

**Official Minutes
City of Niagara Falls Planning Board
September 22nd, 2021**

A regular meeting of the City of Niagara Falls Planning Board was held Wednesday, September 22nd 2021 at 6:00 PM in Council Chambers, City Hall, 745 Main Street, Niagara Falls, New York.

CALL TO ORDER & ROLL CALL

BOARD MEMBERS PRESENT:

Chairperson Tony Palmer
Joseph Giaquinto
Joseph Sarkees
Charles MacDougall
Robert W. Burns
Timothy Polka
Joyce M. Williams
Shurron Cowart
Michael Murphy

Staff Present:

Eric Cooper, Director of Planning
Sarina Deacon, Planning Clerk
Grace Celik, Planner II

Board Members Excused:

Attendees:

Tony Kurdziel
Carroll Reetz
Alex Beletsky via Phone
Councilman Spanbauer
Andre Reetz
Kathleen Dubois
Amy Baker
Rod Davis
Marc Gildner
Azi Muzammil
Donta L Myles
Andrea P
Brian Porter
James Abbondanza
Cherrish Breals
Dr. Khurshid Guru
Bob Pascal

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA — FOR THIS MEETING

CHAIRMAN PALMER asked for a motion to add Discussion of Zoning Ordinance 1302.4 under New Business. A motion to approve the Agenda, with that addition, was made by MR. MURPHY and seconded by MS. COWART

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Motion: UNANIMOUSLY APPROVED.

APPROVAL OF MINUTES:

1. Meeting held September 8th, 2021

MS. WILLIAMS wanted corrections in the minutes to be made as she was incorrectly quoted as MS. COWART.

MS. WILLIAMS, was made MR. GIAQUINTO and seconded by MR. BURNS.

Motion: UNANIMOUSLY APPROVED

PUBLIC PARTICIPATION (All Non-Agenda Topics):

KATHY DUBOIS spoke of her concerns about how the city has not helped local residents who own rental properties. Another resident named DONTE MYLES spoke about his concerns of the city not assisting the homeless with proper housing needs and the quality of life issue in the city.

PUBLIC HEARING:

ACTION ITEMS:

1. Recommendation to City Council: Disposal of City Owned Property at 455 4th Street (SBL: 159.29-2-26) to Power City Hospitality

ROD DAVIS, the Managing Member of Power City Hospitality, explained the company's proposal for the property, a 10 bedroom and 5-bathroom house, which would become a short-term rental. MR. MURPHY asked how many properties Power City Hospitality owned. MR. DAVIS confirmed that Power City Hospitality owned 36 properties. MR. MURPHY asked how many were short-term rentals and how many were long-term rentals. MR. DAVIS confirmed that 1 was a short-term rental and the rest were long-term rentals. MR. MURPHY asked where the properties were located. MR. DAVIS confirmed that three properties, including the one at 455 4th Street, were all within the City Council's proposed short-term rental zone. MR. DAVIS confirmed that the property had been vacant for quite some time. MR. DAVIS confirmed that the currently assessment for the property was \$11,500.00. There was a discussion about the parking space availability but MR. DAVIS said that the area in the back of the property would have at least four parking spaces.

Motion to recommend approval of the disposal of subject property to the applicant made by MR. MURPHY and seconded by MR. BURNS.

POLLED VOTE:

MR. BURNS	Yes
MR. GIAQUINTO	Yes
MR. MACDOUGALL	Yes
MR. MURPHY	Yes
MR. POLKA	Yes
MR. SARKEES	Yes

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MS. COWART	Yes
MS. WILLIAMS	Yes
CHAIRMAN PALMER	Yes

2. Recommendation to City Council: Disposal of City Owned Property at 600 Niagara Street (SBL: 159.30-1-40) and 602 Niagara Street (SBL: 159.30-1-39) to TM Montante

TONY KURDZIEL stepped forward as the Leasing Sales Manager for TM Montante Development. He stated the vision for the property and the vacant lot was to create a retail or restaurant space to contribute to the revitalization of Niagara Street. MR. KURDZIEL confirmed that the building was not under the Historic Preservation. He reiterated that that property could be transformed quickly into a retail or restaurant space to generate more foot traffic.

