

**City of Keene**  
**New Hampshire**

**MUNICIPAL SERVICES, FACILITIES & INFRASTRUCTURE COMMITTEE**  
**MEETING MINUTES**

**Wednesday, June 22, 2022**

**6:00 PM**

**Council Chambers,  
City Hall**

**Members Present:**

Mitchell H. Greenwald, Chair  
Randy L. Filiault, Vice Chair  
Kris E. Roberts  
Robert C. Williams  
Catherine I. Workman

**Staff Present:**

Elizabeth A. Dragon, City Manager  
Thomas P. Mullins, City Attorney  
Amanda Palmeira, Assistant City Attorney  
Kürt Blomquist, Public Works Director  
Patricia Little, City Clerk  
Don Lussier, City Engineer

**Members Not Present:**

*All Present*

Chair Greenwald called the meeting to order at 6:00 PM and explained the procedures of the meeting.

**1) Charles Redfern - Request for Signage Identifying Trails**

Chair Greenwald asked to hear from the petitioner, Charles Redfern. Mr. Redfern stated that his letter requests signage identifying the trails to be placed on either side of the North Bridge and South Bridge, so people coming from any direction know of the identity of the rail trail. He continued that many people drive underneath and think it is a railroad bridge or a regular, one lane bridge, or they just wonder about it. Other states have bridges identified so people know what trails they represent. In this case, they are talking about the bypass highways. These trails are known as the Cheshire Rail Trail, north and south.

Mr. Redfern read from his letter:

*“My inquiry started in the year 2020 with the NH Department of Transportation (NHDOT), which indicated an interest in assisting me with navigating the proper channels for the fabrication and installation of the signs. However, before I reached my second milestone within NHDOT, COVID-19 hit and the state’s highway sign shop was closed until further notice.*

*Accordingly, I turned to the City of Keene Public Works Department for advice and consent. After providing Kürt Blomquist with details provided as exhibits to this letter, I was told the City could do the work but only after the end of winter. He stated this matter could be re-addressed in the coming spring.*

*After the ground thawed, I re-approached the [Public Works] Director and requested that the City begin the sign process anew, either through NHDOT (as Windham had done for the Granite State Trail) or Keene Public Works.”*

Mr. Redfern stated that he was the one who informed the leader of the Granite State Trail group that they could have signs by the highway to identify the trails. He continued that this person thought that was a great idea, and called Bill Watson of NHDOT.

He continued reading his letter:

*“However, [Mr. Blomquist] replied that the operating budget took a hit and turned flat. I noted that all four signs could be fabricated and installed by the state for less than \$900 (in 2021 dollars).”*

Mr. Redfern stated that he has copies of the invoices for the Committee, so they can see they are inexpensive signs. The two [for the Granite State Trail] were \$360.54.

He continued reading:

*“Also, [Mr. Blomquist] asked who would be responsible for the signs’ maintenance and repairs.*

*Please note that a citizen of the Town of Windham, who advocated for such signs, did not appear to encounter the same pushback. The signs were installed by NHDOT in less than six months.*

*It should be noted that the traffic volume passing under these two bridges every day.”*

Mr. Redfern stated that according to the Southwest Regional Planning Commission (SWRPC), it is over 20,000 vehicles a day on any given day that pass under the trail.

He continued reading:

*“It is reasonable to assume that many folks could revisit our city as tourists, and may be interested in our growing trail system.*

*For this reason, I am turning to a collectively wise and honorable group of citizens who practically volunteer their time to the advancement of our community. As you ponder this simple request, I hope to be able to answer any questions you may have at the appropriate committee level.”*

Mr. Redfern stated that he enclosed exhibits showing the signs’ appearance and dimensions. He has copies for staff, and copies of the emails with the NHDOT’s Sign Maintenance Supervisor so they can retrace the steps if they choose to go the NHDOT route. It seems inexpensive; for

Windham, installation was free. If the PWD chooses to do it, so be it. Lastly, he wants to note that in Windham, although the Town requested that the signs be placed before the bridge so people can glance up and see it and know what it is for, for whatever reason, NHDOT put them after the bridge. Mr. Redfern stated that he will give these materials to the City Manager for the record. He continued that he is happy to answer questions.

Chair Greenwald asked Mr. Redfern how many signs he is requesting. Mr. Redfern replied four. Chair Greenwald stated that the wisdom of the State wanting to put the signs on the backside of the bridge baffles him. He asked if the Town of Windham's budget was about \$900 for the signs. Mr. Redfern replied that two signs were \$364.54. Chair Greenwald stated that where he is going with his questions is: those signs in Windham seem like boring traffic signs, and the bridge means so much more. He asked if Mr. Redfern had inquired whether if additional funding were provided, perhaps from Pathways for Keene, would a different sign be allowed. Mr. Redfern replied that the party who owns the land the signs will sit on is the NHDOT. Chair Greenwald asked if the NHDOT would allow a nicer sign, or if it has to be a standard roadway sign. Mr. Redfern replied that he talked informally with Bill Lambert at the NHDOT, and asked about a recreational-type sign, which is brown with a lighter lettering, and attractive. It is not quite like the green traffic signs on highways. Mr. Lambert said that in MA the sign has to be a standard, uniform-type sign, according to the Federal Highway Administration.

Chair Greenwald asked if the signs have to be done [NHDOT's] way even if the signs include none of [NHDOT's] money. Mr. Redfern replied that the signs would have to be put on Keene property, and he does not know if there is any adjacent real estate from which the signs would be readable.

Councilor Williams stated that a brown sign would be a great idea. They are usually for recreational amenities or parks, which this is. He continued that a green sign would also be nice. He commends Mr. Redfern for recognizing this need and bringing this to the Committee.

Mr. Redfern replied that MA had the brown signs for their rail trails, but then someone higher up made them change to the green signs with the small brown emblem embedded to announce the name of the trails. He continued that people driving by cannot read the trail names, because the writing is so small.

