

City of Rochester Planning Board
Monday February 27, 2023
City Hall Council Chambers
31 Wakefield Street, Rochester, NH 03867
(These minutes were approved on March 20, 2023)

Members Present

Mark Collopy, *Chair*
Peter Bruckner
Keith Fitts
Matthew Richardson
Dave Walker
Michael McQuade
Don Hamann
James Hayden
Mark Sullivan

Members Absent

Robert May, *Vice Chair, excused*

Alternate Members Present

Michael McQuade
Rick Healey
Alexander de Geofroy

Staff: Shanna B. Saunders, *Director of Planning & Development*
Ryan O'Connor, *Senior Planner*

(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.)

I. Call to Order

Chair, Mark Collopy called the meeting to order at 6:30 p.m.

II. Roll Call

Senior Planner, Ryan O'Connor conducted roll call.

III. Seating of Alternates

Mr. Collopy asked Mr. McQuade to vote in place of Mr. May.

IV. Communications from the Chair

Mr. Collopy stated that there are no communications to be passed from the chair.

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- V. Approval of minutes for**
- a. January 30, 2023 – Workshop**
 - b. January 31, 2023 – Retreat**
 - c. February 6, 2023 – Regular Meeting**

A motion was made by Mr. Walker to approve all three minutes listed above and seconded by Mr. Richardson. The motion carried unanimously.

VI. Opening Discussion/Comments (up to 30 minutes)

A. Public comment

There were no comments from the public to discuss.

B. Discussion of general planning issues

There were no general planning issues to discuss.

VII. Continued Applications

- A. Green & Company, Old Gonic Road Townhomes, 19 Old Gonic Road** (by Jones & Beach) Site Plan to construct 170 townhomes Case# 131 – 10 – R2 – 21 **Public Hearing *ACCEPTANCE/FINAL DECISION****. The applicant has requested to be continued to March 6, 2023.

Ms. Saunders stated that this application is ready and has requested a motion to continue to the next Planning Board meeting dated for March 6, 2023.

A motion was made by Mr. Walker and seconded by Mr. Hamann to continue this application to the March 6, 2023 Planning Board Meeting. The motion carried unanimously.

VIII. Draft Charitable Gaming Ordinance Presentation

Ms. Saunders presented overview of the Charitable Gaming Ordinance and requested input from the board members regarding the requirements. Ms. Saunders stated that this is being presented due to the changes in State Statutes and allowance of permits within Rochester. Ms. Saunders explained the definition of charitable gaming facility is an organization conducting games of chance. Ms. Saunders stated that Sports Betting is being required to be permitted only when co-located with Charitable Gaming Facility. Ms. Saunders stated that we are proposing that these be permitted within the Highway Commercial zoning district and allowed by conditional use in the Granite Ridge zone. Additional requirements include that if facility is requested for development that the minimum

square footage is 20,000. Ms. Saunders also proposed an easement to the city of the property to display a form of public art and have this area maintained visually. High architectural standards shall include at least 3 colors be incorporated into design and building to be visually aesthetic.

Ms. Saunders mentioned that there will be an increase of people travelling to these facilities and that safe bus loading areas should be required. Additional primary uses such as restaurants and meeting spaces will be looked at separately. Due to the possibility of outdoor entertainment, requirement criteria have been included for noise and decibel rating for closer proximities to residential areas. Ms. Saunders stated that outdoor smoking facilities are to be kept a distance from schools and areas where students are largely present. Safety and security plans must be created by charitable gaming facility in the event of an emergency, including space for Police and Fire Department within facility and access to emergency equipment such as AEDs. Ms. Saunders stated that a high standard must be kept with landscape maintenance around the facility.

Mr. Walker asked what zone these facilities would be in. Ms. Saunders stated Highway Commercial zone and Granite Ridge zone. Mr. Walker stated that he was concerned with the idea of Public Art and didn't feel that it should be listed as a requirement. Mr. Walker asked if the proposed requirements are listed for newly built facilities or facilities that are renovated. Ms. Saunders stated that the requirements are meant for either form of development. Ms. Saunders stated that the hope for these types of facilities would be for community benefit and that they would provide the city an ability to incorporate public art onto 25% of the facility's exterior. Mr. Walker stated that he did not agree with the public art requirement.

Mr. Hayden asked if the facility would have a say in what type of art was shown on the building. Ms. Saunders explained that the requirement as currently written includes that the facility provide 25% of the front building façade would be an easement to the city for the Arts and Culture Commission to decide what art to install. Mr. Hayden asked if facilities that are renovated must remove pavement if they do not have the 15-foot landscape buffer. Ms. Saunders stated that the intent is to require the facility to update to the current standards, which could include the removal of pavement for landscaping. Mr. Hayden stated that he felt there could be a negative domino effect if pavement is removed which could include parking, which could inhibit the number of parking spaces available, then creating more issues for these developers and the public. Ms. Saunders stated that the goal of these requirements is to have a facility that nice looking facility and place when the exterior included aesthetically pleasing features.

