

City of Keene
New Hampshire

PLANNING, LICENSES AND DEVELOPMENT COMMITTEE
MEETING MINUTES

Wednesday, October 12, 2022

6:00 PM

**Council Chambers,
City Hall**

Members Present:

Kate M. Bosley, Chair
Michael Giacomo, Vice Chair (via Zoom)
Philip M. Jones
Gladys Johnsen
Raleigh Ormerod

Staff Present:

Elizabeth A. Dragon, City Manager
Thomas P. Mullins, City Attorney
Amanda Palmiera, Assistant City Attorney
Rebecca Landry, Assistant City
Manager/Communications Director

Members Not Present:

All Present

Chair Bosley called the meeting to order at 6:08 PM.

1) Keene Kiwanis Club – Request to Use City Property – Tree Lighting Ceremony

Chair Bosley recalled that this is an annual request. While not present this evening, the Director of Public Works communicated to the Chair that the Kiwanis Club had held the required protocol meetings. The City Manager, Elizabeth Dragon, had no concerns related to this event and recommended approving the request. There were no questions from the Committee.

Margaret Bruce, Secretary of the Kiwanis Club was available for questions. She recalled from the protocol meetings that they were waiting on a decision whether they could use PVC piping to cover the electric cords at the event. The City Manager did not have that answer yet but the motion would allow the Staff to work out any of those details beyond this meeting.

Chair Bosley knew this event was usually very well attended and it is special to have it occurring in town, especially with kids involved in the downtown and Fire Department participation.

There were no public comments.

Councilor Jones referred to the tree in the Main/Marlboro/Winchester Streets roundabout that used to have no electricity and asked if that was still the case. Ms. Bruce said they are now lit with battery-operated mini lights, so no power is needed.

The following motion by Councilor Jones was duly seconded by Councilor Johnsen.

On a roll call vote of 5–0, the Planning, Licenses, and Development Committee recommended that the Keene Kiwanis Club be granted permission to use downtown City rights-of-way on Friday, November 25, 2022 for the Tree Lighting Festival from 5:00 PM to 8:00 PM conditional upon the signing of a revocable license and indemnification agreement, submittal of a certificate of liability insurance in the

amount of \$1,000,000 listing the City of Keene and an additional insured, and that the Petitioner complies with any recommendations of City staff. In addition, the Petitioner is granted permission to erect a holiday tree on the Main/Marlborough/Winchester Street roundabout. The Petitioner agrees to absorb the cost of any City services over and above any amount of City funding allocated in the FY 23 Community Events Budget. Said payment shall be made within 30-days of the date of invoicing.

2) Ron Robbins/Keene Snoriders - Requesting Permission to Run Snowmobiles in the Right-of-Way along Krif Road from the Ashuelot Rail Trail to Winchester Street

Chair Bosley welcomed Jeremy Evans, President of the Keene Snoriders, who recalled this annual request for access to trails around the Keene area when there is snow cover. This year, they were asking for to renew the crossings they had used for several years; there had been no changes. He welcomed questions.

With no Committee questions, Chair Bosley agreed that this was an annual request before this Committee and the applicants communicate well with Staff and no incidents have been reported. The City Manager, Elizabeth Dragon, reported no Staff concerns with this request and while no protocol meetings were required, Staff did review this application and she recommend approval after conversations with the Director of Public Works.

The following motion by Councilor Ormerod was duly seconded by Councilor Johnsen.

On a roll call vote of 5–0, the Planning, Licenses, and Development Committee recommended that the Keene SnoRiders be granted permission to use the following locations on City property for a snowmobile trail: the right-of-way along the north side of Krif Road from Krif Court to Winchester Street; City property identified by tax map numbers 116/040/000/000/000, 214/003/000/000/000 and 118/001/000/000/000; the crossing of Winchester Street at Krif Road; and, The crossing of Production Avenue approximately 200 +/- feet south of NH Route 9. As well as access to the Class VI Portion of the Old Gilsum Road starting approximately one mile from the Gilsum Town Line and going north, (“Premises”) for the following purpose: for a snowmobile trail, and under the following conditions: Said use shall commence on December 15, 2022, and expire on March 30, 2023, and is subject to the following conditions: the signing of a revocable license and indemnification agreement; and the submittal of a certificate of liability insurance in the amount of \$1,000,000, naming the City of Keene as an additional insured.