Chair Greenwald asked what the MSFI Committee is being asked to do. He asked if the request is for them to recommend that the City Manager be authorized to negotiate and execute a right-of-way agreement.

Mr. Redfern asked if there is a timeline for this so that it is not two years from now. He continued that NHDOT has conveyed, "Look, this has been going on back with you folks since 2020." It started with a citizen, not a municipality. The clock will start, once the municipality goes to the NHDOT, if they choose to do so. The municipality may choose to do it themselves, but it is a good price with NHDOT. He knows the City has its own sign shop. He does not know

how this will be handled, and it is not his business, but he would hate to see another winter freeze happen before the signs go up.

Chair Greenwald asked to hear from Mr. Blomquist. Mr. Blomquist stated that he does not think that the making of the signs will be the issue; it will be getting the agreement, for the two locations. He continued that it will probably take several months to go through the processes. Whether the signs come from the City or the NHDOT is something staff will look at. These are standard signs and the Manual on Uniform Traffic Control Devices (MUTCD) will govern their appearance. If the City Manager is authorized, staff will start a discussion with them and put something in place by the end of the summer.

Councilor Workman stated that she supports this initiative, but wants to put on record that she has heard from other constituents that there is an “overabundance of signs” throughout the City. She continued that the Committee should thus keep in mind that there is such a thing as too much signage and sign fatigue. The more signs the City has, the less likely it is that people will actually pay attention to them. This does not mean she will not support this request; she thinks it is a great idea. They should just be mindful of placements of and frequency of signs.

Chair Greenwald replied that Councilor Workman is right. He continued that at some point a letter will be coming in asking for a sign inventory and elimination of unnecessary signs.

Chair Greenwald asked for public comment.

Councilor Jones stated that he, along with Mr. Redfern, is on the Board of Directors of Pathways of Keene. He continued that North Bridge and South Bridge are very important to this community. The community raised money for North Bridge; it was not just that the State came along and put these bridges up. Behind the North Bridge is a list of all of the local people who sponsored it. He chaired the dedication ceremony committee and remembers it well. The byline on the plaque is “bridging the community.” He thinks it deserves some recognition. He agrees with Councilor Workman that the City has many signs. However, the North Bridge deserves some recognition, because it was a community effort. Mr. Redfern stated that Councilor Jones came up with the “bridging the community” byline, which is very true.

Councilor Roberts stated that as he has mentioned before, on some of the other projects, and as Councilor Jones and Mr. Redfern brought up, they have asked a lot of the community. He continued that the City has many assets, but they ask the community to fund or come up with a lot of the money to create those assets. He will support this, but his view is that this should not even be in front of the MSFI Committee. This is something the City should have taken on its own to do. Mr. Redfern has done a lot of work on this, but to him, it is normal for the City to take responsibility to take the initiative to do this. The City has many good people who volunteer and give money, like Pathways, which has done a great deal of work and contributed a great deal of money. He thanks former Councilor Redfern for being here, but as they go forward

talking about projects like the skate park, dog park, and the disc [golf] park - which again, Keene citizens have given a lot of work and time to - “we cannot keep going to the well.”

Chair Greenwald stated that he hears what Councilor Roberts is saying, but what is even more frustrating to him is what they have heard from Mr. Redfern and the Public Works Director – even if the City, Pathways, and others, as a group, came up with some attractive signs, they cannot do it, because it is a State highway.

Mr. Redfern stated that Councilor Roberts makes a lot of sense, but he wants the Committee to know that people in the Summit Ridge area asked for signage on the trail to emphasize speed limits for the safety of the hikers going up the Ammi Brown Road, to minimize potential conflicts between bicyclists and pedestrians. Thus, Pathways is chipping in some money for that effort. They are also chipping in money for a kiosk, to be completed not to the NHDOT’s specifications, but in a way that gives Peter Poanessa the freedom to come up with an attractive kiosk that will emphasize safety and education. The same person from the seacoast who got the bridge signs, for his idea, gave Pathways a grant for \$2,500, and Pathways kicked in an additional \$1,000.

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

On a vote of 5 – 0, the Municipal Services, Facilities, and Infrastructure Committee recommends the City Manager be authorized to negotiate and execute a Right-Of-Way Usage Agreement with the NH Department of Transportation (NHDOT).

**2) Attorney Michael Bentley – Agatha Fifield – Requesting the City Resume Maintenance of Blain(e) Street – Private Way**

Chair Greenwald asked to hear from Attorney Michael Bentley. Attorney Bentley introduced Agatha Fifield. He continued that his letter from June 8, 2022, tells the story of why they are here tonight. The house that Ms. Fifield owns at 22 Blaine St. was built in 1945. Both he and Ms. Fifield do not think there is any question that from 1945, through and including the winter of 2019-2020, the City of Keene plowed Blaine St. Numerous ownership changes occurred between 1945 and when Ms. Fifield bought the house in 2015, and for the first five years that she was there, there was no question that the City plowed the road in the winter and did some maintenance during better weather. They think, but do not know for certain, that what got them here tonight is that Ms. Fifield called the PWD a couple of times in the winter of 2019-2020 when some trees came down. The first time, City staff came and cleaned it up and everything was fine. She called a second time, and here they are tonight. They do not know for certain that that is what started the investigation by the PWD about Blaine St. and the City’s ownership or non-ownership of it and what the City had done in the past. They understand that 75 years is a long time. Who knows what happened in 1945. They do know that the City was maintaining the road at least through October 2020 when Ms. Fifield received a letter from the City saying the City was not going to do it anymore.

Mr. Bentley continued that of course, this has created problems for Ms. Fifield. She has had to arrange for winter maintenance so that she is able to get in and out from her property. Currently, the road is due some grading to make it more passable. She has had more difficulties since the City is no longer involved. He and his client think it is grossly unfair and highly improper for, after such a period of time, the City to just turn and run from Ms. Fifield, the owner of 22 Blaine St. They tried to figure out what to do and thought the appropriate thing to do, at least for the first instance, was to put their cards on the table with the MSFI Committee. That is what prompted his letter, and why they are here tonight. They think that as a matter of equity and of fairness, the City should recognize what it has done, and what its actions have caused for both Ms. Fifield and the former owners, who came to rely on what has actually been done and for the City to continue that going forward. The City has now made a 180-degree turn on the owner of the property after such a long period of time. They think this is very unfair. Their request is straightforward; they are asking the City to resume the maintenance of Blaine St. to Ms. Fifield's residence. A truck turnaround is just beyond her residence. They are not asking for something new and different; they are asking simply for a resumption of what had gone on for three quarters of a century.

