

City of Keene
New Hampshire

PLANNING, LICENSES AND DEVELOPMENT COMMITTEE
MEETING MINUTES

Wednesday, July 7, 2021

7:00 PM

Council Chambers A

Members Present:

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

Staff Present:

Elizabeth A. Dragon, City Manager
Thomas P. Mullins, City Attorney
Patricia A. Little, City Clerk
Kürt Blomquist, Public Works Director
Rhett Lamb, Community Development
Director/Assistant City Manager

Members Not Present:

All Present

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

1) Kevin Watterson – Change in Date – Request to Discharge Fireworks

Kürt Blomquist, Public Works Director, stated that the Swamp Bats were scheduled to discharge fireworks on July 3, but had to cancel due to weather events. He continued that normally the Swamp Bats do not get a rain date, but for the first time they have considered doing another day. Mr. Watterson has requested permission for July 31, 2021. Staff recommends that the PLD Committee authorize that.

Chair Bosley asked if there were any questions from the committee. Hearing none, she asked if members of the public had any questions. Hearing none, she asked for a motion.

Councilor Greenwald arrived at 7:04 PM.

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

On a vote of 5-0, the Planning, Licenses, and Development Committee recommends that the Keene Swamp Bats be granted permission for the discharge of display fireworks on Saturday, July 31, 2021 on Alumni Field at no later than 10:00 PM, subject to the signing of a revocable license and indemnification agreement and the submittal of a certificate of liability in the amount of one million dollars, listing the City of Keene as an additional insured; submittal of a signed letter of permission from SAU 29 for the use of their property and obtainment of a Class B fireworks permit. In addition, the petitioner agrees to comply with all recommendations of City staff. This

permission is conditional upon the petitioner absorbing the charges for any City services over and above any amount of City funding allocated in the FY 22 Community Events budget. Such payment shall be made within 30 days of the date of invoicing.

2) Keene Elm City Rotary Club – Use of City Property – Clarence DeMar Marathon

Mr. Blomquist stated that this is the annual request from Alan Stroshine, Race Director for the Elm City Rotary Club for their 43rd annual Clarence DeMar Marathon and Half Marathon. He continued that this year it will be in September. Staff recommends placing this item on more time so protocol meetings can be held.

Chair Bosley asked if it is correct that the City has not had its initial protocol meetings for this item. Mr. Blomquist replied that he believes so. He continued that they will be holding those meetings quickly.

Councilor Greenwald asked if they could approve this subject to staff recommendations. Mr. Blomquist replied that normally there is a fairly lengthy approval that the PLD Committee has, and he does not have all of the conditions. He continued that particularly for an event of this size, it is always good to have the appropriate protocol meetings.

Councilor Greenwald asked if there is anything different this year from previous years. Mr. Blomquist replied that he does not know, and that is why protocol meetings are appropriate. He continued that staff has not yet had conversations with Mr. Stroshine to see if the Rotary Club is making any adjustments or changes. They do from year to year, a little bit. These protocol meetings will not take an excessively long time; staff will probably be back within a month. Councilor Greenwald replied that he is always looking to minimize staff time and Council time when something could almost be handled administratively. Mr. Blomquist replied that he appreciates it, but it is also important for the Marathon to get the public exposure that comes with the City Council process.

Councilor Jones stated that he usually agrees with Councilor Greenwald about streamlining anything they can, but they want the protocols to be there so the public can speak to it. He continued that one year there was an issue. Someone [from the public] came and spoke about the environmental impact of the arrows being put on the road. You never know what the public will want to speak about. He thinks this should come back. Mr. Blomquist replied that it will.

Chair Bosley stated that this is a great event and she is happy to see it back on the agenda. She continued that she looks forward to seeing it come back before the Committee. She asked if members of the public had any questions. Hearing none, she asked for a motion.

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

On a vote of 5-0, the Planning, Licenses, and Development Committee placed this item on more time for further consideration by staff.

