

City of Keene
New Hampshire

PLANNING, LICENSES AND DEVELOPMENT COMMITTEE
MEETING MINUTES

Wednesday, March 23, 2016

7:00 PM

Council Chambers A

Members Present:

David C. Richards, Chair
Philip M. Jones, Vice-Chair
George S. Hansel
Bettina A. Chadbourne
Robert B. Sutherland

Staff Present:

Medard Kopczynski, City Manager
Kurt Blomquist, Director Public Works
John Rogers, Acting Health Director
Beth Fox, HR Director
Rebecca Landry, IT Director
Tom Mullins, City Attorney
Rhett Lamb, Asst. City Mgr./Planning Director
Tara Kessler, Planner

Members Not Present:

Other Councilors Present

Carl Jacobs
Gary Lamoureux

Mayor Kendall Lane

Chair Richards called the meeting to order at 7:00 PM; he immediately called a 10 minute recess to facilitate moving to another room due to the number of people in attendance. The meeting reconvened in Council Chambers B at 7:10 PM with Chair Richards requesting a motion to suspend the rules to introduce an additional item of business.

Councilor Jones moved to suspend the rules to hear a time sensitive issue regarding a fundraising event for Cub Scout Pack 348. Councilor Hansel seconded the motion which carried unanimously.

COMMUNICATION: Use of City Property- Cub Scot Pack 348

Kurt Blomquist, Public Works Director reported the Public Works staff met with leaders from the Cub Scout Pack at the Transfer Station/Recycling Center and reviewed with them their plans. Staff believes that the request can be supported in a safe manner with minimal impact to operations at the facility. Mr. Blomquist reported staff recommends approval.

Karen Johannesen, of 308 Chesterfield Road noted Cub Scout Pack 348 stated she is seeking permission to hold a fund raising event on a Saturday in the month of April 2016 at the City's Transfer Station/Recycling Center. The Cub Scout Pack would like to sell coffee and donuts to raise funds to assist in sending its members to summer camp.

Chair Richards asked for questions/comments from the Committee; there being no questions/comments from the Committee or members of the public Chair Richards asked for a motion.

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

On a vote of 5-0, the Planning, Licenses and Development Committee recommends that Cub Scout Pack 348 be granted permission to hold a fund raising event during the month of April 2016 at the City of Keene Transfer Station/Recycling Center subject to the following conditions.

- Provision of a certificate of insurance of at least \$1M naming the City as an additional insured,
- Signing of an indemnification agreement, and
- Compliance with City of Keene staff recommendations.

1) Referral Back: Suggested Ban on Single use Plastic Bags

Chair Richards noted Councilor Clark's suggestion at the last City Council meeting that there is new information regarding this issue. Terry Clark, Councilor Ward 3 replied in the affirmative noting the request to have the City Attorney look into the authority the City may have under the Solid Waste Statutes. Councilor Clark asked to hear the report from the City Attorney.

Attorney Mullins reiterated previous information noting New Hampshire is not a Home Rule state; therefore local governments do not have the authority to act unless that authority is provided to them by the state. Attorney Mullins discussed the broad authority provided under Chapter 47. Continuing he reported he found nothing in the State Statutes providing municipalities the authority to regulate the use, possession, or sale of plastic bags. RSA 149-m (Solid Waste Management) does provide municipalities some broad authority to regulate in the context of solid waste. Continuing, Attorney Mullins noted the City enacted a Flow Control Ordinance some years ago under this provision. Attorney Mullins noted the only thing he could find that might possibly pertain with respect to what the petitioner is asking for is to try and shoehorn an ordinance under RSA 149-m. After further comments he noted this is pretty weak ground to proceed under; and he can't suggest to the Committee or Council how this would fare on any kind of appeal. Attorney Mullins pointed out the other aspect of such an ordinance if approved would be enforcement; he asked what the mechanism of enforcement would be. Attorney Mullins noted that sometimes the Committee and Council have taken a position in the past that isn't clear under state law because they want to send a message; sometimes it works and sometimes it doesn't. It worked in the context of the Synthetic Marijuana Ordinance because we had substantial support from the State. Chair Richards also noted the Smoking Ban; Attorney Mullins commented the smoking ban did result in legislation from the state which preempted our local ordinance.

Chair Richards clarified what Attorney Mullins comments were: we could do this and if challenged it would go to the court system, and we really don't know what the outcome would be. Chair Richards commented he would like to have more information before asking for an Ordinance to be written and see what the full weight of the Council is. Chair Richards asked Councilor Clark if he had anything further to add.

Councilor Clark explained he is used to standing up for what he believes in, whether or not there is somebody bigger at the other end. He continued this is much more important than just the convenience of plastic bags; it goes into the bigger picture of our dependence on fossil fuels. Councilor Clark reiterated previous comments regarding plastic bags being more expensive than paper bags for the mom and pop stores. Councilor Clark noted he feels this is something worth taking a chance on, and turned the floor over to Danielle Baudrand.

Danielle Baudrand, of 19 Bridge Court noted the children in the audience stating we owe them to fight for this and not have plastic pollution within our community. Ms. Baudrand reported there are 5 trillion pieces of plastic in our oceans today and the average shopper uses 500 plastic bags per year; this disposable waste is toxic for our environment. After noting additional statistics Ms. Baudrand stated she is here for her daughter and the future of our planet. Ms. Baudrand encouraged the Committee to come out in support of this issue.

Chair Richards asked for Committee comments/questions.

Referring to the City Attorney's report Councilor Sutherland asked if this would also enable us to outlaw plastic bottles, glass bottles, tires, or other solid waste we would like to have purview over banning. Noting this as a good question the City Attorney commented the analysis would certainly be the same. The City Attorney read from the chapter in RSA 149-m adding the authority flows from the purposes of the statute which is pretty broad. One of the first things is source reduction which is what this proposal would be for (solid waste associated with plastic bags). In summary the City Attorney noted if you were going to use that particular analysis for plastic bags then potentially that analysis could be used for the other items; he also noted you would have to be consistent in the analysis.

