

City of Keene
New Hampshire

PLANNING, LICENSES AND DEVELOPMENT COMMITTEE
MEETING MINUTES

Wednesday, July 24, 2024

6:00 PM

**Council Chambers,
City Hall**

Members Present:

Kate M. Bosley, Chair
Philip M. Jones, Vice Chair
Robert C. Williams (via Teams)
Edward J. Haas
Andrew M. Madison

Members Not Present:

All Present

Jay V. Kahn, Mayor

Staff Present:

Elizabeth A. Dragon, City Manager
Thomas P. Mullins, City Attorney (via Phone)
Rebecca Landry, Deputy City Manager
Andy Bohannon, Deputy City Manager
Jesse Rounds, Community Development
Director
Don Lussier, Public Works Director
Patty Little, City Clerk
Carrah Fisk-Hennessey, Parks & Recreation
Director

Chair Bosley called the meeting to order at 6:00 PM. Having declared that a quorum was present in the Council Chamber, Chair Bosley recognized that Councilor Williams requested to participate remotely due to family travel. Hearing no objections, Chair Bosley granted the remote participation. Councilor Williams was calling alone from his location.

**1) Jim Coppo/Jimmy Tempesta – Request to Discharge Fireworks – First Responder
Appreciation Community Day – August 18, 2024**

Chair Bosley welcomed Jim Coppo of Fitzwilliam and Jimmy Tempesta of Swanzey, who indicated that this event had grown from a smaller event for police first responders and now they were including firefighters. Mr. Coppo provided background, noting that this effort began in 2022 as a private event for law enforcement personnel (from police to administrators and dispatchers) and their families. It had always been a well-attended event. To expand this effort to include fire personnel, the organizers developed a First Responder Appreciation Community Day, open to all police and fire departments (local, County, and State). The organizers had been meeting regularly to plan. This request was for fireworks at the end of the event, but Mr. Coppo said there would also be a softball game, touch a truck, music, and more.

Mr. Coppo continued, explaining that a police officer is related to the owner of Atlas Fireworks, which agreed to implement this firework display at Alumni Field, where the organizers were advised was the common location for fireworks in Keene. This event is intended to provide the community with a way to engage with first responders in a different light, and to allow the first

responders to visualize the community's support. Mr. Coppo and Mr. Tempesta paid for this event themselves, so it is free for the attendees being celebrated.

Chair Bosley thanked the applicants for everything they were doing for local first responders, showing them the respect that they deserve. She said it was lovely to see community members stepping up in this way. She said the Keene Police Department deals with a lot behind the scenes that the community does not know about. The organizers were grateful for the Council's support and stated their hope that this effort could spread to other places.

The City Manager noted that this is a private event, not City-sponsored. Because it would be at Alumni Field, the event does not require City Council approval. The only question before the Committee was the discharge of fireworks.

Vice Chair Jones thanked the organizers for their efforts and contributions. He recalled attending a holiday party for State Troopers at Tempesta's earlier this year. Vice Chair Jones asked the organizers to ensure they communicate with and notify the neighborhood of the upcoming fireworks, so they are not surprised; many demographics have challenges with fireworks, like veterans with PTSD, those on the autism spectrum, or pets. Otherwise, Vice Chair Jones was in support. Mr. Coppo said he and Mr. Tempesta would go above and beyond to notify the neighbors. Additionally, they were planning for an 8–10-minute display vs. a typical longer one, and the display would be lower in the air than normal, so the organizers hoped that would help with neighborhood upset.

Councilor Haas echoed his colleagues, and asked if the organizers were willing to disclose the cost they were incurring for the fireworks. Mr. Coppo explained that they did not know the final cost yet, but that Atlas Fireworks had committed to a significant discount. Councilor Haas appreciated that it would be a shorter show than typical.

Chair Bosley explained to the applicants that there were some challenges and tensions regarding fireworks in the community, because Alumni Field is one of the only safe places in the City for such a display, so this neighborhood bears the brunt of that impact. Councilor Williams had articulated these concerns at past meetings. Mr. Tempesta asked how often there are fireworks there, and Chair Bosley said that 3 requests had been approved this year, but the Council was considering regulations that would limit the displays to one per organization per year (one organization requested 2 displays in 2024). Councilor Haas said the organizers might be setting a new standard for fireworks with the shorter show. Mr. Coppo explained other areas they considered having the event, like Wheelock Park or Swanzey, before the fireworks display was decided. Because a large portion of the honorees would be from the Keene Police and Fire Departments, the organizers received feedback from other towns that the event should be hosted in Keene. The organizers were not sure how many would attend the event. Corporate businesses had approached the organizers asking how they could help; some will award the softball game or homerun derby winners.

Chair Bosley opened the floor to public comments.

Councilor Laura Tobin of Center Street expressed concern about vulnerable populations that are impacted by fireworks displays, like veterans with PTSD, despite her supporting this celebration of first responders.

Mayor Jay Kahn of Darling Road said he had the privilege of watching this event come together, noting the incredible amount of time Mr. Coppo and Mr. Tempesta had volunteered. The Mayor was amazed at the number of organizations participating and the number of activities planned for the event. Mayor Kahn recognized concerns expressed to the Council about frequent fireworks displays, and he hoped some standards could be articulated in the future. He praised what would be an excellent and well-organized event.

There were no further public comments.

Noting the concerns about fireworks in the community, Mr. Tempesta clarified that if the Council felt this was not a good idea or would disrupt too many, the organizers would understand if the fireworks were not approved; they would pivot their planning if needed because their intention is not to disrupt anyone, it is supposed to be a positive event. Chair Bosley thought the organizers were hearing a spillover of a greater City Council conversation about fireworks that was unrelated to this event. The Chair thought this event's patrons would enjoy this display, noting that the fireworks are fun and exciting, especially for kids. Chair Bosley stressed the importance of informing the neighborhood in advance.

Councilor Madison thanked the organizers for including the firefighting personnel, as there are many in his family.

Regarding the motion below, Mr. Coppo listed how all the aspects of the motion (e.g., insurance certificate), and the various permissions needed, were already acquired by the organizers. The City Manager noted that there is a required process with the Fire Department for fireworks displays, and Mr. Coppo said he had already spoken with the Fire Department and was awaiting next steps until after this meeting. He added that in addition to a shorter display, it would be earlier in the evening than many other displays.

