

City of Keene
New Hampshire

PLANNING, LICENSES AND DEVELOPMENT COMMITTEE
MEETING MINUTES

Wednesday, September 13, 2023

6:00 PM

**Council Chambers,
City Hall**

Members Present:

Kate M. Bosley, Chair
Michael Giacomo, Vice Chair
Philip M. Jones
Raleigh Ormerod
Vacancy

Members Not Present:

All Present

Staff Present:

Elizabeth A. Dragon, City Manager
Thomas P. Mullins, City Attorney
Amanda Palmeira, Assistant City Attorney
Rebecca Landry, Assistant City
Manager/Communications & Marketing
Director
Kürt Blomquist, Public Works
Director/Emergency Management
Director/Assistant City Manager

Chair Bosley called the meeting to order at 6:00 PM.

1) Peter Espiefs – Placement of Cell Tower in Residential Neighborhood – Nuisance and Safety Hazard Concerns

Chair Bosley welcomed the petitioner, Peter Espiefs. Mr. Espiefs wanted to talk to the Committee about what he considers a nuisance: the Tilson Company and US Cellular 5G tower in the Middle and Summer Streets area, where the City created some curb cuts. He said it is 25 feet from someone’s home on the corner of Middle and Summer Streets. He asked the Committee to consider whether this is a nuisance. Over the years, Mr. Espiefs had observed many car accidents at this corner, which he thought was a threat to this tower. He added that there are warning signs on these 5G towers, indicating that hazardous voltage could cause death, injury, or substantial property damage. The warnings also indicate that the power supply must be turned off during incidents like collisions, and he wondered who would turn that off. He wondered—if the power was not turned off in time after a collision—what the intensity of the catastrophe would be. From snowplows to vehicles from the courthouse, to City trucks, he thought there were many opportunities for collision. He said people use these streets to cut through the neighborhood. For these reasons, Mr. Espiefs considered this 5G tower to be a nuisance. He was unsure what steps the City took in this process, but it seemed to him like Tilson Company and US Cellular were given the power to do anything they wanted to put the tower in this location. He thought the tower would be safer elsewhere and he did not think there was due diligence in finding a better location.

Mr. Espiefs continued explaining what he called “the general law of nuisance, which refers to something that annoys and disturbs one in possession of [their] property rendering its ordinary use

or acceptance [as] physically uncomfortable.” He said this includes “everything that endangers life or health, gives offense to the senses, the loss of decency, or obstructs reasonable and comfortable use of property.” He referred to Chapter 17 of the City’s Land Development Code, which he said delineated several situations that the City considers nuisances.

Councilor Jones asked where Mr. Espief’s definition of a nuisance came from. Mr. Espiefs said he was referring to NH case law, which is similar to laws across the country. Chair Bosley asked the City Attorney if there are any definitions of a nuisance in the City Code. The City Attorney, Tom Mullins, said that Mr. Espiefs was quoting the basic common law definition of nuisance, which arises in the case law. NH RSA-544 deals with nuisances, which arise in a specific context, including things like lewdness, prostitution, or illegal manufacturing of drugs. There is a definition of nuisance related to dogs. There is also a nuisance definition under the Health Code, dealing with things like public conduct. The City Attorney said the common law definition of nuisance usually arises in the context of property owners with competing interests. An example of a nuisance is in the City’s Noise Ordinance. The City Attorney understood Mr. Espief’s argument to be about the connection between the 5G tower and the common law definition of nuisance on someone’s private property.

Mr. Espiefs thought there were nuisance provisions in Chapter 17 of the City’s Land Development Code regarding things like drainage, glare, noise and vibration, and noxious gases. He thought that voltage was closely related to noxious gases. The City Attorney could not find those definitions in the Land Development Code. Mr. Espiefs thought the nuisance provisions in the City Code were about protecting the population. He wanted the City to determine whether there was another, safer place for this tower. Otherwise, he thought there would be collisions that would impact the homeowners in the neighborhood. Mr. Espiefs spoke with the Fire Chief, who does not have the power to shut off the tower in an emergency, so he wondered who did. He thought this was common sense.

