

City of Keene
New Hampshire

PLANNING, LICENSES AND DEVELOPMENT COMMITTEE
MEETING MINUTES

Wednesday, January 8, 2020

7:00 PM

Council Chambers A

Members Present:

Kate M. Bosley, Chair
Mitchell H. Greenwald, Vice-Chair
Philip M. Jones
Gladys Johnsen
Catherine Workman

Mayor George S. Hansel

Staff Present:

Elizabeth A. Dragon, City Manager
Thomas P. Mullins, City Attorney
Rhett Lamb, Community Development
Director
Heather Fitz-Simon, Administrative
Assistant, City Clerk's Office
Elizabeth Fox, Finance Director
Mari Brunner, Planner
Mark Howard, Fire Chief

Chair Bosley called the meeting to order at 7:00 PM and explained the procedures of the meeting.

1) Body & Soul Road Runners – Request to Use City Property – Community Sponsored Event

Chair Bosley recognized the petitioner. Sara Alderfer, of 563 West Street, stated that she is here to ask permission to run the annual road race on February 8, known as the Red Cap Run. This year the race will benefit the Melendy family. Chair Bosley asked Ms. Alderfer to share some of the history of this race, and share information about what is going on with the Melendy family.

Ms. Alderfer stated that the Red Cap Run has been run for six years. She continued that it is held to benefit a family in crisis. Each year a different family is selected. The Body & Soul Road Runners club is a non-profit organization with a board of directors. They utilize a criteria to narrow down the decision of which local family facing a one-time crisis the event will support. The goal is for the family to receive financial support and to feel the support of the community at large. This year the race is to support the Melendy family. The family's youngest daughter, Bella, had a traumatic brain injury from a sledding accident. Her skull was fractured in 14 places and she will never fully recover. The brain injury has affected her fine and gross motor abilities and cognitive abilities, and she has ongoing migraines, and ongoing doctors' appointments. It is difficult for her family to meet her needs. The Road Runners hope to give some relief, with financial support with money raised from the race.

Chair Bosley asked if City staff wanted to comment on the request.

Fire Chief Mark Howard stated that City staff met with the sponsor for the normal protocol meeting. He continued that everything went well. The need to close or limit traffic on Railroad Street was eliminated from this year's race. Some parking that is normally not permitted in that area will not be needed this year, so the special regulations related to that were taken out of the protocol requirements. The race averages 200 to 300 participants, children and adults, and that is what they expect this year, too. Staff's recommendation is for the committee to allow this to move forward, based on the conditions from staff.

Chair Bosley asked for comments from the committee.

Councilor Jones asked if there is no need for street closing, which he does not see included in the recommended motion. Ms. Alderfer replied that that is correct. She continued that that changed from previous years. They changed the course slightly to start on the bike path instead of on Railroad Street. Last year they kept the road closure in place but realized they did not need it.

Chair Bosley asked for public comment. Hearing none, she asked for a motion.

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

On a vote of 5-0, the Planning, Licenses, and Development Committee recommended that the City Council grant permission to Body & Soul Road Runners to sponsor a running race on February 8, 2020, subject to the customary licensing requirements of the City Council, and compliance with any recommendations of City staff. The Petitioner agrees to absorb the cost of any City services over and above any amount of City funding allocated in the FY 20 Community Events Budget, and agrees to remit said payment within 30 days of the date of invoicing.

Chair Bosley asked how people can sign up for the race. Ms. Alderfer replied that people can pick up paper registration forms at the Body and Soul Personalized Fitness, Ted's Shoe and Sport, or the Marriott; or people can register online.

