

City of Keene
New Hampshire

MUNICIPAL SERVICES, FACILITIES AND INFRASTRUCTURE COMMITTEE
MEETING MINUTES

Wednesday, March 24, 2021

5:30 PM

Remote Meeting via Zoom

Members Present:

Janis O. Manwaring, Chair
Michael Giacomo, Vice Chair
Randy L. Filiault
Andrew M. Madison
Robert C. Williams

Staff Present:

Elizabeth A. Dragon, City Manager
Thomas P. Mullins, City Attorney
Rhett Lamb, Community Development
Director/ACM
Andy Bohannon, Director of Parks,
Recreation & Facilities
Kürt Blomquist, Director of Public
Works/Emergency Management Director
Don Lussier, City Engineer
Steve Russo, Police Chief
Steve Lemears, Police Detective

Members Not Present:

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.

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

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, Kürt 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.

2) Request for Use of City Property - Police Department Memorial Stone - Police Chief

Chair Manwaring welcomed Police Chief Steve Russo. The Chief introduced Detective Steve Lamears of the Keene Police Department who came to the Command Staff with this project that he had been leading for the past six months. Det. Lamears shared that in 2020 a dispatcher died of a sudden illness and there could be no funeral to honor that person as the KPD would normally due to Covid-19. Realizing this inability to honor members of the KPD as they would normally, the unions met and agreed on a design that served everyone in the building. The stone would be roughly six inches deep, two feet long, and three feet high. A copy of the design and proposed location would be in front of the KPD on Marlboro Street. . Given that the assistance would equate to use of tax dollars, Chief Russo was also seeking from the City Council whether it was appropriate and possible for the Director of Public Works to assist in the placement of the stone to minimize placement costs, which the unions were generating themselves.

The City Attorney asked the City Manager whether the Director of Public Works should be named directly in the motion and the City Manager said she thought this was possible without amending the proposed motion. Chief Russo said he had spoken with the Director of Public Works, who agreed because it would not cost them a lot of time or labor. The project was set to commence in approximately five months.

Councilor Filiault stated he was glad to hear it would take some time before this were completed, stating that hopefully by then it would be post-Covid-19 and everyone including the Councilors could attend and provide the deserved recognition.

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 that the City Council approve the use of City property to place a Police Department memorial stone outside the Police Department at 400 Marlboro Street.

3) Purchase of the Robert J. Prowse Memorial Bridge - City Engineer

Chair Manwaring welcomed the City Engineer, Don Lussier, who was excited to present this project. He recalled a discussion with this Committee recently on the Transportation Heritage Trail proposals in the 2021 Capital Improvement Program that were still a few year from execution. He said that the heart of the Transportation Heritage Trail project vision was to use three historic bridges to connect completed sections of the Cheshire Rail Trail, specifically the Industrial Heritage Trail that ends at Eastern Avenue today to the completed sections at the Swanzey town line in order to tell the story of how transportation changes have shaped Keene. The three bridges are the existing Stone Arch Bridge seen from RT-101, reusing parts of the Island Street Bridge that dates to WWII for rapid deployment on battlefields, and the Robert J. Prowse Memorial Bridge that carried Ash Street in Londonderry over I-93. The Prowse Bridge was the subject of this meeting's discussion.

This bridge in Londonderry had to be relocated and removed during the I-93 widening project but due to its historical significance, NH Department of Transportation (DOT) was required to find a way to preserve it. As such, DOT advertised the bridge for proposals and the City's was selected to reuse the bridge by constructing it over RT-101 for the Transportation Heritage Trail. Recently the City received the draft purchase and sale agreements with restrictive covenants. The City Engineer was before the City Council at this meeting to ensure the Council was comfortable with those five restrictive covenants to preserve the bridge's historic significance:

1. Our reuse, maintenance and repairs must preserve the historical integrity of the bridge.
2. The State Historic Preservation Office is allowed to inspect the bridge once installed.
3. The City will submit annual stewardship reports for 10 years.
4. The City will be responsible for future maintenance and must maintain the bridge in a state of good repair.
5. If not relocated by September 13, 2026, the NH DOT can elect to continue storing or scrap the bridge.

The City Engineer said the first covenant was not a problem and the City intended to do so. The second condition, which was to ensure the City meets their preservation duties and the periodic stewardship reports would occur through the City Engineer's office in the Public Works Department. The fourth covenant did not preclude the City from seeking grants or other funding, but the City would be responsible for maintaining it like all its other bridges. Regarding the fifth covenant, the City Engineer said that date was selected because the NH DOT agreement with the Federal Highway Administration required DOT to make efforts to find the bridge a home for 10 years. He thought that if the City were making progress toward the bridge's eventual reuse even if the bridge were not lifted from that storage site by the date listed, that DOT would continue storing it for the City.

