

City of Rochester Planning Board

Monday April 19, 2021

Virtual Meeting

(These minutes were approved on May 3, 2021)

Members Present

Nel Sylvain, *Chair*
Mark Collopy, *Vice Chair*
Peter Bruckner
Terry Dwyer – left at 8:30pm
Tim Fontneau
Robert May
Daniel Rines
Mark Sullivan
David Walker

Members Absent

Lance Whitehill, excused

Alternate Members Present

Paul Giuliano
Donald Hamann

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 Mr. Whitehill who was 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

No alternates were needed.

IV. Communications from the Chair

Mr. Sylvain thanked City Staff and Board members for attending the site visit to Highfield Commons on Thursday April 15th.

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 April 5, 2021 meeting minutes. The motion carried unanimously by a roll call vote.

VII. Consent Agenda

A. Golden Oaks Development, LLC, Freedom Drive

Ms. Saunders explained the applicant is seeking a six month extension to October 20, 2021 for an approved 17-lot subdivision. She added, this will be the third extension.

A motion was made by Mr. Walker and seconded by Mr. Collopy to approve the extension request to October 20, 2021. The motion carried unanimously by a roll call vote.

VIII. Recommendation to City Council to approve Chapter 218 for Stormwater Management and Erosion Control

Public Works Director Peter Nourse explained the changes are required to be implemented the revised EPA 2020 MS4 General Stormwater Permit for which 46 New Hampshire Municipalities are subject. He said as a provision, the City is required to adopt the revisions no later than June of this year. Mr. Nourse said the current ordinance is a product of the 2003 MS4 permit which expired in 2008.

Renee Boudeau of Geosyntec Consultants explained the Stormwater Management and Erosion Control Chapter. She said the permittee shall develop or modify, as appropriate, an ordinance or other regulatory mechanism to be at least as stringent as Section 4 Element C (New Development) and Element D (Redevelopment) of the Southeast Watershed Alliance's Model Stormwater Standards for Coastal Watershed Communities.

Ms. Boudeau explained the changes will require having more robust descriptions of the site conditions, procedures, and measures utilized. As-built plans will be required for all projects that require a SMECP. The inspection and maintenance agreement needs a detailed plan for post-construction maintenance. The applicant will be responsible for the cost of a 3rd party PE or professional consultant used by the Public Works in review of the SMECP. Waivers can be granted if they won't interfere with the spirit and intent of these regulations.

Ms. Boudeau explained the outcome of updating the chapter, saying it will improve water quality of the environment, it will help the City meet the Great Bay Total Nitrogen General Permit obligations, 42 other regulated NH communities will have the same regulations, and it will ensure that pollution reduction controls are being implemented are maintained.

Ms. Saunders told the Board staff has gone through the changes with Public Works and support the changes.

Mr. May asked about off-site mitigation and who says if it's appropriate or not. Ms. Boudeau explained if the applicant can't supply the mitigation on-site they would need to go before the Planning Board to demonstrate why they can't provide the treatment on-site.

Mr. Giuliano asked what noncompliance would look like. Ms. Saunders explained this will be an additional ordinance for site plan review so noncompliance would be with the site plan approval and would be enforced the same way as it is today.

A motion was made by Mr. Walker and seconded by Mr. Collopy to send a recommendation to the City Council to approve Chapter 218 for Stormwater Management and Erosion Control. The motion carried unanimously by a roll call vote.

IX. Discussion on surety for Chesley Farm Estates

Ms. Saunders explained the City has been approached regarding the unfinished nature of the development. She said staff has been in discussion with the developer for several years on his timeframe to finish the work but said the developer is not in a position to finish the development at this time. Ms. Saunders said the City is looking at the option of taking the surety funds to finish the development to the point that it will be accepted as a city road.

Mr. Walker asked if \$95,000 will cover what needs to be done. Mr. Nourse said he recommends taking the entire \$95,000 but the estimate he received from SUR six months ago was \$88,000. He said \$95,000 won't produce what the City should have gotten but the developer isn't capable of completing the work.

Mr. Walker said he is concerned with taking \$95,000 to complete the work but that it won't be enough to be accepted as a city street.

Mr. Sylvain asked what would not be complete with the \$95,000. Mr. Nourse explained it will fix the drainage to where it should have been, the curbing will be saw cut as smooth as possible, but the only thing it will do pavement wise is a mill and fill and some underground drainage. He said there will not be a new black road on Browning, Whitman, and Shakespeare. Mr. Nourse continued saying they do not have testing data for the roadway so they do not know what is underneath it.

Mr. Sylvain asked if inspections were conducted during construction. Mr. Nourse explained there were issues with inspections during the time of construction which the Board was aware of. He further explained there are a couple residents that have been vocal in expressing concerns about the road not being accepted and not receiving services.

Mr. Fontneau said all the lots in the development have been sold and questioned where all the money went. Mr. Nourse said the developer told him they couldn't get the resources together to complete the work.

