

VIRTUAL MEETING MINUTES OF THE UPPER TOWNSHIP PLANNING BOARD NOVEMBER 19, 2020

The Upper Township Planning Board held a meeting on November 19, 2020 by electronic means. The meeting was called to order at 7:30 p.m.

SUNSHINE ANNOUNCEMENT

SALUTE TO THE FLAG

ROLL CALL

Present: Georgette Costello, Ted Kingston, Janet McCrosson, Mayor Richard Palombo, Craig Reeves, Gary Riordan, Robert Young and Chairman Joseph Harney.

Absent: Michael Endicott, John Klebaur,

Also, in attendance were Jeffrey Barnes, Board Solicitor; Paul Dietrich, Board Engineer; Shelley Lea, Board Secretary and Zoning Officer.

APPROVAL OF THE OCTOBER 2020 MEETING MINUTES

A motion to approve the minutes was made by Ms. McCrosson, seconded by Mr. Kingston, and approved. Abstain: Palombo.

TABLED APPLICATIONS

CEDAR LANE DEVELOPMENT LLC – BLOCK 647 LOT 8 – SUB 04-2020 AND SUB 05-2020

Correspondence from Julius N. Konschak, Esquire, was read into the record. The letter requested that the application be tabled until the next meeting on December 17, 2020 at 7:30 p.m. to allow the applicant to renote for a virtual meeting.

SWEAR IN PAUL DIETRICH AND TIFFANY MORRISEY

DETERMINATION OF NEED REPORT – BEESLEYS POINT STUDY AREA

James Malley, Redevelopment Council for Upper Township, discussed how the governing body has adopted a resolution asking the planning board to consider whether or not certain blocks/lots meet the criteria under the State statute to be designated an area in need of redevelopment. This redevelopment includes with it the condemnation authority under the redevelopment statute. The area being discussed is primarily the former BL England Generating Station. He discussed the reasons for having a redevelopment plan in place. All the property owners in the area have been notified of this meeting. The current owners of the BL England site are participating on this virtual

meeting. They have filed a report today as part of their opposition to this designation. The township has been engaged in discussions with the owners and they are working on an agreement that will have both parties working together on the development of this site without the need of any litigation and without the township using eminent domain for a period of time. He stated the agreement is a matter of timing. The township cannot enter into an agreement until the designation process is completed and a plan is adopted. The owners of the property want to preserve their rights to oppose this designation in the event a deal is not made. If the board finds there is substantial creditable evidence a resolution would be adopted that recommends designation of the area to the governing body. The governing body would then designate the area and a redevelopment plan would be adopted.

Tiffany Morrissey, Professional Planner, testified she has worked in the planning field for over 20 years. She has worked with the township to create new ordinances and Master Plan documents, but redevelopment is her area of expertise. The redevelopment area on the map prepared by Paul E. Dietrich, dated September 2, 2020, encompasses Block 479, Lots 76, 76.01, 94.01, 106.02, 107, 107.01, 108 & 108.01, which are the golf course property, the BL England property and additional parcels with frontage along Route 9. The plan only includes a part of lot 76. This area was designated an area in need of redevelopment in 2006 and was later revised. The site is in the process of being decommissioned and no longer being utilized as an electric generating facility. Using her report "Determination of Need Report Beesleys Point Study Area", dated September 2020, she reviewed the statutory criteria she finds apply which are a, b, c and d.

Mrs. Morrissey testified this property is addressed in the 2020 Master Plan Reexamination Report and designated as a Waterfront Town Center District. Portions of the golf course property were included in the Recreation and Parks Zoning District. The Planning Board recognized the BL England property was suitable for future redevelopment opportunities. The entire study area is 348 acres. The BL England facility takes up 323 acres. The facility operated over 60 years and closed in 2019. Portions of lots 76 and 76.01 include a 9-hole golf course that closed in 2009. The golf course and recreation areas were required as part of the approval of the facility in the 1950's. The fishing pier is still utilized. Additional properties include lot 94.01 which is a 17 acres vacant parcel.

