

City of Keene
New Hampshire

MUNICIPAL SERVICES, FACILITIES AND INFRASTRUCTURE COMMITTEE
MEETING MINUTES

Wednesday, April 27, 2016

6:00 PM

Council Chambers

Members Present:

Janis O. Manwaring, Chair
Randy L. Filiault, Vice-Chair
Robert J. O'Connor
Stephen L. Hooper
Gary P. Lamoureux

Kendall W. Lane, Mayor

Members Not Present:

Staff Present:

Medard Kopczynski, Acting City Manager
Thomas Mullins, City Attorney
Kürt Blomquist, Public Works Director
Andrew Bohannon, Parks, Recreation, &
Facilities Director
Don Lussier, City Engineer
Elizabeth Fox, Assistant City Manager/Finance
Director
Rhett Lamb, Planning Director

Chair Manwaring called the meeting to order at 6:00 PM and explained the procedures of the meeting. She stated that per Councilor Jones's request, they will first address agenda item #5.

5) COMMUNICATION – Councilor Jones – Street Lighting – Ralston Street

Councilor Jones stated that he is a member of the City/College Special Commission; it was brought to the Committee's attention that there is no lighting on Ralston Street. That area used to have businesses that closed down at 5:00 PM. Councilor Jones named some businesses that used to be there. He continued that since these businesses closed early, no one noticed that there was no lighting on that street.

Councilor Jones continued that the City introduced the SEED district, put incentives in, and was successful in locating student housing on Ralston Street. Now, there is a lot of pedestrian traffic at night. He recommends that the MSFI Committee recommend asking for options for street lighting. He noted that he was not directly asking for lights. When he chaired the MSFI Committee he would always go to the Public Works Director to ask for reasons for lighting and what the policy was. The reasons were more for drivers than pedestrians and the policy was to have a street light every 400 feet. This is different in that the City created the pedestrian traffic. The Councilor remarked that Ralston Street is not a great pedestrian road and it seems like there is no room for a sidewalk on the east side. The west side currently has a narrow sidewalk. The City might have a longer term plan to make Ralston Street look better, but right now the lighting is most important.

Public Works Director Kürt Blomquist stated that when he drove down Ralston Street he was surprised to see that there really are not any lights. He continued that as Councilor Jones spoke about, the businesses previously in this area were closed in the evening and there was not a lot of activity after they closed. Many of the current businesses are right up on the street. This presents challenges. The City built the sidewalk on the west side about 10 years ago because there was no room on the east side. On the east side, businesses (such as New England Fabrics) and their driveways are right up on the right-of-way line. The corner of the restaurant sits on the right-of-way. When the City rehabilitated the street last summer they widened the shoulder on the west side, painted it, and installed a section of concrete sidewalk up towards the intersection with Emerald Street to provide something on that east side. Even though there is a sidewalk on the west side, there is a tendency for foot traffic, especially from the housing projects, to stay on the east side.

Mr. Blomquist continued that Councilor Jones was looking for options, and his suggestion is for staff to look at this area, but he is concerned that there are no lights there today. The City's street utility standards are to have lights every 400 feet. They would contract with Eversource Energy, as that is how almost all of the street lights are handled in that Eversource owns the lights, and the City rents them. They could get something installed in 90 days. The committee could recommend that this be placed on more time and staff would come back with the cost for this interim solution. As Councilor Jones said, they could have a longer term plan for revitalizing that area.

Chair Manwaring asked if committee members had questions or comments. Hearing none, she asked for public comment. Hearing none, she asked for a motion.

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

On a vote of 5-0, the Municipal Services, Facilities, and Infrastructure Committee recommend the communication regarding street lights on Ralston Street be placed on more time, to give staff time to return with information within two cycles.

