

City of Keene
New Hampshire

PLANNING, LICENSES AND DEVELOPMENT COMMITTEE
MEETING MINUTES

Wednesday, February 26, 2020

7:00 PM

Council Chambers A

Members Present:

Kate M. Bosley, Chair
Mitchell H. Greenwald, Vice-Chair
Gladys Johnsen
Catherine Workman

Members Not Present:

Philip M. Jones

Staff Present:

Elizabeth A. Dragon, City Manager
Thomas P. Mullins, City Attorney
Mari Brunner, Planner
Rhett Lamb, Community Development
Director
Kürt Blomquist, Public Works Director

George S. Hansel, Mayor

Chair Bosley called the meeting to order at 7:00 PM and explained the procedures of the meeting.

1) Use of City Property – Greater Monadnock Public Health Network and American National Red Cross

Chair Bosley asked staff to speak. Kürt Blomquist, Public Works Director and Emergency Management Director, stated that this is a request for authorization for the City Manager to do all things necessary to negotiate and execute agreements with the American Red Cross and the Greater Monadnock Health Network. He continued that both organizations are partners with the City through the emergency management area. The Greater Monadnock Health Network, which is actually one person, is housed out of Cheshire Medical Center and provides coordination with the various health organizations and hospitals in the region. They do things like mass inoculations, and deal with broader health issues. They have two trailers to set up pods in various locations. The Red Cross has various locations in the state where they stage equipment to support the community in various times of need.

Mr. Blomquist continued that in 2014 both groups asked the City for the ability to store their equipment. At that time the Red Cross had a much larger footprint here. The City was providing parking for up to five vehicles and several trailers and pickup trucks, at 560 Main Street. It was a paved, maintained area. The City has sold approximately 10 acres of that, including the area where the Red Cross vehicles were, so he started to look to see where they could relocate these

folks to. The two organizations could have sought parking elsewhere, but from his point of view they are partners and help the community and the City. The Fire Chief was able to provide space at the fire station for the two trailers, and there is a parking area at 350 Marlboro Street near the City's Fleet area. The Red Cross is down to just a trailer and a pickup truck because they shrunk their footprint in the area but still want to maintain a presence. Mr. Blomquist concluded that he recommends the motion before the committee, authorizing the City Manager to negotiate and execute these agreements.

Chair Bosley asked for questions or comments from the committee.

Councilor Greenwald asked the City Manager why staff could not just handle this administratively. The City Manager replied that she looked into this. She continued that the City does already store this equipment. She looked at the motion that authorized that, and saw that it was specific to the location. Due to that reason and the fact that they are negotiating a contract, she felt it was best to bring this to the City Council. Councilor Greenwald asked if the motion, if it comes back, could have language about "future need" being handled administratively, to cut back on the process it goes through. The City Manager replied yes, she appreciates that. She continued that the recommended motion before the committee tonight does not specify a location, so in the future they should be able to handle this administratively if they need to move the equipment.

Chair Bosley asked for public comment. Hearing none, she asked for a motion.

Councilor Workman made the following motion, which was seconded by Councilor Greenwald.

On a vote of 4-0, the Planning, Licenses, and Development Committee recommended that the City Manager be authorized to do all things necessary to negotiate and execute agreements with the Greater Monadnock Public Health Network to park two 20-foot preparedness trailers and with the American National Red Cross to park an Emergency Response Vehicle (pickup) and a 6' by 12' trailer on City property, subject to compliance with any recommendations of City staff.

2) Relating to Small Wireless Facility Deployments in the Public Rights-of-Way - Ordinance O-2019-18

Chair Bosley asked staff to speak. Rhett Lamb, Assistant City Manager and Community Development Director, and Mari Brunner, Planner, introduced themselves. Mr. Lamb stated that they have no presentation slide show tonight but wanted to give information about what they heard at the public hearing, with ideas for amendments and changes to this proposed ordinance. The committee has in front of them ideas for how to proceed. They are at a fork in the road with the ordinance and staff wants to make sure to reconfirm with the City Council how to approach this and tonight is that night, where they wanted to make sure everything is out in front of the PLD Committee so they could choose which path to take. There are two recommended motions. Ms. Brunner will give a quick summary of where they are at. He wants to draw attention to a

letter received on Monday by Councilor Jones, who was unable to attend the meeting tonight. They all have copies of it tonight.

