

MINUTES OF THE REGULAR MEETING OF THE UNION BEACH PLANNING BOARD HELD ON WEDNESDAY, MARCH 30, 2022 IN THE MUNICIPAL BUILDING, 650 POOLE AVENUE, UNION BEACH HELD AT 7 PM.

The regular meeting was called to order by Chairman Ken Connors who announced that the meeting had been duly advertised in the Asbury Park Press and the Independent in accordance with the New Jersey Open Public Meetings Act, more commonly known as the Sunshine Law.

Roll Call shows the following members were present: Mr. Kenneth Connors, Mr. Frank Wells, Mr. Lloyd Coffey, Ms. Bruna Devino, Mr. Shannon Hoadley, Ms. Elizabeth Sweeney, Councilman Louis Andreuzzi, Councilman Anthony Cavallo, Ms. Laura Hallam (arrived at 7:32pm) and Mr. Michael Murray. Pat McNamara, Board attorney, Mr. Dennis Dayback, Zoning Officer, Stan Slachetka, Board Planner, Mr. Andrew Denbigh, Board Engineer and Laurette Wade, Board Secretary were also present. Councilman Cavallo is Mayor Cocuzza's representative.

The following correspondence was received from Mr. Dayback, the zoning Officer: Block 67 Lot 1, 508 Edmunds Ave; Block 102 Lot 13, 307 Poole Ave; Block 20 Lot 7, 822 Second St; Block 53 Lot 17, 729 8th St; Block 240 Lot 6, 1204 High Ave; Block 90 Lot 1, 103 State St; Block 187 Lot 1, 2 & 16, 710 Union Ave; Block 6, Lot 8, 9 & 10, 430 Front St; Block 148, Lot 10, 340 Park Ave; Block 195, Lot 15, 531 Cambridge Ave; Block 39, Lot 12, 901 Seventh St; Block 45 Lot 6 806 Fifth St; Block 218 Lot 20.02, 810 Bayview Ave; Block 67 Lot 3, 510 Edmunds Ave; Block 41 Lot 7, 922 Eighth St; Block 62 Lot 4.01, 136 Henry St; Block 203 Lot 1, 632 Bayview Ave; Block 120 Lot 14 313 Harrison Ave, Block 7 Lot 6, 724 Second St; Block 82 Lot 16, 113 Victoria Place; Block 172 Lot 1, 502 Seagate Ave; Block 83 Lot 8, 310 Edmunds Ave; Block 213 Lot 11.01, 700 Park Ave; Block 171 Lot 17, 623 Aumack Ave; Block 244 Lot 4.01, 1209 Patterson Ave; Block 44 Lot 8, 818 Sixth St; Block 210 Lot 21, 703 Bayview Ave, Block 48 Lot 1, 503 Dock St; Block 23 Lot 14, 915 Second St; Block 102 Lot 8, 124 Victoria Pl; Block 172 Lot 1, 502 Seagate Ave, Block 113 Lot 1, 1713 Florence Ave; Block 146 Lot 14, 811 Fifth St; Block 264 Lot 4 1411 Route 36; Block 191 Lot 11, 1005 Union Ave; Block 113 Lot 1, 1713 Florence Ave; Block 190 Lot 10.01, 903 Union Ave; Block 103 Lot 3.01, 1400 Florence Ave, Block 20 Lot 19, 212 Florence Ave; Block 76 Lot 6, 820 Ninth St; 310 Edmunds Avenue Block 83, Lot 8; 16 Ellison Court Block 142.01, Lot 1.09; 741 Front Street Block 29 Lot 8; Block 192 , Lot 7, 644 Sydney Ave; Block 132, Lot 21, 7 Heckelman St; Block 24, Lot 1, 906 Second Street; Block 83, Lot 3, 208 Poole Ave; Block 18, Lot 8, 307 Florence Ave; Block 5, Lot 21, 122 Dock St; Block 146, Lot 14, 811 Fifth St; Block 198, Lots 2 & 3, 717-719 Union Avenue; Block 137, Lot 22, 216 Morningside Avenue; Block 132, Lot 11 Scholer Drive; Block 40, Lot 10, 915 Eighth Street; Block 102, Lot 8, 124 Victoria Place.

Mr. Hoadley moved to approve the minutes of the February meeting and Councilman Cavallo seconded the motion. The motion was approved by a unanimous voice vote of approval.

Mr. Harry Hoff appeared before the board with his attorney Mr. Paul Mirabelli to continue his application for 430 Aumack Ave, Block 165, Lot 4.01. Mr. Hoff presented a summary of January's testimony and additional testimony for the application for 430 Aumack Ave, Block 165, Lot 4.01.