1) PERIODIC REPORT - Ashuelot River Park Advisory Board

Mr. Bohannon introduced Bud Windsor, the Ashuelot River Park Advisory Board (ARPAB) Chair. Mr. Windsor stated that it is interesting to watch the park mature. It is 26 years old now. They are starting the next steps to make it a true arboretum. He continued that the ARPAB and Mr. Bohannon contracted with Bartlett Tree to do long overdue corrective pruning. The park is getting used for more events. It has become quite an asset for the city. The ARPAB is charged with enhancing and maintaining the park for its present and future use, and the enjoyment and educational benefit. Regarding the educational benefit, they have inventoried most trees. They would like to tag all the trees with QR codes, which would give information about the tree when a person holds a smart phone up to it. They are trying to treat it more like the arboretum that it is, not just a general purpose park. They have had volunteer groups who help out, such as the LINKS program from Keene State College (KSC) and the Keene Lions Club. They hired a

landscaper contract to do day to day maintenance, which is very helpful. The park is blossoming. It is a huge asset. There are some hot button issues, like the West Street Dam, that they are dealing with. There are also plans to develop the land next to the park. It has become more of a gem than he ever saw in 1990.

Mr. Bohannon stated that with regards to the adjoining land, the Ashuelot Greenspace group is looking to expand the park. As things develop staff will bring it forward. They are still in development stages.

Chair Manwaring asked how far back the park goes. Mr. Windsor replied the part they are talking about is the two acres by West Street. Mr. Bohannon stated that the arboretum is on West Street and the park extends all the way back on Rt. 12 and almost abuts the school district. All of that is designated as Ashuelot River Park. Mr. Windsor stated that the ARPAB concentrates on the arboretum.

Chair Manwaring asked if the trees in the back were inventoried. Mr. Windsor replied no, just the trees in the arboretum. Mr. Bohannon stated that the ARPAB's focus is the arboretum area, which pretty much goes to the boat landing/last bench by the start of the Jonathan Daniels Trail.

Chair Manwaring asked if the public had questions or comments. Hearing none, she asked for a motion.

Councilor Filiault made the following motion, which was seconded by Councilor O'Connor.

By a vote of 5 to 0 the Municipal Services, Facilities, and Infrastructure Committee accepted the Ashuelot River Park Advisory Board report as informational.

2) REFERRAL FROM COUNCIL – City Code Section 70-136 – Driveway Permit Exceptions

Mayor Kendall Lane stated that he referred this matter back to the MSFI Committee. He continued that this was the first appeal the City Council ever had related to with this ordinance. The appeal brought up a number of issues with this section of the code, which the committee might want to consider. Councilor Filiault was correct that most people's circumstances have changed. It is now relatively normal for adult children to be at home, and for a household to have multiple cars. Provisions need to be made for different circumstances that developed over time. The ordinance as currently written, both the driveway permit exceptions and the underlying ordinance, do not provide for that. There is no mechanism other than granting a second curb cut in perpetuity to deal with changing circumstances. There are options for the City Council to consider. They could issue temporary driveway permits, the need for which arise in a number of circumstances. It would allow, for example, the Alexs to have the curb cut for the period of time that the Alexs' own the property or have their adult children at home. Then it could expire when the circumstances expire. The answer is not to require everyone to appeal to the Planning

Board or City Council but to change the ordinance. He recommends that the committee seriously consider reviewing and perhaps changing the ordinance with the Planning Director and the City Attorney so there are other options available.

Mayor Lane continued that the second issue to address is a procedural issue about how appeals are conducted. It is not clear from the ordinance how to conduct an appeal. There is no provision for notifying abutters. The appeals are a quasi-judicial consideration by the committee, not a legislative matter, and the standards the committee uses should be very different than they should be under a legislative matter. It is not clear from the ordinance that that is clearly the intent. The ordinance makes it clear that the requestor must demonstrate compliance with the criteria. The MSFI Committee does not have a legal procedure to conduct their own investigation and doing so is an improper procedure under this ordinance. The procedure needs to be clarified and rewritten as well as the substance of the issue relating to driveway permits. Mayor Lane concluded that he asks the committee to work with the City Attorney and the Planning Director to address the deficiencies of this ordinance.