In addition, the Keene SnoRiders, Inc. will be responsible (including cost) for the installation and maintenance of all signage/markings, which will be in accordance with Snowmobile Trail Standards published by NH Department of Business and Economic Affairs; that all signage/markings installed shall be removed from the City right-of-way and City property when there is no longer any snow cover, no structures, including buildings, shelters, lights, displays, walls, etc. shall be permitted with the City right-of-way or on City property; no parking of motor vehicles or trailers and no catering servicing activities of any kind shall be permitted within the City right-of-way or on City property; grooming shall not extend outside the right-of-way of Krif Road, snow windows shall be groomed to provide adequate sight distances and a gentle sloping approach at all road and driveway intersections; no part of the City

Street (paved surfaces) may be used by off-highway recreational vehicles (OHRV) or their operators for any purpose, other than direct crossing; and that Keene SnoRiders, Inc. shall be responsible for the repair of any damage (including costs) and the City right-of-way and property shall only be used when there is snow cover.

3) Memorandum of Understanding – Retaining Wall – Woodbury and Washington Street – City Manager

Chair Bosley heard from the City Manager, Elizabeth Dragon, who said that she was looking for authority from the Council to execute both a Memorandum of Understanding with the Community College and to execute some cross easements. River Valley Community College owns the property at 438 Washington Street and the College has been in the process of attempting to sell that property because they moved onto the Keene State College campus some time ago. Questions arose about the ownership and maintenance of a retaining wall that meanders between private property and the City's right-of-way. She believed the wall was constructed to support the Roosevelt School construction some time ago; the ownership had been transferred since then. Staff agreed that both entities have interest in this wall and its stability; if removed, it would require re-sloping and would violate the viability of the existing building. Failure of the retaining wall would also impact access to Woodbury Street. The City Manager provided photos of an engineering evaluation conducted by the school. The City indicated to the school that the City has no interest in ownership of the wall, but they are interested in the associated guardrail and sidewalk located in the City right-of-way. Therefore, they came to an understanding, and she asked the City Council to grant her the authority to execute a Memorandum of Understanding with the Community College system. The college agrees to repair the wall and to ongoing ownership, and the City will repair and do the ongoing maintenance of the guardrail and sidewalk in the City right-of-way adjacent to the property along the top of the wall. As a part of this agreement, the City seeks Council permission to execute a cross easement for construction and future maintenance by the College in the right-of-way and of the guardrail and other improvements the City will need to go onto their property to address.

No representative of the school was present to speak.

Chair Bosley asked whether the agreement included a time frame for the repairs. The City Manager said no, she was unsure the repairs would occur before the property is sold and she knew the College was looking for this agreement so whoever purchases the property knows they agree to complete the repairs; the City is responsible for the guardrail and the sidewalk. When the engineering report was made, Chair Bosley asked if the City was given any indication of the lifespan of the wall. The City Manager said surprisingly, it is not in terrible condition. The engineering report was by HL Turner, and they classified it in good condition, but it needs some work. She did not think it would be extremely difficult to complete that work but that the harder part would be for the City to build the new guardrail system into the wall.

The Chair asked whether the City should retain the ability to conduct their own engineering report, given the threats to the roadway if the wall failed. The City Manager said the College and City talked

about working together when repairing the wall and conducting the City work and the College was very open to sharing an engineering report or the City undertaking its own.

Councilor Jones asked whether the Memorandum of Understanding would carry over to the new purchaser and the City Manager said that was the intent.

Hearing no public comments, Chair Bosley entertained a motion by Councilor Johnsen, which was duly seconded by Councilor Jones.

On a roll call vote of 5–0, the Planning, Licenses, and Development Committee recommended authorizing the City Manager to do all things necessary to execute a Memorandum of Understanding between the City and the Community College System of New Hampshire with respect to the retaining wall abutting the property owned by the Community College and adjacent to Woodbury Street; and further to authorize the City Manager to do all things necessary to negotiate and to execute permanent cross easements for the construction, and future maintenance of the wall by the Community College, and for the improvements to Woodbury Street to be made by the City.

4) Communications Relative to Public Health Concerns of Small Cell Wireless Facilities, and Possible Revisions to Ordinance O-2019-18-A

Former Councilor Terry Clark was not present, so Chair Bosley heard comments from the other letter writer, Councilor Randy Filiault. The Councilor said he wrote his letter at the request of several neighbors of towers being erected, mainly because they can be harmful in residential neighborhoods. He reminded the Committee that the Ordinance could be changed.

Councilor Jones clarified that this only has to do with small wireless facilities in the City's right-of-way, not those on private property. The City Attorney, Thomas Mullins, said that was correct. He continued that Article 13 in the Land Development Code, which is the part of the Zoning Ordinance referring to telecommunication facilities, includes an overlay district and is applied in areas of the City with private property. This Small Cell Wireless Ordinance and the FCC orders apply in the City right-of-way only.

