

REGULAR MEETING OF THE PLANNING BOARD OF THE BOROUGH OF KENILWORTH HELD ON THURSDAY EVENING, DECEMBER 10, 2020. CHAIRMAN RICH PICERNO PRESIDED.

The meeting began with an affirmation of the Open Public Meetings Act. The schedule of meetings is on file in the Borough Clerks' office, was posted on the bulletin board, and has been mailed to the Local Source, and the Star Ledger.

Pledge of Allegiance was led by Chairman Picerno.

ROLL CALL

Mr. Picerno, Mr. David, Mr. Grimaldi, Mr. Mazzeo, Mr. Pantina, Mr. Laudati, Mr. Calello, Mr. Herbolario, Mr. McMahon. Also present were Planning Board Attorney Mr. Lou Rago and Christian Cueto, Borough Engineer and Mr. O'Brien Borough Planner.

Approval of November 12, 2020 Meeting Minutes

Motion was made by Mr. Grimaldi, seconded by Mr. Pantina to approve the minutes. All in favor.

Communications: None

Old Business: None

Resolution: **Application #5-20**
 Danielle & Suzanne Crincoli
 45 North 10th Street
 Block 75, Lot 8

Mr. Rago said the Board heard this matter at the November 12, 2020 meeting. They were expanding their single family house and they needed front yard set-back variance relief for the front porch portico that they were proposing. The set back is 25 ft., they are proposing a set-back of slightly over 20 ft. The Board felt that it was a good application and the front area was consistent with many other homes in the neighborhood and approved it and tonight we will memorialize it.

Motion was made by Mr. Grimaldi, seconded by Mr. Pantina, to approve the resolution for Application #5-20, Danielle & Suzanne Crincoli, 45 North 10th Street, Block 75, Lot 8. Roll Call: Mr. Picerno voted yes, Mr. David voted yes, Mr. Mazzeo voted yes, Mr. Pantina voted yes, Mr. Calello voted yes, Mr. Herbolario, McMahon voted yes .

New Business:

Mr. Picerno said tonight is a hearing regarding the designation of a non-condemnation redevelopment area. He asked Mr. O'Brien to speak on behalf of this redevelopment.

Kevin O'Brien was sworn in by Mr. Rago.

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Mr. Rago asked Mr. O'Brien to go through his report, describe the property and describe the statutory criteria. He said for the Board for the public, there is only one issue before the Board tonight and that is whether the property in question meets the State's criteria that will enable this Municipality to designate it as an area in need of redevelopment, that is all we are doing, nothing is being approved, we are not dealing with a project, we are not dealing with development, we are dealing with giving the municipality the ability to eventually put on that property what the Governing Body wants to have on that property, that is all we are doing. We are not discussing tonight nor should we, density or anything like that. Any project that hopefully will be built here will come before this board in the future if it gets that far and there will be a public hearing and that is when it all comes out. Tonight is strictly...does the property match the criteria to enable the governing body to confirm that it is a redevelopment candidate, that is it. He asked Kevin to go through his report and describe what he did and how he did it.

Mr. O'Brien said he is a licensed professional planner and has been serving this Borough since 1997 as Planner to this Board and this Borough. His background is not only is he licensed by the State of New Jersey as a Professional Planner and he has done that by means of both examination which is a statewide exam as well as education, having enough education to qualify for that exam. He is also certified by a group called the American Institute of Certified Planners which is a nationwide designation similar to being a professional planner in New Jersey. If he were to go to Oregon or California or New York his AICP designation would be the equivalent of being a licensed professional planner. He has appeared before over 250 boards in this State, has worked for two dozen towns, counties and a number of other bodies such as the New Jersey Legislature, working with New Jersey State Board of Professional Planners which regulates the people in his profession. He has been doing this for quite a while, here in Kenilworth since 1997 and he has written redevelopment plans for a number of municipalities, several in the towns around us including Clark and Rahway. He started writing redevelopment plans in the late 1990's in Jersey City which has a very active redevelopment phase which you know and has certainly come a long way. He said this is not new to him by any means. He is giving his background also for the Board Members who may not realize all the things that he actually has in his background because we usually don't talk about those things.

