

City of Keene
New Hampshire

PLANNING, LICENSES AND DEVELOPMENT COMMITTEE
MEETING MINUTES

Wednesday, January 13, 2021

7:00 PM

Remote Meeting via Zoom

Members Present:

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

Staff Present:

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

Members Not Present:

All present

George S. Hansel, Mayor

Chair Bosley called the meeting to order at 7:00 PM and read the executive order authorizing a remote meeting: Emergency Order #12, issued by the Governor of the State of New Hampshire pursuant to Executive Order #2020-04. Pursuant to this Order, Committee members stated their locations and whether they were alone.

1) Keene Sustainable Energy Program – Energy & Climate Committee

Chair Bosley welcomed an introduction from the Community Development Director, Rhett Lamb, who recalled questions raised by Councilors at their meeting on December 17, 2020 about certain language within the Sustainable Energy Plan. The Director noted the plan was developed based on Council goals on renewable energy and an accompanying Resolution adopted in 2019. The plan is modeled on three types of energy: electricity, heating and thermal use, and transportation. Mr. Lamb continued that the Energy & Climate Committee (ECC) was challenged when determining how to accomplish goals for these energy types because the City does not control in most cases where energy comes from or the choices individuals in the community make for energy use. He said that for one and one half years, the ECC has been working despite these challenges to develop the long-term big ideas presented in the plan that are intended to slowly influence the choices citizens and business have for renewable energy.

Mr. Lamb introduced Community Development Department Planner, Mari Brunner, who provided details on the questions raised by Council on home energy labeling and benchmarking. Ms. Brunner said the ECC was interested in these two strategies because they address the

thermal energy sector, which is a challenging one because there are few options for the City to influence those choices. Additional factors that influenced the choice of these two programs include the idea that energy efficiency and lowering energy use is always an important first step best practice before switching to renewables and an equity consideration of making the cost of operating a home more transparent to consumers and prospective renters. Further, she said the City has minimal data and so these approaches appealed to the ECC because they would provide that information. Ms. Brunner continued explaining that the home energy labeling program, which would typically apply to 1-4 unit rentals, does not require reporting actual energy use, but rather to produce a label that would be associated with the unit and provide the prospective buyer/renter with a way to compare the cost of operating that home to others, while acknowledging different behaviors between individuals. She said that the labeling program uses information that is generally already available to the public like home age, square feet, number of rooms, type of heating system, etc. to help predict how much energy that unit might use. Ms. Brunner said the labeling program is much different than the benchmarking program. Benchmarking asks typically larger commercial property owners to report their actual energy use.

Ms. Brunner continued that the ECC spent considerable time debating the merits of a voluntary or mandatory program and she thought her word choices in the plan may have mischaracterized their intent. She said the ECC was recommending a voluntary program to start and, if successful, the City could explore the possibility of a mandatory program at a later date. Ms. Brunner concluded that she identified a total of six pages in the plan where language could be revised to clarify that the City only recommends a voluntary program to start, which could be modified to mandatory later if the program is successful and there is interest.

Vice Chair Greenwald recalled voicing many questions from constituents at the aforementioned City Council meeting and said that Ms. Brunner did well capturing those concerns, but he continued addressing some specific issues. Vice Chair Greenwald stated that he absolutely supports the Sustainable Energy Plan and he called the goals for energy independence in the plan aspirational ones that would require a lot of time and buy-in. While he feels the plan is worthwhile, he continued with his concerns. What the ECC called labeling, the Vice Chair called rating; and what the ECC called benchmarking, he called reporting. The Vice Chair cited City history of starting with good ideas that progress inspirational proposals, to aspirational goals, to suggested, to voluntary, and then to mandatory. He used examples of the Historic District and Heritage Commissions that began with what he called great aspirational advisory ideas that eventually evolved to mandatory. He continued he was not insinuating that such a progression was bad, but that there is precedent. Once something is included in a plan like this and aspects of the plan are cited continuously, the Vice Chair said they are eventually assumed as the intention of the Council, and a future Council comprised of different members may be unaware that loose ends remained. He continued with issues he identified with programs:

- Regarding single, multi, and small multifamily housing – Vice Chair Greenwald said that during a real estate disclosure, there are questions about energy use, insulation, and basic building structure. He said information is available but does not account sufficiently for

resident behavior, as Ms. Brunner mentioned, which he said would therefore prohibit accurate scoring.