Councilor Madison made the following motion, which was duly seconded by Vice Chair Jones.

On a roll call vote of 4–1, the Planning, Licenses, and Development Committee recommends that Jim Coppo and Jimmy Tempesta for the First Responder Appreciation Community Day, be granted permission for the discharge of display fireworks on Sunday, August 18, 2024, on Alumni Field at no later than 10:00 PM. Said permission is subject to following conditions: the signing of a revocable license and indemnification agreement; that Jim Coppo and Jimmy Tempesta for the First Responder Appreciation Community Day, provide a certificate of liability insurance with the City of Keene listed as additional insured in the amount of \$1,000,000; that

the fireworks vendor also provide a certificate of liability insurance with the City of Keene listed as additional insured in the amount of \$1,000,000; submittal of a signed letter of permission from SAU 29 for use of their property; and obtainment of a State Fireworks permit. In addition, the petitioner agrees to comply with any recommendations of City staff. The Petitioner agrees to absorb the cost of any City-related services. Said payment shall be made within 30-days of the date of invoicing. Councilor Williams voted in opposition.

2) Request for Authorization for the Issuance of a Building permit for 3 Aliber Pl. and 57 Marlboro St. Pursuant to RSA 674:41 – Community Development Director

Chair Bosley welcomed the Community Development Director, Jesse Rounds, for an overview. Mr. Rounds explained that NH statute RSA 674:41 requires that the City Council authorize the issuance of Building Permits for development on a private road. The City of Keene considers non-public roads to be private, and in this case, there is a parcel proposed for building purposes. Chair Bosley said that this Committee needed to consider the Planning Board's guidance in determining the Committee's recommendation to the City Council. Mr. Rounds agreed and added that the applicant presented their proposal to the Planning Board, who had a lot of questions about what they were being asked to do. Essentially, Mr. Rounds said that the purpose of RSA 674:41 is to ensure that developments on a private road are safe. In this case, the private road is Aliber Place off Marlboro Street. The Planning Board debated and ultimately recommended that the City Council should authorize the issuance of Building Permits for this property.

Chair Bosley noted that this applicant was not requesting a Cottage Court Overlay because it is not allowed in that district. Mr. Rounds agreed that the Cottage Court Overlay is only permitted in residential zoning districts and the parcel in question is in the Downtown Edge District.

Chair Bosley welcomed former mayor George Hansel, on behalf of the property owner, Jared Goodell. Mr. Hansel said that Mr. Goodell wishes to build 3 duplexes on this parcel. The portion of the parcel in question is deteriorating concrete and pavement, so Mr. Goodell wants to build 3 small duplexes and add green space to create housing close to downtown Keene. Mr. Hansel said they were all surprised by this issue with RSA 674:41, noting that he had never experienced it during his time in City government. He was grateful that Senior Planner, Mari Brunner, helped explain. Mr. Hansel's research showed that RSA 674:41 is meant to ensure very remote parcels are accessible to emergency services and reviewed by a local governing body, which he did not think applied in this case. He said the Planning Board discussed Resolution R-2000-28, which he said strictly applies to Class VI roads. Legally, Aliber Place is not a Class VI road. Rather, it is a Nonconforming Private Road, which is very different. Mr. Hansel felt that Aliber Place is essentially a shared driveway for 2 parcels, one of which abuts Marlboro Street. He said Mr. Goodell's goal is to voluntarily merge 3 Aliber Place, which is a single-family home lot, with the back of the 57 Marlboro Street lot, which currently has a 3-family unit. So, he sought approval from the City Council to be issued a Building Permit on a private road without frontage. Mr. Hansel clarified that this approval would not be a substitute for any other level of review by the

City of Keene; there will be zoning review, application for the Building Permit, and Mr. Goodell plans to submit documentation aligned with RSA 674:41 to the Cheshire County Registry of Deeds indicating that he would not be holding the City liable for any maintenance of Aliber Place. Mr. Hansel and Mr. Goodell hoped to get through this seeming legal technicality as quickly as possible to proceed with construction starting in September.

Chair Bosley said she was able to garner everything Mr. Hansel was saying by reading RSA 674:41. She noted that the Council had been talking about development in the City, and added that the Joint Planning Board-Planning, Licenses, and Development (PB-PLD) Committee had the issue of private roads listed in their new “more time” agenda section. She said this conversation on private roads needs to occur in a PB-PLD public workshop. Chair Bosley said that Resolution R-2000-28 might no longer be appropriate; especially in the current climate, policies are not going to last 25 years. Given that this property abuts a neighborhood, to which the Cottage Court Overlay would have applied, Chair Bosley was comfortable with additional development there, so she was willing to support this action.

Councilor Haas said it seemed like there were two separate issues: (1) reconsideration of R-2000-28, and (2) allowing consideration of Building Permits and reclassifying the zoning for 3 Aliber Place. He said that 57 Marlboro Street is already zoned properly, which could continue to the proposed duplexes, but he thought 3 Aliber Place would have to be rezoned because it is in the Residential Preservation District. Mr. Hansel said no and explained more about the zoning issues. Mr. Goodell would be seeking two variances and one special exception from the Zoning Board of Adjustment. The one variance would be for building outside of the “build-to” zone (build within 0–20 feet of the road frontage) that is required in Downtown Edge District, which is impossible with this project because the parcel lies outside of the build-to zone. The second variance would be for dimensional requirements; Mr. Goodell wants to build in the setback zone to minimize the visual impact of the new development and provide privacy to the new residents. The special exception would be for parking. Mr. Hansel said this is an interesting parcel because multiple zoning districts converge in an area without public road frontage.

Councilor Haas said it seemed like there was already a normal City process for this to go through, so he did not understand why the Council needed to specially acknowledge those processes. Chair Bosley explained that RSA 674:41 requires the City Council’s approval for a Building Permit to be issued in this case because of the private road. Regardless of all the zoning changes (which were not the purview of this Committee), the applicant could not move forward applying for a Building Permit without the Council’s agreement. Councilor Haas asked if the Committee was considering Resolution R-2000-28. Chair Bosley said no, that was a completely separate matter that would be reviewed in a workshop by the PB-PLD Committee; it would not need to be suspended as a rule to act on this request. Councilor Haas asked if the Committee could address the Building Permit, setbacks, or zoning without dealing with R-2000-28. Chair Bosley said yes.

