



MUNICIPAL SERVICES, FACILITIES AND INFRASTRUCTURE COMMITTEE
Council Chambers B, Keene City Hall
January 26, 2022
6:00 PM

A. AGENDA ITEMS

1. Kevin Leary - Access to Property 218-009-000-000 through the Old Gilsum Road
2. Use of the Old Gilsum Road - Public Works Director/ACM
3. Relocation of Woodard Pond Road - City Attorney
4. REPORT OUT - Maintenance of the Wilson Pond Dam
5. REPORT OUT - Monica Marshall – Request that Main Street be Designated as a Smoke-Free Zone

B. MORE TIME ITEMS

NON PUBLIC SESSION

ADJOURNMENT



CITY OF KEENE NEW HAMPSHIRE

ITEM #A.1.

Meeting Date: January 26, 2022
To: Mayor and Keene City Council
From: Kevin Leary
Through: Patricia Little, City Clerk
Subject: Kevin Leary - Access to Property 218-009-000-000 through the Old Gilsum Road

Council Action:

In City Council January 6, 2022.

Referred to the Municipal Services, Facilities and Infrastructure Committee.

Recommendation:

Attachments:

1. Communication_Leary

Background:

Kevin Leary is submitting a request to access the Fontaine property (TMP 218-009-000-000) through the Old Gilsum Road.

City Of Keene

12.22.21

Formal request for property access:

Dear City Council,

I am writing you in regards to a formal property request to access parcel# 218-009-000-000 owned by the Fontaine Family Trust and under guidance of Mark Fontaine. I have obtained a legal lease which was formally signed by both parties granting me full property access by any means.

I am asking the city for approval to access the property a minimum of 4 times per year using the right of way access point on Old Gilsum Road. I would formally request access using motorized vehicle strictly as an in and out process for continued utility and maintenance work on the property. This would be conducted and schedule prior to any access with the appropriate departments of the city parks and recreation and public works. Each entry would be scheduled ahead of time for a set period of time with the exit scheduled as well with the coordination of said departments.

Thank you,

Kevin Leary



12/22/21



CITY OF KEENE NEW HAMPSHIRE

Meeting Date: January 26, 2022
To: Municipal Services, Facilities and Infrastructure Committee
From: Kurt Blomquist, ACM/Public Works Director
Through: Elizabeth Dragon, City Manager
Subject: **Use of the Old Gilsum Road - Public Works Director/ACM**

Recommendation:

The Municipal Services, Facilities and Infrastructure Committee recommend per Section 94-238 of the City Code of Ordinances, that Kevin Leary, of 27 Meetinghouse Road, Keene, NH, be permitted to use motorized vehicles on the Class VI portion of the Old Gilsum Road for the purpose of accessing and transporting in and out equipment up to four (4) times per year until 2023 to the Fontaine Albert R Revocable Trust Property (218-09-00-000-000). This motorized access to be coordinated with City staff with Mr. Leary abiding by all conditions set by staff.

Attachments:

1. Map Leary Old Gilsum Rd Request
2. Leary Feb 2021 Request
3. MSFI Feb 24 21 minutes
4. MSFI Mar 10 21 minutes
5. Leary Apr 9 21 request
6. City Council Apr 21 21 action
7. City Council May 6 21 action

Background:

The Old Gilsum Road is a Class VI Highway closed in 1980 subject to gates and bars. Further, the City Council added conditions to the closing. These conditions included restricting vehicle access unless granted permission by the City Council and that the owners of property abutting on Old Gilsum Road shall not be prohibited from using the right-of-way for the purpose of gaining access to their respective properties, City Code Section 94-238.

Mr. Kevin Leary in February 2021 sought permission to use the Old Gilsum Road to take equipment to the Fontaine Property, Parcel# 218-009-000-000, for the purpose of performing work on the property. The Municipal Services, Facilities and Infrastructure Committee (MSFI) reviewed this request at their February 24, 2021 meeting.

During the discussions at the February 24, 2021 MSFI meeting, Mr. Leary brought up a request to

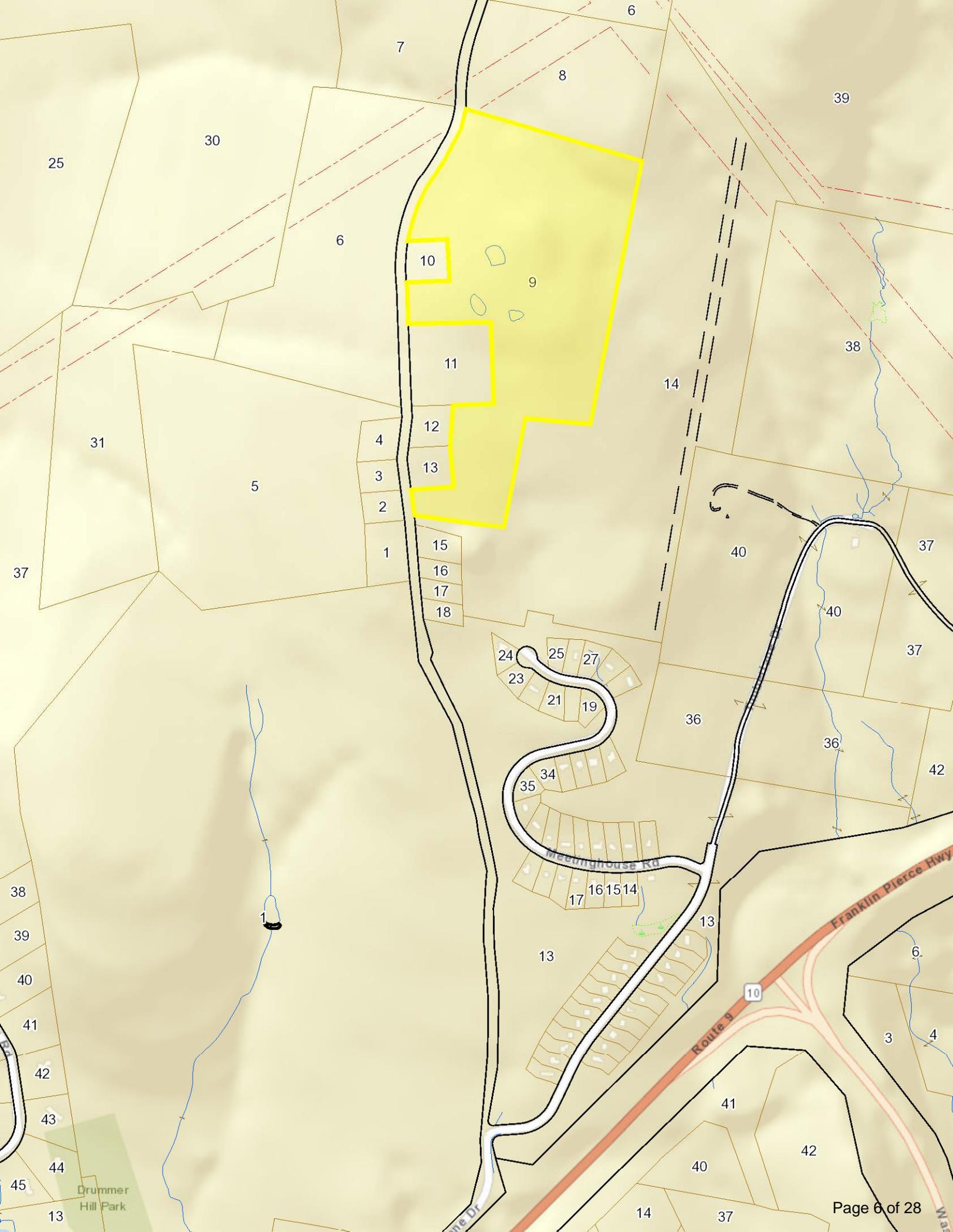
also look at the use of a utility access that goes to the City's water tank and the City property that abuts the Fontaine property. The Committee heard from representatives of the Drummer Hill Home Owners Association and several residents who expressed concern of use of the Old Gilsum Road by motorized vehicles and conflicts with walkers, runners, and bicyclists. The Committee placed the item on more time for staff to work with the requestor.