2) **Continued Discussion: Relating to Small Wireless Facility Deployments in the Public Right-of-Way Ordinance O-2019-18**

Rhett Lamb, Community Development Director, and Mari Brunner, Planner, introduced themselves. Mr. Lamb stated that tonight they will be talking about Ordinance O-2019-18. He continued that they want to give a review and update. There are Councilors here tonight who were not here when this ordinance was introduced, so it is good to give a high-level overview of why they are doing this and provide some background information about the ordinance. Also, a key staff member is not here tonight. At the end of this discussion he and Ms. Brunner will recommend placing this on more time, and they will come back with a more thorough analysis and presentation with details of the proposal.

Mr. Lamb stated that the question is, why are they doing this? And why now? He continued that communities across the country are reacting to a 2018 order from the Federal Communications Commission (FCC) that changed the way communities control or manage telecommunications in city streets and rights-of-ways. The FCC created a big incentive for telecommunications companies to put their installations in the rights-of-way. Part of the reason is the roll-out of new technologies. Staff is not focused specifically on 5G or 4G or any generation of telecommunications, but the FCC order created the opportunity and incentive to install this type of facility in municipal rights-of-way. Tonight's agenda packet includes the City's current telecommunications ordinance, but it does not cover installations in the right-of-way. It almost exclusively addresses the big telecommunications towers up on hillsides on private property. Those have been the common types of telecommunications facilities for the past 15 or 20 years. With the change that is coming, the City's current ordinance is not adequate to manage the transition to any newer technology.

Mr. Lamb continued that the terms being used are: "small cell facilities" or "small wireless facilities." This could be 4G, which is common today, or 5G installation. In 2018, the City was approached by Tilson Technologies, representing US Cellular, asking the City Manager to sign application forms so they could submit applications to the City, through the telecommunications ordinance, for four installations in the right-of-way. The City Council gave The City Manager that authorization. Tilson/US Cellular has not made that application yet, and are telling the City that because their proposal is just for installations in the right-of-way, they are waiting for the City to have a proper ordinance that addresses that. The staff is aware that there are proposals waiting to come forward.

Mr. Lamb continued that the proposed ordinance sets up a license process and a review process that addresses a range of community interests. The interests include safety in the right-of-way, to manage the placement of things so as to avoid obstruction or visibility problems and so that drivers and pedestrians remain safe. The City's interest will also address the location of the device, any size limitations as well as some aesthetic standards.

He continued that these installations have the potential for a fairly significant impact. For example, Keene's wonderful downtown has been preserved. There are no big towers, and utilities are underground. Poles in the right-of-way are almost exclusively the City's and the City builds them to an aesthetic standard. If telecommunications companies want to locate small cell facilities downtown, staff wants to make sure they fit the design pattern of downtown, and that is part of what this ordinance would address. The Director continued staff thinks reasonable standards are really important as this technology becomes more prevalent. Without local standards or some sort of process, the City does not have an opportunity to manage this change and there is nothing that would place limits on providers to do installations based on what the FCC provided.

Mr. Lamb continued that staff knows there are many questions that need to get worked out. They have heard people talk about health impacts with any new technology, which was discussed at the committee's previous meeting. There is a State legislative commission that started its work in the fall of 2019 and they are currently reviewing any health impacts of 5G, with a report forthcoming in November 2020. There is also a challenge to the FCC order ongoing in Federal court. There are these larger topics out there that have a potential impact on the City's implementation of this ordinance over time. Despite that, and the change that could come with

the resolution of some of these topics, City staff believe that the City is better off with an ordinance adopted and in place than they are without it, as this transition in telecommunications technology moves forward.

Ms. Brunner stated that to give a brief overview of the regulatory landscape, there are laws, rules, and orders at the federal, state, and local level. She continued that at the Federal level, there is the Federal Telecommunications Act of 1996, and the FCC Small Cell Order. At the State level, there is RSA 12-K – Deployment of Personal Wireless Service Facilities. At the local level, the City regulates telecommunications through its zoning ordinance. However, the City’s current ordinance was not intended or designed for the right-of-way. Rather, it anticipates applications for tall cell towers, which were more common when the Ordinance was adopted in 2001.