- To the Vice Chair's knowledge, this concept was not enabled by State law and therefore would not be mandatory any time soon.
- There was nothing Vice Chair Greenwald knew of in the NH Board of Realtors or the NH Real Estate Commission dealing with this – no forms or procedures.
- He said there was no criteria for scoring or rating, making it entirely undefined.
- The Vice Chair wondered what company consultant would be available to perform such a rating, stating that he was aware of none.
- Vice Chair Greenwald asserted that to implement this program would require an entirely new City Department, stating that the existing Code Enforcement Division can barely stay current with rental properties and single family houses, and that the Fire Department has been unsuccessful accessing all of the rental properties for life safety inspections for many years. Therefore the Vice Chair said that implementing and verifying this program would be impossible or prohibitively costly.
- He said that energy efficiency is something that every good property manager and homeowner would want.
- Comparisons have been made to energy ratings of cars or appliances but the Vice Chair pointed out, however, that those scores are developed in a laboratory environment for accuracy.
- He thought that asking commercial and larger businesses to report energy use was intrusive. He said that most businesses want to save energy because it saves them money.

Vice Chair Greenwald concluded stating that he supported the overall Sustainable Energy Plan but recommended removing at this time the labeling and benchmarking programs. He said that these background notes would be available for posterity and the program could be revisited down the line if support remained.

Ms. Brunner replied to Vice Chair Greenwald's concerns about home energy labeling inspections and cited Montpelier, VT as having similar concerns for not wanting to create an undue burden for Staff or homeowners and so they use the energy estimator tool to develop a rating virtually at little or no cost to the homeowner. While acknowledging that this would not occur in laboratory conditions for accuracy, Ms. Brunner said it would create a consistent way to compare homes without tracking actual energy use. She did not believe the intention of this program was to have Staff in the field conducting these ratings, which she agreed would be impossible. Ms. Brunner concluded that the greatest issue the ECC struggled addressing was that of split-incentives. While Ms. Brunner agreed that energy efficiency is in the best interest of most property owners, she said that might not be the case for large property owners or multiple property owners, for which tenants pay for energy use and not the landlord, while tenants cannot upgrade the building envelope to benefit their efficiency. She concluded that split-incentives were a consideration in recommending the program.

Chair Bosley stated that listening to Councilor Greenwald raised questions for her. At the time of the initial PowerPoint presentation of the Sustainable Energy Plan, Chair Bosley said she had not thought-through that precedent of things proceeding from voluntary to mandatory. She recalled statements on having Keene move away from fuel that is not renewable for energy home heating and questioned how the City could impact that. The Chair saw that the City Manager did a lot of work trying to create a buy-in electricity option for the City, which the Chair thought was wonderful because there is only one vendor for the City at present; she wondered how the City could impact other energy uses similarly. She said she struggled with the idea of the City enacting programs that could cost homeowners money, like this inspection program, which reminded her of other home inspections that are common before home purchase and she assumed that someone could hire an energy auditor similarly. She wondered how these programs would work, using her property as an example with a home built in the 1970s – modern for Keene – and she anticipated that there would be automatic assumptions about the property in this program based on age and square feet that might not accurately reflect the property; then that grade would remain associated with the structure. Chair Bosley stated that questions still remained for her regarding long-term impacts.

Councilor Johnsen stated that our planet is hurting and needs help, and that we as humans must be stewards of this planet. Still, she received many calls from constituents in support and opposition to the labeling and benchmarking issues. The Councilor believed that if the City did not begin implementing this plan that there would be no progress toward renewable energy goals. She believed that a plan like this is meant to be a living document, for which questions could be addressed as they arise. Councilor Johnsen said that the ECC is comprised of smart individuals, including lawyers and doctors, who put a lot of thoughtful work into this plan; she had faith in their credentials and preparation. She said that the night before this meeting she watched a video on carbon, what it does, and the return on investments – she reminded that all Councilors were provided this video. As a homeowner, Councilor Johnsen said that to lower energy costs she is interested in solar and noted that she pays an average \$400 monthly for oil. Stating due respect to any of her constituents opposing the plan, she would be voting in favor.

