

**Regular City Council Meeting  
February 6, 2024  
Council Chambers  
6:00 PM**

**COUNCILORS PRESENT**

Councilor Creteau  
Councilor de Geofroy  
Councilor Fitzpatrick  
Councilor Fontneau  
Councilor Herman  
Councilor Karolian  
\*Councilor Lawrence  
Councilor Richardson  
Councilor Sullivan  
Councilor Turner  
Councilor Walker  
Deputy Mayor Hamann  
Mayor Callaghan

**OTHERS PRESENT**

Katie Ambrose, City Manager  
Terence O'Rourke, City Attorney  
Attorney James Shannon

**COUNCILORS ABSENT**

**Minutes**

**1. Call to Order**

Mayor Callaghan called the meeting to order at 6:00 PM. Mayor Callaghan announced that Councilor Hamann has requested to attend the meeting remotely. Mayor Callaghan asked Councilor Hamann if it was reasonably impractical for him to attend the meeting in person. Councilor Hamann replied yes and explained that he had been ill. Councilor Hamann stated that his wife was the only other person at home but not in the same room.

**2. Opening Prayer**

Mayor Callaghan called for a moment of silence.

**3. Pledge of Allegiance**

Councilor Karolian led the City Council and all those present in the Pledge of Allegiance.

**4. Roll Call**

Kelly Walters, City Clerk, took the roll call attendance. All Councilors were present as follows: Councilors Creteau, de Geofroy, Fitzpatrick, Fontneau, Herman, Karoline, Richardson, Sullivan, Turner, Walker, Deputy City Councilor Hamann, and Mayor Callaghan. *Rachel Lawrence, newly elected Councilor, Ward 2/Seat B, was sworn in to office at 6:06 PM.*

## **5. Acceptance of Minutes**

**5.1 Reconvened Regular City Council Meeting: January 9, 2024** *consideration for approval*

**5.2 Special Meeting City Council: January 16, 2024** *consideration for approval*

**5.3 Special City Council Meeting: January 24, 2024** *consideration for approval*

Mayor Callaghan announced if there were no objections that all meeting minutes listed above could be accepted with one vote. Councilor Walker **MOVED** to **ACCEPT** the minutes listed above. Councilor de Geofroy seconded the motion. The **MOTION CARRIED** by a unanimous roll call vote of 12 to 0 as follows: Councilors Fitzpatrick, Fontneau, Herman, Sullivan, Walker, Creteau Karolian, Turner, Richardson, de Geofroy, and Mayor Callaghan voted in favor of the motion.

## **6. Communications from the City Manager**

City Manager Ambrose announced that GovTV, formerly known as the Rochester Government Channel has received a major update to its video-on-demand and live-streaming services. She said the new website is user friendly and fully compatible with most devices, laptops, mobile phones, and tablets. She said the new service is in addition to what is currently offered on-line. She said it is recommended that the new site be bookmarked, while the previous site shall be archived and available for the foreseeable future. She gave details about the ability to tune-in through other networks, such as Apple TV, Roku, and more. She said more information can be found on the City's website: rochesternh.gov.

City Manager Ambrose announced that the Rochester School Board is seeking participation in the Superintendent hiring search. She outlined the process and welcomed participation with the on-line survey,

which will remain open until February 26, 2024. She said more information could be found on the Rochester Post as well as the City's website: rochesternh.gov.

## **6.1 City Manager's Report**

### **Add report**

## **7. Communications from the Mayor**

Mayor Callaghan thanked the Recreation Department for hosting an ice-skating rink at the Rochester Common.

Mayor Callaghan acknowledged the recent success of the Economic Development Department with attracting two more businesses to Rochester.

## **8. Presentation of Petitions and Council Correspondence**

No discussion.

## **9. Nominations, Appointments, Resignations, and Elections**

### **9.1. Election: City Council Ward 2, Seat B**

#### **9.1.1. Oath of Office: City Council Ward 2, Seat B**

Mayor Callaghan nominated both Rachel Lawrence and Raymond Turner to fill the vacant City Council Seat (Ward 2, Seat B). Councilor Fontneau seconded the nominations. Mayor Callaghan asked if there were any other nominations. Seeing none, Councilor Walker **MOVED** that nominations cease. Councilor de Geofroy seconded the motion. The **MOTION CARRIED** by a roll call vote as follows: Councilors Fontneau, Richardson, Creteau, Turner, Herman, Karolian, Sullivan, de Geofroy, Fitzpatrick, Hamann, Walker, and Mayor Callaghan voted in favor of the motion.