Councilor Filiault stated that he applauds the Mayor for sending the topic back to the committee for discussion. He continued that this is just a matter of changing times. As the Mayor said, this is the first time someone has appealed to the City Council. As people get wind of this, and with all of the illegal second curb cuts out there, this will have to be addressed. Yes, they should look at both issues. He looks forward to working with staff to update this.

Councilor Hooper stated that he agrees fully. He continued that he felt a little uneasy going to that residence and speaking with the Alexs directly.

The Mayor replied that the ordinance did not make clear what they could or could not do and what the process should be needs to be spelled out. He continued that members of the City Council normally handle things in a legislative manner. This is one of the few instances where they have to take off their legislative hats and put on their quasi-judicial hats. The Planning Board considered the matter quasi-judicially but the MSFI Committee did not, but that is because nothing said the MSFI Committee had to. This is not meant as a criticism of the committee. When it came to the City Council he let the appeal go forward. It highlighted that they have to clarify this for everyone, what the City Council is supposed to be doing when they consider these matters. When this first came up, he talked with the City Attorney and asked him if this should be handled by the committee or the full City Council. There are questions that are not really answered in the ordinance and it needs to be rewritten to take all of those into account.

Chair Manwaring asked the City Attorney how he envisions this process unfolding.

The City Attorney replied that the Mayor is right. He continued that when they looked at this their reaction was, "What do we do with this?" As the committee knows, the City has reestablished procedures in the past about appeals and they are pretty thought out. His suggestion is to place this topic on more time for a couple cycles so he can meet with the

Mayor and staff and rough out in more detail the specifics that the Mayor has identified, and work with the Planning staff to see what other issues they want to identify in the ordinance, too. They would bring that back as a report to the committee about what they want to see in the ordinance and the committee can talk about it.

Chair Manwaring stated that she likes the idea of staff talking about it, but the committee has talked about this issue as well and has feedback to offer. They agree with the Mayor that there need to be changes, and they have ideas, and also want to hear from the public.

Councilor Filiault stated that there are obviously many of these situations in the City. He continued that he wants to hear back first from staff and the City Attorney. Any feedback that the committee offers tonight might not match with the City Attorney's guidance. He will wait to hear what is legal and what is not legal.

Chair Manwaring stated that other than what the Mayor suggested, part of what was problematic, for her, in making a decision, was that there was no on street parking in that area. There are probably lots of areas like that in the city. On the street she lives on, if her son came home, he could park on the street. She hopes that that is thought about as well. She asked for Mr. Lamb's comments.

Planning Director/Assistant City Manager Rhett Lamb stated that this is a great opportunity to look at the Code. He continued that it had minor changes in 2008 and was changed more significantly in 2006. Those changes in 2006 were meant to fix problems related to process. The City had a process that gave separate, independent authority, one to the Planning Board and one to the City Council. The City Council had authority for granting waivers to the driveway code, and the Planning Board had the responsibility of issuing a permit. So it left applicants with the potential problem of getting one approval but not the other. The attempt was made then to establish in the first instance, a Planning Board review, and then for the appeal circumstance, the City Council review. The intent was good. But it probably did not put enough meat on the bones of the process or talk about what standards ought to apply in the review process of the appeal. He is in favor of correcting those. There may be other aspects, like standards that Chair Manwaring brought up, to revisit as well. This is a good time to revisit it and he is in favor of the recommendation to set them on the path to define the scope and bring it back.

