



City of Niagara Falls, New York

P.O. Box 69, Niagara Falls, NY 14302-0069

NIAGARA FALLS PLANNING BOARD TONY PALMER-CHAIRMAN

REGULAR MEETING Minutes for January 31, 2024

A special meeting of the City of Niagara Falls Planning Board was held on Wednesday, January 31st, 2024 at 6:00 pm in Council Chambers, City Hall, 745 Main Street, Niagara Falls, N.Y.

CALL TO ORDER & ROLL CALL

Board Members Present:

Tony Palmer
John Spanbauer
Beverly Callen
Joyce Williams
Schurron Cowart
Helen Kresse
Ryan Dallavia
Phillip Salerno

Absent:

Frank Handley

Staff Present:

Mike Pesarchick, Planner II
Kevin Forma, Director of Planning

Speakers:

Thomas DeBoy, Corporation Counsel
Alicia Stoklasa, Hodgson Russ

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA — FOR THIS MEETING

A motion to approve the agenda was made by **Ms. Williams** and seconded by **Mr. Spanbauer**.

Tony Palmer	YES
John Spanbauer	YES
Beverly Callen	YES
Joyce Williams	YES
Ryan Dallavia	YES
Phillip Salerno	YES
Helen Kress	YES

BOARD REORGANIZATION – Election of officers for 2024:

1. Nomination and Election of CHAIRPERSON

Mr. Forma explained to the new members of the Board that he normally does not start the meeting. The meetings are started by the Chairperson but since this is the first meeting of the year, they were moving the Board reorganization up and electing officers for the year. He called for the nomination for chairperson.

Mr. Spanbauer nominated **Mr. Palmer** for chairperson. **Ms. Williams** seconded the nomination.

Tony Palmer	YES
John Spanbauer	YES
Beverly Callen	YES
Joyce Williams	YES
Ryan Dallavia	YES
Phillip Salerno	YES
Helen Kress	YES

2. Nomination and Election of VICE-CHAIRPERSON

Mr. Forma asked for nomination of vice-chairperson. **Mr. Spanbauer** nominated **Mr. Dallavia**. **Mr. Dallavia** nominated **Mr. Spanbauer**. **Mr. Spanbauer** asked if anyone present wanted the position of Vice-Chairperson.

Ms. Williams nominated **Mr. Spanbauer**. **Mr. Dallavia** seconded the nomination.

Tony Palmer	YES
John Spanbauer	YES
Beverly Callen	YES
Joyce Williams	YES
Ryan Dallavia	YES
Phillip Salerno	YES
Helen Kress	YES

3. Four hour annual training requirement

Mr. Forma said that he did not know why the training requirement is under the subject matter. **Mr. Pesarchick** said that it was based on last year's agenda.

Mr. Forma explained that there is a four hour training that they need to take every year. He will provide the Board with all training materials. He stated that there's no vote necessary on this item.

Mr. Forma gave the gavel to the Chairperson.

PUBLIC PARTICIPATION (*All Non-Agenda Topics*)

There was no public participation.

APPROVAL OF MINUTES

1. Meeting held December 13, 2023

A motion to approve the minutes was made by **Ms. Callen** and seconded by **Mr. Spanbauer**.

Tony Palmer	YES
John Spanbauer	YES
Beverly Callen	YES
Joyce Williams	YES
Ryan Dallavia	YES
Phillip Salerno	YES
Helen Kress	YES

ACTION ITEMS:

1. **Public Hearing: Vote to set a date for a Public Hearing regarding proposed changes to the City Zoning Code related to student housing in R-1 and R-2 zoned districts.**

Mr. Forma explained that the City was exploring changes to the Zoning Code regarding student housing in R-1 and R-2 districts and that the Board would vote to hold a public hearing. He said that representatives from the City Corporation Counsel and Hodgson Russ were there to answer questions the Board had.

Mr. Forma said that the Planning Department recommended setting the hearing for Feb. 28, 2024, after the item was reviewed by the Niagara County Planning Board on Feb. 26, 2024. He said it would give the Board time to prepare notification for people to come to the meeting, and then they would vote on the written referral packet in March.

Mr. Palmer said that the Board would set the date first and then give the speakers time to enlighten the Board. He asked the Board members if Feb. 28th at 6 p.m. was a good time for the Public Hearing and if so, he needed a motion.