Councilor Workman asked Ms. Brunner to cite the six pages where language could be clarified because she noticed several areas of concern where the plan states that residential labeling would be required, which to Councilor Workman meant mandatory. She urged very clear language indicating that this is a voluntary program, which she said was her only concern with the plan. The Councilor continued that personally as a renter she liked the idea of home energy labeling and imagined that the elderly and those on fixed incomes would be interested too, particularly if utilities are not included in rent. She explained that most propane and energy service providers require from renters a deposit that is usually based on the previous tenant's energy use, which in her opinion is unfair. Councilor Workman concluded that she thinks the labeling would be beneficial to homeowners renting their homes long-term.

Councilor Jones thanked the ECC for their work developing this plan. The Councilor recalled being Chair of a different version of the ECC approximately 15 years ago, from which the

Climate Action Plan developed but he said nothing occurred to implement it. When developing City Council goals recently, he submitted the goal to implement City policies and plans. He fully supported the Sustainable Energy Plan and would vote in favor but he wanted to see it complemented by an accompanying implementation plan that does not need to be adopted at the same time necessarily. He did not think the implementation plan should be a product of the ECC but rather from the PLD. Mr. Lamb added that implementation of the Climate Action Plan occurred but mostly regarding City operations, buildings, systems, fleet, etc. He continued that from 1995-2015, the City reduced carbon emissions by 25%. Mr. Lamb thought perhaps Councilor Jones was referring more to the goals set for the community's carbon footprint, for which there were fewer possible leverage points where the City could influence peoples' choices. Councilor Jones agreed but added that there are a lot of ways to implement this plan and make it work. Chair Bosley liked the idea of an implementation plan, citing interest in how the City could achieve these aspirations; she supported the goals but questioned how feasible to attain 100% compliance, which makes her question viability given that she wants a plan that could be accomplished.

Councilor Johnsen recalled that she spent eight years as a NH Representative for Ward Four when Molly Kelly was Senator. During that time, Councilor Johnsen learned that while Keene has a healthy environment, most of the areas surrounding Keene are not as environmentally healthy due to things like industry and wood burning. When she heard scientists, doctors, lawyers, and climatologists presenting this plan, it seemed to her defeatists to stall adoption.

Chair Bosley opened the public hearing and took comments.

Michelle Chalice of 25 Beech Street stated that the environmental perspective of this plan was supported but she pointed out economic benefits and her belief that labeling and benchmarking programs – whether voluntary or mandatory – provide Keene the ability to communicate on the City's housing stock's efficiency accurately and easily. She thought this would help market the community, providing advantages to long-term older residents and to the young professional the City keeps saying they want to attract to the City. She said that young renters are savvy and as these programs become more widely known, it would be a shame for Keene to lose the advantage of youth wanting to compare places they could live. She concluded that benchmarking was the only way to demonstrate progress and that labeling would help market Keene to the taxpaying residents that are desired.

Councilor Michael Remy asked whether an apartment could be excluded from this labeling requirement if utilities were included in the rent. In the instance of home sale, Councilor Remy thought that the seller providing such a rating to the potential buyer would be an advantage, but he stated that if it were a concern it would be the buyer's responsibility. The Councilor questioned the frequency of re-evaluation, such as each time a tenant changes, or whether the rating is static. Councilor Remy thought this should remain voluntary because he does not like mandating that people spend money on something. Chair Bosley said that Councilor Remy's points were all well taken and added her thought that there would be some peer pressure if

everyone does this voluntarily then it would be odd for a building to be unrated. Mr. Lamb said the intention was to address situations in which utilities are included in rent.

Councilor Terry Clark reminded the Committee that this document is very aspirational, meaning it could be adopted and no one would be required to do anything. Enacting the various parts of the plan would require getting into the weeds, creating ordinances, establishing partnerships, etc. He said that all aspects of the plan would require further Council action before implementation. Councilor Clark questioned whether it was worth getting into the weeds with this specific document and urged doing so later instead when establishing whether these programs would be voluntary.