3) Danya Landis/Machina Arts – Request to Erect a Parklet in Public Parking Spaces

Chair Bosley stated that Councilor Greenwald has a conflict on file for this agenda item, so he will be moving to the audience.

Chair Bosley asked to hear from Danya Landis.

Danya Landis of 433 Elm St. stated that she realizes that there is a risk to approving her parklet request, because the State law is not 100% for parklets right now. She continued that her plan is to find a champion to help amend that law. She understands that having a parklet right now is something the City cannot do, but she would like to also address the request in her letter to serve alcohol on Machina Arts' patio in the future. They would like not just an Emergency Order permit, but an actual permit, and also the rental of the three parking spaces.

Chair Bosley stated that she anticipated Ms. Landis's comments and questions this evening and reached out to the City Clerk's Office earlier in the week and asked for clarification on this so she could give Ms. Landis some guidance. She continued that from her understanding, the way that Machina Arts' current sidewalk café license is arranged is such that it continues until March 2022, which means they are covered through the rest of this outdoor season. The City Clerk's Office is asking Ms. Landis to come back with a follow-up license request sometime before the end of the year, maybe in December or January. They would be looking for additional diagrams for what Machina Arts would be asking for. Ms. Landis would come back before the PLD Committee. They need specifics regarding how long Ms. Landis would want the tables to extend down the street, in front of which businesses, and those sorts of details. Since Ms. Landis has had this access and that bodes well for the continuation.

Ms. Landis stated that the current way that Machina Arts has the tables now is the way they want it to be in the future. She continued that all of that has been submitted. She does not know what more she needs to do. Chair Bosley replied that she had recalled, from their previous conversations, that Ms. Landis had felt that as part of her request for parklets that there had been also some sort of addendum to her request for her sidewalk café license to continue, because she believes Ms. Landis had spoken directly to that fact and said something to the effect of "If this is not going to happen this evening, is it possible for me to get some sort of approval for my café license?" That is why she (Chair Bosley) wanted to know that question and where that stood in the process of the City Clerk's Office and coming before the PLD Committee. The City Clerk's Office indicated that they had also verbally spoken with Ms. Landis and she had made those indications, but not all the paperwork was in order. The paperwork that the City Clerk's Office received related directly to parklets, and thus, they need to receive an additional packet.

Ms. Landis replied that she apologizes if this was a misunderstanding, but Machina Arts was literally submitting for the current setup. She continued that there is no other way to set it up in that space, unless they had a parklet. She has submitted that, as part of the Emergency Order when she had to have a permit for a patio. Chair Bosley replied that that was information Ms. Landis gave the City Manager's Office under the City Manager's Emergency Order permission. She continued that she believes the City Clerk's Office needs some sort of modified license agreement. She is not sure if the same documentation was required by the City Manager's Office as it would be required for an official sidewalk café license before the PLD Committee.

City Manager Elizabeth Dragon stated that everything Ms. Landis did was great. She continued that she did a very complete application. Right now Ms. Landis has a license that was granted under the Emergency Order and extends until March 1, 2022. Thus, what the City Clerk was communicating was that in order for Ms. Landis to get a license for next year she needs to submit a new application. Staff have now learned the legalities around use of the parking spaces, and since the sidewalk is not wide enough to accommodate a sidewalk café the way Ms. Landis had it laid out, there is a separate process for the City Council to approve the use of those parking spaces and for Ms. Landis to be able to rent them for a longer period of time. Thus, they will need a new packet for Ms. Landis's new license next year.

Chair Bosley stated that it is her understanding that these licenses renew annually. In the future, Ms. Landis will have to submit similar packets yearly. Ms. Landis asked if she would have to go through the PLD Committee every year. She continued that tonight is her fourth or fifth time at a PLD Committee meeting and to have to do it again would be a lot. This is a frustration as a local business owner. This is a slow process to have to go through. Chair Bosley replied that she understands the frustration. She continued that before she was a member of this committee she had no idea that the reason things take so long is all of these moving parts and the timing of the meetings. There is a permit she, personally, is interested in obtaining, but the City Council will be on a summer break so she will not be able to get it. These are elected, volunteer positions and they only have a certain amount of time. Yes, it takes time. However, Ms. Landis has the safety net of having the license in place until March, and she has some time before she has to worry about coming back before the PLD Committee.