The MSFI Committee continued its review of Mr. Leary Request at its March 10, 2021 meeting. During the discussion, the use of the water tank access road and crossing City property came up. The City's property was under a conservation easement, The Greater Goose Pond Forest Conservation Easement, that had been previously signed by the City Council in 2009. The staff did not know at that time whether the easement would permit the uses that Mr. Leary was requesting. Further, the utility access to the City's water tank crossed land owned by the Drummer Hill Home Owners Association through an easement and staff did not know at that time whether the City could give permission for use other than maintenance, repair, and construction of water infrastructure without concurrence from the Home Owners Association. The MSFI Committee placed the item on more time to have staff review the new request.

The MSFI Committee continued its review of Mr. Leary request at its March 24, 2021 meeting. During the meeting, it was reported that the use of the utility easement and the City property by motorized equipment to access the Fontaine property would not be a use contemplated by the easements. During the discussion, comments were made about a lease of the Fontaine land. There was also discussion on forestry type work, creating better habitat, etc., which was different from earlier discussions. The Committee became concerned that during the discussions on Mr. Leary request information kept changing. The Committee advised Mr. Leary to withdraw his original request and resubmit a request on what he wishes to do.

Mr. Leary submitted a request on April 9, 2021 for access to the Fontaine Property, Parcel #281-009-000-000, and in the request he indicated that he had a lease for the property providing permission access, that he would be using the Class VI portion of the Old Gilsum Road, and would be accessing 2 – 3 times a year with motorized equipment. The MSFI Committee reviewed this request at its April 21, 2021 meeting. The Committee found that Mr. Leary's request met the conditions set out in Section 94-238 of the City code and recommended that Mr. Leary be permitted to use a motorized vehicle on the Class VI portion of the Old Gilsum Road for the purpose of transporting in and out of equipment one time each year until 2023 to the Fontaine Albert R Revocable Trust Property (Parcel #2180009-00-000-00). The City Council concurred with the recommendation on May 6, 2021.

Mr. Kevin Leary has submitted a request, December 22, 2021, to change the number of access to the Fontaine Property over the Class VI portion of the Old Gilsum Road from one time each year to four times each year through 2023.





City of Keene, N.H.
Transmittal Form

February 6, 2021

TO: Mayor and Keene City Council

FROM: Kevin Leary

THROUGH: Patricia A. Little, City Clerk

ITEM: C.2.

SUBJECT: Kevin Leary - Request for Property Access

COUNCIL ACTION:

In City Council February 18, 2021.

Referred to the Municipal Services, Facilities and Infrastructure Committee.

ATTACHMENTS:

Description

Communication - Leary

BACKGROUND:

Kevin Leary is requesting to have access to parcel#218-009-000-000 owned by the Fontaine Family Trust using the original right of way access which is Old Gilsum Road.

2/6/2021

City of Keene

Formal request for property access:

Dear City Council,

I am writing you in regards to a formal request to access parcel# 218-009-000-000 owned by the Fontaine family trust and now under the control of Mark Fontaine. I am asking for formal approval to access the property using the original right of way access which is Old Gilsum Road. The town already states the owner has permission to access this property using Old Gilsum Rd, but because I am not the actual owner I do not have the towns approval. And because of the now established parks and rec trail systems there is no other way to access the property.

The owner has given me formal permission to access the land, and now I am looking for the town's approval to access the land 2-3 times per year through Old Gilsum Road.

Thank You for your time

Sincerely,

Kevin Leary

27 Meetinghouse Rd,

Keene, NH, 03431

Handwritten signature of Kevin Leary and the date 2/6/21.

Mr. Leary said that he had spoken with the Director of Parks, Recreation & Facilities, Andy Bohannon, about this a few times and had now submitted a formal request. Mr. Leary was new to the Drummer Hill Homeowners Association (DHHA) as of September 2020 and as an outdoorsman, he discovered properties at the top of the DHHA land, including a large private lot that he hoped to access. In spite of Covid-19, Mr. Leary said he contacted town members in an effort to discover the property owner – because nothing was posted identifying the land – to determine their interest in selling or a lease program for private access to those grounds. Ultimately, Mr. Leary discovered that the parcel in question is Lot #9, which was in a trust association for the Fontaine family and managed currently by Mark Fontaine. Mr. Fontaine responded to Mr. Leary's request, granting permission to use the lot as needed with the agreement that Mr. Leary would donate to Mr. Fontaine's favorite children's charity. Mr. Leary thought the DHHA maps dated to the 1930s when Old Gilsum Road was the access to all of the lots in question. He says the original clause says the property owners could continue using Old Gilsum Road as a public right-of-way by motorized vehicles to access their lands, but that does not include his lease with the Fontaine family without formal permission from City Council. Mr. Leary said that there is a different access point at the top of the neighborhood, which he said neighbors agreed would be a better point for Mr. Leary to access the property, there is a utility road associated with a now gated water tower that leads directly to the parcel without interfering with recreation areas. Mr. Leary concluded stating his hope to gain access to the Fontaine property using a motorized vehicle with one or two pieces of equipment for land maintenance. He hoped to avoid Old Gilsum Road if granted permission to use the access from the water tower.