Chair Bosley questioned whether benchmarking was mandatory in the plan. Ms. Brunner said that benchmarking was also considered voluntary in the plan.

Toby Tousley of 500 Washington Street said that he also saw holes in the project and stated that he aligned with Vice Chair Greenwald's assertion that City initiatives go from voluntary to mandatory overnight. He said his issue was not with the labeling or benchmarking per se, but rather that housing costs increase annually because of plans like this, and he asserted that affordable housing would never happen in Keene because the City keeps making ordinances like this. He said that most homeowners are not qualified to do this on their own and so either the homeowner or the City would have to pay for someone qualified, which in either case costs the homeowner. He added that there was nothing in the plan about high efficiency fossil fuels, which he thought was a mistake. As a long-term landlord with a solar installation on one of his buildings, he did not oppose the Sustainable Energy Plan, stating that heat was included in his rental costs and so it benefited him to be efficient. He saw benchmarking as a tool that would drive up housing costs and cautioned a slippery slope.

Ann Shedd of Greenwood Avenue reminded the Committee that she was a former Chair of the ECC. Ms. Shedd said the Department of Energy website is a valuable resource that includes a one of the tools used for home energy labeling – called a home energy score – and offers training for individuals to be certified to give those scores. She said this labeling is different than a full energy audit, which cost \$300-\$500 and assesses building performance based on external wall surface area, wall penetrations, etc. She called this a fairly crude approximation of what the operating cost of an apartment could be, but said that it could provide an aspect of economic justice for lower-income renters. She said the transparency provided by energy labeling programs does give sellers credit for investments they made in home energy improvements. She cited a study that found when sellers listed their home energy costs – even if rated high – those homes sold for three to five percent more and spent 18 fewer days on the market than homes that did not disclose. She said that return on investment for energy efficiency upgrades ranges from four percent to over 100%. Ms. Shedd said that anything the City could do to set-up these voluntary programs would improve the quality of housing stock. She cited online resources that exist for commercial buyers as well to analyze return on investment. She cited benefits of the labeling program for the local economy such as job creation. Finally, Ms. Shedd said that better

weatherized structures mean less burning of all fossil fuels – which in NH all come from out of state and contribute minimally to the local economy. She said there are numerous ways this plan and programs help achieve ideals for the City adopted in the 2010 Comprehensive Master Plan and urged adoption.

Nancy Gillard of 72 Reservoir Street stated that she respected the ECC's diligent work to develop this plan, which she supported in its entirety, including what she considered to be valuable tools should homeowners or businesses choose to use them. She thought the more information available to understand how our buildings use energy then the better other parts of the plan could be implemented. She appreciated support and urged adopting the whole plan knowing that it could attract people and improve the community.

Larry Butcher of Felt Road stated that from the perspective of managing rental properties he tries hard to keep rent affordable. He said he welcomed the effort laid out in this plan and thought it would encourage people to start the process – whether through the online assessment or other means – to determine where they stand when renting or selling. As an economist, Mr. Butcher said that this plan was a quality effort to present these issues, with a sequence of events for implementation. As a citizen, Mr. Butcher credited Staff and the ECC, saying they should be proud. He continued taking exception to earlier assertions that because something voluntary was rushed to mandatory in the past that it would always happen, stating that Keene is a place for civic discussion and procedures based on reason. After reading the report in its entirety, Mr. Butcher said that it was clear to him it would be a voluntary program with consideration before next steps. He said that with pressures on the environment these programs would become commonplace nationally and he thought Keene could take pride in being a leader in this domain.