Mr. Hansel said that some would say RSA 674:41 is State of NH zoning, which could be argued against. He inquired with members of legislature about changing this because neither the City nor developers like this. The RSA does not provide the governing body with guidance on what to assess in these instances as opposed to something like a site plan review with very specific things to address. He shared in some of the confusion expressed and he hoped this would change at the State level, so this does not have to occur again.

Councilor Haas asked if the Committee could suspend Resolution R-2000-28 to allow the applicants to move forward seeking Building Permits. Mr. Hansel said R-2000-28 did not really apply here because it does not address private roads. Chair Bosley thought there might have been an amendment to the Resolution. Chair Bosley said it did not seem that—per RSA 674:41—the Council could overarchingly deny Mr. Goodell’s right to ask for this. She said there were some real problems with R-2000-28 and this conversation highlighted that the City should have this conversation sooner than later. She asked the City Attorney whether suspension of Resolution R-2000-28 is required for the Committee to move forward with this recommendation. The City Attorney said it would be best to suspend R-2000-28 because there is a new resolution in place, but suspending it was not required and the Committee could rely on the RSA. It was the Chair’s prerogative to suspend. Chair Bosley supported suspending R-2000-28 to cover all technicalities. Vice Chair Jones agreed.

There were no public comments.

Councilor Haas made the following motion, which was duly seconded by Vice Chair Jones.

On a roll call vote of 5–0, the Planning, Licenses, and Development Committee suspended Resolution R-2000-28 to allow for consideration of this matter.

A motion by Councilor Madison to recommend that the City Council grant the request to authorize the issuance of building permits to Jared Goodell for three duplexes on the property located at 57 Marlboro Street was duly seconded by Vice Chair Jones.

Councilor Haas expressed discomfort because it seemed that this was going around the normal City process of applying for a Building Permit. While he understood that seemed to be what RSA 674:41 was implying the City Council had to do, he would have been in favor of a differently worded motion. Chair Bosley understood the confusion because of these seemingly contradictory documents, but she thought the Council could work that out without preventing or slowing this specific project.

Vice Chair Jones welcomed Mr. Hansel back to the Council Chamber. The Vice Chair said this conundrum was an example of why he asked for the “more time” item on the Joint Committee’s agendas. He had pointed this out to the Community Development Director, and he thanked Mr. Hansel for bringing this forward. Vice Chair Jones thought this showed that this process could work.

Chair Bosley agreed that this issue was high on the list for the Joint Committee because with very minimal effort, the Council could create more opportunities for development, which is what the Council had been standing up for over the last several years. She was glad this came forward and that there were efforts toward development in the community.

The City Manager understood that the way the motion was phrased, it could seem that it was moving straight to issuing a Building Permit, but that was not the case. Rather, the motion would grant City staff the authority to process the Building Permit application and issue it once all other requirements have been met. Chair Bosley added that it would go to the full Council for a final vote.

Councilor Haas moved to amend the motion on the floor to include the City Manager's comments above. There was no second to the motion to amend.

Chair Bosley felt that the original motion provided for the City Manager's wording. The Committee would be recommending that the City Council grant the request to *authorize* the issuance of Building Permits to Mr. Goodell not to *require* the issuance of Building Permits. It would still be the Community Development Department's purview to ensure all the plans and safety mechanisms required for issuing Building Permits are met before the Planning Board considers issuing those permits. The City Manager added that this clarifying language would be included in the report to the full Council. The City Manager also agreed with Chair Bosley that the motion language allows the applicant to move forward applying for building permits.

Councilor Haas withdrew his amendment.

On a roll call vote of 5–0, the Planning Licenses, and Development Committee recommends that the City Council grant the request to authorize the issuance of Building Permits subject to the normal review and approval process, for three duplexes on the property located at 57 Marlboro Street.

3) Continued Discussion – Donation of Land at 0 Ashuelot Street – Compensatory Flood Storage

Chair Bosley welcomed Thomas Hanna, Partner Attorney with BCM Environmental & Land Law, LLC, on behalf of JRR Properties, and Liza Sargent of SVE Associates, on behalf of the Monadnock Conservancy. Ms. Sargent, a civil engineer, was not present during the previous discussion with this Committee and she was prepared to answer questions. Mr. Hanna recalled that this had to do with 0 Ashuelot Street, which is an approximately 3.5-acre parcel that was former overflow parking for the Colony Mill. JRR Properties owns the 3.5 acres and had entered into an agreement with the City to donate approximately 2.5 acres of the parcel for use as a City park, with a children's playground and hopefully a kayak/canoe launch. JRR Properties had also agreed to donate the remaining land to the Monadnock Conservancy for their new headquarters.

The entire parcel is within the 100-year floodplain and under the City's regulations, any filling and loss of the floodplain must be mitigated with compensatory flood storage, which on this site can only happen primarily on the land donated to the City. The last concept plan presented to this Committee involved a larger compensatory storage area (flatter and broader), whereas the plan Ms. Sargent would present at this meeting was suggested by the Public Works Director, Don Lussier, as a collaborative effort with the City for the stormwater drainage pipe that runs through the center of the property (north–south). Mr. Hanna said the applicants sought conditional approval of this concept that would encumber the City's land with the flood compensation, without which the Monadnock Conservancy cannot build on this site. The Conservancy was already immersed in fundraising and design/engineering plans, and was seeking assurance that this concept plan is acceptable to the City Council.

Ms. Sargent reiterated that the plan shown at the previous meeting was for a larger, shallower flood compensation area. The revised plan that she displayed for the Committee would provide compensatory storage for the proposed Monadnock Conservancy building, and would provide for JRR Properties working with the City to repair and upgrade the stormwater system running through the parcel. Creating a riparian channel to remove that pipe would also create a nice buffer between the City's park and the Conservancy's headquarters. Ms. Sargent showed stock images of the possibilities for plantings along the riparian swale, much like at Pat Russell Park.

Ms. Sargent addressed the questions posed at the previous meeting:

1. Depth of the seasonal high-water table?
 - a. Test pits for the Alteration of Terrain Permit found groundwater approximately 5 feet below the ground surface.
2. Does the compensatory storage take into account the groundwater table?
 - a. Absolutely. Flood storage compensation cannot be provided in the groundwater table.
3. Ashuelot River elevation?
 - a. As of June 18, the water elevation was 471.4 meters above sea level.
 - b. This varies with significant rain events, etc.
 - c. To protect the Monadnock Conservancy's site from flooding, the Federal Emergency Management Agency (FEMA) requires at least 1-foot above flood elevation, and she supposed it would be 2.8 feet above.
4. Similarity to another mitigation projects in Keene?
 - a. To address this concern, a riparian swale is proposed with plantings, in addition to the flood compensation.