Mrs. Morrissey testified that in June 2019 a preliminary assessment report was completed for the BL England property as part of the decommissioning of the facility. The report identifies lot 94.01 as a prior tree farm. She reviewed the lots that are being included in the redevelopment area. The facility was a significant source of tax revenue over the years but the value has substantially reduced to close to 62% of what the value was in 2010 when the plant was fully operational. The BL England property contains 291 acres and constitutes 83% of the 348 acres within the study area. The property contains air scrubbers, cooling towers, oil tanks with the capacity of 6.3 million gallons, a coal storage facility, gypsum storage facility, generator and turbine housing and a variety of wastewater detainment systems and similar structures. The plant utilized coal and oil with steam units and diesel generators to provide energy to its 521,000 customers. Two

of the steam units burned coal and used a cooling system with water taken from the Great Egg Harbor Bay. The third steam unit used oil that was transported to the site via rail car. The operation includes two riparian areas where the water was taken from the bay and let back out into another location in the bay. Components of the former use remain on site after decommissioning in 2019. The facility was decommissioned since it had become obsolete for purposes of generating electricity. She referred to a New Jersey Energy Master Plan that was adopted in 2019 that indicates the plant will likely not go back to being used the same way. Prior to decommissioning the plant was going to transition to natural gas but this idea was withdrawn by the State.

Mrs. Morrissey testified her report contains pictures of the property. She did visit the property and walked around to view the different facilities. She testified the BL England Plant is considered a contaminated site due to groundwater and soil contamination. The report identifies 111 areas of concerns of contamination. Four of these areas received a notice of deficiency requiring further remediation to comply with the industrial site recovery act and allow for the issuance of a no further action letter. Lot 76 where the plant is located has 12 areas of concerns recently identified and remain open. The status of all the areas of concerns were addressed in a letter from Henry Wiegel, dated February 6, 2020, which states that 73.6 acres of lot 76 are contaminated. Approximately 35.4 acres have contaminants that have infiltrated into the ground water. The contaminated areas must be continuously monitored for environmental quality related to water and soil and deed restrictions associated with them limit the use of the property until all remediation is undertaken. According to the NJDEP some of the parcels are constrained by wetlands. A majority of the wetlands are located to the west of the railroad tracks. The soils survey shows the soils in this area have some limitations and some are listed as high for corrosion of concrete.

Mrs. Morrissey testified a vast majority of the structures and buildings within the study area were utilized as part of the plant operation. The structures on lot 76 have been abandon and no longer used. The facilities and structures that make up the BL England Plant cannot be easily converted into natural gas or other clean energy production facilities. The structures are largely obsolete and not conducive since they are coal and oil burning energy generating facilities not natural gas facilities. The obsolescence is based largely on the fact that coal powered energy facilities pollute the air which is detrimental to wholesome living and working conditions. For these reasons lot 76 meets criteria A.

Mrs. Morrissey testified Lot 76 contains numerous buildings and structures previously used for an industrial purpose, mainly the generating of electricity. These structures are no longer being utilized and discontinued when the plant was decommissioned. Using the structures as an energy production facility would require substantial upgrades as the current coal and oil facility has been rendered obsolete. The conversion of these buildings to another use would be extremely difficult since the structures were designed specifically for electric generation. Conversion of this site to a different use would require monitoring and a remediation likely to be limited to deed restrictions. The club

house located on the golf course is part of a commercial use that ended in 2009 when it ceased operations. The golf course has areas of concern that will need to be remediated if the site is reused including historically applied pesticides, pesticide storage building, and a surface water pond. Therefore, the appropriate reuse or redevelopment of the property is important in providing a positive land use and economic viability that contributes to safety, health and morals and welfare of the surrounding area and community in general meeting criteria B. She stated the discontinuance and abandonment is reflected on the reduction of the tax assessment with a 62% reduction in value since 2010.