Mayor Callaghan said the first roll call would be to elect Rachel Lawrence. He said a yes vote would indicate a vote for Ms. Lawrence and a no vote would be reserved for another candidate. Councilors Creteau, de Geofroy, Fitzpatrick, Walker, Turner, Herman, Fontneau, Hamann, and Mayor Callaghan voted in favor of the appointment of Rachel Lawrence.

Councilors Richardson, Sullivan, and Karolian voted against the candidate. Mayor Callaghan confirmed that Rachel Lawrence received more than 7 votes and a second roll call for the other candidate is not necessary. Attorney O'Rourke administered the Oath of Office for Rachel Lawrence at 6:06 PM.

Mayor Callaghan announced that Carlton Cooper had withdrawn his application for the vacant City Council Seat due to work commitments.

**9.2. Resignation: Joelle Boumel – Ward 5 Ward Clerk  
*consideration for approval***

Councilor Walker **MOVED** to **ACCEPT** with regret the resignations of Joelle Boumel, Ward Clerk, Ward 5, and Alexander de Geofroy, Selectman, Ward 5 and to thank them for their service. Councilor Fontneau seconded the motion. The **MOTION CARRIED** by a 13 to 0 roll call vote as follows: Councilors Lawrence, Creteau Fitzpatrick, Richardson, Walker, de Geofroy, Karolian, Fontneau, Sullivan, Hamann, Turner, Herman, and Mayor Callaghan voted in favor of the appointment.

**9.3. Appointment: Joelle Boumel – Ward 5 Moderator  
*consideration for approval***

Mayor Callaghan nominated Joelle Boumel to serve as Moderator of Ward 5. Councilor Fontneau seconded the nomination. Councilor Walker **MOVED** to cease nomination and that the Clerk cast one ballot for Ms. Boumel. Councilor de Geofroy seconded the motion. The **MOTION CARRIED** by a 13 to 0 roll call vote as follows: Councilors Sullivan, Lawrence, Walker, Herman, Turner, Fontneau, Fitzpatrick, Richardson, Creteau, de Geofroy, Karolian, Hamann, and Mayor Callaghan voted in favor of the appointment.

**9.4. Resignation: Alex de Geofroy – Ward 5 Selectman  
*consideration for approval***

*This resignation was accepted under 9.1 of the agenda.*

**9.5. Appointment: Alex de Geofroy – Ward 5 Ward Clerk  
*consideration for approval***

Mayor Callaghan nominated Alex de Geofroy to serve as the Ward Clerk for Ward 5. Councilor Walker **MOVED** that nominations cease and

that the Clerk cast one ballot for Mr. de Geofroy. The **MOTION CARRIED** by a 13 to 0 roll call vote as follows: Councilors Herman, Fontneau, Hamann, Turner, Walker, Creteau, Sullivan, Karolian, Lawrence, Fitzpatrick, Richardson, de Geofroy, and Mayor Callaghan voted in favor of the appointment.

**9.6. Appointment: Kendra Finch – Ward 5 Selectman  
consideration for approval**

Mayor Callaghan nominated Kendra Finch to serve as the Selectman for Ward 5. Councilor Walker **MOVED** that nominations cease and that the Clerk cast one ballot for Ms. Finch. The **MOTION CARRIED** by a 13 to 0 roll call vote as follows: Councilors Hamann, Sullivan, de Geofroy, Fontneau, Walker, Herman, Fitzpatrick, Creteau, Lawrence, Turner, Richardson, Karolian, and Mayor Callaghan voted in favor of the appointment.

**9.7. Declaration of Vacancy: Ward 6 Ward Clerk**

Attorney O'Rourke explained that the person who was elected to this position at the last election (November 7, 2023) has refused to take the Oath of Office as prescribed; therefore by Section 66 of the City Charter, the Office is to be declared vacant. Mayor Callaghan asked which part of the Oath this person is refusing to sign. Attorney O'Rourke replied to the section that states "agreeable to the City Charter and the General Ordinances of the City of Rochester". Councilor Sullivan asked if this individual has been given an opportunity to sign the correct version of the Oath of Office. Attorney O'Rourke explained that the individual has been given many opportunities by the Clerk's Office to sign the correct Oath of Office.

Mayor Callaghan gave human (the individual who had been elected to the Ward Clerk position but refused to sign the Oath of Office as prescribed) an opportunity to address the City Council.

human spoke at length about the reasons ~~why he felt~~ **for his assertion** that there is no seat to be declared vacant and that he signed an adequate Oath of Office as prescribed by State law.