Mr. Hamann asked if a lien could be put on the remaining lots. Ms. Saunders said she will ask the City Attorney.

Ms. Dwyer said she is concerned because the developer sold all the lots, he should not be allowed not to finish it to the extent in which it would have been accepted by the City if he had gone forward with the money he gained from the sale of the lots. She said she doesn't feel the City should just do what they feel they need to do, just to make it passable to go forward.

Mr. Sullivan said the Board released surety many times to the developer over the years. He said he's a strong believer in not releasing any surety until the project is complete.

A motion was made by Mr. Walker and seconded by Mr. Collopy to continue the discussion to the May 17, 2021 workshop meeting to allow Public Works time to get a full quote to finish the project. The motion carried unanimously by a roll call vote.

X. Granite Ridge Development District – Residential Zoning change discussion

Director of Economic Development Michael Scala explained the discussion started in 2017 to amend the Granite Ridge Development zone to allow forms of residential housing. He said back then the trends in the marketplace were already trending downward for office space which was part of the original plan for that zone and the demand for residential housing was increasing.

Mr. Scala said over the last four years we have increased the need for housing and we are now in a housing crisis. He said the governor has asked that cities and towns look at what can be done.

Mr. Scala explained the Granite Ridge Development zone has three to four large parcels that could be developed with a combination of commercial and residential units. He said he is looking for comments from the Board so he can develop a proposal.

Mr. Walker said any residential development cannot have access to The Ridge development as far as the stores and Route 11. He said if phase II of the Ridge is proposing residential units they must be on a loop road and enter and exit from the proposed lighted intersection at Nashoba Drive. Mr. Walker went on to say he is concerned about safety with regards to pedestrian traffic on Route 11.

Mr. Sylvain asked if a lighted intersection at Granite Ford has been approved. Mr. Scala said Crane Drive and Nashoba Drive have both been approved for traffic lights and are part of the overall plan for Route 11.

Mr. Scala told the Board that Public Works switched one of their projects to incorporate sidewalks on Route 11 up to Northgate Apartments and the proposed loop road would have a sidewalk also.

Mr. Collopy said in the town he works in a self-contained community called Point Place. He said he thinks it would be a great fit but agrees with Mr. Sylvain and Mr. Walker that it's all in the design. Mr. Collopy said if the City is promoting walking and biking there needs to be trails.

Mr. Fontneau said he supports the idea but it has to be done right.

Mr. Giuliano said he feels that mixed use developments are highly desirable and it's tremendous that Rochester has the opportunity.

Mr. Sullivan asked if they could get statistics on telecommuting. He said he's heard there's a movement of people wanting two and three bedroom units so they can have an office space. Mr. Scala said he has a national survey that shows 30 percent of people by 2025 will be fully remote working.

Mr. Bruckner said before approving a zoning change he would like to see a design plan in order to see how it would work.

Ms. Saunders said if the Board wants to move forward they should do so in a methodical and well thought out way with transparency. She said this is the only zone that does not allow residential so the reasons behind that should also be thought about, why is this the only zone that is solely commercial. We should also think about where else may be commercial use if we are taking commercial land and converting it to residential use. It makes sense to look at design, we are not interested in big box residential that depreciates as soon as its built. We should be looking for a design that keeps its value, true mixed-use. This should be part of a larger discussion about other zones could support expansion of residential.

XI. Request for the Board to reconsider release of surety for Trinity Conservation, LLC Map 259 Lots 36 & 37 in the amount of \$85,711.90

Ms. Saunders explained the applicant asked the Board to reconsider the denial of the release of surety.

Mr. Sylvain asked if Public Works reviewed the plans. Mr. Nourse said he isn't familiar with the project, it was the previous Assistant City Engineer who was involved.

Scott Lawler of Norway Plains Associates said he wasn't the original designer of the project but Norway Plains was. He said the pond in question was a method of getting fill material from the site to help build up the lots around Trinity Circle. He said the design intent was to remove the soil and use it for lot development in hopes it would get excavated deep enough to be in into the ground water and would fill up over time. Its function was not primarily stormwater.

Mr. Sullivan said the City has already had history with this development, the Board shouldn't release anything until the work is complete.

Mr. Sylvain asked if the City would have enough left to finish the project. Ms. Saunders said it would be enough today, but that's not taking into account escalation factors.

No action was needed, as the City did not want to change its decision from last month in not returning the escrow.

Mr. Sylvain called a recess at 8:41pm

Mr. Sylvain called the meeting back to order at 8:47pm

XI. Compliance Hearing

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

Mr. Giuliano recused himself from the discussion.

