

City of Rochester Planning Board
Monday February 22, 2021
Virtual Meeting

(These minutes were approved on March 1, 2021)

Members Present

Nel Sylvain, *Chair*
Mark Collopy, *Vice Chair*
Peter Bruckner
Tim Fontneau
Robert May
Daniel Rines
Mark Sullivan
David Walker

Members Absent

Terry Dwyer, excused
Lance Whitehill, excused

Alternate Members Present

Donald Hamann
Paul Giuliano

Staff: Shanna B. Saunders, *Director of Planning & Development*
Crystal Galloway, *Planning Administrative Assistant II*

(These are the legal minutes of the meeting and are in the format of an overview of the meeting. A recording of the meeting will be on file in the City clerk's office for reference purposes. It may be copied for a fee.)

Mr. Sylvain called the meeting to order at 7:00 p.m. and made the following statement:

Good Evening, as Chairperson of the Planning Board I am declaring that an emergency exists and I am invoking the provisions of RSA 91-A:2, III (b). Federal, state, and local officials have determined that gatherings of 10 or more people pose a substantial risk to our community in its continuing efforts to combat the spread of COVID-19. In concurring with their determination, I also find that this meeting is imperative to the continued operation of City government and services, which are vital to public safety and confidence during this emergency. As such, this meeting will be conducted without a quorum of this body physically present in the same location.

Providing public access to the meeting by telephone: At this time, I also welcome members of the public accessing this meeting remotely. Even though this meeting is being conducted in a unique manner under unusual circumstances, the usual rules of conduct and decorum apply. Any person found to be disrupting this meeting will be asked to cease the disruption. Should the disruptive behavior continue thereafter, that person will be removed from this meeting. The public can call **857-444-0744** and use conference code **843095**. Some meetings will allow live public input, however you must have pre-registered online, otherwise, the meeting will be set to allow the public to "listen-in" only, and there will be no public comment taken during the meeting. (Please note: In order to notify the meeting host that you would like to speak, press 5* to be recognized and unmuted)

Public Access Troubleshooting: If any member of the public has difficulty accessing the meeting by phone, please email crystal.galloway@rochesternh.net.

Roll Call: Please note that all votes that are taken during this meeting shall be done by Roll Call vote.

Let's start the meeting by taking a Roll Call attendance. When each member states their name, also please state whether there is anyone in the room with you during this meeting, which is required under the Right-to-Know law. Additionally, Planning Board members are required to state their name each time they wish to speak.

The Planning Secretary conducted the roll call. All Planning Board members were present with the exception of Ms. Dwyer and Mr. Whitehill, who were both excused. In addition, all Planning Board members indicated that they were alone in the location from which they were connecting remotely.

III. Seating of Alternates

Mr. Giuliano voted in place of Ms. Dwyer.

IV. Communications from the Chair

There were no communications from the Chair.

V. Opening Discussion/Comments

A. Public Comment

There was no one present on the line from the public to speak nor did anyone submit any written correspondence ahead of the meeting.

B. Discussion of general planning issues

There were no issues to be discussed.

VI. Approval of minutes

A motion was made by Mr. Walker and seconded by Mr. Collopy to approve the February 1, 2021 meeting minutes. The motion carried unanimously by a roll call vote.

VII. SDJ Development of Rochester, LLC, Fillmore Boulevard/Eisenhower Drive

Mr. Giuliano recused himself from voting on this application due to a conflict of interest.

Chris Strickler of SDJ Development of Rochester, LLC explained in 2010 when they received approval for the PUD, setbacks were not imposed however, with each phase's approval those setbacks would be imposed. Mr. Strickler said in 2011 when they went back to the Board to ask what type of setbacks they would like to see, the developer received a notice of decision requiring the houses have a 7' front setback. He said there are 32 houses in phase 1A that have all been set that way. Mr. Strickler said in 2018 when they received approval for phase 1B there wasn't a requirement in the notice of decision as to how the houses were to be set. He said

the issue arose when an appraiser for 24 Eisenhower Drive raised the question of the setbacks. Mr. Strickler said they went before the Zoning Board and were granted an Equitable Waiver for one unit but said the wording regarding setbacks is not as clear as it could be, so they are back before the Board to get the issue cleared up. Mr. Strickler said they are requesting to continue setting the houses the way they have been since 2010 in order to keep a unified look to the development.