Mr. O'Brien said the Borough council, in a resolution dated February 26, 2020, directed this Planning Board to undertake a preliminary investigation to determine whether Block 183, Lot 9, also known as 15 North 26th Street, Kenilworth qualifies as a non-condemnation area in need of redevelopment. A non-condemnation area is one that allows private enterprise to take control of the project, whatever comes down the line, the Borough has no condemnation abilities whatsoever, meaning that the Town cannot go in and buy the property themselves, this has got to be done in the market place itself. North 26th Street, as the Board is well aware, from reading his report and looking at the map and these documents have been on file in the Borough Clerk's office for the last 3 weeks so any member of the public had full access to them. He will be referring to that document and to the map. The area right now is basically used as a parking lot for large vehicles, it has been subdivided via fencing for a number of different uses in there but always parking. It is not paved, there are no improvements on the land whatsoever and this property has been like this for at least the last 18 years as we have found through the tax assessor records in the Borough. As Mr. Rago pointed out, our job is to review the criteria that the New Jersey State Redevelopment law lays out in New Jersey statutes which lists a number of criteria for the Borough to consider as to whether or not a property meets the requirements of the Redevelopment Law. Several are listed in the law and what he will be doing is going down some of the criteria that this property does meet, meaning that it would qualify for an area in need of redevelopment. The criteria for redevelopment is found in New Jersey statute annotated 40A:12A-5 and that consists of sub sections C, D, and E.

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Subsection C talks about whether or not a property is unimproved and that has been unimproved for a period of 10 years prior to the adoption of the resolution which was in February of 2020. As he has indicated, this property has been vacant, meaning that there has been no improvements placed on this land for a minimum of 18 years according to the Tax Assessor and a minimum of 25 years in accordance with the historical images on google earth. Because it has been vacant and again vacant means there have been no improvements, no buildings, it has not been paved, there are no storm water, no improvements, no buildings, it has not been paved, no improvements whatsoever have been made to this lot except for parking large vehicles. Since it has been vacant for that amount of time it qualifies under Sub Section C as an area in need of redevelopment. **Subsection D** talks about areas that have dilapidation, overcrowding, faulty arrangement or design, excessive land coverage and detrimental to the safety, health, morals or welfare of the community. He believes that this section of the redevelopment law is also met and this criteria does meet the requirements of the redevelopment law because the subject property has a look of dilapidation, when one takes as you look at it, it is definitely not a highlight of the Borough. Looking at it from 26th Street or from Federal Ave., it does appear to be dilapidated and not improved in any way. The haphazard storage of trucks and other vehicles represents an overcrowding of the area, also represents faulty arrangement and design and excessive land coverage. The property lacks proper storm water drainage facilities and represents a deleterious land use and obsolete layout which is detrimental to the safety and general welfare of the community and by those means he believes it does qualify under Subsection D. **Subsection E** speaks to a total lack of proper utilization under the statute. When one takes a look at this property, he believes that this property does demonstrate a growing lack of proper utilization and a total lack of property utilization, the property is devoid of any tax improvements whatsoever and the storage of vehicles there is not something that advances the safety, health and morals or welfare of the surrounding area for our community. Because of the many criteria that is listed in the Redevelopment Law and the fact that this property meets 3 of those criteria when it only has to meet one to be named an area in redevelopment, he is recommending to the Board that, as a result of this study that has been performed on your behalf, that this property does qualify for determination as a non-condemnation area in need of redevelopment and that it qualifies under the statute under Subsections C, D & E. Mr. O'Brien welcomed questions from the Board.

Mr. Grimaldi said the reason this was brought up was by the February 26th agreement? Mr. O'Brien said under the Redevelopment Law and the Land Use Law the Borough Council is the originator of all redevelopment measures, that law directs the Council to ask the Planning Board, who knows land use and is the only body authorized to do that in the Borough, to undertake that study and make a recommendation. Should the Board adopt the study they would then recommend that study to the Borough Council who would take whatever the next action is. Mr. Grimaldi said but we got here today by their actions on the 26th initiating this to see if it's feasible. The MOU.....this was part of that understanding to get this started?? Mr. O'Brien said that is not part of this tonight, he does not have familiarity of that document. Mr. Grimaldi asked if that was what kicked this off? Mr. O'Brien said no, the resolution of the Borough Council sending this here is how we got here. He said anything else is the council's work. Mr. Grimaldi said they mentioned the MOU in that resolution, maybe its conjecture that whatever is in there also may be the reason why this was brought to us. Mr. O'Brien said he does not know that, the only thing he is responding to and this Board is responding to is the resolution authorizing us to proceed with a study.

