

City of Keene  
New Hampshire

PLANNING, LICENSES AND DEVELOPMENT COMMITTEE  
MEETING MINUTES

Wednesday, April 25, 2018

7:00 PM

Council Chambers A

**Members Present:**

Philip M. Jones, Vice-Chair  
George S. Hansel  
Bart K. Sapeta  
Margaret M. Rice

**Members Not Present:**

David C. Richards, Chair

**Staff Present:**

Rebecca Landry, ACM/IT Director  
Rhett Lamb, ACM/Planning Director  
Kurt Blomquist, Public Works Director  
Don Lussier, City Engineer  
Elizabeth Dragon, City Manager  
Mark Howard, Keene Fire Chief

**Other Councilors Present**

Vice-Chair Jones called the meeting to order at 7:00 PM.

1. **Firstlight Fiber Request to Install Conduit in the Main Street Right-of-Way - Public Works Department**

Don Lussier, City Engineer addressed the Committee noting Firstlight has requested a license to install conduit and utility structures between Central Square and an existing telecommunication manhole near Railroad Plaza. In exchange for use of the public way, Firstlight has agreed to allow other broadband providers to use the proposed conduit in order to access their customers. Continuing, Mr. Lussier reported that the conditions and caveats included in the agreement are pretty standard. What makes a difference is Firstlight is not a regulated utility; hence they fall under different statutes. Mr. Lussier addressed the amendment to the motion noting the lawyers are still ironing out some of the conditions. The amendment would give the City Manager the ability to tweak the conditions, consistent with Council's intent, as the terms are finalized. Mr. Lussier addressed the three potential changes to the conditions:

- #8 – Mr. Lussier said rather than a reserved space we think it is preferable for them to provide us our own conduit; this serves our purpose in the future.
- #9 – The attorneys want to tweak some of the indemnification language.
- #11 – The requestor has expressed concern that 90 days may not be enough time. We will probably allow them more time to figure out how to get the service to their customer.

Vice-Chair Jones clarified the above is the intent of condition #12 to which Mr. Lussier agreed.

Edward Robinson, Construction Manager for Firstlight explained Firstlight has a pretty good presence in the City. He noted the acquisition of Fast Roads and explained the consolidated duct banks, (previously belonging to FairPoint). Mr. Lussier pointed out the original application came from FairPoint and there were numerous concerns. The application before the Committee came about due to Firstlight trying to find a less invasive, more community friendly way of getting service to their customer.

Vice-Chair Jones asked for Committee questions or comments.

Referring to condition #8, Councilor Sapeta asked about co-locating conduit for the City. Mr. Lussier replied when the motion was entered into the scheduling databanks last week we were talking about them allowing space for City conduit. After discussing this with them they preferred to install a separate conduit for City use. This will be turned over to the City after construction for us to use and maintain. Mr. Lussier verified there will be no cost to the City for this installation. Councilor Hansel asked for verification there was no cost to the City. Mr. Lussier replied in the affirmative. Councilor Hansel commented on Firstlight's generosity. Mr. Lussier added we are allowing them to use a finite amount of space in the Right-of-Way.

Rebecca Landry, Assistant City Manager/IT Director reiterated Mr. Lussier's earlier comments noting the agreement is pretty standard. She cited Boston and Portland as examples and explained the excavation is the biggest cost.

Referring to #12, Councilor Sapeta asked if the City Manager would have to notify City Council of the changes made or would it happen automatically. The City Manager replied it would happen automatically but she could notify Council if they so wish. Councilor Sapeta wanted to know if this is a new procedure or something done before. The City Manager replied it has been done before; it provides the flexibility to move forward without having to come back before Council.

Vice-Chair Jones noted the following concerns:

- Referring to condition #2-Where it states "...all costs associated with the installation," can we add "traffic control"?
- Referring to condition #7- Vice-Chair Jones asked if language could be added at the start of this condition stating "In accordance with the City of Keene's Dig Once policy."

Referring to the concern with condition #2, Mr. Lussier commented this could be done, however it is implicit in the installation. Item #4 stipulates they will need to get an Excavation Permit from the City before they dig in the right of way, and one of the conditions of an Excavation Permit is the submittal of a traffic control plan, notifying Dig Safe, providing insurance, etc. .

Referring to the concern with condition #7, Assistant City Manager/Planning Director Rhett Lamb explained that the term Dig Once has been used in a couple different ways by City Staff recently. He continued that we've used it for many years associated with construction projects in

the street where if we have to pave a street we would also evaluate the underground utilities to see if while we were in there they would get any needed repairs at the same time. The term is also now being used in relation to the idea of adding conduit. They are not mutually exclusive per say, but the policy we do have relates to the first of those, and he cautioned using that term in this instance.

Referring to condition #8, Vice-Chair Jones noted the trench is approximately 800 feet long; he asked for the width. Mr. Robinson replied the excavation would be two to three feet wide and approximately 30 inches deep. Mr. Lussier reiterated instead of co-locating cabling or utility equipment we are now talking about having a separate, parallel facility. The word co-locate will be removed. Mr. Lussier clarified there would be no gas or water lines installed in that trench while it is open.