Ms. Saunders told the Board that the recorded plan for the current phase 1B shows the underlying zoning district setbacks when what should be in place are the PUD setbacks. She said because the recorded plan has the default setbacks, it is what now takes precedent.

Ms. Saunders explained the second part of this request is for an increase to the disturbed area. She said as the project has progressed and the pace at which the houses are being sold the developer has gone outside of the approved clearing area. Ms. Saunders said as staff has worked through erosion control issues with the developer, he began working with the State to update the AoT permit. Ms. Saunders said the developer needs to request approval from the Board to update the limits of disturbance, as well.

Mr. Fontneau asked for clarification regarding the color coded plan the Board received in their packets. Ms. Saunders explained the plan shows Eisenhower Drive with pink and green shaded areas. She said the newly disturbed area is the red hatched area which depicts the new increase limits of clearing. Mr. Strickler said NHDES is willing to let them add the area to the approval that was applied for in June.

Mr. Collopy asked if the surety for the development is up to date. Ms. Saunders said yes, the developer has updated all surety bonds.

A motion was made by Mr. Collopy and seconded by Mr. Walker to approve the modification to decrease the front setbacks and to increase the limits of disturbance with the conditions set forth. The motion carried unanimously by a roll call vote.

VIII. Release of surety for Trinity Conservation, LLC, Map 259 Lots 36 & 37 in the amount of \$87,379.18

Ms. Saunders explained Trinity Circle is substantially complete, the only remaining items left are one drainage pond is not at the correct elevation, the playground, and a hydrant. She said the City will retain some of the surety to cover those items. Ms. Saunders said Public Works and the Planning Department has signed off and recommend releasing the requested surety.

Mr. Sullivan said he has an issue releasing any surety because there have been issues in the past with this development. Mr. Sullivan went on to question the amounts on the construction cost estimate worksheet, saying he is reluctant to release anything until the site is 100 percent completed. Ms. Saunders explained the worksheet is completed by the developer and submitted to the City. She went on to say Staff reviews the percentages and there are numerous emails going back and forth between Staff and the developer. She said the final number was amended on the worksheet however, the rest of the percentages was not amended.

Mr. Giuliano asked if the road will be accepted by the City and if so, is the road in condition to be accepted. Ms. Saunders said Public Works has said it is.

Mr. Sylvain asked if the remaining \$44,000 would be enough for the City to complete the work correctly. Ms. Saunders told the Board she relies on Public Works for the cost of construction. She said the development is 100 percent occupied, people have been living there for many years, and almost all of the infrastructure is in. Ms. Saunders said there are a few missing items such as hoods on the catch basins, the pond is at a different elevation than it needs to be, the playground needs to be put in, and there is one path that is not finished. Mr. Sylvain said he isn't comfortable giving the developer \$87,000 back when some of the remaining work could be costly, leaving only \$44,000 for the City to complete the work.

Mr. Fontneau said he agreed with Mr. Sullivan, there have been some significant issues with surety and this project in particular.

A motion was made by Mr. Walker and seconded by Mr. Collopy to deny the release of partial surety in the amount of \$87,379.18, and request the developer come back when the project is complete. The motion carried unanimously by a roll call vote.

IX. Review of January 2021 Surety and Inspections

Ms. Saunders reviewed the list of inspection completed for the month of January and surety with the Board. She explained there are three sureties that will be expiring soon. Two are for the Village at Clark Brook which they are currently working on completing a draw down request, and the other is for Waste Management who has promised to get an extension before the bond expires on March 15th.

X. Discussion regarding amendment to Minor Site Review process

Ms. Saunders explained currently how the Site Plan Regulations are written it states any change of use must go to a Minor Site Review. She told the Board she has proposed an amendment to allow administrative approval for smaller businesses under 10,000 square feet with indoor changes only and/or accessory buildings up to 2,000 square feet. Ms. Saunders explained there would still be review from other departments and their comments would be put into the notice of decision as conditions of approval.

Mr. Fontneau expressed concern about what zones this change would affect because of home occupations. Ms. Saunders explained any Home Occupation 2 or 3 would automatically go to a Minor Site Review. Mr. Fontneau spoke about condominium conversions, saying it's only a change in ownership not a change in the site plan and that he thought that the City had no jurisdiction over approvals. He asked if the law has changed or if it's just a different interpretation. Ms. Saunders said because it is simply a change of ownership you can't hold a condo conversion to the same standards that you would hold a new site plan to. She further explained the law says they have to go through the Planning Board subdivision process even though they're not changing the site plan.