Motion to set the Public Hearing for Wednesday, Feb. 28, 2024, at 6 p.m. was made by **Mr. Spanbauer** and seconded by **Ms. Callen**.

Mr. Palmer stated that it would be a regular scheduled meeting but a Public Hearing would be held at that time.

Tony Palmer	YES
John Spanbauer	YES
Beverly Callen	YES
Joyce Williams	YES
Ryan Dallavia	YES
Phillip Salerno	YES
Helen Kress	YES

Motion passed unanimously.

Mr. Thomas DeBoy introduced himself as Deputy Corporation Counsel for the City of Niagara Falls. He said he would outline what was provided in a supplemental packet the Board members received, beginning with a letter from Corporation Counsel Christopher Mazur dated Jan. 29, 2024.

Mr. DeBoy said the letter introduced Mr. Mazur's recommendation with the referral and his analysis as to why the proposed amendment is long overdue. Mr. DeBoy said the letter gave several different arguments and that the chief argument was economic forces at work in the DeVeaux neighborhood and other neighborhoods seeing an increase in student housing.

Mr. DeBoy stated that the economic incentives are strong for student housing because the profit margins are good. He said that single-family homes are increasingly converted into what might be called student dormitories or student rooming houses. Large rooms in homes are often converted to bedrooms, and a larger house could be rented out at \$700 or \$750 a bed.

Mr. DeBoy said that this practice was slowly eroding the housing market in the City and the availability of single-family homes, and that it changed the character of neighborhoods. Mr. DeBoy said Mr. Mazur's letter pointed to McKoon Avenue which

currently had 15 student housing homes operating with a heavy concentration of students.

Mr. DeBoy stated that he wanted to put special attention to the police resources being called out to close down house parties and that there have been instances where the police have had to close parties of 200 kids. He said that police often have difficulty closing down parties due to stalling tactics, which require more police officers to be called. **Mr. DeBoy** said this was unacceptable and that the City did not have the resources to handle this, either at the prosecutor's office or the police department.

Mr. DeBoy said that police officers often had to be pulled from other neighborhoods, including those with higher crime rates, to deal with the parties. He said it usually takes an hour to an hour and a half before the parties clear.

Mr. DeBoy stated that he represents the city on personal injury lawsuits and that he is concerned about the City's potential liability. **Mr. DeBoy** said that a few years ago, if students were hurt or killed in a drunk driving incident following a party broken up by police, the law would be on the City's side. Now, the law is changing and moving in a direction where police are accountable for creating a dangerous condition if they don't do sufficient sobriety checks. This could result in a lawsuit against the City.

Mr. DeBoy said that the students in their unsupervised living scenarios are exposing the City to potentially massive liability. All it takes is one car to go off the road and a death or injury that could be many millions of dollars for the City.

Mr. DeBoy stated that the students are not as mature as they think they are and when they live off campus, they lack the protection of resident assistance. He explained that living on campus provided students with an RA, campus security, and camera. There are a lot of controls in place on Niagara University's campus for their students that live on campus that help keep a lid on things.

Mr. DeBoy stated that Mr. Mazur's letter addresses some other topics but essentially concludes by saying that and the administration at NU has tried to solve this problem through doubling their enforcement and taking other measures. The NU Administration has contributed to providing another police car.

Mr. DeBoy said that, in conclusion, is that the best efforts of NU to solve this issue are not working. He said to be fair to NU, the best efforts of our police department aren't working at current staffing levels. **Mr. DeBoy** stated that we would have to find money from somewhere to hire more officers and have more police on duty for these pop up parties. He stated that they didn't have enough police to hand out tickets to every underage drinker at a party.

Mr. DeBoy said that the best possible solution is the amendment to the zoning ordinance, which have been adopted by other municipalities from the 1990s to present day. He said that the City of Binghamton [New York] most recently adopted a zoning

amendment like this and that Niagara Falls was modeling its amendment after Binghamton's. He stated that the city is hopeful that following Binghamton's example, we will see the benefits.

Mr. DeBoy asked for questions.

