

**CITY COUNCIL
ROCHESTER, NEW HAMPSHIRE
Nonpublic Session Minutes**

Date: January 16, 2024

Motion to enter Nonpublic Session

Made by: Walker

Seconded by: de Geofroy

Specific Statutory Reason cited as foundation for the nonpublic session:

____ RSA 91-A:3, II (a) *The dismissal, promotion, or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him or her, **unless** the employee affected (1) has a right to a public meeting, and (2) requests that the meeting be open, in which case the request shall be granted.*

____ RSA 91-A:3, II(b) *The hiring of any person as a public employee.*

____ RSA 91-A:3, II(c) *Matters which, if discussed in public, would likely affect adversely the reputation of any person, **other than a member of this board**, unless such person requests an open meeting. This exemption shall extend to include any application for assistance or tax abatement or waiver of a fee, fine or other levy, if based on inability to pay or poverty of the applicant.*

 X RSA 91-A:3, II(d) *Consideration of the acquisition, sale or lease of real or personal property which, if discussed in public, would likely benefit a party or parties whose interests are averse to those of the general community.*

____ RSA 91-A:3, II(e) *Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed against this board or any subdivision thereof, or against any member thereof because of his or her membership therein, until the claim or litigation has been fully adjudicated or otherwise settled*

____ RSA 91-A:3, II(i) *Consideration of matters relating to the preparation for and the carrying out of emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.*

Roll Call vote to enter nonpublic session:

(circle replies below)

Mayor Callaghan

Yes

No

Not Present

Deputy Mayor Hamann

Yes

No

Not Present

Councilor Fontneau

Yes

No

Not Present

Councilor Turner	Yes	No	Not Present
Councilor Fitzpatrick	Yes	No	Not Present
Councilor Karolian	Yes	No	Not Present
Councilor _____	Yes	No	Not Present
Councilor Herman	Yes	No	Not Present
Councilor Walker	Yes	No	Not Present
Councilor Creteau	Yes	No	Not Present
Councilor Sullivan	Yes	No	Not Present
Councilor Richardson	Yes	No	Not Present
Councilor de Geofroy	Yes	No	Not Present

Entered nonpublic session

Time: 6:31 pm

Other persons present during nonpublic session:

City Manager Katie Ambrose, Chief Administrative Officer Kimberly Conley, Economic Development Director Michael Scala, Finance Director Mark Sullivan, and City Attorney Terence O'Rourke

Description of matters discussed, and final decisions made:

Ben Franklin Lease Consideration

Director Scala updated the Council only previously approved negotiations between the City and the owner of the Property. Scala emphasized the need for a short-term downtown parking solution brought on by the pressures caused by multiple, simultaneous mixed-use developments and by the reconfiguration of the Union Street Parking Lot. Scala then outlined the opportunities provided by the City controlling the Property for at least the next 10 years. Councilor Sullivan asked Scala

about the preference downtown residents would get for the parking permit program. Scala said he's identified 150 current public spaces spread throughout downtown that are eligible for the permit program. The Property would provide an additional 37 parking spaces eligible for the permit program.

Director Sullivan then gave a presentation on the mechanics of the lease, the financing of the lease, and the impacts on downtown businesses/residents of not acting. Sullivan stated that the owner of the Property will not, under any circumstances, sell the Property to the City. The owner's portfolio is so strong and diverse, it can continue to simply sit on the Property. Sullivan explained the owner's business model and why it only uses 10 year leases.

Fitzpatrick said that the City must control this Property. Fitzpatrick asked if a Right of First Refusal was possible. Sullivan said that he envisioned those details to be worked out amongst the attorneys when we reach that point. Fitzpatrick said the Right of First Refusal does, to a certain extent, remediate the concerns over the lack of permanency.

Councilor Sullivan said that for as long as he remembers this Property has been an issue with him and that he's always been concerned with the Property being vacant. Councilor Sullivan asked about the Tenant Improvement Allowance. Sullivan explained that the City would get a \$130,000 credit against the lease payments based on the value of any improvements made by the City.

Councilor Sullivan said that he also believes that if the City was the Lessee we would have a foot in the door if the owner ever decides to sell the Property.