Mr. Walker explained in the past administrative decisions were abused a bit. He said the arrangement the Board had with Mr. Campbell was if the Planning Department deemed an administrative decision he would email the Board to ask for feedback to see if anyone objected.

Ms. Saunders said if the Board isn't comfortable with 10,000 square feet threshold, Staff could drop it down. She went on to say there is some language in the Special Downtown Review section she can add regarding notifying the Board.

Mr. Sullivan asked that an appeal process be added.

Ms. Saunders said she will work on a new draft for the next meeting.

XI. Discussion regarding Impact Fees

Ms. Saunders explained after speaking with the City Attorney and the Chairman there was discussion about doing partial impact fees. She said she and Mr. Sylvain discussed lowering the fees by 40 percent of the proportional share of municipality capital improvement costs. Ms. Saunders used the 9 Nature Lane waiver request as an example saying under the existing impact fee schedule he would pay \$4,507, under the

proposed fee schedule it would be \$1,803. She explained the other amendment she made was regarding manufactured homes, saying impact fees are imposed on new development and shall not include the replacement of an existing manufactured home of the same size within six months of the older home being removed. Ms. Saunders further explained if the manufactured home is larger than the one that was removed an impact fee will be imposed on the difference in square footage.

Ms. Saunders went on to say no impact fee would be imposed for the reconstruction of any structure that's been destroyed by fire, or natural disaster where there is no change in size, density or type of use.

Mr. Walker asked where the amendment is that he emailed to her and the City Manager. Ms. Saunders said they spoke with legal counsel and it is not something they can do in house so the thought process was to reduce by 40 percent it may address the concern. Mr. Walker said that wasn't acceptable, and asked who authorized the 40 percent reduction. Ms. Saunders said she brought a potential change to the Board for discussion.

Mr. Fontneau said with regard to replacement of a manufactured home it should be one year instead of six months. He then asked if his 2,000 square foot home burned down and he replaced it with a 2,500 square foot home would he be charged for the full 2,500 square feet or just 500 square feet. Ms. Saunders said the impact fee would be on the 500 square foot increase.

There was a brief discussion regarding additions being under new development in the impact fee ordinance. Ms. Saunders suggested the Board change the language to make it clear.

Mr. Sylvain asked all Board Members to review the ordinance, write down the changes they would like to see and submit them to the Planning Department so there can be another discussion at the March workshop meeting.

Mr. Fontneau asked if the five year exemption would reset for the developments if the Board were to set the impact fees to \$0 now then start up again in March. Ms. Saunders said she would check with legal counsel but she believes the answer is no because the Board isn't repealing the ordinance, they are just setting the fees to \$0.

Mr. Bruckner suggested calling it a moratorium for a fixed amount of time and would be a better way to proceed.

A motion was made by Mr. Bruckner to allow a moratorium of six months. No one seconded the motion, the motion did not proceed.

Mr. Hamann expressed his reluctance on doing anything until the Board gets an opinion from legal counsel.

Mr. Giuliano pointed out the city has about 30,000 residents now, he said you can't get to 40,000 without development and square footage which is going to have an impact.

A motion was made by Mr. Walker and seconded by Mr. Fontneau to set the impact fees to \$0. The motion carried by a 5 to 4 in favor roll call vote.

XII. Other Business

A. Update from Planning Staff

Ms. Saunders didn't have an update for the Board.

B. Other

Mr. Walker said he would like to see the current building height go from four stories to six or seven in order to attract more development in the downtown. Ms. Saunders said, if the board was in agreement, she would work on a draft amendment and bring it to the Board for review in April.

Mr. Sullivan told the Board the FY 22 Capital Improvement Budget draft book is ready and he will be sending those out to the Board this week.

XIII. Adjournment

A motion was made by Mr. Walker and seconded by Mr. Collopy to adjourn at 8:23 p.m. The motion carried unanimously by a roll call vote.

Respectfully submitted,

Crystal Galloway,
Planning Administrative Assistant II

and

Shanna B. Saunders,
Director of Planning & Development