Chair Manwaring asked if it is just driveways that have to go to the Planning Board. Why is it not just a Code Enforcement issue? Mr. Lamb replied that under the driveway code, all the City Council or Planning Board is doing is issuing a curb cut approval. Regarding the driveway, once it goes onto the private property it is defined by standards in the zoning code, and in some cases, the building code. They have to separate those two and staff will help the committee understand this. This group of appeals or permits which the City Council has some appeal authority for is very small. Almost all single family driveways are issued by the Engineering Division and they do a great job. When there is an exception from the standards, the exception and waiver process goes to the Planning Board. The Planning Board deals with about three or four of those a year and they do not usually end up with appeals, which to him say that the Planning Board is doing a fine job

of applying the standards and granting permits. So it is a fairly limited number that are appealed. Anything involving a residence with over three families goes through a site plan review process by the Planning Board, which is not directly or exclusively through the driveway code. The City Council would probably never be involved in the review process for those bigger projects because it is all done through site plan review. It is only the small slice of projects that need the exception and for which the individual seeks relief through the way the Code is written.

Chair Manwaring asked for public comment. Councilor Jones stated that he hopes they consider abutter notification as part of it; he thinks that is important. He continued that it is not just the ordinance that the City Council has to work with, for the appeal process, they also have to look at the somewhat antiquated Code that the Planning Board uses. Their hands were tied when they went through the process. When the appeal came to the City Council he looked at it and thought, the requestors will have to keep parking on their front lawn and take the occasional complaint driven fine, and if they have to keep pulling in anyway, they might as well have their driveway. The most important part is if some of the abutters knew they might want to have input.

Councilor O'Connor 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 discussion on the driveway exception ordinance on more time, for at least two cycles, to allow City staff, including the City Attorney, time to review City Code Section 70-136.

3) MORE TIME REPORT – Removal of Granite Curbing – West Side of Central Square

Chair Manwaring asked if Dorrie O'Meara wanted to speak.

Dorrie O'Meara, of 326 Matthews Road, Swanzy, stated that this topic came back to the MSFI Committee for their reconsideration. She continued that she asks that they place this on more time so she and the City Engineer can work on the plan, which is much smaller than the ones previously proposed.

Chair Manwaring asked if anyone had questions. Hearing none, she asked the City Engineer to speak.

Mr. Blomquist stated that he will speak to this. He continued that the Public Works Department does not have any plan. It was their understanding that the business owner would have a proposal, and it sounds like she does. Staff will sit down and look at the proposed changes to the area. He suggests at least two cycles. Then the petitioner can bring that back to the committee. He continued that he assumes the committee wants the Public Works Department to do some type of sketches so they are familiar with what the proposal is, and to come up with some estimates. The City Council would have to decide if this project serves a public purpose or not for expenditure of funds.

Councilor Lamoureux stated that they have heard here and at City Council meetings about the “public good.” He asked how they go about deciding whether or not something is for the public good. The City Attorney replied that there is no magic line. He continued that the committee needs to decide. There are spectrums. For example, if someone wants a driveway on their property to benefit them, clearly that is not for the public good. That is a clear line. Another clear line, for example, would be the TIF district that the City created – the City spent money to put in water, sewer, roads, and so on and so forth, which resulted in the creation of a corporate industrial park that provided jobs; that is clearly in the public good. When staff and Ms. O’Meara return with a presentation, the MSFI Committee and the City Council will need to decide, based on the facts presented, whether it looks like something that would benefit the general public, or not. That becomes a legislative decision for the City Council to make. He cannot give them the line, but those are examples of the two ends of the spectrum.

Councilor Hooper asked if a proposal like this went forth and there was a good faith effort by both the City and the property owner to collaborate with the funding, would this ease any legal concerns? The City Attorney replied that the first component is whether it is possible for these partnerships to work for the public good and the answer is yes. He continued that both the City and the private entity would contribute resources to achieve the goal. But if the partnership is determined to be benefitting the individual and not the public, even though the private entity says they will contribute resources, the answer is no, it would still not be appropriate. So it really depends on what the project is and the determination that it is really for the public benefit.

