

CITY OF KEENE
PLANNING, LICENSES, AND DEVELOPMENT COMMITTEE
MEETING MINUTES

Wednesday, March 11, 2015

7:00 PM

Council Chambers

Members Present:

David Richards, Chair
David R. Meader, Vice-Chair
Carl B. Jacobs
Emily P. Hague
Bettina Chadbourne

Staff Present:

Tom Mullins, City Attorney
Medard Kopczynski, Asst. City Mgr.
Rhett Lamb, Planning Director
John Rogers, Code Enforcement Manager
Patty Little, City Clerk
Kenneth Meola, Police Chief
Karen Purinton, Planner
Meghan Spaulding, Recreation Planner
Mark Howard, Fire Chief

Mayor Kendall Lane

Members Not Present:

Others:

Councilors Present:

Terry Clark
Philip Jones
Jan Manwaring
James Duffy
Sheryl Redfern
Robert O'Connor
Thomas Powers

Chair Richards called the meeting to order at 7:00 PM welcoming the viewers of Cheshire TV, Channel 10.

1. COMMUNICATION: - Virginia Carter/Walpole Mountain View Winery - Request to Sell Alcohol at the Farmer's Market

The City Clerk reported the applicant had sent her regrets as she was in North Carolina and unable to attend. She had requested that the City Clerk represent the issue for her. The City Clerk noted this is an annual request, and is a requirement of the State Liquor Commission whenever alcohol is sold at a

Farmer's Market. At some point in the future, the Farmer's Market will also be coming before this Committee for its annual request to use City property. In response to Chair Richards, the City Clerk reported the applicant has met all the requirements and there are no changes from previous years.

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

Councilor Jacobs made the following motion, which was seconded by Councilor Meader.

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 2015 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.

2. MEMORANDUM: Cities for Climate Protection - House Bill 208: Repealing the NH Regional Greenhouse Gas Initiative Program

City Planner, Karen Purinton addressed the request from the Cities for Climate Protection. At its meeting of February 4, 2015, the Cities for Climate Protection Committee voted unanimously to "submit a request to City Council that they comment against New Hampshire House Bill 208." Ms. Purinton continued the State of NH has participated in a program called the Regional Greenhouse Gas Initiative (RGGI) since 2005 that sets allowable regional and state carbon dioxide emission levels for the 9 participating states (CT, DE, ME, MA, NH, NY, RI, VT, MD, and RI.) In 2015, all RGGI states will be required to reduce their emissions by 2.5%, which for NH translates to eliminating approximately 200,000 tons of carbon dioxide. 2015 is the first year that emission reduction measures must be implemented. House Bill 208 would repeal NH's participation in the Regional Greenhouse Gas Initiative.

The Cities for Climate Protection Committee strongly urges City Council to take a position against this bill. HB 208 is a step in the wrong direction in meeting the goals of Keene's Master Plan and the NH Climate Action Plan, which call for an 80% reduction in 1990 greenhouse gas emissions by 2050. The passage of the legislation will cost the State over \$110 million in revenue by 2020 and it would mean the loss of \$14.8 million in energy rebates for NH electricity customers in 2015 alone. Mr. Purinton noted 80% of proceeds from RGGI auctions for carbon allowances are used to lower residential and commercial utility bills. It would also mean that \$3.5 million for 2015 municipal energy efficiency programs would be lost. NH electric consumers pay for RGGI allowances whether or not NH participates in the initiative, so there is no benefit for electric customers for the repeal.

Ms. Purinton continued the issue of increasing carbon emissions threatens the health of our communities and citizens, both in the Monadnock region and globally. These regulations are necessary to mitigate the effect historically high greenhouse gas emissions will have on our changing climate. Equally important is a regional perspective, as many of the air quality issues in New Hampshire stem from emissions generated in other regions of the country like the Midwest. For all of these reasons, the Cities for Climate

Protection Committee urges City Council to comment against HB 208 and to keep NH involved as an active member in the RGGI Initiative.

