

MINUTES OF THE PLANNING BOARD MEETING
Tuesday August 13, 2019

Present:

Chairman Larry Lonergan
Mr. Jim Kirby
Ms. Melissa Collins
Mr. Steven Neale
Mr. Al DeOld
Ashley Neale, Planning Board Secretary

Councilman Roman
Mr. Paul Mathewson
Ms. Jessica Pearson
Mr. Tim Camuti
Mr. Greg Mascera, Planning Board Attorney

Meeting called to order at 7:35 P.M. by Chairman Lonergan

Pledge of Allegiance:

Chairman Lonergan reads Open Public Meetings Act Statement.

Public Hearing

Chairman Lonergan asks if anyone from the public would like to address the board on topics not on this meeting's agenda. No public participation.

Continuation from July 25th Meeting

Preliminary Investigation to determine if Block 303 Lot 4, also known as 1 Sunset Ave, qualifies for designation as a non-condemnation area in need of redevelopment in accordance with *N.J.S.A. 40A:12A-1 et seq*, as per the Resolution 2019-99 of the Township of Verona Council dated May 6, 2019.

Mr. Kirby notes for the record that he has listened to the previous meetings recordings and submitted an affidavit, therefore he is eligible to vote at tonight's meeting.

Mr. Meese states that he represents Bob Car Corp., Niel Joy Assoc., and Forsons Partners, who are the owners of 25 Commerce Court and 111 Mount Prospect. Chairman Lonergan asks why these property owner have an interest in the this proceeding. Mr. Mascera notes that for transparency that Kruvant owns the properties. Mr. Meese calls up Mr. Art Bernard a land use planner as a witness.

Mr. Mascera swears in Mr. Bernard. Mr. Bernard goes through his background, specifically stating he is a licensed professional planner, with over 40 years of experience in land use planning and affordable housing. Mr. Bernard testifies that he has reviewed the Benecke report, has visited the subject site from the outside and has prepared his own report. The report was distributed to the Board. It is titled Planners Report Response to Are in Need of Redevelopment Reports for 1 Sunset Avenue (Block 303 Lot 4) dated July 22, 2019, prepared by Art Bernard and Associates, LLC.

Mr. Bernard goes through materials that he used to review the property in his report; he goes through the background of the property including owners. He proceeds by explaining the criteria required to meet to determine if the property can be designated as an Area in Need of Redevelopment, and adds in his opinion both Kasler and Benecke's reports to not establish the property is eligible to meet the criteria. He believes the prior reports are based on net opinions and not factual information. Mr. Bernard continues by recapping his report and pointing out differences in his opinion, from his to the Benecke report. He offers his own definition of obsolete and

quotes from a case Belmar was involved in. He notes that court warn Planning Boards not to rely on net opinions in these types of determinations.

Chairman Lonergan asks if anyone from the Board has questions for Mr. Bernard. Mr. Mascera asks if it is his opinion that because the building is in use, therefore it cannot be deemed obsolete. Mr. Bernard states, "that was the inference he got from reading the court decisions." There is discussion from the Board, Mr. Mascera, and Mr. Bernard on if this is realistic, and the definition of obsolete and its meaning as it pertains to the use of the building. Mr. Lonergan notes the importance of looking at case law and how the courts are interpreting the definition.

Mr. DeOld comments that he believes Spectrum would leave if they has the opportunity at a different location and the building would be vacant, adding to its obsolescence. Ms. Pearson comments that she believes it is unfair to only look at the one single tenant to determine if a property is obsolete. Mr. Camuti asks Mr. Bernard why he did not mention criteria H in his report. Mr. Bernard responds that in his opinion it is not enough to make a determination for an Area in Need of Redevelopment. Mr. Kirby asks for clarification on Mr. Bernard's idea of a net opinion. Mr. Bernard explains that his definition of a net opinion is something that does not have factual backing such as inspection reports or other evidence.

Mr. Benecke and Mr. Bernard engage in discussion regarding the differences between their reports, and their definitions and outlook on if the property could be considered obsolete. Mr. Benecke references Dr. Ettinger's letter regarding the property, and how it functions for the purpose of a special needs school is not sufficient. Mr. Benecke defends his testimony and report as being facts, and not anecdotal or net opinions, as Mr. Bernard has mentioned.

Chairman Lonergan asks if anyone from the public would like to come up with any questions for Mr. Bernard.