Chair Bosley asked for comments from Kürt Blomquist, Public Works Director/Emergency Management Director/Assistant City Manager, who displayed a photo of this tower. Mr. Blomquist explained that this small wireless facility is a new addition to items in the right-of-way that are regulated through the Federal Communications Commission (FCC). The FCC issued many regulations that restricted what communities could do about these structures. The City adopted an Ordinance dealing with the placement of these facilities in the right-of-way, which falls under the jurisdiction of the Public Works Department. The City’s Ordinance deals with these facilities like any other utility structure in the right-of-way. When Tilson requested to locate the tower in this area, Public Works Staff looked to see where the tower could fit. Mr. Blomquist noted that along Summer Street, there are other electric utility and telecommunications installations, including a pole with a transformer 50 feet across the street from the tower in question. This particular area was reconfigured in 2008 when there was a large infrastructure project; one of the goals at that time was to find additional on-street parking in this neighborhood. Prior to 2008, Summer Street was two-way traffic, and the added parking changed it to one-way, which was appropriate for safety.

Mr. Blomquist continued, explaining that when looking for a location for this small wireless facility, the current location was the most appropriate because it is far enough from the telephone pole and is behind the curbing, which would ideally protect it from collision. Mr. Blomquist spoke about the signage on the pole. When there are electrical components, there are OSHA requirements about placing stickers to let technicians know there is an electrical current in the pole. This small wireless facility's electricity is fed from the street pole. If a vehicle hit this facility, it would probably go offline if the electrical feed fails. There is no transformer attached to this structure, and it is like other electrical facilities in the right-of-way. It was Mr. Blomquist's opinion that this was the best location for this tower to be as safe as possible. Unfortunately, drivers do not always follow the right routes and hit things they should not. Still, he felt this location best minimized that possibility. If one of his snowplow drivers hit this tower, for example, Mr. Blomquist would have reason to be deeply concerned about that employee and would likely require a drug/alcohol screening; City plow drivers have successfully navigated that corner without incident for a long time.

Vice Chair Giacomo asked if there is any accident data for this intersection. Mr. Blomquist said he did not pull that data from the Police Department, which would only have a record of reported accidents.

Councilor Jones asked what this tower includes. He assumed the small wireless facility was taking voltage from the pole across the street and transforming it into what was needed for the facility. Mr. Blomquist's understanding was that the facility included some small, step-down, transformers that would be 110–120 voltage; similar to other electrical equipment in homes and businesses. Mr. Blomquist did not think the utility company would allow that. He compared this tower to a home laundry dryer, with a circuit panel that drops the voltage. They typically do not allow attachments to these facilities, so he thought all the equipment was inside the base.

Vice Chair Giacomo agreed that the small wireless facility does have a step-down function, reducing it from whatever the line voltage is. This is usually a single phase that transforms the electricity into 48 DC voltage, which the small cells usually use. This aspect could not occur on the regular utility pole across the street, even if the step-down could take place.

Councilor Ormerod asked if the electricity occurs overhead. Mr. Blomquist said that all installations like this one require electricity underground. Councilor Ormerod asked if the transformer in the 5G tower has to be at ground level. While he is not an electrical engineer, Mr. Blomquist said most poles like this have equipment at the base primarily to make maintenance easier. The actual "tower," or antenna equipment, is at the top of the pole; the electricity at the bottom is captured by fiber-optic wiring in the antenna. He could not say whether all of the technology could be moved to the top of the pole. Mr. Blomquist did note that hitting this pole would be no more dangerous than hitting the pole across the street with the transformer on top. Councilor Ormerod asked if the pole across the street with the transformer required the same warning signs. Mr. Blomquist said there are different safety requirements for different industries. Utility companies have varying standards for

the equipment they require to be located above a certain height, which do not require the same warning signs.

Chair Bosley asked about the ramifications if a vehicle hit this tower. Mr. Blomquist said the tower could fall down or break partially. There is a risk of explosion. Still, Mr. Blomquist's opinion was that this is not a large transformer and is unlikely to create a large explosion; there would probably be a greater incident if the pole across the street was hit. Chair Bosley asked who would shut off this tower if it was hit. Mr. Blomquist said that if this tower fell, he would notify Eversource, and they would likely come and cut the feed. Vice Chair Giacomo said that with the electronics at the base of this pole, it is actually safer because the line voltage would not be exposed like it would be if a telephone pole fell, and high-voltage materials were in the street.

