



Jeff Levine, AICP
Director, Planning & Urban Development Department

April 25, 2016

Joel Kittredge, PM
Maine Department of Transportation
16 State House Station
Augusta, ME 04333-0016

Matt Doughty, PM
Unitil, Northern Utilities, Inc.
376 Riverside Industrial Parkway
Portland, ME 04103

Project Name: International Marine Terminal Expansion: Unitil Gas Facility Relocation
Project ID: 2016-085
Address: 74 West Commercial Street CBLs: 59-A-1, 2, 3, 4, 5, 7, 8, 9, 10, 11
Applicant: Maine Dept of Transportation and Unitil, Northern Utilities, Inc
Planner: Richard Knowland

Dear Mr. Kittredge and Mr. Doughty:

On Friday, April 22, a stop work order was issued for work that was being performed to install gas lines for the pending application the "relocation of existing regulator and control buildings, as well as the associated gas lines." The gas facility is considered a utility substation under the WPDZ zone, which requires conditional use by the Portland Planning Board. The application was submitted on April 13th and the fee for the conditional use review was paid on April 19th, thus this is a pending conditional use application and an amended site plan application for the proposal.

On Friday, April 22nd, an e-mail from Peggy McGehee was submitted with two requests for permission to proceed:

1. First, Unitil is requesting permission to proceed "...to lay down the four 90 ft. pipes prior to back-filling the open trench-which will need to be back-filled in any case as a matter of public safety, with the understanding that it assumes the risk that the Planning Board may not approve this pipeline relocation it assumes the risk that the Planning board may not approve this pipeline relocation in reviewing the pending permit applications." **As provided in Section 14-532, this letter serves as written permission from the Planning Authority to proceed with the laying of the four 90 foot pipes and back filling.**
2. According to Peggy McGehee's correspondence, Unitil is also seeking "... to complete the full underground pipeline installation at this time, if at all possible, with the same risk of ultimate non-approval." **This request is not approved.**

The applications have been distributed for review by all the relevant departments. We are seeking to expedite the review, as the City is aware of the State and Unitil's time frame. We have not scheduled this item with the Board, but are seeking to schedule the public hearing in May. The Board's regular meeting dates are May 10 and May 24th and the scheduling is subject to the final hearings for pending projects submitted ahead of this proposal

The approval to proceed with limited site work for safety reasons is based on the request submitted by Peggy McGehee on April 22, 2016 (Attachment 1).

If you have any further questions, please contact Barbara Barhydt, 874-8699.

Sincerely,


Stuart O'Brien
Director of Planning Division

Attachments:

1. Request from Peggy McGehee

Electronic cc:

Jeff Levine, AICP, Director of Planning and Urban Development
Barbara Barhydt, Development Review Services Manager
Rick Knowland, Planner
Philip DiPierro, Development Review Coordinator, Planning
Ann Machado, Zoning Administrator, Inspections Division
Tammy Munson, Inspection Division Director
Lannic Dobson, Administration, Inspections Division
Michael Bobinsky, Public Services Director
Katherine Earley, Engineering Services Manager, Public Services
Bill Clark, Project Engineer, Public Services
David Margolis-Pineo, Deputy City Engineer, Public Services
Doug Roncarati, Stormwater Coordinator, Public Services
Greg Vining, Associate Engineer, Public Services

Michelle Sweeney, Associate Engineer
John Low, Associate Engineer, Public Services
Rhonda Zazzara, Field Inspection Coordinator, Public Services
Mike Farmer, Project Engineer, Public Services
Jane Ward, Administration, Public Services
Jeff Tarling, City Arborist, Public Services
Jeremiah Bartlett, Public Services
Keith Gautreau, Fire Department
Danielle West-Chulha, Corporation Counsel
Thomas Errico, P.E., TY Lin Associates
David Senus, P.E., Woodard and Curran
Rick Blackburn, Assessor's Department
Approval Letter File



