

CITY COUNCIL MEETING – Monday, October 19, 2020

Public Hearing

Mayor Grenier opened the Public Hearing at 7:53 pm for Ordinance 2020-04 Zoning Ordinance Amendment. There were no public comments. Mayor Grenier closed the Public Hearing at 7:54 pm.

Regular Meeting

Mayor Grenier called the Regular City Council Meeting to order at approximately 7:54 p.m. via Zoom, pursuant to Executive Order 2020-04, Section 8 and Emergency Order #12, Section 3.

a. Pledge of Allegiance

b. Roll Call

Present: Mayor Grenier, Councilors Otis, Morgan, Eastman, Higbee, Berthiaume and Theberge

Absent: Councilors Remillard and Rozek

Also present: James Wheeler, Pamela Laflamme, Susan Tremblay, Chief James Watkins, Deputy Chief Dan Buteau, Shelli Fortin, Dan Whittet, Ann Morin, and Barbara Tetreault, Berlin Daily Sun.

c. Councilor Higbee moved, with a second by Councilor Otis, to accept the minutes of the October 5, 2020 Regular Meeting and Work Session and October 12, 2020 Work Session. So moved, the motion carried by roll call vote. Higbee- yes, Theberge – yes, Otis – yes, Morgan – yes, Eastman – yes, Grenier - yes

Disbursements:

Disbursement Summary Draft #1873 start date 10/03/2020 end date 10/16/2020 for a total cash disbursement of \$1,046,227.16. Councilor Theberge moved with a second by Councilor Otis to accept the disbursement summary and pay all bills as recommended by the Committee on Accounts/Claims. So moved, the motion carried by roll call vote. Higbee- yes, Theberge – yes, Otis – yes, Morgan – yes, Eastman – yes, Grenier - yes

PUBLIC COMMENTS

There were no public comments.

UNFINISHED BUSINESS

1. Council Committee Reports

There were no Council Committee Reports.

2. Ordinance 2020-04 Zoning Ordinance Amendment (tabled 10/5/2020)

In the year of our Lord Two Thousand Twenty

AN ORDINANCE amending the Code of Ordinances of the City of Berlin, Chapter 17, ZONING, ARTICLE II General Provisions, Sec. 17-24 Uses by Special Exception; ARTICLE V. Rural Residential Zone, Sec. 17-52 Uses; ARTICLE XI. Industrial/Business Zone, Sec. 17-112. Uses and ARTICLE XVII Standards for Specific Uses by adding Sec. 17-188 “Bulk Power Supply Facility, Energy Facility, or Renewable Energy Facilities for facilities under 30 megawatts as defined by NH RSA 162-H:2”

Be it ordained by the City Council of the City of Berlin as follows:

That the Code of Ordinances of the City of Berlin Chapter 17, ZONING, ARTICLE II General Provisions, Sec. 17-24 Uses by Special Exception is hereby amended by removing Item 3. under Uses by Special Exception

Sec. 17-24. Uses by Special Exception

3. The following provisions apply to Special Exceptions sought for any Bulk Power Supply Facility, Energy Facility, or Renewable Energy Facility as defined by NHRSA 162-H:2 (referred to herein as "Energy Projects"):

~~Whereas the State of New Hampshire recognizes the need and value of Energy Projects, the City of Berlin has determined that changes have occurred in the community that lead to the requirement for further consideration when reviewing and considering approval of any Energy Project. With the decline of pulp manufacturing/ heavy industry nationally and the closure and cessation of pulp manufacturing in Berlin, the community realizes that there will be projects proposed to utilize the wood, wind and water supply within the City. The citizens of Berlin through public hearings related to the Master Plan update in early 2008 have indicated a desire to properly locate energy related facilities within the community but ideally outside of the downtown area. The City wishes to encourage the development of properly located Energy Projects and has developed the enclosed provisions to ensure the responsible evaluation of these Energy Projects. The following list of criteria will be reviewed in addition to Section 17-24 1 and 2 for all proposed Energy Projects within the only possible zones in which such activity could be properly allowed—the Industrial/Business Zone and the Rural Residential Zone as stated in Section~~