Mr. Mazzeo asked what is the reason for this property for it to be approved as a redevelopment, what is the background reason and what benefits is it for the developer for the township? Mr. O'Brien said there is no developer, the only thing we have is a resolution of Council directing us to undertake a study. He said by taking the study we know by the Redevelopment Law that lists a number of criteria upon which

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we judge whether or not that property qualifies as a redevelopment area. Our step in this game is to find whether it is or is not qualified to be redevelopment area. The Board will then take a vote on whether it does or does not and then send that recommendation to the Council. The Council, for whatever reason, they came up with asked us to do this, he suspects they have other reasons that they would like to pursue but nothing can happen until this Board takes action. Mr. Mazzeo said what he is getting at is...the parcel is in a particular zone of the municipality, I guess we are not privy to know and understand what the council is looking for as far as deviation from different zones or what additional abilities they might have to develop certain properties? Mr. O'Brien said the only thing we have in front of us is does it qualify as an area in need of redevelopment? Council has sent it to us for whatever their reasons are, since they are not stated in the resolution, we are directed to take this step. We give it to Council and then Council is going to do whatever they have in mind.

Mr. Rago said, just so everyone knows, if the Board votes tonight in favor or they agree with Mr. O'Brien's report, that is only a recommendation for the Governing Body, the Governing Body can do with it what they see fit. If the Governing Body is in favor of this, if they are consistent with the Boards statement that they are in favor, they then would direct Mr. O'Brien to prepare a Redevelopment Plan but there is no plan and that is where you put a little bit of meat on the bones and the Governing Body can come up with a plan, a redevelopment plan, that they would like. He said then they would find a developer who will build what the Governing Body wants, that is the key, we do not make the final decision here. If they find a developer, they have to come here for the approval, so there are many steps along the way, many opportunities for public input. We do not have a plan right now, that would be down the road if we get over certain things.

Mr. Pantina said he understands why we are here and he understands some of the Board members queries about the process, understanding that we are just here to decide if it is an area in need of redevelopment. He said one of the questions Mr. Mazzeo asked and you stated that we don't have a developer, in your report, in this resolution it talks about the redeveloper, it talks about density, how is that.....165 units, with 15% affordable housing.....maybe you can explain to the Board if it is within the content of this meetinghow is it that it has already been identified before the report is made? Mr. O'Brien said this is language from Council from the resolution on page ii , this comes from Council, we did not develop this, this is what they have mentioned, our task, no matter what they mention, is..... does this qualify as a redevelopment area, we are not looking, as Mr. Rago said, looking at a plan. A redevelopment plan basically takes the place of zoning, right now this property is zoned industrial and it has to meet all the industrial standards in our Land Use Ordinance. Should a redevelopment plan be written, it will then put in what all the requirements are. When Council gets the next step from us which is, presuming the Board approves this and gives to Council, they then have to accept or reject our study. If they accept the study then they will go forward with a plan and perhaps that plan will include that information and some of the standards they put there but right now those standards have nothing to do with it. Mr. Pantina said that redevelopment plan will originate from Council or the Planning Board? Mr. Rago said the Governing Body would work with Mr. O'Brien with developing a plan for the property. We would do the same thing with the plan as we are doing now and then after that, maybe there is a developer, maybe not, they would have to come in for an application. Mr. O'Brien said the only information we have from Council is the resolution, and you are right they have mentioned some things there but that is not part of the Redevelopment Study which is what this is.....Mr. Pantina said this is included in your report, it creates some questions as to..... Mr. O'Brien said he understands that it certainly raises questions, should they have included that in the resolution.....he does not know but our task is just the Redevelopment Study.

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Mr. Grimaldi said, by their statement, there is a redeveloper in the resolution but we keep saying it may or may not be one, why are we using that language. Mr. O'Brien because we don't know today, December 10th if they were..... Mr. Grimaldi said he is wondering why we are saying that maybe.....they are telling us they have negotiated with a redeveloper, they are telling us that but we are saying there may or not be, he does not understand why we have to say that.....it's like OZ we don't know what is behind the curtain. If you came here and said they have negotiated with this developer, unstated but there is a developer, that's fine, we are saying the same thing, he just doesn't understand the difference in language. Mr. O'Brien said because whatever they said in the February 26th resolution, he has no idea what is going on today on Council part, whether they still have a developer or they don't or did they change, he does know, he is not privy to that. Mr. Grimaldi said but writing this report was started based upon this information. Mr. O'Brien said by the resolution and part of the resolution directed this board to undertake the study. The density, the redeveloper has absolutely nothing to do with the study. Mr. Rago said what Kevin did was not geared to a specific developer or project, it was much broader.....is this land in that bad a shape that complies with certain criteria in the statute to enable us to recommend that Kevin's report be sent to the Council in favor of that report, that is all we are doing now. There may be a developer, there may not be a developer, he is not the Governing Body attorney, Kevin is out of the loop, we are just here for that limited part. Mr. O'Brien said the last information we have from Council is that resolution. Mr. Grimaldi asked if the owner of the property been made aware? Mr. Rago said it is our obligation to notify the owner or owners of all the property that is being under consideration. Mr. Rago asked if it was a single owner and Mr. Rago said he does not know. Mr. O'Brien said the owner of record was noticed in a timely fashion in accordance with the Redevelopment law.

