

City of Keene
New Hampshire

MUNICIPAL SERVICES, FACILITIES AND INFRASTRUCTURE COMMITTEE
MEETING MINUTES

Wednesday, October 23, 2019

6:00 PM

Council Chambers B

Members Present:

Janis O. Manwaring, Chair
Randy L. Filiault, Vice-Chair
Gary P. Lamoureux

Members Not Present:

Stephen L. Hooper
Robert B. Sutherland

Staff Present:

Rebecca Landry, Assistant City Manager/IT
Director
Thomas P. Mullins, City Attorney
Rhett Lamb, Community Development
Director/ACM
Kürt Blomquist, Public Works
Director/Emergency Management Director

Chair Manwaring called the meeting to order 6:00 PM, welcomed the public, and explained the rules of procedure.

**1) Attorney Thomas R. Hanna/BCM Environmental & Land law, PLLC -
Recently Discovered Title Problem Relating to the Commercial Street Parking
Area**

Chair Manwaring welcomed Thomas Hanna of Concord & Portland, who provided history. He said that in 1969, the City established the Commercial Street parking lot, including a low, 20' strip at the rear of the existing Colonial Theater building at 95 Main Street. Within a few months following, Mr. Hanna said that the City Council determined they did not need the 20' strip as a part of the lot. A new layout of the lot in 1970 did not include this strip, but he said that was not the way to undo something done legally. The Colonial Theater has since used the strip to house their HVAC equipment.

Mr. Hanna said this situation has become a problem for the theater now, with a loan closing for 20 Commercial Street and substantial renovations to the theater. He said the bank indicated that if City Council acknowledges this situation behind the theater at their November 7 meeting, as discussed in a recent public hearing, then City staff would be able to work with the Colonial to discontinue that portion of the Commercial Street lot. In this case, the Savings Bank of Walpole would move forward with loan closing. Failing to discontinue would be a bad situation for the theater from a timing standpoint. The City Attorney said he would be happy to go forward working with Mr. Hanna to make a petition and fix the problem, similar to one the Council saw previously.

Councilor Filiault made the following motion, which Councilor Lamoureux seconded.

On a vote of 3-0, the Municipal Services, Facilities & Infrastructure Committee recommended that the City Attorney be authorized to work with the Colonial Theatre Group, Inc., to develop and submit a petition for the discontinuance of that section of the Commercial Street Parking Area that encumbers property now owned by Colonial Theatre Group, Inc., at 89-95 Main Street as shown on a preliminary plan prepared by David A. Mann, LLS, dated October 15, 2019, with the understanding that the formal discontinuance of such section of the Commercial Street Parking Area will occur after the Colonial Theatre Group, Inc.'s loan closing.

The Chair noted that the Mayor had canceled the site visit and public hearing on November 7 for this discontinuance. The hearing and site visit would be established when the petition for discontinuance and accompanying plans are submitted.

2) **James Phippard/Brickstone Land Use Consultants, LLC - Request to Discontinue Easement for Possible Future Road Extension at Black Brook Road**

The Chair postponed this matter until the next meeting so the applicant could be present.

3) **Discontinuance of a Portion of the Commercial Street Parking Lot Resolution R-2019-36 Resolution R-2019-37**

[This was originally agenda item five and the Chairwoman heard it out of order]

Chair Manwaring welcomed Mr. Hanna again, who used a map to demonstrate the 1,372 square foot site, which Jeanna Hamblet agreed to sell to the Colonial Theater for small venues. The Hamblet family previously paid taxes on those parking spaces that the City took as a part of the Commercial Street lot and almost immediately tried to undo, but Mr. Hanna said they did so incorrectly. Mr. Hanna said that part of this petition is for Council to discontinue that portion of the Commercial Street lot to rectify the problem.

The City Attorney countered Mr. Hanna's comments that the Hamblet's have paid taxes on those spaces for 50 years, by noting that the owners have not been charged by the City to use those spaces for 50 years as well.