Motion to recommend approval of the disposal of subject property to the applicant made by MR. MACDOUGALL and seconded by MR. POLKA

POLLED VOTE:

MR. BURNS	Yes
MR. GIAQUINTO	Yes
MR. MACDOUGALL	Yes
MR. MURPHY	Yes
MR. POLKA	Yes
MR. SARKEES	Yes
MS. COWART	Yes
MS. WILLIAMS	Yes
CHAIRMAN PALMER	Yes

3. Recommendation to City Council: Disposal of City Owned Properties below to Niagara Hospitality

- 466 4th Street
- 511 4th Street
- 519 4th Street
- 535 4th Street
- 422 6th Street
- 441 6th Street
- 456 4th Street
- 460 4th Street
- 474 6th Street
- 447 9th Street

BRIAN PORTER came forward as a representative of Niagara Hospitality on behalf of ALEX BELETSKY. He was able to call MR. BELETSKY who explained that his company already owned a number of properties and were looking to renovate them and offer them as long-term and short-term rentals. MR. MURPHY asked how many properties did Niagara Hospitality owned. MR. BELETSKY confirmed that Niagara Hospitality owned 63 properties as well as the Power City

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Building on Old Falls Street. MR. MURPHY asked how many properties were short-term rentals and how many were long-term rentals. MR. BELETSKY confirmed that 18 fully renovated properties were short-term rentals and confirmed that 20 properties were long-term rentals. He confirmed that the remainders of the properties were at various stages of redevelopment. MR. MURPHY asked how many properties were in the City Council's proposed short-term rental zone. MR. BELETSKY confirmed that all of the short-term rental properties were in the City Council's proposed short-term rental zone. MR. COOPER said that out of the ten properties that Niagara Hospitality was looking to acquire, two of them were vacant lots. MR. BELETSKY confirmed that the two vacant lots would be used as green spaces. MR. BELETSKY said that Niagara Hospitality had a proposal to discuss with The City of Niagara Falls to create some long-term development by building houses. He reiterated that it was an ongoing discussion with the city. He confirmed that the parking for all the properties would be off street parking.

Motion to recommend approval of the disposal of subject property to the applicant made by MR. SARKEES and seconded by MR. MACDOUGALL.

POLLED VOTE:

MR. BURNS	Yes
MR. GIAQUINTO	Yes
MR. MACDOUGALL	Yes
MR. MURPHY	Yes
MR. POLKA	Yes
MR. SARKEES	Yes
MS. COWART	Yes
MS. WILLIAMS	Yes
CHAIRMAN PALMER	Yes

4. Recommendation to City Council: Disposal of City Owned Property at 541 4th Street (SBL: 159.21-2-42) to LSNY Holdings

Dr. Khurshid Guru stepped forward as a representative of LSNY Holdings. He explained that the property would be turned into lodging for tourists who come to Niagara Falls not only to visit but also to seek out medical consultations with local specialists.

Motion to recommend approval of the disposal of subject property to the applicant made by MS. WILLIAMS and seconded by MR. MURPHY.

POLLED VOTE:

MR. BURNS	Yes
MR. GIAQUINTO	Yes
MR. MACDOUGALL	Yes
MR. MURPHY	Yes
MR. POLKA	Yes
MR. SARKEES	Yes

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MS. COWART	Yes
MS. WILLIAMS	Yes
CHAIRMAN PALMER	Yes

5. Recommendation to City Council: Disposal of City Owned properties below to Niagara Hospitality

- 417 Elmwood Avenue
- 446 Elmwood Avenue
- 606 Elmwood Avenue
- 628 Elmwood Avenue
- 640 Elmwood Avenue

There was a discussion between the Planning Board, Councilman Spanbauer and the audience about the recommendations to dispose of city owned properties to businesses that want to create short-term rentals. KATHY DUBOIS lamented about the amount of rules and regulations she had to follow to open her rental property. Councilman Spanbauer said he did not see the RFP's until Monday, September 20th when MR. COOPER sent them out. A resident named Mr. Spouse stated that the information about the properties was not available to the public. Mr. Spouse asked if the Planning Board was doing any research into the companies that were looking to purchase properties. MR. MURPHY reminded Mr. Spouse that the Planning Board did not approve the sale of the properties and that it was up to the members of City Council. KATHY DUBOIS complained that local people are not allowed to create proposals to purchase properties and that was why the locals were so upset.

MR. MURPHY asked if Corporation Counsel was asked to come to the meeting. MR. COOPER said they were but could not make it due to a schedule conflict. MR. MURPHY made an official motion to request outside legal counsel regarding the City Council Resolution 2021-29 to amend Zoning Ordinance Chapter 1302.4 by stating the following...

"It is my recommendation to this board that we seek outside legal counsel. It does come at the city's expense. I personally have repeatedly asked Corporation Counsel to come; they have repeatedly not answered or not shown up so like I said we all need to really look and see where we are. Some very specific things needed to happen with what happened when we remove that item from the agenda and we will get into that. But because we as a board cannot depend on our own city's legal counsel to give us direction, we absolutely need to look at outside counsel that will be paid for by the city."

