

DRAFT

City of Keene
New Hampshire

MUNICIPAL SERVICES, FACILITIES, AND INFRASTRUCTURE COMMITTEE
MEETING MINUTES

Wednesday, June 12, 2013

6:00 pm

City Hall, 2nd Floor, Council
Chambers

Members Present:

James P. Duffy, Chair
Robert J. O'Connor
Janis O. Manwaring
Ruth R. Venezia
Philip M. Jones

Staff Present:

City Manager John MacLean
Public Works Director Kürt Blomquist
City Attorney Thomas Mullins

Others Present:

Councilor David R. Meader
Councilor Carl B. Jacobs
Councilor David J. Curran
Councilor Terry M. Clark
Councilor Bettina A. Chadbourne
Councilor David C. Richards

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

1. PRESENTATION – NHDOT – Bridge Rehabilitation and Deck Replacement – Red-listed Bridge that Carries NH Route 9 and 10 Traffic Over Elm Street

Public Works Director Kürt Blomquist introduced Bob Landry from the NH Department of Transportation's (NHDOT's) Bridge Design division.

Mr. Landry introduced Joe Patusky from NHDOT, Doug Graham from District Four, and consultant Josh Lund from McFarland Johnson.

Mr. Patusky stated that the bridge is at Route 9 and 10 over Elm Street near the Fuller School. He continued that it was constructed in 1978. It is a concrete deck over steel strainers on cantilevered concrete abutments. The deck is in poor condition and that is why it is on the red list for deficient bridges. He showed photos of the underside of the bridge. He continued that there is a lot of active corrosion happening on the reinforcing. There is no coating; it is just bare steel bars. The deck has lasted 35 years and it is about time to replace it. The corrosion has become significant.

Mr. Patusky gave some information about the deck: it spans 71'3"; the width of the deck is about 52'10"; and the roadway width is 48'6" between the curbs. The deck has a cross slope of about 4%. There are two lanes that go toward Concord. That is because the profile of the bridge is just

under 5%. It is a fairly steep grade to climb. That adds some width for truck climbing. The average daily traffic is about 9,700 vehicles per day, 5% of which are trucks, and projections are that in about 20 years there will be about 14,400 per day on the bridge. It is also a New England Transportation Consortium (NETC) designated route, so they have to make it accessible for mobile home carriers. The minimum width requirement is 14'6" to maintain those vehicles.

Mr. Patusky continued that NHDOT is proposing constructing a new 8" concrete deck, new brush curbs on the bridge, and copings on the wing walls. They would use a modern concrete mix with chemical additives and air entrainment to help prevent future corrosion and water seeping through the deck. They would also use epoxy-coated reinforcing steel to minimize corrosion. They hope the bridge has a long life once the deck is completed. Some other things they will do while they have the opportunity are installing new joints at the end of the bridge, and a new rail and fence. The deck will be waterproof with a membrane and repaved. Since the deck is coming off, and the barriers that support the steel are 35 years old, they will look at them and maybe replace them if needed.

Mr. Patusky continued that there are some utilities to protect during the project. There are some aerial ones, with about 18 to 20 feet of clearance to electric and cable TV, and a fire alarm wiring from some poles that feed into the schools. Elm Street has a sanitary sewer about four feet under ground, a cast iron water main about six feet underground, and a 15-inch corrugated metal storm drain. All have to be protected and cared for during construction.

Mr. Patusky continued that NHDOT is asking the City to consider is the possibility, when the deck is being removed, of phasing the use of Elm Street to possibly allow the contractor to use half of it at a time to be able to remove the deck and place equipment and materials there. They estimate that the construction will take one construction season, about nine months or maybe less. They hope to have the plans ready in a year. Subsequent to that, as funding becomes available, they can put it out for advertising.

Mr. Patusky read the following environmental statement:

[Text to be inserted when Mr. Patusky/NHDOT sends the document to the minute-taker per requested 6/14/13]

Josh Lund, from McFarland Johnson, stated that the deck replacement is pretty routine – they are replacing the deck in kind. He continued that there will be phased construction, which entails maintaining traffic on a portion of the bridge while the other portion is demolished and reconstructed. They looked at a few different options for how to do this, and the option they chose is one that maintains two lanes of traffic, one in each direction. There are three lanes, and one is an uphill climbing lane. Mr. Lund showed diagrams. He stated that prior to the two lanes on the bridge they will taper down to one lane going across the bridge. They will have two 11-foot lanes on the bridge. They will put the traffic on those two lanes, remove the portion of deck on the other side, build a new deck there, and then move the traffic to the new portion of the deck while they tear up and rebuild the other portion. The phases are very similar – Phase I is to move the traffic over, as described, and Phase II is the same thing in the opposite direction. Another option they looked at was to have wider lanes, but in order to do that, the other phase had to be

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one lane of alternating traffic. Given the steepness and amount of traffic, that was not practical. There will be some temporary traffic control at times on Elm Street.

Mr. Landry stated that the cost for the project is in the range of \$1.5 million. He continued that it is all Federal and State funds, and does not use City funds. Typically the construction season is April 1 to mid-October. Understanding that there are houses in this area, the contractors would work from 7 AM to 7 PM, six days a week.

Councilor Jones asked where this project is in relationship to the emergency access road to the back of the hospital, and if that is affected. Mr. Landry replied no, it is not affected. He continued that this project will be similar to the bridge repair project that is currently happening on West Street, but the West Street project is a quicker repair because the deck it is a partial deck repair. This one is full deck so it will take longer.

Councilor Clark asked if NHDOT will be rerouting traffic down Washington St. Mr. Landry replied no. Councilor Clark stated that there are quite a few houses in this area. He asked if NHDOT can find additional money to do noise calming measures. Mr. Landry replied no, this project is not eligible for sound walls, since they are not widening the lanes. He continued that State funds are pretty tight these days.

Councilor Manwaring made the following motion, which was seconded by Councilor O'Connor.

