, or at the latest, from 1948 to 1968, because in 1968 the Legislature decided that prescriptive rights against the municipality to create a public way was no longer valid. Prior to then, to be able to have created a public way, you needed to have two elements. One was the maintenance, as they have been talking about, which there is some indication has occurred. The second, critical element was that it had to be generally open to the public, and the public, in general, had the right to pass and re-pass, and the municipality decided that is a good idea and decided to start maintaining it. For example, if there was a nice pond on the other side of a piece of property with no particular access to it, and over the years, the public liked going to that pond and started going back and forth to it, and the municipality decided it was a good idea and decided to make a road to the pond so everyone could access it, without any objection from the property owner during that 20-year period of time when that pass and re-pass happened, all of a sudden you had a public way. That was how they created one. The question that is before the Committee is whether, aside from the maintenance, there is enough evidence for the Committee to consider whether the public had a right to pass and re-pass back to this particular piece of property for the 20 years prior to 1968.

The City Attorney continued that his only other suggestion to the Committee is for them to understand, as he is sure Mr. Bentley does, that if snow-plowing were enough to create a public way, every driveway in the town of Temple would now be a public way, because the Public Works Department of the Town of Temple, has for many years, plowed the driveways. Plowing is clearly not enough. Case law indicates that regular maintenance to maintain the passage for the public can be

enough, but it needs that other element: the right of the public to go back and forth. That is something the Committee would want to consider, with respect to how it decides Mr. Bentley's request.

Chair Greenwald asked if there was any indication that it was not a dead end road and maybe went through. Mr. Blomquist replied that this was done before the bypass. He continued that these were all more or less dead end roads, ending in a piece of parcel that belonged to somebody else. Chair Greenwald replied that it did not go through and come around to West St. or something like that. Mr. Blomquist replied not that he is aware of. He continued that you can see that in 1949 before the bypass was built, they stopped at the fields. He cannot remember the name of the property owner now, but this was owned by someone else. There are no indications that any of these looped back in any particular direction. Back to what the developers did back in the 1920s and 1930s, this Pearl St. Gardens is typical of that era where they laid out 20-40 foot wide lots with 100 foot depth and you could buy as few or as many as you wanted.

Chair Greenwald asked if there were any further questions from the Committee. Hearing none, he asked if members of the public had any questions.

Jim Condon of 28 Lee St. stated that when he bought his house in 1988, the whole of Syd St. was dirt and went around the corner onto Blaine St. He continued that the City maintained that until just recently. Syd St. is a private street. Blaine St. is a public street. He feels that Ms. Fifield pays taxes and Blaine St. should be maintained. Regarding Ms. Fifield's road, back in the day, the City used to grade it three times a year and plow it. In the last three or four years they have stopped services altogether, which he understands. Syd St. is a private way, and they put a sign up there. But Blaine St. is still a public road. Therefore, he feels that it should be maintained. Ms. Fifield pays taxes and should have City services.

Chair Greenwald asked the Committee what their thoughts are and what they want to do.

Councilor Williams stated that he thinks there are legal questions here that would be better decided by a judge than by the MSFI Committee. Chair Greenwald stated that he tends to agree, but he would rather see two lawyers sit down together and decide themselves.

The City Attorney replied that unfortunately, this is an "It either is, or it isn't" situation. He continued that the only other thing he would suggest to the Committee, and perhaps Mr. Bentley and his client, is to inquire as to what other public uses there may have been at that property.

Councilor Filiault stated that his comments earlier indicate how he is leaning. He continued that he does not know if they should make a motion to place this on more time. He does not know if that will accomplish something, if the lawyers can get together. He leans towards thinking the City should maintain Blaine St., but he is not naïve and realizes there are legal issues. As he stated earlier, he goes back to asking what the history is, and leans on that heavily. He does not have the exact answer here. This does seem like something for the lawyers. The two lawyers in the room disagree.

Chair Greenwald asked if there was any more comment. Hearing none, he asked for a motion.

A motion by Councilor Williams to accept the communication as informational was seconded by Councilor Workman.

Mr. Condon stated that Blaine Street needs to be maintained in case of fire or an ambulance call. He continued that it is a safety issue as well. What if no one plows it, and Ms. Fifield gets in trouble and calls 911 and they cannot get through? Blaine Street needs to be maintained.

Councilor Roberts stated that if the MSFI Committee accepts this communication as informational, nothing happens. He continued that a decision has to be made one way or another. If the Committee votes yes, the City can say that it has to go to the judge. If the Committee votes no, Mr. Bentley can say it has to go to a judge. The Committee should make a recommendation to the City Council one way or another. If the Committee is not ready to say one way or another, he suggests putting it on more time, to give the City Attorney time to dig up more information and to maybe clarify the information. He will not support the motion to accept this as informational.