a. All Energy Projects must meet the performance standards as stated in Article XVIII Section 17-191—17-200

b. Each Applicant for a Special Exception for an Energy Project shall provide a report or study for evaluation and review by an appropriate qualified peer reviewer that indicates in reasonable detail the primary fuel source to be used and that there is adequate long range supply available for the project. The Applicant's report shall also indicate in reasonable detail the methodology and routing for transporting any off-site fuel supply to the site. The Zoning Board shall select the peer reviewer(s) whose duty it will be to advise the Zoning Board on the issues under review; and the cost of the peer review shall be borne by the Applicant. The inadequacy of and questionable transportation methodology and/or routing of such long term fuel supply shall be grounds for denial of the Special Exception.

c. All Energy Projects shall be sited to maximize use of existing transmission lines and minimize the creation of new transmission lines. If new lines are required, the Applicant shall provide to the Zoning Board a report from a qualified engineer stating the necessity of an upgrade to the transmission lines and the propriety of the amount and location of those new transmission lines. The Zoning Board shall select the peer reviewer(s) of that report, whose duty it will be advise the Zoning Board on the issues under review; and the cost of the peer review shall be borne by the Applicant. The inappropriateness of the amount and location of those new transmission lines shall be grounds for denial of the Special Exception.

d. Further information may be required by the Planning Board during Site Plan Review.

e. The Zoning Board shall consider the physical appropriateness of the Energy Project in relation to the surrounding area it will be located in. Several aspects should be considered when reviewing the appropriateness of the location including but not limited to scale, height, materials being used for construction, level of activity on the site both during construction and during operation, impact on existing and potential future uses of adjoining and area properties, and any other factors which may negatively impact the appropriate development of the area in compliance with the current and future Master Planning process for the City as a whole. The inappropriateness of such siting shall be grounds for denial of the Special Exception.

f. All Energy Projects must obtain a special exception from the City of Berlin before final approval by any State agency regardless of size.

g. All Energy Projects must also comply with all other City, State and Federal regulations, rules, ordinances and laws. (Ord. of 6/16/08)

ARTICLE V. Rural Residential Zone, Sec. 17-52 Uses. is hereby amended by renumbering and adding "Uses Permitted by Special Use Permit" as follows:

Uses Permitted by Special Exception:

17. Tower Structures including but not limited to, towers for transmission (other than telecommunications), communication, cellular telephones, and wind energy. (Ord. of 7/5/05)

And by adding:

Uses Permitted By Special Use Permit

1. Telecommunications Structures or Towers
2. Bulk Power Supply Facility, Energy Facility, or Renewable Energy Facilities for facilities under 30 megawatts as defined by NH RSA 162-H:2

ARTICLE XI. Industrial/Business Zone, Sec. 17-112. Uses. is hereby amended by renumbering and adding "Uses Permitted By Special Use Permit" as follows:

3. Group child care- Class A and B
~~Bulk Power Supply Facility, Energy Facility, or Renewable Energy Facility as defined by NH RSA 162-H:2 (Ord. 6/16/08)~~
4. Accessory uses to the above

Uses Permitted By Special Use Permit:

1. Bulk Power Supply Facility, Energy Facility, or Renewable Energy Facility as defined by NH RSA 162-H:2; and

ARTICLE XVII Standards for Specific Uses is hereby amended by adding Sec. 17-188 "Bulk Power Supply Facility, Energy Facility, or Renewable Energy Facilities for facilities under 30 megawatts as defined by NH RAS 162-H:2" as follows:

17-188. Bulk Power Supply Facility, Energy Facility, or Renewable Energy Facilities for facilities under 30 megawatts as defined by NH RSA 162-H:2