Councilor Hansel asked if either of the petitioners had an idea of the percentage of plastic bags as a representation of the entirety of plastic waste. Councilor Clark noted discussions with Duncan Watson, of Public Works who noted the difference and the problem with plastic bags versus plastic bottles is recyclability. Plastic bags can be recycled but they're not. Councilor Clark reiterated previous testimony regarding storage of the plastic bags to obtain a quantity large enough to sell. He continued we have a system to handle the plastic bottles and tires which people use; we don't have that for the plastic bags.

Councilor Jones asked if we are going to continue this discussion that we specifically talk about high density polyethylene (HTPE) bags as these are the ones that float around in the air. The other low density bags such as those used by J.C. Penny's and dry cleaners are not the problem. Councilor Clark indicated he would stipulate that in his report. Councilor Jones noted another issue being an ordinance would only control what the stores within the City limits of Keene could use; bags from Market Basket would still come into town. Councilor Jones suggested he would like to see this done statewide rather than just at the local level because it creates an unfair advantage to some communities when things like this happen.

Representative Marjorie Shepardson, of 94 Pleasant Street, Marlborough provided additional statistics to backup comments by Councilor Clark and Ms. Baudrand. Representative Shepardson reported Americans throw away 100 billion plastic bags annually with only 1 to 3 percent being recycled. She noted how European countries seem to be getting along without plastic bags. Representative Shepardson reported how some communities have chosen to place fees on bags (five cents); both paper and plastic which is another option for Keene to consider. She noted the efforts of Hannaford's in Portland, Maine along with their education campaign to let people know this is coming. Representative Shepardson plans to put some legislation in again next year; she suggests legislation has a better chance of passing if a city like Keene takes action. This would be much more powerful than just writing a letter of support.

Mya Baudrand, of 19 Bridge Court commented it is sad a lot of the time when she is playing outside because of the plastic bags hanging in the trees and floating in the air. Ms. Baudrand commented she would like to see a ban on plastic bags because they are ruining our environment.

Grady Kole Sampson, of 420 Main Street commented plastic bags are ruining our environment. He asked for a show of hands from those who don't feel plastic bags should be used.

Nikki Sauber, of 9 Wheeler Lane, Swanzey noted her involvement in the community and that she comes here wearing her business hat. She is looking at the economic status of this region and the issue of young people leaving the area. Ms. Sauber continued young people are interested in innovative communities that are changing to make improvements for society and the environment. To not address climate change is to essentially slap a lot of young people in the face and say we don't really care about your problems. Ms. Sauber would advocate for a ban on plastic bags to show that Keene is a progressive community. Ms. Sauber made note of Keene's Comprehensive Master Plan explaining the environment is a large aspect there; she also indicated Keene is falling short of its goals there.

Councilor Hansel stated imposing a ban would involve City resources and perhaps liability. He asked the City Attorney to describe the pitfalls of enacting a ban. Speaking hypothetically Attorney Mullins noted he is always hesitant to provide too much legal advice in a public environment. He continued you've already heard what my thought is

on this; the authority to the municipality is very unclear and probably falls on the side of no you don't have it because of the legislative action that was taken. If the City Council decided this was an issue it wanted to proceed on and enacted an ordinance there would probably be a very quick challenge to that. Although litigation charges wouldn't be outside of the norm for litigation costs it would still be thousands of dollars. The bigger question is how to enforce it. Litigation and enforcement issues would have to be factored into any decision made.

Chair Richards referred to the Smoking Enforcement asking how many restaurants were inspected. Attorney Mullins explained he was not here when this Ordinance was enacted. He noted the town of Colebrook enacted an ordinance at the same time which actually went up to the Supreme Court. Chair Richards suggested no one was sent out to ensure there was no smoking in the restaurants; he added many of the violations are complaint driven and this should be kept in mind.

Councilor Chadbourne asked the City Attorney to explain the norm for litigation costs. The City Attorney said let's assume it was a Declaratory Judgement with someone challenging the City's authority to place the ban, this could probably be handled in-house. If outside action were needed (going all the way to the Supreme Court) that costs would be between \$15,000 and \$20,000. Attorney Mullins continued for the fairly straight forward tell us whether or not we can do it Judge; this could probably be covered by his office.

Councilor Chadbourne asked Council Clark if he had researched other towns in other states and the challenges they faced. Councilor Clark replied there are no total states that he knows of and no communities in New Hampshire. There are two towns in Maine, and half the states of Oregon, California, and Washington. Councilor Clark advised he could not answer the question regarding any court actions. Danielle Baudrand shared her experience working retail in Maryland where the five cents per bag charge was imposed; she noted it was very successful. Based on Ms. Baudrand's comments Councilor Chadbourne commented we wouldn't be able to tell the store owners what they could charge, and asked if this was correct. Attorney Mullins replied if the City of Keene decided to enact what would otherwise look like a tax on plastic bags, it probably wouldn't go anywhere. It's one thing locating this into the Solid Waste Statute which gives municipalities authority with respect to solid waste; it's another thing to try and preempt the State from its ability to tax.

Toby Tousley, of 499 Washington Street commented as a convenience store owner in town he can tell you plastic bags are cheaper; he also shared if a ban was put on plastic bags tomorrow he wouldn't care. Mr. Tousley agreed with earlier analyses provided noting his concern with bringing this waste to the recycling center. This means a waste hauler can't bring it there and how would that be enforced. The ultimate crime is putting it into the landfill, not the person selling the plastic bag.

Chair Richards addressed the City Attorney noting his understanding is we would ban retail people from using these bags; it's not really about what goes in the landfill. The

City Attorney noted his understanding as the proposal is being floated is to tell retailers within the City limits they could not use particular types of plastic bags. Attorney Mullins noted he is not prepared to discuss what happens at the Transfer Station. Chair Richards agreed continuing under the current statute we think we can say you can't use plastic bags, if it holds up. Attorney Mullins noted what you would be doing is trying to locate it in the Solid Waste Statute 149-m; bringing it down to the purpose of the statute which is to source reduce solid waste within the confines of the City of Keene, thou shall not be able to use plastic bags.