Chair Manwaring welcomed the Director of Public Works/Emergency Management Director, Kürt Blomquist, who shared an image of the area that exhibited the few small lots along the Class V Timberlane Drive. He showed land owned by the Fontaine Trust. Mr. Blomquist explained that when the City Council discontinued Old Gilsum Road in the early 1960s, it was reclassified from a Class V to a Class VI roadway and the Council placed the following additional restrictions on the roadway in §94-238. – Closed Streets. "Old Gilsum Road, a class VI highway, closed subject to gates and bars, pursuant to the provisions of RSA 47:17(VIII) is closed to vehicular traffic unless otherwise permitted by the city council. Notwithstanding the fact that Old Gilsum Road is closed to vehicular traffic, owners of property abutting on Old Gilsum Road shall not be prohibited from using the right-of-way of such Old Gilsum Road for purposes of gaining access to their respective properties at their own risk."

Mr. Blomquist continued that as a Class VI roadway, any passive recreation is allowed that does not use motor vehicles, with special exceptions granted by City Council for the Keene Sno-Riders to use the upper portion of Old Gilsum Road under utility lines. The Public Works Department and Parks, Recreation and Facilities Department have managed access to Old Gilsum Road over time, with property owners provided access keys to individual locks for use as they please; the City maintains keys in case of emergencies. Mr. Blomquist said that because Mr. Leary is not the owner of the Fontaine Trust parcel, he is required to seek permission from the City Council for use of Old Gilsum Road by a motorized vehicle. If the Council permitted this

access, Mr. Leary would be provided keys to access the gates temporarily on the condition that use of Old Gilsum Road by roadway, but not motor vehicles, is only for access to the Fontaine Albert R. Revocable Trust property.

Chair Manwaring heard public comment.

Tad Dwyer of 16 Meetinghouse Road questioned whether the Committee had received letters from the DHHA President, Phil Gaiser, or the Treasurer with their stances. The Chair had not received those letters. Mr. Dwyer deferred to another DHHA member, James Kirby of 12 Meetinghouse Road. Mr. Kirby said he was asked by the DHHA President to speak as their representative and a member of the Board of Directors. Mr. Kirby said the concern was not about Mr. Leary but about continued access to Old Gilsum Road by motor vehicles for the sake of public safety. Mr. Kirby said that if another landowner chose a similar arrangement, then granting access to Mr. Leary could set future precedent, allowing more traffic on a road that is used heavily for passive recreation. Mr. Kirby expressed another concern on behalf of the DHHA that the access gate at Timberlane Drive and Old Gilsum Road is locked typically as it should be. However, since utility work last spring, Mr. Kirby said that the gate had been found unlocked consistently, and as of the day of this meeting, the gate was wide open. Mr. Kirbydogl understood that utility workers need access, as do property owners to work on their land, but the DHHA still hoped that lower Old Gilsum Road would remain safe for passive recreation.

Chair Manwaring recognized Mr. Dwyer again who stated that he liked Mr. Leary and that this had nothing to do with him personally. Still, Mr. Dwyer referenced Mr. Leary's letter to the City Council, questioning Mr. Leary's request to access the property by motorized vehicle only two or three times annually, given that he had already far exceeded that to date without permission. Mr. Dwyer had encountered Mr. Leary using his motorized vehicle two days in a row and others had complained to him about Mr. Leary's use. He said that Mr. Leary had been driving over the curbs and around the locked gate to access Old Gilsum Road. Perhaps Mr. Leary was unaware of the rules, but Mr. Dwyer said that this was still clearly not working before permission was even granted, and he was concerned if Mr. Leary were granted this permission.

Mr. Blomquist spoke to the gate being unlocked, and stated that communication was needed with the utility companies who have permanent access for night work to ensure they are locking the gate properly. He said that sometimes the property owners might forget to lock the gate or in some instances, the gate had been vandalized. He said that minimizing use of Class VI roads for motorized purposes is an ongoing challenge because they are still public ways. The Council closed Old Gilsum Road subject to the property owner's motorized use and public's own recreation risk, because the City does not maintain Class VI roads. Mr. Bohannon and Mr. Blomquist would follow-up to monitor the gate and ensure it remains closed and locked. The City Attorney said he would have a conversation with Mr. Blomquist and Mr. Bohannon about the status of Class VI roads and gates.

Councilor Filiault said it was clear hearing these testimonies from all parties that this matter was nowhere near a resolution, stating that more time should be granted for all involved to talk through this more because too many questions remained for a vote.

Having walked and biked Old Gilsum Road and the surrounding trails, Councilor Chadbourne said she had a sense of wanting to preserve the area's quality for passive recreation. A few years ago, she was a member of the Greater Goose Pond Forest Stewardship Plan development, which included public sessions that made clear how much those trails systems are used for passive recreation, and that there was what she called a general consensus that the public wanted those trails preserved from vehicles. Councilor Chadbourne noted her experience with vehicles eroding trails, among other impacts. If this matter were put on more time, she suggested that information from that Stewardship Plan process might be helpful for Council review. Councilor Chadbourne concluded that she did not take this matter lightly and she was not in favor. Mr. Bohannon said that the Greater Goose Pond Forest Stewardship Plan is a great document and that per recommendations in that plan, with support and recommendation from the Conservation Commission, Staff would be returning to Council in short order with a motion to establish a Greater Goose Pond Forest Stewardship Committee to execute actions the plan. He agreed that Old Gilsum Road and surrounding trail systems are used heavily for multiple passive recreation purposes.

Mr. Blomquist said that the majority of properties along Old Gilsum Road are private, meaning that there are technically no public trails off most of the roadway. From a trails perspective, he continued that Old Gilsum Road is technically a public highway and not a trail, but is often used as such because it is unmaintained by the City as Class VI.

Vice Chair Giacomo wanted to hear from Mr. Leary about the allegations. The Vice Chair continued that because representatives of the Fontaine Trust already have access to use motorized vehicles on Old Gilsum Road, Mr. Leary would have access if he were a guest of theirs, and there were no stipulations as to how often the Fontaine's could use vehicles on that road. When it came down to what the Committee was voting on, Vice Chair Giacomo said it seemed clear. He understood that people did not want vehicles on Old Gilsum Road and agreed that he would be scared if he encountered one there during recreation, but in terms of legality he did not see an issue granting Mr. Leary the same access that the owner would have.