Chair Greenwald asked to hear from the Public Works Director. Mr. Blomquist stated that he has graphics to show as he talks about Blaine St. and will offer what history he can. He continued that to orient people to the location, on the right of the graphic is Meadow Rd., which goes back to Pearl St. On the left is the retention pond area across Route 9 for the Monadnock Marketplace. The circled area is 22 Blaine St., which is currently owned by Ms. Fifield. He pointed out Lee St., and stated that it was petitioned in 1957 for public way, and the City Council accepted it in 1957. He pointed out Syd St. and its relation to Blaine St. He continued that this area has an interesting history. It was originally proposed for development in 1927. He showed the plot they filed in the Registry of Deeds, and continued that this was the more traditional plot layout from that era; they were 20-40 feet wide and 100 feet deep. Many deeds in the area refer back to this particular drawing of this particular plot. He showed Lee St., Syd St., and Blaine St. He continued that another street there was called Gillis St. Several other streets were indicated on this particular plot at that particular time. Their deeds referenced plot numbers 163 through 167 and 218 through 220 as the land areas that are associated with this particular property.

Mr. Blomquist continued that that gives the Committee an idea of what all of this was based on. Blaine Street was never accepted by the City, as far as staff can find. There are a couple of ways streets become public. First is the layout process, which is a statutory process that the City Council has adopted. It involves someone petitioning the City Council to lay out a public way. Second is an acceptance process, which means someone saying, "We are going to dedicate this as a public street, and we want you to accept it." Usually that is through the Planning Board or the governing body, and there will be some type of act where a dedication or acceptance occurred. The third way a street can become public is prescription, which means that if the community maintains the street for general, public access - meaning, the general public used it, the general public felt they could use it, and so on and so forth - it is public. A number of court

cases over the years have defined what prescription is. It is very clear that prescription-only applies if you can *demonstrate* that public access occurred for that 20-year period between 1968 and 1948.

Mr. Blomquist showed an aerial photograph from 1949. He stated that the petitioner's house was constructed in approximately 1945. He showed Meadow Rd., Pearl St., what is referred to today as Lee St., Syd St., and Blaine St. He showed a set of buildings that he assumes in 1949 represented the house and something like a barn. He continued that this image shows what was there in 1949 and questioned whether that would have met "general public access." When the PWD looks at something like this to make a final determination as to whether a street is public, they look for layouts, or dedications and petitions, and for both Syd St. and Blaine St. they have never found anything that has demonstrated that those acts ever occurred. In 1957, Lee St. was laid out by a petitioner to construct houses along the northern side. Then in 2004 or 2005, a petitioner wanted to construct additional housing there, and a section of Lee St. had fallen into Class VI status, City-owned but not maintained. The City Council went through a process, which was necessary to be able to extend the active part of the street.

Mr. Blomquist showed an image from the City's files from 1949. On the survey plans, Blaine St. is called "private," as is Lee St. At that particular time, at least from a legal standpoint or a standpoint of filing of plots, they were still labeled as private streets.

Mr. Blomquist continued that in 1997, owners of property off Meadow Lane requested that the City pave Syd St. At that point, the PWD sent a letter indicating that the City could not pave Syd St. because it was a private street. He is not doubting that over the years, operational staff has done work out there. In most cases, it was probably the result of calls from the property owners asking them to come to take care of something. The operational staff does not always know what has been designated as a private street. They probably have plowed it and probably have done limited maintenance during his time here. He cannot speak for what happened before he was here. Clearly in the City's records, at least before he was here, Blaine St. and Syd St. were determined to be private streets. Whether the PWD and the City performed limited maintenance activities for those periods, he cannot speak to, and unfortunately, the folks who were around then are no longer with the City.

Mr. Blomquist continued that this goes to the question of whether there was City maintenance in the 20 years prior to 1949. Again, he has not found anything that would suggest the City actively did continuous maintenance on it from that period, because the information the City has does indicate that Blaine St. and Syd St. are private.

Mr. Blomquist showed an image of today's property mapping, to show how the properties are configured today. He showed Meadow Rd., Lee St., Blaine St., and the property in question. He continued that the next property down is 68-80 Lee St. That property owner owns the sections across Blaine St. to the other side. The next set is 121-127 Meadow Rd., the apartments accessed off Key Rd. That property owns all the property over to Lee St. In 1927, some people

had an idea for development, but that never came into being. Properties were bought and sold combined, and this is what exists today. The last property is 47 Meadow Rd., owning all of what Syd St. is on and a portion of Blaine St.

Mr. Blomquist continued that the Committee might be asking what rights Ms. Fifield has. Information suggests that, again, this is a private street. The deeds for 121-127 Meadow Rd., 68-80 Lee St., and 47 Meadow Rd. all have sections that deal with this issue. To give another note, this particular property does not have a sewer; he believes it is off a leach field. The water is a private service that runs all the way down Syd St. to Lee St. It was first installed in 1959 and then repaired in 1987. The City's files indicate that. It is a one-inch line, so it is not a main. It is a private service. An example of why this is important is that the deed of 47 Meadow Rd. has a section that says, *"The premises hereby conveyed are subject to any easements or rights-of-way of record, or law, to lay and maintain a private water service to the land now or formally known as the Forciers, and for passage and re-passage to and from land to said Forciers."* This says that the property owner of 47 Meadow Rd. said they have a right to have that private water service across their property to go down to; they have a right to access it. They also have a right to pass and re-pass over their property to get out to Lee St., a public way. It goes further to say, *"This is also subject to the rights of the public, if any, and the rights of the private property owners, if any, to use Gillis St., so-called; Blaine St., so-called; and Syd St., so-called."* The properties at that point in time did not recognize that there was a public way here. These were "so-called" streets, again, reflecting back to the 1927 deed.