Ms. Brunner stated that to give a brief recap: what they are talking about tonight are “small wireless facilities,” which are a type of wireless broadband infrastructure that typically take the form of a small antenna three cubic feet in volume or less, often attached to an existing structure such as a buildings or utility pole. They can also be placed on new structures built within the right-of-way. She continued that typically they have associated accessory equipment that cannot be more than 28 cubic feet in volume. They are typically attached to structures 50 feet or less, or no more than 10% taller than surrounding structures.

Ms. Brunner continued that one unique aspect to small wireless facilities is their range is a lot shorter than traditional macro cell towers. The wavelengths cannot penetrate through buildings and other structures so they would need to be more densely deployed to give adequate coverage. The reason the City has come to this point tonight is: in 2018 the Federal Communications Commission (FCC) issued the Small Cell Order, which was intended to speed the transition to the next generation of wireless services, called 5G. The order restricts the fees and compensation that state and local governments can receive from applicants, requires all aesthetic requirements to be reasonable and no more burdensome than those applied to all other infrastructure deployments within a municipality, and objective and published in advance. This means that if a municipality wants to have any sort of regulations regarding small wireless facilities, the regulations must be published in advance of them receiving applications. The order also includes much shorter timeframes whereby the applications need to be approved.

Ms. Brunner continued that staff, following the issuance of the order and at the direction of the City Council began looking at this and drafting an ordinance regarding small wireless facilities. The City has a telecommunications towers and antennas ordinance in the Zoning chapter of the Code, but that is for facilities on private property and mostly aimed at macro towers. It does not deal with small cell facilities in the right-of-way. That is the purpose of creating this license that would be issued by the Public Works Director. The City has already received interest from a company that wants to install 4G small cell facilities in the right-of-way.

Ms. Brunner continued that staff is proposing, with this ordinance, a license issued by the Public Works Director that would establish location standards, siting and design standards, and procedures for application intake and review. To date there have been quite a number of meetings and a public hearing at the City Council. They have heard a lot from the public. The major concerns the public has expressed are the health effects of 5G. There have been comments from citizens proposing increasing the distances of these small wireless facilities in residential areas or from residential properties and schools. Staff shared information at the hearing about the NH commission to study the environmental and health effects of 5G, which was established through HB 522 and will give its final report in November 2020. They also heard concerns about aesthetic impacts. Members of the public encouraged staff to think of ways to encourage co-location to minimize the new structures in the public right-of-way. There were concerns

expressed about impacts to property values and scenic areas and the Historic District, putting accessory equipment underground, making sure the City and community is fairly compensated by the companies, including provisions for battery backups so the small wireless facilities could be used during emergencies, and protecting people's personal data. Staff has potential revisions to the ordinance to try and address these issues.

Ms. Brunner continued that the first option is including a "sunset clause" in the ordinance which would state that if the FCC rule is overturned or repealed the ordinance would be null and void. Another option would be to add a provision saying that if the ordinance is amended in the future, all amendments would apply to all future applications. She asked the City Attorney to explain.

City Attorney, Tom Mullins, stated that it would avoid "the grandfathering issue." He continued that if the City makes a change the new applicant cannot say, "Well, you did not make the previous applicant do this; this is discriminatory." This places everyone on notice that this is a prospective application.

Ms. Brunner stated that another potential revision would be to increase the spacing requirements in residential districts. Currently the ordinance as proposed has a 400' spacing requirement between facilities and they have seen other communities adopt greater spacing requirements in residential areas. They could also potentially include a minimum distance from schools. She and Mr. Lamb want direction from the committee on how to proceed.

Mr. Lamb stated that staff's position is: they think the City is better off with an ordinance than without one. He continued that the City Council is at a crossroads with this. Councilor Jones has recommended a moratorium be placed on 5G licensing until the State commission's report on the health effects is completed. So that leads to the recommended motions in front of the committee tonight. The first motion reflects staff's belief that they should continue developing this ordinance, incorporating changes based on input from tonight and public input. The second recommended motion is for them to include, in the licensing provisions in the ordinance (if and when they adopt it), a limit on the type of applications that can come forward, with a limit to place on staff to only accept applications for 4G until 2021, so the State commission has time to do its work in studying 5G.