Mr. Collopy stated that the requirements state that the developer may request to have the easement waived if they provide the public art to their facility. Mr. Collopy stated his support of the public art on the facility for the benefit of the community and that he feels that the developer should be creative or have conditions in the art shown. Mr. Hamann stated that the facility must follow the current law that is in place for public art and that he feels that it should be a requirement of the development to provide the art and have it approved. Ms. Saunders stated that because of Supreme Court ruling that the content provided by the facility cannot be regulated.

Mr. Richardson asked if the sole purpose of this requirement is for the city to control content. Ms. Saunders stated that the city cannot control content and that the main reason is for the long-term maintenance of the art currently and throughout the future. Mr. Richardson asked about what if the facility does not like the public art provided by the city. Mr. Richardson stated that he felt that a mutual agreement should try to be reached based on the art provided and that the developer should have a say in the art that is put on their building.

Mr. Bruckner stated that he thinks that there should be an ongoing design procedure with regards to the public art. Ms. Saunders stated that the art would follow the existing Mural Ordinance.

Mr. de Geofroy asked that if the facility is granted a waiver and allowed to provide their own art, how do we separate the belief that we may be regulating content if their art plan is denied. Mr. de Geofroy also asked for elaboration on co-locating sports betting within the facility. Ms. Saunders stated sports betting was a different allowed use under state statute for the facility and that we wanted to tie sports betting with the charitable gaming so that it has to follow the same design requirements as Charitable Gaming Facilities. Mr. de Geofroy asked for the rationale behind co-locating Sports Betting and Charitable Gaming Facilities. Ms. Saunders stated that in research that sports betting has often been found with charitable gaming.

Mr. Sullivan stated that he felt that the plan for public art should be the responsibility of the owner because the city will be held financially responsible for the maintenance and repair of the art, and it would require a large amount of additional funds to properly maintain art throughout these facilities. Mr. Sullivan also commented the sports book is required to be put on the ballot and voted in by the citizens to get a sports book license and this had previously failed when brought to the ballot. He also stated that in order to have sports betting within a facility that it would need to be brought back to the ballot and voted upon.

Mr. McQuade asked if the police department had a chance to weigh in on the proposed Charitable Gaming Ordinance. Ms. Saunders said that they have.

Mr. Hayden asked if the 20,000 sqft requirement was only for gambling use or for the building as a whole. Ms. Saunders stated that the square footage requirement was only for the gaming use.

Mr. Walker asked if the previous proposal for the Charitable gaming facility in Kmart was permanent or temporary, Ms. Saunders stated that the proposal was meant to be permanent with the intention to grow. Mr. Walker stated again that he disagreed with the idea of forcing a facility to agree to an easement or provide public art on the building's frontage. Mr. Walker also asked if these requirements also pertain for developers that are leasing building space and stated that he feels that holding these requirements to those leasing would be burdensome for the developer. Ms. Saunders stated that the requirements are not meant to be a financial hinderance, but that these requirements are meant to bring aesthetically pleasing views to the community.

Mr. Fitts stated that he was surprised to see some of these listed requirements and asked if electronic vehicle (EV) chargers could be added. Ms. Saunders stated that she would propose that all new commercial developers of a specific size have at least one EV charger. Mr. Sullivan asked if there was a universal EV charger. Mr. Fitts and Mr. Bruckner stated that there were two different types, Tesla and then all others, but that Tesla vehicles can be charged with the current overall charger. Mr. de Geofroy stated that he was in support of having EV chargers listed as a requirement in new commercial developments. Mr. Fitts recommended that the number of EV chargers should be based on a percentage of current parking availability within the lot.

IX. Draft Solar Ordinance Presentation

Ryan O'Connor gave overview of the solar ordinance. Mr. O'Connor proposed 3 options on how the city can approach ground mounted solar in Residential Districts. First option is a minimum lot size requirement of 20,000 SqFt for ground mounted solar. Mr. O'Connor showed GIS image of Residential R1 and R2 lots that would meet the 20,000-sqft minimum for ground mounted solar. The second option, a tripling of the current front setback of 10 feet to 30 feet. Mr. O'Connor showed an image of what an example of the increase would look like for current residential homes. The third

option is to not restrict ground mounted solar in residential zone, which are the current listed requirements for ground mounted solar.

Mr. de Geofroy stated that he was in favor of the 20,000 SqFt lot size requirement for ground mounted solar.

