

CITY OF LOCKPORT
CORPORATION PROCEEDINGS

Lockport Municipal Building

Regular Meeting
Official Record

August 19, 2020
5:30 P.M.

Mayor Michelle M. Roman called the meeting to order.

ROLL CALL

The following Common Council members answered the roll call:

Aldermen Abbott, Devine, Kantor, Oates, Schratz and Van De Mark.

MAYOR'S UPDATE

RECESS

Recess for public input.

081920.1

APPROVAL OF MINUTES

On motion of Alderman Devine, seconded by Alderman _____, the minutes of the Regular Meeting of August 5, 2020 are hereby approved as printed in the Journal of Proceedings.
Ayes _____. Carried.

PUBLIC HEARING

The Mayor announced a public hearing on a request for a Special Use Permit to utilize the existing building located at 1149 Lincoln Ave. as a medical office.

The Mayor asked the City Clerk if any petitions or communications relative to said Special Use Permit have been received.

8/4/20 Terry Harmon, Lockport Planning and Zoning Board – the board recommends the request.

Recess for public input.

The Mayor closed the public hearing.

PUBLIC HEARING

The Mayor announced a public hearing to hear and consider a Local Law amending the City of Lockport Hotel Occupancy Tax Law.

8/19/20

The Mayor asked the City Clerk if any petitions or communications relative to said Local Law amendment have been received.

Recess for public input.

The Mayor closed the public hearing.

PUBLIC HEARING

The Mayor announced a public hearing on a proposed Partial Update of the Comprehensive Plan Relating to the RA-Reserve Area District of the City of Lockport.

The Mayor asked the City Clerk if any petitions or communications relative to said proposed Partial Update have been received.

Recess for public input.

The Mayor closed the public hearing.

PUBLIC HEARING

The Mayor announced a public hearing to hear and consider a Local Law amending section 190-77 Special Uses allowed in the RA Reserve Area District.

The Mayor asked the City Clerk if any petitions or communications relative to said Local Law have been received.

Recess for public input.

The Mayor closed the public hearing.

PUBLIC HEARING

The Mayor announced a public hearing on the application made by Cazenovia Recovery Systems, Inc. seeking to rezone the site of the former Niagara County Infirmary, located at 102 Davison Rd., Lockport, NY.

The Mayor asked the City Clerk if any petitions or communications relative to said application have been received.

Recess for public input.

The Mayor closed the public hearing.

FROM THE CITY CLERK

The Clerk submitted payrolls, bills for services and expenses, and reported that the Department Heads submitted reports of labor performed in their departments. Referred to the Finance Committee.

Communications (which have been referred to the appropriate City officials)

8/13/20 Mayor Michelle M. Roman – recommendation that Anna M. Mauri be appointed as a member of the Lockport Board of Ethics.
Referred to the Committee of the Whole

Notice of Complaint:

8/4/20 109 & 119 Niagara Street – trees
8/7/20 298 Locust Street – tree
8/10/20 2 Hoover Pkwy – tree
8/10/20 50 Beattie Avenue – tree
8/10/20 125 Akron Street – tree
8/10/20 348 High Street - trees

Referred to the Director of Streets and Parks.

Notice of Claim:

8/7/20 Teresa Swider, 24 Sunnyside Street, Lockport, NY
Referred to the Corporation Counsel.

MOTIONS & RESOLUTIONS

081920.2

By Alderman Oates:

Resolved, that the Mayor and City Clerk be authorized to issue orders in favor of the claimants for payrolls, bills, and services to be paid on August 20, 2020 as follows:

General Fund	Fund A	\$102,378.47
Water Fund	Fund FX	\$ 21,158.09
Sewer Fund	Fund G	\$ 31,925.94
Refuse Fund	Fund CL	\$ 718.14
Self Insurance	Fund MS	\$ 54,980.08
Payroll	Pay Date 8/13	\$470,751.62

Seconded by Alderman _____ and adopted. Ayes _____.