Mr. Hanna continued that the City has a constructed a sidewalk on the Hamblet's private property that will now be owned by the Colonial Theater. They proposed granting an easement for the City to accept, and therefore protect the private property owner relative to the public use of this area. The City Attorney said staff is prepared to draft that easement.

Councilor Lamoureux made the following three motions, all of which Councilor Filiault seconded.

On a vote of 3-0, the Municipal Services, Facilities & Infrastructure Committee recommends that the City Manager be authorized to do all things necessary to negotiate and execute an easement for the purpose of constructing and maintaining a public sidewalk on private property at 20 Commercial Street.

On a vote of 3-0, the Municipal Services, Facilities & Infrastructure Committee recommends the adoption of Resolution R-2019-36.

On a vote of 3-0, the Municipal Services, Facilities & Infrastructure Committee recommends the adoption of Resolution R-2019-37.

4) Councilor Greenwald – Request that Crosswalks be Marked at Hillside Village – Wyman Road

[This was originally agenda item three and the Chairwoman heard it out of order]

Chair Manwaring welcomed Councilor Greenwald, who said he spoke to many Hillside Village residents and staff at a recent open house who seek a crosswalk for safe crossing between the two buildings on either side of Wyman Road. He showed the Committee an architectural rendering of the possible crosswalk. He questioned how quickly City staff could accomplish this. He said it seemed extremely simple to him and he hoped staff came prepared to propose a solution before the weather changes. He provided several pages of signed petitions in support.

Chair Manwaring recognized Gregg Burdett, Director of Human Resources for Hillside Village, who said that 180 employees are approved and there will be almost 300 residents within the year. With the tremendous amount of traffic and guests, people walk across Wyman Road on a daily basis. He noted that Wyman Road has become a thoroughfare, with speeds approaching 50mph coming downhill. He said many residents are seniors and it takes them time to cross the road. Mr. Burdett respectfully requested that the Council grant Hillside Village permission for a crosswalk.

The Community Development Director said much time has passed since the Planning Board spent substantial time reviewing site plans for this property in 2015-2016, when Engineering and Public Works staff worked with the designers and owners to develop the safest solution. He said it was clear from the beginning that it was necessary to address these concerns and he shared the site plan approval from that time. A condition of site plan approval was that the developer must install a crosswalk at the location in question or elsewhere. He said the record is clear that Hillside Village designed the site to direct all pedestrian traffic through an underground tunnel below Wyman Road that connects the two buildings. At the time of approval, the Planning Board expressed concern that people would want to cross Wyman Road at street level; they wanted more information and therefore reached a compromise. Mr. Lamb read the third condition of site plan approval: *“Between twelve and eighteen months following the issuance of Certificate of Occupancy, the Applicant will hire an independent consultant to complete an assessment of pedestrian traffic and safety along the area of Wyman Road adjacent to the site. If the*

Public Works Director determines that the pedestrian volumes and assessed safety conditions warrant changes to the site and/or roadway design, the Applicant will work with the Public Works Director and Planning Department to implement the agreed upon changes at the expense of the Applicant.”

The Community Development Director explained that the 18-month time period provided in that condition ended in June 2019. The Community Development Director shared two possibilities from his view: 1) recognize that the jurisdiction for this matter is with the Planning Board and to refer the applicant there, or 2) accept this matter as informational. He said that referral to the Planning Board follows the path this project is already on in terms of evaluating and reporting back to the Planning Board. He said there is no reason Hillside Village cannot between looking at a solution right away and staff will work with them to do so as soon as possible.