Mr. Dallavia stated that his primary concern is creating a law that cannot be enforced or is very difficult to enforce. **Mr. Dallavia** stated that he lived across the street from a college house. He stated that the group has bought a bunch more, and that they do not rent it as separate rooms, they rent it jointly among all of the tenants. **Mr. Dallavia** stated that he rented a place with two other young men when he was 19 years old and he was not a student. They weren't a family. He asked how you enforce it the ordinance. He asked, are you asking people to share their expenses and their grocery bills? **Mr. Dallavia** asked if it's a group of three guys that are living together, are you're not allowing people that are poor to not be able to live together.

Mr. DeBoy explained that this ordinance creates presumption that if it's more than three students, that it's not family related. He said that if the house was the subject of a complaint, the group of more than three students would have to meet all criteria of what it meant to be a family. If they couldn't, they wouldn't be allowed to live there.

Mr. Dallavia asked how that would play out does and would the tenants be charged with a crime? He asked what information is needed to determine whether they meet this criteria.

Mr. DeBoy explained that in a way it's the same for anything else in the Zoning Code and that it would be a citation from a zoning enforcement officer. It would be the same as someone running a commercial operation out of the garage. The City or surrounding neighbors could take the property owner to Supreme Court Niagara County and ask for an injunction to cease and desist.

Mr. DeBoy said that if a landlord routinely rented to students who are not family members, a case could reach the State Supreme Court level and result in fines and the landlord losing his license for repeated violations of the Zoning Code.

Ms. Stoklosa stated that she wanted to make it abundantly clear the intent of this is not to dictate what a family is. The intent of this is to clearly state that seven college students who are living together for convenience while they go to school and it's temporary, they're transient, and they're throwing parties, they're not a family.

Ms. Stoklosa responded to Mr. Dallavia's example saying that, if some close friends want to live together because its cost efficient, you share in the cost of paying bills and you have dinner together, no one is going to be bringing that to the Code Enforcement Officer. She said that they want to limit the listing of scenarios in the Zoning Code.

Mr. Dallavia stated that may not be the intent but that's what is stated. He read the statement from the package:

"It's presumptive evidence that for or more persons living in a single dwelling unit are not related by blood marriage or legal document do not constitute a traditional family."

Ms. Stoklosa stated that it's a rebuttable presumption. She stated that she didn't think the zoning code enforcement officer would entertain the idea of prosecuting that sort of situation..

Mr. Palmer asked if Code Enforcement would be the department to enforce the ordinance because this would then be a violation not a crime.

Mr. DeBoy said that was correct.

Mr. Palmer asked if it would go before the Housing Court in Niagara Falls.

Mr. DeBoy stated that in terms of the citation that might be issued, the first response would be a citation and that would go to City Court. The City has no Housing Court but housing violations are heard by City Court judges.

Mr. Palmer explained that as a former law enforcement officer, he observed the how Housing Court worked and how nothing got done because of adjournments.

Mr. DeBoy stated that the City has a part-time attorney, Neil Reddien, who was instrumental in developing the ordinance for licensing landlords. He said that the City amended the ordinance so that we had better control over out-of-state property owners and LLCs who were landlords. A major problem was getting jurisdiction over them. Now, landlords have to consent to the jurisdiction of City Court.

Mr. DeBoy stated if there's a lack of cooperation from the landlord, they will lose their license with the city. If they are operating an unlicensed business, that's an invitation to go to Niagara County Supreme Court and ask for an injunction to close down this illegal operation.

Mr. Spanbauer asked if the Attorney and Administration at Niagara University seen the proposed ordinance. He stated that he is asking that question because students right now are starting to look for housing for the 2024-25 academic year, and that students will begin to sign leases usually in April.

Mr. Spanbauer suggested that the expiration date to give the students a year and give them until May of 2025 to make sure people know what's going on. He asked when the ordinance would go into place.

Mr. DeBoy answered April 2024, pending a City Council approval.

Mr. Spanbauer asked if it's April of this year, how do you tell students or how do landlords tell students how it will affect their housing. He stated that he understands that there is a grandfather clause but he thinks there's got to be a little consideration for the hundreds of students there. **Mr. Spanbauer** stated that he is all for the proposal but he was playing the 'devil's advocate.'

Ms. Stoklosa stated that it's simply a draft and that this is simply to start the process. If that is the one of the concerns of the public, it's a simple change. The Board's and the City Council can ultimately push that date out. The Amendment as drafted provides an avenue to be exempted data is not pushed out for landowners to seek an exemption.

