

10/17/2019

A site visit was held Thursday, October 17, 2019 at 5:45 PM relative to a petition from Attorney Thomas Hanna, representing the Colonial Theatre, to consider Resolution R-2019-36, Relative to the Absolute Discontinuance of a Portion of the Commercial Street Parking Lot and Resolution R-2019-37, Relative to the Acceptance of a Warranty Deed to Correct the Sidewalk and Curbing Encroachment Problem – Commercial Street Parking Lot. City Councilors in attendance included: Carl B. Jacobs, Janis O. Manwaring, Thomas F. Powers, Terry M. Clark, Randy L. Filiault, Kate M. Bosley, Robert J. O'Connor, Robert B. Sutherland, George S. Hansel, Gary P. Lamoureux, Bettina A. Chadbourne, David Richards and Mitchell H. Greenwald. Mayor Kendall W. Lane and City staff in attendance included: the City Attorney, City Manager, and the Public Works Director. Councilors Philip M. Jones and Steven L. Hooper were absent.

The Mayor called the site visit to order at 5:45 PM. The Public Works Director, Kurt Blomquist, informed the attendees of the scope of this project indicating that this project has come to fruition due to the selling of the property located 20 Commercial Street to the Colonial Theatre. The property is currently owned by Jeanna Hamblet Revocable Trust. It was noted there are issues within the current title of the property that need to be resolved in order to have a clear title to sell the property.

The 1969 discontinuance layout had taken the property that is in question, 22 feet in depth and 60 feet in length in front of the current building, formerly known as the Downtown Fitness for Women. Then in 1970, the Planning, Land and Licenses Committee wanted to undo the discontinuance in 1969. The process that was completed was not sufficient to codify the change. This was determined through the disclosure process when reporting to the Savings Bank of Walpole. The petition for the discontinuance is intended to correct the errors in 1970. The portion being discontinued includes about 8 parking spaces and has been privately used by the Hamblet Family. They have been paying taxes on the portion that was thought to be theirs since the 1970s.

Attorney Thomas R. Hanna recapped the events that the Public Works Director stated. He also explained the need to correct the sidewalk and curbing encroachment problem. The sidewalk, from the side of the building to the backside of the building, is owned by the Hamblet family and they have been paying taxes on this portion of the property. In the process of selling, the piece of the property needs to have an easement to allow pedestrians to continue to use this sidewalk.

Attorney Thomas R. Hanna continued to explain the third and final issue will be addressed at tonight's meeting as a communication. He stated that the Savings Bank of Walpole will go forward on the loan as long as the errors that have been addressed at this Site Visit and the future Site Visit will be corrected in the future as needed.

The Public Works Director answered questions from the City Councilors in attendance. As there were no further comments, the Mayor declared the site visit closed at 5:57 PM.

A true record, attest:

  
Assistant City Clerk

10/17/2019

A regular meeting of the Keene City Council was held Thursday, October 17, 2019. The Honorable Mayor Kendall W. Lane called the meeting to order at 7:00 PM. Roll called: Carl B. Jacobs, Janis O. Manwaring, Thomas F. Powers, Terry M. Clark, Randy L. Filiault, Kate M. Bosley, Robert J. O'Connor, Robert B. Sutherland, George S. Hansel, Gary P. Lamoureux, Bettina A. Chadbourne, Stephen L. Hooper, Philip M. Jones, David C. Richards and Mitchell H. Greenwald were present. Councilor Hansel led the Pledge of Allegiance. A motion by Councilor Greenwald to accept the minutes from the October 3, 2019 regular meeting was duly seconded by Councilor Jones. The motion passed with a unanimous vote in favor.

#### ANNOUNCEMENTS – MAYOR

The Mayor announced that the Veteran's Council is extending its annual welcome for all City Councilors to attend and participate in the Veteran's Day Ceremony, which will be held at the Veteran's Monument at the Keene Parks and Recreation Center on Monday, November 11, 2019 at 11:00 AM.