The City Attorney stated that the burden is on the individual requesting that this be a public way to establish that. He continued that even still, accepting the communication as informational does not remove from the property owner or from Mr. Bentley the opportunity to either have and provide further information through the City Attorney's Office, or to take it to the Superior Court. The City Council can do what it wants, but staff is suggesting to the Committee that there is not enough evidence before them at this point to establish that this was recognized by prescription as a public way. Whether the answer to that question is true or not depends on whether the Superior Court agrees. His suggestion is that accepting it as informational is certainly appropriate. They could also place it on more time to allow Mr. Bentley, to the extent that he can, to provide additional information to the City, which they could then consider.

The City Attorney continued that the City recognizes what happens to this property owner. That is clear. Nobody likes to be here in this position, telling this to the property owner, who probably purchased the property without any knowledge of all of this. It is not easy. On the other hand, as the Public Works Director pointed out, the City is constitutionally prohibited from spending public dollars on what would otherwise be a private right. Right now, all they have been able to establish is that this is a private driveway. There are many long driveways in this community and otherwise. They could not open up the possibility of maintaining them and using them as a public way. The Committee can place this on more time or accept it as informational; his recommendation is the latter. It would not preclude Mr. Bentley from coming back with additional information if he wishes to do that.

Chair Greenwald stated that he was trying to determine if there is a compromise, but the City Attorney put it clearly: it is either yes, or no. He continued that this is a complex, legal issue. Any real estate agency involved with something like this is putting themselves in deep water trying to explain the rights of private driveways and everything else they have heard here. Whoever represented it at the time probably thought it must be a public street because it had a street sign, and therefore created this whole nightmare, but the more they are all talking, the more they see how complex this all is.

Councilor Roberts asked, if the Committee accepted this as informational, does the City Council have a right to reject that and then bring it up for a vote of the full City Council? The City Attorney replied yes; the Committee is only making a recommendation. He continued that he reminds folks that the City Council meeting would not be an opportunity for Mr. Bentley to present anything different from what he has presented to the Committee. Chair Greenwald replied that the City Council could choose to refer the matter back to committee and they would have to go through this whole conversation again. The City Attorney replied that then he would suggest the other option of placing the matter on more time, and to allow Mr. Bentley to attempt to provide additional information with respect to the three elements.

Mr. Redfern stated that he was on the Planning, Licenses, and Development Committee many years ago, and he cannot quite remember if precedence was set in any way where the City granted discontinuance of private use for public purposes. He continued that this would go back to the 2000-

2012 timeframe. The City Attorney replied that he thinks Mr. Redfern is confusing a couple of concepts. He continued that a public way created in the past through one of the processes can be discontinued subject to gates and bars, and it becomes a Class VI road and no maintenance is required, but it has to have been a public way in the first place. He continued that he is unaware of any point where the municipality would have any authority to take any action with respect to a private way, in the context that Mr. Redfern is talking about. He thinks what Mr. Redfern has in mind is the discontinuance of what was otherwise a Class V or Class VI road.

Councilor Filiault stated that his inclination is if this to go to the City Council as informational he would refer it back to the Committee. He continued that he does not think they have resolved the situation yet. In all fairness to a tax-paying constituent, the Committee should check all avenues before they are done with it. Maybe the City Attorney is right. But he thinks Mr. Bentley makes good points. The history shows good points on both sides. He does not think that placing this on more time and giving it 30 more days would hurt. It might help, or it might make it more complicated, but he hopes that the Committee withdraws the motion and rephrases the motion to place it on more time for 30 days so both attorneys can do more research.

Chair Greenwald stated that he hears what Councilor Filiault is saying, and knows that it will not be snowing anytime soon.

Councilor Williams withdrew his motion. Councilor Workman withdrew her second.

The City Attorney stated that he would like to clarify the timeframe for Mr. Bentley, remembering that June has a fifth week, so the next opportunity for the City Council to consider the Committee's recommendation would be July 7. He continued that usually, the City Council accepts a motion for more time without any further discussion. Then, it could be taken up again generally any time after that, but the City Council is going on vacation, so he believes the next Committee opportunity would be late August.

Chair Greenwald asked if Mr. Bentley understands the timeframe. Mr. Bentley replied that he was not expressly aware of that schedule but it is all fine with him and Ms. Fifield. He continued that it will give them time to try and find some old folks in town who can tell them what happened in periods of time when most people in the room were not around.

Councilor Filiault made the following motion, which was seconded by Councilor Williams.

On a vote of 5 – 0, the Municipal Services, Facilities and Infrastructure Committee recommends placing the communication on more time.