

City of Keene
New Hampshire

PLANNING, LICENSES AND DEVELOPMENT COMMITTEE
MEETING MINUTES

Wednesday, March 8, 2023

6:00 PM

**Council Chambers,
City Hall**

Members Present:

Kate M. Bosley, Chair
Michael Giacomo, Vice Chair (6:23 PM)
Philip M. Jones
Gladys Johnsen
Raleigh Ormerod

Members Not Present:

All Present

Staff Present:

Elizabeth Fox, ACM/HR Director
Thomas P. Mullins, City Attorney
Rebecca Landry, ACM/Communications
Director
Kürt Blomquist, ACM/Public Works
Director/Emergency Management Director
Jesse Rounds, Community Development
Director

Chair Bosley called the meeting to order at 6:00 PM.

1) Farmer's Market in Keene – Request to Use City Property

Chair Bosley welcomed comments from the Assistant City Manager/Public Works Director/Emergency Management Director, Kürt Blomquist. Mr. Blomquist said this was the Keene Farmer's Market's annual request for a license to hold their weekly market, which would be only on Saturdays this year. The applicant requested the same fee for the spaces this year. Mr. Blomquist was unaware of any other changes to the request besides the elimination of Tuesdays.

Councilor Jones thought he recalled the Farmer's Market moving to Gilbo Avenue during Covid-19. Mr. Blomquist said the Farmer's Market moved to that location (from the center island in the Commercial Street lot) before Covid-19 (approximately eight years ago) because they saw advantages with being adjacent to the bike path. So, Mr. Blomquist confirmed that the City had no issue with the Farmer's Market at this location.

Chair Bosley asked if the applicant, Bruce Bickford, had any comments to add. Mr. Bickford said there was nothing new other than eliminating the Tuesday Market.

With no further comments or questions from the Committee or the public, Chair Bosley entertained a motion by Councilor Johnsen that was duly seconded by Councilor Jones. Vice Chair Giacomo was absent.

Councilor Jones noted that the Farmer's Market's opening day this year is April 22, which is also the date of Green Up Keene and there could be more business for the Market. Mr. Bickford agreed, noting that five years ago the Market began opening two weeks earlier to align with Green Up Keene. Chair Bosley agreed that this is a great collaboration.

On a vote of 4-0, the Planning, Licenses, and Development Committee recommended that the Farmers' Market of Keene be granted permission to use 22 spaces along Gilbo Avenue and 18 spaces on the other side of the median strip in the Commercial Street parking lot from Saturday April 22, 2023 to Saturday, October 28, 2023. Said permission is subject to the following conditions:

- The furnishing of a certificate of liability insurance in the amount of \$1,000,000 naming the City of Keene as an additional insured;
- The signing of a standard revocable license and indemnification agreement;
- The receipt of a total rental fee of \$932.00 (payable on the first day of every month at \$155.00 per month);
- Access to City electrical shall also be provided at a fee of \$60.00 for the season;
- Obtainment of all necessary permits and licenses and compliance with all laws, and compliance with any recommendations of City staff.

It is further recommended that the Farmer's Market of Keene be allowed to erect sandwich board signs on City property prior to the start of sales, subject to review and approval by City staff with respect to the number and location. The signs must be removed immediately after the sales have concluded.

2) **Memorandum of Understanding with Civil Air Patrol – Airport Director**

Chair Bosley welcomed the NH Director of Communications for the Civil Air Patrol (CAP), Carey Heckman of Hanover. Mr. Heckman said CAP has five repeaters throughout the State, one of which is near Keene and provides 20-30 miles of communications that CAP uses to coordinate their ground teams and aircraft during search and rescue missions. Mr. Heckman said that CAP does approximately 80% of all search and rescue missions in the United States as a part of the US Air Force, which funds CAP's search and rescue, and disaster relief. For example, when the Connecticut River floods, the Air Force asks CAP to provide aerial reconnaissance. In such situations, CAP's communications network uses the repeaters to coordinate aircrafts safely. CAP also performs fire patrol for the State of NH and the repeaters help aircraft to communicate with the State fire officials. Mr. Heckman said that to use the repeater coordination, users must be within the range of the repeater. CAP's incident command post is in Concord, NH, not within the range of a repeater. Thus, CAP uses a radio connected to the internet near the repeater that can be accessed from anywhere in the world with an internet connection. If the Committee agreed, Mr. Heckman said that a radio would be installed in the existing squadron office at the Keene Dillant Hopkins Airport, which is conveniently within range of CAP's repeater. He said the memorandum of understanding was a simple document, 95% of which protects the City's ability to end the agreement if something goes wrong. The City can terminate the agreement at any time and with a reasonable amount of notice, CAP would remove all the equipment. Mr.