The Public Works Director recalled that there were significant conversations with the Hillside Village development team about this need to cross Wyman Road. He did recognize the difference between the development team several years ago when built and the operational team there now. He said this is not a simple conversation of crosswalks, but also where they go and end. During design development, City staff wanted Hillside Village to put sidewalks along Wyman Road to provide safe passage; complaints continue today that there is inadequate walking space along the roadway. The developers countered saying the internal paths would be sufficient and they saw no need for sidewalks along Wyman Road. Thus, the third condition of site plan approval was the compromise for Hillside Village to come back and do it. Because there are no sidewalks on Wyman Road, there is nowhere for a crosswalk to begin and end, so Hillside Village might need additional right-of-way to accomplish managing their facilities on each side. The Public Works Director recommended continuing this through the Planning Board.

Councilor Filiault said it was clear that all agreed there is a problem and sidewalks are the solution. He asked the most expedient process to follow. The Public Works Director recommended that Hillside Village return with their proposed plan, which is their responsibility. The Community Development Director said it might seem obvious that a crosswalk is necessary, but said that the location of that crosswalk is very important in relation to the vertical hill and steep turn. He said the crosswalk's location is not as obvious as it may seem and professional analyses are needed to ensure standards are met; doing so might require on-site improvements via Hillside Village because there is currently no sidewalk on site to lead pedestrians to a crosswalk. Councilor Filiault questioned the speed limit on Wyman Road. The Public Works Director said the current posted speed limit is 30mph and there is a speed table in front of the facility. He agreed that City engineers recommended Hillside Village would need to create walking space on Wyman Road to connect to their internal paths. The development engineers disagreed, however, which is part of why the speed table was installed.

Chair Manwaring asked if there are signs alerting motorists to the speed table. The Public Works Director confirmed and said there are speed limit signs as well. The City Council agreed to change the speed limit to 30mph there, which is uncommon for a road in the

Rural Zone, but was done to protect residents. The Community Development Director said staff was in favor of making this happen and would make every effort to work with Hillside Village. Chair Manwaring asked Mr. Burdett why residents could not use the underground tunnel developed for that reason. Mr. Burdett said it is a wonderful walkway but it is impractical for those crossing the street regularly, when the weather is clear. He said most people park 30' from the Community Center but must walk into the Health Center and take the elevator to the lower level and tunnel; he said it is a maze to get there. He added that he understood fully that there is no sidewalk leading to the speed table and he added that it has become an incentive for young kids to "catch air." Hearing this concern, Councilor Lamoureux asked if police units could be posted there to generate information for the Planning Board. The Community Development Director said he would coordinate that with the Police and Public Works Departments.

Councilor Greenwald said it was obviously a simple situation with a complex process to get to it. He thanked staff for doing anything possible. He asked if Hillside Village could put signs on their own property directing pedestrians to cross at the speed hump. The Public Works Director said that they could not legally place signs in the public right-of-way. They could put signs on their own property but said the speed table is not a crossing and it would not be appropriate or safe as such. He said it is complex, and he admitted frustration because he told the development team that this would likely happen and they countered saying pedestrians would be directed to use the tunnel. It is currently laid out unsafely and it needs to be corrected. Councilor Greenwald said that was a more positive response than he anticipated. He suggested they could put signs on their property during the interim of Planning Board decision. The City Attorney cautioned that although they can do what they wish on their own property, they would in this case be directing people across the City right-of-way, which from staff's perspective is unsafe. He was concerned with a background of the City supporting that unsafe usage in some way. He understood frustration over this process, but said that jurisdiction was with the Planning Board and that was where this issue should go. Councilor Greenwald appreciated anything that would fast track the process and hoped Hillside Village would cooperate.

Chair Manwaring recognized Councilor Philip Jones, who thanked Councilor Greenwald for bringing this forward, as safety is a big concern, and thanked Mr. Burdett for protecting his residents. He requested that the City does anything they can in the interim to make this safer. The Public Works Director did not think more speed tables would help. He said anything suggesting to pedestrians that cars would stop when they enter the roadway provides a false sense of safety for pedestrians and there would be no way to alert public drivers to a crossing. The Public Works Director ensured there would be sufficient signage moving forward to alert drivers of a denser pedestrian population for a rural area. He recommended against anything in the interim encouraging people to cross Wyman Road where it is unsafe. Safety is staff's concern.