#### PUBLIC HEARING – KENO ON THE 2019 MUNICIPAL GENERAL BALLOT

The Mayor opened the public hearing at 7:03 PM. The Notice of Hearing and Certificate of Publication were read. The Mayor recognized Kelly Jane Cleland Director of Sales and Product Development for the New Hampshire Lottery Commission. Ms. Cleland began by explaining that she is present to answer questions about keno. She noted that this was before the City Council two years ago just prior to the launch of keno in January of 2017. Since then 84 municipalities, including cities, towns and one unincorporated township have voted to allow keno, and it is now occurring at 190 establishments. One thing to note is that recently there was a change with keno funding. With the passage of HB 4, keno funding will now go into the Education Trust Fund, rather than solely being used to fund full day kindergarten programs. Everything else about keno is exactly the same. Ms. Cleland clarified that she represents the Lottery Commission, not the Department of Education. She offered to answer any questions that would fall within her purview.

Councilor Jones noted the last time this happened, all it said on the ballot was "Should Keene have Keno?" with no explanation that it would only happen in places holding liquor licenses or that it is one central keno operation – not individual games. There was not a lot of education to assist the public, nor was the wording on the ballot particularly helpful. It did not pass in Keene, and that may have been due to lack of information. He added that within the State, often money is said to be funding something specific and then that changes with time and it becomes part of the general budget. He asked if there are any stopgaps to prevent that. Ms. Cleland responded to the first question, noting that the phrasing of the question on the ballot is dictated by SB 191, something that is out of the Lottery's control. She agreed that more information is needed, and that is why the Lottery Commission visits communities to answer questions and engages in public awareness campaigns. She went on to state with regard to funding, all lottery funds collected since the passage of the lottery in 1964 have gone toward education and been deposited in the Education Trust Fund. She noted that it was a surprise to the Lottery Commission that this new shift would occur at this time.

Councilor Greenwald asked Ms. Cleland to explain where keno can occur. Ms. Cleland noted that it may only occur in pouring establishments like bars and taverns. Many times family restaurants do not qualify. Each location receives a visit to determine if it can be approved.

The Mayor noted this hearing is an opportunity to educate the public about keno. The question will be on the ballot on November 5, 2019, and this hearing is meant to provide information about keno and the use of the funds collected.

Councilor Sutherland asked what impact of the introduction of keno has had on overall revenue growth, and he asked for demographics regarding keno gamblers in terms of education level, levels of disposable income, etc. Ms. Cleland stated they do not have information on who is engaging in keno games, but they do have some information from an economic impact study, which showed that establishments operating keno are seeing new customers at their locations, as well as an increase in sales of alcohol and food, which has resulted in a need to increase their staffing levels. Offering keno has been very positive for the establishments that have keno. They are not seeing any issues stemming from this. They are seeing sales of other lottery products increase, which may be attributable to the addition of keno, but they may also be due to more product offerings generally, such as the iLottery app and fast-play games. Meaning there are more opportunities for lottery sales to occur. The Lottery Commission had a record year this year, returning over \$106,000,000 to the Department of Education. Part of that is due to keno and part of it is due to general lottery growth.

Councilor Clark stated the State of NH is now changing what this funding will be used for after saying it would be used to fund kindergarten. Keno has been able to expand the habit of gambling, according to the chart provided by the Lottery Commission, and extract even more money from people who cannot afford it.

The Mayor opened the floor to public comments. There being none, the Mayor closed the public hearing at 7:14 PM. He noted the City Council having authorized the question on the Municipal General ballot, the purpose this evening was to notify the public and provide information for them to be prepared to vote on the question at the election on November 5, 2019.