Ms. Brunner continued that a few laws and orders at the Federal level that have direct bearing on the proposed small cell facilities ordinance include the Telecommunications Act of 1996, which is interpreted and enforced by the FCC; and the Aug 2, 2018 FCC Moratoria Order, which states that all moratoria, express or de facto, on small cell, other wireless, or wire-lined facilities would violate Federal law. It states that moratoria or local actions or requirements that would prevent or suspend the acceptance of, processing of, or approval of applications or permits for telecommunications facilities or services are not allowed at the local level. She continued that there is also the September FCC Small Cell Order, which is intended to speed the transition to the next generation of wireless services, known as 5G. Despite the intention, currently most companies are taking advantage of it with 4G applications.

Ms. Brunner continued that the definition of “small wireless facility” is a facility that has an antenna no more than three cubic feet in volume, with associated equipment no more than 28 cubic feet in volume. They have to be put on structures no taller than 50 feet, or mounted on a structure no more than 10% taller than adjacent structures. Also, the antennas cannot extend to the full height of the structure they are mounted on or be more than 50 feet tall or increase the height by more than 10%.

She showed photos of some small wireless facilities as examples, stating that they are usually installed on street lights and utility infrastructures. She continued that in some cases they are a new facility. That is what Tilson was proposing for Keene. One of the example photos shows that type. She showed another slide with more examples provided by Verizon, attaching small cell facilities to decorative poles.

Ms. Brunner concluded that as Mr. Lamb went over earlier, staff recommends that the City create a license that would be issued by the Public Works Director or his designee. It would establish location, design, and siting standards, and the procedures for application intake and review. The goals are to preserve and protect the public right-of-way and municipal infrastructures, maintain the balance between public and private interests, establish location standards, establish aesthetic standards, establish application intake procedures and reasonable fees, and create the opportunity for high-quality, advanced wireless services for the City’s residents, businesses, and visitors.

Chair Bosley asked for questions or comments from the committee.

Councilor Jones stated that he has a few questions. He continued that the proposed ordinance says “review by the director,” but who is the director?

Ms. Brunner replied the Public Works Director.

Councilor Jones replied that the ordinance should say that, to make it clear. He continued that the FCC says small cell facilities can be up to 50 feet tall but the City’s definition is 35 feet. He asked, could a company override the City’s guidelines because of the FCC’s guidelines?

Ms. Brunner replied that the reason staff proposed limiting it to structures 35 feet in height is because in NH, under RSA 12-K:10, once the structure is in the right-of-way it can be extended by another ten percent without having to go through any review. So if a 35-foot tall facility is increased by six feet then it is at 41 feet and then it could be extended more under the RSA. But this topic is up for discussion. If the committee thinks they should increase the allowed height, they can.

Councilor Jones replied that he definitely does not want to increase it. He continued that he wants to know if a company would be able to come in and say, “Well, the FCC says we can use 50 feet.”

Mr. Lamb replied that it is a cap, not a low limit. He continued that he thinks they can go below 50 feet, but staff will take a look at this.

Councilor Jones stated that his last question is: the “colors and finishes” section of the proposed ordinance says “...match the underlying support structure and blend with the surrounding environment” but the original telecommunications ordinance used the word “camouflage.” Is that the same?

Mr. Lamb replied that small cell facilities will be more obvious because they will be closer to people, so it will not be possible to fully camouflage them. For example, they cannot make small cell facilities look like trees, the way they could with larger towers. He continued that they want these facilities to blend in, so it is more about matching them to the surroundings.

Chair Bosley asked for comments or questions from the public.

Lori Schreier, of 916 River Road, Westmoreland, read the following prepared statement:

“I am testifying today to request that Ordinance 0-2019-18, Relating to Small Wireless Facilities Deployments in the Public Right-of-Way, be put on long term hold and that the City of Keene join with others calling for a moratorium on 5G and small cell deployments at this time.