Although it is a Class VI highway, Councilor Chadbourne said that all the trails around Goose Pond are connected and as a hiker/biker, Old Gilsum Road feels like one of those trails whether it is technically. She said it is very jarring when a motor vehicle suddenly approaches in that wilderness space.

Mr. Leary spoke to the allegations, stating that Mr. Dwyer was correct, and that he attempted to contact the City for more than the past month about access since the property owner granted him full rights; the property owner told him the access was through Old Gilsum Road. Before putting an ATV on Old Gilsum Road, Mr. Leary said he reached out to the City and as many people as possible to ensure he was not upsetting neighbors or recreation areas. He said that his access was not to joyride through the property for recreation but because he had permission to work there

and thought winter might be better with Old Gilsum Road less traveled. He did not think Old Gilsum Road was the best way to access the property, citing the water tower access again that would interfere with no recreation. As a father who also uses Old Gilsum Road for recreation with his children and pets, he too did not want dangerous misuse of the road by motor vehicles. Mr. Leary thought there was a miscommunication and he hoped to access the property directly from the safest point – the utility road at the water tower.

Chair Manwaring also suggested putting this item on more time to allow all parties to think and review the Greater Goose Pond Forest Stewardship Plan, not just because of Mr. Leary, but to consider further setting possible precedent.

Vice Chair Giacomo disagreed, stating that he thought the request should move forward and that this had nothing to do with the Greater Goose Pond Forest Stewardship Plan. He would not support more time.

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

On a vote of 4-1, the Municipal Services, Facilities and Infrastructure Committee recommended placing this item on more time for one Committee cycle while Staff and all other parties communicate and report back with their results in two weeks. Councilor Giacomo opposed.

4) Introducing a New Citizen Reporting System - City Engineer

Chair Manwaring welcomed the City Engineer, Don Lussier, and Public Works Department Administrative Assistant, Andrea Madaglia, who reminded everyone that his system is not for emergency use and that it is not monitored at all times. Until recently, Ms. Madaglia said that residents and visitors of Keene had been able to report non-emergency problems and maintenance needs using a cellular phone application (app) called "YourGov". This app is no longer supported, and so the City is launching a replacement reporting system. The new system is called "See-Click-Fix" and is available for both the Apple and Android operating systems. You can also submit requests on your computer directly from the City's website (<https://ci.keene.nh.us/>) or at <https://seeclickfix.com/keene>.

Ms. Madaglia used photos to demonstrate to the Committee how the new app works. When the app first opens on iPhone or IOS (it could differ slightly between the two), she said that the user would be prompted to sign-in or register. Once an account is created, the user could see the number of active and completed requests throughout the City, links to the City website and online services, as well as announcements that apply to one's location. If there is a complaint, users would first be asked if they want to submit a photo of the problem. They would then be prompted to provide the issue location (using the phone's services or entering the address manually), select the category of the request, and provide a brief description of the issue. Depending on the category selected, the user could be asked to answer more questions, such as whether there is a hazard to pedestrians. Users could choose to hide their identity from the request details that are visible to other members of the public, but City Staff would still see user names. After submitting a request, the user would be able to see the active request in their profile

City of Keene
New Hampshire

MUNICIPAL SERVICES, FACILITIES AND INFRASTRUCTURE COMMITTEE
MEETING MINUTES

Wednesday, March 10, 2021

5:30 PM

Remote Meeting via Zoom

Members Present:

Janis O. Manwaring, Chair
Michael Giacomo, Vice Chair
Randy L. Filiault
Bettina A. Chadbourne
Robert C. Williams

Members Not Present:

Staff Present:

Elizabeth Fox, HR Director/Assistant City
Manager
Rebecca Landry, IT Director/Assistant City
Manager
Andy Bohannon, Director of Parks,
Recreation & Facilities
John Rogers, Zoning Administrator
Kürt Blomquist, Director of Public
Works/Emergency Management Director
Don Lussier, City Engineer
Rhett Lamb, Community Development
Director/Assistant City Manager

Chair Manwaring 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, Chair Manwaring called the meeting to order at 5:33 PM and Committee members stated their locations and whether they were alone.

1) Kevin Leary – Amended Request for Property Access off the Old Gilsum Road Through City of Keene Utility Road

Chair Manwaring welcomed Mr. Leary, who addressed the amendment to his February 6, 2021 request. With this amendment, Mr. Leary now sought permission to use a gated utility road maintained by the Public Works Department that abuts the Fontaine property, which he has permission from the owner to access for recreation. The utility road leads to a City water tower. This request is to allow his motor vehicle on that utility road so that he can access the Fontaine property without interfering with recreation on Old Gilsum Road, which was an expressed concern with his original request.

Vice Chair Giacomo said he received questions from constituents about the type of activities Mr. Leary would be engaging in on the property; would there be hunting, trapping, or potential impacts to the general area and not just Old Gilsum Road. While Mr. Leary was not obligated legally to

reply, the Vice Chair asked. Mr. Leary replied that his activities would be strictly recreational, creating trails for utility work by ATV, and his means of preserving the land.

Chair Manwaring requested comments from the Director of Parks, Recreation & Facilities, Andy Bohannon. Mr. Bohannon said that this request had pivoted since the last meeting's discussion about concerns for recreation on Old Gilsum Road. The Greater Goose Pond Forest conservation easement signed by the City Council in 2009 is held by the Society for Preservation of NH Forests. Mr. Leary seeks to access the lot, where the water tower is located. At present, Mr. Bohannon was unsure whether the conservation easement would limit the City's ability to grant access over that parcel; he thought such access would be likely limited but Staff were still researching and gathering information from Society for Preservation of NH Forests. Mr. Bohannon requested that the Committee place the matter on more time to allow Staff to learn more, gain input from the City Attorney, and return with a full understanding.

Chair Manwaring welcomed public comment.