As a part of her research, Chair Bosley asked Staff to draft a list of installations and it was clear how many there are. She referred to these as small wireless facilities because 4G and 5G are used in marketing, whereas this discussion was about the lengths of radio waves emitted from the towers. The City currently has five small wireless facilities, with the potential for one more application. There are also 12 on State properties that the City has no regulation over. There are a few more on private properties, for which the City only has right and regulations regarding aesthetics; they cannot approve or deny construction. This discussion was only about properties in the City's right-of-way.

Chair Bosley continued providing some background on this issue and the timeline of how this had been addressed by this committee in the past. The Ordinance was introduced in 2019 in response to the FCC putting forward the requirement that the City had no authority to deny the installation of these facilities in the City's rights-of-ways. The Committee spent a long time educating themselves and listening to public concerns, and they heard the City Attorney's perspective that in the absence of an ordinance, the

City was left completely undermined. The FCC regulations put us in a situation where without some ordinance in place, the small wireless facilities could be constructed in any manner companies see fit, with any aesthetics. It was pertinent to have something on record that was adopted unanimously by the City Council in May 2020. The City Council can only revisit the same topic once per calendar year. Thus, in January 2021, Terry Clark submitted a letter requesting that the City Council revisit the Ordinance in light of the State report expressing concerns about potential medical liabilities of the small wireless facilities. There were strong opinions in the report and someone from the State then spoke to the City Council to describe the majority opinion of the report. The City Council found that their Ordinance met the State's suggested setback requirements. There was some additional legislation before the State that might have made some stricter State-backed ability for the City to regulate some of these items, which is why this had been on more time for some support from the State on this issue. The Chair said the information in the report might be worthy of supporting and heard an update from the City Attorney.

The City Attorney said that in one letter on October 6 he learned that HB-1644 contains some additional setback requirements—1,640 feet in multiple locations—and his understanding was that it would be going before the House again during this legislative session for adoption or not. Chair Bosley said that was important because a few weeks ago the Committee had this, and the State was in limbo still. She said the whole Committee should keep an eye on that. In January, the City's Ordinance could be revisited as it is a living document regardless of whether there is support from the State.

Chair Bosley asked the Committee's opinion on where the Ordinance stands currently.

Councilor Jones referred to Section 802-205 on Location Standards, which require small wireless facilities to be located no less than 750 feet from pre-schools, schools, and daycare centers. He asked why 750 feet? The City Attorney recalled that many resources were consulted when drafting this Ordinance and this number seemed to be consistent nationally. The FCC provided little guidance and left the decision at the discretion of each municipality. The City Attorney said that if HB-1644 were enacted it would put a specific State limit of 1,640 feet, in which case the City's Ordinance would need to be adjusted. He said the caveat about HB-1644 is that even though the FCC rule specifically does not preempt State law RSA 12-K regarding applications, if the 1,640 feet were challenged by the industry and they claimed it materially inhibited the ability for them to conduct their business; it would likely be heard by the Federal District Court against the State.

The Chair understood that radio waves do not travel far, which is why they are constructed in a grid to be useful.

Councilor Giacomo said it would be almost inconceivable for a telecommunications company to not challenge a 1,640-foot setback because the range of these on clear lands, without hills or trees in the way, is approximately 1,500 feet. So, anything above 1,500 feet is virtually invalidating them. If you wanted any usage from high bandwidth cellular service in places like hospitals, etc., where people want it, 1,500 feet would invalidate their use entirely.

Chair Bosley could not recall where the specific numbers came from but recalled that they did address these vulnerable locations like nursing homes, schools, and childcare facilities.

Chair Bosley opened the floor to public comment. Any questions posed by the public would be answered at the end.

Doug Johnson of 20 New Acres Road encouraged more investment at the State level. He said it sounded like the community and Council were aware of the hard-published science behind it that he had been reading since 2014. He worries about it and encourages all to read more about it. Mr. Johnson said there are 16 homes on New Acres Road and 14 expressed to him that they are concerned about the new small wireless facilities at New Acres Road and Allen Court. He said the entire street is within those 750 feet, and the hospital is within 500 feet. He asked whether the City and citizens would be made aware when the companies change these small wireless facilities from 4G to 5G?

Ron Clace of 37 Allen Court posed three questions: 1) Is there a contract with the cell phone companies, and if so, for how long? 2) Is the City compensated by whoever owns the tower because it is in the right-of-way? and 3) In the future, will other companies be allowed to put their equipment on the same towers as small wireless facilities and magnify the radiation coming from them?