By a vote of 5-0, the MSFI Committee accepts NHDOT's report as informational.

**2. MEMORANDUM – Public Works Director – NH Rt. 9 and 10 Over Elm Street
Bridge Rehabilitation Information – Traffic Control Agreement**

Mr. Blomquist reported that his memorandum was a cover note about the NHDOT presentation. He continued that over the past year, part of the NHDOT projects that have been implemented has been what they call a Traffic Control Agreement. This agreement establishes that NHDOT is responsible for traffic control on their projects. The City has entered into these agreements on other projects in the area. It does not place any obligations on the City. It clearly states that NHDOT is responsible, and their representatives. The City will have discussions with NHDOT about Elm Street and underneath. It will not be difficult to allow them the partial closures of Elm Street that they are asking for. The City will be working with them and having certain requirements for them and their contractors. Mr. Blomquist continued that he recommends the MSFI Committee recommend authorizing the City Manager to sign the agreement.

Councilor Venezia stated that this project is close to Fuller School. She asked if there are provisions made for rerouting school buses during the project. Mr. Blomquist replied that these issues will be worked out between the Public Works Department, the Police Department, NHDOT, and the contractors. He continued that he is not inclined to reroute traffic. What the contractors and NHDOT will have in place will provide protections from materials coming from above. The idea of lane closures is open to discussion. For some of their own projects, the City has, for example, not allowed the contractors to begin work until school had started, had them take a break when school ended to allow time for the traffic to get in and out, etc. The City is comfortable with working with NHDOT to come up with the appropriate plan.

Councilor Venezia stated that NHDOT talked about protecting infrastructure under the bridge, and about the location of the pipes. She continued that she is curious about how they protect something that is four feet underground. Mr. Blomquist replied that it will depend on what they are doing. He continued that on West Street, for example, they have had small cranes. If they need larger cranes, they would put down matting that the outriggers go on to distribute the weight.

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

By a vote of 5-0, the MSFI Committee accepts NHDOT's presentation and recommends that the City Manager be authorized to do all things necessary to execute a traffic control agreement.

3. PETITION – Repaving East Surry Road

Jan Cohen of 142 East Surry Road stated that she has lived there for 32 years. She continued that for reasons she and other residents indicated in the petition, [the condition of the road] is a significant issue for residents, tax payers, and people who use it to get to Goose Pond, the golf course, etc. It used to be paved every four or five years. That has not happened in a while. It is in desperate need of repaving. She continued that East Surry Road gets year-round use now, with people hiking, biking, going to the golf course to go snow shoeing in the winter, going to the orchard in the fall, and so on and so forth. It is a gem of a neighborhood, but has fallen into disrepair. Ms. Cohen continued that they hope that the Public Works Department agrees that it is in poor condition. They are asking for the City Council to fairly evaluate this road's need for repair, and consider it with other projects in the City's budget. It has not been paved in ten years and is not on the schedule for the next six years.

Ms. Cohen asked the City to consider that there has been a change in the traffic use on East Surry Road - traffic has increased significantly over the last decade, especially in the summer, when the Elks Camp is there, along with children, school buses, golfers, customers to the greenhouse and orchard, etc. All of these uses have increased the deterioration of a formerly pristine road. They asked the City for information about the evaluation process, and hope to receive that soon. They will come back when they have had a chance to review the data.

Councilor Richards stated that he had a conversation today with the City Manager and the Public Works Director in regards to evaluating and possible funding. He continued that he asks the MSFI Committee to place this issue on more time and give it a timeline so staff can come back with more information. The petitioners are pretty understanding of the City's process.

Mr. Blomquist stated that he appreciates folks coming forward to talk about infrastructure concerns, which are near and dear to his heart and the lifeblood of the community. He continued that certainly, this road is along the lines of poor condition. There are about 126 miles of road in the city. Each year, the city goes through the Capital Improvement Program (CIP) process. Staff presents recommendations to the City Council for various infrastructure improvements, including overlay reconstruction. They have tools they use to develop that list, such as software that looks at factors such as amount of cracking, traffic, and other information about condition. Staff takes into consideration the other work going on, such as water and sewer, and financial

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considerations. The City Council has developed various policies and those are integrated through the process.

Mr. Blomquist continued that today he talked with someone about the condition of their road, and the City Manager's Office did also. They talked about what they could do ahead of the CIP process, potentially coming forward with more information about the current program, maybe with some ideas on how to get more out of the current funding available, etc. They want to work with the City Manager's Office over the next three to four weeks and come back with more information, such as which roads have been identified, and what overall conditions are across the board. There are other roads in poor condition. He continued that he spoke today with a woman from Hurricane Road, which has been identified and is working through the program. She worried that it would be bumped off the list.

Chair Duffy asked Mr. Blomquist to explain the CIP process. Mr. Blomquist replied that typically it is for projects which cost \$20,000 or more, which includes all infrastructure projects. He continued that the process starts in June or July, when staff begins to review projects presented in the past and considers new ones. Staff pulls everything together over the summer and into late October. In the first weeks of November, the document goes to the City Council and the review process begins. There is a public hearing in late January or early February to get the public's input about the CIP. The City Council looks at the information received from that process. By March, the City Council adopts the five-year CIP. The first year of it becomes part of the operating budget, which begins the review process in May.

Chair Duffy asked if the Public Works Department has a traffic count for East Surry Road. Mr. Blomquist replied no. He continued that they can look at that. He expects it is a low volume of 300 to 400 vehicles per day. Chair Duffy stated that there seems to have been some asphalt patching over areas of the road. He asked how recently that was done. Mr. Donison replied that it is a section of road that looks like a drag shim, but he is not sure what year that was done. Mr. Blomquist replied that he thinks it was last year or the year before. He continued that that is part of the strategies they would work through with the City Manager. They have a certain amount of funds in their operating budget.