Peter Hansel of 61 Bradford Road, Chair of the ECC, appreciated the Committee and others taking time to analyze carefully this plan over two years of effort. He manages two rental houses for his company and knows what value there is to a house being well-insulated and saving energy and therefore money for tenants in those units. He has taken advantage of the NH Save program for his own home and those he manages, stating the options available for transition for non-renewable to renewable energy, which is the charge of the ECC. He agreed with the challenges of implementation, particularly in the heating sector. Just like cars and appliances have energy ratings, he said that homes could be similar, though he acknowledged the potential complications of accuracy and cost stated earlier. He said another important tool is education on energy choices, which he thinks is pivotal in implementation. Mr. Hansel said the ECC was also concerned to develop a plan with a component focused on economic justice, stating that energy upgrades make little sense if one cannot afford the home they live in. He said this is a living document that would be revisited over time and adaptable to new technologies and practices. Mr. Hansel concluded that his company has been benchmarking energy use for 15 years and he wanted to provide that information to the City so it can monitor progress over time, stating pride in the results.

There being no further public comments, Chair Bosley returned to the staff for additional comments.

Ms. Brunner reported the pages for revision: 2.4, 2.7, and 5.4 cite, "require energy efficiency disclosure for existing and new residential...and require building owners of certain sizes or in certain districts to report energy use," and she suggested that a revision could say "encourage" instead of "require." She cited tables on 5.6, 5.7, and 5.11 that address key benefits and challenges as well as implementation steps for home energy labeling programs, and said instances asserting the program is mandatory could be changed to voluntary. Ms. Brunner concluded that if the City were interested in a mandatory program in the future it could pursue the option but that this plan could be voluntary.

Vice Chair Greenwald requested that Staff draft two revisions, one with all of the clarifications Ms. Brunner cited, and one that excludes the home energy labeling and benchmarking programs from the plan entirely. Vice Chair Greenwald said that it would not be the worst thing if these became mandatory given that there are already disclosure mechanisms in real estate.

Vice Chair Greenwald moved to put the matter on more time to allow Staff to revise according to his two aforementioned options, which Councilor Jones seconded.

Councilor Johnsen questioned whether the motion would send the edits directly to full Council and the Chair said that placing the matter on more time would bring the revision back to PLD for review before proceeding to full Council.

Councilor Johnsen moved to amend Vice Chair Greenwald's motion as: to change the wording to make clear the programs are voluntary and send the adoption of the Sustainable Energy Plan to full Council. Councilor Workman seconded the amendment. On a vote of 3-2, the motion to amend passed; Vice Chair Greenwald and Councilor Jones opposed.

On a vote of 5-0, the Planning, Licenses and Development Committee recommended adoption the Sustainable Energy Plan, with staff to prepare revisions to the plan that would clarify the programs are voluntary.

2) Councilor Clark – Relating to Small Wireless Facility Deployments in Public Rights-of-Way

Chair Bosley welcomed Councilor Terry Clark, who recalled that when this ordinance passed it was with the caveat that it would be revisited following a report from Governor's Commission to Study the Environmental and Health Effects on 4G and 5G technologies. The 400-page report, which includes the majority and minority committee reports, was published on November 2, 2020. He cited unsuccessful attempts by the Commission to obtain select information from the Federal Communications Commission (FCC) and could therefore not determine why standards for acceptable radiofrequency (RF) radiation are so much higher in the US than in other

industrialized nations. Lawsuits exist against the FCC for not accounting for biological effects when setting their standards and concerns arose that RF waves around us today would increase with time. Significant research on health risks came to light throughout the study and more research is required. The Commission also learned that the World Health Organization and insurance industry are hedging their bets against RF radiation because of potential harm.

Councilor Clark turned to Lori Schreier of 916 River Road in Westmoreland, NH, to explain the commission's recommendations and how the current ordinance could be amended to reflect those recommendations. She is also a member of NH for Safe Technology and has studied these issues for a long time, testifying before this Committee in the past.

Ms. Schreier explained that the Commission did an extensive study of the thousands of peer reviewed research and arrived at 15 recommendations and answers eight questions showing damaging effects to human health, especially children, animals, insects, and plants from RFs emitted from wireless radiation. The harm is likely to be much worse from exposure to the higher frequencies of 5G small cells, which can emit signals close to peoples' homes and businesses when deployed in the public rights-of-way (ROW). The report also identifies earlier generation 4G wireless, as posing concerns, especially when 4G will be deployed with 5G in small cells, when they will later be upgraded to 5G through a software update. This is why Ms. Schreier added 4G and above small cells to the proposed ordinance amendments. A memo from Ms. Schreier was included with the agenda packet that detailed the proposed areas of change. Ms. Schreier stated that she reviewed the commission's intent, its recommendations, and what amendments to Keene's ordinance were feasible and low risk legally. Although the FCC asserts against legal ability to legislate based on health impacts, she said that amendments are allowed based on local zoning and police powers relating to aesthetics, economic interests, and public welfare.