Jeananne Farrar of 59 School Street said her neighborhood had been deluged with variations for so many things and this is just one more she has tried to educate herself on—small wireless facilities, the FCC, the TCA, etc. She is upset because these facilities have been placed on the very corner of the Historic District. She said while that area may now be called the Downtown Transition Zone, it is increasingly populated by young families now living under and across the street from small wireless facilities. She said the poles are not incredibly unattractive, but that the fact of the matter is the FCC says radio frequencies that emanate from small wireless facilities are in great excess and they would have to put signage on those that would likely frighten people who do not want to live nearby. She said they affect people's health issues and they do not belong in neighborhoods full of people. Members of her neighborhood have spoken with the Director of Public Works.

Peter Espiefs stated he has lived at 29 Middle Street for 50 years. He is 91 years old. Mr. Espiefs does not want such a construct next to his home. The most favored position of these structures is not in residential areas; they are the least preferred. He said the Downtown Transition Zone is still residential and the small wireless facilities do not belong there. A Mr. Savastano from Mr. Espiefs' neighborhood wrote a letter to this Committee about this issue in July and stated good reasons why they should not be placed there. The residents appreciate the Committee's consideration. Mr. Espiefs said there are more suitable locations.

Anthony Trembley of 67 Summer Street thought that when this issue arose first, the neighborhood had concerns with whether there could be meaningful setbacks in an area with homes so close together. What is interesting about this neighborhood is that its demographics are changing, with more and more young families and children, which the older long-term residents love to see. He said this demonstrates that there is desire in the community to live in town. Mr. Trembley concluded that putting these towers

in such a dense neighborhood is a major concern for all the residents.

Michael Zoll of 18 Summer Street said he was one of the new families in the neighborhood. He is happy to be in this wonderful City. He said most people own a cell phone. He said that when he read Public Works information, he was struck that the preferred placement for small wireless facilities is in non-residential districts, so he was unsure what was mixed up here. One of these facilities is 30 feet from his residence and is surrounded by other homes. He emphasized that this location is in the historic district, where residents must go through a lot to improve their homes and to support the district. He said a cell tower is an unaesthetic problem in the Historic District. Despite being in the Transition Zone, this is a residential area, with plenty of people living around it. There are better locations.

Robert Farrar of 59 School Street said the placement of the towers had been articulated already. He understood that they must be in the right-of-way, somewhere between the sidewalk and the road. That said he believed there were public ways all over town outside these residential areas. He also mentioned young families moving back into his neighborhood with children and no radiation is needed there. He questioned the small wireless facility on Winchester Street near to a dormitory, stating that it does not make sense. He said to move the towers away from residential neighborhoods, despite potential criticism for not having 5G, stating that peoples should “move away if a phone is that important”. He thinks the City Council needs to pay close attention to what is happening to neighborhoods; it is important as a community is built on neighborhoods, not businesses.

Jeananne Farrar of 59 School Street expressed sadness, wondering whether the local people have anything to say any more. She continued that the FCC and the State enforce policy and when it gets to the people; it is a done deal, if people do not follow the daily advancements. People have lived a long time in the School Street neighborhood since it began operating in the 1700s. The residents respect the history of that area—from Jonathan Daniels to various Mayors, doctors and others who were the backbone of the community. The people who live there and walk the street love the look and feel and want to keep it that way. She said if it were really that necessary, she was willing to go back to work with her preservation to try to create a neighborhood heritage community to work with her neighbors on these issues.

Chair Bosley went through the various issues the public brought forward. She pointed out that many who spoke are from parts of the community where an application is underway, or a tower has been constructed. She emphasized that this Committee must focus on the terminology and rules as these towers apply to the whole community and not each individual neighborhood. However, there is a process of notification to neighbors, and the Council has some ability to work within the FCC process, which she wanted everyone to understand so they can have their voices heard.

The City Manager addressed the question of whether the City has contracts for these small wireless facilities companies. She stated that the companies receive a license under Section 82-10, which says that, “The license term is one year automatically renewed one year from its issuance and every year thereafter.” Other language talks about when it can be revoked. The City does charge a fee (approximately \$270), which can only be charged to recuperate the expense it takes the City to review

the application. The other compensation the City receives is property taxes for all structures in the right-of-way not owned by the City.

The City Manager continued explaining that other companies may install additional equipment on existing poles with small wireless facilities. The Chair said this discussion about co-location ensued when drafting the original Ordinance language. She said that because the companies do not work well together, and to avoid seeing three adjacent towers, the Ordinance states that if possible small wireless facilities must be co-located on existing towers.

Regarding the Historic District, the City Attorney said part of the problem is that these facilities exist in the right-of-way and the Zoning Ordinance and regulations do not apply in the public right-of-way. That was a huge concern the FCC passed over. Chair Bosley said the original draft language considered this issue.

The City Manager clarified that the City would not be notified when these companies switch from 4G to 5G.