Councilor de Geofroy asked human if there were any of his Quaker beliefs precluding him from taking that section of the Oath of Office (City

Charter & General Ordinances). human replied that signing an Oath of Office not prescribed in the Constitution would be illegal. Councilor de Geofroy asked what Quaker beliefs required him to remove words from the Oath of Office. human explained that the Oath of Office that is prescribed in the Constitution does not include verbiage about the City's Charter nor the General Ordinances. Councilor Sullivan asked for clarification about the RSAs; are the RSAs giving guidance to the language permitted in an Oath of Office or is it meant to be a minimum standard for the language for an Oath of Office. human said the RSAs do allow Cities to require and administer an Oath of Office; however, there is nothing in the City Charter that indicates a variation of an Oath of Office differing from the RSA.

Mayor Callaghan asked about the opinion offered to human by Orville "Bud" Fitch, Legal Advisor to the Secretary of State's Office, dated January 16, 2024. human, did not acknowledge receipt of the letter; however, he stated that he delivered a letter to the Secretary of State this past Tuesday.

Kelly Walters, read the email she received (CC'd from the SOS Department) addressed to human dated January 16, 2024, which outlined that it is reasonable that a person seeking an elected position would adhere to the local rules/regulations City Charter/General Ordinances. human agreed with the statement made by the Secretary of State's representative **in part**. ~~, to the extent that the City Charter requires specific language (City Charter/General Ordinances).~~ He clarified that he is not saying that he does not want to follow the City Charter; however, the City Charter itself does not stipulate that **specific** language is to be added to the City of Rochester's Oath of Office.

Councilor Walker **MOVED** to declare the Ward Clerk Position (Ward 6) vacant. Councilor de Geofroy seconded the motion. The **MOTION CARRIED** by a 10 to 3 roll call vote. Councilors Walker, Fontneau, de Geofroy, Turner, Karolian, Fitzpatrick, Hamann, Sullivan, Creteau, and Mayor Callaghan voted yes. Councilors Herman, Lawrence, and Richardson voted no.

## **10. Reports of Committees**

### **10.1. Appointments Review Committee**

**10.1.1. New Appointment: John Gisis – Historic District Commission Seat A, Regular Member Term to expire 1/2/2026 consideration for approval**

Councilor Walker stated the Committee recommends that John Gisis be appointed to the Historic District Commission. Mayor Callaghan **MOVED** that John Gisis be appointed to serve as a Regular Member to the Historic District Commission with a term to expire on 1/2/2026. Councilor Fontneau seconded the motion. The **MOTION CARRIED** by a 13 to 0 roll call vote as follows: Councilor Fontneau seconded the motion. Councilors Fitzpatrick, Turner, Hamann, Richarson, Sullivan, Fontneau, Karolian, Creteau, Herman, de Geofroy, Walker, Lawrence, and Mayor Callaghan voted in favor of the appointment.

**10.1.2. New Appointment: Candy Bailey – Historic District Commission, Seat H, Alternate Member Term to expire 1/2/2025 consideration for approval**

Councilor Walker stated the Committee recommends that Candy Bailey be appointed to the Historic District Commission as an Alternate Member. Mayor Callaghan **MOVED** that Candy Bailey be appointed to serve as an Alternate Member to the Historic District Commission with a term to expire on 1/2/2025. Councilor Fontneau seconded the motion. The **MOTION CARRIED** by a 13 to 0 roll call vote as follows: Councilors Turner, Richardson, Karolian, Fitzpatrick, Sullivan, Hamann, Lawrence, Herman, de Geofroy, Creteau, Fontneau, Walker, and Mayor Callaghan voted in favor of the motion.

**10.1.3. New Appointment: Brett Veno – Historic District Commission Seat I, Alternate Member Term to expire 1/2/2026 consideration for approval**

Councilor Walker stated the Committee recommends that Brett Veno be appointed to the Historic District Commission as an Alternate Member. Mayor Callaghan **MOVED** that Brett Veno be appointed to serve as an Alternate Member to the Historic District Commission with a term to expire on 1/2/2026. Councilor Fontneau seconded the motion. The **MOTION CARRIED** by a 13 to 0 roll call vote as follows: Councilors Karolian, Hamann, Turner, Fontneau, Sullivan, Lawrence, de Geofroy, Walker, Herman, Creteau, Fitzpatrick, Richardson, and Mayor Callaghan voted in favor of the motion.