Ms. Schreier's first recommendation was to increase the City's insurance protection without a pollution exclusion because insurers generally categorize electromagnetic fields as a pollutant. She questioned how the City would protect its citizens and financial assets. She included in her recommendations the proposal to increase the setbacks of small cell placement from other small cells and from residences, churches, schools, parks, senior centers, hospitals, and fire/police stations; the commission report urged that "setback for all new cell towers should be 500 meters, which translates to 1,640 feet." She said many cities have enacted much further setbacks than the Keene ordinance currently suggests, which could be argued for aesthetic reasons. She referred to the 9th Circuit Court of Appeals decision in August 2020 that granted more leeway for municipal decisions based on aesthetics, which does include spacing and placement decisions for telecommunications facilities.

Ms. Schreier continued with recommendations on the requirement to show gaps in service, which contrary to her report, she said that the 9th Circuit Court recently denied this as a viable reason to deny an application. Regarding measurement of signal strength to show compliance with the FCC's RF exposure limits, Ms. Schreier learned that as a general rule, the FCC rarely

requires the owners to test limits. Therefore, she said that local governments are the first and only line of defense against their constituents being exposed to illegally excessive levels of radiation emanating from wireless facilities in their jurisdiction; she said to imagine the fences and warning signs around cell towers that would not exist around small cells. Ms. Schreier concluded with another matter from the 9th Circuit Court recently about non-discrimination requirements, stating that this is a common concern that needs clarification, and that the court decided that stronger restrictions could be imposed on wireless facilities than other infrastructures

Chair Bosley recognized Community Development Director, Rhett Lamb, who said that the record Councilor Clark presented was accurate and that a copy of the NH commission's report was available in the City Clerk's office for review. Mr. Lamb said it was important for the Council to have an opportunity to read the document, which includes the majority and minority reports because there was no consensus.

Mr. Lamb continued that the City is currently in the application process with a company seeking to locate four structures in the ROW according to the ordinance adopted in summer 2020, through the Public Works Director, who is the licensing authority per that ordinance. Council questions on that permit application in progress could be directed to Mr. Lamb, Ms. Brunner, or the City Manager. Mr. Lamb continued that modifications to this ordinance should be done so as to not interfere with that permitting already in progress. Therefore, Mr. Lamb stated his suggestion that the PLD Committee focus on the NH Governor's report itself and deciding whether its recommendations are viable and within the City's authority (under the FCC order and NH RSA-12K) to consider amending the ordinance. He did not recommend pointed deliberation at this meeting about potential amendments to the ordinance given the current permitting.

Vice Chair Greenwald questioned whether it was mandatory for rental property owners/residents to notify tenants/buyers of their proximity to a tower; from his perspective as a realtor, he said there is a focus on disclosure and transparency. Ms. Schreier stated that there were recommendations in the report that homeowners should have the opportunity to have the RF impact around their home assessed, and further that the State consider establishing a formal inspector's certification for the process that homeowners could hire. She said the recommendations were to not impose on homeowners.

Chair Bosley stated that she read the report and while she was not an expert on the content, she did not recall the aforementioned section and recommendations on property inspections. She wondered if it was in the Committee's best interest to be educated further about the report and its content in the near future.

Councilor Jones asked Ms. Schreier for clarification about service providers not being functionally equivalent. Ms. Schreier referred to the fifth page of her memo, and she cited counsel from telecommunications attorney, Mark Del Bianco, and his interpretation of the 9th Circuit Court's recent decision that per the FCC Small Cell Order of 2018, municipalities do not

need to treat wireless carriers the same way that they treat electric companies, cable companies, and other utilities; regarding setbacks, spacing, or aesthetics. Each wireless company must be treated the same, but not the same as other infrastructures.

Chair Bosley opened the meeting to further comments from public speakers and identified a three minutes time limit per speaker.