Ms. Purinton reported a bill similar to this was recently approved by the House and is now in the Senate Committee. Instead of repealing the legislation, the intent would be to redirect the funds of who gets the rebate from the RGGI program. Ms. Purinton indicated she hasn't had time to research this enough to form a position, and the Committee hasn't met to review the changes that have been made. She is unsure how the City Attorney would like to proceed, but recommends tabling this issue to allow the Committee a chance to review the changes.

Chair Richards addressed the City Attorney who recommended putting this on "more time" for at least a cycle to allow the Cities for Climate Protection Committee the time to understand the changes.

Councilor Hague noted this issue came before the City Council last year at this time. Her belief is the Committee voted to oppose any legislation that would repeal RGGI because Keene is such a leader in climate change adaptation, and in reducing greenhouse gas emissions. Councilor Hague noted it would be in keeping with their past preferences to oppose the repeal.

The City Attorney suggested if the Committee is in support of going forward with the RGGI program the other alternative is just to authorize the Committee to go forward their own assessment of the RGGI legislation without the letter. The City Manager agreed with the City Attorney, noting as the legislative process moves along there may not be enough time to come and go back through a cycle with the City Council. The City Manager continued we could allow Ms. Purinton to monitor this and keep us apprised; if in her best judgement she needs to testify or ask someone from the City Council or the Mayor's office to testify she would have the permission to do so if needed. Chair Richards indicated he didn't have a problem with this, but was concerned about how to word the motion for this.

Mayor Lane commented that between now and next Thursday Ms. Purinton will have the opportunity to determine what the amendments to the legislation are. He continued she could do a Memo to the City Council next Thursday night so the City Council can either act to approve or disapprove the letter if it is unnecessary. Mayor Lane noted his recommendation that this Committee's recommendation to City Council is that they want the RGGI program to remain the way it is currently. Chair Richards agreed. Mayor Lane noted adjustments could be made at the City Council meeting next Thursday rather than waiting three weeks to go through another cycle. Chair Richards also agreed with this.

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

Councilor Hague made the following motion, which was seconded by Councilor Meader.

On a vote of 5-0, the Planning, Licenses and Development Committee recommends that the Mayor or his designee be authorized to sign and send a letter on behalf of City Council to Keene's Delegation requesting they take a position supporting the New Hampshire Regional Greenhouse Gas Initiative program.

3. COMMUNICATION: Ruth Sterling/Let it Shine - Request to Use City Property - Pumpkin Festival

Chair Richards stated the petitioner is unable to have any representation at the meeting. He continued he would like to open the floor to public comments after hearing staff and any Committee comments, as this was fully noticed and there is a large turnout. Chair Richards asked the City Manager for the City's recommendations and reasons.

The City Manager noted he has had conversations with both the Police Chief and the Fire Chief relative to this matter. He continued their concern is the safety and welfare of the community. They are also concerned with what they see an aggressiveness by the leadership of Let it Shine, that at times, calls into question the cooperation that is necessary for an event of this kind. Noting the Chiefs can speak for themselves, the City Manager continued he believes staff would be reluctant to recommend this event take place in the same fashion that it has because of their concerns for public safety and the welfare of the community as a result of past actions and concerns. The Manager continued that staff recognizes this is a decision of City Council and they will do whatever the City Council directs them to do. He added, the community would be in jeopardy if the event were to go forward in the same fashion that it has in the past.

Chair Richards noted he would like to open it up to the Committee for any questions, and then open it up to the public.

Councilor Chadbourne said she would like to hear from both the Chief of Police and the Chief of the Fire Department.

Chief Meola, of the Keene Police Department noted discussions have been taking place internally relative to concerns regarding this event moving forward; especially with what they saw this past fall. He continued it certainly taxes the City's resources, and now it appears the resources throughout the State; which causes him concern. Chief Meola mentioned recent FOP Committee discussions relative to this event moving forward; and the question was raised as to how they could separate the costs for inside the footprint from the costs outside the footprint. Chief Meola pointed out the difficulties in separating the two activities. Chief Meola also noted the need for personnel to be fluid and able to fill-in gaps inside or outside the footprint. Chief Meola acknowledged there have been talks about coming up with a safety and security plan; adding it is very difficult to do on such short notice like this. He continued this is a plan that would take months and months, along with involving many Law Enforcement partners throughout the State. There were over 50 Law Enforcement personnel at the last internal debriefing. Chief Meola said he has some concerns moving forward as this event has now gained international notice. Chief Meola commented that without unlimited money and resources, he would be concerned about developing a plan for what they saw last year. Chief Meola continued he is really concerned about outside elements seeking a national stage to prove their point or get their item heard. After additional comments regarding taxing local and State resources, Chief Meola indicated it is his opinion they need a break; perhaps the event could come back at a different time and fashion.