A True Record, Attest:

  
Assistant City Clerk

#### PUBLIC HEARING – DISCONTINUANCE OF A PORTION OF COMMERCIAL STREET PARKING LOT

The Mayor opened the public hearing at 7:15 PM. The Notice of Hearing and Certificate of Publication were read. The Mayor recognized Public Works Director Kurt Blomquist. He noted that as the notice stated, the City of Keene has received a petition from the Colonial Theatre, which is represented this evening by Attorney Thomas Hanna. He continued that the petitioner has requested the discontinuance of a public way. What this means is they have requested that a right the public has to pass and repass on this property associated with the Commercial Street

parking lot be discontinued. To orient the public, Mr. Blomquist noted this parking lot is located off Main Street, Gilbo Avenue and Emerald Street, directly behind Margarita's and the Colonial Theatre. The particular property involved is known as 20 Commercial Street, the location of the former Lady of America gym. Mr. Blomquist noted the process for the discontinuance includes submittal of a petition, a site visit of the location – which happened earlier this evening, and a public hearing. The petitioner will explain the need for the discontinuance this evening and then the matter will be referred back the Municipal Services, Facilities and Infrastructure Committee for further review and a recommendation back to the full City Council. He provided some historical details relative to the need for this petition, stating that in 1969 the City was acquiring properties to create the Commercial Street parking lot area and working with a number of private property owners in the area. At that time, the City Council laid out a public way over the City owned land as well as some private property located in this area for this purpose. Within about a year, there was an interest to narrow down a particular area of the original layout, so at that time in 1970 the City Council passed another layout for the Commercial Street lot. Unfortunately, in 1970 the process was not followed correctly resulting in that layout not being valid. So, what has remained in effect has been the 1969 layout of the Commercial Street lot. He ended by introducing Attorney Hanna to address the Council.

Attorney Thomas R. Hanna of the law firm BCM Environmental Land Law stated that he represents the Colonial Theatre. He continued the Colonial Theatre has a contract to purchase 20 Commercial Street from Jeanna Hamblet. Unfortunately, when they discovered this mistake of the 1969 layout, it caused the bank, that is financing the purchase and some substantial renovations to the main Theatre at 95 Main Street, to require that this “cloud” on the title created by the 1969 taking and layout be resolved. With the aid of a map, Attorney Hanna pointed out the area in question, noting it is a rectangular parcel approximately 60 feet long by 20 feet wide adjacent to 20 Commercial Street. The property was taken in 1969. He went on to explain that within months of the recording of the Resolution to layout this area, the then Planning, Lands and Licenses Committee sent a memo to the Mayor and City Council trying to retract or indicate that it no longer recommended that the 60 foot by 20 foot area be included in the Commercial Street parking lot. He added that as Mr. Blomquist had indicated, not many months after that in 1970 there was a new layout of the Commercial Street parking lot that did not include this affected area, the subject rectangular spot. However, that 1970 layout did not undo the taking in 1969. So, for all these years technically that 1969 layout and taking of the subject property was effective – notwithstanding the fact that the City Council and the property owner understood that that was private property. Taxes have been paid on the area for the last 50 years, and for all that time it has been accommodating parking. Again, the action taken by the City Council in 1970 with the intent of rectifying this situation was not legally adequate. The only way that you can undo a layout is for the same body that laid out the area to formally discontinue that area and hence that never having happened before. We are now doing what is being required by the bank to accommodate the closing on this property in as timely a fashion as State Statute will allow.

Attorney Hanna went on to reference a letter he submitted to the City Council on September 17, 2019 that involves a request to have the City accept an easement from the land owner for a section of sidewalk that was installed in 2015 on the west side of 20 Commercial Street which was built on private property. This needs to clearly be a City sidewalk, and the best way to accomplish that is through the granting of an easement.

Councilor Jones noted he missed the site visit and therefore cannot vote on the discontinuance. He asked if he is able to vote on the easement. The City Attorney answered in the affirmative.

Attorney Hanna made reference to another defect in the 1969 layout relative to the rear of the Colonial Theatre that was discovered, and a further petition to discontinue which will be submitted to remedy this. In the meantime, the bank is asking some sort of affirmative action from the Council on November 7, 2019. The Mayor noted this will need to be a separate action from that of the request for discontinuance before the Council this evening. Attorney Hanna agreed and stated a second petition to discontinue will be submitted at a later time.

