

City of Keene
New Hampshire

PLANNING, LICENSES AND DEVELOPMENT COMMITTEE
MEETING MINUTES

Wednesday, February 13, 2019

7:00 PM

Council Chambers A

Members Present:

David C. Richards, Chair
Philip M. Jones, Vice-Chair
George S. Hansel
Bart K. Sapeta
Margaret M. Rice

Staff Present:

Elizabeth Dragon, City Manager
Rhett Lamb, ACM/Community Dev. Dir.
Andy Bohannon, Parks & Rec. Director
Kurt Blomquist, Public Works Director
Tom Mullins, City Attorney

Members Not Present:

Other Councilors Present

Terry Clark
Carl Jacobs

Chair Richards called the meeting to order at 7:00 PM.

1. **Tim Zinn/Let it Shine - Request to Use City Property - 2019 Pumpkin Festival**

Tim Zinn, of 43 Grove Street reviewed the 2018 Festival's success. He indicated the attendance to be between 4,000 and 6,000 people. Mr. Zinn commended and thanked all the volunteers, students (Keene and Swanzey), City staff, and sponsors for their efforts. He also mentioned the few local businesses that were part of the Festival. For 2019 they plan to hold the event on Sunday, October 27, 2019, utilizing the same footprint. Mr. Zinn outlined the activities and indicated they would maintain the cap of 5,000 pumpkins. Mr. Zinn addressed the one new request to have three to four local non-profits be allowed to sell baked goods and hot drinks.

Chair Richards commented he had no issues with a few non-profit vendors as long as the parameters are clearly defined here tonight.

Chair Richards asked for Committee questions or comments.

Councilor Rice referred to the application and asked if the five tables would be under the five

canopies requested. Mr. Zinn replied in the affirmative noting they are basically for protection against the weather.

Councilor Sapeta thanked Mr. Zinn for starting the process early and for sticking with the theme Art in the Heart. Councilor Sapeta was also in favor of the scope of the event and the addition of a few non-profits. He suggested the organization think about Master Planning the event for the next 10 to 20 years thinking about how the City and others can help. Mr. Zinn said he was in favor of Councilor Sapeta's suggestion and noted the organization is open to Council's concerns.

Chair Richards raised the issue of Sidewalk Café licenses and asked the City Attorney about conflicts. He also noted the option of obtaining permission to use the space from the license holders. The City Attorney indicated the City would not exercise its right to suspend those licenses and the City might have to make other spaces available such as an Obstruction of Right-of-Way permit through the Department of Public Works. He further explained during the protocol meetings we would need to know who those vendors are and where they want to go. Mr. Zinn commented the initial thought was to put the tents on the west side of the square where there is less going on and there would be no interference with restaurants. Chair Richards clarified he did not want to see two events conflicting legally.

Councilor Jones congratulated Mr. Zinn on doing a great job. He referred to the history of the event and commented Let it Shine is a victim of its own success and outside factors. Continuing he said the Pumpkin Festival became a Northeast destination event. Councilor Jones said moving the event to Sunday and closing at 7:00 PM was the best thing they ever did. Councilor Jones also noted he was in favor of incorporating non-profits into the event.

There being no further questions from the Committee or the public, Chair Richards asked for a motion.

Councilor Hansel made the following motion which was seconded by Councilor Sapeta.

On a vote of 5-0, the Planning, Licenses and Development Committee recommends the request for use of city property for the Pumpkin Festival be placed on more time so that protocol meetings could occur.

3. Petition for a License to Construct and Maintain a Natural Gas Pipeline - Councilor Clark

Noting he had a conversation with Councilor Clark, Chair Richards moved agenda item #3 up next. Councilor Clark sent this in as information to be viewed in regards to agenda item #2.

There being no questions from the Committee or public Chair Richards asked for a motion.

Councilor Jones made the following motion which was seconded by Councilor Hansel.