Chair Bosley asked the process when the City receives an application for a small wireless facility. She knew that when an application comes in it goes to the Director of Public Works for review and there is a stamped RF Engineering Report that goes with it. The City Attorney replied that the applicant must provide an engineering certificate stating that the unit complies with the FCC requirements for radiation. The City accepts that certification but does not have the technical capacity to review it. The Chair said that certification refers back to the FCC requirement for radiation.

The City Attorney said the annual license fee is \$270 but there is a \$500 charge at the time of application for review. With that money, the City sends written notifications to abutters within a 300-foot radius of the proposed installation, giving the public an opportunity to comment back to the Director of Public Works about the application. The applicant must provide all application requirements to the Director of Public Works. If an incomplete application were received, a shot clock would be applied; the municipality has certain number of days depending on whether a new or colocation structure of 45–90 days. The shot clock can be paused within a certain period if the reviewer says the application is incomplete and the applicant must submit anything missing.

Chair Bosley heard a common concern from the public about decisions on where these small wireless facilities are located and whether the City can intervene to have a company place them elsewhere to create a buffer from residential areas because the Ordinance advises such.

Chair Bosley continued asking, after abutters are noticed, what is their ability to express their concerns and appeal to the Director of Public Works? The City Attorney said this has occurred and the Public Works Director has a requirement that a particular installation be relocated for these types of reasons. What Staff discovered is that applicants are willing to work with the City and Director of Public Works; the underlying test to the point they would object would be if the new location inhibited the technology's ability to work, but at this point they had not done that. The City Manager referred to the

appeal process under Section 82-209, which states that appeals of the Director are made to the court of the jurisdiction. There is no administrative appeal of the Director of Public Works' decision.

Chair Bosley asked the status of the application for 21 Summer Street and the City Attorney said he did not know the status. Chair Bosley suggested that since that application is with the Director of Public Works, that concerns should be brought to his attention. If the City Attorney is correct that applicants are willing to work with us, the Chair said perhaps a better placement may become available. She thinks the process of working together in the community is that if we cannot necessarily fix a problem, we bring together the people who can. The City Attorney said that negotiation or discussion usually happens at the beginning of the process to the extent that all design and permitting is accomplished at this point and the applicant might be very reluctant; the shot clock still applies. Chair Bosley's understanding was this was being accepted as a new application because the location had changed so there might be some flexibility and the residents should follow up with the Director of Public Works.

Councilor Filiault said his concern was lack of transparency, which he was not calling intentional, but he said it was a problem during his tenure on the Council. He understood that these applications go to the Director of Public Works and not back to Council because they do not have to be notified. Still, he said the City Council are the elected officials of the City, "the blame and the buck stops here", and the Council should be notified of these applications; he thinks not doing so is unacceptable. He does not want constituents calling him, him not having answers to questions, and having to call the Director of Public Works. He concluded that the City needs better transparency and this issue proved it.

Chair Bosley said there are questions she does not have answers to, and she is not an expert. She said the Council cannot know everything going on inside the City at all times. She was unsure she wanted to know every time an application was submitted but she can as a Councilor always find the information because she knows who to ask. She knew that other Councilors know whom to contact to get those answers; it is a great group of Councilors who try hard to get back to people.

Chair Bosley addressed the Committee and asked where they stand on the current Ordinance and whether any tweaks were needed. Alternatively, they could wait to see what legislation comes from the State.

Councilor Johnsen said she also does not like when the FCC tells us what to do when we might not agree. Still, she said she did not know the full politics, so she was still listening and she really appreciated the residents coming to speak.

Councilor Ormerod asked what if the City Council were notified of every 5G application; what would that look like and could it be stopped or negotiated. How could we prevent something like this? The City Attorney said there were two parts to the answer: First, the notification to City Council is something the City Manager and/or Public Works Department could roll-up to be presented to the Council at their meetings. He said the second part of this is legal. Last time Staff and the Council went through this Ordinance in detail. The City Attorney stated that the FCC had put municipalities in a box; hundreds challenged their decisions at the 9th Superior Court of Appeal in 2019, when the Court upheld the FCC

authority for this rule that impacted every municipal right-of-way and gave them little to do about small wireless facilities. He understood that was hard for people to hear, but there is very little the City can do to stop the roll-out of these towers, unfortunately. If people want to be engaged with this issue, the City Attorney said it should be through the State and Federal election processes because the FCC is appointed by Congress, where this originates.

Councilor Jones remembered 2020, when he tried to amend the Ordinance to limit it to 4G only; he was in the minority. Still, he thought this was an opportunity for transparency. He wondered if the Ordinance could be amended to have anything over 4G go through the City Council and not just the Director of Public Works review, even though the FCC says it must be allowed. He said that would at least make it transparent to the public, which it is not currently. He thought they could get around the shot clock by doing that.