John Wyciskala from the law firm of Inglesino, Webster, Wyciskala & Taylor. Represents Spectrum 360. He asks Mr. Bernard if he was familiar with the Civic JC, Inc. v. City of Jersey City from 2017 that challenged a redevelopment designation by a property owners group, state of usefulness could not be used to determine if a property is obsolete.

Lorraine Ruzich from 41 Glen Road. Asks Mr. Bernard if he has a financial incentive to disagree with Dr. Ettinger's letter that was read into the record at last meeting. She asks if he was ever in the building, Mr. Bernard states he was not able to get into the building and inspect.

Chairman Lonergan asks if any other members of the public had questions for Mr. Bernard. Seeing none, he asks for any members of the public to comment on the tonight's topic.

Lorraine Ruzich from 41 Glen Road. States in her opinion this property should be considered obsolete, layers of complexity are ridiculous, its common sense and the Township should do it due diligence.

Mr. Meese states that the Board has been presented with a lack of evidence; there are no facts or measurements that supports a conclusion to find the property meets the criteria to be designated as an Area in Need of Redevelopment.

Herb Lev from 45 Summit Road. Reads a case from 2015, Main Street LLC vs. City of Hackensack. States he would like to focus on criteria H, which was mentioned in the planners report but was only discussed minimally. Adds that smart growth has been discussed in the State of New Jersey since 2002, Governor McGreevey's executive order. He talks about the Kruvant properties as interveners in affordable housing with the Township. He talks about traffic on Mount Prospect Avenue. He adds in his opinion criteria H is enough to make the determination that this property qualify as an Area in Need of Redevelopment. He concludes by reading from a West Windsor court case.

John Wyciskala from Inglesino, Webster, Wyciskala & Taylor. States that they respectively find that the findings in the Benecke report are appropriate, and establishes multiple criteria to grant a designation as an Area in Need of Redevelopment. He defends Dr. Ettinger's letter and adds the board should consider the element of public health for the special needs children.

Chairman Lonergan asks if any other members of the public that would like to speak on the matter. Seeing none. Chairman Lonergan calls for a 5-minute break at 9:07 PM.

The meeting is called back to order at 9:16 PM.

Chairman Lonergan states that he would like to hear feedback from the Board members before the topic is put to a vote. Ms. Collins asks if criteria H can be considered by itself, and if there is any other legal guidance that can be considered with making that determination. Mr. Mascera clarifies that there is no case that he is aware of where H has been used by itself, but the statute reads that one or more criteria has to be met. Mr. Camuti states that on page 7 of the Bernard report states. "relates to the usefulness and public acceptance of the facility. He asks if the public acceptance is known. Mr. Mascera states it is not known to his knowledge, but the purpose of local planning boards is to use their knowledge of the community as well as testimony and public comment to make that determination. Mr. Camuti asks if marketability of the property a factor in obsolescence. Mr. Mascera explains that the definition of obsolescence is subjective, and he should base it on testimony given from all parties. Ms. Pearson disagrees with the obsolescence argument, but feels that the smart growth criteria is compelling. Mr. Mathewson asks if a different use or future change should be considered or if only the facts at this point in time should be. Mr. Mascera explains that this is only the current condition and not what it could be. Councilman Roman states that he thinks this lends itself well to the smart growth principles. Mr. DeOld agrees that he would be in favor; he believes that it meets more than one of the statutory requirements to be designated as an Area in Need of Redevelopment. He lists some positive impacts for the Township if the property is redeveloped. Mr. Neale agrees that the current use is obsolete, while looking at the listed criteria. Mr. Kirby agrees with the rest of the Board, adds that the testimony tonight has persuaded him into seeing how criteria A also fits, as well as criteria H.

Chairman Lonergan asks for a motion to vote on recommending to the Township Council that Block 303 Lot 4 meets the criteria to qualify as a non-condemnation area in need of redevelopment. Motion is made by Ms. Collins, and seconded by Mr. DeOld. Roll call is taken votes are as follows.

Yes: Mr. Mathewson, Mr. DeOld, Mr. Camuti, Ms. Pearson, Mr. Kirby, Ms. Collins, Mr. Neale, Councilman Roman
No: Chairman Lonergan

Adjourn

After a motion made by Councilman Roman and seconded by Mr. Neale, there was a unanimous vote to adjourn at 9:41 PM.

Respectfully submitted,

Ashley Neale
Planning Board Secretary

PLEASE NOTE: Meeting minutes are a summation of the hearing. If you are interested in a verbatim transcript from this or any proceeding, please contact the Planning Board office at 973-857-4805.