On a vote of 5-0, the Planning, Licenses and Development Committee moves to recommends the background information supplied by Councilor Clark on the PUC petition be accepted as informational.

2. **Stephen Rokes/Liberty Utilities - Request for Easement - Beneath Hickey-Desilets Park - Installation and Operation of Distribution Line for Propane/Air Distribution System**

Stephen Rokes, of 80 Pearl Street and Andrew Mills addressed the request. Mr. Rokes said they are looking for an easement through the Hickey Desilets Park in order to construct and maintain their distribution line. Mr. Mills said they need to increase reliability by creating a continuous loop to support the system for Keene residents. The loop system basically ties two sections together to form a continuous loop. This is a natural evolution and with that they are looking for an easement that would allow them to bore a pipe across the Ashuelot River near Winchester Street. Mr. Mills explained the bore path noting they would try to limit the curve to ease the strain on the pipe during a pullback process. Doing this will push them out into City property. Mr. Mills identified the easement area as being the southeast corner of the park; it would be 14 feet wide extending from the west from the bank of the Ashuelot River 175 feet,

Chair Richards noted his understanding is you can go along the current ROW without going under the park. Mr. Mills replied in the affirmative. Chair Richards continued so why would you want to go under the Park rather than with the other utilities along the other path. Mr. Mills said the other utilities were installed during bridge construction; they are hanging underneath the bridge. He continued it is difficult to install a utility once the bridge is installed. A structural engineer is needed and it is very expensive. We do not have a structural engineer in-house. In order to stay in the City's ROW we have to drill under the wing-wall which is not an engineering best practice as we could undermine the bridge. Mr. Mills concluded replacing the bridge is not something they want to do.

Chair Richards noted his concern that the City is giving an easement through a Park for perpetuity when there is an accepted method in practice without having to do that. Kurt Blomquist, Public Works/Emergency Management Director replied in the affirmative and reiterated the method described by Mr. Mills. Mr. Blomquist agreed there could be undermining of the wing-wall/abutment and it would be much more expensive for them.

Chair Richards asked for Committee questions or comments.

Councilor Hansel wanted to know the activity level at this portion of the Park. Andy Bohannon, Parks & Recreation Director replied the activity level there is minimal. He also noted moving forward to work along Winchester Street the Park will be adjusted. Mr. Bohannon also said the local Italian Society has adopted the Park. Following up, Councilor Hansel asked about the restrictions that would be placed on the City. Mr. Blomquist explained the language would be similar to other easements; for example we could not build a building or put a storage shed over the top of it. Chair Richards clarified this is forever; Mr. Blomquist replied in the affirmative until such time as they might abandon it. Mr. Blomquist also clarified for Councilor Jones this is the existing Winchester Street Bridge; not the Island Street Bridge.

Councilor Sapeta wanted to know the environmental considerations and worse case scenarios with the drilling. Mr. Mills explained they did get a license to cross the river from the PUC and

these concerns have to be identified during that process. The major concern would be a frac-out which is an inadvertent return of the drilling lubricant.

Councilor Rice asked the estimated timeframe of the project. Mr. Mills explained the project and gave an estimation of 15 business days.

Councilor Sapeta commented he wanted to weigh out the advantages for all involved. He pointed out the applicant's proposal would be less expensive for them. Continuing he said the City would lose a parcel. He then asked if there was something else the applicant could offer in exchange for that parcel. Mr. Mills replied the pipe would be 10 feet under the surface and the City is free to place anything on top of it that is not a permanent structure. Our parent company actually pays us to go out and do volunteer work so we could help with the annual clean up. Mr. Blomquist suggested offering ideas to the City Manager to keep in mind while we work with Liberty Utilities.

Addressing Mr. Blomquist, the City Attorney referred to cut sheet L-1 that depicts the easement across the Park and the two pits. The City Attorney asked if there would be any special agreements would be required for the installation of these pits. Mr. Blomquist replied he believes both pits are within the ROW so they will be addressed during the Excavation Permitting process. The City Attorney clarified the only easement required under this proposal would be for the one that crosses the Park. Mr. Blomquist replied in the affirmative adding it is the placement of the pipe for which they are seeking the easement.