**10.1.4. New Appointment: Douglas Lachance – Planning Board, Seat K, Alternate Member Term to expire**

**1/2/2025 *consideration for approval***

Councilor Walker stated that the Committee recommends that Douglas Lachance be appointed as an Alternate Member to the Planning Board. Mayor Callaghan stated that he would not bring this nomination forward at this time. He said this would allow the Appointments Review Committee time to review other candidates/applications.

**10.1.5. Reappointment: Kathleen Noble – Library Trustees, Ward 4 Term to expire 1/2/2027  
*consideration for approval***

Councilor Walker stated the Committee recommends that Kathleen Noble be reappointed to serve as the Library Trustees, Ward 4. Mayor Callaghan **MOVED** that Kathleen Noble be reappointed to serve as the Library Trustee for Ward 4 with a term to expire on 1/2/2027. Councilor Fontneau seconded the motion. The **MOTION CARRIED** by a 13 to 0 roll call vote as follows: Councilors Fitzpatrick, Fontneau, Herman, Hamann, Sullivan, Walker, Creteau, Karolian, Turner, Richardson, de Geofroy, Lawrence, and Mayor Callaghan voted in favor of the appointment.

**10.1.6. Reappointment: Peg Higgins – Library Trustees, Ward 1 Term to expire 1/2/2027  
*consideration for approval***

Councilor Walker stated the Committee recommends that Peg Higgins be reappointed to serve as the Library Trustees, Ward 1. Mayor Callaghan **MOVED** that Peg Higgins be reappointed to serve as the Library Trustee for Ward 1 with a term to expire on 1/2/2027. The **MOTION CARRIED** by a 13 to 0 roll call vote as follow: Councilor Fontneau seconded the motion. Councilors Fontneau, Richardson, Creteau, Turner, Herman, Karolian, Sullivan, de Geofroy, Fitzpatrick, Hamann, Lawrence, Walker, and Mayor Callaghan.

**10.1.7. Reappointment: Lance Powers – Zoning Board of Adjustments Seat A, Regular Member Term to expire 1/2/2027  
*consideration for approval***

Councilor Walker stated the Committee recommends that Lance Powers be reappointed to serve as a Regular Member of the Zoning Board of Adjustment. Mayor Callaghan **MOVED** that Lance Power be



reappointed to serve as the Zoning Board of Adjustment with a term to expire on 1/2/2027. Councilor Fontneau seconded the motion. The **MOTION CARRIED** by a 13 to 0 roll call vote as follows: Mayor Fontneau. Councilors Richardson, Lawrence, Creteau, de Geofroy, Sullivan, Fitzpatrick, Walker, Turner, Herman, Karolian, Fontneau, Hamann, and Mayor Callaghan.

**10.1.8. Reappointment: Peter Bruckner – Planning Board, Seat E, Regular Member Term to expire 1/2/2027 consideration for approval**

Councilor Walker stated the Committee recommends that Peter Bruckner be reappointed to serve as a Regular Member of the Planning Board. Mayor Callaghan **MOVED** that Peter Bruckner be reappointed to serve as a Regular Member of the Planning Board, with a term to expire on 1/2/2027. Councilor Fontneau seconded the motion. The **MOTION CARRIED** by a 13 to 0 roll call vote as follows: Councilors Lawrence, Creteau Fitzpatrick, Richardson, Walker, de Geofroy, Karolian, Fontneau, Sullivan, Hamann, Turner, Herman, and Mayor Callaghan voted in favor of the appointment.

**10.1.9. Appointment: Rick Healey – Planning Board, Elevation from Alternate to Regular, Seat A, Term to Expire 1/2/2027 consideration for approval**

Councilor Walker stated the Committee recommends that Rick Healey be elevated from an Alternate Member of the Planning Board to a Regular Member of the Planning Board. Mayor Callaghan **MOVED** that Rick Healey be elevated from an Alternate Member of the Planning Board to a Regular Member of the Planning Board with a term to expire on 1/2/2027. Councilor Fontneau seconded the motion. The **MOTION CARRIED** by a 13 to 0 roll call vote as follows: Councilors Sullivan, Lawrence, Walker, Herman, Turner, Fontneau, Fitzpatrick, Richardson, Creteau, de Geofroy, Karolian, Hamann, and Mayor Callaghan.

Councilor Walker stated that the next Appointments Review Committee is scheduled for February 27, 2024, at 6:00 PM. He invited the newly elected Councilor, Councilor Lawrence, to participate in the meeting. Mayor Callaghan announced that Councilor Lawrence is duly appointed to serve on the Finance Committee, Community Development Committee, and the Appointments Review Committee.

**10.2. Codes & Ordinances Committee – No January meeting**

No discussion.