The Mayor opened the floor to public comments. There being none, the Mayor closed the public hearing at 7:30 PM. He noted the hearing would remain open for written public comments until 1:00 PM on Tuesday October 22, 2019. Comments must be signed and submitted to the City Clerk's Office by the deadline for consideration by the Municipal Services, Facilities and Infrastructure Committee prior to their vote on a recommendation.

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Assistant City Clerk

#### CONFIRMATION

A motion was made by Councilor Greenwald and duly seconded by Councilor Jones to confirm the following nomination: Kathleen Kennedy Burke to serve as a regular member of the Library Board of Trustees with a term to expire June 30, 2023. On a roll call vote, with 15 Councilors present and voting in favor, the nominations were confirmed.

#### NOMINATIONS

The following nominations were received from the Mayor: Thomas Haynes to serve as an alternate member on the Ashuelot River Park Advisory Board with a term to expire December 31, 2022; and David Souther to serve as a regular member on the Bicycle Pedestrian Path Advisory Committee with a term to expire December 31, 2019. The nominations were tabled until the next regular meeting.

#### COMMUNICATION – CATHERINE SOUTHER – RESIGNATION – AGRICULTURAL COMMISSION

A communication was received from Catherine Souther, submitting her resignation effective immediately to the Agricultural Commission. A motion by Councilor Greenwald to accept the resignation with regret and appreciation of service was duly seconded by Councilor Jones. The motion passed with a unanimous vote in favor.

#### COMMUNICATION – MARK REBILLARD/KEENE DOWNTOWN GROUP AND JIM NARKIEWICZ/KEENE ICE & SNOW FESTIVAL COMMITTEE CHAIR – REQUEST TO USE CITY PROPERTY

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A communication was received from Mark Rebillard, Keene Downtown Group, and Jim Narkiewicz, Keene Ice & Snow Festival Committee, requesting to use City property for the 17<sup>th</sup> annual Keene Ice and Snow Festival to be held on February 1, 2020. The communication was referred to the Planning, Licenses and Development Committee.

#### COMMUNICATION – ROB ROBBINS/KEENE SNORIDERS – REQUEST TO USE CITY RIGHTS OF WAY

A communication was received from Rob Robbins, Keene Snoriders, requesting to use City rights of way along Krif Road from the Ashuelot Rail Trail to Winchester Street from December 15, 2019 to March 30, 2020. The communication was referred to the Planning, Licenses and Development Committee.

#### COMMUNICATION – JEANNE MCCLIMENT – BANNING ROOSTERS WITHIN THE CITY LIMITS

A communication was received from Jeanne McCliment, requesting that the City Council consider a ban on roosters within the City limits. The communication was filed into the record as informational.

#### COMMUNICATION – TAD SCHRANTZ/THE COLONIAL THEATRE GROUP – VARIOUS LICENSES NEEDED FOR THE RENOVATION AND ADDITION TO THE COLONIAL THEATRE

A communication was received from Tad Schrantz, The Colonial Theatre Group, requesting several licenses from the City to accommodate the renovation and addition to the Colonial Theatre. The communication was referred to the Planning, Licenses and Development Committee.

#### COMMUNICATION – ATTORNEY THOMAS R. HANNA/BCM ENVIRONMENTAL & LAND LAW, PLLC – RECENTLY DISCOVERED TITLE PROBLEM RELATING TO THE COMMERCIAL STREET PARKING AREA

A communication was received from Attorney Thomas R. Hanna, BCM Environmental & Land Law, PLLC, relative to their petition to discontinue a portion of the Commercial Street Parking Lot. While reviewing the documents and plans associated with that discontinuance another title problem was discovered. This problem relates to the Hamblet property that was also included in the 1969 layout of the parking area. This second title defect affects the proposed addition to the existing theatre building. The communication was referred to the Municipal Services, Facilities and Infrastructure Committee. The Mayor set the Site Visit for November 7, 2019 at 5:45 PM and the Public Hearing for November 7, 2019 at 7:00 PM. Note: Subsequent to the Oct. 17<sup>th</sup> Council meeting, the Mayor canceled the site visit and public hearing because the petition for discontinuance had not yet been received.