Chair Bosley said it had been a while since the Committee worked on this Ordinance. She thought there was language included about placing accessory units underground. Mr. Blomquist said there were some recommendations to put things underground and there is a restriction on the sizes of boxes that can be placed on the sides of poles. Mr. Blomquist said this design met all of the criteria and this configuration gives it a better appearance than what some other companies might have installed. Chair Bosley recalled some conversations about updating this Ordinance and she asked Staff to consider where utilities can be placed underground, if possible. She did not see why that could not be a common request of utility companies.

Vice Chair Giacomo noted that the problem with placing all utilities underground is maintenance. He said the box is above ground level so it can be easily maintained. Placing utilities underground requires a confined space permit and many other things. He cautioned against updating the Ordinance every time the Council does not like some small facet of it; he thought this would undermine what the Ordinance is trying to do, which is to help the overall aesthetics, because there are many other unsightly options. Vice Chair Giacomo thought this tower was fairly benign in terms of the streetscape. He thought the Ordinance was crafted carefully for both safety and accessibility.

Councilor Jones asked—with Mr. Blomquist as the point person on these towers—if there is anything the Committee could do to improve the Ordinance. Mr. Blomquist thought the Ordinance did provide guidance on the variety of equipment and where they can be placed. He had seen other proposals involving more equipment and different boxes. He thought there was interest in, and some opportunity for, placing some equipment underground. However, there is a much larger construction impact when placing things underground. Since some of these decisions were Mr. Blomquist's, Councilor Jones wondered whether Mr. Blomquist needed better guidance within the Ordinance. Mr. Blomquist said he tries to apply the existing guidance in the Ordinance in the best way he can.

Chair Bosley opened the floor to public comments.

Bradford Hutchinson of 305 Marlboro Street had spoken with Mr. Espiefs about this tower. Mr. Hutchinson saw this tower being installed, and thought it was well constructed and well designed.

Mr. Hutchinson heard some people talking about this small wireless facility as if it were just another telephone pole. However, he said this is a 5G tower, which is very controversial because of perceived public health effects. He spoke about the dual threats of technocracy and transhumanism. He said there was a lot of misinformation spreading about 5G. He spoke about medical devices that use 5G, which he claimed are designed to activate microscopic holes in human tissues. He said that no one could confidently state the damage this 5G technology could cause. Mr. Hutchinson said it was important to look at the FCC regulations.

There were no further public comments.

Vice Chair Giacomo believed that City Staff thought about this installation carefully and that the warning sign was very standard. Thus, he did not see any reason for specific action.

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

On a vote of 4–0, the Planning, Licenses, and Development Committee recommends accepting this communication as informational.

Councilor Jones said this continues to be an educational process for the Council. He appreciated that Vice Chair Giacomo explained that this is DC voltage, which is not as dangerous as people might think because DC automatically grounds itself. He thought Mr. Espie's brought up some good points for the Council to consider when it next reviews this Ordinance.

2) Attorney Michael Bentley – Monadnock T Hangar Corporation – Request to Renew Existing Lease

Chair Bosley welcomed the applicant, Michael Bentley, who is one of the hangar owners from the Monadnock T Hangar Corporation at the Dillant Hopkins Airport. His lease arrangement began on July 22, 1988, when the City of Keene granted the Monadnock T Hangar Corporation a 20-year lease, with an option to renew for an additional 20 years. Mr. Bentley is one of the original hangar owners. Thus, he was in the 35th year of the total 40-year lease arrangement. His current lease did not contain an option to renew for any further period. The lease is due to expire in 5 years, so Mr. Bentley was making this request to negotiate with the City Manager to grant an option to renew it for an additional 20 years. Some of his fellow hangar owners were seeking another 20 years with an option to renew for a total of 40 years. If Mr. Bentley's lease is not renewed, he would have to remove the hangar, restore the land, and give it back to the City. With a renewed lease, if Mr. Bentley decided to sell his hangar, the new owner would have the extended lease terms. Not renewing the lease would limit the marketability to sell the hangar if wanted. As is his responsibility, Mr. Bentley maintains the hangar roof and the rest of the structure is in good shape. Thus, he thought he had been a good tenant, and he said the City had been good to him, such as always plowing snow. He has paid his quarterly rent on time for the last 35 years. Because the current lease contains a CPI adjustment, he was paying more quarterly for rent than what the City is advertising to lease other hangar space. He was not asking for a reduced rate, but to renew the lease.