Councilor Lamoureux asked Mr. Burdett if he objected to the City proceeding as quickly as possible. Mr. Burdett said he was not present for the development of Hillside Village and appreciates the City's willingness to consider this issue again; he said Hillside

Village would do everything possible within financial reason. He understood it is a dangerous spot on Wyman Road and was happy to comply with the City moving forward.

Chair Manwaring recognized Councilor Carl Jacobs, who said he heard nothing keeping Hillside Village and City staff from working together immediately to ensure there are no loose ends when the matter goes to the Planning Board. The Community Development Director agreed completely, saying he was ready to work with Hillside Village immediately following the meeting.

Councilor Filiault made the following motion, which Councilor Lamoureux seconded.

On a vote of 3-0, the Municipal Services, Facilities & Infrastructure Committee recommends that the correspondence from Councilor Mitch Greenwald, dated October 14, 2019, be referred to the Planning Board for consideration in accordance with Condition #3 of the Board's Conditions of Approval for Site Plan Review No. SPR-11-16, dated November 28, 2016.

5) Ashuelot Court Sewer and Water Main Replacement – In Response to Request to Partner in the Installation of Water and Sewer Lines on Ashuelot Court, a designated Private Road – Public Works Department.

[This was originally agenda item four and the Chairwoman heard it out of order]

The Public Works Director recalled that this was a request from residents on Ashuelot Court, a privately owned street. The water and sewer mains on Ashuelot Court date to the 1930s as a part of the original Faulkner-Colony complex. There are three properties on Ashuelot Court, though one has been subdivided into two residential properties in use. Over time dating back to 1993-1994, residents of Ashuelot Court have requested assistance from the City to replace water and sewer lines there, but the residents and Council never reached a final agreement. The current request from residents is for the same issue, requesting that the City work with them on main replacement, turning the infrastructure over to the City for continued upkeep.

The Public Works Director explained the options. He researched establishing a water and sewer district at this location, in addition to City and state law. The City Code allows for acquisition of private streets and utilities when they are at City standard. He referenced the section of code for sewer improvements, which allows the City to act as a bank for a loan for sewer improvements that can be repaid over 20 years; that section also creates a lien on the property if not repaid. He referenced NH RSA-38 for water utilities, with similar language allowing City Council to assess on persons served by the water system and for those assessments then to create a lien on the property.

The Public Works Director noted that the property owners offered to contribute \$10,000 upfront to be split between the water and sewer components, and thus showing their willingness to participate in this with the City. He provided what residents would see in cost on top of their normal water and sewer. The City Engineer did a preliminary design

and estimated the sewer costs at \$33,800 and the water costs at \$50,500 for a total cost of \$82,000 estimated now. The cost per property was distinguished based on frontage. He explained the three decisions before Council: 1) whether to act in a loan capacity, 2) to determine the length of time for the loan, which residents hoped would be 20 years, and 3) whether to change the interest rate suggested. He indicated what the cost ranges would be for the three property owners. Generally, over a 20-year loan of \$82,000, the payment for each property would range from \$995-1,300 annually. If construction costs less, then the loan would be less. Staff recommended authorizing the City Manager to negotiate an agreement that would be filed with the Registry of Deeds to follow the properties, not the owners. Staff also recommended authorizing the City Engineer to size the mains. City Code thinks of sewer mains that would support larger developments, but because there is no chance of significant further development near this site, staff believes the 10' water main suggested would be oversized, and thus could create other issues like standing and stale water. The City Engineer would like the flexibility to change the pipe size to avoid such issues.

