

MINUTES

PLANNING BOARD

TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Regular Meeting

September 16, 2015

The Regular Meeting of the Planning Board was called to order at 7:30 PM by Michael Einbinder in the Public Meeting Room.

Mr. Einbinder confirmed that the meeting was being held in conformance with all regulations of the SUNSHINE LAW and proper notice had been given to the Courier News; also, the Agenda had been posted in Town Hall, Board Office, and supplied to the Township Clerk at least forty-eight hours prior to the meeting. The Agenda items will not necessarily be heard in the order listed and the meeting will not continue significantly past 10:30 PM.

Roll Call:

Members present were Mr. Einbinder, Mr. Johnson, Mr. Niceforo, Mr. Monaco, Mr. Beal, Mr. Bocchino, Mr. Cunningham and Ms. Perna. Mr. Albert Cruz, Board Attorney, was also present.

Adoption of Minutes:

July 15, 2015 Regular Meeting

A motion was made by Mr. Einbinder, seconded by Ms. Perna, to adopt the Minutes of the Regular Meeting of July 15, 2015 as presented. The voice vote was unanimous.

Presentation:

Michael Mistretta of Harbor Consultants, Inc. will present the findings of its preliminary investigation of the Township owned Library Property (identified as Block 1301, Lot 26), the property owned by the Church of the Little Flower (identified as Block 1301, Lot 19), and the Township owned properties located along Snyder Avenue (identified as Block 208, Lots 38, 39 and 40) so that the Planning Board may determine whether the properties are in need of non-condemnation redevelopment as defined by the New Jersey Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, *et seq.*

Mr. Cruz advised that the at the direction of the Township Council the Planning Board earlier this year authorized Harbor Consultants to prepare a preliminary investigation

report to determine whether the subject properties are in need of non-condemnation redevelopment. This is a public hearing for the purpose of hearing that report. Appropriate notice has been given as evidenced by Exhibit PB-1 – Affidavit of Service and the Board has jurisdiction to proceed tonight.

Mr. Cruz further advised that following the presentation there will be an opportunity for public comment and then the Board will consider the testimony and exhibits. The Board will determine if any of the properties meet the criteria for area in need of non-condemnation redevelopment. The Board must be satisfied that there is substantial evidence to determine that the study areas meet the criteria.

Mike Mistretta was sworn, gave his educational and professional background and was accepted as an expert witness.

Mr. Mistretta presented Exhibit PB-2 – aerial map of Snyder Avenue property, Exhibit PB-3 - aerial map of the library property and the Little Flower property and Exhibit PB-4 – Harbor Consultants Preliminary Investigation Report.

Mr. Mistretta noted that these properties are outside the flood zone and do not contain wetlands or flood areas.

Mr. Mistretta reviewed the exhibits and appendices attached to the report in support of the report, some of which are contained in a separate binder identified as Exhibit PB-5 – additional supplementary report supporting the testimony. He noted that these exhibits and reports have been on file with the Township Clerk and Planning Board office.

Mr. Mistretta reviewed the redevelopment and housing law including what the Township is required to do and the criteria that is to be met for designation as an area for redevelopment. Each of the properties meets at least one of the criteria. He said he looked at the properties, walked the sites, reviewed the documents and mapping and review criteria to reach a conclusion.

Mr. Mistretta discussed the properties and his conclusions as to the criteria met by each of them for redevelopment.

Mr. Mistretta noted that the Snyder Avenue property had previously been designated for affordable housing and discussed the requirements that need to be met by the Township with respect to fair share housing.

Mr. Mistretta described each of the properties investigated in the Harbor Consultants report and discussed the ownership, use and history of the properties. With regard to

the Snyder Avenue properties, he noted that in his opinion Lots 38, 39 and 40 meet the requirements of criteria (c), Lots 39 and 40 meet criteria (e) and all three lots meet criteria (h). He reviewed photographs of the Hamilton Avenue property that show the existing condition of the building and property and address criteria (a), (d) and (h).

In response to questions from the Board members, Mr. Mistretta stated that he has not looked at the value of the properties. It has been his experience that municipalities do not own or develop affordable housing but benefit if a third party or private developer gets involved. At this point the Planning Board is only being asked to determine whether or not the criteria for redevelopment has been met.

Public Hearing and Public Comment:

Public hearing and public comment on the preliminary investigation presented by Harbor Consultants, Inc.

A question was raised by Thomas Foregger with respect to the status of each Board member participating in the hearing with respect to membership in Little Flower Church to make sure there are no conflicts of interest.

Mr. Cruz stated that he has been advised that none of the sitting members or their families is a member of the Church of the Little Flower.

Mr. Foregger stated the opinion that one of the Board members has a spouse involved with the Church and presented evidence of that involvement to Mr. Cruz. Mr. Cruz examined the evidence presented with respect to Mr. Niceforo's wife being a participant at the Church and stated the opinion that the evidence did not rise to the level of a conflict. He further stated that nevertheless, out of an abundance of caution to protect the record and so that there is no appearance of any type of conflict, Mr. Niceforo will step down and recuse himself from this hearing.