He stated that there was never a separation as the lots never merged. Having never been titled to the Kaminsky, only a correction of the tax maps. Specifically, directed from the borough attorney and guided by the NJ Tax Assessor's handbook and instruction manual giving all tax assessor's the direction and power to correct and revise tax maps under Public Law 1913 Chapter 175 and additionally 54:1-15 just as the corrections on the Mitchell Property on 705 Fourth St, 816 Center, 618 Jersey, Block 251 Lot 2.01 & 2.02 by the point, 221, 2.01 by the creek on Brook Street and many others. None of these were subdivisions, just the reassignment of a tax lot identification number. You must understand that in the early 1960's not only did the town of UB file for bankruptcy, it was under control and being managed and audited by the State of NJ. This lasted into the mid 1970s. There were many administrative, operational and financial issues, clearly the tax collection and administrative processes were lacking. The misidentification of these lots were just one of many errors in record keeping.

The property Bock 229 Lot 63 & 64 were still owned by Mr. & Mrs. McCarthy, both currently deceased. The Kaminskys sold their home in 1995, by 1998 the title was clear on corrected lot 4.01, the new owner 446 Hillside LLC sold the lot to my father with clear title and an insurance policy.

In my opinion, had the documents I now have in my possession been available in 1999 & 2001, I think the board would have a much better understanding of the complete situation and not make the decision based on the lots being illegally separated.

Now I have here some questions that I had for the tax assessor. Tax assessors, not here right? He was informed he was not able to be my witness which I understand but he was able to answer a couple questions via email so I would like to get them on the record.

Mr. McNamara and Mr. Mirabelli have an exchange about getting copies for public record since Mr. DelRe commented on it, it makes it public record. Mr. Hoff agrees to get the board copy of his remarks.

Mr. Hoff continues. My first question to him (Mr. DelRe) was *Is it standard practice to record the lien holder of a tax lien certificate as the owner of a property in the borough tax assessment sheets.* His response: While it may be common for a lien holder to continue to pay taxes on a property, in my experience it is not standard practice to address the lien holder as the property owner. 2nd email, again I had about 12 question but these were a couple he was able to answer. I asked him what his thoughts were on this – *Is there any way possible that a correction, change, update or modification to a tax map could possibly create a subdivision there by affecting ownership, deeds, property lines, metes and bounds and schedule A?* He responded: A subdivision is generally created by an application to the planning board. An assessor's role in any subdivision is to properly display the records on the tax list tax map and the digital assessment software so that the tax billing and ownership are correct. However, I believe that you are correct that neither the tax list nor the tax map are controlling factors regarding ownership. Please let me know if you have any additional question.

And this is the final one in a follow up email. I have no issue at all going on the record regardless. It is fairly clear to me that the lots should have never been merged, consolidated for assessment purposes, only is one thing, there was even a problem with that measure. As the ownership was placed in the name of a lien holder who never actually took ownership of the parcel by the way of foreclosure. As far as I can tell, at no point in time were the lots ever owned by the same party, excluding of course the borough's ownership of very early on. I don't know if that the endo all to be all but tax assessor's records and tax maps do not supersede the legal ownership presented by a deed. That should be readily understood by all parties involved and simple enough to explain it not. I believe the facts are strong enough to speak for themselves in this case. Let me know if anything changes.

The three emails have been marked C-1, C-2 & C-3.

Mr. Hoff continues. And this is just a quick ending. This is the last of my stuff. In my opinion the tax maps cannot create a merger, the tax map cannot create a subdivision, a tax map has zero power regarding the standing or status of land it represents. The tax maps cannot affect change of ownership, size, metes and bounds or property lines. ? v. Wall Twsp. Reiterates merger has nothing to do with tax ? of a parcel. The tax assessor may not merge lots for the purpose of taxation. As per Young v. Bergen Co. Bd. Of Taxation. This is actually stated on page 8 of the then planning board' attorney's brief. It goes on to state all that the tax assessor did when creating 4.01 and 4.0 from only lot 4 was to establish separate line times for the purpose of taxation. He himself states the action of the assessor was just for the purpose of taxation. The supposed merger in 1962 and the assumed subdivision in 1995 could never by any action of change, addition, modification, omission to the tax map do what the board and attorney state it did. It's an illustration of a drawing, a guide for the most remedial, mundane of actions to locate and identify parcels of land within the borough with approximate sizes for reference. The borough of UB did not even have zoning ordinances until 1963 and locked and merger did not go into effect until 1967. The tax map and consolidation in 1962 was simply an error by the survey team based on the wrong owner being listed by the tax assessor on the prior assessment list. If truly there was some mystical merger and separation, then lot 61 & 62 which is 428 Aumack Ave would have suffered the same cloudy, convoluted fate as lots 63 & 64 but they have not, they've been transferred b a deed no less than 3 times since 1995 with clear title with the benefit of full legal use. If fact tax map designations mean so little that typical when they are added to a deed they state "The land referred to as commonly know as block # and lot # on the tax map of said borough or for informational purposes only being know and designated as block # and lot # in said borough. In 107 years, the metes & bounds, Schedule A, property lines have never changed but the tax map designation have changed no less than 5 times as most lots in UB have had at least 4 completely different tax map references. None of them affecting property lines, ownership, deeds, subdivisions or mergers. It just can't happen.