Ms. Saunders explained the items the Board saw during the site visit. She said what Staff is asking for is no more CO's to be issued; all the stormwater ponds and infrastructure including along the access road, and on Hussey Hill Rd. be completed; as-built plans must be received no later than June 15th; all street signs, stop bars, and street lights be installed by May 15th; all fill piles be moved at least 100 feet away from any lot at which a CO is being requested; any piles need to be properly stabilized and have adjacent temporary stormwater infrastructure that the engineer feels is appropriate to protect the natural resources onto private property; and that the fill piles be no higher than the allowed building height in that zone, which is 35 feet. She said they are still asking that the City obtain, at the developer's expense a third party inspector to inspect the site and report weekly to Public Works and put together a monthly report for the Planning Board.

Mr. Sullivan asked if the pile of rocks located behind 107 and 111 Fillmore Boulevard part of the action items. Assistant City Engineer Tim Goldthwaite said he doesn't see an issue with the stability of the rocks behind the homes.

Mr. Strickler said waiting until June 15th for a CO would be catastrophic to them. He said plans are being designed for phase III and if all goes well the stockpiles should be moved this fall into phase III.

Mr. Collopy said he agrees with the recommendations. He said as a Planning Board member he expects the inspectors to do a thorough job and communicate with the developer to make sure they are aware of the conditions.

Mr. Strickler said they are willing to have third party oversight but would like to know what the parameters will be. He said he's been working with the City since 2010 on this project, they're not going anywhere, and they've never stopped. Mr. Strickler said they have a nice development running and they're being painted in a bad light.

Mr. Strickler said they started phase IIB in 2018 at the wrong time of year and have suffered for it since. He said they've been stopped twice, once from May until August and again last summer which is prime building season for reasons he believes were unwarranted.

Mr. Sylvain explained there are reasons behind the shut downs, because things were not being done correctly.

Mr. May said it bothers him that there are people buying houses with the expectation they'll be able to occupy the house in a reasonable timeframe and then find out they can't. He said there needs to be a warning label, buying a house does not guarantee you will get a Certificate of Occupancy.

Mr. May said for a nonprofessional to look at the site it does not look right, it does not look the way you expect a construction site of active home building and occupancy to look. He said it looks substandard.

A motion was made by Mr. Collopy and seconded by Mr. May after review of the site plans the March 30th letter from the City to SDJ Development of Rochester, LLC and the information presented at the site walk on April 15, 2021 I move that the developer complete the following:

- 1) No more CO's will be issued until the following are complete:
 - a. All Stormwater Ponds, forebay's spillways, swales, CB's and piping including the infrastructure along the Access Road and on Hussey Hill be completed, per approved plan set, and asbuilts submitted no later than June 15th.

- b. All street signs (to City Specifications), stop sign on the correct side of the street, stop bars, street lights be installed
- c. All fill piles to be moved at least 100 feet away from any lot in which a CO is to be requested. Piles must be properly stabilized and have adjacent temporary stormwater infrastructure – as the Engineer feels is appropriate to protect the natural resources and private property. Piles shall be no higher than the allowed building height in the zone -35 feet.
- d. City shall obtain at the Developer's expense a Third Party inspector to inspect the site both for compliance to the approved plan and erosion and sediment control. This inspector shall report at least weekly to DPW and at least monthly to the Planning Board.

The motion carried unanimously by a roll call vote.

XII. Review of March 2021 surety and inspections

Due to the late hour the Chair said the Board will review this item at the next scheduled meeting.

XIII. Review of fiscal year 2022 CIP

Due to the late hour the Chair said the Board will review this item at the next scheduled meeting.

XIV. Discussion on Impact Fees

Ms. Saunders explained the Board met the City's Legal Counsel who went over what Bruce Mayberry had presented to the Board. Mr. O'Rourke explained the Board would need a reason to treat single family homes on a single differently.

Ms. Saunders said there was discussion on increase in square footage and determined it would not be assessed an impact fee because it was not creating a living unit. She said there were questions about what the fees are being used for now and how it's used to pay down CIP items.

Mr. Walker said he thinks 80 percent of impact fees are being assessed to single lots and it's not having the intended use this Board was lead to believe it was going to. He said at this time he's in favor of discontinuing impact fees.

Mr. Fontneau said he agrees with Mr. Walker. He said the Board just heard a plea from Economic Development to expand residential development. Mr. Fontneau said all you hear about is the housing crisis in New Hampshire and the Governor has established a task force to look at this issue.

Mr. Bruckner said this is a good time to eliminate impact fees. He said the City should concentrate building up its tax base which will take care a lot of the fees that are needed.

Mr. Rines asked if the funds that have been collected be returned. Mr. Walker said they would be returned.

A motion was made by Mr. Walker and seconded by Mr. Collopy to recommend the City Council repeal Impact Fee Ordinance. Until such time the Impact Fee assessment shall remain at \$0. The motion carried by a 7-1 roll call vote. Mr. Collopy opposed.

XV. Other Business

A. Update from Planning Staff

Ms. Saunders didn't have any updates for the Board

B. Other

Mr. Walker asked that a discussion on building heights be placed on an upcoming agenda.

XVI. Adjournment

A motion was made by Mr. Walker and seconded by Mr. Collopy to adjourn at 9:43 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