OPEN MEETING TO THE PUBLIC

Motion made by Mr. David, seconded by Mr. Grimaldi to open the meeting to the public.
All in favor.

Mr. Picerno said we are going to ask anyone from the public to please come up to the microphone, speak clearly. We are going to a 5 minutes for each person to speak on this particular topic and this topic only, we are going to ask that because there are so many people here and we are trying to exercise some COVID19 restrictions. If public #1 comes up and public #2 and #3 say the same exact thing, please move on to other topics because they are all important and we want all of you to be heard. At the end, we will answer whatever questions we possibly can. He asked that everyone respect that for all our neighbors and the people that are here tonight who came out in these trying times.

Sal Candarella, 321 North 21st Street - Mr. Candarella commended Mr. O'Brien, he worked with him on this Board for 15 years. He has definitely proven that this area is in need of redevelopment. He totally agrees and agrees that the Board should vote in favor of that tonight. He also wants some of the other Board Members here who are not as familiar as some of the architects or engineers on this Board and those people who have sat here before for years. To his knowledge Kenilworth has never undergone a process like this, so it is new to a lot of people and he knows it's new to you Rich. He said what happens in this situation, there is a developer, the developer has gone to Mayor and Council and it says it in that report that they want to build 165 units, they want to do it with X amount of stories high, they want to have some common area, they have to provide parking per RSIS or whatever this Board feels like the

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parking requirements are but this planner has a definite idea in his head and it is this Boards job to make sure what we approve is good for this town and is the right thing whether its 165 units or 60 units we want to make sure what this Board approves is good. We don't want to just give him what he wants because the next step after you approve this, the developers attorney and council's attorney get together and develop an ordinance, that ordinance will be reviewed by this Board and sent back with a recommendation or without a recommendation and that will be the negotiation as to what they could build. He said those two attorneys are going to come up with an Ordinance and you guys are going to have to review that ordinance and make sure whatever is in that ordinance or whatever the Mayor and Council approve is good for this town. He is not telling you what is good or not good for this town, that is for the Board to determine but let's be reasonable and look at density and height and parking and all those things when it comes to that. He asked Mr. Rago if he had the right process and Mr. Rago replied yes, that is down the road if we get that far. Mr. Rago said when this goes to Council things could happen. He said when we get that, this Board will go over everything. Mr. Candarella said he would like to be here as part of that audience when we are reviewing that ordinance.

Robert Herbert 14 North 12th Street – Mr. Robert asked Mr. O'Brien if in the Redevelopment Agreement has separate bulk or zoning regulations normally compared to what the standards are now for what it is zoned for now? He asked who would come up with those zoning bulk requirements, would it be a recommendation from the Board or Council? Mr. O'Brien said the study was directed by the Council, not by this Board so it came to this Board and the Board directed me to undergo the study as their staff. The sequence of events is that should this Board approve the study and then recommend it to Borough Council, the Borough Council can accept or reject this study which qualifies this area as a need of redevelopment. Should they do that then it would be up to the Borough Council to author a redevelopment study which in some ways is like a Land Use Ordinance so right now this is under the Industrial Zone requirements, a Redevelopment Study would lay out what those bulk and use requirements would be if they are different from the existing ones so that would be up to Council.

Lisa Pierro, 45 North 6th Street – Ms. Pierro said in 2015 the Planning Board approved 8th Street to go from Industrial to Residential 8 units to help out with low income housing in Kenilworth. It is 5 years later and there is no lowincome housing people living in there, the homeowners have not conformed to one thing that they were supposed to do. Mr. Picerno said we need to speak only to this Redevelopment Study. Ms. Pierro said how does any of this benefit me, the homeowner and a taxpayer. Mr. Picerno said we need to discuss whether this should go forward as a study, we are not here.....not that I don't want to hear you.....Ms. Pierro said North 8th Street was from 5 years ago and they have not done one thing they were supposed to do in order to get it turned into residential. Mr. Picerno said that has nothing to.....Ms. Pierro said all they did was change their taxes from \$16,000.00 to \$20,000.00. Mr. Picerno said to Ms. Pierro that she has some interesting.....Ms. Pierro said so how is that benefiting me.....Mr. Picerno said he can't answer that for you tonight because we are here to discuss the Redevelopment Study, what happened on 8th Street, he can't talk about tonight, he needs to focus on what is in front of us right now, he needs the Board to focus on that and the public to focus on that. We can here you at another meeting based on that particular criteria and we would be happy to hear you, we want to know from the public what is going on. If there was a misstep someplace, let's try and fix it but he can't discuss that tonight because it takes away from our agenda of what we are doing tonight. He is sure you can appreciate that. Ms. Pierro said its all the same and Mr. Picerno said it is not. She said if you can't handle an 8 family unit, how are you going to handle 165? You approved it but no one ever did what they were supposed to do with it. Applause. Mr. Picerno said we are not going to lose control of this meeting, any applause or outburst he will ask to hold, we think that everyone has a good conversation, Mr. O'Brien, myself, our Vice Chair and even you Mr. Pugliese who just clapped, he would like for you, especially you