Robert Shalit of 350 Water Street recalled that Mr. Leary's original request was to access the property two or three times annually and now the request was to access the parcel three or four times annually with a four-wheel vehicle, which Mr. Shalit said looked large. Mr. Leary said he would only be accessing with an ATV. Mr. Shalit requested more detail on the activities Mr. Leary intended to pursue on the property; would he be hunting, shooting, or trapping? Mr. Leary said that there might be hunting on that property. Mr. Shalit asked if Mr. Leary was aware of the pervasive hiking and biking trails surrounding that property. Mr. Leary said that was the case for most hunting roads and private properties that abut recreational areas. Mr. Leary said that hunting is a recreational sport. Mr. Shalit asked if Mr. Leary was aware of how heavily the surrounding area is used for recreation. Mr. Leary replied in the affirmative, adding that he hikes the Old Gilsum Road area daily. Mr. Shalit continued that the recreational trails surrounding this property are used by all people – snowshoeing, horseback riding, cycling, and more. Despite changing his request to access via the water tower road, Mr. Shalit asked whether Mr. Leary would still be accessing the same gate that opens to Old Gilsum Road. Mr. Leary replied no, with the amended request, his activities would never touch Old Gilsum Road; he would use a gate at the top of the neighborhood property that connects to the water tower utility road.

Chair Manwaring asked Mr. Bohannon to comment on gate access and he said that at the top of the Meetinghouse Road cul-de-sac there is an access road to the City's water tower, which is where Mr. Leary sought to access.

Chair Manwaring took final comments from Mr. Shalit, who asked whether Mr. Leary was comfortable hunting on the property despite it being surrounded by trails used actively, adding that he had never experienced anything like this and that the area had always been off-limits to motor vehicles. Mr. Leary replied that this was simply a matter of his personal recreation choices, which include hunting, on a private parcel where he has permission to engage in these activities. Mr. Leary concluded that many private lots surrounding this one in question were hunted long before he

moved into the Drummer Hill Homeowners Association and he suspected the same was true for public lands not in conservation easement where the activity is allowed. Mr. Shalit said he would comment further at the next hearing.

Vice Chair Giacomo made the following motion, which Councilor Filiault seconded. On a roll call vote of 5-0, the Municipal Services, Facilities & Infrastructure Committee recommended placing the request on more time for one cycle.

2) Grant Application for Transportation Heritage Trail – City Engineer

Chair Manwaring welcomed the City Engineer, Don Lussier, who was present to request Council authority to submit a grant application for the Transportation Heritage Trail. The City Engineer recalled that the fiscal year (FY) 2021 Capital Improvement Program includes this project as the City's next iteration of the trail development program. The City first began investing in trail properties in 1998, demonstrating a long series of investments and commitments to developing the trail network since. This FY21 phase is the first in a long term vision to extend the trail from existing Rail Trail parking at Eastern Avenue and eventually connecting to trails improved already in Swanzey. This grant application for phase one focuses on the section from Eastern Avenue to RT-101, ending there for now with signage about the coming trail features, including a historic bridge installation to connect this network over RT-101 to the Stone Arch Bridge. Phase one would also include addition of needed trail amenities and connecting the trail to neighborhoods off of Chapman Road and Marlboro Street using City owned property that was the old Chapman Road. City Staff requested that the City Council grant authority to submit the grant application and requested that the Mayor sign a letter on behalf of the City Council expressing the legislative body's support for this project.

Councilor Williams asked when the final connections were projected. Mr. Lussier said that completion is planned for FY27, though he said much of that is driven by the need to seek outside grant funding to continue pursuing the project's conclusion.

Vice Chair Giacomo asked about the plan for a crossing at Eastern Avenue, noting that the other Rail Trail crossings are bold, and recalling recent discussion of pedestrian challenges on that thoroughfare. Mr. Lussier admitted there was no plan at present and that concepts were under discussion in advance of concrete recommendations that would arise from the formal design phase. At this time, Mr. Lussier imagined a mid-block crossing with a rapidly flashing beacon similar to the one at Keene State College on Main Street. Pedestrians always have the right-of-way and such street features make drivers aware of unique conditions.

Vice Chair Giacomo referenced the stone buttress at the end of Eastern Avenue, where the trail used to end, and asked whether this phase of the trail would go around that. Mr. Lussier said that stone abutment was a part of the spur that diverged from the Cheshire branch at that location, carrying the privately owned railroad to a quarry in Roxbury. The Transportation Heritage Trail would not follow that same line but rather stay south, or right if facing the abutment. Mr. Lussier continued



City of Keene, N.H.
Transmittal Form

April 9, 2021

TO: Mayor and Keene City Council

FROM: Kevin Leary

THROUGH: Patricia A. Little, City Clerk

ITEM: C.2.

SUBJECT: Kevin Leary - Request for Access to Property - Old Gilsum Road

COUNCIL ACTION:

In City Council April 15, 2021.

Referred to the Municipal Services, Facilities and Infrastructure Committee.

ATTACHMENTS:

Description

Communication_Leary

BACKGROUND:

Mr. Leary has submitted a new request for access to the Fontaine property through the Old Gilsum Road.

4/9/2021

City of Keene

Formal request for property access:

Dear City Council,

I am writing you in regards to a formal request to access parcel# 218-009-000-000 owned by the Fontaine family trust and now under the control of Mark Fontaine. I have obtained a legal lease which has been signed by both parties granting me direct access to the property. I am asking for formal approval to access the property using the original right of way access which is Old Gilsum Road. I would request to enter the property using a small tracked motorized machine strictly for utility purposes. With the help and guidance of a licensed forester we will be conducting property maintenance and improvements. This will be a one-time entrance with work done over a set amount of time and a one-time exit of the property using Old Gilsum Road. This would be schedule and planned with the appropriate departments of the Keene Parks and Receptions and Public Works. We would like to have this approved for this year and would only happen every 2-3 years with the guidance and coordination of said Keene departments to appropriately schedule the entrance and exit of equipment.

Thank You for your time

Sincerely,

Kevin Leary

Handwritten signature of Kevin Leary and the date 4/9/21.

27 Meetinghouse Rd,

Keene, NH, 03431



March 24, 2021

TO: Mayor and Keene City Council

FROM: Municipal Services, Facilities and Infrastructure Committee

ITEM: D.1.

SUBJECT: Amended Request for Property Access off the Old Gilsum Road Through City of Keene Utility Road

COUNCIL ACTION:

In City Council April 1, 2021.

Report was filed as informational with the understanding that Mr. Leary will be submitting an updated request.

RECOMMENDATION:

On a roll call vote of 5-0, the Municipal Services, Facilities & Infrastructure Committee recommends acceptance of the communication from Mr. Leary for access to property off the Old Gilsum Road through the City of Keene utility road as informational.