**COMMUNICATION – JAMES PHIPPARD/BRICKSTONE LAND USE CONSULTANTS, LLC – REQUEST TO DISCONTINUE EASEMENT FOR POSSIBLE FUTURE ROAD EXTENSION AT BLACK BROOK ROAD**

A communication was received from James Phippard, Brickstone Land Use Consultants, LLC, requesting to discontinue an easement that was acquired by the City to allow for the possibility of a second means of access to the Black Brook Road subdivision. The communication was referred to the Municipal Services, Facilities and Infrastructure Committee.

**COMMUNICATION – COUNCILOR GREENWALD – REQUEST THAT CROSSWALKS BE MARKED AT HILLSIDE VILLAGE – WYMAN ROAD**

A communication was received from Councilor Greenwald, requesting crosswalks be marked at Hillside Village on Wyman Road. The communication was referred to the Municipal Services, Facilities and Infrastructure Committee.

**COMMUNICATION – COUNCILORS O’CONNOR AND FILIAULT – PROPOSED NEW BUS ROUTE THROUGH THE WHELOCK STREET, NEWMAN STREET AND PINE AVENUE NEIGHBORHOOD**

A communication was received from Councilors O’Connor and Filiault, requesting that the City Council review the proposed new bus route through the Wheelock, Newman and Pine Avenue neighborhood. The Mayor announced that there is a public meeting sponsored by Symonds School scheduled for October 23, 2019 at 6:00 PM. The communication was referred to the November 13, 2019 Municipal Services, Facilities and Infrastructure Committee.

**MSFI REPORT – COUNCILORS BOSLEY & RICHARDS – COMPREHENSIVE REVIEW OF NEIGHBORHOOD SPEED LIMITS**

Municipal Services, Facilities and Infrastructure Committee report read recommending that City staff be directed to conduct an analysis of speed limits in the City of Keene. A motion by Councilor Manwaring to carry out the intent of the report was duly seconded by Councilor Filiault. A brief discussion took place. A motion by Councilor Greenwald to refer back to the Municipal Services, Facilities and Infrastructure Committee was duly seconded by Councilor Clark. A brief discussion took place. A motion by Councilor Greenwald to withdraw his motion to refer back to the Municipal Services, Facilities and Infrastructure Committee was duly seconded by Councilor Clark. A motion by Councilor Greenwald to amend the committee report to recommend the City Manager to be directed to provide a scope of the work necessary to determine whether or not to lower the speed limits to 25 miles per hour in appropriate areas of the City was duly seconded by Councilor Clark. The motion to amend passed with a unanimous vote in favor. The amended committee report passed with a unanimous vote in favor.

## MSFI REPORT – AUTHORIZATION TO GRANT A UTILITY EASEMENT – PUBLIC WORKS DEPARTMENT

Municipal Services, Facilities and Infrastructure Committee report read recommending that the City Manager be authorized to do all things necessary to negotiate and execute an amendment to the existing easement with Central Square Terrace Housing Associates Limited Partnership to allow for conduit and appurtenant equipment between the transformer and the Central Square Terrace building across the City of Keene parcel that contains the City Hall parking structure. A motion by Councilor Manwaring to carry out the intent of the report was duly seconded by Councilor Filiault. The motion passed with a unanimous vote in favor.

## MSFI REPORT – KATIE SCHWERIN – PUBLIC ART PROPOSAL

Municipal Services, Facilities and Infrastructure Committee report read recommending that the proposed public arts display by Katie Schwerin to be placed at the Dillant Hopkins Airport be referred to the City Manager to review the proposed display in accordance with Resolution R-2018-22 and possible acceptance by the City. A motion by Councilor Manwaring to carry out the intent of the report was duly seconded by Councilor Filiault. The motion passed with a unanimous vote in favor.