Councilor Venezia stated that Ms. Cohen indicated that asphalt used to be put down every four or five years but that stopped. She asked Mr. Blomquist to speak to that. She suspects it stopped due to the economy. Mr. Blomquist replied that the city used to have a chip seal program. He continued that it is a surface treatment. It uses oil and asphalt emulsion and is covered with a thick layer of gravel material. That was used on rural and low volume roads because it provides a sealant to keep water out and provides an additional five to seven years. It was done a lot in the 1970s and 1980s. When he began working with the City in the early 1990s there was some concern about that. Many rural roads had become more occupied with folks who were looking for something more substantial. In the 1990s they began cutting back on chip sealing and converting roads to asphalt. That project went to about six or seven years. He thinks East Surry Road would have fit into that chip sealing program in the 1970s and 1980s.

The City Manager stated that he distinctly recalls that the City amped up its programs in the late 1990s after years of neglect. He continued that they have continued to spend a certain amount of

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money each year to catch the city up. They had a grant through the American Recovery and Reinvestment Act (ARRA) account that helps.

Mr. Blomquist replied yes. He continued that in 1996, the Public Works Department, through the City Manager's Office, presented an infrastructure report card. It included road overlay. At some point they were down to less than \$100,000 per year for the roads. That had been in place since the late 1980s. The City Council recognized the need to start investing in infrastructure. Starting in approximately 1998, they doubled the program and continued to increase the funding in that. Even today, when they had to adjust the last CIP back a little bit to deal with financial issues, that CIP was still significantly higher than what was being spent prior to 1996. A challenge is that there are 126 miles of road, and they have to figure out how to deal with the abuse the roads take. Some roads can go 20 to 25 years without attention if they are rural, but Court Street, for example, sees thousands of cars a day and need repaving more like every 15 years. Park Avenue was paved in 1998 and now needs work, because of all the traffic. Infrastructure is expensive. It is a challenge.

Chair Duffy stated that the economy is an issue. He continued that the City also had to put up some significant money to repair infrastructure damages due to severe weather events. Ms. Cohen raised concerns about people walking, biking, pushing strollers, etc., on less than ideal terrain. He asked Mr. Blomquist how much of a safety issue that is. The speed limit is 30 mph but he assumes people speed there. Mr. Blomquist replied that it is a rural road, and is old, with a narrow right-of-way. He continued that the pavement width is maybe 22 or 24 feet, which does not leave a lot of space and there are no curbs. It is true that the edge of the road is not in the greatest shape but that is true for other rural roads, too. It makes it challenging.

The City Manager asked Mr. Blomquist what the cost is per linear foot for resurfacing (grinding and putting down new surface). Mr. Blomquist replied that reconstructing costs a little over a million dollars a mile, and an overlay is probably about two thirds of that cost.

The City Manager stated that context is important. He continued that he looks at streets and he is always calling the Public Works Department to let them know what he sees. Infrastructure is very expensive. The City's revenue has been flat for about five years. Mr. Blomquist said that he thought they could come back with more information in four weeks, but he does not think they can do it that soon – there are too many things on their plate right now. He continued that there are big workshops coming up with the City Council on a couple different issues, and they are working on flooding issues. He asks for the MSFI Committee to give them the summer to work on this. He heard Ms. Cohen say that she wants answers because East Surry Road is not in the 6-year plan. There is nothing they can do with the CIP right at this moment, so he would like to have the summer to work on it and perhaps even come up with funding mechanisms to try and accelerate some of the street work, if that is possible. It would be time well spent.

Councilor Venezia stated that she was out today and she measured East Surry Road as well as she could. She continued that it appears to her that they are talking about approximately a mile of the road, from Gunn Street to Court Street. Mr. Blomquist replied that it would be definitely the first mile, probably a little bit more. Councilor Venezia continued that there are two fire hydrants there, and wells 3 and 4 feed through there some place. She asked if there are pipes

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under the road. Mr. Blomquist replied that there is a section with water mains up to Goose Pond. He continued that from the Court Street well, it heads down south.

Mary Arnott, of 44 East Surry Road, stated that what Ms. Cohen said is correct. She continued that in addition, the City should consider the people going to the golf course from out of town. Main Street has always been maintained as a conduit to attract people so that business will increase and people will move to Keene. If they see only East Surry Road they will not be impressed. Ms. Arnott continued that Ms. Cohen did not mention the truck traffic, which is new – people are logging, and there is a gravel pit up the road. People are moving in. The patching that was done last year did not stay on the road – her husband had to go vacuum it up. It ended up in neighbors' yards and was not effective.

Councilor Meader stated that he has been a resident of East Surry Road for 54 years and he agrees with his neighbors. He continued that he agrees with the idea of staff coming back at the end of the summer, looking at the evaluation process, looking at funding, comparing this road to other roads, and getting more of an idea about what the criteria are. East Surry Road is not in the pipeline for the next five or six years. They want to be somewhere in the process, maybe worked into the next year's CIP.

Councilor Chadbourne stated that as a cyclist, East Surry Road is one of her favorite routes in spite of the risks. She continued that it is very unsafe. It is easy to hit anything so close to the shoulder. It does not take much to throw a cyclist off balance and into traffic. She has concerns about safety and urges following the City Manager's lead in regards to coming back at the end of the summer.

Councilor Clark stated that the Public Works Department is applying rules that they have always applied, in order to meet budget constraints and get everyone's job done, but times have changed. He continued that State and Federal budgets have changed – they are giving the City less money. It seems like the City is stopping the infrastructure spending again, not because they do not want to fix things, but because they do not have money. The State and Federal government will not do it, so it falls on the City. Councilor Clark continued that he is interested in the questions the Public Works Director and the City Manager will come back with. He guesses the last time this road was reconstructed was a long time ago. The traffic patterns are much different now than they were years ago, so applying the same standards – such as how many people are on the road, etc. – means that this type of rural road may never be reconstructed again, because there will always be some other road in front in line. He is glad citizens are coming forward. He hopes staff can come back with answers, and he will talk with staff. Councilor Clark asked that the MSFI Committee place this item on more time, so they can come back with a real solution. In regards to funding, in the next six years the City has a couple bonds expiring, so maybe that will free up some money.