Chair Bosley thanked staff for all of their work on this. She continued that she agrees that they should continue to work on the language of the ordinance and that they have to have something to fall back on, in case they were challenged in court for if they decided not to issue licenses. That is important information for people to look at when they approach the City with applications. She is open to what Councilor Jones has brought to the table regarding having some sort of timeframe where they hold off on accepting 5G applications. They have a company that is interested now in 4G. Her understanding is that company is waiting to see the language in this ordinance to see if they want to move forward with their application and to see how this will affect them, so the City and the City Council need to continue to work on this ordinance.

Councilor Johnsen stated that she is empathetic to the folks who expressed concerns about 5G, and she respects them a great deal. She continued that she is happy to hear more about moving ahead with 4G and she likes what Councilor Jones brought forward because she does not want to rush 5G. She is thankful for the folks who helped educate the City Council about 5G, and she thinks they need more education about it.

Councilor Workman asked: if a party installed small wireless facilities for 4G technology, would those facilities be equipped to be updated to 5G sometime, so they would not have to reinvent the wheel? Ms. Brunner replied yes, her understanding is that 4G small cell facilities fit on the poles and could be switched out for 5G in the future.

Mr. Lamb stated that as staff researches this they are hearing about the first rollout of 5G infrastructure in dense, urban areas, but they believe it would be quite some time before there would be any 5G density here in Keene. They anticipated 4G for quite some time. We will find out what really happens as we move forward, but they have been hearing 5G is on a slow roll out, for small cities like Keene.

Chair Bosley asked, what about density? What happens if there are five companies applying for licenses for 5G infrastructure? Would there be a tower every one hundred feet, for example, if companies are allowed to have the facilities 400' apart? How much can the City enforce co-location? Ms. Brunner replied that they propose the ordinance say the facilities must be 400' from *any* structure. That is in line with the current streetlight standards of 400' spacing.

Mr. Lamb stated that they want applicants to take advantage of co-location as much as possible, and that probably means using existing utility poles. That depends on the availability of adequate utility poles to serve as co-location structures. They anticipate companies wanting to install new poles instead of using the City's low ones which might not fit the needs of the carriers. Co-location is available, but whether it gets used or not, or whether the City can require it or not, depends. This proposed ordinance does allow new structures.

Chair Bosley asked if the proposed ordinance addresses what happens when a company approved for a 4G license wants to update to 5G. Would they have to come back and apply for a new license? Mr. Lamb replied yes, that is staff's intent; they want to make sure the language says that.

Chair Bosley asked for public comment. She stated that they already had a lot of public comment, at the public hearing, and therefore she wants to keep it to new ideas.

Mayor George Hansel stated that he wanted to address a process question. Typically with a public hearing there is a set amount of time during which the City accepts public comment after that hearing, because typically a public hearing addresses a specific ordinance or an action the City Council will take right after it. This public hearing was an exception. It was to gather public input and allow the public to speak to the entire City Council on this topic. There was

some question as to whether public input would be allowed after the fact and it is allowed in this case; it is up to the chair.

Councilor Terry Clark asked: once a license has been issued, if the ordinance's sunset clause goes into effect, does that mean the license goes away and the company has to take their equipment down? Mr. Lamb replied that he is not sure. He asked if Councilor Clark means if someone makes an installation and then the FCC order is repealed or overturned. His guess is that the equipment would be allowed to stay there as the investment has already been made and the company has completed the installation.

Ms. Brunner stated that the ordinance does require an annual renewal of the license. She continued that the ordinance currently has it as an automatic process so as not to burden staff. They can look into this more. Maybe if this ordinance were to sunset they would not offer another license.

Councilor Clark stated that that was his other question - how much of the process would be public, if after one year, the license renewal just goes through staff? He continued that this first year is so critical, as they are gaining the knowledge about safety and other issues. Could they include language saying companies would have to resubmit after a year?

The City Attorney asked for clarification about what Councilor Clark is asking. Councilor Clark stated that he wants to know if the ordinance can say that the license is only good for one year and then after that first year is over, a company would have to come back and reapply for a whole new license and go through the process all over again. If the company gets the license for the second year, then after that, [the renewal could just be handled automatically through staff as proposed]. It would just be for that first year, because no one knows what is going to happen.

Chair Bosley asked if Councilor Clark is asking for applicants to come back to the PLD Committee after the first year is up. Councilor Clark replied no, just reapply. Chair Bosley replied that the ordinance *is* asking companies to reapply annually, even after that first year. She continued that at the end of the first year staff would administratively approve the renewal requests.