City Attorney Tom Mullins stated that to clarify, once the license is granted for the sidewalk café piece, Ms. Landis will not have to keep coming to the PLD Committee. However, to the extent that she will want parking associated with it, that is a different part of the process.

Chair Bosley stated that the license will need to be renewed through the City Clerk's Office annually. The City Attorney replied yes, through the City Clerk's Office, but not through the PLD Committee. Chair Bosley stated that once Ms. Landis's sidewalk café license is granted, she will be able to get an administrative approval on a yearly basis. She will have to apply for that yearly.

Ms. Landis replied that she thought she was already applying for at least that piece through her initial application, but she understands.

Councilor Jones stated that he is sorry Ms. Landis had to go through all of this, but it was mostly due to the COVID changes. He continued that otherwise, she would only have to come to the PLD Committee once to get her license approved, and if everything stays the same, she can renew it every year. That was the system they set up. He believes parking is different and has to be renewed every year through the Finance, Organization, and Personnel Committee, because it comes out of the parking fund. Ms. Landis replied yes, she understands that.

Chair Bosley stated that she thinks it is complicated by the fact that Ms. Landis's original license was given to her through the City Manager's Office first. The City Manager stated that it is also complicated by the fact that Ms. Landis needs the parking spaces. She continued that if she did not need the parking spaces, they could probably do this tonight, but because she does need the parking spaces, there is a separate process for that. And Ms. Landis is not able to get a sidewalk café license without it, because she does not have enough sidewalk. That is the complicating piece. Right now she can operate under the Emergency Order, thankfully, and that license extends through the season. But that is the piece they will need to address for the future.

Ms. Landis stated that she thanks the City Manager for clarifying that, because that makes more sense than just the standard patio/alcohol permit.

Chair Bosley asked if there were any further questions about the parklet portion of this request. Hearing none, she asked if members of the public had any questions. Hearing none, she asked for a motion.

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

On a vote of 4-0, the Planning, Licenses, and Development Committee accepted this item as informational. Councilor Greenwald abstained due to his conflict of interest.

4) Councilor Gladys Johnsen – Legislative Authority to Install Parklets in Parking Spaces

Councilor Greenwald rejoined the Committee.

Councilor Johnsen read what she wrote to the Mayor and City Councilors:

“Last week during the PLD Committee meeting on June 2, the topic of parklets was discussed again, and at that time, City Attorney Mullins shared his research about municipalities using streets and sidewalks without having direct authority from the State.”

Councilor Johnsen continued that in her letter she then asked whether the PLD Committee could meet with their State Senator and Representatives to see if they could help the Committee make a

temporary regulatory decision, more specifically, for this summer session. Based on what she just heard, she thinks they do not need that right now, but they will need it for the future.

She continued that her letter continues: *“Chair Bosley explained how this discussion is much more complicated than we had originally thought. I heard, appreciate, and understood her reasons why we could not approve any parklets. However, I’m asking that this issue be included in the agenda for [the July 7 meeting]. Perhaps there might still be a way [to do this.]”*

Councilor Johnsen continued that it sounds like folks figured out a way, where Ms. Landis’s license goes until March. Her letter gives a sense of where she is coming from. She appreciates what Ms. Landis is talking about, and appreciates what they have heard from the City Attorney. Sometimes the rules in Concord have to be changed. That is what she was pushing for.

Councilor Jones stated that he thinks this is a great idea, but as they all know, Concord can be partisan and the entire City delegation is part of the minority in Concord. He continued that he thinks they would get more bipartisan help if they asked the NH Municipal Association (NHMA) to champion this cause. He thinks there are a number of communities that want to or have put in parklets. He would like that to be part of the motion.