The City Attorney said no. Once an application is tendered into the City, there is a period of time to act and sending it through the Council process would not stop the shot clock. The point is that this is a part of the FCC ruling—however and whenever an application is submitted to the City, a shot clock begins and if the City fails to act during that period, the court could order the installation.

Councilor Jones asked if there were a way to make this a more transparent process because this would happen every time a tower is installed in a neighborhood, with people unaware and of the rules and Ordinance, and Councilors unable to ask questions.

Chair Bosley said that most in the audience were concerned with towers in their communities and others did not show up because they are not in their front yards yet. She noted that there is a new licensing committee with this PLD Committee as the appeals board now with potential for conversation. She asked, if under time constraints, whether the Director of Public Works was the most expedient means to meet that requirement. The Chair suggested an opportunity for neighbors to voice their concerns to the applicants and Staff, with an opportunity for negotiation.

The City Manager replied that the Director of Public Works was chose not for expediency but because he oversees many issues in the right-of-way, like driveway permits and other licenses, etc. She thought the City could certainly communicate to the public when applications come in and notify the City Council to be more transparent in terms of appeals. She added that the 300-foot radius could be broader to help more people be a part of the notification process. She would need to think through the rest because of the time process.

Chair Bosley said that the notification process was key to a lot of the frustration she heard from the public. She asked where that number came from; she understood that it parallels a variance abutter notification. The City Attorney said no, it is 200 feet for zoning and 300 feet for small wireless facilities. At the time this Ordinance was drafted, 300 feet seemed above and beyond, however, the Chair said the piece missing is that a Zoning Board application would be notified, with a chance for public comment. She suggested modeling that perhaps not formally through the process at Public Works with a Zoom meeting on each application to include that information in the abutter notice. The City Attorney replied

again that the problem is the position the municipality is in. To the extent that the public would like to come in and stop it, the City Attorney said that was not something that would occur.

Councilor Giacomo said this is a utility like any other. He asked if there was a notification process when a phone pole is installed. The City Attorney said no, it is a statutorily defined utility and is specifically excluded from those requirements; they are essentially their own entity. Councilor Giacomo asked, if it is not a utility, whether anything else lies in the same category as small wireless facilities. The City Attorney said no, they have their own Statute RSA-12K, in addition to the FCC rules. The one thing the 9th Circuit Court of Appeal provided to municipalities is a great opportunity to deal with small wireless facilities' aesthetics, like a public utility, but not opportunity with respect to regulation and control.

Councilor Giacomo said that made sense. He thought it sounded like most of the problem neighbors should have with small wireless facilities would be aesthetic and he understood that they should not stick out. He thought the Ordinance passed last year accomplished that to the greatest extent possible. He said some of the locations in the Ordinance from most to least desirable also spoke to that by trying to place them in less populated and more hidden places aesthetically. He believed the current Ordinance was designed to do that and he did not think it necessary to change the language.

Councilor Johnsen noted that the audience shook their heads in opposition to some of Councilor Giacomo's comments.

Chair Bosley inferred from the audience reaction that the biggest concern was less aesthetic and more about wireless radiation from the poles [she said the audience nodded in the affirmative]. The Chair said that the hope is that some of these studies and perhaps state regulations—if they could agree—could show unhealthy radiation levels that could allow the City to set enforceable limits. At this moment, the City Council cannot regulate this until something comes from the State.

Councilor Giacomo thought it was problematic that people were operating under the assumption that—despite what FCC study showed—these small wireless facilities are dangerous. He understood that radiation was a scary word. However, it was necessary to understand how this radiation worked. He said 5G frequencies have been proven unharmed and studies created to show harm are deeply flawed. He said the issue with the new possibilities at the State level is that it is the same people who have pushed these studies the entire time; it is all the same information and was full of people who already believed it was harmful. The New York Times, The Atlantic, and the Wall Street Journal had pieces on it. The Councilor had even spoken to private investigators who have found these studies trace back to strange places; those are not good studies. There are thousands of good ones. He did not want Keene on the record putting credence to this.

Chair Bosley said that unfortunately the truth is there is so much information on this that supports both sides, and she feels that this Committee's decision is limited in authority. Regardless of individual beliefs, she read the long and wordy State study, which ultimately indicated to pull 4G and 5G out of schools. She said we are all bathed in wireless frequencies daily and she could not imagine there was no humanistic effect—but that is not the Committee's position. They could only try to make the best

Ordinance for the community that protects people in the best way without going to court. She is looking to her State Representatives, who can take that information and hopefully provide a policy to follow or make adjustments to. Without that, the Chair said the City had little reasonable leg to stand on.