Councilor Filiault asked where the bridge was stored currently, how the bridge would get here, and who would pay for that transportation. The City Engineer said that the bridge was currently disassembled and stored in the central median of I-93 in Londonderry in a construction yard off on the northbound side. He continued that two years ago, University of New Hampshire Civil Engineering students assessed the potential reuse of this bridge, including logistics and costs of moving a 216-foot long disassembled bridge to Keene over highways. Those students received estimates from heavy haulers of approximately \$20,000 because it would be oversized and overweight despite being dis-assembled. The cost of the whole project was laid out in the CIP and transport was one of those costs. The vision was always for the City to pursue other funding opportunities to offset these costs. At this time, the City had already submitted a Transportation Alternatives Program grant application to pay for the first phase that would extend the trail to the bridge site and he anticipated applying for further grant funds for the remaining phases.

Chair Manwaring knew that Pathways for Keene was beginning fundraising for that bridge project and maybe other private entities would help as well.

Vice Chair Giacomo thanked the City Engineer for continued momentum on this project, calling it one of the most exciting projects in last year's CIP. He thought this was creative and would provide an amazing gateway into the City. He understood that the purchase price was \$1 and that there would be transportation costs but he asked whether there would be costs to the City before moving the bridge to Keene. The City Engineer said not immediately, but there would be costs (not included in the CIP) to prepare the site for the installation, including abutments and more. The City was under no obligation to provide security, fencing, or a covering for the bridge while it was stored and if it were damaged or vandalized before transport through no fault of the City's. The City reserved the right to walk away from the agreement if the bridge could no longer be used for the intended purpose.

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 that the City Manager be authorized to do all things necessary to negotiate and execute a Bill of Sale along with Restrictive Covenants for the historical preservation of the Robert J. Prowse Memorial Bridge.

4) Request for Exception from the Public Improvement Standards - City Engineer

Chair Manwaring welcomed the City Engineer again, who was accompanied by Andrew Mills and Steve Rokes of Liberty Utilities. This was a request for an exception to the City Utility Standards, specifically Section 70-127(3), which is the paragraph in City Code that sets the standard of concrete sidewalks. The request for a waiver resulted from a conversation between the City Engineer and Mr. Rokes on the site in question. Liberty Utilities wanted to replace their gas mains under Roxbury Street before the City completes its regular paving this summer. Unfortunately, Roxbury Street is one of Keene's concrete roadways and the City Engineer was not enthusiastic about cutting a trench down the center of it. After brainstorming, the two entities agreed to the option of placing the gas mains under the northern sidewalk of Roxbury Street, where today the sidewalks were asphalt and maintained by the Public Works Department. Roxbury Street is a main collector/artery street in the City and while asphalt sidewalks would not be the first choice, the sidewalk there today was in fair to poor condition. Staff saw locating the gas line under the sidewalk as an opportunity to improve conditions in the interim until the City could afford concrete sidewalks, while keeping Roxbury Street from degrading due to cuts in the concrete surface for this trench.

Councilor Williams asked what block of Roxbury Street was under discussion. The City Engineer said beginning at Harrison Street and going to Oak Street, connecting to sections improved previously. The City Engineer said Liberty Utilities already planned to replace all gas mains west of Beaver Brook as a part of utility work there and in that case the roadway would be torn-up already and so there was less concern.

Councilor Filiault said he might object normally because of standards but with the current condition of the sidewalks in question, this was a win-win because while they would not be concrete, new asphalt sidewalks would be much better than the current condition and so he was okay with the request.

Vice Chair Giacomo asked how this would relate to the rest of the Roxbury Street construction project. The City Engineer said this would occur in advance of the more significant and disruptive phases of the Roxbury Street project west of the river. This work was planned to begin as soon as Council voted and if Council denied this waiver, Liberty Utilities was prepared to proceed with replacement in the center of the roadway. If Council approved the waiver, then work would proceed under the northern sidewalks. He anticipated this work concluding before work west of Beaver Brook begins.

Mr. Rokes thanked the Councilors for this opportunity and agreed with Councilor Filiault's statement about this being a win-win. He reminded that there would still be some street crossings cut to connect gas on the northern side to the other sides such as at Gurnsey and South Lincoln Streets. He thanked the Council for considering this request.

Councilor Williams said that as a Ward Two Councilor he heard a lot of complaints about the Roxbury Street sidewalks and he was glad this was happening; it would be a great opportunity regardless of the asphalt.

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 recommends that Liberty Utilities be granted an exception from Sec. 70-127(3) of the Public Improvement Standards in order to restore existing asphalt sidewalks on Roxbury St. with asphalt.

5) Adjournment

There being no further business, Chair Manwaring adjourned the meeting at 6:41 PM.

Respectfully submitted by,
Katrnya Kibler, Minute Taker
March 26, 2021

Additional Edits by,
Terri M. Hood
Assistant City Clerk