### **10.3. Community Development Committee**

Councilor Creteau said the Committee is starting to discuss the CDBG Grant applications. He said the Committee recommendations are forthcoming.

### **10.4. Finance Committee**

Mayor Callaghan said a discussion was held at the last Finance Committee about the Waste Management Reserve Fund Draft.

### **10.5. Planning Board**

No discussion.

### **10.6. Public Safety**

Mayor Callaghan gave an update about traffic issues on Chestnut Hill Road and recommended keeping the matter in Committee at this time.

### **10.7. Public Works**

Councilor Hamann stated that there were no action items. He said Director Nourse gave an overview of the City's Municipal Separate Storm Sewer System Permit (MS4). Councilor Hamann directed the City Council to seek additional information, which could be found in the City Council packet materials.

Councilor Hamann said the Committee agreed to change the scheduled meeting time.

## **11. Unfinished Business**

There was no unfinished business on the agenda.

## **12. Consent Calendar**

There were no consent calendar items on the agenda.

## **13. New Business**

**13.1. Resolution Granting Community Revitalization Tax Relief to the Property Located at 135 North Main Street Under the Provisions of RSA 79-E in Connection with a Proposed Rehabilitation Project *first reading and refer to public hearing February 20, 2024***

Mayor Callaghan read the resolution for a first time and referred the matter to a Public Hearing to be held February 20, 2024 as follows:

**Resolution Granting Community Revitalization Tax Relief to the Property Located at 135 North Main Street Under the Provisions of RSA 79-E in Connection with a Proposed Rehabilitation Project**

**Be it Resolved by the Mayor and City Council of the City of Rochester, as follows:**

**Whereas**, in an effort to stimulate local economic development and enhance City downtowns and Town centers, the New Hampshire Legislature has enacted RSA Chapter 79-E, entitled "Community Revitalization Tax Relief Incentive"; and

**Whereas**, the City of Rochester adopted the provisions of such Community Revitalization Tax Relief Incentive Program pursuant to RSA Chapter 79-E by Resolution of the City Council on October 7, 2008; and

**Whereas**, Andy Yau, owner of the so-called 135 North Main Street in downtown Rochester, is desirous of making use of the benefits of RSA Chapter 79-E and it has, therefore, proposed a substantial rehabilitation project with respect to the structure located upon the so-called 135 North Main Street; and

**Whereas**, RSA Chapter 79-E requires that the governing body of the City of Rochester make certain findings and determinations with regard to a proposed substantial rehabilitation project in order for the structure to qualify for the RSA Chapter 79-E Community Revitalization Tax Relief Incentive;

**Now, Therefore**, the Mayor and City Council of the City of Rochester, by adoption of this resolution, hereby make the following findings and determinations with respect to the proposed substantial rehabilitation proposal for the so-called 135 North Main Street property contemplated

by the owner's Community Revitalization Tax Relief Application dated January 5, 2024, to wit:

(1) Any tax relief under the provisions of RSA Chapter 79-E or this resolution that is to be accorded with respect to the so-called 135 North Main Street property project shall be accorded only after the property owner grants to the City a covenant pursuant to the provisions of RSA 79-E:8 ensuring that the structure shall be maintained and used in a manner that furthers the public benefits for which the tax relief was granted and in accordance with the requirements of RSA 79-E:8; and

(2) The Mayor and City Council find public benefits under RSA 79-E:7 in the proposed revitalization project proposed with respect to the so-called 135 North Main Street property project; and

(3) The proposed substantial rehabilitation project with respect to the aforesaid 135 North Main Street provides the following public benefits to downtown Rochester:

I. It enhances the economic vitality of the downtown;

II. It enhances and improves a structure that is culturally and historically important on a local level, within the context of the City's Historic District and the City center in which the building is located;

III. It promotes development of downtown Rochester, providing for efficiency, safety, and a greater sense of community, consistent with RSA 9-B;

(4) The specific public benefit is preserved through a covenant under RSA 79-E:8 if the project is implemented consistent with (a) the aforementioned application; (b) the terms of this resolution; and (c) any other applicable requirements of Chapter 79-E; and

(5) The Mayor and City Council find that the proposed use is consistent with the City's Master Plan and development regulations.

**Furthermore**, as a result of making such determinations and findings, and subject to the owner's compliance therewith, and with the provisions of RSA Chapter 79-E, the Mayor and City Council hereby grant the requested tax relief for a period of seven (7) years beginning with the completion of the substantial rehabilitation of the structure upon the so-called 135 North Main Street property.