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Mr. Pugliese to understand that you have been in my position before, you have been the Mayor or our town and he would like you to control yourself so we can get through this meeting so other people have a chance to speak. Mr. Picerno said to Ms. Pierro that she can continue and have another 5 minutes but she needs to talk about this study. She said but it's the same thing, it's talking about low income housing bringing it into Kenilworth, that's what you agreed with this so who is going to benefit? Mr. Picerno asked Mr. O'Brien to address Ms. Pierro. Mr. O'Brien said if you have a complaint about something that has been done in the past or an ordinance or a variance that has not been met, he advised her to call the Building Department tomorrow morning. She said we all know where the building department has gotten her.....Mr. O'Brien asked if he could finish and said he advised Ms. Pierro to call the Building Department in the morning and file a complaint with the Zoning Officer and the Zoning Officers position is to investigate that complaint and find out what is wrong, if there is anything and to issue a complaint through a summons or whatever is necessary. Ms. Pierro thanked Mr. O'Brien and said she appreciates it and Mr. O'Brien said he looks forward to hearing from her.

Mr. Fred Pugliese, 715 Richfield Avenue – Mr. Pugliese said the public is here to listen to what the expert is saying why the Board should declare this area an area of redevelopment. He said everyone is relying on the expert, the public and the Board is relying on the expert. What the public heard here does not meet the necessary requirements of a proper evidential opinion. What he heard today was a net opinion. He heard the law and he heard conclusions. The law that he heard was not the full law. What he heard today was a gloss over of the three subsections of the statute, that is what he heard. We are all here to see if we should follow his recommendation to approve. We heard a net opinion, a conclusion and no meat and substance in between. If it is a net opinion, this Board cannot rely upon it, unless there is something he doesn't know, the opinion brought forth here tonight should not be relied upon by the statute and moving forward to approve his recommendation. Mr. Rago asked Mr. Pugliese if he read the full report that Mr. O'Brien prepared? Mr. Pugliese said he read portions of it. Mr. Picerno said he is not being facetious but did he hear you read portions of it?? Mr. Pugliese said he read portions and he attended the meeting and what he heard and what he saw. Mr. Pugliese asked for the report. Mr. David said it has been available to the public and has been for quite some time. Mr. Pugliese said he does not think you can limit him to 5 minutes, Mr. Picerno said we can, not to go back and forth with you but when we were on CouncilMr. Pugliese interrupted and said he has to be given the opportunity to be heard.....and Mr. Picerno said you are and because of the amount of people here, while you were on Council and when you were the Mayor and he was the Chair and part of this group of the Board, we limited minutes so everyone could be heard. What we need to say in five minutes but if we are going to have a trial then you need an hour and a half. What we would like for you to do is to make your comments, we want you to be heard but we can put a limit on the amount of time that the public speaks so everyone can be heard and you were part of that Mr. Pugliese. Mr. Pugliese said when he was the Mayor we did limit people but at the end of the meeting if you wanted to come back up and say anything additional, we always let people come back. Mr. Picerno said if there is time and this thing doesn't get out of hand, we don't have any problem having you come back up, but let's get everyone up here so that everyone can have a piece of this pie and let's hear what the public has to say, it is important to this Board, not just important to you. Mr. Pugliese said he agrees. Mr. Picerno said to Mr. Pugliese, you are going to share with us some interesting statements that we want to hear and he is really looking forward to hearing them. Mr. Picerno gave Mr. Pugliese an additional 3 minutes. Mr. Pugliese said he is going to have to come back, he is trying to build a case for appeal if necessary. He said Subsection C has 2 prongs, Mr. O'Brien asked what page are you on? And Mr. Pugliese said he is talking about the statute itself. Mr. O'Brien said he does not know what you mean by two prongs. Mr. Pugliese said so it has to be vacant for a period of 10 years and the second prong being by reason of its location, remoteness, lack of means access to a developed sections all portions of the municipality or typography or nature of ??? is not likely