Darryl Masterson, of 44 Willow Street commented Councilor Jones touched on his major concern, what is a single use plastic bag. He assumed they were talking about grocery store plastic bags, noting he doesn't use trash bags more than once. He assumed the blue plastic bags used for picking up dog refuse aren't used more than once. Mr. Masterson also assumes people are using these grocery store bags in replacement of the little blue bags. For Mr. Masterson it is more of how can we find more of the repurposing that is going on. Mr. Masterson understands the global implications and does not like the idea of setting up an ordinance in Keene banning the use of plastic bags; he would be more interested in seeing what other ways we can do things. Mr. Masterson is opposed to the City creating an ordinance banning plastic bags.

Georgia Cassimatis, of 9 Miller Lane, Swanzey shared her involvement in the community and history with Ms. Baudrand. Ms. Cassimatis recommends not reinventing the wheel on this issue; she suggested using another model to make our process easier. Ms. Cassimatis is a young professional in Keene and sees Keene being a leader for the rest of the state.

Councilor Sutherland referred to people's comments made earlier noting there are a lot of arguments that can be brought forward; he agreed with Councilor Jones that this issue would be more effective at the state level. Councilor Sutherland asked what is it we can do while we are waiting for that to happen. He also recommended talking to the retailers in the community who use plastic bags about what we could do better as a community, rather than using a hammer first.

Chair Richards asked for any additional comments/questions from the public.

Habame Karabakakis, of 89 Woodland Avenue commented sometimes she feels like grownups don't care about how much waste is going into the natural woods. Like her friend Mya Baudrand she sometimes feels sad to see the plastic bags in the woods where she plays. She is in favor of the ban on plastic bags.

Councilor Jones noted that both Habame and Mya are doing their 4th grade trip to the State House. He recommended the girls obtain a copy of Hawaii's statute banning plastic bags to bring with them. Councilor Jones thanked the girls for bringing this forward.

Councilor Carl Jacobs noted he is hearing the plastic bags are a problem and that there is uncertainty on whether to proceed with some kind of action. Councilor Jacobs

commented he would rather go with the certainty that we need to take some kind of action on this problem. He continued we were leaders with the smoking and synthetic marijuana and we can be leaders in this.

Alan Gross, of 209 South Road, Swanzey is a High School teacher in Keene. He displayed the cloth bags the Keene High School environmental group made and is selling. After additional comments Mr. Gross commented he wants to challenge the Committee (City of Keene) to be a leader and consider this ban.

George Karabakakis, of 89 Woodland Avenue noted his daughter spoke earlier. He commented a challenge was mentioned earlier; he agreed this is a challenge and with every challenge there is an opportunity. Mr. Karabakakis noted the amazing things Keene has done. Mr. Karabakakis recommends taking a stand along with taking the opportunity to speak to local businesses and asking them to stand with us.

Milo Baudrand, of 19 Bridge Court asked the City Attorney if there was another angle that could be used; perhaps a public health issue. Attorney Mullins noted the general answer to that question is there may be other mechanisms we want to consider going forward. Addressing RSA 149-m Attorney Mullins noted the ability for municipalities to require some type of recycling process; this language is a lot clearer and stronger than the language with respect to banning. He also noted RSA 147 deals with rubbish and disposal; he is unsure if there is an opportunity under this statute to look at it. Attorney Mullins cited a case as an example adding there may be some other approaches to this thinking outside the box. He also noted he has not done any research to this approach. Another approach to RSA 149-m is to perhaps take the recycling approach rather than the banning approach.

Chair Richards suggested that Council supports this, adding the real motion would be to have staff investigate the writing of an ordinance which would include looking at all those things.

Chair Richards asked for additional comments or questions from the Committee or the public.

Councilor Sutherland noted the earlier discussions suggesting we welcome the area businesses in and ask them two questions; 1) what would be the impact on this, and 2) would you consider working with the community to ban them informally rather than having an ordinance. Chair Richards suggested perhaps a better way to put that if we do this is to have staff reach out to local businesses as they investigate an ordinance to determine the financial impact.

Councilor Jones addressed Mr. Masterson's earlier comments. He referred to an article in the Bloomberg magazine regarding Austin's ban on plastic bags which they are now starting to regret. Councilor Jones also agreed with Councilor Sutherland's comments we need to know a lot more about what we can and cannot do. Councilor Jones wouldn't ask staff to come back with an ordinance; he would ask them to come back with options that

we can discuss and invite those affected. He would also like to know more regarding the enforcement and punishment. Councilor Jones noted the passion of those present adding he doesn't want to see that go away.

Councilor Chadbourne commented she is hesitant to pass this onto staff with a lengthy list; she would like to see those that are passionate come back with research they have already done or can do prior to staff having put in many hours. She agrees that Keene can be a trendsetter, but would prefer state legislation over local. Piggy backing on this and other comments Councilor Sutherland noted he thinks the bigger story here is if the community would get the big box stores and other stores away from using plastic; rather than the City of Keene trying to bring the hammer down on businesses.

Chair Richards commented people pick up their dog remnants with the plastic bags and leave them in his trashcan; he would rather they leave it because it is biodegradable. He shared recycling efforts made by his employer and commented at the end of the day with recycling you save money. He noted Keene has been a leader in the past, and the state has followed. Chair Richards is not in favor of asking the people to do the research needed to provide more information. Instead he suggests asking the City Attorney or City staff to ask businesses what this will cost and what are their feelings; then come back to Council. Chair Richards indicated he would support an ordinance even though that doesn't seem to be the Committee's feeling tonight.

Attorney Mullins explained it is not the role of the City Attorney to contact businesses in town. Chair Richards clarified he meant staff. Attorney Mullins noted he understands the direction the Committee is leaning towards; what are the options, what/how do you think out of the box, when you look at RSA 149-m are there any other possibilities. Another observation noted by Attorney Mullins was when we were successful in moving the state (smoking and synthetic marijuana) a big reason for that was there were other communities that stepped up and did the same thing. He suggested it might be helpful to reach out to other communities, adding his office can certainly reach out to other communities in the state.