Councilor Chadbourne made reference to Chief Meola's retirement and asked him how hard this event would be for a new Chief. Chief Meola pointed out the Police Department has excellent staff, succession

plans have been developed, and there is a City wide team to work on this event. The City Manager noted Councilor Chadbourne raised an excellent point, he also agreed with Chief Meola; adding regardless of who is hired it will still be a challenge.

Referring to Chief Meola's comments regarding a "short notice", Councilor Hague asked if he was saying there isn't enough time to develop the plan even though they are six months out. Chief Meola said he honestly thinks there is time to develop a plan; his reference to "short notice" referred to any expectation that a plan could be developed before the license request was considered. He continued if Council were to move forward with this, staff would certainly start working on the protocol.

Councilor Jacobs commented he has had the privilege of sitting in on the protocol meetings and he was continually impressed by the quality and professionalism of the people in those meetings. He was also impressed by the enormity of the task. Continuing, Councilor Jacobs said to get into this thing without a clear plan is really dangerous. Thinking staff can pull it together in a month or two is more dangerous; clearly they are stretched to the limits in not only the local resources, but also the regions resources. After additional comments, Councilor Jacobs indicated he was not comfortable moving forward with this event; and added that he believes the neighborhoods have suffered enough with this event. Councilor Jacobs noted the event has gotten bigger every year, and it is now something they can't control.

Chair Richards asked Chief Meola what costs were not anticipated this year. Chief Meola said they always plan these things based on the previous year. They try to do a thorough analysis of what they might see and then plan to deal with those things. Chief Meola said he thought this year they had a good plan for maximum personnel coming in to deal with issues that historically they see happening in the late afternoon hours. This year they saw things spin up on Friday afternoon, which they were not prepared for and things continued to pick-up during the day and into the evening. The chief continued they didn't have the personnel to deal with the issues that began at 12 o'clock because they've never seen it before. Chief Meola noted personnel were called in four hours early; he also added this was an 8 to 9 hour riot which they weren't prepared for. These were costs they never planned for; and had they been billed the cost would have been considerable. Now in planning they have to include those things and they will have to pay those additional personnel costs; estimated at approximately \$130,000 which could go higher. Chair Richards pointed out that near that amount was spent this time, just for police. Chair Richards noted the fantastic job Emergency Services did, adding his point was the City did end up with a \$140,000 bill. In order to preplan for this event including the State Troopers and a helicopter they are really talking more like \$200,000 to \$250,000. The City Manager agreed it could easily go \$200,000 or higher, with \$200,000 not being out of the question for planning purposes. The City Manager also cautioned having a plan doesn't mean bad things can't happen, it just means you're trying to anticipate those bad things and be prepared. Standing on the line with the Police Chief, the City Manager said he saw the incredible anger and emotions; he also saw how tired the police were after hours and hours on the line while they were waiting for reinforcements. He can only surmise how bad it could have been had those reinforcements not arrived. The City Manager noted he loves the event for the City, but he is very concerned about the safety of the community.

Chair Richards asked Chief Howard, of the Keene Fire Department, what was unanticipated last time that the Department will have to anticipate this time.

