

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

Date: February 6, 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 Lawrence	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: 6:59 pm

Other persons present during nonpublic session:

City Manager Kathryn 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 Sullivan provided an update on his lease negotiations with the Property owner. Sullivan said this particular property owner is very difficult to move on issues. Sullivan said he got him to move on the fit up allowance and the sublease. Sullivan said he could not get him to move on the option to purchase or the right of first refusal. Sullivan said despite his best efforts, these two items are totally off the table. Sullivan said the owner wants a clean cut after ten years if it simply

is not working at with the tenant, even if the tenant is a government entity. Owner said that if things are going well with the tenant, he always seeks to renew the lease. Sullivan explained the issue with the sublease is that the Owner does not want the City to sublease to any entity that would be in conflict with other lessors in his portfolio.

Sullivan said if this building was in any other location in the City, he'd be a no. However, given the location, the need for parking, and the need to protect the City's investment in the downtown, he is asking the Council to approve entering into this lease.

Callaghan asked Sullivan to discuss how this lease will protect the investment in downtown.

Sullivan then explained all of the past, current, and future projects which will be detrimentally affected by the lack of parking in this location.

Councilor Sullivan asked the useful life of a new parking lot. Sullivan said it would not be much beyond ten years. Councilor Fitzpatrick said we are victims of our own success and that we must protect that investment in the downtown; he said we have to have parking downtown. Fitzpatrick said he supports the lease even without new terms on the sublease. Councilor Walker said he agreed with Fitzpatrick and said the downtown would be in peril without this lease. Walker said he supports the lease. Walker said if we do not act, this property will sit and rot.

Councilor Fontneau said it's a bad deal and a bad investment. Fontneau said we should shop around the \$3 million instead. Fontneau said after 2 years on the Parking Committee that the City does not have a parking problems. Fontneau said if we do have a parking problem then it was caused by poor planning by the City Council.

Councilor Herman said he has a problem with the price of the lease. Herman wishes the City had the means to force the property owner to do something with the Property.

Creteau asked Scala's opinion on the parking situation in downtown. Scala said the studies say we do not have a supply issue, but we have a management issue that would require the City to

monetize its parking spaces. Scala said the City is preparing a plan to monetize the parking through a combination of permitted parking just outside of downtown and metered parking in the heart of downtown. Scala, who lives downtown, said he knows that during high volume times for downtown businesses that prime parking is occupied by residential tenants.

Karolian asked if the City would add additional parking enforcement. Scala said yes.

Councilor Sullivan said he thinks he is in support of the lease, but needs a little more nudging.

Councilor Sullivan asked if there would be any City use for the building. Director Sullivan said not right now because the City would be seeking economic, not government, activity on the property. Director Sullivan said that he believes that this property owner does not care and he will leave it empty for 20-30 more years. Director Sullivan said in his position on the Board of Rochester Downtown that the majority of the owners feel the City and the City Council are more concerned with the Ridge than downtown. Director Sullivan said parking or no parking, this is an opportunity for the City to do something with this vacant building that sits at the gateway to downtown. Director Sullivan said the questionnaire put out by the Parking Review Committee found most people are not willing to walk more 400 feet from parking to destination.

Councilor Fitzpatrick said what he's learned from parking experts is that the issue isn't whether you have ample parking, but are you perceived to have ample parking. He said the recommendation was always to overbuild by 30% so the perception is that the area has ample parking.

City Manager Ambrose said as for the use of the building, the staff would be looking to the Council to decide what the highest and best use is.

Scala said the average downtown commercial rent is between \$10-12 per square foot and this deal is \$14 per square foot. Councilor Sullivan said he does want to see a use at the building so the taxpayers don't see the City paying for an empty building. Director Sullivan said that the burden

to find a sublessee will fall on the Economic Development Department, but that is what it is there for.

Fontneau said he just can't get over the cost; its not that he doesn't support downtown. Callaghan said he felt similarly, but he has become convinced that we need this parking as a bridge to the permanent solution for parking once the downtown is fully built out. Callaghan said the optimist in him says that creating this extra parking with make our businesses stronger and will attract more excellent restaurants to our downtown.

de Geofroy said that we should look at this as a "loss leader" to get people in the door that will lead to bolstering our downtown which leads to long term results. He said that this is the #1 eyesore in downtown. He said if the City does not renew the lease in ten years and someone else comes in to lease it, that is huge win for the downtown. The City will show that it is worth investing in the downtown.

Councilor Hamann said he wants to see the language included in the lease about the owner not unreasonably withholding approval for a sublease.

Council Action: Motion to Authorize the City Manager to Enter Into the the Lease on the Terms presented Director Sullivan by Walker, Seconded by de Geofroy

Yea: Walker, Fitzpatrick, Lawrence, Sullivan, Karolian, Creteau, Turner, Richardson, de Geofroy, Hamann

Nay: Fontneau, Herman, and Callaghan

Motion to leave nonpublic session and return to public session

Made by: Walker

Seconded by: de Geofroy

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

Public session reconvened

Time: 8:34 pm

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

Indefinitely? ☒ Yes ☐ No (circle one)

If yes, motion made by: Walker

Seconded by: de Geofroy

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.

☒ 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	<input checked="" type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> Not Present
Deputy Mayor Hamann	<input checked="" type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> Not Present
Councilor Fontneau	<input checked="" type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> Not Present
Councilor Turner	<input checked="" type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> Not Present
Councilor Fitzpatrick	<input checked="" type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> Not Present
Councilor Karolian	<input checked="" type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> Not Present
Councilor Lawrence	<input checked="" type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> Not Present
Councilor Herman	<input checked="" type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> Not Present
Councilor Walker	<input checked="" type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> Not Present
Councilor Creteau	<input checked="" type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> Not Present
Councilor Sullivan	<input checked="" type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> Not Present
Councilor Richardson	<input checked="" type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> Not Present
Councilor de Geofroy	<input checked="" type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> Not Present

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

Time: 8:34 pm

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