The following documents presented by Mr. Foregger were marked as exhibits: Exhibit PB-6 – ethics law statement for Richard Niceforo, Exhibit PB-7 – record details from the Department of the Treasury for Richard Niceforo, Exhibit PB-8 – Church of the Little Flower Bulletin dated May 16, 2010, and Exhibit PB-9 – Church of the Little Flower Bulletin dated December 4, 2011.

Mr. Niceforo left the meeting (9:00 p.m.).

Carol Matula, raised a question with regard to Mr. Bocchino's eligibility to hear this matter since he is an employee of the township.

Mr. Cruz stated that Municipal Land Use Law specifically allows municipal employees to be on the Planning Board and it is pursuant to that law that Mr. Bocchino is a member of the Board.

Members of the public, including Thomas Foregger, Carol Matula, Edward Delia, Bill Machado and Charles Pratt, were sworn. The members of the public raised questions and discussion took place with regard to the Harbor Consultants Preliminary Investigation Report, Mr. Mistretta's testimony, how the properties meet the criteria for designation for non-condemnation redevelopment, possible development of the properties for affordable housing, the appropriateness of Mr. Mistretta's reliance on the expert reports obtained with respect to the properties, Mr. Mistretta's personal examination of the properties and review of expert reports, the condition of the existing buildings with regard to safety and ADA compliance, possible future need for expansion of the sewer treatment plant on Snyder Avenue, existing issues of noise and odors emanating from the sewer treatment property, and speculation that the Church will be closing.

In response to questions from the public, Mr. Mistretta further discussed the criteria for redevelopment and how the properties meet those criteria. He advised that if the Board approves the redevelopment study there would be a second phase of hearings at which there would be discussion of what can be done with the properties. Mr. Cruz stated that this is the first step in a long process. Any proposed development of these properties would have to come before the Board with a fully engineered site plan and all issues would be addressed. The only issue being addressed at this hearing is whether the redevelopment criteria have been met.

Members of the public made the following statements:

Dr. Foregger expressed the opinion that the public is entitled to cross examine Mr. Mistretta as well as the persons who prepared the expert reports being relied upon. He objected to the limitation of time for questioning and requested the right to submit written comments to the Board.

Ms. Matula expressed the opinion that Mr. Mistretta has not met the burden of proof showing that these properties are blighted and in need of redevelopment and stated that if the Board is not going to allow her to cross examine Mr. Mistretta those questions will have to be raised in another forum.

Mr. Delia expressed the opinion that there is no benefit to the Township of redevelopment. The residents will not have any say about what is put there and how close it will be to their properties. He does not see any reason to consider these properties for redevelopment.

Mr. Machado expressed concern about the protection of wetlands.

Mr. Pratt expressed concern regarding these properties being subject to builder's remedy lawsuits and Mr. Cruz explained that a developer would have to have an interest in the property to proceed with such a lawsuit.

The Public Hearing was closed on the motion of Mr. Einbinder, seconded by Ms. Perna and carried 7-0.

Planning Board Discussion and Potential Action:

Planning Board discussion and potential action on the preliminary investigation presented by Harbor Consultants, Inc.

In response to questions from the Board, Mr. Mistretta reviewed the criteria for redevelopment and how each of the properties met those criteria. He also stated that the Township will be required to review plans for either rezoning or redevelopment as the next step in the process. A redevelopment plan must be prepared and approved after a public hearing and it would be adopted in the same way as an ordinance.

Mr. Einbinder stated that the Board is being asked whether or not there is sufficient evidence that these properties meet the criteria to be deemed for redevelopment. He believes Mr. Mistretta has made a good presentation of the criteria and how the property has complied and he is in favor of approving this for referral to the Township Council.

Mr. Cruz reviewed the motion to be voted on and the proposed resolution to be adopted at a future meeting summarizing the Board's recommendation that these properties be designated as non-condemnation redevelopment areas. The resolution will be prepared and voted on at a Special Meeting scheduled on September 30, 2015.

A motion was made by Mr. Einbinder, seconded by Mr. Bocchino, to accept and recommend to the Township Council the findings of Harbor Consultants, Inc. as to the need for non-condemnation redevelopment of the subject properties as discussed, subject to the requirements, restrictions and limitations that shall be set forth in a Resolution of Memorialization to be adopted by the Board at a Special Meeting of the Board on September 30, 2015.

The motion was carried 7-0 with Mr. Einbinder, Mr. Johnson, Mr. Monaco, Mr. Beal, Mr. Bocchino, Mr. Cunningham and Ms. Perna voting in favor. There were none opposed.

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Adjournment:

A motion was made by Mr. Einbinder, seconded by Ms. Perna, to adjourn the meeting. The voice vote was unanimous and the meeting adjourned at 11:10 p.m.

Regina Giardina, Secretary Pro-Tem