I attest and affirm that the following statements are true, accurate and within personal knowledge derived from published peer reviewed scientific studies, reported court cases, and current events. All of the following statements are backed by the evidentiary materials and links annexed to my testimony.

The radiation from small cells is not small: Wireless antennas emit microwaves — non-ionizing radiofrequency radiation — and essentially function as cell towers. Each installation can have over a thousand antennas that are transmitting simultaneously. The Federal Communications Commission estimates that millions of these wireless transmitters will be built in our rights-of-

way, directly in front of our homes. 5G will add to — not replace — our current wireless technology: 5G will not only utilize current 3G and 4G wireless frequencies already in use but also add higher frequency — submillimeter and millimeter waves — in order to transmit data at superfast speeds. Communities should not be stripped of their right to make decisions about this new technology. ‘Streamlining’ means almost automatic approval. Public notice and public hearings should not be eliminated.

Scientists worldwide are calling for a halt to the 5G Roll-out: Over 200 scientists and doctors issued a declaration calling for a moratorium on the increase of 5G cell antennas citing human health effects and impacts to wildlife, especially birds and bees.

Cumulative daily radiation exposure poses serious public health risks: Peer reviewed, published science indicates that exposures to wireless radiation can increase cancer risk, alter brain development and damage sperm. Most people are unaware that wireless technology was never tested for long-term safety, that children are more vulnerable and that the accumulated scientific evidence shows harm.

5G Frequencies are absorbed into the skin. Physicians found that higher millimeter frequencies intended for 5G use are preferentially absorbed into the sweat ducts at much higher rates than other organ tissues and are absorbed more than lower frequencies. 5G frequencies are used as weapons by the Department of Defense and have the capacity to cause severe skin, ear, and eye damage. The landmark US Toxicology Program study found clear evidence of cancer and DNA damage in rats from wireless radio frequencies and that was from earlier 2G and 3G technologies. Other studies found wireless radiation associated with damage to human blood, neurological and neuropsychological effects endocrine and hormonal damage, tumors, visual and hearing disturbances, many chronic diseases and infertility. Microwave sickness is no longer just experienced by people who work with radar. Symptoms include burning sensations, tingling in face and hands, dryness of mucous membranes, swelling of ears, throat, nose and sinuses, concentration and memory problems, headaches, nausea, teeth and jaw pain, muscle and joint aches, depression and sleep issues.

Studies show property values drop up to 20% on homes near cell towers. Would you buy a home with a mini cell tower in the yard?

Microwave antennas in front yards present several worker and public safety issues: Unions have already filed comments that workers were injured, unaware they were working near transmitting antennas. How will HVAC workers, window washers, and tree cutters be protected? The heavy large equipment cabinets mounted on poles along our sidewalks also present new hazards. Cars run into utility poles, often, what then?

Fiber to the premises is the safe alternative: Worldwide, many regions are investing in wired fiberoptic connections, which are safer, faster, more reliable, provide greater capacity, and are more cyber-secure.

Over 46 cities are suing the FCC for pre-empting local control over placement and reduced payment for use of public rights of way for 5G small cell towers. The case is now in the 9th Circuit Court of Appeals. There is also a case exposing and prosecuting a vast financial scandal behind 5G promoters for illegally using publicly funded fiber. City Councils and public pushback across the country are either rejecting small cell applications that do not meet their criteria or refusing to adopt ordinances that do not protect public health and the public rights of way.

The NH 5G Commission to study the health and environmental impact of 5G has a report due out in November 2020 and current lawsuits challenging the FCC order to strip cities of their rights to protect the public welfare will be heard in 2020. I urge the Council to delay any action on this Ordinance and applications for 5G small cells until further guidance is provided by the Commission and the Courts.