Councilor Madison asked who would be ultimately responsible for the flood compensation storage swale. Mr. Hanna said that based on the language provided by the City Attorney, Tom Mullins, Mr. Hanna thought that might still need to be worked out. Mr. Hanna knew the City

needed to retain its right to maintain its stormwater drainage, so there might be a shared obligation. He suspected that the Monadnock Conservancy would have some obligation to maintain the riparian swale, which would have to be approved by both FEMA and the NH Department of Environmental Services. Mr. Hanna suspected that the City would delegate to the Monadnock Conservancy but that the City would retain the right to step-in because of its obligation to maintain its own easement. The Public Works Director, Don Lussier, said that “shared responsibility” was a good way to state it, as the Public Works Department is responsible for maintaining flowage. At present, there was a subsurface drainage system of pipes that provide drainage to the surrounding area, including the Keene Housing developments on Castle Court and River Street. The City must maintain that open flow from those properties and the Monadnock Conservancy would have an obligation to maintain the capacity of the flood storage on its site, so woody vegetation and sediment cannot accumulate there. The Parks and Recreation Department would have an interest in maintaining whatever plantings are agreed upon. Thus, there were still many details to finalize to develop a plan for plantings on site that would be maintained by Parks and Recreation. Public Works would need access to bring equipment on site to maintain the flow line of the drainage swale.

Councilor Madison said his 2 primary concerns were: (1) siltation and sediment flow from large runoff events, and (2) invasive species. The Councilor cited challenges with overgrown invasives at Pat Russell Park. Given the Monadnock Conservancy’s mission, he hoped they would invest managing invasives on site.

Councilor Haas asked if the petitioners considered elevating the building to allow floodwater to flow under it, lessening the amount of compensatory storage needed. Ms. Sargent said that was not considered. Councilor Haas said that to anticipate future events, the City would need to consider these things a bit differently. While that might not be how things work in Keene’s City Code yet, he said they would be changing over time. For example, the flood maps used for this design were from 2006, and he asked if the engineer used any other information to set these levels. Ms. Sargent said the flood storage must be designed for the current FEMA standards, so she was designing for the current regulations of both Federal and State guidelines. Echoing Councilor Madison, Councilor Haas noted that what used to be conceived of as infrequent storm events were becoming more frequent. Thus, he anticipated needing to clean out the compensatory storage regularly. Councilor Haas asked if this displacement was being offset by the building footprint. Ms. Sargent replied that the building, a part of the parking lot, and the stormwater treatment (for the Alteration of Terrain Permit) all have to be above the 10-year flood elevation. Councilor Haas asked which parts of the site would still be in the flood zone and Ms. Sargent pointed to the relevant areas on the map.

Vice Chair Jones asked the Public Works Director if something else could be done with the storm drain that runs north–south on site; is it fed from the north by street receptacles? Mr. Lussier replied that it is actually an open channel today that is just immediately north of this property on the Keene Housing parcel on Castle Court. About halfway down the 0 Ashuelot Street parcel, a head wall is proposed going north–south and the stream would be rerouted into

another pipe; only the portion of the pipe that interferes with the compensatory storage and the rest would remain. To the Councilor's question of whether the pipe could be eliminated to daylight into the Ashuelot River, Mr. Lussier said no; if the West Street Dam was removed that might be a possibility, but that was not within the realm of consideration. This water course and the drainage area it takes water from Ashuelot Street to Gilbo Avenue and through the Colony Mill parking lot, eventually daylighting in was used to be called Mill Creek. Mill Creek is a man-made ditch that eventually goes to the Ashuelot River, downstream of the West Street Dam. Vice Chair Jones asked if there were any other options for the stormwater drain. Mr. Lussier said no, none other than removing West Street Dam, which is not within the realm of possibilities

Chair Bosley asked if the proposed design would prevent the City from doing anything else it wants with the property. Deputy City Manager, Andy Bohannon, said the City worked with the applicants on the proposed design and he thought everything was in order. The Ashuelot River Park Advisory Board was also consulted on the preliminary concept that would include a parking lot, a road to kayak access, and a small playground. It seemed that everything could be accommodated within the space.

Councilor Williams noted how much more he liked this design than the previous one presented because it would encumber less space, is more characteristic of a creek and will provide habitat for native pollinators and aquatic species.

Councilor Madison asked what the test borings revealed about the subsurface. Ms. Sargent said there was 3 inches of loam over approximately 18 inches of structural fill. There are more soils closer to the river, with some sands over a silty clay layer. Councilor Madison agreed with Councilor Williams that this is a much better design than the previous one—with habitat for birds, aquatic species, amphibians, and pollinators—and he thinks it will complement the Conservancy's facility.

Chair Bosley opened the floor to public comments.

Ryan Owens, Executive Director of Monadnock Conservancy, affirmed that this flood compensation design would complement the Conservancy's new headquarters, including supporting educational opportunities on site. This design would result in a much more natural wetland, which is exactly what the Conservancy had in mind. Mr. Owens added that Conservancy Staff love pulling invasives, so they would be on the lookout.

Vice Chair Jones made the following motion, which was duly seconded by Councilor Madison.

On a roll call vote of 5–0, the Planning, Licenses, and Development Committee recommends that the City Manager be authorized to do all things necessary to negotiate, execute, and/or accept all documents required for the purpose of constructing and maintaining required compensatory flood storage located on property to be transferred to the City by JRR Properties, LLC, being a portion of 0 Ashuelot Street ("Property"), for the benefit of JRR Properties, LLC, or its

transferees, successors, or assigns, and as preliminarily depicted as “Concept #3” on the Plan prepared by SVE Engineering, dated 01-Jan-24, to be effective as of the date of the transfer of the property into the City.

The City Attorney, Tom Mullins, shared his understanding that Mr. Lussier and Mr. Bohannon were very instrumental in this new design. Mr. Hanna agreed. Chair Bosley thanked them for their efforts.