Chair Duffy asked if the committee has to accept the petition as informational and then make a separate motion, or if they can fold it all together. The City Attorney replied that one motion is okay.

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Councilor Venezia stated that she did not know there was a gravel pit. She asked where that is. Ms. Cohen replied that it is near the golf course. The City Manager replied that the City is aware of the gravel pit, which is not legal. He continued that they are working on it.

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

By a vote of 5-0, the MSFI Committee accepts the petition and places this matter on more time, subject to the return of the City Manager with a report.

4. MEMORANDUM – Parks, Recreation, & Cemeteries Director – Status of a Dog Park

Mr. Bohannon reported that at the MSFI Committee's last meeting in May, he brought forward a recommendation for the committee to review other potential sites for a dog park which had previously not been able to be considered, because either they were not the City's property or had other plans. He continued that the City Council approved that at their last meeting. Before the committee tonight is a proposed (yet flexible) schedule, for the committee to review space at the Dillant-Hopkins Airport property, Wheelock Park, and Carpenter Street. He continued that he did not include Bent Court in the schedule because it has already been explored. The report he gave the committee last time gave the pros and cons of each location and a matrix.

Chair Duffy asked if it would be possible to review two sites during one meeting, instead of reviewing each one at a separate meeting, as a time-saving measure. He continued that for example, they could consider Wheelock Park and Carpenter Street during one meeting. Mr. Bohannon replied yes. He continued that the Dog Park Committee wants to move along and get a site finalized as soon as possible. Carpenter Street was rated lowest on the matrix. He asked if the committee wants to even consider that site. They could discuss two potential sites at one meeting, or all three.

Councilor Jones asked if Mr. Bohannon could be prepared to discuss all three potential sites at the June 26 meeting. Mr. Bohannon replied yes.

The City Manager asked if there is any value in considering taking Carpenter Street out of the running. He continued that it has characteristics like Bent Court, such as a neighborhood very close to it. Also, it is along Beaver Brook and does flood, and it has active recreation. The committee might consider short-listing Wheelock Park and the airport, to see if either rises to the top, and if not, they could then entertain the other options.

Chair Duffy replied that he sees the rationale, but Carpenter Street has already been put out there. He continued that the City Council went through process with considering Bent Court – residents did not like the idea of having a dog park there, but the City Council still chose that location. He thinks the MSFI Committee should do their due diligence by allowing people to give input on the Carpenter Street site.

The City Manager replied that the reason Mr. Bohannon was suggesting spacing the meetings out is that there might be a lot of people in attendance, in regards to each and every site. He continued that if they address all three sites at one meeting they might need to have a giant

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meeting at a place like Heberton Hall. Also, people all have different interests, and it might not be the best interaction, to put all three sites together in one meeting.

Christine Wold from 32 Carroll Street stated that she suggests Wheelock Park, because people walk their dogs there already. Chair Duffy replied that Wheelock Park is scheduled to be discussed on July 10.

Councilor Manwaring stated that she likes the idea of discussing the airport site on one day and discussing Wheelock Park and Carpenter Street on another day.

Councilor O'Connor made the following motion, which was seconded by Councilor Manwaring.

Move that the MSFI Committee review the recommended locations for a dog park with the proposed schedule.

Councilor Jones stated that that motion, with the wording "proposed schedule," would not allow for the discussion of two sites in one night.

Councilor Jones made the following motion, which was seconded by Councilor O'Connor.

Move that the motion be amended by striking the words "through the proposed schedule" so it states: "Move that the MSFI Committee review the recommended locations for a dog park."

Councilor Venezia stated that that does not add clarity.

Councilor Venezia made the following motion, which was seconded by Councilor Manwaring.

Move that the motion to amend be amended so that the original motion states: "Move that the MSFI Committee review the recommended locations for a dog park, with the Wheelock Park and Carpenter Street areas to be discussed on July 10, leaving the Airport [to be discussed] on June 26, with a final recommendation given on August 14."

Councilor Jones stated that the City Council is on vacation on August 14. Chair Duffy replied that it is okay, because these are public workshops, not City Council committee meetings. Mr. Bohannon replied that he meant August 7, not August 14. He continued that August 7 would be the MSFI Committee's first meeting in August after the City Council is back from vacation. Councilor Jones noted that Mr. Bohannon's memorandum states that these discussions about the sites would be "during an MSFI Committee meeting," so they are not public workshops.

In the motion, the date should be changed to August 7, not August 14.

Councilor Jones stated that he wanted to keep it more open [by not including dates in the motion], but "it is not a hill to die on" and he supports the amended amendment.

The amended amendment passed by a vote of 5-0. The amended motion passed by a vote of 5-0.

5. CONTINUED DISCUSSION – Sale of Synthetic Marijuana

The City Attorney stated that the MSFI Committee and City Council tasked his office to look at the issue, and they did. He continued that aside from the legal issue they will have to deal with, there is no dispute of the public health consequences of these products. It is really unfortunate that these synthetic drugs exist. One detective he talked with, who was instrumental in trying to work on this in other parts of the state, said that he has been against drugs all of his life, but if his son asked him if he should use marijuana or synthetic drugs, he would tell him to smoke marijuana. Synthetics are such destructive drugs. This issue is percolating in numerous places around the state, and other states, at numerous levels.

The City Attorney continued that the results of his conversations with a lot of different people showed that in this area there is not a lot of clarity. This is an issue that should be decided on the State level and Federal level. There have been ordinances adopted by other municipalities in New Hampshire. What is important to understand is that there are ordinances from other jurisdictions around the country. Keene has to be careful about looking to other states. New Hampshire abuts Massachusetts. Many people are here from MA. It really is important to understand that concept. NH is not a “home rule state.” They use the term “local control” in NH. The City Attorney continued that from his point of view, that is defined as: the State tells municipalities what to do, and municipalities find a way to pay for it. A “home rule state” is different; it is one in which the State takes to itself certain powers, and whatever it has not taken to itself is left to municipalities to legislate on. This is not true in NH. NH’s municipalities are purely subdivisions of the State and draw their authority from State statute.