Mr. Blomquist continued that the other deed for 121-127 Meadow Rd. has a similar clause, *"Subject to any rights which may exist in the strip of land formerly shown as a street in the plan entitled Pearl St. Gardens, Keene, NH,"* dated August 1927, Planning Board of Cheshire County Deeds. This is again recognizing that there are rights of other property owners across what was formerly known as Blaine St., in this case; that "strip of land" titled as Blaine St. The other deed, because of the occupancy for 68-80, has similar language: *"Subject to any rights-of-way that may exist."* This implies that there are some rights-of-way and if they exist, this deed is subject to those particular ones that a property owner would have to exert their standing as saying "This is a right-of-way that I have." This all continues to suggest that Blaine St. and Syd St., which are connected together, are private streets that the public does not have any specific interest in.

Mr. Blomquist stated that there is the issue of expending public funds on private property. He continued that that is the reason why the PWD sent notification that they need to stop doing [maintenance and/or plowing], because in doing so they are not following the law. They were spending public money on a private way. They did the notification and let [the property owner] know that the PWD would be ceasing any operations. Unfortunately, over the years, the City and the PWD has done these types of work, primarily snow removal, and probably some light maintenance like filling in a hole here or there. He knows his staff did this work probably in response to property owners, because they are very focused on responding to and taking care of customers' complaints, but sometimes the operational staff does not realize that they are



performing work on a private road or they believe that they can do the work they are doing. Clearly, in 1997, the PWD notified the Meadow Rd. property owner that the PWD would not pave their street, because they *could* not, because it was a private street at that time.

Mr. Blomquist stated that that is the background on the street. He continued that he would be happy to answer questions.

Chair Greenwald asked if the property in question involves 68-80 Lee St. also. Mr. Blomquist replied that they own across Blaine St., and they actually own the frontage in front of the property, so they are involved, and that is one of the deeds they have here – “subject to any rights-of-way.” Chair Greenwald asked if 68-80 Lee St. is Ms. Fifield’s property also. Mr. Blomquist replied no.

Chair Greenwald stated that Google Maps shows a foundation out there. Mr. Blomquist replied that if there is one, it would have to have been performed by one of these property owners. He continued that he will pull up Google Maps to see what Chair Greenwald is talking about.

Councilor Williams asked if this was ever paved by the City or anything like that. Mr. Blomquist replied that Blaine St. is unpaved. He continued that he does not know how Syd St. got paved, but if you actually go down it, it looks like it is part of the parking lot. The aerial image shows it is all pavement from one side to the other. The City did not put it into any paving program because it is a private street.

Councilor Filiault stated that Mr. Bentley’s letter states that the City was maintaining Blaine St.]since approximately 1945 until the City sent the letter out in approximately 2020. He asked if that is correct. Mr. Blomquist replied that he does not believe that is correct. He continued that he cannot say what happened between 1948 and 1968; all he has is the records he has, which indicate that in 1949 that street was considered private. He has to assume that at that particular time the City would not have been maintaining it. He has no evidence, from any of the City’s records, that the City was maintaining it at this point in time.

Councilor Filiault stated that he takes pride in trying to know where every street in Keene is, but he had no idea where Blaine St. was, until he drove it the other day. He continued that he likes to go with precedent and history, and that is why his question – although he does not want to get into a ‘he said/she said’ situation – is whether the City has been maintaining it for years. Going back to 1945, who knows. As they talked about the other day, just finding records from the 1980s can be difficult. He just wants to see if they can obtain a history showing that the City did maintain this for a certain amount of years. Mr. Blomquist replied that unfortunately, by law, you cannot use prescription unless you can demonstrate it from 1968 back to 1948. He continued that if the City has been mistakenly maintaining it since then, it does not make it a public way. The issue is spending public funds on private property. Everything the City has at this point, as he has demonstrated tonight from deeds and other documents, indicates that this is

private property. It is not a public way. If the City has been mistakenly maintaining it, including during his time here, they have been mistakenly doing it.

Councilor Filiault stated that he has been researching the property, and saw old MLS listings that showed the road as public. Mr. Blomquist replied that real estate agents are sometimes not accurate. He continued that the City has 28 private streets, and he knows that some of those have been said by real estate agents. Councilor Filiault replied that he is not saying that real estate agents define the law, but he is trying to get the history. Has the City been maintaining it, has it been listed as a public road, did the previous owners think it was a public road, and so on and so forth. Mr. Blomquist replied that he understands, and that would be all good if Councilor Filiault was trying to demonstrate that from 1948 to 1968. It does not matter what they are doing today, by the law. To make it a public street, there are two ways to do that, but in the City of Keene there is just one way: you would have to do a layout. You would have to determine that there is a public necessity, to lay a highway out.

Mr. Blomquist continued that one of the issues here is there is only one property. Chair Greenwald replied that that is why he was asking about across the road.

Mr. Blomquist stated that he now sees the Google Earth image. He asked Chair Greenwald where he was looking (when he saw the foundation), and zoomed in. He continued that he could check with Code Enforcement. It would have to be work that is being performed by one of those other property owners. Chair Greenwald replied that it is okay; he was just wondering. He asked if there are any other dirt roads in the city that are plowed. Mr. Blomquist replied public ways, yes. He continued that there are about two miles of unpaved roads, mostly dead end.

City Engineer Don Lussier stated that the foundation Chair Greenwald saw in the photo was the 68-80 Lee St. developer; that was under construction just in the last few years. He continued that access to that site is off the end of Lee St. Visible in the aerial photo is the bridge they installed to get into that development. They do not access that property through Blaine St., and it is the same with Princeton Apartments to the south. Their access is off the end of Key Rd.