4) City Council Rules of Order Amendments – City Attorney

Chair Bosley welcomed the City Attorney, Tom Mullins, and the City Clerk, Patty Little. Chair Bosley recalled that the last time the Committee reviewed these amendments, she asked that they be presented for individual votes. The Committee was not required to decide on all of the presented amendments at this meeting, and portions could be placed on more time. As there was not a quorum of Councilors present at this meeting, those in the audience wishing to speak would be permitted.

The City Clerk introduced the 6 proposed amendments. She ensured that the document was properly formatted for this first reading and made some edits to ensure consistency from her perspective of having to use these documents often. She provided a high-level overview of the proposed amendments:

1. Amendment #1: Section 2. Special Meetings & Workshop Meetings
 - a. Introduces the concept of workshops in the 2nd paragraph.
2. Amendment #2: Section 11. Right of Floor
 - a. Introduces the concept that a Councilors *should* rise in their place when speaking, as opposed to it being mandatory.
3. Amendment #3: Section 15. Voting and Conflict of Interest
 - a. Conflict of interest reporting extended to Councilors’ spouses, parents, and children over age 18.
4. Amendment #4: Section 25. Communications
 - a. The only section of new text presented. A more substantive addition. Speaks to the issue of communications that are not germane to the City or State of NH, or over which the City lacks the authority to take action. Such communications would be placed in Councilors’ mailboxes but not agendized.
5. Amendment #5: Section 32. Report by Committee
 - a. Housekeeping changes to clarify that after a public hearing, if there is written comment agendized for the subsequent committee meeting, that does not guarantee the petitioner the right to speak at the committee meeting.

6. Amendment #6: Section 33. Resubmission of Items Previously Considered

- a. This section had never been triggered by any action of the City Council since it was introduced 20 years ago. This included a slight change in wording. This relies on the Council dealing with resubmissions through a proper motion for reconsideration. If there is new information presented that might change the Council's decision, a matter could be reintroduced. She mentioned the challenge in determining whether such new information would result in a different vote. This amendment clarified the reconsideration process, also calling for such communications to be placed in Councilors' mailboxes but not agendaized.

The Committee proceeded deliberating on each amendment individually.

Amendment #1: Section 2. Special Meetings & Workshop Meetings

Chair Bosley thought the Committee had reviewed this to some degree already, and this amendment would clarify that the Council would restrict voting at workshop meetings to the movement of items back to a Standing Committee for further consideration.

Councilor Haas referred to the language presented, noting that special meetings could be called by 7 members of the City Council, but a specific number of Councilors was not specified for calling workshop meetings. The City Attorney agreed that was a Scrivener's error, which would be corrected when the amendments are presented to the City Council. Councilor Haas asked if workshops are open to public input. The City Attorney said that because workshops are technically official meetings of the City Council, allowing for public input is usually at the discretion of the Chair, but could be decided case-by-case.

Councilor Williams expressed concern about the 7-member requirement, noting that 7 members could comprise a quorum of one of the Standing Committees. So, he suggested that 5 members might be a better choice. The City Attorney said that was a good idea, noting that the language about 7 members was carried over from past edits, adding that "or more" was removed for this specific reason. The City Attorney and City Clerk agreed that changing the number to 5 was reasonable. Councilor Haas suggested that the amendment should specify that those 5 members could not comprise all members of a Standing Committee.

Chair Bosley opened the floor to public comments.

Mayor Jay Kahn of Darling Road suggested not lowering the number below 5 members, as 3 members, for example, could comprise a quorum of a Standing Committee. He did not want to move from a clear rule to something unclear.

Councilor Jacob Favolise of Main Street opposed lowering the number to 5 because that would give 1/3 of the Council the ability to easily call a special meeting on specific issues. If the number is lowered to 5, the Councilor did not think he could vote to support the amendment. He

preferred a number closer to a majority of the Council being able to call a special meeting. Vice Chair Jones asked if Councilor Favolise would be in favor of changing it to 6 members, and Councilor Favolise said he preferred 6 vs. 5, but he was not worried about a quorum of Standing Committee members being able to do so.

There were no further public comments, so the Committee proceeded deliberating about Amendment #1.

Councilor Williams supported lowering the number in question to 5 Councilors, which would still be a strong voice within the Council. He did not want to add more hurdles for calling a special meeting, so while he preferred 5, he thought 6 was better than 7. Councilor Madison understood Councilor Favolise's point and added that this could be abused for minute reasons, politics, or showboating. Councilor Madison also understood and agreed with Councilor Williams' points. So, Councilor Madison supported 6 members. Councilor Haas agreed with 6, noting that the Mayor or City Manager could still call special meetings, and the change to 6 would avoid quorums. He suggested that those 6 members should represent all 3 Standing Committees (i.e., 2 from each). Chair Bosley and Vice Chair Jones also agreed with the change to 6. The Chair agreed that this Council is not above members abusing these things in the future, but this would help ensure that enough members agree that a matter is worth calling a special meeting or workshop. For these reasons, Chair Bosley supported requiring that those 6 members must be comprised of 2 Councilors from each Standing Committee. The City Clerk confirmed that this would apply to both special meetings and workshops.

The City Attorney said he supported the change to 6, but cautioned about the requirement that 2 be from each Standing Committee, noting that 2 Councilors from the same Standing Committee could block the desire of the other 4 Councilors. Thus, he suggested ensuring that there is not a quorum of any one Standing Committee. Chair Bosley understood the Attorney's point, but they agreed that mathematically, this situation would be unlikely.

The Committee agreed on the following edit: "... 6 members, not to create a quorum of any one Standing Committee."

Councilor Madison made the following motion, which was duly seconded by Councilor Haas.

On a roll call vote of 5–0, the Planning, Licenses, and Development Committee recommends that the City Attorney be directed to introduce Amendment #1 (Section 2. Special Meetings & Workshop Meetings) to the Rules of Order for first reading, as discussed.

Amendment #2: Section 11. Right of Floor

Chair Bosley said this amendment was triggered by her request to vote on each amendment separately. She recalled that the Council had a workshop on these Rules of Order, and the Council directed the PLD Committee to review the proposed amendments. Chair Bosley stated

that she could not support this amendment because she felt that this change would lead to abuse when Councilors stay seated purposefully to portray their emotional reactions or lack of support. While she thought Councilor Williams' points about medical privacy were well made, and that those with medical challenges should be allowed to sit if needed, she felt that some would abuse the right as a form of protest during disagreements. Chair Bosley appreciates the Council's decorum, which helps to maintain a level of maturity and respect. By eliminating this structure, Chair Bosley thought it would lead to abuse. She did not favor the change of "shall" to "should" because it gives Councilors the opportunity to decide whether they are in the mood to rise on that date. She said it is not if, but when the disrespect would emerge.