If the Council votes to approve an Ordinance at this time I urge the Council to incorporate into the ordinance the August 2019 DC Circuit Court of Appeals decision requiring that all small cell applications be reviewed and approved under the National Environmental Policy and Historic Preservation Acts. It would also be prudent to allow for revision and recession of any Ordinance as the legal landscape changes.

In the spirit of Healthy Monadnock I also urge the Council if it adopts this Ordinance allowing small cells, that they only be placed far away from residences, schools, daycare centers, and hospitals. Some cities in California have required distances between small cells of up to 1500 feet for aesthetic reasons and also require evidence of need, including demonstration that existing facilities do not provide adequate coverage and/or adequate capacity to the area.

I have expressed no matter of mere concern but solely matters of substance, fact and law. Everything stated here is documented herein. Thank you.”

Councilor Greenwald asked The City Attorney, how much latitude does the City Council really have in dealing with this matter? He continued that his understanding is that the FCC says 5G will be [approved] if requested. Can the City Council really stop it?

The City Attorney replied that right now the FCC order is in place. He continued that as was pointed out, there is litigation with respect to the order, initiated in a number of federal jurisdictions around the country, now consolidated in the 9th Circuit Court of Appeal. The order is not subject to an injunctive action from the courts, saying “You don’t have to do this until we’ve decided as a court what we’re going to allow the FCC to do or not do.” So technically, the order is in place. Oral arguments are scheduled in the 9th Circuit for February 10, and they will see what happens with that, but right now the order is in place. The City Council has a lot of latitude with respect to what it wants to do, either with the ordinance or with not adopting any ordinance, but staff is saying that not doing anything is not the recommendation they are making

to the City Council. The problem becomes clear if an application comes in and the City has not put some parameters around the application process, where these can be sited, what the aesthetics are, and so on and so forth. If the City says “no” or has no process, the applicant can decide to present a proposal to the Federal District Court about how they want to site the small cell facilities and that takes the control of the City away.

The City Attorney continued that at a previous meeting his comments were slightly misconstrued. Staff is not suggesting that RF (radiofrequency radiation) issues are not important and should not be considered. City staff does not have the expertise to make a decision with respect to the health effects of RF radiation. If the Council wants to explore that issue, it would be necessary to get expert advice. Also, as pointed out, there is a study commission at the state level to look at the health effects, but its report will not be out until [November] 2020. The suggestion was made to craft the ordinance in such a way as to provide some leeway to the City in the event that A) the FCC Small Cell Order is overturned by the Federal District Court, to have language saying “If that happens, we’re out,” or B) if there will be substantive changes later on, that the ordinance says that the changes necessary from the City’s perspective be retroactive, trying to deal with the grandfathering question that has come up.

The City Attorney concluded that the short answer to Councilor Greenwald’s question is: they obviously are not going to do anything tonight, since this is being placed on more time, but they will be going into more detail and the Council will be hearing the suggestion from City staff that having some ordinance in this context is better than having nothing, so the Federal District Court does not decide what the City should do or not do.

Through Chair Bosley, Councilor Jones asked Lori Schreier to repeat the full name of a national environmental policy she referenced, which he was only able to write down a portion of. Ms. Schreier replied that all of the information is in the packet she provided, and it is the National Environmental Policy Act (NEPA).

Councilor Jones thanked Ms. Schreier for referencing Healthy Monadnock. He stated that the City is a partner.

Chair Bosley asked if anyone else from the public wished to speak, and recognized Bradford Hutchinson, of 305 Marlboro Street.

Mr. Hutchinson stated that he is glad he came tonight, because this is an issue he has been reading a lot about, from many sources online. He continued that he is concerned by what he hears from people, such as the information Ms. Schreier gave. He cannot speak to the technical details, but in general, he recognizes some of the court cases Ms. Schreier was talking about. There is a lot happening very quickly. There are a lot of players, and billions or trillions of dollars “chomping at the bit to ram 5G down our throats whether we like it or not, with zero testing.” He continued that he has an old flip phone with 3G, or third generation technology. But what people have right now is 4G and it works just fine. People do not really need 5G. They want to push 5G through as fast as they can so they can connect every single device on the planet in real time. People’s current phones would then be microphones and used in real time to track

them. That is just the beginning. He continued that he wants to be careful, because some of what he reads from some sources is alarmist and he does not know how valid it is because he is not an electrical engineer.