081920.3

By Alderman Schratz:

City of Lockport

Local Law No. 4 of the year 2020

A LOCAL LAW amending Section 13 of Local Law No. 3 of the year 2019:

8/19/20

Be it hereby enacted by the City Council of the City of Lockport as follows:

**SECTION 13
DISPOSITON OF REVENUES**

All revenues from the imposition of the tax under this local law shall be paid into the treasury of the City of Lockport and shall be credited to and deposited in the General Fund Account of the City of Lockport. Five percent (5%) of said revenue shall be retained by the City of Lockport for administration and collection costs. One percent (1%) of such revenue from this tax shall be dedicated to the operation of the Discover Niagara Shuttle. The disposition of the remaining net revenues shall be as follows: Twenty-five percent (25%) of the net revenue from the tax shall be used for the promotion of community and economic development in the City of Lockport; and Seventy-five percent (75%) of the net revenue shall be allocated and paid to a not-for-profit Corporation under contract with the County for the promotion of tourism in the County. The terms "economic development" and "tourism" may be defined by resolution of the Lockport City Council.

This law shall be effective upon filing with the Office of the Secretary of State.

Seconded by Alderman _____. A roll call vote was taken which resulted as follows:

Alderman Abbott	VOTING	_____
Alderman Devine	VOTING	_____
Alderman Kantor	VOTING	_____
Alderman Oates	VOTING	_____
Alderman Schratz	VOTING	_____
Alderman Vandemark	VOTING	_____

The Local Law was thereupon declared duly adopted.

081920.4

By Alderman Kantor:

Resolved, that the request for a special use permit made by C. E. Beney, LLC. to utilize the existing building as a medical office, located at 1149 Lincoln Avenue, situated in a B-1 Zone, be and the same is hereby approved, subject to the following provisions:

- No change in character of neighborhood.
- No excessive noise or disturbance of neighborhood.
- No appreciable change in traffic.
- No outside storage of materials.
- Special permits can be indefinite or limited to a specific time.

The special permit shall go to the applicant only and shall terminate on the sale or transfer of the property, and further it terminates if the use permitted is abandoned for more

8/19/20

than one year, if any of the conditions enumerated herein have changed, and in the discretion of the Common Council make such use unsuitable.

Seconded by Alderman _____ and adopted. Ayes _____.

081920.5

By Alderman Schratz:

Resolved, that pursuant to their request, Lockport Main Street, Inc. is hereby granted permission to host a "Saturday Sidewalk Sale" utilizing the City right of way in front of local businesses on August 29, 2020 from 10:00 a.m. to 5:00 p.m., subject to filing a certificate of insurance with the City Clerk naming the City of Lockport as additional insured.

Seconded by Alderman _____ and adopted. Ayes _____.

081920.6

By Alderman Abbott:

Whereas, the City has previously made an agreement with Troy and Banks Smart Solutions to perform a NYSEG pole and light audit in the fiscal year 2020, and

Whereas, Troy and Banks Smart Solutions has identified savings and has invoiced the City for their services according to their contract, but there are not enough funds in the line item to pay for their invoice, and

Whereas, the City will move funds that will no longer be required for utilities into the appropriate line item to pay for this service; now, therefore, be it

Resolved, that the 2020 General Fund Budget is hereby amended as follows:

Expense:

Decrease:

A.1900.54623	Utilities – Electricity	\$ 2,395.93
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Increase:

A.1010.54055	Professional Services	\$ 2,395.93
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Seconded by Alderman _____ and adopted. Ayes _____.

081920.7

By Alderman Oates:

Whereas, Resolution 121920.16 moved \$17,000 in funding from the Treasurer to the Finance Department to be used for professional services, and

Whereas, the Finance Department has required only \$11,910 of the funding for year-end services relating to FY 2019, and

Whereas, the Common Council's FY 2020 budget for professional services does not have enough funding to pay an outstanding Lumsden and McCormick invoice for the FY 2019 audit; now, therefore, be it

Resolved, that the 2020 General Fund Budget is hereby amended as follows:

Expense:

Decrease:

A.1310.54055	Professional Services	\$ 5,000
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Increase:
A.1010.54055 Professional Services \$ 5,000

Seconded by Alderman _____ and adopted. Ayes _____.