Mr. Lamb stated that these licenses would all be approved by the Public Works Director. He continued that these licenses would not be a City Council approval. The FCC order has very short timeframes for approving license applications. A renewal after the first year is just a payment, not a submission of the entire application again.

Councilor Clark stated that he is asking for applications to be resubmit just for the first year. Hopefully the reports will come out rosy and everything will be fine [regarding the health effects of 5G] and we will have great coverage for our cell phones. But if on the chance it does not happen like that, and the report says 5G causes major cancers, for example, he wants to make sure they can protect the public.

Chair Bosley stated that they are talking about holding off on accepting applications for 5G infrastructure, which people are concerned about, until January 2021. She continued that that gives them time to wait for the reports to come in and for staff and the City Council to review them, before they open the door to 5G. This ordinance would be an opportunity for people to invest in 4G with the hope that the City would someday open the doors to 5G but they would have the reports back before they consider allowing it.

Councilor Johnsen asked if Councilor Clark is asking for some kind of guarantee. Councilor Clark replied yes, assurance that public safety will continue after the first year when they have learned about what the public safety issues are.

Councilor Greenwald asked, when a company requests that their license be renewed, what is the criteria for possibly not allowing the renewal? Ms. Brunner replied that it is currently proposed that companies meet certain conditions when a license is issued. She continued that one criterion for not renewing would be if the company is not meeting the conditions of the license. If the City needs the company to move the pole, for any reason – since the municipality has the power to regulate the right-of-way for public health and safety - the company will have to move it at the company's expense.

Councilor Greenwald asked, once the Public Works Director signs off on a license, is it done? The infrastructure stays unless it is practically falling off? The City Attorney replied that there is a provision in the ordinance allowing the Public Works Director to revoke a license if he finds the facility is not in compliance with the requirements of the article. There are a lot of requirements in the article with respect to maintenance, public safety, distance, and so on and so forth. If the facility installation looks the same as when it was first installed, yes, the license continues to be approved. But if the equipment degrades, or becomes a safety hazard, or does not comply with the requirements in the article, that would be a basis for not renewing the license.

Ms. Brunner stated that there are provisions for abandoned facilities needing to be removed. She continued that staff can talk about this at the next meeting as well. Councilor Greenwald stated that once a facility is up, it is up, and he can see the annual license turning into a five-year one. Mr. Lamb replied that they are proposing collecting an annual fee from the companies. Ms. Brunner added that they propose modeling it after how the City handles food licenses – renewing the licenses on the same date each year for all of the companies, so they do not have to track the passage of one year based on each company's specific sign-up dates.

Chair Bosley asked for public comment.

Lori Schreier of Westmoreland thanked the Committee for considering the moratorium until the report is out in November. She continued that she urges them to consider that moratorium for *all* small cell facilities. These are new, and will be much closer than other towers, and there are quite a bit of studies showing the health effects are not good with 4G either. Therefore, not having

them close to people until they know more seems wise. She wants to ask staff about something she testified about at the public hearing – will the ordinance include the requirement to have all applications go through the National Environmental Policy Act (NEPA) requirements? And would they consider including a requirement for public notice for co-locations? As she recalls, the proposed ordinance only calls for public notice for new structures. She continued that lastly, she wants to know if they would consider requiring testing for the aggregate emissions, not just from individual antennas, because if they co-located, it would be nice to know how much, total, is coming off the pole.

Mr. Lamb replied that he is happy to take a look at those questions and issues. He continued that he thinks they will not see a lot of co-locations initially. The availability of the preferred location for the service providers will depend on the possibility of co-location structure that works for them. With the 4G applications the City has seen so far, staff pushed them towards co-location, and the service providers are only interested in that one type of setting, where there was a reasonable structure they thought they could look at to see if it would serve their purpose or not. In every other circumstance they were proposing their own poles.

Chair Bosley stated that she wonders if, once those poles are installed, other companies might be interested in locating on newly-constructed small cell facility poles. She continued that she knows the City cannot require that, but maybe they could give some sort of incentive, such as reducing a company's fees if they co-locate on a structure. Ms. Brunner replied that there is already a pretty strong incentive for co-locating, under State law, which has a stricter timeframe under which a municipality is required to approve a license. It is 45 days, which is a pretty tight timeframe for notifying the public, which is why staff did not propose that for co-location. But that also ends up be an incentive *to* co-locate. They have tried their best in the ordinance to encourage co-location, as a way to reduce the total number of structures that get built in the right-of-way.