Councilor Madison added that there is an old military saying: "salute the rank, not the man." So, he felt that standing before addressing the Council and dais shows respect to other Councilors, Mayor, and citizens. He was also concerned about this being abused. He recalled several years ago when a Councilor tried to change this Rule immediately after someone they disliked was elected as mayor, so the potential for abuse was clear. He suggested changing the language to, "A member shall rise if able." In the future, if Councilors need this exception, Councilor Madison did not think anyone would make a scene at a Council meeting if that person does not stand.

Chair Bosley noted that at Standing Committee meetings, Councilors do not stand to address the Chair, but comments should be made through the Chair. When there is banter during a less formal workshop, Councilors are not required to stand. Still, she thought this could devolve into chaos and disrespect. She supported including "if able." Deputy City Manager, Rebecca Landry, suggested that, "An able-bodied member shall..." could simplify the language and accomplish the same objective. Councilor Haas supported this change because it would be easier to enforce. Vice Chair Jones recalled that historically, Councilors would rise to address the dais, but could remain seated when addressing consultants or petitioners. He questioned whether this amendment would require for standing for everything, not just addressing the dais.

The City Attorney said this was a good conversation to iron these things out, and noted that unless otherwise modified, these special meetings and workshops abide by the City Council's Rules of Order. It is the Council's decision if they want to maintain the informality associated with workshops. The City Attorney was also considering more specificity in this section regarding Council meetings to eliminate any of the ambiguity that arose in this discussion. He suggested the following, "... during a regular or special meeting of the City Council, when recognized by the Chair, a member shall rise..." Chair Bosley added, "... during a regular or special meeting of the City Council, when recognized by the Chair, a member shall rise when able..."

Chair Bosley asked if the Committee should address rising to speak to petitioners or consultants. The City Attorney said that was a separate question, adding that there could be specific requirements associated with Councilors needing to stand to be visible to the audience. To the City Clerk's knowledge, there was no issue between sitting and standing for broadcast purposes.

The City Attorney was concerned about adding more complexity by incorporating all of these wordy distinctions. Chair Bosley said the language stated, "... will respectfully address the Mayor," and she thought that not including the wordiness would leave too much room for interpretation. If there was a problem, the Mayor would address that individually with the respective Councilor outside of the meeting. The City Attorney said that was a great point given that this Rule was specific to addressing the Chair or temporary Chair. Then, it is the Chairs' purviews to monitor discussion during meetings.

Councilor Williams said he supported the addition of "able-bodied," because he does not want there to ever be a situation in which someone must publicly declare a disability. He noted that the need for accommodation could change throughout a long meeting, and it could get harder for some to continue standing. He said people should not have to talk about their medical problems in a public forum. He felt that should be assumed and if the Mayor has a concern, it should be addressed outside of the meeting. Chair Bosley agreed, saying she would hope that would be the case to avoid uncomfortable conversations on the floor in general, unless the Mayor has another reason to think that person is choosing to be disrespectful. She thought it was a standard approach that she felt confident the current Mayor would follow. Vice Chair Jones noted that the Rules did not specify that a Councilor must publicly declare their inability, because it is no one else's business. He wanted to add regular Council meetings too as the City Attorney suggested.

Chair Bosley opened the floor to public comments.

Councilor Jacob Favolise respectfully disagreed with Chair Bosley's assertion that sitting while addressing the dais is inherently disrespectful. He said he is the member of many deliberative bodies outside of this role as Councilor, and this is the only forum in which members must stand to address the presiding officer. So, he preferred "should" vs. "shall." Councilor Favolise thought the addition of "able-bodied" would be appropriate. He agreed that these changes could lead to abuse, but said that is a conversation for the Mayor or Council as a whole, and ultimately up to the voters.

Chair Bosley thought the only way to keep sitting from being disrespectful when addressing the dais would be to completely remove the standing requirement. By using "should," with some abiding and others not, she believed it would be used as a tool of protest. While she does not mean disrespect by sitting when addressing her fellow Councilors at meetings in general, she believes that the Council holds/should hold itself to an extraordinarily high standards when deliberating on challenging topics. As the PLD Chair, she must maintain control of the conversation while supporting forward progress and public input, and a certain level of respect for that position is also needed. Reaching the finish line on complicated topic requires this level of respect, and it is the Mayor's job (and Committee Chairs' jobs) to shepherd the Council through those processes. Chair Bosley had experienced fellow Councilors pushing the limits of these formalities in various ways, and she personally believed that it would not be long before it is used as a political tool.

Mayor Kahn said this discussion of rising was comparable to the rules of order for NH legislative bodies. The Mayor could not imagine the inhumanity of not recognizing someone's inability. He thought things would get confusing and difficult to interpret if distinguishing between rising to address the dais vs. to address consultants/petitioners. The Mayor favored the requirement to rise if able during Council meetings. Chair Bosley agreed that rising should be the Rule for all Council meetings and that directing questions through the Standing Committee Chairs during those meetings should be standard too.

Councilor Laura Tobin of Center Street said she was not raised to associate standing with respect. Still, if it is helpful to maintain order, she was happy to do so. She said it would be important to ensure that someone unable to stand is not embarrassed; it should be a personal decision. She also cautioned against labeling those who do not stand. Councilor Tobin expressed reservations about adding the term "able-bodied" because it implies that inability to stand means one is unable to act appropriately as a Councilor. As such, she recommended fewer words in this instance. Vice Chair Jones thought the Committee had agreed against "able-bodied" but Chair Bosley thought the Committee was considering "shall rise if able."

Chair Bosley said she understood the concern and agreed with protecting someone's privacy. She cited some other standard Council practices that are equally awkward, like having to announce why someone is participating remotely. She cited the case of a Councilor needing to participate remotely long term due to health reasons, and that instance influenced amendments to the Rules of Order; the Rules require that Councilors specify why they participate remotely, and that Councilor had to disclose (a State rule) that it was due to health reasons to some degree. She thinks such rules are cumbersome, awkward, and uncomfortable, and she knows the current Mayor would address things outside of meetings as appropriate. With changes discussed, the Chair felt more comfortable presenting these recommendations to the Council. Vice Chair Jones added that much of this discussion was about being functional and respectful, but he cited tradition too, which influenced his belief that standing should be a part of regular Council meetings. Chair Bosley said she also appreciated staff pointing out that some of this decorum helps with broadcasting meetings for the public.