The City Attorney continued that the first question is, in terms of synthetic drugs, if there is any specific statutory authority given to the community, with respect to legislating in a field. He found that there is not any statutory authority to regulate any kind of product. The State has given municipalities some general authority in what is called the Prudential Affairs of the Town. In NH, under Chapter 47, there is a broad set of categories the City/municipalities can regulate in. Then the question is, in the absence of specific authority, can the City fit [regulating synthetic drugs] under one of those general categories? The issue associated with that is that the State has specific statutes in place that deal with controlled drugs. It relies on the Federal regulatory scheme and automatically incorporates amendments made at the Federal level. So even in the absence of specific legislative authority to act, often the State will look at its own regulatory scheme and say, “We preempt any right you have to act.” This happened recently in regards to outside burning in the City. State regulatory agencies showed up and said that. It is called preemption of the field.

The City Attorney continued that he talked with police departments and their respective counsel and they expressed the same thing to their legislative bodies that he is expressing to the MSFI Committee now. Other municipalities decided to enact an ordinance to deal with the issue of synthetic drugs. The Keene City Council can take that step. He continued that he cannot tell them whether that step would be enforced through the courts all the way up, if someone chose to challenge it. As far as he knows there have not been challenges to the local ordinances. There is one in particular that had good phraseology that he liked, from the Town of Wolfeboro – they tried to deal with the issue by locating the authority with the Town to control roadways, sidewalks, common areas, parks, cemeteries, etc.; all Town-owned property. They have a lot of

control over public ways. If the MSFI Committee was inclined to go down that route it is a better way to do it.

The City Attorney continued that he has to caution them that these are matters that people take to court, and will take to the Superior and Supreme Courts. He does not want anyone to be under the notion that just because the City enacts it, it will ultimately be successful. The other route that can be taken goes back to his comment about how this should be an initiative happening from the State level. The State is in control of its criminal and drug statutes. The State amended RSA 318-B a while ago and it does have a controlled drug analog provision in it. The City should remind the State that that exists. The State should see if it needs to change that to cover these situations. Part of the problem, as the Committee knows, is that if you define the drug by its chemical composition - and that is how the State's Attorney General defines it - [the manufacturers] can always stay one step ahead of you [by slightly changing the composition]. Some states have done it more clearly by saying in their controlled drug provision, "This includes everything else," for lack of a better way to put it. The MSFI Committee could do that, and instruct the City to file a resolution with the State legislative bodies. They did that in regards to the outside burning issue when they found the City did not have authority over that. The City sent a communication asking that the State take action.

The City Attorney continued that he has another suggestion, which does not deal with synthetic drugs directly, but is something that other municipalities have found helpful: there is a chapter in the Criminal Code, 644:5-a, which states that it is illegal to inhale toxic vapors for effect (i.e. huffing). This is at least applicable to what would be occurring when someone inhales synthetic marijuana. The problem with the statute is that it only deals with the user. It does not deal with the fact that there are people purveying the material in the first place. There are continuing efforts around the state to deal with the issue on a statewide level. The City Council has at least one clear path of action – passing the resolution, which would go to the County Attorney and the State Attorney General. The other path is to enact an ordinance.

Councilor Jones asked if the existence of an ordinance, and just the fact that they would have to go through the courts to challenge it, would be a deterrent to folks. The City Attorney replied yes. He continued that that is why other municipalities have taken that step, even with the uncertainties that exist. The only caution he has is: it has not been tested yet. They need to keep in mind that this would be in the criminal context, and the issues in the criminal context are more acute than in a civil context. In the criminal context, all of the rights and protections under the United States Constitution apply. A problem not yet fleshed out is the Ultra Vires Doctrine, which means "without authority." If the City enacts a criminal statute that is then determined by a court to be without authority, it opens question – is there any potential liability that flows back from that? He has not researched that issue. But the City would have to consider that.

Councilor Jones stated that the easy option is to request that staff draft a resolution to the State and then the City Council would ask the public to support it. The City Attorney replied that it is not easy, but it is the option that the City clearly has the authority to do. He continued that a resolution does not answer the question directly, and he knows a direct answer is what everyone wants. One of the reasons why a resolution is something that has some effect to it is because of other conversations that are happening at some very serious levels within the state.

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Municipalities need to be behind that conversation at this point, one way or the other – through the ordinance, or the resolution.

Councilor Venezia asked if they could do both the resolution and the ordinance. The City Attorney replied yes. Councilor Venezia asked if they could then remove the ordinance if the resolution becomes law. The City Attorney replied yes. He continued that in that case, there would be no need for the ordinance. The only reason they are now considering an ordinance is because the State needs to be clear with this. If the State enacted or interpreted what exists now to include this, then yes, the ordinance would be moot. Councilor Venezia asked if the ordinance, being moot, would just vanish, or if the City would have to do anything with the ordinance. The City Attorney replied that the ordinance would be in the books but superseded by State law. He continued that there are other ordinances like that on the books; they try to go in and clean them up.

Chair Duffy asked for public comment. The City Attorney stated that his comments are for the MSFI Committee and the City Council. He continued that he is not here to provide legal advice to members of the public, nor to get into a legal debate.

Vonique Ramian of Keene stated that she is here speaking for Emily Hautanen, to share Ms. Hautanen's story of what it is like to be a victim living with a synthetics addict. She continued that it took seven months for Ms. Hautanen to lose everything – her daughter, her home, car, money, friends, family, and husband. The effects of spice caused her husband to seize and pass out on Main Street and it took three Police Officers to get him to the Emergency Room. When he came to in the ER, he had no recollection of any of it. He was jailed for burning and beating his wife's pregnant body. During the seven months of her husband's abuse, Ms. Hautanen had to deal with his memory loss, aggressive behavior, seizures, paranoia, and vomiting of blood. Ms. Ramian continued that they should not let Ms. Hautanen's story go to waste today. [Spice] is affecting families in horrible ways. These synthetic drugs are nothing like marijuana and the name "synthetic marijuana" should be reevaluated. They are nothing like anything they have ever seen. It took Ms. Hautanen just seven months to lose everything.