1. Purpose:

The purpose of this Article is to establish general guidelines for the siting of Bulk Power Supply Facilities, Energy Facilities, or Renewable Energy Facilities as defined by NH RSA 162-H:2 (referred to herein as "Energy Projects"):

a. Preserve the authority of the City of Berlin to regulate and to provide reasonable opportunities for the siting of Energy Projects;

b. All Energy Projects must meet the performance standards as stated in Article XVIII Section 17-191—17-200;

c. All Energy Projects shall be sited to maximize use of existing transmission lines and minimize the creation of new transmission lines. If new lines are required, the Applicant shall provide to the Planning Board a report from a qualified engineer stating the necessity of an upgrade to the transmission lines and the propriety of the amount and location of those new transmission lines. The Planning Board shall select the peer reviewer(s) of that report, whose duty it will be advise the Planning Board on the issues under review; and the cost of the peer review shall be borne by the Applicant. The inappropriateness of the amount and location of those new transmission lines may be grounds for denial of the Special Use Permit.

d. The Planning Board shall consider the physical appropriateness of the Energy Project in relation to the surrounding area it will be located in. Several aspects should be considered when reviewing the appropriateness of the location including but not limited to scale, height, materials being used for construction, level of activity on the site both during construction and during operation, impact on existing and potential future uses of adjoining and area properties, and any other factors which may negatively impact the appropriate development of the area in compliance with the current and future Master Planning process for the City as a whole. The inappropriateness of such siting shall be grounds for denial of the Special Use Permit.

e. All Energy Projects must also comply with all other City, State and Federal regulations, rules, ordinances and laws.

f. Further information may be required by the Planning Board during Site Plan Review.

2. Regulation:

Energy Projects shall be allowed by Special Use Permit, in accordance with RSA 674:21 II, as either primary or accessory uses in the Industrial Business and Rural Residential Zones in the City of Berlin provided that the standards of this article are met.

3. Special Use Permit Procedures for Energy Projects:

a. The Special Use Permit Granting Authority

The Special Use Permit Granting Authority (SUPGA) shall be the Planning Board of the City of Berlin

b. Special Use Permit Conditions

Before granting a special use permit under this Section, the Planning Board may, after due consideration and consultation with other City Officials require any technical reports as may be necessary and attach any conditions deemed necessary to fully implement the purpose and intent of this Article.

c. Submittals

All commercial Energy Projects will submit an application for a Special Use Permit either prior to or jointly with their application for Site Plan Review.

4. Financial Security:

Recognizing the extremely hazardous situation presented by abandoned or discontinued Energy Projects, the Planning Board may require a form of financial security to be posted as a condition of approval for a special use permit for Energy Projects. This security, in an amount to be determined by the Planning Board, may be in the form of, cash or a non-lapsing irrevocable letter of credit or other form acceptable to the Board and the City Attorney. It will be posted by the applicant and held by the City until the Energy Project is removed. It shall be the sole responsibility of the applicant, its assign, or its successor in interest, to ensure that acceptable and adequate security, once posted, is maintained continuously and without lapse. Lapse of adequate security shall be grounds to revoke a special use permit and cause for the Energy Project to be removed.

This Ordinance shall be in full force and effect from and after passage.

Councilor Higbee moved, with a second by Councilor Otis, to remove this item from the table. So moved, the motion carried by roll call vote. Higbee- yes, Theberge – yes, Otis – yes, Morgan – yes, Eastman – yes, Grenier – yes

Councilor Higbee moved, with a second by Councilor Otis, to read Ordinance 2020-04 by short title for a second time. So moved, the motion carried by roll call vote. Higbee- yes, Theberge – yes, Otis – yes, Morgan – yes, Eastman – yes, Grenier - yes

Councilor Higbee moved, with a second by Councilor Otis, to read Ordinance 2020-04 by short title for a third time. So moved, the motion carried by roll call vote. Higbee- yes, Theberge – yes, Otis – yes, Morgan – yes, Eastman – yes, Grenier - yes

Councilor Higbee moved, with a second by Councilor Otis that Ordinance 2020-04 be passed. So moved, the motion passed by roll call vote. Higbee- yes, Theberge – yes, Otis – yes, Morgan – yes, Eastman – yes, Grenier – yes

3. Brookfield Option Agreement

City Manager Wheeler advised that Brookfield Renewable Energy is interested in purchasing 3.83 acres of a 4.7 acre parcel, tax map 129, lot 49-30, that is owned by the City. The remainder of the parcel will remain in the City's ownership. For an option agreement of one year, Brookfield will pay a \$10,000 non-refundable deposit, which can be extended one time for 6 months for \$15,000.