The City Attorney replied that the NHMA is going to be involved because of their legislative activity. He continued that that is why they suggested working with Sen. Kahn, because through that conduit, the City can open up other conduits, including the other members of the House and legislative delegation and the NHMA. They would clearly be working with all of them.

The City Manager stated that she can add, from her time on the NHMA board and as part of their legislative process that every other year they go through an extensive process to get all of the communities to vote on which items are action items that they move forward in the legislation. It would take too long to get an action item unless they could directly tie it to one that the NHMA already has. However, the NHMA can support Keene. If, like the City Attorney was saying, they were able to work on some legislation and then go to the NHMA, she thinks Keene can make a good case that this is about local control. NHMA is supportive of every community in NH having that level of local control.

Councilor Jones stated that there could be other lobbying groups, such as the NH Restaurant Association, who would want to see this through. He continued that he thinks the word should get out that Keene wants to do this.

Councilor Greenwald stated that he has 22 years of experience on Main Street as a retailer. He continued that he thinks parklets are a great idea, and he would be first in line to get every parking space he could grab and call the space a parklet. They would see a lot of merchandise out there. If they are going to do parklets for restaurants, they should do them for retail stores. If they cook up some interesting criteria to focus parklets where they want them to go, he does not think it will float. [Staff] wants parklets on Court Street, which is great, and he thinks they would be great on

Main Street too. All of those spaces would be taken up by aggressive retailers. He hopes they are, if this happens.

Councilor Greenwald continued that however, he will change hats and advocate for parking on Main Street. There are not enough parking spaces on Main Street, the side streets, or anywhere downtown. Yes, they need a parking deck. He understands the finances of a parking deck probably better than many other people do. Maybe they need a workshop to explain to the public and other Councilors that parking decks are very expensive, hard to maintain, and very difficult. They need parking. Any time they take away a parking space for any particular use, the other users are losing it. They should think about multi-story buildings. The retailer or restaurant may think it is very important for them, and the second-floor offices want it for them, and the third- and fourth-floor residents want it for them. Who is the most deserving? His answer is “all of them.” He is interested in the creativity of the parklet and thinks it is a great idea as such, but he thinks it is a bad idea for the overall parking needs of downtown.

Councilor Greenwald continued that he thinks the talk about whether Concord will be partisan on this is unusual. He does not think this is a partisan issue. He does not think Concord will think this is very important, when they deal with issues that are more serious than parking spaces in downtown Keene. He will oppose this, primarily due to the need for more parking downtown. When he sees empty parking spaces on Main Street, then maybe he will change his mind. He is not seeing that; he sees them filled, particularly during the dining hours. It was amazing to see all of the spaces filled over the Fourth of July holiday. The Parking Department is probably looking at the possibility of changing the parking hours. That is a whole other conversation that the FOP Committee will probably be having. If there are three or four parking spaces as part of the Emergency Order, so be it, but other places need the parking so he will oppose any of this legislative authority to install parklets.

Chair Bosley stated that she respectfully disagrees with Councilor Greenwald. She continued that she feels that whether the PLD Committee decides to create an Ordinance to allow parklets in Keene or not, they should have the right to make that decision. They were doing some great work in this committee, originally, outlining criteria and coming up with compromises and ways to make parklets work for the greater community, and by potentially offering a limited number of licenses on a first come, first serve basis so there is not an overtaking of downtown. However, they cannot even have that conversation if they are not in a position to have authority to have the conversation. Thus, the first step is to get Concord to recognize that it is important that each city is able to look at its own particular issues and make their own decisions based on what their communities need. She would like to see this at least get started.

Councilor Greenwald asked the City Attorney if he would like to lead the fight for home rule. He asked if the City Attorney could explain to the Committee what home rule is all about, and how Concord is not going to let this happen.