Councilor Filiault stated that the committee does not have the proposal before them tonight, so they are getting ahead of themselves. He continued that what the City Engineer proposed was not what Ms. O’Meara was looking for – it seems like it was “massive overkill.” He suggests they not put the cart before the horse. They need to allow time for the petitioner and staff to get together to see if this is a reasonable request. He thinks it will be. They have done work of this scope at other City-owned facilities for the public good but it was for someone renting space with the City. The airport was the most recent example, where they shared costs.

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

Move that the Municipal Services, Facilities, and Infrastructure Committee recommend more time on the removal of granite curbing on the West Side of Central Square to allow staff and the petitioner to come back with a plan they can discuss.

Finance Director/Assistant City Manager Elizabeth Fox asked for the time frame. Councilor Filiault replied that he will amend his motion to say two cycles. He continued that he would prefer one cycle since everything else is on two cycles.

Mr. Blomquist replied that one cycle would be a concern. The Public Works Department is in the middle of construction. He continued that one cycle would mean they would

have to be ready by next Friday, to get it on the committee's agenda. Two cycles is reasonable. Councilor Filiault replied that two cycles is the motion.

Councilor Lamoureux stated that last time there was a vote on this topic, he was one of the votes to decline. He continued that one reason was because the City has money put aside for July 1 for a discussion about a revitalization of downtown. He does not disagree but he will be voting against this because he thinks the study needs to take place.

On a vote of 4-1, the Municipal Services, Facilities, and Infrastructure Committee recommends more time on the removal of granite curbing on the West Side of Central Square to allow staff and the petitioner to come back with a plan they can discuss. Councilor Lamoureux was opposed.

4) COMMUNICATION – Councilor Lamoureux – Lighting Project – Commercial Street Parking Lot

Councilor Lamoureux stated that the City Council voted last year to complete the rehabilitation of the Commercial Street parking lot. He continued that the parking lot has been completed; work was done last spring and summer. There was originally a small mill/shim/overlay project of just the travel lanes. The City Council along with the Parking Service and the Public Works Department brought forward an increased scope of work to pave those areas and remove the asphalt curbing and sidewalks and replace with concrete. The Commercial Street lot was also repaved and accessible parking was in place. The City Council also talked about the lighting situation. Another proposal was brought forward and the City Council voted to install conduits and bases during construction. That has been completed and they are ready to move forward with the next phase. There is street lighting with utility poles with overhead lines. The poles are aging and at least one is condemned and in need of replacement. If they are going to install poles in that area they should look at changing the project and putting lighting up, for the last phase of the project. Original pricing was about \$99,000. Hamblet Electric did the lighting. They value engineered that and it is estimated at about \$76,000 for the lighting and utility wiring.

Councilor Lamoureux continued that he checked with the Finance Department today. Based on what is in the Capital Improvement budget, they have \$1,046,000 in the Downtown Infrastructure fund. Of that, \$672,000 is allocated for some type of a parking structure in the Gilbo Avenue area. That leaves a little over \$350,000.

It is time to install the new lighting this construction season. Eversource gave a new transformer proposal. They are ready to put their wiring underground. Also underground are the Time Warner and fire line conduits. This would eliminate the overhead wires in that area and the need for replacing those poles, which are unattractive. And again, they would have a better lighting plan. There will be new lighting on the side of the Colonial Theater; there is currently not a lot of lighting in that alley, which the theater uses often. That would install new lighting that matches the ornamental lighting that would be in that section.

Councilor Lamoureux continued that tonight he is asking for the committee to have a discussion about completing the lighting phase. They have the money reserved in the Downtown Infrastructure Reserve, which would entail City staff creating a resolution to allocate the money from that fund.

Councilor Hooper asked if they were to do something in 2016 versus 2017, would that keep the costs stable, or keep the costs below what they would be if they waited a year or two down the road? Councilor Lamoureux replied that they were able to hold the pricing for this coming year, because this pricing was from last year. He continued that Hamblet Electric works with Eversource regularly to make sure they have the right type of lighting that would be eligible for a rebate through Eversource. The City could apply for a rebate.