Chair Bosley asked for comments from the City Manager, Elizabeth Dragon. The City Manager said the Monadnock T Hangar Corporation had been a very good tenant and she wanted that relationship to continue. Because she had not yet had an opportunity to work on this with Mr. Bentley, she was asking for more time to negotiate and then bring a recommendation back to this Committee when ready to execute. One reason this lease expires at the end of 40 years is because the Federal Aviation Administration does not allow leases to extend past 40 years, because it is considered past the useful life of a property. Thus, sometimes there is a reversion clause in leases. The City Manager thought it was better to work on new terms with the Monadnock T Hangar Corporation. The City does not typically offer early renewals and there is difficulty in knowing what the requirements at the airport would be in 5 years. Still, she thought she could draft creative lease language to deal with this.

Councilor Ormerod wondered if this could be like real estate, in which sometimes a lease can be terminated early and a new one signed immediately. He asked if it was premature to discuss these options. The City Manager did think it was premature.

Councilor Jones thought that renewal would be a win-win situation for both parties. Discussion ensued about the recommended motion, which did not give the City Manager permission to execute a new lease before presenting the new terms to this Committee. The City Manager noted that the petitioner's letter included a request to reduce the rent, but she heard from Mr. Bentley's comments that he was not seeking a reduction, just renewal. There are more details she must explore before crafting a new lease.

Chair Bosley opened the floor to public comments.

Bradford Hutchinson of 305 Marlboro Street has known Mr. Bentley for a long time. Mr. Bentley's request seemed reasonable to Mr. Hutchinson. Mr. Hutchinson thought keeping the Monadnock T Hangar Corporation would be best for the City long-term. He supported renewing this lease.

Councilor Jones made the following motion, which was duly seconded by Councilor Ormerod.

On a vote of 4-0, the Planning, Licenses, and Development Committee recommends the City Manager be authorized to do all things necessary to negotiate these leases and bring them back when ready to execute.

3) Ryan Grandmont – Hawker and Peddler – Request to Place Sandwich Board on City Sidewalk

Chair Bosley noted that the applicant, Mr. Grandmont, was unable to attend this meeting. Still, the Chair wanted to move this forward because the season for outdoor sales is short. She asked for comments from City Staff.

Kürt Blomquist, Public Works Director/Emergency Management Director/Assistant City Manager, also recommended moving this forward. He said the recommended motion aligned with how the Farmers' Market had been treated.

Chair Bosley opened the floor to public comment.

Bradford Hutchinson of 305 Marlboro Street had spoken with Mr. Grandmont about this issue. Mr. Hutchinson spends a lot of time on Main Street and keeps an eye on things. He said that much like Central Square, Railroad Square poses some concerns because of the number of people who congregate there, some of whom might be homeless or using illegal drugs, which could be public nuisances. He said the last 3 years had been hard on the downtown and the economy. He sees too many empty parking spaces and too few pedestrians on Main Street. Mr. Hutchinson did not think any downtown businesses were doing great. He thought it was in the City's best interest to support food trucks like this one, which help to attract customers to the downtown. However, on Railroad Square, he said it was harder to access this business because the area is often occupied by non-customers. He had noticed that the truck moved into a loading zone near Cherry Garden because he was asked by City Staff to move there, in part by the Director of Parks, Recreation, and Facilities.

Chair Bosley explained that Railroad Square is unique because it has characteristics that preclude it from being a town square, but it is not necessarily a park either; still, it is Parks and Recreation Director's purview. The City Attorney agreed. Chair Bosley added that the challenge with Railroad Square is that the brick paver area was gifted to the City with stipulations that delineate what can occur in that area—no commerce—which is why Mr. Grandmont was asked to relocate. This is also why the Farmer's Market cannot be located there. There are festival permits that allow commerce on Railroad Square during certain events. Chair Bosley thought the City Staff supported whatever could be done for Mr. Grandmont's business.

Mr. Hutchinson was concerned that Mr. Grandmont was not satisfied with the City. Mr. Hutchinson said that he likes to see the City working cooperatively with people, but he did not think he or Mr. Grandmont fully understood the complexities of Railroad Square. Mr. Hutchinson hoped this could be worked out.

Chair Bosley agreed that the outdoor selling season is short, which is why she wanted to move this forward in Mr. Grandmont's absence. She also noted that Mr. Grandmont could contact any City Councilors with questions, not just those representing his Ward.