Mr. Palmer stated the Planning Board will also have the opportunity to put some rebuttals into this to send back to Cooperation Council. The Board can make recommendations.

Mr. Spanbauer stated that there are three or four things that are mentioned in the letter that should be supported with data. He suggested that data be added to the proposal, such as data showing that an increasing number of single-family homes are being converted into the equivalent of college dorms. **Mr. Dallavia** concurred with this. **Mr. DeBoy** said that Mr. Mazur's letter included some data.

Mr. Spanbauer asked who they worked with to develop the draft, such as Binghamton University. He wanted to know if the students experienced any difficulties with the policy. **Ms. Stoklosa** responded that to her knowledge, there was no communication directly with Binghamton and that their amendment was simply used as a guide.

Mr. Spanbauer said it might be a good idea for someone to call Binghamton and see what difficulties or problems they had, which would be proactive for Niagara Falls.

Ms. Callen said that she would like to know the outcomes of those concerns so there was some kind of measurement, per se.

Mr. DeBoy said that there was a lot written about the Binghamton amendment in the newspapers and there were numerous news articles written when it was approved. He said that, based on the news reports, it was a positive experience.

Mr. Dallavia said there were a lot of doubles and triplexes and fourplexes on the southern part of the DeVeux neighborhood and asked if they were affected by this proposed amendments. **Mr. DeBoy** said that some buildings may have been grandfathered in when the 2009 Zoning Code went into effect. He said that you can think about those as if each unit was set for one family. There would be no way for more than three students to evade the ordinance if it passed.

Ms. Callen asked what is stopping students from going to Hyde Park or other neighborhoods. **Mr. DeBoy** referred to a zoning map in the packet and said that the

proposed ordinance would have the same effect in any R-1 or R-2 zone. **Mr. Dallavia** asked if the landlords could still buy a duplex in an R-3 zone and use it for students; **Mr. DeBoy** said that was correct.

Ms. Stoklasa said that the amendment is set up to target houses that are cramming eight students in a 3-bedroom house, and that the language was rebuttable.

Mr. Dallavia asked if it wasn't already illegal for six students to be in a 3-bedroom house. **Ms. Stoklasa** said she couldn't speak to that, but thought it might be a matter for the Code Department. She said the target of the law were students living in an 8-bedroom house and partying in the backyard.

Mr. Spanbauer asked if students weren't a problem, you'd never hear about them, and if they're a problem there's now a clause in the Zoning Code that was enforceable. **Ms. Stoklasa** said that was correct.

Mr. DeBoy said that landlords have to renew their license every year, so that would be a time to make them aware of the new ordinance.

The Board thanked Mr. DeBoy and Ms. Stoklasa for their time.

OLD BUSINESS:

1. Local Waterfront Revitalization Plan: Discussion of the ongoing LWRP and upcoming meeting of the Waterfront Advisory Committee (WAC) in February.

Mr. Forma said that since Charles MacDougall was replaced on the Board, there was a need for a new representative for the Local Waterfront Revitalization Plan (LWRP). **Mr. Spanbauer** said he would like to do it. **Mr. Forma** said that the next meeting was on Feb. 13 at the Niagara Riverside Resort and that the Planning Department would send more information.

Mr. Forma said that the survey for the LWRP was extended to March 31 to try to solicit more responses. He said they were encouraged by the amount of recent responses and were trying to get as much input as possible.

2. Waterfont Advisory Committee (WAC): Discussion and nomination of a new Planning Board representative to the WAC to replace Charles MacDougall.

This was discussed as part of item 1.

Mr. Spanbauer brought up the Planning Board bylaws. He said that there had been discussion in the past on updating them and that he did a little research on other municipalities' bylaws. He recommended that, with the new members, that

everyone review the bylaws and see if there were any edits anyone wanted to make.

Mr. Palmer said that any edits had to be voted on at a meeting, so everyone had to get a copy of the bylaws. He said that the bylaws had been there for as long as he had been on the Board. Mr. Spanbauer said he thought that they were last updated in 2021.

Mr. Forma said that the Historic Preservation Commission recently updated the bylaws because they were inadequate for its purposes.

Mr. Palmer said that, for the next meeting, make sure everyone had a copy of the bylaws and that they could come in with recommendations and comments. Once they started discussing it, they would have to do something that night to approve the bylaws. Mr. Forma said the Planning Department would send out something.