Councilor Johnsen stated that she hears what Councilor Greenwald is saying and she appreciates him being here and his history here means a lot to her. She continued that the only reason she recommended Sen. Kahn, primarily, is because this could start there. She spoke with Chair Bosley, who said that would be a good place to start. She likes what Councilor Jones is saying. Having been in Concord, she can say that what is has been like this past year is not indicative of what Concord could do. This past year, unfortunately, has had a cluster of folks who have been very negative. However, she was there for eight years [and knows] that if this comes up, yes, it might take a long time, but she thinks that not just Keene but all the other towns from the state should have this opportunity. Her understanding from a Councilor not present tonight is that Portsmouth, Concord, and she believes Manchester, too, already use parklets in the summer. She hopes Councilor Greenwald knows she is empathetic with the parking situation itself. She has more faith in Concord turning around. There were two deaths – they lost the Speaker of the House right after his first week [in the position], which tossed things around, and then they lost Representative Ley, which was a big issue for many people. She hopes that in this next year, perhaps, Concord will be willing to listen. Senator Kahn would know that.

Councilor Jones stated that he does not want to start jumping to conclusions. He continued that right now, they are just asking for State legislation. Keene would still have to do an Ordinance for this and have a licensing process. State legislation would not give carte blanche permission for parklets to go up and down all of the streets. There could end up being none, in the end. He thinks they should get past the legislation part and then worry about what will happen in Keene.

Councilor Johnsen stated that when Chair Bosley explained this to her, she said that they need a starting place, and that is what she hears Councilor Jones talking about. She continued that they just need to get this off the ground.

Councilor Greenwald stated that they can send this to Concord if they want. He continued that they were drifting into home rule. When Pat McQueen was the City Manager he explained what “home rule” means. Just because Keene thinks something is a good thing does not mean that Concord will allow it. He will still oppose this, on the principal of it, but they can see if Concord will even hear this.

Councilor Workman stated that she thinks they owe it to the residents and businesses to at least explore the option and advocate that Keene, as a municipality, should be allowed to make these decisions about what is best for Keene.

Chair Bosley asked if members of the public had any questions.

Danya Landis stated that she recently walked around Portsmouth, her hometown. She continued that she talked with a restaurant owner there who has a parklet similar to the one Machina Arts would like to build. At every eatery, café, and restaurant, in every possible space, there was a parklet. It was bustling and alive. The business owner she talked with is very willing to help Keene lobby and help restaurant owners across the state come together to know that they need

parklets as an option. As they all have experienced during COVID, being in locations that do not have outdoor seating can be a detriment to your restaurant and your business. Some State Representatives are already interested in championing this. Many people who are pro-business and want small businesses to succeed will also be championing this.

Ms. Landis continued that parking is a sensitive issue in Keene. She comes from Queens, NY, where parking in front of a business does not happen. She thinks parking in Keene is very convenient and cheap, and parking tickets are also cheap. She thinks Keene is very generous with its parking, in general. She appreciates people standing up for small businesses and realizes that this is a City decision, but it is also a State decision. She sincerely wants to defend her industry and make sure everyone can succeed in the long run.

Chair Bosley stated that a lesson she frequently talks to her children about is that nothing worth doing is ever going to be easy. She continued that every cause you are passionate about has a price you will pay, such as time and/or effort. These processes can take a long time, and you must be willing to stick with it and put your head down and just keep moving forward.

Chair Bosley asked if members of the public had any further questions. Hearing none, she asked for a motion.

Councilor Johnsen made a motion, which was seconded by Councilor Jones.

Move that the Planning, Licenses, and Development Committee recommend that Senator Kahn be approached about introducing legislation that would provide municipalities the legislative authority for allowing parklets in public parking spaces.

Councilor Johnsen asked if should the motion pass, it means that the City Manager and City Attorney takes it from here. Chair Bosley replied yes.

On a vote of 4-1, the Planning, Licenses, and Development Committee recommends that Senator Kahn be approached about introducing legislation that would provide municipalities the legislative authority for allowing parklets in public parking spaces.. Councilor Greenwald was opposed.

5) **Adjournment**

There being no further business, Chair Bosley adjourned the meeting at 7:35 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

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