081920.8

By Alderman Kantor:

WHEREAS, the Fire Department, through the Fire Chief's office, was authorized to apply for a Federal Emergency Management Agency (FEMA) - Assistance to Firefighters Grant (AFG) to assist in the purchase of three new cardiac defibrillator/monitors to replace the three aged units the Fire Department currently has in use, and

WHEREAS, the Fire Chief received notification from FEMA on Wednesday August 5th, that the Department had received an award from the FEMA AFG program that would allow for the purchase of these defibrillator/monitors now has until September 4th, 2020 to accept this award, and

WHEREAS, if this grant award is accepted the Federal share of these funds will be for \$96,468.35, while the Non-Federal share of these funds will be for \$9,646.84 to complete the total funds applied for at \$116,115.94; NOW THEREFORE BE IT

RESOLVED, the Fire Chief is hereby directed and authorized to accept this FEMA AFG grant award to pay for the purchase of three new cardiac/defibrillator monitors and that the 2020 General Fund Budget is hereby amended as follows:

Revenue:

Increase:

A.3410.34389 Other Federal Public Safety Aid \$ 96,468.35

Expense:

Increase:

A.3410.52070 Public Safety Equipment \$ 96,468.35

Seconded by Alderman _____ and adopted. Ayes _____.

081920.9

By Alderman Oates:

Resolved, that Mulvey Construction Inc. is hereby granted permission to place equipment on the sidewalk in front of 45 Main Street, in the city right-of-way, for an exterior window project. The work will begin upon approval of this resolution.

Said permission is subject to Mulvey Construction filing a certificate of insurance with the City Clerk naming the City of Lockport as additional insured.

Seconded by Alderman _____ and adopted. Ayes _____.

081920.10

By Alderman XXXX:

Resolved, that pursuant to the recommendation of Mayor Roman, Anna M. Mauri, 57 Coolidge Avenue, Lockport, NY is hereby appointed as a member of the Board of Ethics. Said term expires on July 2, 2023.

Seconded by Alderman _____ and adopted. Ayes _____.

8/19/20

081920.11

ADJOURNMENT

At _____ P.M. Alderman Devine moved the Common Council be adjourned until 5:30 P.M., Wednesday, September 2, 2020.

PAUL K. OATES
City Clerk

8/19/20

August 19, 2020

Via Electronic Mail and Hand Delivery

City of Lockport Common Council
City of Lockport Municipal Building
1 Locks Plaza
Lockport, New York 14094

Re: Application to Rezone and Redevelop Niagara County Infirmary Property

Dear Mayor Roman and Honorable Councilors:

I am writing on behalf of Cazenovia Recovery Systems, Inc. ("CRS") regarding its pending application to rezone the portion of the Niagara County Infirmary Property located in the City of Lockport (a/k/a 102 Davison Road) (the "Property") from Reserve Area (RA) to Multi-Family Residential (R-3) to facilitate the rehabilitation and reuse of the existing structures on the Property to provide supported housing for individuals suffering from substance use disorders (the "Project").

CRS has previously addressed why it believes that rezoning the Property to R-3 is justified, both because its current RA zoning is clearly inappropriate (as a property that has long accommodated development) and because such rezoning is necessary (and a reasonable accommodation) to allow for the provision of a type of housing that the Niagara County Department of Mental Health Services has identified as a "critical unmet need" within the County. These points are covered most comprehensively in CRS's September 6, 2019 letter to the City of Lockport Planning Board ("Planning Board"), a copy of which is annexed hereto as **Attachment A**, and, in the interests of efficiency, need not be repeated herein.

In addition, CRS submitted a letter to the Planning Board, dated January 7, 2020, in which CRS sought to provide additional information in response to questions and comments made at the December 18, 2019 meeting of the Planning Board, which comments mostly related to potential adverse environmental impacts associated with the Project. A copy of CRS's January 7, 2020 letter (with attachments) is annexed hereto as **Attachment B**. As recited in the January 7, 2020 letter, CRS has requested formal input from the City regarding the Project, including its potential environmental

impacts, and has offered to meet with the City and/or its consultants to discuss such concerns at the convenience of the City.

Most recently, by letter dated August 3, 2020, CRS advised this Council that it is willing to reduce the scale of the Project by eliminating any new buildings on the Property, which would have the result of reducing the total number of proposed units by 40, for a proposed total of 65-70 units, all located in rehabilitated existing structures on the Property.