Heckman said CAP pays for all the equipment and installation. He welcomed questions. Chair Bosley thanked Mr. Heckman and said this was good information to help understand the usefulness of this tool and how it connects to keep the community safe. She said it was a great resource.

Councilor Jones said this was good news for the City, Airport, and nation. He thanked Mr. Heckman. Councilor Jones said he was lobbied on this by his neighbor, Ray Harvey, who Mr. Heckman said he had received an email from on this day.

Councilor Ormerod asked if a repeater was being installed at the Airport. Mr. Heckman said no, just a radio, which remains on one channel that communicates with the repeater; the radio allows CAP to connect the repeater to the internet. Councilor Ormerod said this matter was before the PLD Committee for a reason. As such, the Councilor asked Assistant City Manager/Communications Director, Rebecca Landry, if there were any regulations the Committee needed to consider. Ms. Landry referred to the Airport Director, David Hickling. Mr. Hickling said he the City Attorney reviewed the memorandum of understanding and found no issues with any regulations. Mr. Hickling said there was question of whether this radio would interfere with any other radio traffic, but the memorandum of understanding says CAP would remove the radio if that occurred. Mr. Heckman said CAP already had this technology installed at three locations and so far, there had been no problems.

Chair Bosley said that at this meeting, the Committee was recommending that the City Council authorize the City Manager negotiate on this matter. The City Attorney, Thomas Mullins, said that because this is a use of City property, this was somewhat like a license. However, because the City has a relationship with CAP, the memorandum of understanding sort of takes the place of the license, which is why this PLD Committee was reviewing this matter.

With no further questions or comments from the public or the Committee, Chair Bosley entertained a motion from Councilor Jones that was duly seconded by Councilor Ormerod. Vice Chair Giacomo was absent.

On a vote of 4-0, the Planning, Licenses, and Development Committee recommended that the City Manager be authorized to do all things necessary to negotiate and execute a Memorandum of Understanding with the Civil Air Patrol to install communications equipment in the Airport Terminal Building.

**3) Use of City Property – New Hampshire Department of Environmental Services
Installation of Bedrock Monitoring Well – Public Works Director**

Chair Bosley welcomed Andy Bohannon, Director of Parks, Recreation, & Facilities. Mr. Bohannon said that he and the Assistant City Manager/Public Works Director/Emergency Management Director, Kürt Blomquist, had a conversation with Michael Howley, the geoscience program specialist from the geological survey, which is a division of NH Department of

Environmental Services (DES). The discussion was about the possibility of having a water monitoring station in Keene off Old Gilsum Road. NH DES selected this location because of its proximity to trails and housing. Mr. Bohannon explained that the western part of NH is underserved for this monitoring, and it is critical for the State to monitor these water systems related to droughts. Mr. Bohannon and Mr. Blomquist felt the location was in an adequate place. The first part of the recommendation was to execute a license with NH DES and the second part was to allow NH DES permission to bring the necessary equipment through Old Gilsum Road.

Chair Bosley appreciated the report. She said this would benefit the City as a whole because there would be a nearby data point that indicates the real time availability of water in the area. Mr. Bohannon said that was correct, the nearest bedrock monitoring well was in Greenfield and it was overburdened. He said the next closest one that DES was looking to install was in Rindge. Mr. Bohannon said this new bedrock well in Keene would serve the greater community well.

Councilor Ormerod said it was exciting to be getting this bedrock monitoring well for the community. He asked how deep this well would be, what bedrock is, and why bedrock monitoring is important. Mr. Bohannon said the well is anticipated to be 400 feet deep, which Mr. Blomquist said is typical of a bedrock well in this region. Mr. Bohannon also noted that this well would be located in a conservation area. Mr. Blomquist explained that this well would be used for groundwater monitoring. In the state of NH, there are two types of groundwater aquifers. The aquifer in question is deep and moves toward the Connecticut River. He noted that surface water is not the best indication of what is happening in an aquifer. This bedrock well would allow for monitoring fluctuations in the aquifer over time and how quickly it rebounds from a period of drought, for example. With climate change, Mr. Blomquist said the City had two drought conditions in the last two years. There is a concern about how quickly the aquifer in question is recovering from drought since it had not been monitored until now.