MR. COOPER confirmed that some of the properties had been vacant for more than ten years. MR. MURPHY said he could point out four local investors in the audience that did not get a fair chance at purchasing the detailed properties because of the moratorium. MR. MURPHY stated that the City Council undermined the Planning Board when City Council changed the voting for very specific reasons and very rare occasions, where City Council changed the requirement for City Council to override from a unanimous vote to a majority vote. MR. MURPHY reiterated that the Planning Board does not approve final sales of properties and that it falls on City Council.

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Motion to recommend approval of the disposal of subject property to the applicant made by MR. POLKA and seconded by MR. MACDOUGALL.

POLLED VOTE:

MR. BURNS	Yes
MR. GIAQUINTO	Yes
MR. MACDOUGALL	Yes
MR. MURPHY	Yes
MR. POLKA	Yes
MR. SARKEES	Yes
MS. COWART	Yes
MS. WILLIAMS	Yes
CHAIRMAN PALMER	Yes

OLD BUSINESS:

NEW BUSINESS: Discussion of Zoning Ordinance 1302.4

CHAIRMAN PALMER asked if anyone had seen City Council's resolution. He read the following...

"Relative to the amendment of the City of Niagara Falls Zoning Ordinance Chapter 1302.4.2D. Whereas the City Council has recently proposed an amendment to Chapter 13042.4.2 (D) of the City's Zoning Ordinance and whereas the proposed amendment was dually submitted to the Niagara Falls Planning Board for its review and recommendation. Whereas at its meeting held July 14th, The City Planning Board made no recommendation relative to the proposed amendment and removed the same from the agenda and whereas the Planning Board declined to make a report to The City Council of its recommendation in sixty days pursuant to Chapter 1302.4.2D, its recommendation shall be deemed to be approved by The Planning Board so now therefore be it reside that The City Council and The City of Niagara Falls does hereby amend Chapter 1302.4.2D of The City of Niagara Falls Zoning Ordinance as reads.....

WHEREAS, the City Council has recently proposed an amendment to Chapter 1302.4.2 (D) of the City Zoning Ordinance; and

WHEREAS, the proposed amendment was duly submitted to the Niagara Falls Planning Board for its review and recommendation

WHEARES, at its meeting held on July 14th 2021, the City Planning Board made no recommendation relative to the proposed amendment and removed the same from its agenda; and

WHEARES, as the Planning Board declined to make a report to the City Council of its recommendation within sixty (60) days, pursuant to Chapter 1302 its recommendation shall be deemed to be an approval by the Planning Board; and

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Niagara Falls, New York does hereby amend Chapter 1302.4.2 (D) of the City of Niagara Falls Zoning Ordinance to read as follows:

D. Affect of Planning Board Recommendation.

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No amendment of this Zoning Ordinance that has not been approved by the Planning Board shall be adopted except by (unanimous vote of the City Council) three-fourths majority approval of the City Council as constituted by the City Charter; that being four (4) votes..."

CHAIRMAN PALMER confirmed that a letter was drafted as per the Planning Board's request on July 14th. CHAIRMAN PALMER then displayed a letter he wrote that was cce'd to The Planning Board members, Mayor Restaino, Eric Cooper and Chris Mazur. CHAIRMAN PALMER confirmed that a copy of the memo had not gone to the other members of the Planning Board until September 1st even though he had signed the memo on August 6th. The letter stated...

"At the July 14th 2021 meeting of the Planning Board, the agenda contained an item to set a public hearing at the direction of City Council Resolution 2021-29. The Planning Board subsequently voted to remove the item from the agenda because the Planning Board deemed it incomplete.

The following are a specific list of deficiencies:

- 1. Part One of a completed Full Environmental Assessment Form shall be included (City of Niagara Falls Zoning Ordinance 1302.4.2.A.1.i.).*
- 2. Establishment of the lead agency for this action.*
- 3. Referral to the Niagara County Planning Board for recommendation (NYS GML 239-M)*
- 4. A letter of intent and reason for the change including how the proposal meets the objectives of the comprehensive plan (City of Niagara Falls Zoning Ordinance 1302.4.2.A.1.f.).*

Therefore, it is the respectful recommendation of the Niagara Falls Planning Board that a public hearing on the proposed amendment to Chapter 1302.4 not be held at this time without these materials."

CHAIRMAN PALMER asked MR. COOPER if he had sent the letter. MR. COOPER confirmed he had sent the letter to Chris Mazur. CHAIRMAN PALMER asked MR. COOPER if Corporation Counsel had told him to not send the memo to the other Planning Board Members. MR. COOPER stated that he did not recall. CHAIRMAN PALMER stated that he called and demanded that the letter be sent to the other Planning Board Members. CHAIRMAN PALMER stated that City Council's resolution was in default. MR. MURPHY stated that in a conversation he had with Councilman Kenny Thompkins that it was the City Council's position that they never received the recommendation.