Chair Richards asked if the Committee should suggest "more time" to allow some of this information to be gathered. The City Attorney indicated this would be a reasonable suggestion. The City Attorney suggested individuals provide his office through the City Manager's office the information they have. Councilor Chadbourne noted this is what she was suggesting; she also noted the City Clerk's Office has a handout on dog poop pointing out it is a big problem when they leave it. Discussion continued with the City Attorney noting the "more time" suggestion is appropriate with the understanding that everybody that is out here in this audience who has information they would like to submit should do so through the City Clerk's Office and/or the City Manager's Office so we can take a look at all of it.

Councilor Jones noted San Francisco as the largest city to ban plastic bags and Austin had many drawbacks; he suggested these are the types of things we have to evaluate.

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

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

On a vote of 5-0, the Planning, Licenses and Development Committee recommends this issue be placed on “more time”.

Milo Baudrand, of 19 Bridge Court addressed the dog poop issue noting he uses a biodegradable bag that is available. He pointed out these bags are more expensive and suggested another option is to use better bags.

2) COMMUNICATION: Virginia Carter/Walpole Mountain View Winery - Request to Sell Wine at Farmer's Market

The petitioner, Virginia Carter addressed her request noting the request is the same as last year's. Attorney Mullins reported that all City requirements have been met.

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

Councilor Chadbourne made the following motion which was seconded by Chair Richards.

On a vote of 5-0, the Planning, Licenses and Development Committee recommends that the Walpole Mountain View Winery be granted permission to sell alcohol at the 2016 Keene Farmer's Market on City property licensed to the Farmer's Market of Keene. Said permission is contingent on the following: submittal of a signed letter of permission from the Farmer's Market of Keene, obtainment of all necessary permits and licenses and compliance with all laws, and the assurance that consumption of alcohol at the Farmer's Market of Keene will be strictly prohibited.

In response to Ms. Carter the City Attorney advised the City Clerk's Office will send the necessary information to the Liquor Commission after the full Council meeting on April 7, 2016. Ms. Carter indicated she has had some issues with this process in the past.

3) COMMUNICATION: Weston Liu/New England Aerobatic Club-Request to Use City Property- Dillant-Hopkins Airport

Weston Liu, of Brookline distributed copies of an aerial view of the flying area. Mr. Liu reported the New England Aerobatics Club has been flying here since 2007. The Club has obtained an FAA Certificate of Authorization that involves a safety review. After meeting with neighbors last year some of the activities were modified; the Club only flies on five Saturdays per year. Mr. Liu noted there are typically 12 to 15 pilots who come to fly; these pilots buy fuel and patronize the local restaurants. Mr. Liu reported the Club also has the required liability insurance.

Chair Richards asked for questions/comments from the Committee.

Councilor Sutherland commented on the standings of the Club and asked if the aerobatic box location differed from previous years. Mr. Liu reported the box is the same as in past years.

Councilor Hansel asked if the Club currently housed any planes at the Keene Airport. Mr. Liu replied in the negative.

Councilor Jones asked if there had been any drawbacks since 2007. Mr. Liu noted they have heard concerns about the noise and we tried to respond to those, but there have been no actual incidents.

Chair Richards asked for questions/comments from the public.

Rebecca Landry, IT Director and Assistant City Manager noted she has been helping to manage the airport. Ms. Landry reported the Airport Advisory Committee met last week and made a recommendation in support of this request. Ms. Landry pointed out the Airport Advisory Committee Chair Clark Dexter and other Committee members were present this evening.

Clark Dexter, Chair of the Airport Advisory Committee reported meeting with the Aerobatics Club last year and noted the concessions the Club made; one being they raised the floor 500 feet. Mr. Dexter reported one of the neighbors commented at the last Committee meeting that this effort made a significant difference.

James Dunn, of 1 Riverton Street asked the following questions; 1) what does the City gain from having this annoyance for seven hours a day on a Saturday, 2) how much financially does this exercise give to the City of Keene. Mr. Dunn compared the amount of revenue received from the airport to that which the City receives from the College. Mr. Dunn's third question was how exactly does this Club have a positive impact at the airport when it destroys half a day for 500 families? Mr. Dunn asked if the ire of the community counts in the Committee's deliberations; he also noted he would like the Committee to consider the people who live under the box.

Darryl Masterson, of 44 Willow Street noted he does hear the noise from the planes and deals with the College transient noise which to him is a much bigger deal. Noting that he understands Mr. Dunn's complaint Mr. Masterson begged the question what does the City get from this.

John Dunnell, of 30 Lynwood Avenue a lifelong resident of Edgewood reported the sound is intensely annoying and a nuisance. Mr. Dunnell asked if any of the Airport Advisory Committee members or members of this Committee live in the affected area. Mr. Dunnell noted his opposition to this request.

Jeff Scott, of 45 Crowningshield Road, Chesterfield asked for a description of the box. Ms. Landry provided the description obtained from the FAA representative in New Hampshire which is the NH DOT. In addition she noted Council's recommendation last

year that the box be 1500 feet above the airfield surface which was 500 feet higher than in previous years. Mr. Scott then asked how many residences they are flying over. Mr. Liu replied the official answer is zero; it is all over the Ashuelot River woods. In response to Mr. Scott, Mr. Liu also noted the box is 3,500 feet wide by 3,500 feet deep, and is not over any occupied buildings. In the case of an accident Mr. Liu verified the plane would fall into an uninhabited area.

Beth Bendel, of 80 Airport Road acknowledged all the comments made and pointed out nobody had pointed out that many members of the public come out to watch the aerobatics.

Bob Bergeron, of Surry and also an Airport Advisory Committee member commented this group is very safety minded and they fly the box. Mr. Bergeron is in favor of approving this request. Mr. Bergeron's mother lives in the area and doesn't complain about the flying exercises.