Barbara Barhydt <bab@portlandmaine.gov>

FW: Unutil pipe construction on the MDOT site

1 message

pmcgehee@perkinsthompson.com <pmcgehee@perkinsthompson.com>

Fri, Apr 22, 2016 at 5:00 PM

To: bab@portlandmaine.gov

From: Peggy L. McGehee
Sent: Friday, April 22, 2016 4:56 PM
To: bab@portlandmaine.gov
Cc: rwk@portlandmaine.gov
Subject: Unutil pipe construction on the MDOT site

Dear Barbara:

Thank you for taking my call regarding Unutil's pipe installation work today on West Commercial Street and the abutting MDOT IMT expansion Site.

Unutil's construction team thought, in good faith, that it could install underground pipeline on the Site in conjunction with its West Commercial Street public-right-of way work, and thus was surprised when the City issued a stop work order for the on-Site work for lack of City permits. The construction team immediately complied, although it thought that the location permit it had obtained from the Public Works Department (and its on-site explanation to the PWD of its further pipe installation work extending into the Site) and MDOT's agreement for Unutil to commence the on-Site underground installation work, was all that was required.

This e-mail is not to dispute the stop work order, but to explain the good faith intent to comply with all City requirements in undertaking this work. This e-mail is also to request the City's forbearance for Unutil to complete at least so much of the work as is already half-done, given that there is an open trench already dug, with four 90 ft. pipes alongside ready to be lowered in before back-filling—understanding and accepting its risk that the pipeline installation is still subject to the Planning Board's review and approval, per Unutil/MDOT's pending permit applications.

By way of explanation, this pipeline installation work is quite unique from a permitting perspective. Typically the only City permits Unutil needs to obtain when installing underground pipe are public ROW location permits. It typically is not required to obtain a City permit to install underground pipeline on private property, such as MDOT's "private" IMT expansion Site, but only needs to obtain the private property owner's permission/easement (which it did).

Unutil fully recognizes that it must first obtain Planning Board approval before constructing any *above-ground*

structure, such as the proposed gas regulator building, SCADA building, fencing, and meters. It did not understand, and its consultants, of which I am one, failed to advise it, that the Planning Board's permit jurisdiction also extends to the underground installations.

Unitil therefore requests that it be given leave to lay down the four 90 ft. pipes prior to back-filling the open trench—which will need to be back-filled in any case as a matter of public safety, with the understanding that it assumes the risk that the Planning Board may not approve this pipeline relocation in reviewing the pending permit applications.

Unitil further requests leave to complete the full underground pipeline installation at this time, if at all possible, with the same risk of ultimate non-approval. In order to meet MDOT's goal to have this gas facility relocation work done this year, so MDOT can complete its IMT expansion project, and commence construction of a cold storage facility. Unitil must complete its work before the seasonal heating season officially begins on October 1, or else it will have to wait till the following spring. Unless Unitil can very soon undertake this work, it may not be able to complete it before the MDOT's October 1 deadline.

For all these reasons, Unitil and MDOT respectfully request the City lift the stop work order as to Unitil's underground installations.

Thank you for your consideration. Unitil has its construction contractors on stand-by on Monday in the hope that this matter can be quickly resolved, so if there is any information we can provide to assist the City's timely review of this matter, we will immediately respond.

Regards, Peggy

PEGGY L. McGEHEE
ATTORNEY

PERKINS THOMPSON

ONE CANAL PLAZA, PO Box 426
PORTLAND, ME 04112-0426
207.774.2635 MAIN

207.871.8026 FAX

www.perkinsthompson.com
pmcgehee@perkinsthompson.com

CONFIDENTIALITY AND TAX ADVICE NOTICE: The information contained in this communication may be confidential or privileged. If you are not the intended recipient of this communication, any disclosure, copying, distribution or use of this communication is prohibited. If you have received this communication in error, please notify the sender and immediately destroy this communication. Any tax advice contained in this communication cannot be used to avoid tax penalties.