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to be developed through the instrumentality of private capital. Mr. Pugliese said you stated that the property is vacant, correct? Mr. O'Brien said the property has been vacant for at least 25 years. Mr. Pugliese said but you also stated that there were cars and trucks throughout the property and Mr. O'Brien said that is correct. Mr. Pugliese said so it is not vacant and Mr. O'Brien said yes it is. Mr. O'Brien said if one goes to the Tax Assessors records, this property is classified as Class #1 which is vacant land, there are no improvements whatsoever on this property. Mr. Pugliese said the statute says unimproved vacant land so it is either unimproved or vacant. Mr. O'Brien said it is both. Mr. Pugliese said he disagrees, he thinks it has to be both unimproved and vacant. Mr. O'Brien said it is both. Mr. Pugliese said it has cars and trucks all over and it is not vacant. Mr. O'Brien said cars are not a permanent improvement, they are parked there temporarily, once those cars are cleared off, you have a vacant piece of land. Mr. Pugliese said alright so let's go to the second prong. Mr. Picerno said to Mr. Pugliese that he came up here at 7:38 and it is just about 7:45, if you want if there is time at the end he would be happy to have you come back up but he would like to get the other people in before the time goes away. When they are all done, he would be happy to bring you back up if we can still maintain this meeting in this professional manner? Mr. Pugliese asked the Planning Board to consider that this is a net opinion, all the prongs of the statute have not been satisfied.

Mr. Pugliese said going back to Subsection C, not only does it have to unimproved and vacant but by reason by its location, remoteness, etc, etc..... long pause.....Mr. Picerno said to Mr. Pugliese, you are reading as you are going along..... if you are unpreparedyou just got this paperwork and what you are trying to do here is, you are unprepared, you are trying to read as you go which is OK but come on either you know what you want to talk to this Board about or you don't. Mr. Picerno asked Mr. Pugliese to tell what exactly he is here, why you are against it or Mr. Pugliese said he does not think it meets all the statutory requirements. When you look under Subsection C not only does it have to be vacant and by reason of its location, remoteness, lack of means of access to developed sections or portions of the municipality or typography or nature of the ?? is not likely to be developed through the instrumentality of private capital. He said how does that meet that second prong, he will take your word that it is vacant and unimproved but doesn't the statute require also other set criteria to be satisfied?

Mr. O'Brien said the Redevelopment Law requires that a study area meet one requirement of the redevelopment law in order to be named an area in need of redevelopment, we only have to meet one criteria, in this case we meet three so he believes we have done our due diligence. In regards to your question about the other clauses in Subsection C, on his report page 7, third paragraph, it is a rather lengthy one about 9 or 10 lines that does discuss how it meets the other criteria of subsection C, if you like he can read it to you.....The subject property has remained vacant for a period of at least 18 years as indicated on the Borough's tax assessors records and for a period of at least 25 years, as indicated on an available aerial photos. The sand born maps included in the environmental report appear to evidence that the property has been undeveloped for nearly a century. It is believed that this persistent lack of development is as a result of the nature of the soils and water features on the site, i.e. the soil and water contamination on the property as a result of how the property was used over time and is therefore not likely to be developed through the instrumentality of private capital alone . Access to the property is somewhat limited given that the 545 ft. of property line along its western boarder, only 206 ft. or less than 38% is adjacent to the right of way of North 26th Street. He said to Mr. Pugliese that he thinks that answers your question that it meets 3 or 4 of that criteria. Mr. Pugliese saidso you said there was contamination on the property and Mr. O'Brien said that is correct. Mr. Pugliese asked if there is still contamination on the property and Mr. O'Brien said he cannot answer that. Mr. Pugliese asked if there was an NFA listed for that property and Mr. O'Brien said he does not know the answer to that, he knows that it was under EPA authority and the environmental report that was provided reports that. Mr. Pugliese

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said if an NFA was issued for the property wouldn't that remove that from the consideration of contamination on the property outside of your opinion? Mr. O'Brien said no because that would then qualify for a possible ground fields action which is another criteria of the redevelopment law that if that were so it would meet that criteria but because I did not have that information, he did not include that in our findings. Mr. Pugliese said you did not have the NFA letter in your findings. Mr. O'Brien said he is not aware of an NFA letter which is why it is not included. Mr. Pugliese said he believes there was an NFA letter issued for the property and if that is the case it should not be part of your consideration, because if there was an NFA, no further action is necessary then the EPA gave its blessing to move forward. Mr. O'Brien said sure and actually if it was an NFA it would qualify for another part of the redevelopment law which concerns.....Mr. Pugliese said but that is not part of your report.....and Mr. O'Brien said it is not because we were not aware of the final action on it.