Councilor Hansel asked Mr. Blomquist if we had any other projects in the City that had to go under the wing-walls, and is this something he is comfortable with. Mr. Blomquist replied when rebuilding bridges the utilities have installed conduit under the bridge. He agreed trying to retrofit after a bridge construction is a higher risk. Mr. Blomquist noted he is not aware of the City having done this in the past. West Street is the only location he is aware of gas hanging off the bridge; everything else is underground.

Councilor Jones asked if the new Island Street Bridge would be an option for the applicant. Mr. Blomquist replied they want to go to the west and the Island Street Bridge is to the north so it would make no sense for them to do that. Mr. Rokes reiterated this needs to tie into Pearl Street to create the loop. Mr. Mills added the pipes by Island Street are a different pressure and so they cannot be tied together.

Chair Richards asked for public comments or questions.

Carl Jacobs, Councilor Ward 2 asked how this project will affect the proposed rain garden. Mr. Blomquist noted when Liberty Utilities proposed this they were not that far along with the Winchester Street project and this will be part of the discussion during our ongoing negotiations. Referring to the idea that this is forever, Councilor Jacobs asked if we have any control over what goes through that pipe overtime. Mr. Blomquist replied in the negative noting the permission for them to be here dates back to 1936. Councilor Jacobs continued by commenting that for Liberty Utilities it is not just a question of redundancy it is also an effort to expand services. Councilor Jacobs wanted this information to be on record.

Terry Clark, Councilor Ward 3 advised he is also an Intervener in this case before the PUC and he opposed Liberty's request to put a pipeline under the Ashuelot River. Councilor Clark said it is not necessary for this Committee to approve the petitioner's request for them to accomplish the goal of expanding the distribution system in Keene. Councilor Clark reported he gave the City Clerk a copy of PUC Order 26-212 that was also provided to the Committee. He drew attention to Page 3 where it states option B was an equally acceptable alternative to option A. Councilor Clark pointed out nowhere in the report does it say that option B is a danger, is any more risky, or any more expensive. He noted that Liberty declined to discuss finances at the PUC hearing as it would impugn their abilities during the bidding process. Continuing, Councilor Clark said as they are bringing the expense up today and he would like them to elaborate what the costs are. They did not bring up option B at this meeting. The PUC did say it is an equally acceptable alternative. Councilor Clark explained the Park is dedicated to two local soldiers who died in WW2. The pipe line would go right under their stone. Councilor Clark disagreed with Mr. Bohannon regarding the Park use. He concluded by noting we are the stewards of the park land and asked why we should give up our rights when they do have an alternative. Councilor Clark said option B is his favorite option because it protects the City's constituents. Councilor Clark encouraged the Committee to review the PUC report.

Mike Sheehan, in-house Attorney for Liberty Utilities noted he was involved in the PUC proceedings described by Councilor Clark. He discussed the confusion over costs noting the expensive option is hanging it over the bridge. Attorney Sheehan continued there is not a cost differential going from option A to option B. The cost for drill was confidential at the proceeding due to the future bidding process. Option A is the preferred engineering route which takes us under the Park and an easement would be needed. Should option A not be approved Mr. Mills designed option B which keeps us in the State's Right-of-Way.

Councilor Hansel asked why option A is preferred if it is not the cost factor. Mr. Mills said it would cost one to two percent more to do option B, and he conceded that cost is not a factor. The risk to the wing-wall is there although minimal. As the engineer he wants to eliminate as much risk as possible. Mr. Mills added they prefer not to hang on bridges because if the pipe is under the bridge they are safe from floods. Mr. Mills also addressed the curve explaining if they have the easement it would be one continuous curve; if they do not have the easement it would basically be two curves and an increase in pullback pressure which increases the number of steps they have to take.