I had mentioned at the last meeting there was a handwritten note in the tax assessor's file from 1951, a request by Mrs. Tierney to redeem the tax sale certificate for Block 229 Lots 63 & 64 owned by Robert and Mary McCarthy. A 72 year old handwritten note proving the tax assessors' office knew the Zahns and later the Kiminskys did not own lots 63 & 64. As it turns

out the Tierney's are heirs of the McCarthys and listed on the tax sale certificate in 1997. So it was an heir that tried to redeem in 1951 the ownership should have been corrected then.

And this is just a final quote for the record. The first attorney used in 1998 was assigned by the firm to the case and he had only been recently passed the bar. He was not prepared to deal with the unexpected confrontation by the adjacent property owners. He was so poorly prepared that the then planning board's attorney's brief state he never even touched on the positive and negative criteria. The second application presented after the first one was remanded back due to an incomplete record by the township and deemed by the board as res judicata, which was later disproven, the board never heard any of that testimony that was prepared. Mr. Pape the senior attorney at the firm of the original attorney had worked with my father for years. They lost in court. He knew that the firm did a poor job, my parents knew they did a poor job and my parents sued his attorney. The outcome was the firm bought the lot for \$33,000 and refunded all legal fees. When I did the OPRA request in Sept. and received all the documents that clearly indicated there had never been an illegal subdivision, I completed a promise to my dad that someday I would try and fix this. I purchased the lot back from the law firm so there was no chicanery as a board member has stated. Mr. Pape stated recently when presented with the documents that you have received, that he has never seen them before. Two prior board members stated they had never seen those documents before. When the OPRA was requested for all the trial briefs and evidence, not a single copy of the exhibits were located. OPRA law didn't come into effect until 2002, so these documents in all likelihood never saw daylight. They were not referenced in the judge's decision, there weren't listed in the first or second brief, by the planning board attorney. In a pre-trial brief to the first application, there's a reference to documents that were submitted to the meeting by a neighbor. They are referenced as self-explanatory but no actual document were found in the files by the OPRA request. I did not find any other mention of them. I'm telling you this so you understand how I came to be here with this application tonight. This really should be confrontational. I should be a cooperative effort to correct the wrong doing. Yes the board and the attorney just got it wrong. There's nothing humorous about that statement. After all they are just human and if we never made mistakes we wouldn't need the Supreme Court or an appellate division to review and overturn Supreme Court decisions.

If the board is so inclined, I request the following: A motion to accept that lot 4.01 was not illegally created, that there was never a merger and thereby never an illegal subdivision and two, a motion to approve the structure as it was presented. That is all I have.

Marked as Exhibits:

- C-4 Schedule A(s) showing that the descriptions are just there for information purposes only.
- C-5 Document showing Tierney was an heir to the McCarthys.
- C-6 9 Deeds for both parcels.
- C-7 Bound Booklet created by Harry Hoff that includes all other information that he referenced.

Mr. McNamara states that he cannot recommend the board proceeds with a final vote tonight. There's a lot of additional information that has been provided and the board needs time to review it.

Mr. Mirabelli asks if the board has any questions. No questions at this time.

The application was carried to the April 27, 2022 meeting.

Deputy Ventures, LLC applying for Preliminary and Final Major Site Plan Approval for **710 Union Ave, also known as Block 187, Lots 1, 2 & 16** per the requirements outlined in the Redevelopment Plan. The zoning application has been approved by the zoning official. The property is a conforming vacant corner lot located on the south side of Central Avenue at the intersection of Union Ave. The Redevelopment Plans meet the bulk and area requirements outlined in the Commercial Corridors Redevelopment Plan. Represented by Mr. Jeffrey Gale.

Mr. Hoadley and Mr. Murray excused themselves from the hearing. Mr. Hoadley has a conflict of interest and Mr. Murray received notice for this property.

Mr. Jeffrey J. Carr of the firm Lindstrom, Diessner & Carr, PC, Dennis Dayback, zoning official and Andrew Denbigh, Board Engineer are sworn in.

Exhibit A-1: Application package.

Exhibit A-2: Color rendering dated 11/12/21.