**13.2. Resolution for Supplemental Appropriation of \$182,496.00 FY24 General Fund CIP Fund for Pavement Program *first reading and consideration for adoption***

Mayor Callaghan read the resolution by title only as follows:

**Resolution for Supplemental Appropriation of \$182,496.00 to FY24 General Fund CIP Fund For Pavement Program**

**BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ROCHESTER, AS FOLLOWS:**

That the Mayor and City Council of the City of Rochester hereby appropriate One Hundred Eighty Two Thousand Four Hundred Ninety Six Dollars (\$182,496.00) to the General Fund CIP for the purpose of paying costs associated with the Pavement Program. The entirety of this supplemental appropriation shall be derived from the State Highway Block Aid Grant previously received by the City.

To the extent not otherwise provided for in this Resolution, the Finance Director is hereby authorized to establish and/or designate such multi-year, non-lapsing accounts and or account numbers as are necessary to implement the transactions contemplated in this Resolution.

Councilor Walker **MOVED** to **ADOPT** the resolution. Councilor de Geofroy seconded the motion. The **MOTION CARRIED** by a roll call vote as follows: Councilors Herman, Fontneau, Hamann, Turner, Walker, Creteau, Sullivan, Karolian, Lawrence, Fitzpatrick, Richardson, de Geofroy, and Mayor Callaghan voted of the motion.

**13.3. Update on Community Development Block Grant COVID-19 (CDBG-CV) Funded Gafney Home Project *first reading and refer to public hearing on February 20, 2024***

Mayor Callaghan announced that the Update on Community Development Block Grant COVID-19 (CDBG-CV) Funded Gafney Home is referred to a Public Hearing on February 20, 2024.

**13.4. Resolution for Council Authorization to Expend \$5,000 from the Opioid Settlement Funds on the Jesse Lewis**

**Choose Love Movement *first reading and consideration for adoption***

Mayor Callaghan read the resolution for a first time by title only as follows:

**Resolution for Council Authorization to Expend \$5,000 from the Opioid Settlement Funds on the Jesse Lewis Choose Love Movement**

**BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ROCHESTER, AS FOLLOWS:**

That the Mayor and City Council of the City of Rochester hereby authorize that Five Thousand Dollars (\$5,000.00) from the Opioid Settlement Fund be expended on a speaking engagement provided by the Jesse Lewis Choose Love Movement. The entirety of this expenditure shall be derived from the Opioid Settlement funds previously received by the City.

To the extent not otherwise provided for in this Resolution, the Finance Director is hereby authorized to establish and/or designate such multi-year, non-lapsing accounts and or account numbers as are necessary to implement the transactions contemplated in this Resolution.

Councilor Walker **MOVED** to **ADOPT** the resolution. Councilor de Geofroy seconded the motion. The **MOTION CARRIED** by a 13 to 0 roll call vote as follows: Councilors Hamann, Sullivan, de Geofroy, Fontneau, Walker, Herman, Fitzpatrick, Creteau, Lawrence, Turner, Richardson, Karolian, and Mayor Callaghan voted in favor of the motion.

**13.5. Consideration of Application - 60 Shaw Drive *Motion to approve or deny***

Attorney O'Rourke stated that the City of Rochester Zoning Ordinances Section 275.26.6 governs what is permissible on a Class VI Road. He gave a brief overview of the uses permitted on such roads.

Attorney O'Rourke recommended that the first part of the petition (Addendum A), the construction of a single-family home be approved; however, he gave details of why the other two parts of the petition should be denied: the construction of a contractor's storage yard and to install

accessory commercial solar panels of up to 100 MW AC upon the newly subdivided lot.

Councilor Sullivan asked if the applicant could upgrade the roadway to Class V status and who is responsible for the classification status. City Attorney O'Rourke replied that this is a City road classification, which the applicant could not upgrade themselves.

Councilor Fontneau stated that the roadway, beyond the Class V portion, has been in very poor condition based upon his last visit. City Attorney said the Solar Project, which had been previously approved, included a commitment to upgrading the roadway. He said there could be some delays due to State permits pending, but he is not sure. Councilor Fontneau asked if the roadway is accessible for emergency equipment/vehicles. Attorney O'Rourke said both the Fire Department and Police Department were satisfied with the condition of the road in terms to responding to emergency situations.

Councilor Walker asked if this request is part of the initial solar project that has already been approved. Attorney O'Rourke said that is a separate project that was previously approved. He clarified that the proposed subdivision is acceptable; however, it would create a second lot to be developed, which is what is in question now in terms of what can be developed on a Class VI roadway.