Mayor Lane stated that first, there is a policy question regarding whether the City Council wants to go forward with the issue of lighting in the Commercial Street parking lot. Second, there is the issue of how it will be paid for and which account it would come out of. If the MSFI Committee recommends that the City Council go forward, and the City Council agrees, he will refer this to the Finance, Organization, and Personnel (FOP) Committee and the FOP Committee will determine the financing. Maybe they would just fold it into the budget, or maybe do something else.

Councilor Lamoureux stated that the anticipation was that when a resolution came forward it would go to the FOP Committee. He continued that the Downtown Infrastructure Capital Reserves money is not tax money. It comes out of a separate account and which does not affect the tax base at all. There is \$100,000 put in each year to the Downtown Infrastructure Capital Reserve to fund these types of projects.

Councilor Filiault stated that he has no problem looking at the project. He continued that however, the committee has had a proposal from a constituent asking for a minor curb cut and a proposal from another constituent asking for minor curbs to be moved, and both proposals have gone through the gamut. Now Councilor Lamoureux is asking to move up a *City* project, saying that it is “just a million dollars, no problem,” after having just pointed out during the last agenda item that the City has a plan coming down the road so he does not want to do [the constituent’s] project yet. Councilor Filiault continued that he thinks the committee and City Council would be better off if they listened to constituents as much as they listen to themselves. He wishes they would give constituents the decency, time, and reduced rhetoric that the City Council gives to City projects. That said, he has no problem with staff looking at this and reporting back.

Mr. Blomquist stated that the Commercial Street lot went through a series of review by the City Council in February 2015. That is where staff brought forward the concept of adding the lighting. There were two pieces - one, the cost for installing the underground conduit and pedestals; second, the cost for the lights. The estimates were \$90,435 for the underground work and \$95,700 for the lighting. At that point the City Council considered and approved the underground conduits and pedestals. Lighting was considered, but the City Council decided to only move forward with the underground. The FOP Committee minutes of February 19, 2015 say they would consider lighting later

on. The current estimate is \$95,700. The intent, if the committee recommends that the City Council move forward with lighting consideration, is that the Mayor would refer the matter to the FOP Committee to make sure the \$95,700 is adequate.

Chair Manwaring asked if there is lighting there now. Mr. Blomquist replied that there is overhead lighting, rented from Eversource. That has been the light source on Gilbo Avenue east, across the street from Commercial Street, and it has been in place for at least 20 years in the Commercial Street lot. They maintained that lighting when they did the reconstruction, because the fixtures were not bought for the ornamental/downtown style lighting so they left the poles in place. The poles need to be looked at for replacement, as Councilor Lamoureux was saying. The intent of the City Council was to look at this in the reasonable future, to install ornamental-style lighting in that area.

Chair Manwaring asked if this is in the CIP. Mr. Blomquist replied not right now. He continued that if the FOP Committee says they should consider that, staff would insert it into the CIP. They could do it in what is being considered for fiscal year 2017, or insert it in the FY 2018-2023 CIP (which they will start putting together in 60 to 90 days), or, as Councilor Lamoureux indicated, there is the Downtown Infrastructure Capital Reserve, which is part of the TIF district that was established, and funding could come from there.

Chair Manwaring asked for comments from the committee or public. Hearing none, she asked for a motion.

Councilor Lamoureux made the following motion, which was seconded by Councilor O'Connor.

On a vote of 5-0, the Municipal Services, Facilities, and Infrastructure Committee recommends that the City Council give staff the authority to prepare a resolution to install lighting on the Commercial Street lot in construction season 2016.

5) Adjournment

Hearing no further business, Chair Manwaring adjourned the meeting at 6:55 PM.

Respectfully submitted by,
Britta Reida, Minute Taker