The City Manager, Elizabeth Dragon, clarified some things. She said Chair Bosley did well explaining the complicated issue with the Railroad Square pavers. She explained that Mr. Grandmont applied for a vending permit for a space his trailer could not fit in, which he and the City Staff did not realize initially. This limited space pushed Mr. Grandmont onto the pavers, which is restricted. Instead of revoking the vending permit, City Staff worked on a compromise, which is the loading zone location. Because this is not as ideal of a spot for business, City Staff supported the request for the sandwich board sign.

Councilor Jones recalled when he chaired the Municipal Services, Facilities, and Infrastructure Committee in 2000, eight spaces were created downtown for vendors to use. Due to minimal usage, the number was reduced to five spaces a few years later. Instead of asking for one of these vendor spaces, Mr. Grandmont was only asking for a sandwich board, which Councilor Jones thought should be granted.

Councilor Ormerod made the following motion, which was duly seconded by Vice Chair Giacomo.

On a vote of 4–0, the Planning, Licenses, and Development Committee recommends that the current license issued to Ryan Grandmont for use of the vendor cut-out adjacent to Railroad Square be amended to allow placement of a sandwich board sign on City property, which may be erected prior to the start of sales each day, subject to review and approval by City staff with respect to the specific location. The sign must be removed immediately after sales have concluded.

4) Roger Weinreich – Request to Use City Property – Block Party

Chair Bosley welcomed the petitioner, Roger Weinrich of 110 Main Street, who recalled that there were several downtown block parties before the pandemic. This event will be on Saturday, October 22, beginning at 2:00 PM. This would involve closing the section of Main Street directly in front of the Good Fortune block, routing traffic around Eagle Court to Cypress Street, and another closure near Modest Man Brewing. There would be games and activities, mostly for children, but some for adults as well. The goal is to have the block party coincide with the Pumpkin Festival and the road closure was intended to help some of the businesses on the southern end of Main Street. He would coordinate with the Pumpkin Festival organizers and would attend all the necessary protocol meetings with City Staff. He mentioned concern about the cost of the road closure, which 2 years ago involved jersey barriers, and required two Police Officers because it did not coincide with another community event. Someone also had to direct traffic. This cost had varied for past events, from \$3,000 to \$5,000. Mr. Weinrich wants to ensure everything works well for the cost before making the investment.

Chair Bosley asked for comments from Kürt Blomquist, Public Works Director/Emergency Management Director/Assistant City Manager. Mr. Blomquist reiterated that there had been other block parties in past years. He requested more time to hold the necessary protocol meetings with the petitioner to determine what would be needed for this event and how it would interact with detours for the Pumpkin Festival if they coincide. He could provide the financial information to Mr. Weinrich for the normal protocol. Considering that this Committee would not meet again until October, which would push the final Council vote to 2 days before this event. Thus, Mr. Blomquist would request that Mayor Hansel call this item forward for a Council vote on September 21 or October 5.

Vice Chair Giacomo hoped the protocol meetings would address the 150-foot section of Main Street that would be open northbound, and whether it would be more cost-effective to close that section

too. Mr. Blomquist agreed that this came up in his conversations with Police Lieutenant, Shane Maxfield. Keeping this section open—in conjunction with the Pumpkin Festival—could accommodate drivers going north to east, or vice versa. This was the arrangement for the 2022 Pumpkin Festival. By pushing traffic over to Cypress Street, drivers might be more restricted. Mr. Blomquist said they could possibly do as they have for other events, which is the full detour at Main and Emerald Streets that would require drivers to use Eagle Court versus going down Cypress Street.

Vice Chair Giacomo thought there was interest from businesses on southern Main Street for an event like this. He would likely attend the protocol meetings because of his position on the Pumpkin Festival Board. Chair Bosley thought it sounded like the two events could be complementary.

Mr. Weinrich understood that this was a late request, and if it does not work out this year, he hoped it could lead to a discussion about how to do future event closures.

Chair Bosley opened the floor to public comments.

Bradford Hutchinson of 305 Marlboro Street remembered the two previous block parties. He noted that those previous events were set up differently, and he talked with Lieutenant Maxfield about security and road closures. Mr. Hutchinson thought the past events worked well and he supported another one.

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

On a vote of 4–0, the Planning, Licenses, and Development Committee recommends that the request to use City property for the block party be put on more time to allow for protocols to be scheduled.

5) **Adjournment**

There being no further business, Chair Bosley adjourned the meeting at 7:23 PM.

Respectfully submitted by,
Katryna Kibler, Minute Taker
September 15, 2023

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