Mr. Hutchinson continued that The City Attorney mentioned RF. He studied World War II history, and that time saw an explosion in technology – radar, microwave, high energy radio, and more that was brand new - and it was needed for the war so it was rammed through. What was suppressed were the many workers injured and killed by the radiation by the equipment because no one knew what they were doing. It was so new. No one could have foreseen the incidents because the technology was getting pushed through so quickly and no one was listening to the doctors trying to set limits. That is what he sees now. People do not know enough about 5G, and so much is happening so fast. He heard that January 23 at the Keene Public Library the Monadnock Progressive Alliance is having a free showing of the film “Generation Zap.” That film is available online, too.

He continued that late last year he saw something about this ordinance going in with some instruction for not looking at the health effects. That is wrong. They have to look at the health effects. He suggests to the City Council and staff that they use a division of labor type approach – for example, ask the City Attorney’s Office to look at the legal challenges and issues. They need to have good questions so they can get good answers. He was encouraged by Councilor Jones’s questions. Why this is important is: a couple years ago he was at a City Council meeting when a telecommunications company wanted to put a tower in a cupola at Keene State College and one or two more in the city, for 4G communications. After the meeting he spoke with the man who brought the proposal from the company, which the City Council approved, and asked, “Is this 5G compatible, and is it part of the rollout?” The man did not know and could not answer the question. This was a person from the company putting in the tower. So what he is seeing is that the industry does not want people to ask questions.

Mr. Hutchinson continued that there are some people who do not really understand the technology and they are alarmist. They have to be careful of that, too. The middle ground is: they need more information. What about having an ad hoc committee of Councilors? Mayor Hansel might want to create an ad hoc 5G study committee. He suggests they move with deliberate speed but no undue haste to ask questions and understand the answers. It should have an educational component, learning the acronyms, language, and technical aspects. A division of labor approach would be to have, for example, The City Attorney’s Office look at the legal aspects, and someone connected to Cheshire Medical Center look into the health aspects, and someone from the Public Works Department look into siting, and so on and so forth. Regarding the siting of small cell facilities and “camouflage,” near the Colonial Theatre is a big electrical panel covered in photo-realistic brick that matches the brick behind it; if you take a few steps back, it just looks like a brick wall. That is the kind of thing needed in Keene.

Councilor Bosley thanked Mr. Hutchinson for his comments. She stated that some of the intention of this ordinance is to purposefully integrate small cell facilities into the community without it being an eyesore; that is a big reason staff is looking into this. The way it sits now, the City has no control. If a company brought the City Council a proposal, the City has no control over the design, spacing, size, structure, and so on and so forth. Without any ordinance, they do not have any way to deny the application. But through this process, which includes taking

information from citizens, they can begin creating situations like Mr. Hutchinson is talking about.

Chair Bosley asked for further comments from the public. Hearing none, she asked for a motion.

Councilor Greenwald made the following motion, which was seconded by Councilor Johnsen.

On a vote of 5-0, the Planning, Licenses, and Development Committee placed Ordinance O-2019-18 on more time.

Councilor Jones made the following motion, which was seconded by Councilor Greenwald.

On a vote of 5-0, the Planning, Licenses, and Development Committee recommended a full public hearing before the City Council to be set by the Mayor.

Councilor Greenwald asked if only Keene residents can speak at the public hearing. The City Attorney replied that anyone can speak.

Hearing no further business, Chair Bosley adjourned the meeting at 7:50 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Additional Edits by,
Terri M. Hood, Assistant City Clerk