Mr. Picerno asked Mr. Pugliese to wrap it up and he said he would speed it up. He said this is very important, he can't imagine a more important decision that has to be made by this board in the past decade. Mr. Picerno said he wants to be fair to everyone and without a doubt this is an important decision for everyone. Mr. Picerno said you came up, you made some good statements, you asked to see a document that you haven't read prior to you getting here, you only read portions of it so what we have here is a conversation going back and forth but get to the crux of what you want to say. Mr. Pugliese said he does not think the statutory requirements have been met. Mr. Picerno said you made that statement, it's on the record. Mr. Pugliese said you stated there is only 206 ft. of frontage and that is the reason it meets the criteria of subsection C? Mr. O'Brien said no that is incorrect. Mr. Pugliese asked how much frontage is there? Mr. O'Brien said there is 545 ft. of property line. Mr. Pugliese asked how much has access to the North 26th Street right of way and Mr. O'Brien said 206 ft. is adjacent to the right of way. Mr. Pugliese asked so in your opinion there was only 206 ft. frontage to the right of way the reason why this property should be designated as a property in need of redevelopment. Mr. O'Brien said the criteria itself, under subsection C talks about and this is what you were getting at before in your question as to whether or not it met the requirements, talks about reason of its location, remoteness, lack of means of access to the developed sections or portions of the municipality. He said he thinks this speaks to the fact that this property is isolated from the rest of the Borough. Mr. Pugliese said it does have 206 ft. of frontage on 26th Street.....correct? Mr. O'Brien said yes which is fenced off, barriered and has no access to the property through that. Mr. Pugliese said there is frontage on 26th Street though? Mr. O'Brien said it is frontage however it is not access. Mr. Pugliese said why not, he is missing something, so if it is on the road how can you not have access to the property from the road? Mr. O'Brien said the only access is through the driveway at the corner of Federal and 26th Street. Mr. Pugliese said but they can always widen the driveway. Mr. Pugliese said they can always widen the driveway.

Mr. Picerno said here we go again and he said to Mr. Pugliese that he is boarder lining almost like hearing the case that would be before us after Council, right now we are here to understand your concerns about how you don't approve of this and your reasons why but you are really asking questions like if we had a plan in front of us. He said our vote here tonight will be based on that but our voted also when and if this goes through Council and comes back to us, all those questions are going to be raised, everyone of them. It's not going to meet.....Mr. Pugliese said respectfully he disagrees because your job as the planning board is to decide whether this meets the statutory criteria of an area of redevelopment. He is giving you an opinion based upon the statute on why this area meets that criteria and he is saying.....Mr. Picerno said we have heard that five times, if you have something newhe wants to hear it but you have nothing new, you said the same thing five times. Mr. Pugliese said in his opinion 206 ft. of frontage is more than enough but he is not the expert, he feels because of the extent of frontage it does not meet the subsections. Mr. Pugliese said now lets go to subsection D.....Mr. Picerno said he has to stop

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you.....Mr. Pugliese said for the record he wants to note that he has not been given an opportunity to fully state and be heard, he wanted to go through subsection D. Mr. Picerno said you can for the record anything you like because you are the attorney and he is just a poor lay person who tries to help this Borough through a Planning Board Meeting. He said he gave everybody 5 minutes and he gave you Mr. Pugliese 15 minutes because you asked to come back and he said he would but at this point its repetitious, you are saying the same thing. Mr. Pugliese said he is moving to subsection D of the statute.

Mr. Picerno asked his Board if he can close this meeting to the public since no one else is speaking and then ask Mr. Pugliese to come back and speak or can he only speak at the public portion? Mr. Rago said let him speak at the public portion, he wouldn't want to close the meeting and then. Mr. Picerno said to Mr. Pugliese, with fairness to the public and you, especially you, how much more time do you need? Mr. Pugliese said it is tough to say, it depends upon his response. Mr. Rago said we know your position, you don't agree with the report. Mr. Pugliese said he wants to say why he feels that way.