Councilor Walker asked if the Planning Department approves the application for the subdivision on a buildable lot for a Class VI roadway. Attorney O'Rourke explained that the Planning Department instructed the applicant to seek a waiver for the Class VI Road prior to seeking approval from the Planning Board. He said it is understood that the application, if approved by the City Council, is the first part of the approval process. Councilor Fontneau believed the Planning Board would not be involved in the approval process unless the subdivision approved by the City Council included an approval for the commercial aspect of the petition.

Councilor Walker said there is a significant wetlands issue on the lot and that there might not be enough buildable land on the lot to build a single-family home.

Councilor Sullivan wished to clarify if this project would be in addition to the other solar lot recently approved. Attorney O'Rourke said that it is correct, this is a separate proposal.

Mayor Callaghan gave a brief history of the previously approved project for a Solar Panel Project on the Class VI roadway, which had been approved by the City Council; however, at that time, there had not been any discussions about a sub-division or other projects forthcoming.

Councilor Sullivan wished to confirm that approval/denial of this petition would not impact the existing Solar Panel Project on the other side of the lot. Mayor Callaghan said that is correct.

Councilor Walker asked if the sub-division/single-family home had been approved by the Planning Board. Attorney O'Rourke did not recall that it had been approved yet; however, there would be enough footage to meet the required standards on the new lot. City Council briefly discussed the approval process.

Councilor de Geofroy said to install accessory commercial solar of up to 100 MW AC upon the newly subdivided lot as indicated in the proposal would be calculated at 4,000 times the capacity limit.

James Shannon, Attorney and President/Owner of Bayonne Construction Co., Inc., and Co-Owner Investor in GNM Solar 17, LLC, addressed the City Council.

Mr. Shannon apologized for a typographical error in the petition that incorrectly lists a reference to 100 MW (megawatts), which should be corrected to 100 KW (kilowatts). He said the proposed project includes 100 KW, which still exceeds what is permitted under "Solar, Accessory Residential"; however, 100 KW is exactly the amount, which is acceptable under "Solar, Accessory Commercial".

Mr. Shannon agreed with the City Attorney that this is the first step in the approval process, and he realizes that he may need to seek approval from the Planning Board and possibly the Zoning Board of Adjustment, if necessary.



Mr. Shannon stated that there is a large investment on this land, which is close to \$4,000,000 worth of solar equipment, and it has become vitally important to protect that equipment. He said protecting the equipment is one of the reasons for the request to build a single-family home on this lot. He explained that it would be necessary to have a tractor-lift to service the tractor equipment. Lastly, it will be necessary to keep the lot plowed; which are all reasons why a contractor yard is being requested as part of this proposal.

Mr. Shannon reported that the portion of the roadway after the pavement ends has greatly improved and includes a turn-a-round suitable for emergency vehicles.

Mr. Shannon said he is hoping to generate more electricity than what is permitted under "Solar, Accessory Residential" (25 KW) to grow the business and to provide solar energy for the proposed single-family home on the new lot. He understands that requesting an excess of 25 KW exceeds what is permissible through "Solar, Accessory Residential", and that additional approval by the Planning Board or maybe the Zoning Board of Adjustment may be needed.

Mr. Shannon acknowledged that there have not been many waivers granted for commercial business on Class VI roads in Rochester; however, there have been a few, including the initial Solar Panel Project that was approved by the City Council within the last year. He believed that the initial commercial waiver for the Class VI roadway is covered already with this existing approved Solar Panel Project: GNM Solar 17, LLC,; however, he is presenting this petition to the City Council at this time to make certain the proposed project is covered by the prior approval. He believed a precedent has been set and stated that this proposed project is not as large as the initial project. Mr. Shannon said this is the first step of the approval process for the subdivision.

Mayor Callaghan asked questions about the right-of-way on the proposed new lot and if there were three acres of land excluding the easement. Mr. Shannon said there is a powerline easement on the proposed lot. He said the map shown to City Council is in draft form; however, the final drawing could be adjusted to show exactly how the setbacks could be met while avoiding the wetlands. Mr. Shannon briefly

explained the process of testing for wetlands, making a plan to meet the land-use size requirements, and determining the area for the potential septic system.

Mayor Callaghan asked why the request for a single-family home had not been included with the initial proposal to the City. Mr. Shannon explained reasons why living near the business area would add extra protection for the investment, which was not realized during the original project.