The Committee agreed to the following: the Rules apply to regular Council meetings in addition to special meetings and workshops, and the Rules should say "shall if able."

Councilor Madison made the following motion, which was duly seconded by Councilor Haas.

On a roll call vote of 5–0, the Planning, Licenses, and Development Committee recommends that the City Attorney be directed to introduce Amendment #2 (Section 11. Right of Floor) to the Rules of Order for first reading, as discussed.

Amendment #3: Voting & Conflict of Interest

Chair Bosley recalled that the Rules changed in recent years to include this conflict of interest disclosure. In addition to disclosing boards and organizations Councilors are associated with, this amendment would require that they also disclose that information for their spouses, parents, or children over age 18.

Vice Chair Jones asked about “live-in partners” or “co-residential dating,” which is how NH refers to common law marriages. The City Attorney said that adding this distinction would be the Council’s purview. Chair Bosley thought the Council would have a draw a line somewhere, and the Vice Chair agreed. The City Attorney added that there are not technically common law marriages west of the Mississippi River, but there are certain instances in NH in which common law marriages can be recognized.

Councilor Williams did not support this amendment. He understood revealing conflicts of interests for himself because he voluntarily agreed to be in this public position, whereas his spouse and children had not agreed to reveal their private business.

Chair Bosley opened the floor to public comment.

Councilor Jacob Favolise addressed the City Attorney, stating that he had heard substantive changes to the amendments discussed, and he wondered if those went past simple Scrivener’s edits. Did this process satisfy the prior written notice of amendments to the Rules of Order? He felt that these amendments were substantially and materially different than the amendments presented at a prior Council meeting. The City Attorney replied that it was acceptable for this Committee to suggest changes that would be presented to the City Council for first reading, and then the changes would come back to PLD for a final recommendation to adopt. The final amendments will require prior notice to the City Council, and a 2/3 vote of the Council is required to adopt the amendments. The motions on these amendments during this meeting would allow the City Attorney to work with the City Clerk to present revisions to the City Council.

As written, Vice Chair Jones and Councilor Williams did not support this change. Councilor Haas said he agreed with the change to be as clear as possible in modern times. Chair Bosley said it was not her intent to belabor everything that could go wrong as a result of how these Rules are written, or to imply negativity about her fellow Councilors. Still, she had witnessed inconsistencies in fellow Councilors’ voting patterns based on theirs or familial associations with other groups. The Chair supported this disclosure and did not necessarily agree with Councilor Williams; the Chair thought it was important to extend this to family members. Chair Bosley wanted to send this to the full Council for input; Vice Chair Jones agreed.

The Committee agreed to: send this amendment to the Council for its input. Councilor Williams did not agree with the amendment.

Councilor Madison made the following motion, which was duly seconded by Vice Chair Jones.

On a roll call vote of 4–1, the Planning, Licenses, and Development Committee recommends that the City Attorney be directed to introduce Amendment #3 (Section 15. Voting & Conflict of Interest) to the Rules of Order for first reading, as discussed. Councilor Williams voted in opposition.

Amendment #4: Section 25. Communications

This was the first time the Committee reviewed this new section provided by the City Attorney. The Chair thought this was timely as the Council had recent interactions related to this policy. She asked her colleagues how they thought this written policy would affect the Council's interactions with non-germane business.

Councilor Madison supported this addition. Since joining the Council, there had been a few incidents in which he felt the Council's willingness to hear issues had been abused. For example, someone brought forward a Medicare for all proposal, asking the City to make a recommendation, and as a new Councilor, he agreed to go along with it. Still, he advised the petitioner to bring this up in their own town (Dublin) and they refused, which he found astonishing. Again recently, when members of the public asked the City to take action on the war in Gaza, he offered them more appropriate options to speak with Cheshire County (their request was on behalf of Cheshire County), talk to Keene's Human Rights Committee, or bring the issue to their own town councils (one was from Swanzey and another from Surry). Councilor Madison was disappointed to find that the individuals did not pursue any of those options, which led him to believe that it was not a truly sincere effort. It was clear to him that the City was being taken advantage of on occasion to support outreach and advocacy on behalf of others. Lastly, Councilor Madison acknowledged that there had been some claims in the community that he proposed a resolution on the war in Ukraine in 2022–2023, which he said was not true, and that such a position was not reflected in any of the associated meeting minutes.

Chair Bosley agreed that she had heard other misinformation in the community. She recalled a community effort for the City to take a position on Ukraine, but the City stayed appropriately neutral despite being accused of taking a position. The Council would have to suspend its Rules to take such an action. Chair Bosley was glad this was being addressed, noting that she would feel more comfortable in the future with a firm Rule in place.

Councilor Haas said he fully agreed with this amendment, and he was glad to have an established process by which 6 Councilors could call a special meeting if they believe the Council should address a request like this. So, there is always a backup plan.

Vice Chair Jones had called for this change for some time, and he was in full support. He agreed with Councilor Madison's points. The Vice Chair added that from a business perspective, the Council needed to recall that there is a value and cost associated with all of these actions by City staff on the Council's requests (e.g., drafting resolutions). He felt that the Council always owes it to the taxpayers to reduce costs where possible.

Chair Bosley opened the floor to public comment.

Mayor Jay Kahn asked the City Attorney to address the potential that there could be a motion to suspend this Rule should Councilors want to address a communication classified as non-germane. The City Attorney said that was one reason for the “provided however” clause at the end of this section, should Councilors disagree with the City Clerk’s designation of communications as non-germane; placing the communications dubbed non-germane in Councilors’ mailboxes would support this possibility. Councilor Madison appreciated the “provided however” addition because it is important for the Council to know what issues the constituents are concerned about, so they can be directed to more appropriate levels, like State of NH or national leaders.

The Committee agreed that: they proposed no changes to this amendment.

Councilor Madison made the following motion, which was duly seconded by Councilor Haas.

On a roll call vote of 5–0, the Planning, Licenses, and Development Committee recommends that the City Attorney be directed to introduce Amendment #4 (Section 25. Communications) to the Rules of Order for first reading, as discussed.