Chief Howard said he would first echo the earlier comments of the City Manager and the Police Chief. Chief Howard explained his history with the event and stated they have always considered the Pumpkin Festival a public safety issue even when it was a much smaller event. The concerns over what they saw on that night last October, and what they dealt with that afternoon and that evening and into the early hours of the morning was nothing that they had experienced during his tenure with the Fire Department. Chief Howard commented the strain on their resources was pointed out earlier. He continued at the height of the incident the Keene Fire Department had requested 160 personnel through the Mutual Aid System (45 were from Keene). This not only put a strain on the City, it put a strain on the Mutual Aid System, which consists of 78 towns. Chief Howard relayed the experience of waiting at the Command Center for 45 minutes taking reports of burns and injuries in some of those large gatherings. Chief Howard explained once they declare it is a large gathering they do not enter; until they have permission from the Police Department and/or an escort. Chief Howard also pointed out this was the first time they stood and waited to put a fire out; as this was a Command decision. Chief Howard referred to the security environment of today and the involvement of State and Federal agencies in the planning of this event. Addressing the strain on resources, Chief Howard noted he is not only concerned about the impact on the City, but also the impact it has on the neighboring communities.

Councilor Hague referred to the mention of there being 78 towns in the Mutual Aid System, and asked Chief Howard to remind her how many of those towns responded and if there were any repercussions to those towns due to the drawdown of their resources. Chief Howard replied he was not familiar with any specific impact they had, but suggested there were perhaps 25 Fire and EMS agencies responding. He will provide the actual number for Councilor Hague.

Councilor Duffy commented he understands hypothetically if there were unlimited resources the main goal of your plan is to protect the footprint of the Pumpkin Festival, and be able to respond effectively and safely anywhere in the City. Councilor Duffy asked if part of the plan has ever been to address and diminish the magnitude of the behavior and the situations that occurred off the footprint this past October even with unlimited resources. Chief Meola suggested Councilor Duffy was speaking to an issue that they have worked on for as long as the Pumpkin Festival has been going on. From the very 1st year, they saw behaviors that could potentially impact the footprint and the overall intent of the planning was to mitigate those behaviors. That has included working with the college, their staff, going door to door weeks before the Pumpkin Fest with college staff and Code Enforcement, landlords, and Fire Marshalls. This year they took a much sterner approach by developing a team that went out the day of the Pumpkin Fest to try and quell these issues before they became problems. Chief Meola noted what has been seen in past years and what was witnessed this past year; adding that social media allowed the groups to grow so quickly. This past year was their most aggressive attempt at trying to mitigate a lot of those issues.

Councilor Duffy reiterated his comments regarding unlimited resources and asked what could actually have been done to dissipate what was going on outside the footprint that has been well documented, or was it a matter of trying to stop it before it happens. Chief Meola suggested it is a combination of both messaging, and the post event actions that occurred. Over 500 man-hours went into the post event investigations. Keene State College ran 180 people through their official Conduct Board. Chief Meola said there has been some major work done and he hopes that would have an impact moving forward. Even with unlimited resources Chief Meola indicated he is uncertain he could staff a plan if he developed one.

Chair Richards asked for public comments.

The City Manager commented that by the way Chair Richards opened the meeting it appeared as if he will give Let it Shine their opportunity at some point in the future. He indicated the two Chiefs have given a good representation of what they saw and their concerns. Chair Richards agreed noting after discussions with leadership it was his thought they would put this on “more time” for two weeks to allow Let it Shine an opportunity to address their letter. Seeing there was a crowd, Chair Richards commented he wanted to give the public the opportunity to speak.

Councilor Filiault asked why this Committee would even think about putting this issue on “more time” for a petitioner that did not show. Councilor Filiault suggested putting this on “more time” makes no sense.

Councilor Powers asked why we would subject the staff to another two weeks of this nonsense; adding the staff has worked very hard, this has gone through the process with the applicant notified and the applicant not being here. Councilor Powers’ second question was why we would continue to work with a program when from all information they have received from the taxpayers this event has just gotten to big, and stretched the resources of this community.

Charles Redfern, of 9 Colby Street noted his history as a City Councilor, and his support of the event for many years. He pointed out changes in the event over the past few years, and relayed an experience where a pumpkin came flying through a senior citizen’s window. Mr. Redfern pointed out there shouldn’t be a place in this community where you have to feel unsafe in your own home. Mr. Redfern asked the Committee to consider this as they respond to this request to use City property. Mr. Redfern asked the Committee to remember a comment made by a State Police Officer at the Pumpkin Festival which was “we’re very lucky somebody didn’t die here today.”