Sullivan said another way to look at this situation is maybe the City loses the Property in 10 years, but the City might put the Property in such a solid condition that it becomes more attractive to the private sector.

Councilor Sullivan stated that he felt the only alternative to not doing the lease is the leave the Property vacant and that is not really acceptable.

Councilor Hamann said we need to consider the loss of the monetization of the Property in ten years and how we will backfill the parking spaces lost in 10 years.

Scala said that the City has access to money sources that the private sector doesn't and that the City can make uses of the Property that the private sector cannot. Scala also said the City can immediately make low cost cosmetic changes to the Property like we did with the Hoffman that changes the optics around the Property.

Ambrose stated it would be a policy decision of the Council to give staff the direction regarding the use, other than parking, of the Property in terms of focusing on private actors, public actors, non-profits, incubator space, etc.

de Geofroy also reiterated the call for a Right of First Refusal. de Geofroy wanted to make sure that we can narrow the scope of uses of the Property that the owner can refuse. Sullivan said that owner's concern about sublessees was making sure that nothing the City does violates existing agreements it has with other tenants.

Sullivan presented other properties in downtown that show the extent of market failures existing simultaneously with increased positive development.

Creteau said he believes the CC needs an answer on the Right of First Refusal and we need to know the limits that the owner will place on our sublessees.

Walker said he believed that the owner will never do anything with this building and that the City is the only chance to make this Property productive. Walker said that we owe it to every business in downtown to do this lease because of the heartburn we are going to cause by closing down Union Street Parking Lot; it will be a relief valve. Walker believes that if we are successful, the owner won't "pull the rug out" from us in ten years because the owner isn't going to do anything.

Fitzpatrick said he will support this wholeheartedly if we have a Right of First Refusal and support it holding his nose if we don't for all the reasons stated by Walker.

Councilor Sullivan said this building kills our view of downtown because this is the first thing a person sees and it looks like we have a dead downtown. This empty building shades all of the incredible progress downtown.

Sullivan pointed out the portion of the Property that the owner said the City could incorporate into the Riverwalk Project.

Callaghan asked what is Plan B for downtown parking if this lease falls through. Sullivan said it is to employ the plan from the Parking Review Group that encourages parking in the available public parking in the outer ring of downtown. Sullivan said we could also try to negotiate with other owners downtown for short-term parking leases, but there would be no guarantees.

de Geofroy said he agrees with Fitzpatrick's sentiments and that signing the lease shows action on the part of the City in response to a known community need.

Walker said Plan B would be to negotiate a deal with St. Elizabeth Seton.

Council Action: None at this time.

Yea:

Nay:

Motion to leave nonpublic session and return to public session

Made by: Walker

Seconded by: Hamann

Motion: **PASSED** / DID NOT PASS (circle one)

Public session reconvened

Time: 8:00 pm

Motion made to seal these minutes? **Yes** No (circle one)

Indefinitely? Yes No (circle one)

If yes, motion made by: Walker

Seconded by: Hamann

because it is determined that divulgence of this information likely would:

____ Affect adversely the reputation of any person other than a member of this board.

X Render a proposed action ineffective.

____ Pertains to preparation or carrying out of actions regarding terrorism.

Roll Call Vote to seal minutes:

(2/3's vote of members present required)

Mayor Callaghan	<u>Yes</u>	No	Not Present
Deputy Mayor Hamann	<u>Yes</u>	No	Not Present
Councilor Fontneau	Yes	No	<u>Not Present</u>
Councilor Turner	<u>Yes</u>	No	Not Present
Councilor Fitzpatrick	<u>Yes</u>	No	Not Present
Councilor Karolian	<u>Yes</u>	No	Not Present
Councilor _____	Yes	No	Not Present
Councilor Herman	Yes	No	<u>Not Present</u>
Councilor Walker	<u>Yes</u>	No	Not Present
Councilor Creteau	<u>Yes</u>	No	Not Present
Councilor Sullivan	<u>Yes</u>	No	Not Present
Councilor Richardson	<u>Yes</u>	No	Not Present
Councilor de Geofroy	<u>Yes</u>	No	Not Present

Motion: PASSED / DID NOT PASS (circle one)

Time: 8:00 pm

These minutes recorded by: Terence O'Rourke, City Attorney