Chair Greenwald asked if the Committee had more questions. He stated that this seems like a very technical, legal situation. Hearing no further questions, he asked for public comment.

Mr. Bentley asked Mr. Blomquist if, at the end of Blaine St., there is a City sign like the ones Mr. Redfern was just talking about, saying "Blaine St." Mr. Blomquist replied yes, but there are street signs on all private streets, just to indicate that there is a street.

Mr. Bentley asked Mr. Blomquist if there is any evidence in the City's records to the effect that the City has *not* maintained Blaine St. for 75 years. Mr. Blomquist replied that he cannot find anything for that, but that is a decision a judge has to make. Mr. Bentley replied that he understands; he just wants to make sure that there is nothing in the City's records to indicate one way or the other. Mr. Blomquist replied not in the research he has done to date, but that does not

mean he has completed all of his research. He continued that there are other avenues to pursue, such as going through old annuals from that era. At this point, what he has been able to find suggests that the City has not maintained it.

Mr. Bentley asked Mr. Blomquist to tell the Committee what things he found to indicate that the City has not maintained it. Mr. Blomquist replied that he has only been able to find records going back 30 years. Mr. Bentley asked if Mr. Blomquist can tell the Committee what records he saw within that 30-year period to indicate that the City has not maintained the road. Mr. Blomquist replied that he has not seen that, and as he said, during his time here, the City has done some maintenance on it.

Chair Greenwald stated that he would like to pause the conversation, which is sounding quite legal. He continued that the more he hears, the more legal confusion he feels, and he is not a judge.

Mr. Bentley asked Chair Greenwald to ask Mr. Blomquist, who spoke of the deeds of the surrounding properties, whether he looked at the deed for 22 Blaine St. He continued that the reason for his question is that some of Mr. Blomquist's commentary indicated what was in the abutters' deeds to indicate private issues. His question is whether there is anything in the deed for 22 Blaine St. to come up with the same conclusion.

Mr. Blomquist replied that there is nothing in the 22 Blaine St. deed, but it references back to the other deeds he previously referred to. In July 1970, a Council action from the Bills, Lands, and Licenses Committee - "[Regarding] the Forciers' petition to purchase the old land on Blaine St., the Committee agrees the City has no use for this parcel." Mr. Blomquist noted that he has not figured out what parcel it is yet. He continued reading, "the Committee recommends that the established procedure be followed to obtain bids from abutters for the minimum being set at assessed value. This is a 100x200 foot lot on a private way." Thus, back to at least 1978, it was still considered a private way by the City.

Councilor Roberts stated that maybe this is something the City Attorney can answer, but from what he heard, if the City maintained that road for the last 40 years and did everything according to the law, all that would have been illegal. However, if the City had maintained it from 1948 to 1968, that would have been legal.

City Attorney Tom Mullins stated that he and Mr. Bentley disagree on this issue. He continued that from the City's perspective, maintenance is just *one* element of whether you can create a way as a public way. There are two other elements. The first is that whatever happened had to have happened for 20 years prior to 1968, or at the latest, from 1948 to 1968, because in 1968 the Legislature decided that prescriptive rights against the municipality to create a public way was no longer valid. Prior to then, to be able to have created a public way, you needed to have two elements. One was the maintenance, as they have been talking about, which there is some indication has occurred. The second, critical element was that it had to be generally open to the

public, and the public, in general, had the right to pass and re-pass, and the municipality decided that is a good idea and decided to start maintaining it. For example, if there was a nice pond on the other side of a piece of property with no particular access to it, and over the years, the public liked going to that pond and started going back and forth to it, and the municipality decided it was a good idea and decided to make a road to the pond so everyone could access it, without any objection from the property owner during that 20-year period of time when that pass and re-pass happened, all of a sudden you had a public way. That was how they created one. The question that is before the Committee is whether, aside from the maintenance, there is enough evidence for the Committee to consider whether the public had a right to pass and re-pass back to this particular piece of property for the 20 years prior to 1968.

The City Attorney continued that his only other suggestion to the Committee is for them to understand, as he is sure Mr. Bentley does, that if snow-plowing were enough to create a public way, every driveway in the town of Temple would now be a public way, because the Public Works Department of the Town of Temple, has for many years, plowed the driveways. Plowing is clearly not enough. Case law indicates that regular maintenance to maintain the passage for the public can be enough, but it needs that other element: the right of the public to go back and forth. That is something the Committee would want to consider, with respect to how it decides Mr. Bentley's request.

Chair Greenwald asked if there was any indication that it was not a dead end road and maybe went through. Mr. Blomquist replied that this was done before the bypass. He continued that these were all more or less dead end roads, ending in a piece of parcel that belonged to somebody else. Chair Greenwald replied that it did not go through and come around to West St. or something like that. Mr. Blomquist replied not that he is aware of. He continued that you can see that in 1949 before the bypass was built, they stopped at the fields. He cannot remember the name of the property owner now, but this was owned by someone else. There are no indications that any of these looped back in any particular direction. Back to what the developers did back in the 1920s and 1930s, this Pearl St. Gardens is typical of that era where they laid out 20-40 foot wide lots with 100 foot depth and you could buy as few or as many as you wanted.

Chair Greenwald asked if there were any further questions from the Committee. Hearing none, he asked if members of the public had any questions.

Jim Condon of 28 Lee St. stated that when he bought his house in 1988, the whole of Syd St. was dirt and went around the corner onto Blaine St. He continued that the City maintained that until just recently. Syd St. is a private street. Blaine St. is a public street. He feels that Ms. Fifield pays taxes and Blaine St. should be maintained. Regarding Ms. Fifield's road, back in the day, the City used to grade it three times a year and plow it. In the last three or four years they have stopped services altogether, which he understands. Syd St. is a private way, and they put a sign up there. But Blaine St. is still a public road. Therefore, he feels that it should be maintained. Ms. Fifield pays taxes and should have City services.

Chair Greenwald asked the Committee what their thoughts are and what they want to do.