Lindsay Jones of Keene stated that she is 15 and a recovering spice addict. She continued that she had earned her way out of a day placement school. Her friends got her addicted to spice when she had just started at Keene High School. She was good for the first month, but then her addiction blinded her from everything that was important. She had multiple truancies and was on the streets 24 hours a day. Ms. Jones continued that she would do anything to get high, including horrible things to get the money. She would like for spice to be taken off the market. She is still recovering and it would be a big help to her and all of her friends. She had some of her best friends turn on everyone and they are completely different people. She had seizures and would wake up in the hospital and not remember any of it. She knows of a spice addict who died. His parents had his [body autopsied] and his lungs had quarter-sized holes. Ms. Jones continued that she would vomit black goo. She still coughs up black. Ms. Jones concluded that she would love for spice to be off the market.

Michael Bourassa stated that he does not have an address. He continued that he is homeless and living on the street. He continued that he sees [the effects of synthetic drugs] every day. Our

children are being destroyed by this product. This is his home town and it is under assault. Everyone needs to work here in Keene and Concord to stop this. These drugs are easy for kids to get. Kids will do anything to get it and it is highly addictive. Mr. Bourassa continued that he watched one of his friends detox. She could not do anything but cry, for weeks, lying in bed wanting to die because she could not have spice. She spent \$750 in four or five days then started stealing from her mom to support her habit. All the sellers do is change one molecule and sell it under a different name, so they are always playing catch up. He continued that he knows the ordinance would be a risk to the City but it is a bigger risk to our kids [to not have the ordinance in place]. He urges the City Council to act as quickly and as sternly as possible. If the business owners that choose to provide these products cannot see their moral obligation to the community, the City has to take steps for them.

Polly Morris, coordinator with Monadnock Voices for Prevention, stated that the impact on families and youth is devastating. She continued that kids are dying and spend weeks at a time in psychosis. [Staff at Monadnock Voices for Prevention] do not know what to do. There are no statistics. For prevention, they need to do something now. Ms. Morris continued that she knows there are legal issues, and she thanks the City Attorney for all his research, but for the prevention piece they need to set the ordinance. Monadnock Voices for Prevention and others have prescription drug take back days, and involve the college in drug prevention, talk about binge drinking, etc., but synthetic drugs are taking over so quickly. It is scary that these drugs are legal. If the State is not ready to move, or if they are moving too slowly, the ordinance that the City could pass would protect kids immediately. She asks that the MSFI Committee please consider it.

Chair Duffy asked if there are any coordinated public education campaigns or active interventions occurring in the community, such as communications with the businesses that sell synthetics. Ms. Morris replied that she has not talked with business owners, but others have. She continued that she and others are trying to raise awareness – she is doing a presentation for the youth that work with the City for the summer.

Chair Duffy asked if Ms. Morris thinks there needs to be more awareness. He asked if there is any role the City can play in that part of it, in regards to talking about the dangers. Ms. Morris replied yes, the more people that can be aware and involved, the better. She continued that people want to think that it is not happening here, not to their kids, but it is. Synthetic drugs are here, they are legal, and they are being shared amongst kids. Synthetic drugs do not show up in drug test results unless you are specifically testing for it and it is hard to track, because the ingredients change. Many local coalitions are trying to raise awareness. Some people will not let these coalitions into the schools because they do not want to face that this is happening.

Bradford Hutchinson stated that he is a candidate for Councilor at Large, lives in Keene, and was born and raised in Keene. He continued that his comments tonight are not directed at anyone personally, and most people who need to hear what he is saying are not here tonight.

Mr. Hutchinson asked if this is being recorded. Chair Duffy replied yes, it is being video taped to air on Channel 8. Mr. Hutchinson replied that is good; he wants his words to reach a wide audience.

Mr. Hutchinson continued that he does not like seeing these synthetic drugs listed as “synthetic marijuana,” because these drugs are different. They have many names and it is confusing: bath salts, plant food, spice, K2, etc. Synthetic drugs are plant material products with chemicals, not marijuana, and he would like people to be clear with terminology. Synthetic drugs come in various forms and can be smoked, snorted, put in liquid, or injected. He continued that he is a recovered alcoholic and prescription drug addict. Mr. Hutchinson shared an anecdote about his drug use as a teenager, and stated that while that was “fun,” these synthetic drugs are not.

Mr. Hutchinson continued that the 40-year war on drugs has been a failure. They need to do new things. If people’s use of a substance causes them to hurt other people, then the community and the government have a right to step in and do something. He has contempt for the Drug Enforcement Administration (DEA) for failing. He saw a poster in the lobby saying this is a “synthetic drug free community,” and agrees with the terminology “synthetic drugs.” He thinks Cheshire Medical Center should make their labs available to test synthetic drugs. The ingredients change. There should be an organized, coordinated effort against these drugs by the Police Department, Federal and State governments, doctors, hospitals, and agencies. Everyone needs to work together. In Keene, the problem is relatively small in terms of numbers of people, but it has ripple effects throughout the community. Mr. Hutchinson asked why a representative from the Police Department is not here tonight. He asked if these drugs are made out-of-state and brought into the state, and if so, why is there no representative from the DEA tonight.

Chair Duffy stated that they are trying to do what they can with what they have.

Mr. Hutchinson continued that they need more and better information. There are people who would do more to help if there was a coordinated, organized effort. He wants to encourage that process to continue. This is everybody’s problem.