Councilor Walker asked about the requirement for acreage in terms of the powerline easement. He asked if the easement would be excluded from the overall calculation. City Manager Ambrose did not believe the easement would be a factor in terms of meeting the requirement of the lot size (three acre minimum). She said the ordinance does not specify the lot size (buildable or not) just the minimum acre requirement. She said the Planning Department has reviewed the proposal and agrees that a single-family home is permissible on that road. She said an accessory dwelling unit would be permitted as well. She stated that a contractor storage yard is not permitted on a Class VI roadway; however, it is allowed in the Agriculture Zone with an approved waiver. She reminded the City Council that the project proposal exceeds what is permitted under "Solar, Accessory Residential" (25 KW). Lastly, she said, the Planning Department is aware of the significant wetlands and buffer on that proposed lot. She confirmed that obtaining a waiver for the Class VI road is the first step in the process.

Mr. Shannon addressed Councilor Walker's concerns about the amount of wetlands on the proposed lot. He explained that an expert in the field has already flagged the unbuildable areas of the lot and it was concluded that there is plenty of potential buildable areas on the lot, while avoiding the wetlands.

Councilor Walker asked if the City Attorney's recommendation has changed at all. Attorney O'Rourke replied no. He said the first part of the petition, to construct a single-family home, should be approved; however, he gave details of why the other two parts of the petition should be denied: the construction of a contractor's storage yard and to install

accessory commercial solar of up to 100 KW AC upon the newly subdivided lot.

Mr. Shannon responded that the 100 KW AC is acceptable under "Solar, Accessory Commercial", which was approved for the first lot. He believed if the contractor storage yard were to be approved than it would fall under the commercial usage, which is set at 100 KW.

Councilor Sullivan asked if the Solar Panels would be roof-mounted or free-standing panels similar to the previous project. Mr. Shannon replied that it would be the same type of solar panels as the previous project.

Councilor Sullivan asked if the contractor yard and additional panels could be permitted on the existing lot. Mr. Shannon said without the subdivision, he believed the land use would support that development; however, he would need to be certain prior to pursuing the approval process because all the same issues would arise being on a Class VI road. The other part of the land has more wetland issues, which is why the proposal is to subdivide the land first.

Councilor Fontneau said the construction-based storage yard could produce a considerable amount of use on a Class VI roadway. He said if a single-family home and a two-car garage were approved, it could easily fit a plow-truck and/or lift station if needed. Councilor Fontneau stated that this applicant has a specific use for the proposed contractor's storage yard; however, if approved, a subsequent owner may have a more intense use than what is being proposed this evening.

Councilor Walker **MOVED** that the City Council **APPROVE** the City Attorney's recommendation as follows:

- To Approve the first part of the petition, to construct a single-family home.
- To Deny the other two parts of the petition: The contractor's storage yard and to install accessory commercial solar of up to 100 KW AC upon the newly subdivided lot.

The **MOTION CARRIED** to approve the petition as outlined above, by a 13 to 0 roll call vote. Councilors Turner, Richardson, Karolian, Fitzpatrick, Sullivan, Hamann, Lawrence, Herman, de Geofroy, Creteau, Fontneau, Walker, and Mayor Callaghan

#### **14. Non-Meeting/Non-Public Session**

##### **14.1. Non-Public Session, RSA 91-A:3,II(d) Land**

Councilor Walker **MOVED** to enter into Non-Public Session, RSA 91-A:3,II(d) Land at 8:35 PM. Councilor de Geofroy seconded the motion. The **MOTION CARRIED** by a 13 to 0 roll call vote as follows: Councilors Karolian, Hamann, Turner, Fontneau, Sullivan, Lawrence, de Geofroy, Walker, Herman, Creteau, Fitzpatrick, Richardson, and Mayor Callaghan voted in favor of the motion.

Councilor Walker **MOVED** to exit the Non-Public meeting at 8:35 PM and to seal the minutes because disclosure would render the proposed action ineffective. Councilors Fitzpatrick, Fontneau, Herman, Hamann, Sullivan, Walker, Creteau, Karolian, Turner, Richardson de Geofroy, Lawrence, and Mayor Callaghan voted in favor of the motion.

#### **15. Adjournment**

Mayor Callaghan **ADJOURNED** the City Council Regular meeting at 8:36 PM. The **MOTION CARRIED** by a 13 to 0 roll call vote as follows: Councilors Fontneau, Richardson, Creteau, Turner, Herman, Karolian, Sullivan, de Geofroy, Fitzpatrick, Hamann, Lawrence, Walker, and Mayor Callaghan voted in favor of the motion.

Respectfully Submitted,

Kelly Walters, CMC  
City Clerk