James Dunn, of 1 Riverton Street shared his experiences and stated he can't understand why the City continues to allow this to happen. Mr. Dunn also addressed the noise created by the planes because they don't have mufflers.

Beth Bendel clarified her earlier comments regarding the number of people watching the event; ten to fifty people at any given time throughout the day multiplied by seven hours.

Jeff Scott, of 45 Crowningshield Road, Chesterfield commented he forgot about the noise. He continued we need to think about balance and what is benefiting the few at the discomfort and displeasure of the many. He recommends thinking about the many, as noise is annoying.

Rod Thompson, of West Surry Road is also a member of the Airport Advisory Committee. Mr. Thompson noted airports constitute a wide variety of things from C&S jets to small planes similar to what he owns. Mr. Thompson noted these flyers are the epitome of aviation skills; he also pointed out only one airplane at a time is in the box. Mr. Thompson reiterated some of the safety features and noted the importance of the pilots being able to practice. Mr. Thompson noted the many ways this promotes aviation. Mr. Thompson is in favor of granting this request.

James Dunn, of 1 Riverton Street pointed out there has been no discussion regarding gasoline; Keene uses low-lead gasoline. Mr. Dunn asked if those coming here are also using low-lead gasoline; Mr. Dunn would also like Council to consider this point when making their decision.

John Dunnell, of 30 Lynwood Avenue noted noise is a subjective matter and provided an analogy that would be subject to an ordinance in Keene. Mr. Dunnell's analogy was that of a dog barking for 20 minutes off and on for an entire Saturday. He asked wouldn't this cause some concern for you as citizens of Keene. Mr. Dunnell noted this is very annoying.

There being no additional comments from the public Chair Richards asked for additional comments/questions from Committee members.

Councilor Chadbourne noted she had several questions. She asked Mr. Liu if they used to fly more than the 5 Saturdays per year. Mr. Liu replied several years ago they were flying a couple more days per year; he added we are very weather dependent and Sunday flying was used as a rain date. Councilor Chadbourne referred to the handout and addressed the box in relation to the neighborhood. Mr. Liu noted the neighborhood in question is actually to the north of the box. Councilor Chadbourne then asked if the Club has always had the box or is it new. Mr. Liu replied no we've always flown right there. In response to Councilor Chadbourne's next question Mr. Liu explained the additional 500 feet was added in an effort to reduce the impact on the neighborhood north of the field. After additional comments Mr. Liu added we are trying our best to be good neighbors. Mr. Liu also noted they start later in the morning to accommodate the neighborhood; they typically start before 10 AM.

Chair Richards noted he is inclined to support the motion; he added we just hired an Airport Director for the very purpose of marketing the airport. He added it does bring people in and it appears the rules are being followed.

Councilor Sutherland raised the issue of not being able to advertise for this event as that would make it an airshow. Mr. Liu agreed noting the rules for airshows come from different chapter of the FAA manual; he added what we do is a sporting event. We can advertise there will be an aerobatic practice but we are not allowed to publish something in the newspaper that says come see the aerobatic practice.

Councilor Hansel noted the number of letters and phone calls he has received on this issue that echo some of the same sentiments heard here this evening. Councilor Hansel noted he supports the economic activity at the airport; he was hoping to hear more validation of the economic benefits. Not getting the validation he was looking for Councilor Hansel stated he would be voting against this request.

Councilor Chadbourne indicated she was in favor of the request as it supports the airport and local small businesses. She continued it is good public relations; she feels five days is reasonable and they have tried to work with their neighbors. Councilor Chadbourne feels this is a reasonable request and will be supporting it.

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

Councilor Sutherland made the following motion which was seconded by Councilor Chadbourne.

On a vote of 4-1, the Planning, Licenses and Development Committee recommends that that the City Council authorize the use of the Dillant-Hopkins Airport by Chapter 35 of the International Aerobatic Club from the date of issuance through December 31, 2016, subject to the execution of a Revocable License and Indemnification Agreement, the receipt of an insurance certificate in the amount of at least \$1 million dollars naming the City as an additional insured and all other requirements of City staff including but not limited to the following restrictions: compliance with any requirements of the FAA, limit

practice sessions to not more than 5 for the year, there will be no Sunday practice sessions, aerobic activity shall not occur below 1,500 MSL, limit aerobic activity to the southern portion of the aerobic box established by the FAA, restrict use of the aerobics box until after 10:00 AM, and invite neighbors to the mandatory safety briefings held on practice days. Councilor Hansel voted in opposition.

Chair Richards noted deliberations would continue at the next full Council meeting. The public is welcome to attend but is not allowed to speak.

The City Manager clarified the Airport Manager was hired after the Airport Director retired in December 2015. The role of the Airport Manager has a very different role and mission.

4) COMMUNICATION: Sarah Wilton, Skye Stephenson & Councilor Clark - Requesting the City Council take a Position on the Kinder Morgan Pipeline

Sarah Wilton, 127 School Street addressed her request noting her concerns first that the Council acknowledge its constituents who have written countless letters appearing in the Sentinel especially those that oppose the New England Direct (NED) pipeline. Secondly, Ms. Wilton would like the Council to acknowledge the community, neighbors, and cities that are opposing this pipeline that are in our region. Ms. Wilton named the communities opposing the pipeline. Ms. Wilton said the Council has a choice of looking to the future or remaining in the past. She noted the earlier discussion regarding plastic bags adding there was agreement on the importance of Keene's environmental vision. Rejecting the pipeline is consistent with promoting our environmental ethics promoted by Antioch University, our green businesses, and renewable energy; as well as Project 2020. Referring to a Sentinel article yesterday, Ms. Wilton suggested the pipeline breaks the environment in many ways; 1) the extraction process releases methane emissions, 2) laying the pipe destroys wildlife habitats, and 3) the pipe leakages break the environment (one pipeline leak every 30 hours from 1986 and 2014). After additional comments Ms. Wilton stated that corporations like Kinder Morgan have more power than our collective communities and states; she continued entering into any agreement with fossil fuel corporations such as Kinder Morgan puts our families and communities at a disadvantage, and a very unequal power relationship. Ms. Wilton noted the many citations Kinder Morgan has received.