Mr. David asked Mr. Rago, when Mr. Pugliese first came up here he stated he was here so that he can build a case for appeal, so we have to sit here and listen to him build a case for an appeal of our decision? Mr. Rago said we are not anywhere near that state and Mr. David said that was his statement he made when he first came up here so he is here trying to build a case by going through sections of this report that the Board has had and has reviewed and make a decision based on what is in front of them. Mr. Rago said it wasn't a good way to open up. Mr. David said the gentleman, Mr. O'Brien who prepared the report works for this Board so he is not here to mislead this Board on what he has provided to us, he has done his work, he has worked for this community for 30 years so he thinks we can all trust that what he puts in here is going to be professional and accurate and so he feels we should move on.

Mr. Pugliese said, respectfully that is not what the law requires, that you trust the expert that gives the report, the law requires that it be based on fact and based upon the statute. Mr. David said and he has provided those facts. Mr. Pugliese said it also requires for him to be heard, you and me may disagree. Mr. David said you have been heard, that is the point. Mr. Picerno said you have been heard more than anyone else tonight Mr. Pugliese, we gave you the latitude so he is going to ask that you.....Mr. Pugliese asked the Board respectfully to take into consideration that the subsections of part D not be satisfied because it hasn't been show that it is detrimental and safety and health and morals of the welfare of the community the property as is, the same thing goes for subsection E which requires that a title search on the property not only that, it requires that the condition of title cause diverse ownership of the real properties and only after because if there is a defect in title or the title is defective can you move on to the other requirements, that hasn't been shown.

Mr. Rago said he has done redevelopment work in a lot of places and he said the report that Mr. O'Brien prepared is one of the best he has seen, you can say you disagree but he thinks the report is fine and he does not think it is a net opinion, he thinks it more than holds up on its own. Redevelopment is broadly construed because it is considered to be for the public welfare to take a piece of property that has been basically garbage for a long time, that the private sector has not developed and put it in a position where somebody can come in and do something with the property rather than keeping it as it is, that's a public benefit. We understand that you do not agree and that is fine.

Mr. Picerno said please let the record show that we did give ample time for Mr. Pugliese , we did give everyone here in this courtroom an opportunity to speak and we gave Mr. Pugliese an additional 15 minutes on top of the 5 and tried to be as accommodating as possible.

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Motion made by Mr. David, seconded by Mr. Pantina to close the meeting to the public. All in favor.

Mr. Rago said the next step is discuss or the ultimate motion would be to accept Mr. O'Brien's report with regard to the criteria and that it be referred to the Council for further action whatever that may or may not be. Mr. O'Brien said with the recommendation of the Planning Board.....Mr. Rago said with the recommendation of the Planning Board that the property does meet the criteria to be placed in a redevelopment zone, we don't go any further than that, he will then do a resolution which we will adopt next Thursday at our special meeting in whatever the Board does with this, that is what we are dealing with now, nothing beyond the property meets the criteria.

Mr. Grimaldi asked if we are allowed to make any other recommendations, saying yes we approve this but Council please look at XYZ. Mr. Picerno said we can put anything in there the same way we have any other meeting. Mr. Rago said at this point probably not, if it ever gets to the point where a redevelopment plan has been directed to be prepared by Mr. O'Brien, the plan would come to us, not an applicant, the plan and at that point we can say maybe it's too high, maybe it's too dense and before you come up with an ordinance, we recommend that you do other things but that is down the road.

Mr. Picerno said so if we approve or deny this application, if it is approved we could not have conditions on that resolution? Mr. Rago said at this point he does not know what the conditions would be.

Motion made by Mr. Pantina, seconded by Mr. Grimaldi to recommend to the Governing Body that the Planning Board approve the Redevelopment Study. Roll Call: Mr. Picerno voted yes, Mr. David voted yes, Mr. Grimaldi voted yes, Mr. Pantina voted yes, Mr. Mazzeo voted yes, Mr. Laudati voted yes, Mr. Calello voted yes, Mr. Herbolario voted yes, Mr. McMahon voted yes.

COMMENTS FOR THE GOOD OF THE BOARD

OPEN MEETING TO PUBLIC

Motion was made by Mr. David, seconded by Mr. Pantina to open the meeting to the public. All in favor.

Mr. Candarella, 321 North 21st Street – Mr. Candarella said after you write the resolution doesn't it have to hold for 30 days before it gets voted on? Mr. Picerno said actually you can do it on the very same night.

Motion was made by Mr. David, seconded by Mr. Laudati to close the meeting to the public. All in favor.

ADJOURNMENT

Motion to adjourn was made by Mr. David, seconded by Mr. Pantina. All in favor.

Respectfully submitted by:
Kathleen Moschitta
Recording Secretary