Councilor Higbee asked if the City Attorney has reviewed the contract and is comfortable with the waiver of consequential damages. City Manager Wheeler advised that the attorney has reviewed and is comfortable with it.

Councilor Theberge asked about the railroad right-of-way, which was discussed several years ago as a possible snow machine trail in winter. Mayor Grenier advised this is not part of the land sale and that any right-of-way would remain.

Councilor Higbee moved, with a second from Councilor Otis, to approve the option agreement with Brookfield Renewable Energy as presented. So moved, the motion passed by roll call vote. Higbee- yes, Berthiaume, Theberge – yes, Otis – yes, Morgan – yes, Eastman – yes, Grenier – yes

NEW BUSINESS

4. Resolution 2020-22 FD \$9,999.75 Hazard Mitigation Grant (1st read)

Councilor Higbee moved, with a second by Councilor Otis, to table the Resolution and schedule a public hearing for November 2, 2020. So moved, the motion carried by roll call vote. Higbee- yes, Berthiaume – yes, Theberge – yes, Otis – yes, Morgan – yes, Eastman – yes, Grenier – yes

5. Resolution 2020-23 PD \$2,000.00 Scholarship (1st read)

Councilor Berthiaume moved, with a second by Councilor Higbee, to table the Resolution and schedule a public hearing for November 2, 2020. So moved, the motion carried by roll call vote. Higbee- yes, Berthiaume – yes, Theberge – yes, Otis – yes, Morgan – yes, Eastman – yes, Grenier – yes

6. Resolution 2020-24 Election Expenses Grant (1st read)

Councilor Higbee moved, with a second by Councilor Berthiaume, to table the Resolution and schedule a public hearing for November 2, 2020. So moved, the motion carried by roll call vote. Higbee- yes, Berthiaume – yes, Theberge – yes, Otis – yes, Morgan – yes, Eastman – yes, Grenier – yes

6a. Resolution 2020-25 Clean Diesel Grant Program (1st read)

Councilor Berthiaume moved, with a second by Councilor Morgan, to table the Resolution and schedule a public hearing for November 2, 2020. So moved, the motion carried by roll call vote. Higbee- yes, Berthiaume – yes, Theberge – yes, Otis – yes, Morgan – yes, Eastman – yes, Grenier – yes

7. City Manager's Report

1. Superintendent King updated that School Board on the School's HVAC systems. What remains to be completed are larger repairs on the Elementary and Middle School systems. TRANE has offered to bring in an engineer at no charge to perform a structural analysis and prepare a plan for fixing and potentially funding the repairs.
2. BIDPA received five responses to its Request for Proposals for a Market Feasibility Study for a Hotel/Lodging Facility. Proposals will be reviewed by BIDPA before a consultant is selected.
3. Health Trust has approved its audited financial statements and declared a return of surplus to Member Groups. Each year Health Trust retains only the amount needed to pay for claims, administration and reserves. Any amounts over that are returned to members. Berlin's share of the return is \$21,054.34.