Councilor Jones asked if we did this what organizations would we be petitioning. Ms. Wilton said there are two things; 1) you would support Keene going on record as filing for intervenors status with Federal Emergency Regulatory Commission (FERC), second Keene would be joining the coalition of other communities opposing the pipeline. Councilor Jones clarified the deadline for claiming intervenors status has passed; he asked if other communities filed before the deadline. Ms. Wilton agreed they had and noted FERC is allowing some flexibility in this matter.

Councilor Sutherland reported he did some research on this by going to the FERC website to understand what it took to be an intervenor. Councilor Sutherland shared his findings. He asked if the City was being asked to comment or intervene in a court proceeding. Councilor

Sutherland did look up Docket CP 16-21 owner Tennessee Gas Pipeline, LLC with the project name Northeast Energy Direct. He noted there are three opportunities for public input within the process. Continuing on Councilor Sutherland stated our interests here are for other communities and we're being asked to comment on something that has to do with air and water which has federal implications; Councilor Sutherland continued his comments wanting clarity on what was being asked. Ms. Wilton clarified she is asking Keene to file for intervenors status on behalf of all 25,000 residents of Keene. Councilor Sutherland asked if this was an invitation for Kinder Morgan to come here and tell us what they're offering. He noted he would like to have full knowledge of what's going on. Councilor Sutherland continued his comments noting he is unsure whether this request should go to local legislators, directly to FERC (from Ms. Wilton), or to the EPA. Ms. Wilton reiterated her thought that it should go to the City Council because she wants the City to be on record either opposing or supporting the pipeline as are other cities in our region.

Councilor Clark addressed Councilor Sutherland's question of what standing the City of Keene has on this issue noting the standing is very important and hasn't really been discussed. Councilor Clark reported that Kinder Morgan is asking electrical rate payers to pay for this project; every person in Keene who receives an electric bill will be affected by this so that is where our standing is. He continued it is real economic sense to what we're asking of you. Councilor Sutherland agreed that is concerning, noting he doesn't think the City of Keene has any authority over utility rates; he thinks this is something that would go to the Public Utilities Commission (PUC) or the Consumer Protection office at the state level.

Chair Richards clarified the request is for us to write a letter opposing the pipeline along with other communities.

There being no additional Committee comments/questions Chair Richards asked for public comments.

Patricia Martin, of 17 Power Road, Rindge addressed Councilor Sutherland's question commenting yes, you should be concerned for all rate payers in Keene and the State of New Hampshire that they will be paying for this pipeline. Yes, the PUC is going to make a decision and so is FERC. Currently we have 3 to 4 billion cubic feet of natural gas coming into all of New England; we use about 1 billion cubic feet per day to generate our electricity for all of New England (50% of our electricity). The proposals coming before us would increase the natural gas supply coming into New England by almost 70%. Since 2013 our wholesale electric costs have dropped almost 60% and yet we have seen no reduction in our retail electricity rates. Ms. Martin introduced Representative James McConnell to address the export scheme that is behind this proposal. Ms. Martin continued her comments noting the Cheshire County Commissioners did file for intervenors status.

Representative James W. McConnell, of 17 Suburban Acres, Swanzey outlined the Kinder Morgan proposed pipeline route starting in the fracking fields of Pennsylvania out to the Maritimes. This is an export pipeline with Kinder Morgan running around New England looking for opportunities to pretend they have demand up here. So far all they have been

able to do is sign a couple of agreements with Liberty. The reason Keene and every other rate payer on the grid has a problem with this is because the Governors met two years ago and determined they needed more gas capacity here in New England, and would be happy to pay for it on the backs of New England electric rate payers. They are proposing a tariff and in addition the idea that electric generating companies could contract for capacity on the pipeline which they may or may not use. This would mean Kinder Morgan would be able to build the pipeline on the backs of the rate payers whether or not the demand was here. This is public funds paying for a private company's pipeline. Representative McConnell's content and desire with the Bills that have been filed along with arguments to the PUC are that if Kinder Morgan is required to pay for this pipeline based on economic demand they will run into real trouble. Beginning in December 2015 Kinder Morgan's outlook was downgraded from stable; there was a 30% drop in their stock price in 10 days. The downgrade applied to 44 billion dollars of pipeline debt; adding another 5.2 billion for this project that has no real demand might be more than they can handle. Kinder Morgan's expectation has been that they would have overseas demand; last February 9th the Industrial Energy Consumers of America (IECA) filed with the Department of Energy to block the export permits which they knew were the basis under which this pipeline was being proposed. Happily, the price overseas has dropped quite a bit since then; but the IECA were afraid given the export scale they were talking about the price of natural gas would go up. That matters to us as well because 50% or thereabouts of our electricity is generated by natural gas. That increase would be felt here in the New England grid. Recently, Repsol the owner of one of the major facilities up in New Brunswick has indicated they will no longer be going through with their 2 to 4 billion dollar conversion to allow for the export of gas through the terminals up there. This is because the price of natural gas overseas has dropped so dramatically. Our fear is if Kinder Morgan is allowed to get us to buy this pipeline for them it will be a gigantic case of overkill with no advantage to New Hampshire or the rest of the New England grid. It will also do tremendous damage to the 17 towns in southern New Hampshire that it will go through. Representative McConnell addressed the growth of the pipeline industry as it came out of World War II. He noted the FERC requirement for scoping sessions; many letters were sent to FERC suggesting these sessions couldn't be held because much of the information provided by Kinder Morgan along these routes was TBD's. Ten days after the scoping sessions began Kinder Morgan dropped a 6,500 page change to what they had submitted on the towns. Representative McConnell proposed a Bill that would prohibit the PUC from allowing Kinder Morgan to charge rate payers. We should see a report out on this late in the summer. Representative McConnell noted another Bill requiring the PUC to consider any number of things such as the public good; which thus far they have not proceeded to do. Representative McConnell suggested the Governor has been less than helpful as she is in support of this pipeline. He noted Kinder Morgan is very aggressive; they have a number of lobbyists, one was a former PUC Chairman, and another one was a PUC Commissioner. Continuing his comments Representative McConnell suggests the TV commercials suggesting lower electric prices are nonsense.