Ralph S. Richardson, of 11 Walnut Street, stated that Keene is a wonderful town. He continued that it is time that hearts in Keene wake up. People need to act for what is in the best interest of the community/for the common good. In the past, individuals, businesses, religious institutions, and schools all worked for the common good, but now, people have yielded to corporations, business interests, and greed, and the common good is ignored for profit. He continued that he is also a recovered alcoholic. He is fully involved in the recovery community in Keene and sponsors people (through a recovery program) who have been spice addicts. They are adamant that these substances need to go. They could not be here tonight because they work. Mr. Richardson continued that he is here speaking for them also. He and one of the people he sponsors stood in front of Phat Stuff. He is willing to do whatever he can to see this insanity stop. He agrees with Councilor Venezia and assumes that her questions [about whether the City Council can do both a resolution and an ordinance] were about how many ways the City can go about stopping this [use of synthetic drugs]. He feels that every avenue should be pursued, even if it means the City may incur some liability. Mr. Richardson suggested they get over their fear of lawsuits, and instead live in their hearts for what is in the best interest of the community.

Mr. Richardson continued that recently, he has participated in the visioning process for the Keene Public Library. That is where the answer is to these problems. They need to be reaching

out to young people who are suffering by giving them spaces where they can express themselves creatively, instead of using drugs. The answer lies in the healing arts. He continued that he witnessed what Ms. Hautanen and her husband went through. He is a member of the One Hundred Nights shelter community and the Community Kitchen. He witnessed Ms. Hautanen's husband's episode from having taken spice, which was "not a pretty picture." He woke up not remembering anything. Mr. Richardson concluded that it is time to say no to these drugs, and the City should do everything possible to do so, including taking on the possibility of lawsuits.

Kelly Reinbold stated that she lives in Keene and is Ms. Hautanen's best friend. She continued that she is the parent of two kids, ages 16 and 11. She witnessed the abusive behavior of Ms. Hautanen's husband. It is time to get synthetic drugs off of the streets and out of the stores. She does not want to get a call saying her child is dead, in jail, or in Florida. It is time for people to recognize how bad this is. Everyone needs to come together as a community to put an end to these drugs.

Kimberly Diemond from Marlborough stated that she wanted to give an update on what the committee has been doing. She continued that they agree that the effects of synthetic drugs are alive daily in this town. She does not know the statistics because the data is not being collected, but anecdotally, there has been an increase in synthetic drug use and an increase in related violent crime. A small but growing number of people have partnered with the Monadnock Area Drug and Alcohol Abuse Coalition (MADAC). They have fliers which state "We support a synthetic drug-free community," and are asking business owners to put them in their windows. Out of the 20 businesses they have asked so far, 13 have agreed to put the signs up, three said "maybe," three said "no," and one is undecided. Corner News put up a similar poster saying they will not sell synthetic drugs and also signed a pledge. She continued that the larger supplier in town has opposed taking the synthetic drugs out of his store and said he will sell them until they are illegal.

Ms. Diemond continued that having the ordinance to start this process, and a resolution approved later, is the best action to take. They need to attack this from many angles. They can get it out of the stores that are not willing to do it voluntarily. They have identified more stores that are supplying it; there are a couple in Keene, and they are hoping to involve Swanzey, Claremont, and Winchester in this effort. Above and beyond the resolution and ordinance, the City could help private citizens coordinate efforts to have a louder voice, with maybe a subcommittee or ad campaign, to link into the other initiatives that the City Attorney was talking about. They could represent this municipality on a State level to get the ball rolling. There is potential here to do many things. There are a growing number of people willing to help.

Ms. Diemond asked what the timelines are for a resolution and ordinance. Chair Duffy replied that staff would draft an ordinance with direction from the City Council, if this committee recommends that to the City Council and the City Council agrees. The ordinance would be to outlaw the sale of synthetic drugs in Keene. There would be a public hearing process, as there is with any/all proposed ordinances. Then the ordinance would go to the Planning, Licenses, and Development (PLD) Committee to be discussed, amended if necessary, and approved. If the process went quickly with no opposition, it would take a couple of months. A resolution would be language and that could happen within two weeks to a month.

Ms. Diemond asked what the resolution would do. Chair Duffy replied that a resolution cannot compel. He continued that it would illustrate to the State that the City recognizes this issue as very serious. It would acknowledge the heart-wrenching and direct testimony of what this is doing to Keene's kids and community. Many communities are concerned about this. A resolution would show Keene's elected officials in Concord that more and more people mean business on this issue. The City has sent resolutions to the EPA and the President, often on climate change. There are many things the City has addressed on the State level. For example, they wrote a resolution in regards to the State's refusal to deal with Keene's infrastructure problems and the lack of safety of bridges and dams and making the community pay for that. Resolutions are signed by the Mayor and endorsed by the full City Council.

Ms. Diemond requested that the MSFI Committee vote on an action plan, a resolution, an ordinance, and a partnership with MADAC and private citizens.

Councilor Jones thanked Ms. Diemond for bringing this issue to the committee's attention. He continued that they were naïve and did not know about this. He thanked her for her work, and stated that they will see what they can do to help.

John Vaine, of Keene, stated that he is a recovering spice addict. He continued that he smoked it for a year. He still has residual effects, such as muscle spasms and worsening asthma. There is a drug test for it now and he gets tested once a week. Mr. Vaine continued that he lost his girlfriend and almost attacked her, and hurt their 5-month-old son. He did a lot of bad things he never would have done on other drugs. Synthetic drugs are worse than heroin, which he knows because he is also a recovering heroin addict, and it was more difficult to get off of spice. Spice is much easier to get a hold of and is ruining kids' lives. He was offered sexual favors for getting people spice – he declined, but that is what people are resorting to. People from out of state have brought \$1000 worth of spice across the border. It is ruining this town from what he remembers when he was a kid. He continued that when he was smoking spice he did not want anything to do with his kids, but now that he has six months clean, he wants everything in the world to do with his kids. It is hard to prove to his girlfriend that he has changed. She is afraid of him and wants him away from the kids.