Contrary to Mr. Lamb's suggestion, Councilor Bobby Williams addressed the four small cell towers in the permitting process currently. The Councilor agreed that nothing in the discussion at hand should effect those permit applications underway, stating that it would be inappropriate. Still, in the long-term, Councilor Williams hoped for a review of how this permitting process works, issues that have arisen since the ordinance was adopted in 2020, current neighborhood impacts from small cells already installed, aesthetic impacts, and current RF impacts. With that information eventually available, the Councilor thought it would provide the City Council a better understanding of the true impacts of 5G rollout, which would allow better decision making for revising the ordinance.

Beth Cooley, Assistant VP of State Legislative Affairs for CTIA of 1400 16th Street NW, Washington, DC. CTIA is the trade association for the wireless communications industry and Ms. Cooley was a member of the Governor's commission on behalf of the wireless industry. She recalled testifying before this PLD Committee in 2020. Ms. Cooley, David Juvet (who would speak subsequently), and Senator [James] Gray signed on to the minority report, opposing the majority recommendations. She encouraged Councilors to read the minority report. In summary, Ms. Cooley stated that the minority felt that there were too many members of the commission with preconceived notions about RF safety and that the commission was run in a flawed manner; that the majority recommendations have no basis in scientific fact, are irresponsible, and would subject the State and any localities implementing those recommendations to needless and expensive challenges that would drain time and resources from more important and credible priorities.

Contrary to the majority report, she said that RF science is well studied and known. Ms. Cooley continued that when setting RF limits from wireless devices, the FCC intentionally provided a significant safety margin 50 times below the threshold at which adverse health effects have been observed in lab animals. In December 2019, the FCC reassessed the available science, including studies on 5G network safety, and concluded that wireless devices and small cells are safe when adhering to the current FCC exposure limits, as required by law. Given scientific consensus, Ms. Cooley stated that the majority report recommendations exceeded what a reasonable response should be to the evidence. Further, courts have rejected consistently states' and localities' efforts to regulate wireless devices based on alleged RF health effects. She continued that Federal preemption bars state and local efforts to require modifications to devices, additional warnings/disclosures, or zoning/placement decisions of towers and equipment based on perceived safety concerns. She added that the NH commission report is an outlier among other states; the States of VT, OR, HI, and LA also studied this issue and found no known adverse

health risks. Ms. Cooley concluded that any actions restricting/inhibiting the deployment of wireless infrastructure are counter to what NH residents want, citing a 2020 poll of NH voters, 89% of which stated it was very important to have reliable high speed internet connectivity during the Covid-19 pandemic and 80% of which supported mobile wireless upgrades in their communities.

David Juvet, Senior VP of the NH Business and Industry Association of 122 N Main Street in Concord, NH, which serves as the NH Chamber of Commerce. He was a member of the 5G commission minority report and shared many of the concerns that Ms. Cooley articulated. Mr. Juvet stated that the Commission was impacted by Covid-19, losing six months' work. Due to the deadline to complete the commission report, he stated that there were few opportunities for minority members to invite experts to present findings contrary to what the majority Commission wanted to see. Therefore, Mr. Juvet urged the City Council to proceed cautiously, noting long-term challenges with broadband in the Monadnock Region, and that he did not think Keene would want to create an island for itself by interfering with new technologies. Finally, through his statewide work, he was unaware of any other municipality in NH proceeding in what Mr. Juvet called, "the direction that was on the table tonight."

Carson O'Neil of 14 W Diane Drive stated that he was a resident of the projected neighborhood for the four aforementioned small cells in the permitting process currently, for which he received notification by mail, and that he thought it "absurd" to place a tower in a neighborhood populated so densely with youth and elderly due to the potential health hazards, regardless of signs/disclosures. Mr. O'Neil concluded that high speed internet is not worth even minor health risks. He asked that residents of the neighborhoods under consideration for these small cells be kept informed better. Councilor Jones noted that this matter was outside the realm of Committee discussion at this meeting and Mr. Lamb assured the Chair that he would follow-up with Mr. O'Neil to explain the notification requirements for his neighborhood and to explain how to contest the application if he chooses.