Acknowledging the end of Representative McConnell's presentation Chair Richards thanked him and noted he got a lot of information about things he didn't know. Chair Richards asked for questions/comments from Committee members.

Councilor Hansel asked Representative McConnell if eminent domain is a factor in this. Representative McConnell replied in the affirmative. They have the right to exercise eminent domain once they get their Certificate of Convenience from FERC. Representative McConnell noted a Bill that would require them to take the entire parcel once they take the piece they want. Chair Richards asked for clarification that the company Kinder Morgan was authorized to exercise eminent domain. Representative McConnell verified Kinder Morgan is authorized to exercise eminent domain; permission is granted by FERC. Councilor Hansel asked if eminent domain issues would come up on extensions off this pipeline; potentially one going to Keene. Representative McConnell replied in the affirmative; if they had laterals the same condition would apply. Councilor Hansel commented that would potentially affect Keene residents' properties down the line. Representative McConnell concurred.

Councilor Jones asked why we aren't petitioning the PUC. Representative McConnell indicated that is who you should be petitioning. FERC will be making a number of decisions and may provide additional periods to become an intervenor. Right now the PUC wants to hear from anyone opposing the project. Those of us opposed to this project would love to have the City of Keene express reservations about this project.

Patricia Martin, of 17 Power Road, Rindge reported on an additional connection noting Liberty Utilities is owned by Algonquin; Liberty Utilities is the only entity contracting on the pipeline right now. Liberty Utilities bought the gas company here in Keene. We have learned their parent company has a 10% stake in the NED pipeline, and Eversource has a 40% stake in the Algonquin project. She noted the power generators have not signed up for any of this gas. Ms. Martin continued the price of natural gas the other day was \$1.70/per dekatherm, and if we had the capacity contracts the utilities would be asking the power generators to pay the \$1.70 plus \$1.50 for the reservation capacity per dekatherm. This sounds like a very bad deal that the rate payers will be stuck with.

Jerry Silverman, of 67 East Lake Road, Fitzwilliam displayed photos of pipeline construction. Addressing why Keene should be a part of this Mr. Silverman reported on the Coalition formed last year. He noted the Town of Fitzwilliam joined in May and holds meetings every two weeks. Mr. Silverman contends this is a regional impact, not a state impact; it is really a Northeast impact as it goes from Pennsylvania to the coast and beyond. The pipeline is a real threat to the environment and our water quality. Mr. Silverman made note of the outdated technology utilized. Mr. Silverman concluded by saying Keene is not an island, you are our hub, and we need your support.

Councilor Carl Jacobs commented he did learn many things tonight; he added there are environmental and economic concerns if this project moves forward. He reported he has been attending the Regional Issues series put on through the Chamber of Commerce and has been involved in some regional efforts surrounding the arts. Councilor Jacobs commented sometimes Keene acts like a 500 pound gorilla; here are our neighbors that have identified a real problem, just because we don't see it in our backyard we don't seem to want to care about our neighbors. Councilor Jacobs continued he thinks he has been convinced tonight that the problem is actually in his backyard. He commented here are our neighbors asking us

for help; noting he thinks we should give that consideration and he hopes we take some action. Chair Richards thanked Councilor Jacobs for his comments noting we don't usually think that way; he added they really opened his eyes.

Patty Stevenson, of 14 Barrett Avenue thanked those present for bringing their expertise in this issue forward. She shared her knowledge of the struggle in Massachusetts to prevent the pipeline from going through many towns. Ms. Stevenson noted the original pipeline route had nothing to do with New Hampshire; she also noted the potential danger to our water system the pipeline could cause.

Seth Reece, of the Richmond Planning Board noted the research he has done on this issue since being advised the pipeline wanted to come through this region. He reiterated earlier comments regarding Liberty Utilities and New Hampshire Gas. Mr. Reece reported Keene would have the ability to receive clean natural gas at the expense of the 18 towns the pipeline will cross. Mr. Reece reported Kinder Morgan currently uses 30 inch diameter pipe with the gas running at about 1,500 PSI; he noted the devastation that could be caused by leaks and the resulting explosions. Noting that Keene residents might save a few cents on gas Mr. Reece asked they take into consideration the risk this puts on your southern New Hampshire neighbors. When the blasting begins for this pipeline they will be crossing three major stratified drift aquifers; if the blasting cracks these aquifers they will go way underground and become inaccessible to the well fed southern residents. Mr. Reece commented he would love to see Keene go to bat and support its neighbors.

Stephanie Scherr, of Fitzwilliam thanked the Committee for hearing those present and invited Keene to join them as their big sister town. She made note of the possible compressor stations in New Ipswich, Northfield, Mass, and Winchester. Ms. Scherr continued her comments noting we are talking about the Connecticut Valley region. Ms. Scherr encouraged Keene to support these efforts.

Susan Durling, of Winchester noted her health concerns with this pipeline. Ms. Durling asked how she can get all her files to the Committee. Noting our email is very limited Chair Richards agreed a link to her documents would be acceptable. Ms. Durling indicated she would also forward a NHDES report on stratified drift aquifers; she displayed a photo depicting the aquifers and the pipeline and suggested Keene's water would be affected.

Susan Silverman, of 67 East Lake Road, Fitzwilliam referred to a Sentinel article noting regional Fire Chiefs have met to discuss the health and safety of this project. She mentioned the recent gas leak in Keene that was very scary; she added we are talking about the potential for something much worse. Ms. Silverman reported Rhododendron State Park is part of the route for the pipeline; she note this is a regional asset. Ms. Silverman is also looking for support from Keene in this endeavor.