Councilor Williams stated that he thinks there are legal questions here that would be better decided by a judge than by the MSFI Committee. Chair Greenwald stated that he tends to agree, but he would rather see two lawyers sit down together and decide themselves.

The City Attorney replied that unfortunately, this is an “It either is, or it isn’t” situation. He continued that the only other thing he would suggest to the Committee, and perhaps Mr. Bentley and his client, is to inquire as to what other public uses there may have been at that property.

Councilor Filiault stated that his comments earlier indicate how he is leaning. He continued that he does not know if they should make a motion to place this on more time. He does not know if that will accomplish something, if the lawyers can get together. He leans towards thinking the City should maintain Blaine St., but he is not naïve and realizes there are legal issues. As he stated earlier, he goes back to asking what the history is, and leans on that heavily. He does not have the exact answer here. This does seem like something for the lawyers. The two lawyers in the room disagree.

Chair Greenwald asked if there was any more comment. Hearing none, he asked for a motion.

A motion by Councilor Williams to accept the communication as informational was seconded by Councilor Workman.

Mr. Condon stated that Blaine Street needs to be maintained in case of fire or an ambulance call. He continued that it is a safety issue as well. What if no one plows it, and Ms. Fifield gets in trouble and calls 911 and they cannot get through? Blaine Street needs to be maintained.

Councilor Roberts stated that if the MSFI Committee accepts this communication as informational, nothing happens. He continued that a decision has to be made one way or another. If the Committee votes yes, the City can say that it has to go to the judge. If the Committee votes no, Mr. Bentley can say it has to go to a judge. The Committee should make a recommendation to the City Council one way or another. If the Committee is not ready to say one way or another, he suggests putting it on more time, to give the City Attorney time to dig up more information and to maybe clarify the information. He will not support the motion to accept this as informational.

The City Attorney stated that the burden is on the individual requesting that this be a public way to establish that. He continued that even still, accepting the communication as informational does not remove from the property owner or from Mr. Bentley the opportunity to either have and provide further information through the City Attorney’s Office, or to take it to the Superior Court. The City Council can do what it wants, but staff is suggesting to the Committee that there is not enough evidence before them at this point to establish that this was recognized by prescription as a public way. Whether the answer to that question is true or not depends on

whether the Superior Court agrees. His suggestion is that accepting it as informational is certainly appropriate. They could also place it on more time to allow Mr. Bentley, to the extent that he can, to provide additional information to the City, which they could then consider.

The City Attorney continued that the City recognizes what happens to this property owner. That is clear. Nobody likes to be here in this position, telling this to the property owner, who probably purchased the property without any knowledge of all of this. It is not easy. On the other hand, as the Public Works Director pointed out, the City is constitutionally prohibited from spending public dollars on what would otherwise be a private right. Right now, all they have been able to establish is that this is a private driveway. There are many long driveways in this community and otherwise. They could not open up the possibility of maintaining them and using them as a public way. The Committee can place this on more time or accept it as informational; his recommendation is the latter. It would not preclude Mr. Bentley from coming back with additional information if he wishes to do that.

Chair Greenwald stated that he was trying to determine if there is a compromise, but the City Attorney put it clearly: it is either yes, or no. He continued that this is a complex, legal issue. Any real estate agency involved with something like this is putting themselves in deep water trying to explain the rights of private driveways and everything else they have heard here. Whoever represented it at the time probably thought it must be a public street because it had a street sign, and therefore created this whole nightmare, but the more they are all talking, the more they see how complex this all is.

Councilor Roberts asked, if the Committee accepted this as informational, does the City Council have a right to reject that and then bring it up for a vote of the full City Council? The City Attorney replied yes; the Committee is only making a recommendation. He continued that he reminds folks that the City Council meeting would not be an opportunity for Mr. Bentley to present anything different from what he has presented to the Committee. Chair Greenwald replied that the City Council could choose to refer the matter back to committee and they would have to go through this whole conversation again. The City Attorney replied that then he would suggest the other option of placing the matter on more time, and to allow Mr. Bentley to attempt to provide additional information with respect to the three elements.

Mr. Redfern stated that he was on the Planning, Licenses, and Development Committee many years ago, and he cannot quite remember if precedence was set in any way where the City granted discontinuance of private use for public purposes. He continued that this would go back to the 2000-2012 timeframe. The City Attorney replied that he thinks Mr. Redfern is confusing a couple of concepts. He continued that a public way created in the past through one of the processes can be discontinued subject to gates and bars, and it becomes a Class VI road and no maintenance is required, but it has to have been a public way in the first place. He continued that he is unaware of any point where the municipality would have any authority to take any action with respect to a private way, in the context that Mr. Redfern is talking about. He thinks what Mr. Redfern has in mind is the discontinuance of what was otherwise a Class V or Class VI road.

Councilor Filiault stated that his inclination is if this to go to the City Council as informational he would refer it back to the Committee. He continued that he does not think they have resolved the situation yet. In all fairness to a tax-paying constituent, the Committee should check all avenues before they are done with it. Maybe the City Attorney is right. But he thinks Mr. Bentley makes good points. The history shows good points on both sides. He does not think that placing this on more time and giving it 30 more days would hurt. It might help, or it might make it more complicated, but he hopes that the Committee withdraws the motion and rephrases the motion to place it on more time for 30 days so both attorneys can do more research.

Chair Greenwald stated that he hears what Councilor Filiault is saying, and knows that it will not be snowing anytime soon.

Councilor Williams withdrew his motion. Councilor Workman withdrew her second.

The City Attorney stated that he would like to clarify the timeframe for Mr. Bentley, remembering that June has a fifth week, so the next opportunity for the City Council to consider the Committee's recommendation would be July 7. He continued that usually, the City Council accepts a motion for more time without any further discussion. Then, it could be taken up again generally any time after that, but the City Council is going on vacation, so he believes the next Committee opportunity would be late August.

Chair Greenwald asked if Mr. Bentley understands the timeframe. Mr. Bentley replied that he was not expressly aware of that schedule but it is all fine with him and Ms. Fifield. He continued that it will give them time to try and find some old folks in town who can tell them what happened in periods of time when most people in the room were not around.