Based on the above-referenced prior submissions, CRS believes that it has demonstrated that the Project will provide a crucial public service, while resulting in no discernable negative impacts on the community or the environment, and that therefore its request to rezone the Property to accommodate the Project should be granted.

Nevertheless, CRS acknowledges that the Project has met with significant opposition from certain members of the community (as is all too often the case with respect to this type of housing), which opposition, CRS contends, lead the Planning Board to adopt a recommendation against the rezoning of the Property on March 5, 2020, based largely on a document titled "City of Lockport Partial Update of the Comprehensive Plan/ RA Reserve Area District" ("Planning Board Report"). It is to this document that the balance of this letter is addressed.

As outlined below, CRS contends that the Planning Board Report contains numerous mischaracterizations and flawed premises that ought to be rejected by this Council in favor of its obligation to reasonably accommodate housing for individuals suffering from a disability and to prevent discrimination against such individuals in the City's land use regulations. See generally 42 U.S.C. § 3604(f)(3)(B) (defining unlawful discrimination to include "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling"); Tsombandis v. West Haven Fire Dept., 352 F.3d 565 (2d Cir. 2003); Step by Step Inc. v. City of Ogdensburg, 176 F. Supp.3d 112 (N.D.N.Y. 2016) (mandating the rezoning of a property to accommodate housing for individuals with substance abuse disorders); Continental Bldg. Co. v. Town of N. Salem, 211 A.D.2d 88, 92 (2d Dept. 1995) ("municipality may not zone to exclude persons having a need for housing within its boundaries or region") (citing Berenson v. Town of New Castle, 38 N.Y.2d 102, 109 (1975)).

Mischaracterization of the Project. The Planning Board Report characterizes the Project as providing "multi-family housing and ... medical services" (p. 1) and "in-patient medical services" (p. 8), upon which it bases two flawed contentions: (a) that the Project constitutes impermissible "spot zoning" (p. 1) and (b) that it is prohibited by certain deed restrictions (pp. 8-9).

However, as explained in CRS's April 23, 2020 letter to Niagara County (upon which the City was contemporaneously copied and which is annexed (with attachments) as **Attachment C** hereto), the Project will not – and cannot legally – provide “in-patient medical services”, but rather would provide housing and “residential services” to its residents, a conclusion affirmed by the New York State Office of Addiction Services and Supports. Neither the County nor the City has contested (or otherwise responded) to this letter, and its conclusions refute both the Planning Board Report’s contention that the Project would constitute spot zoning or would violate the deed restrictions on the Property.

Impermissible “spot zoning” is defined as “the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners.” Rodgers v. Village of Tarrytown, 302 N.Y. 115, 123 (1951) (emphasis supplied). That is not the case here, as CRS is seeking to rezone a large, long vacant parcel for a residential use in an area comprised of other residential uses (including other nearby multi-family residential uses)¹, all to serve an important public need. Rezoning a property for such purposes does not constitute spot zoning. See Matter of Youngewirth v. Town of Ramapo Town Bd., 155 A.D.3d 755, 761 (2d Dept. 2017) (holding that rezoning of single parcel for use as affordable multi-family housing did not constitute spot zoning).

Moreover, since the Project will not be providing medical services (in-patient or otherwise), there is clearly no basis to conclude that the Project is prohibited by any deed restrictions on the Property.²

CRS’s Alleged Lack of Cooperation. The Planning Board Report accuses CRS of “constant attacks on the process”, inappropriately requesting “private” meetings, “misrepresenting the extent of the purchase of the Property”, taking “months to answer written questions regarding [alleged] contradictions in its application and its Full Environmental Assessment Form,” and refusing to answer questions regarding the Project. See Planning Board Report at pp. 1-2. Each of these accusations is belied by the actual record in this matter.

As explained in greater detail in its January 7, 2020 letter (**Attachment B** hereto), CRS has consistently attempted to work cooperatively with the City regarding this Project, has regularly updated its submissions and repeatedly offered to answer questions and/or meet with City officials, but its efforts have been met either with silence or outright hostility.

¹ See Area Map, annexed hereto as **Attachment D**.

² Nevertheless, as explained in CRS’s April 23, 2020 letter (**Attachment C** hereto), even if medical services were being provided as a component of this residential development, nothing in the deed restrictions would prohibit such ancillary services.