Councilor Jones asked if this well would just be measuring for the height of the water or for other things like pH, PFAS, or potability. Mr. Blomquist replied that theoretically the well could measure for those factors, but the primary purpose of this bedrock well would be to monitor the quantity of water in the aquifer, which is measured by height. There is no intention to have the well monitor water quality.

Vice Chair Giacomo arrived at 6:23 PM. He recalled past deliberations over traffic on Old Gilsum Road and asked how much activity was expected for the drilling equipment. Mr. Blomquist replied that drilling equipment would access the site via Old Gilsum Road once to perform the drilling for 3–5 days and exit at the end of that period, a pick-up truck and workers would enter and exit the site each day, and he expected that NH DES would enter and exit the site each day in an SUV. Mr. Blomquist continued stating the once the well is installed, DES would likely enter/exit the site a few times per year and it is possible that they could just walk in instead of using a vehicle, but access with a SUV is also possible.

Hearing no further comments or questions from the public or the Committee, Chair Bosley entertained a motion by Councilor Ormerod that was duly seconded by Councilor Johnsen.

On a vote of 5–0, the Planning, Licenses, and Development Committee recommends that the City Manager be authorized to negotiate and execute a license with the New Hampshire Department of Environmental Services (NHDES) for the installation and maintenance of a bedrock monitoring well on City-owned property (102/ 001/000 000/000) located in the Greater Goose Pond Forest for the purpose of groundwater level monitoring, subject to the City’s standard licensing conditions and other conditions set by City staff. Further, Per Section 94-238 of the City Code of Ordinances, the New Hampshire Department of Environmental Services is authorized to use motorized vehicles on the Class VI portion of Old Gilsum Road for the installation, maintenance, and monitoring of the bedrock monitoring well. Access shall be coordinated with City Staff.

4) Ordinance O-2022-19-A: Relating to Amendments to the Land Development Code

Chair Bosley welcomed the Community Development Director, Jesse Rounds, who explained that the Community Development Department compiled Ordinance O-2022-19-A to address multiple issues that Staff had identified during the first 1.5 years that the Land Development Code was in use. Mr. Rounds briefly listed the amendments:

- Article 9 – A change to the driveway standards for shared driveways.
- Article 11 – A change to the driveway standards to clarify language about an exemption for access across surface waters for one- and two-family homes if they are the lot of record.
- Article 13 – Two changes governing when entities must submit for a conditional use permit (CUP).
- Article 15 – Proposed change to add the possibility of a waiver for congregate living and social services CUPs.
- Article 25 – Multiple changes that explained the paths that various changes within the Land Development Code needed to take through the City Council, Planning Board, and Joint Planning Board-Planning, Licenses, and Development Committee for approval.
- Article 9 – Currently, there is a process by which an applicant can request a major reduction in parking requirements on their property. This requires an applicant to meet all of the special exception criteria plus two parking-related special exception criteria. The general special exception criteria are more esoteric and have nothing to do with parking. In the case of this parking exception, Staff proposed focusing only on the two parking special exception criteria.

Chair Bosley explained that this was not the first time this PLD Committee had heard about these proposed amendments, which had been reviewed by the Joint Committee and City Council, and there had been a public hearing. She said that at the Joint Committee meeting, concern was expressed about the section on CUP waivers and the impact that section might have on the rest of the proposed “housekeeping” items Mr. Rounds listed; she called these more benign, clerical

issues discovered in the Land Development Code. She continued saying that this CUP waiver issue created a change in what the spirit of the Ordinance was when it was written. At the Joint Committee meeting, Chair Bosley suggested separating that issue from the rest of the amendments. She said that the Planning Board and the Planning, Licenses, and Development Committee—not equal in membership—were discussing this item that effects the Planning Board and there was no agreement between the two committees to separate the CUP waiver amendment. Chair Bosley hoped that discussion would continue to see if her fellow Councilors still supported separating the amendment.