Councilor Filiault made the following motion, which was seconded by Councilor Williams.

On a vote of 5 – 0, the Municipal Services, Facilities and Infrastructure Committee recommends placing the communication on more time.

### **3) Councilor Philip Jones – Unsafe Sign Placement**

Chair Greenwald asked to hear from Councilor Jones. Councilor Jones stated that the two words he wants to talk about are “safety” and “consistency.” He continued that his letter asked the City Council to prohibit the placing of signs in any City right-of-way that is not safely accessible without permission of the City. The prohibition of signs for safety reasons would be similar to the already established prohibition of panhandling in those same locations for the same reason. The prohibition would include all roundabouts, rotaries, traffic circles, medians, and dividers. The purpose is to prohibit the unsafe placing of all signs, including political campaign, business promotion, help wanted, event notification, yard sale, and so on and so forth. Maple

Ave. is a dark street with medians, including one between Pako Ave. and Melody Ln. One night when he was driving there, he saw someone placing a sign and wondered what the person was doing. The next morning he drove by in the daylight and saw that the person had put a “bus drivers wanted” sign up. There was no crosswalk or any safe crossing to that median. At one point last fall, the roundabout in front of the hospital had 23 signs in the center of it, and there is no crossing there.

Councilor Jones stated that regarding the word “consistency,” about six years ago when there was a petition to stop panhandling in the city, the City Council was advised by the City Attorney that they could not do that, but they could stop it in those unsafe crossing places. He asked if that is correct. The City Attorney replied that the bottom line is that the City cannot prohibit individuals from panhandling, but the City and the KPD have the right to make sure people are not in unsafe locations. Regarding signs, moving back and forth to an unsafe location to place a sign is something that a Police Officer would probably interrupt if they saw.

Mr. Blomquist stated that protocol was developed between the KPD and the PWD. They looked at spaces and agreed upon what traffic spaces in the opinion of Public Works staff – as the people who design and maintain them – would be unsafe. For example, the median on lower Winchester St. by Key Rd. is not designed to have pedestrians, so the KPD was comfortable saying, “No one should be panhandling there.” They ran into some issues regarding some of the off ramps, because someone there is not necessarily unsafe, because in some ways pedestrians are allowed on those. The KPD and the PWD went through that process of determining which locations the KPD could ask someone to move away from.

Councilor Jones replied that from what he is hearing from staff, the consistency is there. He continued that he is asking for the same exact thing regarding signs, for the same exact reasons. He knows staff is asking the Committee to accept this as informational, but he thinks this is a safety issue that should go to the City Council for a vote. If they approve his request, the matter will return to the Committee. He does not know if it is a sign ordinance or a traffic safety one, but he assumes this would be an amendment to an ordinance. Thus, the Committee will have a second chance at this, and so will the City Council.

Chair Greenwald stated that in speaking with the City Clerk, he can say that the City does have regulations as to where signs can and cannot go. He continued that the State has their own such regulations. He thinks it is already in Code. He wonders if there could be a document explaining to candidates or businesses where their signs can and cannot go, and explaining that someone can stand and hold a sign anywhere they want because a handheld sign is part of freedom of speech. This an educational issue. The information is already here.

Mr. Blomquist stated that staff does not disagree with Councilor Jones’s safety concerns over the proliferation of signs. The topics of the proliferation of signs, the tools that are available, and the resources, all have to come together. As Chair Greenwald indicated, City Code sections say where signs can and cannot go. For example, if a sign is advertising a Main St. business but the



sign is on West St., it is an Off Premise Sign and is prohibited. In general, none of those signs are permitted in the right-of-way. The PWD and the KPD have the authority to remove signs in that instance, and they do.

Councilor Jones asked if he is talking about business signs. Mr. Blomquist replied no, he means all signs, like “bus drivers wanted” or anything else. He continued that political advertising is addressed by RSA 664:17. Theoretically, the City Council is supposed to vote to give permission for political signs to go within the public way, for any street in the city. They have never done that. Most entities have not, because it gets a little tricky. The important question is, what do we do? Yes, it is the PWD’s practice to remove signs from the middle of the roundabout, on shoulders, and so on and so forth, because people are not supposed to be going there. Passing an ordinance will not stop people from placing signs there, because the KPD is not going to go out and try to ticket someone for that. The Police Chief has talked with the City Council about how there are already many things the KPD is challenged to do. When the PWD learns of or sees signs in the roundabout, they pull them, hoping that hints to other people that they should not be putting signs there. He pulls them out on Central Square all the way down Main St., because they want to keep that space clear, and there are safety concerns. In areas where the PWD does roadside mowing, they try to pull the signs out beforehand. If they see or get a complaint about an intersection with a proliferation of signs that limit one’s view, PWD staff goes out and removes the signs.

Mr. Blomquist continued that he removes any unsafely-placed signs, regardless of content. Sometimes someone calls him to ask why he removed a sign about a child who has cancer, for example, and he explains that signs are not allowed there, and invites the person to come to the office to get the sign back. The PWD does not have the resources to get to all locations in the city, so they pull in the areas they can. There are a couple spots in which signs proliferate, that the City does not have control of – for example, the ramp by the car wash on West St., which is State property. All they can do is notify the State about the signs and ask the State to come remove them, but the NHDOT is as constrained as the PWD and it is low on their priorities. That area gets many signs because people know the City pulls them from other locations.

Mr. Blomquist stated that his opinion, as staff, is that the City has the rules allowing them to go out and pull the signs, and they are doing it. He continued that the help he asks for is for people to call the PWD if they are concerned about a space. He hopes people realize they should not be putting signs in unsafe locations, but unfortunately, many people do not follow the directions. The PWD re-educates political entities every election year. They get upset with him and come to his office, and scream at PWD staff when they are pulling the signs out, saying staff does not have a right to do that. PWD staff hands them the State statute. He does not think they need another ordinance; he thinks they need to educate people more. It would be great to educate candidates about this, but it might not help with the person who is so excited about the candidate they are trying to put out as much information about the candidate as they can and putting signs up in unsafe locations. However, if people tell the PWD where the signs are, staff can pull them. When Councilors get the phone calls from people upset that their signs are gone, the Councilors

can educate people that way, too, and encourage them to go pick up their signs at the PWD. He keeps them out in the foyer for about 30 days, which he does not *have* to do, but chooses to do in recognition of the funds people spend on their signs.