Amendment #5: Section 32. Report by Committee

The City Clerk reported that these were housekeeping changes. The current Rules of Order provide for the opportunity for oral comments at the close of a public hearing. There is also an opportunity for the public to submit written comments until the agenda cut-off for the subsequent Standing Committee agendas. There had been some confusion as to whether—when a member of the public submits a communication after a public hearing—the petitioner is guaranteed an opportunity to speak before a Committee/Council. This amendment would codify that tradition.

Vice Chair Jones liked that this would clear up some ambiguity, so these are not treated as regular communications. He recalled when the Council adopted this Rule to provide more clarity to public hearings.

The Commission agreed that: they support this change.

Councilor Madison made the following motion, which was duly seconded by Vice Chair Jones.

On a roll call vote of 5–0, the Planning, Licenses, and Development Committee recommends that the City Attorney be directed to introduce Amendment #5 (Section 32. Report by Committee) to the Rules of Order for first reading, as discussed.

Amendment #6: Section 33. Resubmission of Items Previously Considered

The City Clerk noted that there was a proposed edit to the title of this section as well as some added language. This would eliminate past language indicating that if a petitioner or anyone introduces new material that could change the Council's mind, that it could lead to the matter being reopened for the Council's consideration. This amendment would eliminate the past language and indicate that any resubmission of the same item needs to be through the formal reconsideration process. The caveat would still exist so that the Council could suspend this Rule to reconsider a matter. Chair Bosley added that language was included to clarify that once an item of business is accepted as informational by the Council, that topic cannot be brought forward again until the next calendar year, which the City Clerk said was correct. Vice Chair Jones appreciated the edit to the section title, which made it clearer.

Councilor Haas noted that by operating on the calendar year, it could make for a very busy holiday season, if something is submitted in December and then reintroduced in January. He suggested a minimum of 4 months between resubmissions. The City Attorney asked: if the Council disposes of a matter of business, and there is a material change, why would the time period matter?

Chair Bosley said she understood the points presented. She noted that when voting on ordinances, this Committee regularly states that it could be revisited and amended if needed. So, she said there should be some capability to revisit things after a certain time period. She echoed Councilor Haas and provided the example of how many times residents brought the issue of 5G to this Committee, which was commonly introduced to the Council in November and then again in January because of this calendar year stipulation. She agreed that it could be prudent to change it to a specific period of time vs. the calendar year.

Vice Chair Jones thought the calendar year made sense because new Councilors start in January, and there could be new perspectives on issues previously disposed of. It had been the custom for his whole tenure on the City Council, and it had always worked, with no overwhelming jump to reconsider things in January. Councilor Williams agreed with the Vice Chair's perspective and that the tradition should be maintained for these reasons. The City Attorney agreed with the wisdom of the group, as this ensures that an action of one Council cannot bind a future Council.

Chair Bosley opened the floor to public comments.

Councilor Jacob Favolise said he saw a challenge with the reconsideration process because in most cases, he thought it would provide 14 or 21 days during which new information could be presented that might change the Council's decision. While he understood that Rules could be suspended, he was cautious of creating a system that normalizes regular suspension of the Rules, which he feels should only happen in very limited extenuating circumstances. While he agreed that he does not want to see this abused—and he could imagine scenarios in which it could—he could equally imagine scenarios of new information emerging that could change the Council's

disposition outside of the 2–3 week window for reconsideration, which he called a note of caution.

Chair Bosley said she had been under the impression that the Mayor can put things back on the Council's agenda if they feel it is warranted. The City Attorney replied that reconsideration would still be restricted to the next meeting of the City Council. Under the Charter, the Mayor does have the authority mentioned by Chair Bosley, but one would have to be on the prevailing side to request reconsideration.

The City Manager added that in her tenure on the Council, she had experienced petitioners who try to come back to the Council for a different answer if they do not like the first response they receive. She emphasized the amount of effort and time required to research something, provide recommendations to the Committee, staff meetings, and for the public to provide their opinions. Unless someone provides compelling new information for Councilors to feel it should come forward again, the City Manager did not think that reconsideration should not happen automatically. Chair Bosley agreed, recalling a past instance of hearing a matter close to the end of the year and political motivations led to an effort for reconsideration at the beginning of the next year. She said it was painful to watch it unfold that way. The Chair saw value in creating space and capacity for the Council to own and live with the decisions it makes, even if only temporary.

Councilor Favolise said he understood the Mayor's broad authority to assign communications to a Standing Committee or accept them as informational. So, he wondered if there was a way for the City Manager's concern to be addressed by the City Manager choosing to accept matters as informational in addition to a number of Councilors changing their minds and waiting to appeal a decision. He thought there might be another way to address the Manager's concerns. Chair Bosley agreed that it is not the only way, but she thought it was the most effective way to deter that behavior.

With due respect to Councilor Favolise's points, the City Attorney said that each Standing Committee does have an area of jurisdiction, and communications naturally fall into some of those areas. There are times when the City Clerk must make an informed attempt to assign communications when they do not clearly fit in one of those purviews. To proceed with reconsideration, it should be specific to the Council's Rules. He said this was similar to the earlier discussion about not allowing public comment after a public hearing. He said this Rule needs to be very clear, without having to look to other portions of the Rules to infer what the Council is trying to do. Chair Bosley agreed and referred to a recent issue that was accepted as informational, was challenged on the Council floor without a second, and was brought forward again at the next Council meeting. If the language in this Rule is removed, Chair Bosley thought the Council would see more of these instances of people wanting to wear down the cc and use it as a platform for their protest. She felt confident in the history Vice Chair Jones described, indicating that this calendar year provision had been effective. Chair Bosley liked the association with new Councils that could bring a fresh perspective. Councilor Haas said it seemed the

greatest issue with this had been over 5G. Chair Bosley added the recent example of protests for Gaza. If the Committee supported this, Councilor Haas said he was comfortable with it. Chair Bosley added that there is the opportunity to amend the Rule in the future.

Councilor Madison made the following motion, which was duly seconded by Vice Chair Jones.

On a roll call vote of 5–0, the Planning, Licenses, and Development Committee recommends that the City Attorney be directed to introduce Amendment #6 (Section 33. Resubmission of Items Previously Considered) to the Rules of Order for first reading, as discussed.

5) Adjournment

There being no further business, Chair Bosley adjourned the meeting at 8:35 PM.

Respectfully submitted by,
Katryna Kibler, Minute Taker
July 26, 2024