Chair Richards clarified through the City Attorney that the City is not being asked to choose between two options here; they are being asked to give an easement through the Park. The City Attorney said that is true. The only thing in front of the Committee is the easement through the Park under option A. If for some reason the Committee does not prefer that option they would basically need to deny the request and the applicant could proceed on their own with option B. Chair Richards added it then would not even be a City Council matter; it would be an administrative matter. The City Attorney agreed.

Councilor Sapeta thanked Mr. Clark for shedding some light on this issue so the Committee has more understanding of what is going on. He also thanked Mr. Mills for his further explanation.

Councilor Jones addressed the lubricant Bentonite used during the boring process noting it is non-toxic. He referred to staff's recommendation to place this on more time noting if that is the case he would like to see staff directed to return with other recommended options, answer the question is the option the best advantage for the City or for Liberty Utilities, and should this be presented to the Winchester Street Committee for the upcoming project. Chair Richards noted it is his intention to make a motion first and see where it goes.

Councilor Hansel said he is in favor of letting staff take a deeper look at this as the option to utilize park space for perpetuity does seem kind of muddy.

Councilor Rice asked Mr. Bohannon to explain the process for voiding a park or changing its use. Mr. Bohannon explained the process and added he did not see why we would ever want to change a park's use. Mr. Bohannon also verified the Park has no ties to the Land, Water, and Conservation Fund which would put it in perpetuity forever and not allow the easement. Councilor Rice asked if the land would just remain as greenspace. Chair Richards mentioned changes taking place within the City noting he does not want to remove any options the City may have. He also asked why we would have an easement over a Park when the utility can remain in the ROW.

Terry Clark, Councilor Ward 3 said he would be interested in knowing why more time was recommended. Mr. Blomquist said it was his recommendation because he did not know what the Committee would dive into, and more time was a place to start. Chair Richards added he thinks we have all the facts and he would never oppose a request for more information. Councilor Hansel agreed with the Chair noting he did not know what other information could be presented. Mr. Blomquist reported they have been involved in the discussions with Liberty and option B does pose a low risk. There are no plans to replace that bridge for another 40 years. Mr. Blomquist concluded by noting if the Committee is not interested they can just say no. Councilor Hansel asked Mr. Blomquist if he would still want the Committee to put this on more time. Mr. Blomquist replied in the negative.

Carl Jacobs, Councilor Ward 2 clarified Liberty has two options that are equal for the most part and they do have a preference. He said from the City's point of view there is a lot of potential downside to giving up our right to this parcel.

Councilor Sapeta said this will happen on way or another. He noted he would be interested in having the City Manager talk with Liberty about how they can help with some leadership and sustainability to offset the potentially harmful footprint of gas through the pipeline. Attorney Sheehan indicated the Committee should stay tuned. He said we are a progressive utility and you will see some good things in Keene.

Chair Richards confirmed with the City Attorney that motions are usually made in the positive first. The City Attorney confirmed, adding if the positive motion fails you would then make a motion in the negative. Councilor Sapeta made a point of order regarding the motion. Chair Richards clarified what would take place for Councilor Sapeta. Mr. Mills added a last comment regarding the Building Code setbacks noting the reason for the 14 feet was so as not to affect any

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future construction.

There being no further questions or comments from the Committee or public Chair Richards asked for a motion.

Councilor Rice made the following motion which was seconded by Councilor Hansel.

On a vote of 0-5, the Planning, Licenses, and Development Committee recommends the approval of the request by Liberty Utilities. The motion failed unanimously with all Committee members in opposition.

Councilor Rice made a second motion which was seconded by Chair Richards.

On a vote of 5-0, the Planning, Licenses, and Development Committee recommends the request by Liberty Utilities be denied.

3. **Adjournment** - There being no further business before the Committee Chair Richards adjourned the meeting at 8:14 PM.

Respectfully submitted by,
Mary Lou Sheats Hall
February 15, 2019