The City Attorney addressed Ms. Cooley and Mr. Juvet, and questioning whether they knew of any follow-up planned by the State on the majority and minority reports. Ms. Cooley replied that the reports were submitted and posted on the commission's website but she was unaware of plans for follow-up. Mr. Juvet added that his job is to primarily track legislation for the business community and he had not seen printed or titled legislation resulting explicitly from the Commission's study.

John Stevens, the statewide Interruptibility Coordinator for the NH Department of Safety and Coordinator of the NH Interruptibility Executive Committee, explained that in 2012, Congress authorized the First Responder Network Authority specific to providing cellular coverage to public safety. That Authority contracted with AT&T to build the infrastructure to support that network. He cited significant progress in NH over the last four years to provide LTE coverage to first responders. Mr. Stevens said that missing from this effort are connections to many sites in the Cheshire, Sullivan, and Grafton Counties. As a former NH State Police Commander, he

recalled fears during his service that there were first responders in the field without adequate communications. Mr. Stevens expressed willingness to work with the City to provide expanded coverage to the Keene area.

The City Manager stated that the Commission's report was lengthy and suggested that it might be best for Council and Staff to learn more about the majority and minority reports, and to invite members of that Commission to educate the Council. Chair Bosley agreed, citing confusions that remained after her first review of the report and that she would find it beneficial to ask more questions. Vice Chair Greenwald agreed that the Council needed more explanation from balanced perspectives to make decisions in the public's best interest.

Per the Chair's request to know the best path forward to continue this discussion, the City Attorney stated that there were two proposed motions the Committee could consider: one to file Councilor Clark's communication as informational with the understanding that review of the matter would be ongoing, or another to place the matter on the Committee's more time list with specific direction to the City Manager to provide follow-up information to the Committee. Councilor Jones expressed concern that placing the matter on the more time list could result in another application preempting it. The City Attorney replied that it was possible, but that the City was operating currently under an ordinance process and in all fairness to pending applications while this remains on more time, operations would proceed under the current ordinance unless and until the City Council amends it.

Vice Chair Greenwald moved to place the matter on more time awaiting additional information, which Councilor Jones seconded.

Mr. Lamb referred back to Councilor Williams' comments about the practice of implementing this ordinance since it was enacted and stated that Staff are cataloging the issues the Councilor mentioned and would be reporting back to Council in that regard.

Chair Bosley noted that if and when the City Council were to amend this ordinance, that then the Council would be unable to amend it again until the subsequent calendar year. As such, she said that all input available should be reviewed before making such decisions. The City Attorney suggested against establishing a specific future date for the Committee to revisit this matter, but rather that the City Manager would bring the matter back to Committee when Staff are ready to present more information. Chair Bosley agreed and stated that she did not want to move forward with Committee recommendations to amend the ordinance before Staff input on the FCC report and the current permitting process underway.

The motion to place the matter on more time passed with a unanimous 5-0 roll call vote in favor.

3) **Lori Schreier – Relating to Small Wireless Facility Deployments in Public Rights-of-Way**

4) Herman Kelting – Relating to Small Wireless Facility Deployments in Public Rights-of-Way

Ms. Schreier stated that she had already covered her letter during the previous agenda item and urged review of her proposed changes; she stated that she could also suggest commission members to speak before this Committee and mentioned that Senator Denise Ricciardi might be following up on the commission reports. Ms. Schreier asked for further clarification on Chair Bosley's comment about being able to change the ordinance again until the next calendar year. The Chair explained that the City Council reviews proposed amendments to ordinances on an annual basis and so if amendments are adopted by full Council, additional amendments could not be assessed until the following calendar year.

Mr. Kelting was not present for comment on his submitted communication.

Councilor Terry Clark thanked the Committee for hearing this matter.

Vice Chair Greenwald moved to accept the communications as informational, which Councilor Jones seconded, and the motion passed with a unanimous 5-0 roll call vote in favor.

5) Adjournment

There being no further business, Chair Bosley adjourned the meeting at 9:12 PM.

Respectfully submitted by,
Katriona Kibler, Minute Taker
January 16, 2020