Mr. Healey asked where the 20,000SqFt number was pulled from. Mr. O'Connor stated that the 20,000sqft was the size that showed to have the increase buffers showing that the ground mounted solar system could be placed and not have an overall effect on the community. Mr. Healey stated that the option containing the 30-foot setback would be complicated because most home are built within 25 feet of the road. Ms. Saunders stated that the requirement would be exclusive to ground mounted trackers and not houses and roof mounted. Mr. Walker stated that the setback was meant to keep the trackers out of residential front yards.

Mr. Hamann stated that he was also in support of the 20,000 SqFt lot size requirement.

Mr. Healey asked if there was a specific brand of tracker or if there were different types. Mr. O'Connor answered that this requirement would be for any ground mounted solar system. Mr. Healey asked about the difference in sizes for trackers and that if there was a size requirement listed for the ground mounted tracker itself.

Mr. Bruckner asked if there was a formula or maximum size of a ray that is allowed. Mr. O'Connor stated that he was not sure of a maximum size but the tracker at the Staples property is 48 panels and that would be significant to a single-family home. Mr. O'Connor also stated that the height of the system would also have to fall within zoning limits.

Mr. Hayden stated that that a 25-kilowatt system is about 1600 – 1700 SqFt.

Mr. McQuade stated that he has seen no issues throughout the city and that he feels that the third option is best and that there should continue to be no restrictions with ground mounted solar.

Mr. Sullivan asked where in the ordinance the city deals with commercial sites. Mr. Sullivan also stated that the Federal Government is offering large tax breaks to commercial facilities that use solar power. Mr. O'Connor pointed out in the ordinance where commercial was covered and stated that the solar system could be an accessory to the commercial use or a secondary principle use of the property. Mr. Sullivan suggesting that there be an inclusion of limitations on solar systems so that commercial companies cannot install an excessive number of systems in order to sell power because it is not a principle use in those commercial facilities. Ms. Saunders stated that the accessory to the commercial use is limited to 100- Kilowatts for a facility. Ms. Saunders stated that if a facility goes over that amount, then the solar system is to be set as a secondary principle of use. Mr. Sullivan suggested that an attorney review the Solar Ordinance.

Mr. Fitts stated that he has concerns regarding the decommissioning of solar systems through the future. Mr. O'Connor stated that the application requires that the applicant submit information on the system they plan to use with the application.

Mr. de Geofroy stated that he does not feel there need to be additional restrictions with ground mounted solar systems.

Mr. Collopy stated that the term "front yard" could mean different spaces for many homes in Rochester and that he supports the option of the 20,000 SqFt lot size requirement.

Mr. Hayden asked how long there have been no regulations for ground mounted solar. Ms. Saunders stated that there has never been a regulation.

Mr. Hamann stated that he has seen that ground mounted systems are significantly more expensive than roof mounted.

Mr. Sullivan motioned to incorporate the 20,000 SqFt requirement for ground mounted solar systems into the draft ordinance; seconded by Mr. Fitts.

Mr. McQuade stated that there should be a motion for if the board wants to make any changes the solar ordinance at all, first. *Mr. Sullivan and Mr. Fitts retracted their motion.*

Mr. Sullivan suggested that the board waits for legal counsel regarding the solar ordinance before presenting any plans to the Council.

Planning Board held consensus vote to decide if they felt there should be any regulation at all of residential ground mount systems. A hand vote was conducted showing 6 members in favor of regulation, 5 against. Board will move forward with regulation options.

Planning Board held consensus vote regarding how to regulate. All in favor of 20,000 SqFt lot size minimum requirement, with exception of Mr. Walker.

Mr. Walker motioned to have 20-foot setback added to 20,000sqft lot size minimum requirement. Motion was not seconded.

Ms. Saunders stated that the plan has been sent for a quote for third-party legal counsel, which will be reviewed and decided whether to proceed with this second review of this draft ordinance.

X. Review Capital Improvements Plan, Fiscal Year 2024

Ms. Saunders provided overview of the Capital Improvements Plan. Ms. Saunders stated that this plan consists of requests by department heads for all items not currently listed in operating budget. Ms. Saunders stated that Statute 674.5 lists the responsibility of the Planning Board in reviewing the Capital Improvements Plan in relation to the Master Plan. This year will be on an abbreviated basis, but next year the idea is to form a Capital Improvements Committee. Ms. Saunders stated the 9 criteria listed in the write-up including City Master Plan, item addresses a public health or safety issue, improves efficiency of existing services, addresses a current deficiency, preserves or builds on a previous capital investment or current projects, reduces future operating costs, supports efforts to promote economic vitality, responds to a state or federal requirement, and is eligible for outside funding. Membership of committee would require 3 members of the Planning Board, 3 members of the City Council, and 2 members at large appointed by the City Manager. Members would independently score each item in plan. Ms. Saunders explained that scored projects could then be brought the City Manager and City Council for decision. CIP Projects are defined as \$10,000 or greater and are at least a 10-year lifespan. Ms. Saunders stated that this plan review would back up budget review timelines and Capital Improvements Plan to October.