The City Attorney, Thomas Mullins, explained that the Committee could either move this Ordinance forward to the full Council or send it back to the Joint Committee. His recommendation was that if the Committee wanted to send that amendment back to the Joint Committee, that they send the whole Ordinance back instead of separating the amendment. He said it was too difficult to sever the Joint Committee discussion from what was happening at this hearing. Chair Bosley asked if Staff supported sending the whole Ordinance back to the Joint Committee if that was the case and Mr. Rounds replied in the affirmative.

Discussion ensued between Councilor Jones and the City Attorney about what sending the Ordinance back to the Joint Committee would accomplish and what direction would be given to Staff. The City Attorney said the motion would be for the PLD Committee to recommend to the City Council that the Ordinance be returned to the Joint Committee for further review and action. Councilor Jones said that if the City Council returned the Ordinance to the Joint Committee, that Committee would not know what this PLD Committee wants. The City Attorney said that was correct and that this was much like the March 2, 2023 City Council discussion. The City Attorney explained that the Joint Committee is appointed by the City Council and while the Joint Committee can review the background notes from this PLD Committee, it would be improper for the PLD Committee or City Council to direct the Joint Committee to do anything. The PLD Committee could discuss their preference now and then raise the issue again at the Joint Committee.

Vice Chair Giacomo said this Committee would be sending the same thing back to the Joint Committee that the Planning Board unanimously voted against separating at the last meeting. Thus, the Vice Chair said that sending this Ordinance back would just be going in circles unless the Planning Board changes their mind or has different attendance this month. The City Attorney said that the problem from his perspective was that severing this one amendment from the Ordinance is a material change to the Ordinance. Sending an Ordinance back to the Joint Committee isn't typical. He agreed that the Joint Committee might arrive at the same result but then it would be up to the City Council to decide what to do with it.

Chair Bosley thought it was fair to say that at the Joint Committee meeting, she explained to the Planning Board what was at risk by letting the Ordinance leave the Joint Committee in its entirety and sending it to full Council. She listed the options: (1) send the Ordinance back to Joint Committee and reiterate that the PLD Committee was not ready to accept this Ordinance as

a whole and ask the Planning Board to rethink it, or (2) send the Ordinance on to the full City Council, which could vote the whole Ordinance down because of this one issue, and Staff would lose the ability to make all the other housekeeping changes until calendar year 2024 without suspension of the Rules of Order. The City Attorney confirmed the Chair's understanding. Thus, Chair Bosley hoped the Planning Board would have some interest in the fact that the PLD Committee was serious about this and that the other amendments should not be at risk because of one controversial topic. The City Attorney said it would be important for Councilors to communicate that nuance to the Planning Board and he thought the Community Development Department would be present to explain that to the Joint Committee as well. The City Attorney did add that this would be a recommendation to the City Council to send the Ordinance back to the Joint Committee and it was possible the City Council could say no and adopt the Ordinance as it stands.

Councilor Jones stated for the record that he liked most of Ordinance O-2022-19-A except for the CUP waiver for congregate living and social service conditional uses. Councilor Ormerod was also concerned about the CUP waiver because it would be bypassing a system that was set-up with a legislative group—the Planning Board—with the Zoning Board of Adjustment as the judicial interpreter. He said that as written, this Ordinance would eliminate the intention to have that judicial review, and he would have to vote down the whole Ordinance for that reason. Councilor Jones asked whether there was a special committee for those uses. Chair Bosley said there is the Congregate Living and Social Services Licensing Board and this would not bypass that Board.

The Chair explained that this waiver would allow the Planning Board to waive items in the Land Development Code that were instituted during the process of creating the Social Services and Congregate Living Ordinance that protected the public from things like screening. In essence, she said that if a person wanted an item from the Land Development Code waived, they would have to go to the Zoning Board to get that waiver. The Planning Board does not have the same expectation for review as the Zoning Board; she said the Planning Board is much more liberally willing to waive those criteria, which Chair Bosley said was circumventing the system. It was the Chair's opinion that those items should be removed from the Land Development Code if they are unwanted versus giving a liberal body a way to waive them when they see fit. She said that if someone wants something waived, they should go through the proper channels.

The City Attorney clarified that new congregate living applications must go to the Planning Board first for a CUP, then the Congregate Living and Social Services Licensing Board would receive the Planning Board's recommendation. Mr. Rounds agreed with Councilor Jones that it could be a three step process; if a new use applicant was seeking relief from one of the criteria, they would go to the Zoning Board for a variance, to the Planning Board for the CUP, and then to the Licensing Board. Mr. Rounds said that the CUP waiver would remove that third step.