Jeff Scott, from Chesterfield, showed a sign that he made in opposition to synthetic drugs. He stated that he has been standing on the square holding signs for a long time. When he saw articles in the paper [about synthetic drugs in Keene], he was very alarmed, and now holds an anti-synthetic drugs sign. When he stands in front of Phat Stuff holding it, he hears so many horrific, scary stories. Lots of people thank him for protesting. People need to be educated about these drugs, and they are not getting enough education. There is a workshop tomorrow night, hosted by MADAC, and he has fliers for it. Mr. Scott continued that he grew up in the 1960s when drugs were fairly safe. At Woodstock, someone commented about which drugs people should stay away from – someone had their back. Now that is not true. People want to make money and do not care about people's health. Keene, as a community, needs to be strong and do whatever is in their power. He and others are trying to stand in front of Phat Stuff every Saturday for as long as it takes. They have seen people walk up to the store, see them with their signs, then walk away. Just having a presence helps. It would be great to see the community

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galvanized, and he encourages people to be brave and hold signs. Mr. Scott distributed fliers for the meeting tomorrow, from 5:30 to 7:00 PM in the Mountain View Room at KSC.

Deb Chambers, from Swanzey, stated that she has never protested anything, but she now protests synthetic drugs. She continued that these drugs are horrible. When your children are born you are not given a manual. You have to wing it and go with your gut. There is nothing more heart wrenching than watching your child on these drugs that you can buy on Main Street. Ms. Chambers continued that her daughter is an addict. She seen her on these drugs, and coming off of them, and it is heart breaking. She has been to Phat Stuff and Romy's Market, and was thrown out of Phat Stuff when she said, "All you are worried about is making money, at the expense of our children." She would rather see someone on a marijuana high than on a high from this poison. When she and Mr. Scott stand in front of Phat Stuff with their anti-synthetic drugs signs, people say to them that if marijuana was legal, they would not have to do this. Ms. Chambers continued that she is here to say, get these drugs off of the streets. Synthetic drugs are the most difficult drugs to detox from. She has heard horrible stories, and has seen people throwing up blood and had to call an ambulance. She was naïve when these products first came out, wondering why anyone would try bath salts [as drugs], but these bath salts are not the kind that go in your tub. These products look like eye shadow containers and come in attractive packages. These drugs have to go, and she will fight for this. The City has to do something.

Mr. Hutchinson stated that if a synthetic drug user does not want help in stopping, there is not much that can be done, other than having law enforcement step in. He continued that for people who want help, the hands of Alcoholics Anonymous should always be there and people should be able to receive compassionate help. People who want help getting off of synthetic drugs should not be arrested and put in jail; the City's system of giving help needs to improve.

Chair Duffy stated that he has heard everyone loud and clear tonight.

Councilor Clark asked if the MSFI Committee could recommend that the City put up a "We support a synthetic drug-free community" sign. Members of the public replied that the City has already put it up in the downstairs of City Hall.

Mr. Richardson stated that Wendell Berry, a powerful writer, talks about how the nation can be brought back to life by small towns and cities acting for the common good. He continued that it is time.

Councilor Jones stated that he thinks the MSFI Committee should ask staff to draft a resolution, and discuss an ordinance. Councilor Manwaring replied that she wants Councilor Venezia's original suggestion of both the ordinance and resolution. Councilor Venezia agreed.

Chair Duffy stated that a third action could be for the MSFI Committee to ask the Mayor's Office to either create a committee or explore partnering with MADAC and others who are working on this issue. He continued that an ER nurse from Cheshire Medical Center described to them what a 15-year-old went through due to use of synthetic drugs, including permanent brain damage. They could ask the Mayor to help coordinate an ad hoc council to explore ways to educate the public – it is very important for the City to step up. A few years ago when there

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was a stabbing on Elm Street, the Mayor convened a community committee to explore and address those issues. It gives folks a chance to heal and feel productive.

Councilor O'Connor agreed with having all three actions.

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

Move that the MSFI Committee recommend that City staff draft a resolution to be sent to the State, requesting the banning of the selling of synthetic drugs.

Polly Morris stated that Councilor Jones only said "the sale of," and she would like a ban of possession, use, and display also. The City Attorney replied that they do not need to craft the language tonight. He continued that they are directing staff to write the resolution. Ms. Morris asked for Monadnock Voices for Prevention to be part of the ad hoc committee.

Mr. Hutchinson stated that he supports the motion. He continued that it does not need to be perfect. It is just a first step, and the sooner it is done, the better.

The motion passed by a vote of 5-0.

Councilor Jones stated that sometimes action leads to action. He continued that when Mayor Blastos proposed a ban on smoking in restaurants, and they received similar legal advice cautioning them that the authority was with the State, but they went forward with it anyway. The City's actions are partially what led to the State statute. Sometimes you need the action and publicity to bring the issue forward.

Councilor Jones made the following motion, which was seconded by Councilor O'Connor.

Move that the MSFI Committee request the City Council draft an ordinance banning the sale of synthetic drugs.

Mr. Bourassa stated that he wants this to be effective, and he urges the City to find a legal leg to stand on. He continued that they should dot the I's and cross the T's. It will be challenging, and it probably will be challenged at some point, but they should not let that scare them. He continued that he is absolutely in support of the ordinance.

Councilor Jones stated that he thinks this creates important debate. He continued that it goes to the full City Council for their input.

The motion passed by a vote of 5-0.

Chair Duffy stated that it is important for them to address this issue in as many ways as possible. He continued that they hope the ordinance has enough legal strength to diminish the presence of synthetic drugs in this community, and a resolution is important, too. The problem is growing and members of the community are being affected.

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Chair Duffy made the following motion, which was seconded by Councilor Venezia.

By a vote of 5-0, the MSFI Committee recommends that the Mayor form an ad hoc committee to address this issue community-wide.

6. Adjournment

At 8:46 PM, Councilor Venezia made a motion to adjourn. Councilor Jones seconded the motion, which passed by unanimous vote.

Respectfully Submitted by
Britta Reida, Minute-taker