4. Health Trust also sent our Guaranteed Maximum Rate (GMR) of an increase of 6.2% for budgeting purposes. The rates are revisited in the spring when the final rates will be established.
5. The PD ordered two Ford Explorers a few months ago. Due to their lack of availability, pickups were researched, and two were found at Plymouth Ford at a cost less than the State bid. They are basic trucks which can eventually be transferred for use by the PWD.
6. The Supervisors of the Voter Checklist will hold a session in the main lobby of City Hall on Tuesday, October 27, 2020 from 7:00 to 7:30 p.m. Citizens can register to vote and/or make changes to their address. Positive ID and proof of domicile is required to register to vote.
7. The City Clerk's Office will be preprocessing absentee ballots in the Auditorium of City Hall., 168 Main Street, Berlin, NH on Thursday, October 29 at 10:00 am. The public is welcome to attend and those attending are encouraged to wear a mask and socially distance.
8. The US EPA has announced that the Administrative Record for the removal action at the Lavoie property at 640 Hillside Avenue is available for review. The EPA encourages the public to review and comment. The Record can be found at <https://semspub.epa.gov/src/collection/01/AR66548>
9. The PD statistics as reported to the Police Commission at their October meeting are attached.
10. BEMS statistics are attached.

Councilor Theberge moved, with a second from Councilor Morgan, to accept the City Manager's Report and place it on file. So moved, the motion carried by roll call vote. Higbee- yes, Berthiaume – yes, Theberge – yes, Otis – yes, Morgan- yes, Eastman – yes, Grenier – yes

8. Mayor's Report

a. Proclamation Extra Mile Day

WHEREAS, Berlin is a community which acknowledges that a special vibrancy exists with the entire community when its individual citizens collectively “go the extra mile” in personal effort, volunteerism, and service; and

WHEREAS, Berlin is a community which encourages its citizens to maximize their personal contribution to the community by giving of themselves wholeheartedly and with total effort, commitment, and conviction to their individual ambitions, family, friends and community; and

WHEREAS, Berlin is a community which chooses to shine a light on and celebrate individuals and organizations within its community who “go the extra mile” in order to make a difference and lift up fellow members of their community; and

WHEREAS, Berlin acknowledges the mission of the Extra Mile America Foundation to create 300 Extra Mile cities in America and is proud to support “Extra Mile Day” on November 1, 2020.

NOW THEREFORE I, Mayor of Berlin, New Hampshire do hereby proclaim November 1, 2020 to be Extra Mile Day. I urge each individual in the community to take time on this day to not only “go the extra mile” in his or her own life, but to also acknowledge all those around who are inspirational in their efforts and commitment to make their organizations, families, community, country or world a better place.

Councilor Higbee moved, with a second from Councilor Morgan, to accept the Mayor's Report and place it on file. So moved, the motion carried by roll call vote. Higbee- yes, Berthiaume – yes, Theberge – yes, Otis – yes, Morgan- yes, Eastman – yes, Grenier – yes

9. PUBLIC COMMENTS

Ann Morin of 24 Tamarack Lane in Berlin advised the Council that those who live on the outskirts of Berlin have limited access to internet services. Morin advised that many residents are at home due to COVID19, working remotely, or homeschooling, and depend on reliable internet. Morin was hoping the city could help to facilitate

improvement in services. Pamela Laflamme advised that this is unfortunately not a quick fix. There is money available from the CARES Act to help with shovel ready broadband projects, but unless a community had already been planning, there would not be a project ready to go. There is a committee that has been trying to mobilize as a county to be in a position to help those that are not well-served. Laflamme noted that the City should take the opportunity to talk to the companies when they are running wires in our area. The companies should be encouraged to make the services available, affordable, and accessible. Mayor Grenier advised that Spectrum does hold a franchise in the City, and they should sit down and have a meeting to address the concerns. Councilor Higbee noted that he has heard many complaints about the quality of service and that customers are not getting near the bandwidth they signed up for.

10. Council Comments

There were no Council comments.

11. Adjournment

On a motion by Councilor Higbee, seconded by Councilor Theberge, the Council voted to adjourn the meeting at 8:40 pm. So moved, the motion carried unanimously by roll call vote. Higbee- yes, Berthiaume – yes, Theberge – yes, Otis– yes, Morgan – yes, Eastman – yes, Grenier – yes

A True Record, Attest:

Shellie Fortin
City Clerk

Note: Minutes are unofficial until they have been accepted by the Council by motion.