NEW BUSINESS:

1. Planning Board membership: Update on new Planning Board members voted on by City Council and memberships expiring in 2024.

Mr. Pesarchick said that Mr. Palmer's, Ms. Williams', and Mr. Dallavia's terms all expire on Dec. 31, 2024, and that if they wanted to seek another term that they should think about it. The other members were set until 2026 or 2027.

Mr. Palmer said that they could ask to be reinstated but they didn't necessarily have to. They didn't have to do anything until November.

Mr. Forma suggested that if they wanted to be reinstated, that they should talk to one of the City Council members and that Planning did not have much say in the last round of approvals. **Mr. Spanbauer** said that when he was on City Council, they did send out things but they never asked for input from the Planning Department. He made a recommendation that they talk with City Council to give input on future nominees. He said that he would have loved that when he was on the City Council.

2. 500 3rd Street: Update on forthcoming Radio Social project at 500 3rd Street that was previously approved by the Planning Board in 2021.

Mr. Pesarchick gave an update on the Radio Social project at 500 3rd Street. He said that the project was previously approved in 2021 with conditions that the parcels be amalgamated, but the amalgamation never occurred and the site plan approval expired.

Mr. Forma said that the alley behind the buildings was an issue because there were public utilities running there, and that the project needed an easement. Mr. Palmer

said he thought this was brought up in 2021. Mr. Forma said they would provide all new plans and a new application package.

Mr. Pesarchick said that he had a call with their project manager who said that the project was moving, just needed to go for the easement and amalgamation with the goal of shovels in the ground by late spring or summer.

Mr. Palmer asked why the Ensol Station project [540 56th Street] was removed from the agenda. **Mr. Pesarchick** said there were outstanding concerns from the Engineering Department regarding the plant's stormwater system that needed to be addressed. He said that the applicant was revising and would try again for the next meeting.

Ms. Kresse asked what that project was. **Mr. Pesarchick** explained the project and that he would send the new members the initial submission package. **Mr. Spanbauer** remarked that the initial application was excellent at explaining the impact of traffic. **Mr. Pesarchick** said they included a noise study as well.

Mr. Forma said that, speaking of traffic, Planning was still awaiting a traffic study from Chick-Fil-A. **Mr. Palmer** remarked that he just watched a car try to turn left out of that plaza [6610 Niagara Falls Boulevard]. He said that they needed to talk to Benderson Development and figure something out, because if they approved Chick-Fil-A they would be adding a lot of traffic there.

Mr. Salerno said that Lancaster has a policy where they examine driveways on Transit Road and that they make you take them out if the road density is too much.

Mr. Forma said that they could talk to New York State because they've already asked to see the traffic study when it's done. **Mr. Palmer** said he thought that's why the truck stop on Niagara Falls Boulevard was put on hold; **Mr. Forma** said that was due to environmental concerns.

PLANNING REPORT / COMMUNICATIONS:

1. Staffing changes: Update on new Environmental Planner in the Office of Planning.

Mr. Forma said that the Planning Department had a new environmental planner, Jessica Bass, who was from Niagara Falls. He said she was getting her feet wet in the new position and that the Board would likely not have much interaction with her.

2. 25 Rainbow Boulevard: Update on Turtle landmarking public hearing held on Jan. 18, 2024.

Mr. Pesarchick said that the Turtle recommendation for a Local Historic Landmark was going to be voted on by the Historic Preservation Commission on Feb. 1, 2024.

He said that the Planning Board had some comments on that and he wanted to keep them in on the loop. Mr. Spanbauer asked about turnout at the public hearing; Mr. Forma said it was excellent, with over 20 speakers.

Mr. Spanbauer asked if the Board was getting involved with Buffalo Niagara Waterkeeper at all. **Mr. Palmer** said that he received emails from them after attending seminars and they keep you up-to-date on what they're doing.

Mr. Forma said that Waterkeeper had just finished a plan for Gill Creek. A big problem is that a lot of creeks have been dammed up and channeled off, so there are a lot of problems like phosphorus.

Mr. Pesarchick asked the Board members to update their preferences on where they get documents sent, whether or not that was paper or digital.

ADJOURNMENT

Motion to adjourn was made by **Mr. Dallavia** and seconded by **Ms. Callen**.