Councilor Ormerod suggested improving the notification process and widening the perimeter. That enhanced transparency is within the City's power and the Council can make it clear that stopping this is the domain of the State and Federal governments. He stated that the Council cannot decide science, everyone has science.

Councilor Jones cited a technology Attorney, and suggested acquiring monitors to measure radiation. They could be lent from the Library to put people at ease. This was something he wanted to look into further. Councilor Bosley agreed that it could help ease people's fears.

Councilor Giacomo emphasized, as an engineer, that good science is not for liking or disliking. He said we have to stop pretending this is an opinion. There is good science and bad science, and bad science perpetuates the myth, which causes fear. He stated that we cannot embarrass the City by giving it credence. He understood what people believe and feel, but there is good science that is fact and has proven that the effects of hypersensitivity to electromagnetic regulation is a fully psychosomatic affect, but not physical harm. He said we cannot keep pretending this is something with equal weighting on both sides. He compared this to the issue of scientific validation of vaccines. He said this is seriously problematic for the City.

Councilor Ormerod said that in his experience as a physicist, chemist, and engineer, he agreed with Councilor Giacomo's assessment that there is insufficient information to prove small wireless facilities are harmful. Still, he said that we need to do what we can to improve the notification process.

Chair Bosley asked, if amendments to the Ordinance passed at this meeting, what would the timeframe be to have them passed this calendar year. The City Manager noted that the Ordinance refers to the 300' radius and says the City must send the notices, not the person completing the application. The City Attorney said the pushback to widening the radius is if an applicant objects to that, which they could when they see the Ordinance. He thought it was appropriate to do otherwise. Chair Bosley said it was late in the season and legislation was hanging at the State level that might give the City credence to modify this Ordinance again in 2023. If the Committee started the process for a minor amendment now and it does not pass until next year, would that prohibit revisiting it again until 2024 or is there the time in this calendar year to affect the proper change to this Ordinance. The City Attorney said they could change the notification radius now and it would likely be approved by the end of the year. Then, if the State comes down with something in 2023, additional amendments could be made.

On increasing the radius, Councilor Ormerod suggested the same distance that the small wireless facilities must be from schools, 750 feet, to be consistent. Chair Bosley wanted to be specific, because the letter from Mr. Clace noted that he is 800 feet away. She asked if 1,000 feet was reasonable, noting that the radiation blast is approximately 1,500 feet from the tower. Councilor Giacomo said that radiation works in a spherical motion and the intensity of radiation reduces via a cubic formula.

Councilor Giacomo thought it would take the City a lot of time to notify within 1,000 feet. Chair Bosley said it would be the responsibility of the applicant to provide that list of abutters and stamped envelopes. Chair Bosley agreed with 750 feet, which is halfway between two towers. The City Attorney thought 750 feet made sense under the current Ordinance because the small wireless facilities cannot be within 750 feet of each other. He said pushing it further than that might cause confusion between multiple towers.

Mr. Espiefs said the least favored location for such a tower is a residential area and that is because there is suspected radiation. Councilor Giacomo said there was no problem with radiation, but Mr. Espiefs asked why else that would be the least favored location and asked the Council to think about that.

Although the Chair agreed with Councilor Giacomo, who is an engineer, that there is science on both sides of this, Chair Bosley comes from the school of thought that just because there is no reason to think something is bad does not mean we should think it is good. She did not personally know the science that supports this as harmful, but she was one who advocated for the towers to be placed effectively, but away from vulnerable populations. The City does not have the authority to just say no, so they tried to compromise as thoughtfully as possible. She thinks residential communities were last on the preferred location list because of community aesthetics. She said the downtown is historic and is considered in transition by the City right now because there are offices mixed with homes. Chair Bosley thinks it would benefit the community most to place small wireless facilities in industrial locations where they would look less out of place.

Mr. Clace asked about the 750 feet from healthcare facilities, pre-schools, school, day cares, etc. Chair Bosley said yes, of existing buildings, but we cannot predict the future and there is nothing that preempts a school from moving within 750 feet of a small wireless facilities. Mr. Clace asked who would do the actual measuring. The City Attorney replied that it is the Director of Public Works' job. Mr. Clace asked if the daycare at Cheshire Medical Center was included, and the City Attorney said yes. Chair Bosley said it would be included and assumed it fell outside the 750-foot radius, but Mr. Clace could verify that.