Councilor Rice asked for the estimated time of the project. Mr. Robinson replied perhaps a week after the excavation; it depends on how the brick goes back together. He indicated perhaps two weeks maximum.

Vice-Chair Jones asked how we are protected from the finished project being two inches higher/lower than grade level. Mr. Lussier explained this is part of the Excavation Permit process; the site is rechecked in a year. He continued if there are any problems they have to be corrected at that time.

Vice-Chair Jones asked for public questions or comments. There being none Vice-Chair Jones asked for additional comments/questions from the Committee.

Returning to condition #12, Councilor Sapeta noted he is still new to the Council and commented if we allow for these modifications than what is the role of the Council in making these conditions. He suggested adding the following to the recommended condition:

- The City Manager upon notifying City Council may modify the above conditions in order to accomplish City Council's intent.

The City Manager asked if she could notify Council via a memo and if Councilor Sapeta was asking she wait before executing. Councilor Sapeta agreed a memo was sufficient. He is not asking the City Manager to wait before executing; he wants to ensure there is communication back regarding the changes made. The City Manager agreed this is a reasonable expectation. She noted these things are usually worked out beforehand but can take time when there are lawyers on both sides involved. Mr. Lussier added the reason this was put on the agenda is the applicant does want to start construction and we want to encourage them to get their project going.

Rebecca Landry thanked Firstlight for taking over Fast Roads when they were having a hard time. She commented Firstlight brings competition in the broadband market to Keene. Ms. Landry added what they are doing is very good for Keene.

Councilor Hansel said Councilor Sapeta's point is well taken and his suggestion is a good one.

There being no further questions or comments from the Committee or public Vice-Chair Jones asked for a motion.

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

On a vote of 4-0, the Planning, Licenses and Development Committee recommends that the City Manager be authorized to do all things necessary to negotiate and execute a revocable license agreement with TVC Albany, Inc., D/B/A Firstlight Fiber for the installation of conduit, cabling and associated appurtenances (licensed property) within the Main Street Right-of-Way, subject to the following conditions:

1. The Licensed area shall be in the approximate location depicted on a sketch entitled “Project Route: Main St. – Church St. Area” by Firstlight, dated 2/12/18, with final locations to be approved by the Public Works Director.
2. Licensee is responsible for all costs associated with the installation, maintenance or repair of licensed property and the restoration of any area(s) which may be disturbed to the satisfaction of the City.
3. Licensee is required to obtain all required Federal, State and local permits, including but not limited to a City excavation permit, prior to performing any work.
4. Licensee shall be required to obtain an encumbrance or excavation permit from the City of Keene prior when performing any construction activity, maintenance tasks or accessing the licensed property in such a way that will obstruct public use of the right of way.
5. If the City requires the licensed property to be relocated or removed for any reason, Licensee shall perform such work and the cost of this work is the responsibility of the Licensee.
6. Licensee is responsible for the payment of any properly assessed real property or personal property taxes associated with its use and occupancy of the right-of-way in accordance with RSA 72:23, I (b), when due, failing which this license may be terminated.
7. Licensee agrees to allow any third-party to co-locate their cabling and equipment within the licensed property. Licensee shall be entitled to collect usual and customary lease fees from any such third party.
8. Licensee agrees to allow the Licensor to co-locate cabling and equipment within the licensed property and shall reserve not less than one (1) innerduct for such use. The Licensee will not be entitled to any lease fee or use charges as a result of such use by the Licensor.
9. Licensee agrees to indemnify, defend, and hold the City, its officers, officials, agents, employees, successors and assigns (collectively “City”), harmless from and against any claims, costs, losses, damages, causes of action, personal injuries, property damage (including any damage to the Premises), legal and administrative proceedings, liabilities, defenses, penalties, fines, liens, judgments, and expenses (including all costs, attorney(s)’ fees and related expenses), whether at law or in equity relating to or arising from the use of the Premises by Licensee.

Licensee shall hold the City harmless for any claim, demand, cost or expense arising from or related to the licensed property, including but not limited to any damage to the licensed property whether caused by the City or by any third party.

10. In any action brought by the City to enforce the terms of this License, the City shall be entitled to recover its costs, expenses, and reasonable attorney(s)' fees from Licensee. The terms stated at paragraph 9 shall survive the termination of this License.

11. Licensor may terminate this license for any reason upon ninety (90) days' prior written notice to Licensee. Licensee shall remove the licensed property and restore any disturbed areas to the satisfaction of the City within thirty (30) days of such termination.

12. The City Manager may modify the above-listed conditions in order to accomplish Council's intent. The City Manager will also provide a memo to the Council communicating any changes to the approved conditions.

**2) Adjournment** - There being no further business before the Committee Vice-Chair Jones adjourned the meeting at 7:31 PM.

Respectfully submitted by,  
Mary Lou Sheats Hall  
April 26, 2018