BACKGROUND:

Chair Manwaring said that this discussion was about Kevin Leary requesting access to the Fontaine Property and not about what he might be doing on the property. The Chair welcomed the Director of Public Works/Emergency Management Director, Kurt Blomquist, who said that since the last meeting Staff had an opportunity to review the request by Mr. Leary for access to the Fontaine property through the water tower utility road. Meetings between the Director of Public Works, Director of Parks, Recreation & Facilities, the City Attorney, and Community Development Director led to Staff being unable to recommend granting Mr. Leary access to the water facility road at the end of Meetinghouse Lane for several reasons.

Staff determined that there are actually two easements involved. There is an easement that was granted to the City back in 1994 when what was known as "Drummer Village" was constructed. There is a section of property that abuts the end of Meetinghouse Lane that goes to the City water tower property, which is owned in common by Drummer Hill Village. Then there is a second easement that encompasses an additional property there that the City negotiated with the New Hampshire Society for Forestry back in approximately 2000. There have been problems with people accessing and vandalizing water properties, such as the graffiti on the Roxbury Street water tank. He continued that the challenge was trying to secure and maintain these facilities from unauthorized entry and potential damage due to very serious concern for those drinking water supplies, including the one in question, which serves Drummer Hill Village. There were concerns for Mr. Leary's activities attracting other nuisances, particularly motor vehicle activity. Additionally, there would be an additional burden to ensure this facility was maintained. The Director of Public Works continued that the residents have a certain level of expectation to see City vehicles in the area for regular maintenance, but there is an unwritten expectation of the neighbors not to see other vehicles.

The Director of Public Works explained the second easement, which is a conservation easement that the City

granted to the Society for Preservation of NH Forests in 2009. As the grantor, the City reserved the right to continue operations, maintenance, and repair of the existing water supply facility. The provision stated that only the City would be able to access for the sole purpose of providing a public water supply system and he thought the City presented to the Society and the public that it would reserve those rights to use the land in this way only. For all of the aforementioned reasons, the Director of Public Works could not recommend granting access to the water tower utility road.

The Director of Parks, Recreation & Facilities, Andy Bohannon, stated that he supported the Director of Public Works' recommendation. Mr. Bohannon and the Community Development Director, Rhett Lamb, communicated with the Society for Preservation of NH Forests, which provided a certificate of support for the Director of Public Works on this issue. Mr. Bohannon expressed concern for the Greater Goose Pond Forest with the potential for future motorized access that could result from Mr. Leary's activities

Chair Manwaring accepted comments from Mr. Leary, who recalled that he was a member of the Drummer Hill Association, the president of which submitted a letter to the City Council stating support for Mr. Leary accessing that road through the neighborhood's property access gate. Mr. Leary continued that he also spoke with the Society for Preservation of NH Forests, which provided him the deed and the stewardship plan. He said those documents do not contain any language that would specifically prohibit the City Council from allowing access to certain Goose Pond Properties for various forestry programs. He said that the surrounding properties would therefore be assessed and forested at some point and must be accessed at that time, when third parties would be allowed to make that crossing for the owners.

Mr. Leary continued that he had hired Alex Barrett, a licensed forester, who would help him carry out this work on the property. He said that his plans were highly in-line with the stewardship plans for the surrounding properties. Mr. Leary said that as a leaseholder, with financial obligations to the Fontaine Trust, he technically and legally had the right to access the Old Gilsum Road right-of-way. Still, after hearing that many people disagreed with motorized vehicles there, he initiated the current water utility road request as an effort to find an alternate route that would not interfere with Old Gilsum Road as an access point even though property owners and leases are to allowed access to the Old Gilsum Road. Mr. Leary questioned where the suggested access point is going to be. He continued that Old Gilsum Road and the gate at the bottom of the power lines on Court Street were the only two access points to the Goose Pond Forest for forestry, or to any of the private properties at the top of Drummer Hill not owned by the City. Mr. Leary concluded that this would not necessarily be ATV access, but rather to bring "a machine that contributes to this forestry company." He said that would be the extent of the access.

Chair Manwaring expressed confusion. She thought the original request was to use an ATV on Old Gilsum Road, then to use an ATV on the water tower road, and during all of that time there was no mention that she could recall of forestry equipment or an associated project. She asked if staff was aware of this forestry component.

The Director of Public Works shared the Chair's confusion. He stated his understanding from a previous conversation with Mr. Leary was that the request was to access the property by a motor vehicle and then there were comments about a small bobcat-style excavator and potentially another small vehicle for minor work/clearing.

Councilor Filiault said he was also confused and he wanted to hear more from Mr. Leary because this seemed to be a different discussion than a few weeks ago regarding property use. The Councilor wanted to know what the access was for and what Mr. Leary would be doing. Mr. Leary replied that the original plan has always been to manage the property for wildlife and habitat improvements. He said he worked to find and within the last week has finally found a licensed contractor to help him establish a stewardship plan for the property so he does not conduct any unnecessary work. He has signed a contract with this licensed forester.

Mr. Leary continued that the original plan was for the legal access point off of the Old Gilsum Road. He reached out to community members to determine the correct access point and he was told that it would be the Old Gilsum Road. He began using an ATV to access the land with what he called his lessee's rights to begin work before learning that he needed formal permission from the City Council to access the property by a motor vehicle using Old Gilsum Road. He submitted that request and concerns were raised about motorized access to Old Gilsum Road and so he sought alternate routes, which led to this amended request to use the water tower access road, thinking it might be better than Old Gilsum Road.

Vice Chair Giacomo said, he was also confused but thought he was beginning to understand. He asked that the City Attorney to comment on the legal aspect of does the lessee have the same legal rights for property access as the owners and if yes, what is the recourse, and what was the City Council's legal obligation.

The City Attorney, Tom Mullins, said that he was also confused, especially given comments about a third party contractor that the Attorney had not heard before. From the beginning, the City Attorney understood that Mr. Leary wanted to access the Fontaine property regularly by crossing over Old Gilsum Road with an ATV for purposes he had negotiated with Mr. Fontaine. The City Attorney said it changed at some point to Mr. Leary's statements of possibly less vehicle access and now some sort of forestry equipment. The City Attorney referred back to Vice Chair Giacomo and stated that property owners on a Class VI road have a right to access their properties over and across a Class VI road. However, the City is required to maintain that road and retains certain liability protections as a result. The public also retains rights to non-motorized use of the road. In looking through the information the City Attorney had to date, he had no evidence of an actual lease between Mr. Leary and the Fontaine's, but rather that Mr. Fontaine allowed Mr. Leary certain rights to use the property. Contrarily, the City Attorney believed there was a communication stating that it was not a lease. If there were a lease, he thought it was likely less complicated and with the property owners right to lease the property would become the right to access for the lessee. The City Attorney clarified that this was not legal advice to Mr. Leary or Mr. Fontaine, but the answer he had for the Councilor.