The City Clerk advised that she had received an email communication from Ruth Sterling indicating that a representative would not be present for the meeting. The City Clerk commented that according to the email, Ms. Sterling was waiting for confirmation from the City Clerk’s office that this item was on the Committee agenda, and then she would firm up representation from the Board. The City Clerk noted that Ms. Sterling believes she did not receive that confirmation from the City Clerk’s office. The City Clerk outlined the protocol followed by her office; adding in this instance Ruth Sterling received a mailed letter which was delivered to her home. The City Clerk gathers that Ms. Sterling did not open the letter. At the last moment, Mr. Alex Bates who was supposed to represent Let it Shine for Ms. Sterling, advised that he had conflicting work engagements and could not attend. The City Clerk continued it has always been the practice of this Council that they respect the fact that a petitioner is absent for whatever reason, and that the Committee would typically give them more time to be present.

Councilor Clark thanked the City Clerk for the explanation. Councilor Clark suggested everyone has finally seen the facts that have been building up over the past several years; adding this festival has contracted “a virus.” After additional comments Councilor Clark said putting it on “more time” would not do any good.

Councilor Jacobs pointed out the first petitioner wasn't here this evening and the Committee acted on it. He noted the reasons why "more time" is usually asked for; adding what he is hearing tonight from the City Manager and both Chiefs is that the community should take a pause from this event completely. Councilor Jacobs continued he doesn't think this fact will change because they come back in two weeks. Councilor Jacobs noted he would be inclined to say the City Council not issue this license.

Dave Curran, of 16 Prescott Street agreed with Councilor Jacobs' comments pointing out applicants have been absent in the past and their requests have been approved. He then asked why can't you deny an application without the petitioner being present. Mr. Curran suggested this is backwards, he thinks all the details should have been vetted before a request was made to use City property. Chair Richards commented in the past they have had to do that because it takes so many months after the license is granted in order for them to put the plan into place.

Darryl Masterson, of 44 Willow Street pointed out he was able to attend the meeting even though he had other obligations that needed to be adjusted. Mr. Masterson added if the City Manager and the two Chiefs can't stand before you and say this is a go, then it would be irresponsible for this Committee to move forward with this request.

Jim Gardner, of 27 Birch Street addressed the topic of risk; adding he hopes that as City Councilors they feel it is part of their responsibility to do intelligent risk management with respect to pretty much everything they do. In order to do that risk management, you need to know something about the nature of risk. Mr. Gardner read from Dr. Len Fleischer's letter that was a written contribution to the Pumpkin Festival Community Forum. That letter referenced college as part of an "extended path of adolescence." Mr. Gardner also made reference to the City's Code of Ordinances, Section 46-92 Licenses, and suggested that Let it Shine's proposal is contrary to both the Ordinance and the spirit of the law.

Councilor O'Connor made reference to an instance on his Committee where an applicant missed an email; he then asked, what are the ramifications of Ms. Sterling saying she didn't receive this email? The City Attorney replied this comes up in a very different context than what you're referring to. The City Attorney noted he wouldn't make any suggestions on why or why not Let it Shine wasn't here. The City Attorney also commented the Committee is only making a recommendation at this point, and the full Council still has a right to act on it. The City Attorney continued as the City Clerk pointed out it has been the practice in the past for Council Committees if the petitioner isn't present to take that into consideration, but the Committee is not required to do that. It is expected that people who file petitions with the City will follow through on the process, and this is the process in front of you.

The City Manager noted he is very concerned about not offering equal time to the Let It Shine Board. He continued in weighing important decisions it always behooves the City Council to have all the information and to have heard from all the stakeholders. From that standpoint, it seems like the right thing to do; is to hear what others have to say. He noted the explanation provided by the City Clerk; adding whether we agree or not there was an explanation given for why someone could not be here at the last minute. The City Manager pointed out there are a number of ways to handle due process in a Committee hearing, and he asked the Committee to be very careful in that regard.