Councilor Lamoureux asked if the City would take over maintenance of water and sewer at this site once the loan is paid in full. The Public Works Director anticipated six water mains and six sewer mains becoming part of the City system that the City is currently not responsible for maintaining. Services would continue between the mains under Ashuelot Court and the private properties there. For water, the City of Keene is responsible for the pipes between the main and curb stop; from the curb stop to building is the private owners' responsibility. For sewer, private property owners are responsible for lines from the main to buildings. These rules would remain upon completion of the project. Councilor Lamoureux asked if the payments would be a part of the residents' quarterly or annual billing. The Public Works Director thought that would be a part of the City Manager's negotiation. He annualized the cost to describe the estimate to the Committee.

Chair Manwaring recognized Rich Kalich (of Ashuelot Court), who appreciated staff and Council's consideration of the long-term issues with the mains under Ashuelot Court. He recalled that in the past residents of Ashuelot Court could not reach consensus on this issue; he said that all residents today want to move forward, so they hoped Council would consider this solution. He added that the residents hoped for 0% interest as opposed to the 2.25% proposed, which was at the Council's discretion; he said the residents have been paying normal water and sewer forever, as if the City maintained the lines. The residents would continue paying those rates and so he said the City is getting something in return from his perspective. He said the residents would bare the price of lines that would become City property for nothing, and thus he hoped the Council would consider 0% interest. He questioned if the lien requirement on each property would be an encumbrance to selling any of the properties during those 20 years; he questioned if there was a way around the lien requirement during negotiations.

The City Attorney replied saying the lien is a statutory requirement. He added that he and the Public Works Director worked months to find a solution for the residents and the City. They are operating under statutory authority to do this work on private property and there are very limited ways to do so, and thus the lien is to protect the taxpayer. He

recognized the downside of liens, but if the legislature expends public funds for this purpose, then there must be a way to recollect at the end of the process if not repaid.

Councilor Lamoureux asked if this would include an easement because it is on private property. The Public Works Director said that the City owns the land under Ashuelot Court dating back to when the City acquired rights to the West Street Dam, when Keene Housing Authority acquired the Court from the Faulkner-Colony Mill housing complex in the 1960s. These complex technicalities, like easements, would be negotiated by the City Manager. He did not anticipate needing easements because the City is entering land they already own. Mr. Kalich said the property owners there would be happy if the City took ownership of the Court, which the Public Works Director said would likely cost double what was presented at this meeting to rebuild the entire street that is currently gravel. Mr. Kalich said the City taking care of the water and sewer would be a huge step.

Councilor Lamoureux thought there was merit to reducing the interest rate from the 2.25% presented. He thought it was a good point that the residents have paid more than everyone else has because they own the infrastructure. The Assistant City Manager referenced the meeting packet and language in the Code, which suggests there must be some simple interest rate if not paid in full up front. Councilor Filiault said he understood Councilor Lamoureux's point but said it was not an option so he did not want to complicate it more. The Public Works Director said there must be an interest rate, which could be as low as 0.1%. The City Attorney appreciated that Councilors wanted this to be uncomplicated but assured them that arriving at the solution presented to them was very complicated, and that this was just a glimpse at the efforts to accommodate it all. Councilor Filiault suggested passing the motion as presented because the Council could amend the interest rate when voting on the matter, knowing it would not exceed 2.25%. He did not think the three Councilors voting were comparable to a full Council making the decision with the City Manager's advice. Staff agreed.

Councilor Filiault made the following motion, which Councilor Lamoureux seconded.

On a vote of 3-0, the Municipal Services, Facilities & Infrastructure Committee recommends that the City Manager be authorized do all things necessary to negotiate and execute agreements with the property owners of Ashuelot Court for the purpose of financing the replacement of the existing sewer and water mains and to accept the mains after work is completed. Any payment plan shall be up to 20 years with annual interest rate of 2.25%. That the City Engineer is authorized to do all things necessary to size the sewer and water mains. Further, the City Manager is authorized to do all things necessary to use Water and Sewer Fund unallocated fund balance to fund the design and construction of the sewer and water main replacement work.

6) Adjournment

Hearing no further business, Chair Manwaring adjourned the meeting at 7:01 PM.

Respectfully submitted by: Katryna Kibler, Minute Clerk