Exhibit A-3: T&M letter dated 3/22/22

Mr. Carr testifies the parcel of land is not a vacant lot. The intent is to erect 3 buildings on the site, 2 fronting Union and larger structure facing internal parking lot. The largest building (#3) will be residential, 4 units with garages. The other 2 buildings shall be mixed use. Building 1 will have 1 garage and building 3 will have additional garages for Building 1 and 2 tenants. Parking will be assigned. Retail units will be accessed primarily from Union Ave with secondary access behind the buildings. Need variance for parking space size: 9x20 where 10x20 is required. One space for EV. Mr. McNamara asks that 1 more be made ready. They are created 27 parking spaces where 23 are required. Retail would close by 11pm.

There are not variances required for density or lot coverage. But a variance for setback from Union Ave is required. 15 foot required, proposing 2.2' with a 5' dedication required by the county.

Mr. Carr discussed each item of the T&M letter dated 3/22/22. There was a discussion about item #5 lighting.

Frank Wells asked about page 8 of the storm management report states that the property can't meet DEP requirements. Mr. Carr responded that because of its location, it is not possible to meet DEP recharge detention basins. There will be roof gutters to lawn and a swale around

building #3. There is no application required to DEP. There will be a small increase in stormwater to the system. Dennis Dayback requested a calculation of the inlet be given to the board. Mr. Carr stated he will try, not sure if he can prove it. The proceeding was opened to the public.

Michele Mitchell, 701 Central Ave against the application, inquired about additional utility poles, dumpsters, height, retail restrictions, site vision leaving Central and overflow parking. Mr. Carr and Mr. Gale responded, no additional utility poles, no dumpsters, height allowed is 30 feet and 2 stories. We are less than 30 feet and are 2 stories. Retail is restricted by Redevelopment Plan, there will be no site vision. 5 feet will be dedicated back to the county, we meet the sight triangle. Overflow parking will be on the street, same as everyone else. Ms. Mitchell then asked “do you want to see this outside your door?” No response.

Terry Tomasko, 705 Central Ave against the application voiced concerns about parking and access. Some houses don't have driveways. And when there was a fire at one of the houses on the street, the fire trucks could not get down the street due to cars parked. Snow removal is already a problem. Concerned about delivery trucks, garbage trucks coming down the street. On bad rain days she floods.

Michele Chabala, 716 Union Ave, against the application voiced concerns about drainage for building 1 which is next to her property, who would maintain the new greenery at the fence and that her windows are right there towards the retail stores and 11pm is late during the week, AC units near her property and that they are requesting all these waivers. Mr. Carr responded: no drains will be toward your property, the property owner will be responsible for the greenery, no AC units will be near your property. She then stated that she did not receive notice. Mr. Gale was able to produce the certified letter receipt showing that notice was mailed to her. She then stated I am concerned and don't want it.

Mr. McNamara stated that due to the hour we should carry to next month. Mr. Gale concurred. Councilman Andreuzzi made the motion to carry and Mr. Wells seconded. Voting yes: Connors, Wells, Coffey, Devino, Sweeney, Andreuzzi, Cavallo and Hallam

Resolutions for Chairman Kenneth Connors, Attorney Patrick McNamara, Vice Chairman Shannon Hoadley, Secretary Laurette Wade, Board Engineer T&M Associates, Newspapers Asbury Park Press & Independent, Schedule of Meeting Dates and Conflict Attorney James Gorman. Councilman Andreuzzi made a motion to approve all and Councilman Cavallo seconded. There was one vote for all of them. Voting yes: Connors, Wells, Coffey, Devino, Sweeney, Andreuzzi, Cavallo, Hallam and Murray.

The resolution approving the application of the applicant , John and Nancy Curtis, 1129 Florence Ave, also known as Block 60, Lot 19. The applicant requested the following variances to construct an enclosed breezeway, Second Floor Bathroom and Kitchen Remodel:

(a) Section 13-10.4 f.5.– Minimum front setback of 15 feet where 20 feet is required *pre-existing, (b) Section 13-10.4 f.6 – Minimum side yard setback of 2.8 feet and 18.7 where a

minimum of 8 feet and a total of 20 feet is required *pre-existing, (c) Section 13-4.1 – No nonconforming building shall be enlarged, extended or increased.

Mr. Hoadley moved to approve the resolution and Councilman Andreuzzi seconded the motion. Voting yes: Connors, Wells, Coffey, Sweeney, Andreuzzi, Cavallo and Murray. Abstained: Devino, Hoadley and Hallam

Chairman Connors called for a motion to go into closed session at 9:55 PM in accordance with the Open Public Meetings Act. Mr. Wells made a motion and Mr. Coffey second. The motion was approved by a unanimous voice vote of approval.

Mr. Wells made a motion to go out of closes session at 10:22 and Mr. Coffey second. The motion was approved by a unanimous voice vote of approval.

There being no further business Mr. Coffey moved to close the meeting at 10:24 and Councilman Cavallo seconded the motion. The motion was carried by a unanimous voice vote of approval.

Respectfully submitted,

Laurette Wade