Charles Redfern, of 9 Colby Street noted he appreciates the City Manager's thoughtfulness regarding this matter. Mr. Redfern asked if the letter was signed by Ruth Sterling; Chair Richards replied in the affirmative. Mr. Redfern pointed out it was also Ruth Sterling at another Committee meeting that made the definitive statement that she will never, ever be in front of this Board again. Mr. Redfern suggested she has kept her word.

Darryl Masterson, of 44 Willow Street asked if Ruth Sterling or her representative is allowed to come before this Committee at a different date would that meeting be an open forum. Chair Richards confirmed public comments would be accepted if this item were to come back in two weeks. The City Attorney verified public comments would be accepted.

Karen Purinton, City Planner noted her understanding that every time when this event comes around it is worked into the Union Bargaining Contract that employees can't take leave on that weekend. Ms. Purinton continued it is her understanding that the weekend Ms. Sterling listed in her request was not the same weekend as in previous years. The City Manager noted he is aware of the issue Ms. Purinton is talking about, and if this event moves forward this issue will be part of the planning process.

Councilor Meader made a motion to deny this request based on comments from the City Manager and the two Chiefs. Councilor Jacobs seconded the motion.

Chair Richards noted he had hoped to put this on "more time" as a courtesy. He added this is a very controversial issue; nobody wins here. Continuing, Chair Richards said it's too bad it has gotten to this point; he doesn't blame the people running the event, and feels it has become a centerpiece for outside behavior. Although this is sad the City must be more concerned with people getting hurt, than they are with having an event. The deciding factor is the staff can't guarantee safety, no matter how much money they spend.

Councilor Hague noted she was hoping for some clarity regarding the \$300,000 mentioned in the letter. She commented the amount of public input has been unusual and very helpful. Councilor Hague pointed out the comments made regarding the demands on the City's resources and finances. Noting she came to this meeting ready to place this issue on "more time", Councilor Hague pointed out she won't be here in two weeks which is the deciding factor because her questions won't be answered. She is therefore inclined to follow the lead of her fellow Councilors. Chair Richards commented for clarity this is the annual request for the Pumpkin Festival; he also agreed with Councilor Hague comment that he too is unsure what the \$300,000 means.

The City Manager referred to the letter noting the first sentence seems to be the request for the license; even though it doesn't specifically say license. He read from the letter noting he believes this is the request for the license to manage and organize the Pumpkin Festival for 2015. The City Manager also noted without the petitioner being here he has no idea how they arrived at the \$300,000 number.

Councilor Jacobs clarified if the Committee passes this motion the full Council will still get to vote on it. Chair Richards agreed. Councilor Jacobs then asked if the Council agrees with this Committee's recommendation does that preclude Let it Shine from submitting another request. The City Manager

advised his understanding is you would not be able to entertain a motion again in this calendar year. The City Manager continued that's the other reason why it's tricky not to allow the other party to speak to you before you make a final decision. The City Attorney weighed in noting what the Rules of Order require is if the matter has been considered and acted upon it can't be brought before the Council in a calendar year unless it falls under one of three specific circumstances. The City Attorney continued they are 1) there was a motion for reconsideration that was tendered to the Council within 10 days of that last vote by a party on the prevailing side, 2) the Mayor has the authority under the City Charter to require reconsideration, and 3) unless there is a substantial change in the proposal as determined when the proposal comes in. In general it's true; once it's acted upon it doesn't come up again for another calendar year.

Councilor Chadbourne noted she was a big proponent of the Pumpkin Festival and pointed out all the things she liked about the festival in the past. She also commented it has metamorphosized into something else; we are very fortunate that somebody didn't get killed or seriously hurt. Councilor Chadbourne indicated she came to the meeting tonight ready to vote against this request; she added in all fairness they should provide Let It Shine an opportunity to speak.

On a vote of 5-0, the Planning, Licenses and Development Committee recommends to City Council that the Request to Use City Property for the 2015 Pumpkin Festival be denied.

There being no further business before the Committee, Chair Richards adjourned the meeting at 8:20 PM.

Respectfully submitted by,
Mary Lou Sheats-Hall, Minute Taker
March 14, 2015