Contrary to the Planning Board Report, CRS specifically requested, but never received, written feedback on its application and EAF. Notwithstanding this lack of feedback, CRS timely attempted to provide information responsive to questions and comments made at the Planning Board's December 18, 2019 meeting, repeatedly offered to meet ("in any setting desired by the City", not, as the Planning Board Report alleges, in private) to discuss any of those issues further, and offered to consider any "objectively verifiable data" indicating that further studies or reports were necessary. However, to date, the City has never provided CRS with any written feedback on its application or supporting material, requested any such meetings or provided any data that would call CRS's EAF into question.³

Comprehensive Plan and Zoning Code Analysis. Despite acknowledging that (a) the "purpose of the RA District is to delineate those areas where substantial development of the land in the form of buildings or structures is prohibited" due to "special or unusual ... natural conditions" or that lack of proper facilities and infrastructure (Planning Board Report p. 6 (citing Zoning Code § 190-76)); (b) virtually every other RA parcel is a park without significant building structures (*id.* at pp. 3-6); and (c) the Property has long been developed with substantial buildings and was actively used for decades for residential, institutional and professional purposes (*id.* at p. 7), the Planning Board Report nevertheless concludes that the RA zoning classification is appropriate for the Property.

This conclusion is based on the purported fact that (a) the Property's prior uses were all public in nature, whereas the Project would be privately owned and operated; and (b) there is allegedly no demand for new multi-family housing in the City. Planning Board Report at p. 7. Neither contention is well founded.

There is no indication in the Comprehensive Plan or the Zoning Code that purports to distinguish between private and public uses. Moreover, the other RA-zoned parcel in the City that is improved with substantial structures similar to the Property, the Keenan Center, is also a privately run use, and thus there is no rational basis for this distinction.⁴

Furthermore, as noted above, the Niagara County Department of Mental Health Services has specifically found that the very type of housing that CRS is proposing to

³ It should also be noted that the City has also failed to respond to CRS's Freedom of Information Request, dated May 14, 2020, seeking copies of any documents relating to the City's intent to act as lead agency for purposes of environmental review of the Project.

⁴ It should also be pointed out that the Planning Board Report recommends, and the City is actively considering, amending the RA District Regulations to allow a significant expansion of this private use, as indicated in the August 10, 2020 Buffalo News article annexed hereto as **Attachment E**. It is irrational to conclude that the construction of a large arena on an RA-zoned parcel is consistent with the intent of that district, but the reuse of existing buildings on the Property is not.

provide is a "critical unmet need" within Niagara County, and thus the Report's assertion that there is no demand for such housing is demonstrably incorrect.

Lastly, the Planning Board Report largely ignores the detailed Comprehensive Plan analysis set forth in CRS's September 6, 2019 letter (**Attachment A** hereto, at pp. 3-4), which identified numerous aspects of the Comprehensive Plan that envisions multi-family, affordable housing in areas including Davison Road and adaptive re-use of vacant parcels and historic structures, as proposed by the Project.

Instead, the Planning Board Report (at p. 8) relies on the Comprehensive Plan's stated goal of "[p]reserve[ing] the residential integrity of the City's neighborhoods by limiting conversions of single-family homes to multi-family or commercial use." Of course, CRS is not proposing to convert any existing single-family homes to multi-family, but rather to restore and reuse existing structures, previously used to house multiple unrelated individuals.

Nor is the Planning Board Report's characterization of the Project as representing a "drastic" change in density (p. 11) well-founded, particularly in light of the proposal to eliminate any new buildings on the Property and the well-documented existence of multi-family developments of similar or greater density in the vicinity of the Property (see Attachment D).

For all of the foregoing reasons, CRS respectfully urges the Common Council to determine that the Project will not result in any significant adverse environmental impacts and rezone the Property to R-3 to allow this important Project to move forward.

Respectfully submitted,

BOND, SCHOENECK & KING, PLLC



Charles D. Grieco

CDG/cjk
Attachments

Cc (via e-mail): Daniel Spitzer, Esq., Special Counsel to the City of Lockport
Brian Seaman, Esq., Town of Lockport Attorney
Ms. Suzanne Bissonette, CEO, Cazenovia Recovery Systems, Inc.
LHC Holdings LLC