The City Attorney continued by stating he shared the Director of Public Works' concerns with allowing non-City access over the utility road, though he thought an agreement could be reached if the Council were inclined. The City Attorney continued that he had further concerns with third party access, which if the Council were inclined to approve, would require some sort of license, with an access description and insurance for use of City property.

Councilor Williams said he was wary of expanding access to ATV's where there was not access currently. Specifically, the Councilor just heard that Mr. Leary does not have a lease, which would make a difference to the Councilor in granting access to the land in one of these ways. He thought granting access in this way to someone without a lease would create precedent for others buying tiny properties in the Greater Goose Pond Forest along Old Gilsum Road and giving out ATV licenses to all their friends. He thought there needed to be a line somewhere in this issue and he thought a lease would be that line. The Councilor said he wanted to support forest management but needed to know more about the intended work. He continued that excavators are a big deal in the context of local wetlands and overall impacts. He thought the City could find ways to encourage stewardship and he could support limited access through the water tower road for that purpose. However, he said that was different from ATV access a few times annually. In addition to the impact on local habitats, ATV's lead to new informal roads, noise, and other stressors on nature. He suggested an option could be an electric vehicle such as a cargo bike, which he thought would be much less noticeable to other area users and he thought, was legal under today's standards. Councilor Williams concluded that the Conservation Commission was trying to establish a Greater Goose Pond Forest Stewardship Committee and he thought this would be a great question to send to such a Committee.

Councilor Madison said he shared Councilor Williams' concern about there being no lease. Councilor Madison was also concerned with ATV's accessing the road near the water tank, citing his familiarity with security as a growing issue for the water industry. He thought he was confused perhaps the most because he was new to the

City Council. Still, Councilor Madison understood that this was a request for occasional ATV access, which had now seems to have graduated to equipment access including excavators, skid steers, or maybe something heavier. He was concerned with the potential impacts of such equipment to the utility road or Old Gilsum Road. Councilor Madison said that for him to feel comfortable considering access he would need to see a lease at bare minimum.

Councilor Filiault said that the proposal seemed to change over the weeks since first introduced and he was not blaming Mr. Leary, stating he thought Mr. Leary was doing his best to access properly but that the reason for access continued to change. The Councilor recommended that Mr. Leary take a few weeks to speak in more detail with the Director of Public Works and Director of Parks, Recreation & Facilities to put forward an accurate request. Councilor Filiault said he was also confused having gone through three meetings and he thought everyone needed to look at this with fresh eyes. He was not in a position to vote at this time.

Mr. Leary stated that he could speak for himself and the Fontaine's in asserting the Mr. Leary does bare financial obligation – an annual donation to the St. Jude's Children's Hospital in the Fontaine name that had already occurred once – and that there was an agreement in writing as to Mr. Leary's plans for the property. Mr. Leary said he shared that correspondence with Mr. Bohannon and so he did not understand why it was not shared with everyone. From the start, he said he reached out to the Director of Public Works and the Director of Parks, Recreation & Facilities with an initial correspondence to access the property, but he did not realize all he would have to go through to do so and some learning was necessary. Mr. Leary said the original access told to him by Mr. Bohannon was through the Old Gilsum Road with an ATV and following that direction, Mr. Leary said he bought an ATV in December strictly to carry equipment to the property and then he learned from Mr. Bohannon that he needed permission from the Council to do so.

Mr. Leary continued that from the beginning he made clear that he wanted to bring in a small tract excavator for the work this year. Therefore, Mr. Leary hired a forester to ensure what he does is in line with stewardship. The forester would be doing none of the work and would not be accessing the property with equipment as a third party, but rather he would be advising Mr. Leary's of the necessary work in order to make a better habitat on that property. He said that like any other forestry plan, the excavator should only need to access the property every 10 years. Mr. Leary said he forwarded the forestry contracts to Mr. Bohannon as well, stating that he was unaware with whom information needed to be shared.

Chair Manwaring welcomed public comment.

Eloise Clark of 1185 Roxbury Road said she was the Chair of the Conservation Commission when the conservation decree was enacted to protect the property. She was concerned about the precedent of opening the property to motorized vehicles. She was curious about the precedent for other logging operations.

Joan Van Saun of 62 Meetinghouse Road expressed concern for the spot at which the dirt road ends near the water tower, where a walking path extends to the start of Old Gilsum Road. She could not imagine an ATV on that path, stating it would erode the grass and she had never seen a motor vehicle there. While it was only approximately 1/16-mile in length, she was concerned.

The City Manager said one challenge was due to this request having evolved from Old Gilsum Road to the water tank and from an ATV to active forest management/equipment. She suggested the option to discard the request before the Committee at this meeting regarding access to the water tower property and Mr. Leary could submit a new request articulating his forestry plans and provide any additional documents to prove a lease agreement.

Councilor Filiault said he agreed with the City Manager but said it should be clear that wording in the new request must be completely different or the Council cannot rehear the matter until next calendar year per their Rules of Order. The City Manager said that issue could be prevented if the current request from Mr. Leary was

accepted as informational and Mr. Leary submitted a new letter that the Staff and the Council could review.

Chair Manwaring stated her continued concern for ATV access to Old Gilsum Road, a Class VI road. Councilor Williams was happy to support a real conservation effort for that property, if possible, but agreed with needing more information from Mr. Leary beyond access issues for all parties to develop a best approach. He supported accepting the request as informational.

Vice Chair Giacomo agreed that accepting as informational provides flexibility and allows the petitioner to return with something clearer that indicates the lease agreement. Councilor Madison concurred with the other Councilors and said it would be good to see a new proposal, proof of lease, information on the equipment types, and the frequency of this use.

Mr. Leary stated his understanding of what the Committee sought and added that he just hired the forester to complete the plan, which he thought would be complete in advance of the next MSFI Committee meeting, when he could also present the lease agreement.

If Mr. Leary planned to return for the next regular meeting the Councilor Filiault wondered why not place the matter on more time. The City Attorney responded that Mr. Leary withdrew his original request regarding ATV use on Old Gilsum Road and then submitted a different request for the water tank road, which were essentially two different matters. If returning with requests for the Class VI road, then the City Attorney said it should be noticed to that affect so that abutters and other interested parties could appear for the discussion.