Mr. de Geofroy asked if all items are scored and weighted the same amount. Ms. Saunders stated that they are all weighted and scored the same. Mr. de Geofroy stated that he felt some items may have higher priority and therefore carry more weight than other items. Mr. de Geofroy mentioned

that items should include an assessment of the Return on Investment (ROI) moving forward in the future.

Mr. Walker asked who came up with scoring effort. Ms. Saunders stated that multiple departments joined on discussion of score basis. Mr. Walker stated that he felt the City Council will ultimately decide and scoring could be considered a waste of time.

Mr. Fitts asked about the mention of Dover reports. Ms. Saunders stated that the bullet point was left over from the draft document where the drafters were discussing which path to take; the Dover or Portsmouth layout. Mr. Fitts asked about other cities that are participating in programs like this, and Ms. Saunders answered that multiple cities have a program in place.

Mr. Hayden asked if the members would volunteer or be assigned. Ms. Saunders stated that members would hopefully be interest-based volunteers. Mr. Hayden stated that he recommended a diverse committee of different departments and viewpoints.

Mr. Healey stated that the process is not new, and he felt that, in the past, the recommendations for items listed in the Capital Improvements were passed.

Mr. Hayden asked why process was going to begin next year. Ms. Saunders stated that the wait is due to timing and the budget process has already begun.

Mr. Sullivan asked if this would include the school department. Ms. Saunders stated that it does not include the school department at this time.

Mr. de Geofroy asked if the 2 members at large appointed by the City Manager within the City Manager's purview, or should this appointment be approved by the mayor and the City Council. Ms. Saunders stated that it would be researched over who responsibility the appointment would fall under.

Ms. Saunders explained the Review Sheets within the CIP book presented. Ms. Saunders stated that multiple criteria including project priority and need, building or previous projects, expected useful life, general description, justification, relationship with other projects, implications of deferring. Ms. Saunders stated that this topic will be discussed further in the next work meeting.

XI. Review of Inspections and Surety for January 2023

Ms. Saunders provided review of Inspections and Surety. Ms. Saunders said that the Planning Board can expect to see changes in inspection tracking sheets. Ms. Saunders stated that Ekinbor is still in discussion about draw down. Lydall is stalled due to about 20 outstanding permits before the building department. Lydall will be reached out to for current status updates.

Mr. Walker stated that Lucas Lane and Clark Brook are about to expire.

XII. Release of Surety

A. The Village at Clark Brook, Constitution Way. Release of remaining surety balance of \$27,430.45 for the 24-lot subdivision located on map 256 lot 61- 0 thru 24.

Mr. Walker asked if the request included the interest or if the interest would be additional. Ms. Saunders stated that if there is interest, that it would be released as well.

Mr. Walker motioned to release the remaining surety in the amount of \$27,430.45, seconded by Mr. Hamann. Motion carried unanimously.

B. Key Collision of Rochester. Surety release (100%) in the amount of \$65,025.07 for the addition to the 8,000 SqFt building addition and parking lot expansion located on map 221 lots 158 & 159.

Mr. Walker motioned to release the remaining surety in the amount of \$65,025.07, seconded by Mr. Hamann. Motion carried unanimously.

XIII. Other Business

A. Planning Update

Ms. Saunders asked if Planning Board members needed packet copies again in their packet next month regarding 19 Old Gonic Rd or if members would be able to keep current information. Members stated that they would keep them for next Planning Board meeting on March 6, 2023.

Ms. Saunders stated that last Thursday's Parking Review Group Parking Poster session was cancelled due to snow and next date available is Wednesday, March 22, 2023, meeting has been rescheduled to that date.

Mr. Fitts states that he is unable to attend and requires Planning Board member to fill in.

Ms. Saunders stated that Planning Department has new Administrative Assistant in front office, Jaclyn Millard.

Mr. Bruckner brought up the fact that all plans were still available through links on Agenda.

B. Other

There was no other business to discuss.

XIV. Adjournment

A motion was made by Mr. Walker and seconded by Mr. Bruckner to adjourn the meeting at 8:08pm. The motion carried unanimously.

Respectfully submitted,

Jaclyn Millard,
Administrative Assistant II

and

Shanna B. Saunders,
Director of Planning & Development