## CITY MANAGER COMMENTS

The City Manager advised that the Police Department is going through their accreditation process. An assessment team from the Commission of Accreditation for Law Enforcement Agencies, otherwise known as CALEA, will arrive on October 28, 2019 and will remain on site until October 30, 2019. The purpose is to examine all aspects of the Keene Police Department's policies, procedures, management, operations and support services. As part of this process, agency employees, members of the community are invited to comment at a public information session, which will be held on Tuesday, October 29, 2019 at 5:00 PM, at the Michael E.J. Blastos Room, located at 380 Marlboro Street. CALEA is internationally recognized organization that establishes standards for law enforcement agencies, assesses agency compliance with these standards and confers the accreditations upon qualified agencies. The accreditation lasts for four years.

The City Manager advised a new resident that moved from the mid-west pitched an idea of art on the snowplows. Public Works Department thought it would be a wonderful idea to engage the students and have one plow be painted by those students for the upcoming winter would be a great way to begin the process. The Monadnock Waldorf School children have finished their masterpiece and is currently on display at Railroad Square. The plow is also featured on the Keene Public Works Department Facebook page. It is the desire to engage other schools in the Keene District to participate next year.

The City Manager advised that she met with the Downtown Coordinator, Beth Wood, on Tuesday, October 15, 2019. She provided a great summary of some of the activities she has been involved with, including the Radically Rural Event. She was co-leading the Main Street track and will be doing the same next year. Ms. Wood is also very active in the Arts and Culture

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Corridor, has been working on a pop-up event that will be on Saturday, October 19, 2019 in Railroad Square from 11:00 AM to 3:00 PM. She has been working on the First Friday initiative to connect Keene State College students with the downtown business event and networking opportunities as a way to encourage grad-students to remain in community. She is a member of the downtown group, which is now taking on the Snow & Ice Festival. Ms. Wood has been working with Paragon Digital on the community calendar. She has also been visiting with Main Street business.

The City Manager provided an update on the Kingsbury Project. On October 10, 2019, there was a successfully executed tax payment arrangement for 2009 and 2010 taxes, interest and penalties due for the former Kingsbury property. The total amount due is \$710,025.27. Payment #1, the amount of \$115, 833, had been deposited. Payment # 2 is due next week on October 21, 2019 in the amount of \$119,000. Payments will be applied to the oldest year taxes first. Starting with payment #4, the 2009 taxes, interest and penalties will be paid in full, then payments will be then applied to the 2010 taxes, interest and penalties. This payment schedule was important to minimize any potential return of funds should the property owner default, which we are not anticipating. In addition, language was included so if payment was not received on the date specified for each payment, the City will send notice via email that the payment was not received. The property owner will then have seven days to make the payment, if still not received, the City will immediately begin the process of issuing a tax collector's deed for the property under RSA 80:76. Once the tax payment arrangement had been executed, she began negotiations related to the land matters. The City Manager is still waiting for a response for the last offer.

The City Manager explained the new change for vehicle registrations, Clerk Works, in the Revenue Department. The financial software that the City uses does not interface with the State's Vehicle Registration software. Clerk Works is the only State approved Motor Vehicle software and it will eliminate the need of duplicate entry by staff. About 21,000 vehicle registrations are processed each year. This will make the process more efficient and the only change the customer will see is that they will sign on the digital signature pads, they only have to sign their name once and it prints on all three copies of the registration.

#### PLD REPORT AND ORDINANCE O-2019-12: RELATING TO ZONE CHANGE – 560/580 MAIN STREET

Planning, Licenses and Development Committee report read recommending the adoption of Ordinance O-2019-12: Relating to Zone Change – 560/580 Main Street. The report was filed into the record. Ordinance O-2019-12 was read for the second time. A motion by Councilor Richards for adoption of the Ordinance was duly seconded by Councilor Jones. On roll call vote, 15 Councilors were present and voting in favor. Ordinance O-2019-12 declared adopted.

The Mayor adjourned the meeting at 8:20 PM.

A true record, attest:

  
Assistant City Clerk