Hearing no further questions or comments from the public or the Committee, Chair Bosley entertained a motion by Vice Chair Giacomo that was duly seconded by Councilor Jones.

On a vote of 5–0, the Planning, Licenses, and Development Committee recommended that the City Council refer Ordinance O-2022-19-A back to the Joint Committee for further review and further recommendation to City Council.

5) Taste of Keene Food Festival – Request for License

Chair Bosley heard no objection from the Committee to bringing this item forward from more time. Vice Chair Giacomo made the following motion, which Councilor Ormerod seconded. On a roll call vote of 5–0, the Planning, Licenses, and Development Committee suspended Section 26 of the Rules of Order to act on the request from the Keene Young Professionals Network to host the 2023 Taste of Keene Food Festival.

Chair Bosley welcomed the applicant, Alana Fiero, President of Keene Young Professionals. Ms. Fiero was excited about this third annual Taste of Keene Food Festival to be held on Saturday, June 3, from 11:30 AM–3:30 PM. The layout would be much like it was in 2022, with closures to Central Square, part of Main Street, and part of Roxbury Street, in addition to a beer garden in the Hannah Grimes Center for Entrepreneurship. Ms. Fiero said they hope for the same great turnout as last year. She welcomed questions.

Vice Chair Giacomo asked what if any changes were anticipated this year. Ms. Fiero said the restaurant and brewery participation would be much like in 2022. She said that the beer garden was crowded last year, so the plan this year is to move the live music to Central Square so there is more room for the beer garden at Hannah Grimes, where it was last year. Also, this year the chef demonstrations and hot pepper contest were eliminated. There were no other contests planned yet for 2023.

Councilor Jones recalled that this event developed originally from the Covid-19 Rebound Committee and the Keene Young Professionals stepped-up to sponsor it. Chair Bosley said there is a lot of support for this event that helped the City rebound that first year.

The ACM/Public Works Director/Emergency Management Director, Kürt Blomquist, said there had been several protocol meetings already and the motion before the Committee was the minimum to get permissions from the Council. There were several more protocol meetings scheduled to finalize the event.

Hearing no further comments or questions from the Committee or public, Chair Bosley entertained a motion by Councilor Jones that was duly seconded by Vice Chair Giacomo.

On a vote of 5–0, the Planning, Licenses, and Development Committee recommended that the Keene Young Professionals Network be granted permission to use downtown City rights-of-way on Saturday, June 3, 2023, and reserving a “rain date” of Sunday, June 4, 2023 in the event of inclement weather, to conduct a Food Festival conditional upon the following:

- The furnishing of a certificate of liability insurance in the amount of \$1,000,000 naming the City of Keene as an additional insured;
- The signing of a standard revocable license and indemnification agreement;
- That the Petitioner agrees to absorb the cost of any City services over and above the amount of City funding allocated to the event, and agrees to remit said payment within 30-days of the date of invoicing;
- That the footprint and layout for the event shall encumber the traveled portions of Central Square, Main Street both sides from Central Square to Railroad Street and Gilbo Avenue, and a portion of Railroad Street. Road closures may include any portions of other streets needed to facilitate detour routes. The full extent of road closures and detour routes shall be agreed upon with City staff;
- That the Petitioner is permitted to place porta-potties in City parking spaces located at the base of Washington Street from Friday, June 2, 2023 to Monday June 5, 2023, which will be chained together and affixed to ensure they are not vandalized while unattended overnight;
- That the actual event will be held from 11:30 AM to 4:00 PM with the times for set up and clean up to be established with City staff;
- That free parking be granted under the provisions of the free parking policy for City parking spaces on Washington Street needed for storage of equipment from Friday, June 2, 2023 to Monday June 5, 2023; and spaces within the event footprint on the day of the event;
- The submittal of signed letters of permission from any private property owners for the use of their property; and
- Said permission is granted subject to obtainment of any necessary licenses or permits and compliance with all laws; and compliance with any recommendations of City staff.

6) Adjournment

There being no further business, Chair Bosley adjourned the meeting at 6:52 PM.

Respectfully submitted by,
Katrnya Kibler, Minute Taker
March 9, 2023

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