Noting the late hour Chair Richards asked for Committee members thoughts.

Councilor Hansel commented he is moved by our neighbors coming and addressing their concerns. His own private research yielded a similar opinion. He comes to the place of

where is Keene's input going to be most effective; he feels if Kinder Morgan is going to have New Hampshire rate payers pay for this pipeline where they will be exporting the majority of the gas they are basically asking every rate payer in New Hampshire to speculate on international gas prices. Councilor Hansel's suggested course of action is for the City of Keene to send a letter to the PUC letting them know that Granite Stators pay some of the highest rates in the country and we should not have to suffer bill increases so that energy companies can take their land by eminent domain. We need to get the point across that this seems like a lose-lose situation for the residents of the Monadnock Region.

Agreeing with Councilor Hansel's comments, Councilor Jones asked the City Attorney if the response should be by resolution rather than letter. The City Attorney commented the Council has taken a number of different approaches to these types of things, and it depends on what approach the Committee and Council would like to take. Councilor Jones indicated he would like to see this done by resolution; he added it would be important for us to see a draft of the resolution before going on and approving it. Chair Richards explained the resolution process.

Councilor Sutherland noted he appreciated the educational commentary provided this evening; he added there is still information he doesn't know. He is most concerned that anything this City Council does is effective; he is not interested in just the letter but where it goes and what impact it will have. Councilor Sutherland suggested there may be multiple letters. Discussion continued with Councilor Hansel replying to Chair Richards the PUC is reviewing information right now. Chair Richards also wanted additional information on FERC's intervenor's status. Representative McConnell replied intervenor's status gives one the ability to comment and take/be party to a legal action. Representative McConnell recommended Keene send FERC a letter as the opportunity for intervenors status is closed; our focus at the moment is with the PUC. Susan Silverman, of Fitzwilliam indicated she would be happy to forward a copy of the letter sent to the SCC from the town of Fitzwilliam. Chair Richards agree this would be helpful. Ms. Silverman indicated Keene could still intervene at FERC; she agreed with Representative McConnell's comments you could intervene just to have a say and to be informed. She indicated the FERC process would be going on at least until the end of this year when they finish the final environmental impact statement. Ms. Silverman suggested the state level is a place where you can really make a difference.

Noting the hour Chair Richards suggested the focus should be on exactly who we're sending it to and why; have all the information provided to the City Attorney to start crafting the letter. The City Attorney explained this is a five week month; he assumed the Chair is talking about having this go to Council on April 7th for instructions to move forward with this process. If that is the case the next PLD Committee meeting would be on April 13th. Chair Richards clarified he was thinking it would first come back to this Committee.

Councilor Jones recommended a resolution addressed to the PUC noting that's the part that affects Keene residents the most. This shows our sister communities we're on their side; we can also send a copy to FERC showing our opposition. He recommended keeping it very simple; Councilor Hansel agreed noting the key issue is against having New Hampshire rate

payers paying for this construction. Councilor Hansel suggested this is what would be most effective and is the key to what links the pipeline to Keene residents and our constituents. Attorney Mullins asked if you're going to ask the full City Council to approve that or are you asking staff, after the Council meeting of April 7th to come back with a resolution that you will consider and then send on to the Council. Discussion continued with Attorney Mullins noting the question before the Committee is should the City Council take a position with respect to the Kinder Morgan pipeline through the PUC by drafting a resolution, and a letter, to the PUC. Chair Richards agreed the right answer is to go to the full Council first. The City Manager suggested the shorter version of this would be to make a motion tonight to request the City Attorney and staff draft a resolution to go back through the Council process.

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

Councilor Hansel made the following motion which was seconded by Chair Richards.

On a vote of 5-0, the Planning, Licenses and Development Committee recommends that City staff be directed to come back to City Council with a draft resolution identifying the concerns we have for the NED pipeline affecting Keene residents.

The City Manager said he thinks the verbiage is fine beyond the Planning, Licenses and Development Committee recommends that the City Council. Chair Richards agreed.

Toby Tousley, of 499 Washington Street asked if he was only allowed to discuss the motion on the floor. Chair Richards replied in the negative. Mr. Tousley discussed alternative energy sources and electricity production in this region. He suggested listening to the other side and that natural gas is a good alternative to get us to the next 30 years. Members of the public provided additional comments in response to Mr. Tousley's comments. Chair Richards halted additional comments at this time, again noting the hour, and advised that this issue would go before City Council in two weeks and be back before this Committee in three weeks.

5) REPORT: Heritage Commission- Demolition Review Ordinance

In response to Chair Richards, Councilor Clark noted he would like this issue to be reported out with no action taken. He noted the Heritage Commission's recommendation to City Council that no changes be made to this Ordinance.

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

Councilor Jones made the following motion which was seconded by Chair Richards.

On a vote of 5-0, the Planning, Licenses and Development Committee moves to place the Demolition Review Ordinance on "more time".

6) MEMORANDUM: City Manager - Permission to Negotiate

In response to Chair Richards, the City Manager indicated he would let his memo speak for itself.

Chair Richards asked for questions/comments from Committee members.

Councilor Hansel referred to the Memorandum and asked is there really a necessity to execute on any of these things. Councilor Hansel noted he feels uncomfortable not having any kind of Council input on these things. The City Manager noted the Council can do as it wishes, noting the Council gave authority to negotiate for example the restaurant lease at the airport yesterday; you may want to separate out the leasing from the land sales which is fine adding he wants to contain the process as much as he can.

Councilor Chadbourne also noted she had questions; adding if the Chair feels we don't have the time now she is not comfortable voting without further discussion. Councilor Jones also indicated he would rather see this on more time if there is nothing time sensitive.

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

Councilor Sutherland made the following motion which was seconded by Councilor Chadbourne.

On a vote of 5-0, the Planning, Licenses and Development Committee moves to place this issue on "more time".

There being no further business Chair Richards adjourned the meeting at 10:38 PM.

Respectfully submitted by,
Mary Lou Sheats Hall
March 28, 2016