Kristen Leech of 37 Middle Street said there is a small wireless facility on her corner. She appreciated the energy and time going into this from the City Council, who seemed as frustrated as the neighbors were. She appreciated the neighbors being heard. She said in her 21 years at this location, they had been through a lot with rezoning, some of which they advocated against before the ZBA. She realized there might be nothing the City Council could do about this. Whether because of science, she believed this small wireless facility would decrease hers and surrounding property values, when they do not know whether it is safe. The neighbors do not want it. She concluded speaking about the small wireless facility near the Fire Station, noting that fire trucks trying to return to the station must hit that bump-out and if they swing the opposite direction, they will hit a fire hydrant. The Chair suggested that Ms. Leech take this observation to the Director of Public Works.

With no further public comment, the Committee discussed a possible amendment.

Councilor Ormerod said that if going with 750 feet, that is approximately five to six times the number of current notices going out. The City Attorney said the \$500 application fee was presumptively reasonable and to increase it they would have to go through a justification process. The City Manager said, “The City shall mail public notice to all persons entitled to notice, including all owners of record,” from Section 82-208.

Councilor Jones recalled discussing the notification process during the parklet process, when the City Attorney said there was concern if someone missed out on the notifications within the project area because it would fall back on the City. The City Attorney said that was true, but in this situation where the Ordinance is more a statutory requirement than legislative action it was different and added that the City is careful in the notification process. The City Attorney continued that under Section 3A for public notices where it says 300 feet it states that, “the applicant shall submit the mailing labels and pay the fee to cover the cost for mailing to each person requiring notices.” The Chair was unsure if “paying the fee” meant it came out of the \$500 application fee and asked for clarification whether that is a part of the initial fee or additional. If not, is it unreasonable to consider adding a fee. The City Attorney said that would be an actual cost not a fee; the application cost is generally for the review and then they pay the costs of the mailings, which could vary. Chair Bosley thinks the applicant should share the burden.

Councilor Jones did not think this was time for an amendment, but rather to give the City Manager this background so she can consult with the Director of Public Works about fees and distances and report back to the Committee. Chair Bosley noted that doing so would likely prohibit adoption of any amendments before the end of this calendar year without a suspension of the Rules of Order. The City Attorney agreed that would be like the recent Rules of Order process.

Councilor Johnsen liked what Councilor Jones said and wanted to hear from Councilor Giacomo.

Councilor Giacomo said that any radius value chosen would be arbitrary and no matter how far it is, someone will live farther than that and could be upset. Using the number estimated for other notifications makes more sense to him. He did not feel like this was accomplishing anything other than increasing the number of notifications, but he guessed the point was to notify everyone when something arises.

A motion by Councilor Giacomo to accept the communications from Terry Clark and Councilor Filiault as informational was duly seconded by Councilor Ormerod.

Councilor Jones wanted to know what that motion would mean. Chair Bosley said it would end this discussion now with no direction to Staff. The City Attorney said there would likely be little conversation left at Council if this were accepted as informational and this would end the process, inhibiting the Council’s ability to adjust the distance. However, the City Attorney said this would not trigger the rule. Councilor Jones asked when it could be revisited. He did not agree with Councilor Giacomo. Councilor Jones saw the notifications as good will the community deserves. He said there was to harm in requiring applicants to provide additional notifications. Councilor Jones agreed with 750 feet and being consistent with the rest of the Ordinance.

Chair Bosley heard public comment on the motion.

Mr. Trembley said that Councilor Giacomo was right that there will always be someone outside the radius upset. But he said that his neighborhood was going through the Zoning Board with large group home on Summer Street that would require a variance; he lives three doors but 206 feet away from the building and was not happy they were preempted from the notifications. He said the notion of these tight-knit neighborhoods was being treated the same way as the rest of town, with larger lots and more distance between the homes. In his neighborhood, he felt that 750 feet was a welcome distance.

On a roll call vote of 2–3, the motion to accept the communications as informational failed. Councilors Giacomo and Ormerod voted in the minority.

A motion by Councilor Jones was duly seconded by Councilor Bosley to place the communications from Terry Clark and Councilor Filiault on more time to allow the City Manager to make further recommendations to the Committee based on the comments made to the Committee by the Petitioners and by the public.

Councilor Johnsen asked whether that leaves the opportunity to amend the abutter notification during this calendar year. The City Manager said yes, but it would require a change to the Ordinance, which would bring us into the new year. Chair Bosley said that was fine.

On a roll call vote of 4–1, the Planning, Licenses, and Development Committee recommended placing the communications from Terry Clark and Councilor Filiault on more time to allow the City Manager to make further recommendations to the Committee based on the comments made to the Committee by the Petitioners' and by the public. Councilor Giacomo voted in the minority.

5) Adjournment

There being no further business, Chair Bosley adjourned the meeting at 8:09 PM.

Respectfully submitted by,
Katryna Kibler, Minute Taker
October 14, 2022

Edits submitted by,
Terri M. Hood, Assistant City Clerk