Chair Greenwald stated that he agrees with Councilor Jones that there are many more business-oriented signs showing up, and thinks it will only get more intense, as people figure out this is a way to market things. His question to the City Attorney is whether an easy to understand, friendly memo can be given to the candidates when they come in, the violators at the companies, and so on and so forth.

The City Attorney replied that anyone who has tried to decipher RSA 664:17, which is The Placement of Political Signs on Public Property, knows that we have to be very careful about that. If the City wanted to, if someone came in and filed for an election, they could at least be handed the statute. He would be reluctant to try to give them advice with respect to what to do about it. He would be reluctant for the Committee to request the City Manager or the City Clerk to try and put together a statement saying what people can and cannot do with signs, especially in a political context.

Councilor Jones stated that it sounds like an ordinance is not necessary, but he thinks they should do something, to be proactive instead of reactive when someone gets hurt. He continued that they do not have to do it tonight, but he asks Councilors and staff to think about future ways of educating people, or any other way to prohibit signs in unsafe locations and prevent an accident from happening.

Mr. Blomquist replied that he agrees, and what he always finds challenging is that people are paid to put up signs and paid based on the number of signs they put up. They will try to educate people the best they can, but this is a difficult situation. The best the PWD can do is pull the signs, and people get the idea that if they put a sign [in an unsafe place], it will go away. It is similar to how the City attacks graffiti. Their goal is to get it cleaned before it stays too long, because otherwise someone sees it and thinks, "Oh, the City hasn't done anything, so I guess I can put my graffiti here now." It is the same thing with signs. Yes, the signs are a safety concern to the PWD, but it comes down to resources. They have specific areas they focus on, from a safety standpoint, but with the rest of the areas, it is extremely difficult.

Councilor Jones stated that it is fine to accept this as informational, on paper, and the Committee should do that, but he thinks the safety aspect of this should be on their minds and they should be thinking of this down the road.

Chair Greenwald asked if there was further comment from the Committee or public.

Councilor Williams stated that the safety aspect is important, but they should not forget the clutter and pollution aspect. He continued that he has problems with those as well.

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

On a vote of 5-0, the Municipal Services, Facilities, and Infrastructure Committee accepts the communication as informational.

**4) Warrant for Unlicensed Dogs - City Clerk**

Chair Greenwald asked to hear from the City Clerk. He asked if she has the list of offenders.

City Clerk Patricia Little replied no, it is about 50 pages long, and she chose to save a few trees and not print it for the Committee's agenda packets. She continued that this is the annual request for the Committee to authorize the KPD to issue civil forfeitures, which are essentially \$25 fines, to dog owners who failed to renew their dog licenses by April 30. This year there is a different twist to this. When Barry Hilton, the City's animal control officer retired, they had an opportunity to talk with Chief Russo about the dog registration program, to educate each other about what Barry Hilton was doing for the City Clerk's Office and what the City Clerk's Office was doing for the KPD. One of the things that came out of that conversation was the fact that although they are very diligent about the warrant of dog owners who failed to renew their dog's license; there is another group of dog owners who are also not as responsible as they should be. This group of dog owners are those who fail to respond to the rabies notification letters that the office sends out monthly. The City Clerk continued that veterinarians are required to report to the City any vaccinations that they have administered. State law also requires that the Clerk inform dog owners of the requirement to license their dog. Throughout the year, every month, the Clerk's Office gets these notifications from vets and sends out letters to these dog owners about the requirement to license their dog.

The City Clerk continued that they met with the new Assistant City Attorney shortly after she arrived, and she explained that administratively they cannot use the normal civil forfeiture process unless it is included in the warrant authorized through the City Council. Thus, this year the Committee has two groups of dog owners: those who failed to renew, and those who failed to respond to rabies letters. The number is less than a thousand, but certainly more than the Clerk's Office would typically have in a year. With the civil forfeiture, if the Council authorizes the warrant, the Clerk's Office will send out a civil forfeiture notice on behalf of the KPD, through regular mail. They will get several hundred responses. Most people will say they left town or that their dog died. Over the next several months, because this probably will take until September or October, this list of nearly a thousand dogs will be whittled down to, hopefully, a few dozen. At that point, they turn it over to the KPD and ask if they want to do any further enforcement action. The State Law allows for a summons to court. Historically, issuing a summons has not been a very cost effective because the judge typically requires that the dog owner pay the forfeiture, and license their dog." Prior conversations with Chief Russo have indicated that the Police Department would probably not want to issue summonses in these situations; however, she thinks the KPD can assist the Clerk's Office informally through a

personal contact with the remaining dog owners. The Clerk's Office intends to get this list of nearly a thousand names down to a few dozen over the next several months.

Chair Greenwald asked if the City gets any of this money. The City Clerk replied yes, certainly. Chair Greenwald replied that he thought it all went to the State. The City Clerk replied that a portion of the dog license fee goes to the State.

Chair Greenwald asked if the Committee had any questions. Hearing none, he asked if the public had questions or comments. Hearing none, he asked for a motion.

Councilor Filiault made the following motion, which was seconded by Councilor Roberts.

On a vote of 5-0, the Municipal Services, Facilities, and Infrastructure Committee recommends that the City Council issue a warrant for unlicensed dogs pursuant to NHRSA 466:14, and the Keene Police Department be directed to issue civil forfeitures to those dog owners who have failed to license their dog by April 30, 2022.

#### 5) **Adjournment**

There being no further business, Chair Greenwald adjourned the meeting at 7:44 PM.

Respectfully submitted by,  
Britta Reida, Minute Taker