Vice Chair Giacomo made the following motion, which Councilor Filiault seconded.

On a vote of 5-0, the Municipal Services, Facilities & Infrastructure Committee recommends acceptance of the communication from Mr. Leary for access to property off the Old Gilsum Road through the City of Keene utility road. as informational.



April 21, 2021

TO: Mayor and Keene City Council

FROM: Municipal Services, Facilities and Infrastructure Committee

ITEM: D.1.

SUBJECT: Kevin Leary – Request for Access to Property – Old Gilsum Road

COUNCIL ACTION:

In City Council May 6, 2021.

Voted unanimously to carry out the intent of the report.

RECOMMENDATION:

On a roll call vote of 5-0, the Municipal Services, Facilities and Infrastructure Committee recommends per Section 94-238 of the City Code of Ordinances, that Kevin Leary be permitted to use a motorized vehicle on the Class VI portion of the Old Gilsum Road for the purpose of transporting in and out of equipment one time each year until 2023 to the Fontaine Albert R Revocable Trust Property (218-009-00-000-000). This motorized access is to be coordinated with City staff with Mr. Leary abiding by all conditions set by staff.

BACKGROUND:

Chair Manwaring welcomed Kevin Leary of 27 Meetinghouse Road to speak about this new request. Mr. Leary said that since he was before this committee last, he met with City Staff from the Parks, Recreation & Facilities Department and Public Works Department to discuss in-depth the work he planned and decided it was best to present a new proposal to the City Council with more information. Mr. Leary continued stating that he obtained a legal lease granting him access to the Fontaine Property. He sought formal access to the property per the original right-of-way access, which is Old Gilsum Road. He requested to enter the property using a small tracked motorized machine to work with a licensed forester for property maintenance and improvements. Mr. Leary said this one-time annual entrance would be followed by the property work and would then require a one-time exit via Old Gilsum Road. This access would be scheduled always with the appropriate Staff in the Departments of Parks, Recreation & Facilities and Public Works to coordinate access through the locked gate to Old Gilsum Road. He requested this access once in 2021 and to then occur again every two or three years with the same Staff guidance.

Chair Manwaring welcomed the Director of Public Works/Emergency Management Director, Kurt Blomquist, who said that he and other Staff had robust discussions with Mr. Leary about his plans. Per Section 94-238 of the City Code, the Class VI Old Gilsum Road can be accessed by motor vehicles with Council permission. The Director of Public Works said that Staff were satisfied with the formal lease that Mr. Leary obtained for access to the property. If the City Council granted Mr. Leary this permission, the City would facilitate the appropriate legal documentation with Mr. Leary so that he could access the property in the fashion he described. The Director of Public Works said that this request met all requirements in the City Code. As such, Staff recommended that this Committee recommend to the City Council that Mr. Leary be given access to use a motorized vehicle on the Class VI portion of the Old Gilsum Road for the purpose of transporting in-and-out of equipment to the Fontaine Property one-time yearly until 2023 so long as this motorized access is

coordinated with City Staff and Mr. Leary abides all conditions set by staff.

Chair Manwaring asked for certainty that Staff were satisfied with the lease Mr. Leary presented and the Director of Public Works replied in the affirmative, stating that it meets the intent of the City Code.

Vice Chair Giacomo thanked Mr. Leary and Staff for working out a mutually beneficial resolution to this issue.

Vice Chair Giacomo made the following motion, which Councilor Filiault seconded.

On a roll call vote of 5-0, the Municipal Services, Facilities and Infrastructure Committee recommends per Section 94-238 of the City Code of Ordinances, that Kevin Leary is permitted to use a motorized vehicle on the Class VI portion of the Old Gilsum Road for the purpose of transporting in and out of equipment one time each year until 2023 to the Fontaine Albert R Revocable Trust Property (218-009-00-000-000). This motorized access is to be coordinated with City staff with Mr. Leary abiding by all condition set by staff.



CITY OF KEENE NEW HAMPSHIRE

ITEM #A.3.

Meeting Date: January 26, 2022
To: Municipal Services, Facilities and Infrastructure Committee
From: Thomas Mullins, City Attorney
Through:
Subject: Relocation of Woodard Pond Road - City Attorney

Recommendation:

Move that the Municipal Service, Facilities and Infrastructure Committee recommend that the City Manager be authorized to do all things necessary to negotiate and execute an Easement Deed with the Town of Roxbury for the relocation of Woodward Pond Road across City-owned property in Roxbury, New Hampshire.

Attachments:

None

Background:

During the 2020 and 2021 construction seasons, the City completed a major reconstruction of the Woodward Pond Dam in Roxbury. The dam is one of two dams that the City owns in the Roaring Brook watershed and is a key component of our surface water supply system.

The reconstruction work included changing the slope of the downstream face of the dam. This in turn impacted the alignment of a Class VI road that historically ran along the toe of the dam. In order to facilitate the City's upgrade of the dam, the Town of Roxbury approved a warrant article on March 10, 2020, to amend the layout of the existing roadway. The modified road now runs along the crest of the dam.

The City owns the property over which the new layout passes. Therefore, the City must grant the Town an easement for highway purposes in order to complete and record the layout amendment process.



January 20, 2022

Keene School District
Maintenance Department

77 Arch Street
Keene, NH 03431

PH: 603-352-8919

FAX: 603-357-3245

Kenneth M. Dooley
Director of Buildings and Grounds
kdooley@sau29.org

Re: Wilson Pond Dam (Arch St. Keene)

To whom it may concern,

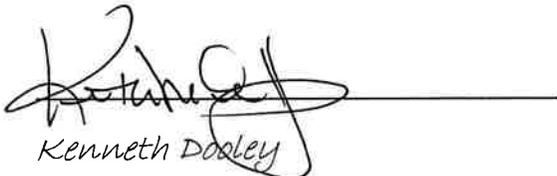
The Keene School District is currently under contract with Dubois and King for the design, bidding and oversight of the renovation of the dam located on Arch Street in Keene NH. Currently the project is in the final stages of design as D & K works closely with the state for plan approval. D & K has also been charged with completing all the required permits.

Upon approval of the design, Dubois and King will then begin the bidding process for qualified vendors. The intent is to begin work on the dam within the year. Although the finalized plans have not been shared with the district our intent is to have as minimal impact to the property as possible, yet bringing the dam up to code to withstand the

flooding requirements set forth by the state dam bureau.

If you have any questions feel free to contact me.

Sincerely,



Kenneth Dooley
Director of Buildings and Grounds
Keene School District