Mr. Lamb stated that regarding the term “moratorium” being used tonight: staff is not considering this a moratorium. They are considering the ordinance as a method of accommodating 4G now, recognizing that there is no interest now in building 5G. They are structuring the ordinance based on what the market is asking for now in Keene.

Robert Williams, City Councilor, stated that he has a few thoughts. He continued that first is a clarification of how he foresees 5G infrastructure being used. Many times people hear it is for phones and mobile devices. He would be surprised if that is still the main focus in 5 or 10 years. He thinks it will be competition for cable TV. There will probably be a box you can have at your house that plugs into 5G and companies would be selling Hulu, Netflix, and so on and so forth, and all of the bandwidth requirements that come with sending high-resolution digital videos through the air. He wants to make sure people recognize that 5G is not just for mobile phones. It could have broad impacts on how broadband is delivered in the city. He continued that he feels 5G is inferior to other technology for that, such as fiber to the home. If Keene has fiber in all neighborhoods and attached Wi-Fi at the house there would not be much demand for 5G in

the neighborhoods. But if they never get fiber to homes, they could have 5G poles every 400 feet in the neighborhoods and a lot of bandwidth going through, and he does not think the connectivity would be much greater than his cable connection today.

Councilor Williams continued that Ms. Brunner had a good list of concerns for items to be considered in the next round of updates. In addition, he would like the City to prohibit a “wireless back haul,” which is the connection between the 5G node and wherever it is going, such as the central office or the bigger pipes we have in our internet. One way to do that would be to just have a microwave dish or another radio frequency, pouring more radio frequencies in the air. If the City requires it to be connected by fiber optic that is one less thing to worry about. With respect to co-location, it is important, and service carriers fight it to the extent that they can, which is unfortunate.

Councilor Johnsen stated that she wants clarification. She continued that she is hearing staff wants to go ahead and continue to work with 4G, and she is hearing Councilor Jones wants a moratorium. She asked if that is a separate motion. Chair Bosley replied that they are considering two things. First, do they continue to work on the language in the ordinance? And separately, do they consider taking a break and not allowing 5G applications until the report comes back in November on the health effects? They need to look at those as separate issues.

Councilor Johnsen stated that whatever they decide should be communicated to the public, so people understand, if they are concerned, that the City is not putting 5G in. Chair Bosley replied yes. She continued that the FCC has said municipalities are required to accept applications for this new technology, through the FCC’s order. So if the City chooses to not accept these 5G applications they are potentially opening themselves up to litigation. A company could ask for the City to accept their application and if the City does not, the company could take the City to court. The court could order the City to accept the application. If the City did not have an ordinance in place the applicant would have free reign to do whatever they want. Regulations have to be made prior to the acceptance of an application. The City could not give guidelines after the fact, if the court forces them to accept applications.

Councilor Johnsen stated that at the public hearing there was one person who said that another option is for the City to be willing to take a stand. Chair Bosley replied yes, they could take a stand as a City. Councilor Johnsen clarified that she is not recommending it, just stating what a citizen said. Chair Bosley stated that the process she just described could potentially be the outcome of the City taking a stand. People are not knocking down the City’s door right now trying for 5G. It is really smart for them to be having these conversations ahead of time to come up with the guidelines. But, companies could come any time with applications.

Chair Bosley asked if there was any further comment. Hearing none, she asked for a motion.

Councilor Greenwald made the following motion, which was seconded by Councilor Johnsen.

On a vote of 4-0, the Planning, Licenses, and Development Committee recommended that the City Manager prepare and submit for further consideration by the City Council a revised Small Cell Wireless Ordinance based on comments obtained from the Public Hearing, and incorporating any other revisions deemed necessary or appropriate by the City Manager; and that if the Small Cell Wireless Ordinance is adopted by the City Council, the City Manager or her designee be directed to accept only applications for antenna and transmission equipment of up to a maximum of 4G until January 2, 2021.

Chair Bosley thanked everyone for their participation in this important topic, which will keep progressing.

There being no further business, Chair Bosley adjourned the meeting at 7:48 PM.

Respectfully submitted by,
Britta Reida, Minute Taker