MR. COOPER stated that Corporation Counsel said that the action taken at the Planning Board meeting on July 14th was incorrect and not within the appropriate rules of the procedure. MR. MURPHY asked MR. COOPER if Councilman Soda had given a recap of the July 14th meeting to anyone that MR. COOPER was involved with either verbally or in writing. MR. COOPER answered that there was an email. MR. MURPHY asked MR. COOPER what was in the email. MR. COOPER answered that he did not remember. MR. MURPHY asked MR. COOPER if the email stated that there was a timeline or a deficiency in what occurred at the July 14th meeting. MR. COOPER answered that he did not think so. MR. MURPHY asked if the email was ignored or there was a response at all. MR. COOPER answered that there may have been one email but it could have been Councilman Soda responding to his own email. MR. MURPHY asked if those conversations regarded CHAIRMAN PALMER or MR. MURPHY. MR. COOPER answered that he did not think so.

MR. MURPHY asked if MR. COOPER had received any feedback from the administration or from City Council regarding what the Planning Board had done on July 14th. MR. COOPER stated no. MR. COOPER stated that the letter from CHAIRMAN PALMER was signed on August 6th and submitted to CHRIS

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MAZUR. MR. COOPER had stated that CHRIS MAZUR advised that the Planning Board had not taken the appropriate steps to table the item on the agenda. MR. MURPHY asked MR. COOPER if he had any feedback or if he was informed there was an error and a timeline of sixty days. MR. COOPER stated that the timeline was not mentioned to him, but he had a conversation with CHAIRMAN PALMER prior to the 9/8 Planning Board meeting and informed him of the Corporation Counsel's opinion. MS. WILLIAMS asked what date CHRIS MAZUR talked to MR. COOPER. MR. COOPER said it was sometime after August 6th. MR. MURPHY stated that the Planning Board was not given enough time to correct their error.

MR. MURPHY asked what the response from Corporation Counsel had been when they had been asked to show up at Planning Board meetings. MR. COOPER stated that he had spoken to Corporation Counsel on the importance of attending the Planning Board meetings but Corporation Counsel was unable to attend the meeting due to a scheduling conflict. MR. MURPHY stated to the Planning Board that he had repeatedly asked Corporation Counsel to attend the Planning Board meetings and what steps they ought to take to have outside legal counsel.

CHAIRMAN PALMER asked the Planning Board what their thoughts were. MR. MURPHY asked if a hand vote could be taken to see if the other Planning Board members wanted to seek outside legal counsel at the city's expense. MS. COWART asked, if the Planning Board was not confident about the information they were receiving from Corporation Counsel and if they were unhappy with how things were going, should the Planning Board receive outside legal counsel?

A physical hand vote was taken for Planning Board members to vote on if they wanted outside legal counsel. MR. MURPHY went on record and stated "yes." CHAIRMAN PALMER said he would have to ask the Planning Board staff to write up a letter to Corporation Counsel requesting that the Planning Board be afforded outside legal assistance because they feel there is a conflict of interest between Corporation Counsel, The City Administration and The Planning Board. CHAIRMAN PALMER went on further to say that the Planning Board was not being represented fairly because of the conflict of interest.

MR. MURPHY stated, *"The conflict is, Corporation Council is representing City Council and the administration and giving them direction on something that we did that they did not give us direction on and now we're expected to come and bail us out."*

MS. COWART had to leave but she said she would vote "yes" for seeking outside legal counsel. MR. BURNS also had to leave early for an appointment. MR. COOPER asked if CHAIRMAN PALMER wanted to make a motion about sending a letter to Corporation Counsel.

MR. MURPHY made a motion for the letter to be sent to Corporation Counsel and it was seconded by MR. GIAQUINTO.

POLLED VOTE:

MR. BURNS	Absent
MR. GIAQUINTO	Yes
MR. MACDOUGALL	Yes
MR. MURPHY	Yes
MR. POLKA	No
MR. SARKEES	Yes
MS. COWART	Absent
MS. WILLIAMS	Yes
CHAIRMAN PALMER	Yes

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PLANNING REPORT / COMMUNICATIONS: MR. COOPER stated that he and MS. CELIK were working on updating the site plan application and that the DRI Projects are starting up soon. CHAIRMAN PALMER asked for a status report on the DRI project at the next Planning Board meeting.

ADJOURNMENT:

A motion to adjourn was made by MR. POLKA and seconded by MR. MACDOUGALL.

Motion: UNANIOUMOUSLY APPROVED.