Mrs. Morrissey testified that lots 94.01, 107, 107.01 and 76.01 have been vacant for more than 10 years and by reason of its location, remoteness, lack of means of access to developed sections, topography, or nature of its soil, it is unlikely to be developed through the instrumentality of private capital. It is unlikely lot 94.01 would be developed through private capital since approximately one-third of the lot is constrained by wetlands and buffer requirements would further restrict development on the site. The only road access to the site is from the end of Lincoln Avenue by way of a paper street known as Spencer Avenue in a residential neighborhood. These properties have soils that make development more challenging and costly. Lots 94.01 and portions of Lot 107 are in an area where the corrosion of concrete is high. A portion of Lot 76 has been vacant for more than 10 years and contains wetlands and the soils suffer from potential of contaminants from the plant. These items contribute to criteria C.

The decommissioned electric plant is obsolete because electrical generating plants are converting to natural gas and other clean energy production methods. The plant was discontinued and abandoned. Based on a visual inspection, the buildings are vacant and in disrepair. The vacant buildings are detrimental to the public health, safety and welfare and create an area for undesirable activity and squatters. Vacant buildings can reduce property values and municipal revenues. These buildings have become obsolete and discontinued and meet criteria D.

In her professional opinion Lots 106.02 108 108.01 are necessary for the effective redevelopment of the study area and allow for Lot 76 to connect to Route 9 in multiple locations to allow for flexibility, increased safety and decreased congestion. Inclusion, of these properties are necessary in order to effectuate the overall redevelopment of the area. She finds the study area meets the statutory criteria for an area in need of redevelopment under criteria a, b, c and d. She believes there is significant creditable evidence provided in her testimony and in her report to substantiate the findings.

Jennifer Porter, Esquire, was present on behalf of RC Cape May Holdings in connection with three of the properties which comprise approximately 83% of the study area and represent a significant part of the proposed redevelopment area. RC Cape May does not necessarily oppose the designation of the property as being in need of redevelopment but has concerns regarding the condemnation aspects of the redevelopment. They recognize there is a mutual benefit of a redevelopment designation.

Ms. Porter cross-examined Mrs. Morrissey. Mrs. Morrissey testified she and Paul Dietrich visited the property and looked at different buildings sometime in September 2020. Parts of the property are surrounded by fencing and she was not able to enter these sections. At no time did she contact the owners to get inside the structures. She testified that she took the photos in her report. She was given information from the township engineer such as old reports and met with Mr. Weigel. She further testified she did not prepare the area in need study in 2005 but she did review the report. Since that time, the plant has been decommissioned and is no longer being utilized or upgraded. She stated that she was involved in the recent Master Plan. There was discussion concerning the new WTC zone and its permitted uses. There is a provision in the ordinance allowing the electric substation to remain. She has not been directed to work on a redevelopment plan.

Ms. Porter reviewed criteria a through c that was discussed by Mrs. Morrissey. She reviewed the section of the report with Mrs. Morrissey.

Russell Arlota, PE, was sworn. He testified he is an Independent Consultant with RC Cape May Holdings and authorized representative of the company. He has worked directly with RC Cape May since 2017 and prior to that through other companies providing services to the owners of the plant. He testified he is familiar with the property. He provided the board with his education and background. He stated that RC Cape May acquired Lots 76, 76.01 and 94.01 from AC Electric in 2007. The coal and oil plant on Lot 76 had generated power since the early 1960's. The electric plant was shut down and decommissioned in 2019 and the golf course closed in 2009. There is currently an AC Electric substation on Lot 76 and they are in the process of installing overhead electric lines in the area. There are active underground and overhead easements on the property. An overview of the transmission easements was shown. A slide shows the 12.8 acres which are under a purchase agreement with Ocean Wind and the location of a cable to the substation. The option agreement provides for a 4-year option term. At the time of purchase in 2007 there were 87 areas of concern which have now been addressed. He discussed environmental issues relating to historic remediation. At the time the plant shut down there were 12 areas of concern identified. Currently six areas have been addressed. The company spent an excess of fifteen million dollars decommissioning and remediation of the property. The owners have been actively marketing the site for sale.

Mr. Arlota testified the site is not abandoned and the owner actively maintains the property. The property is monitored 24/7. There are no building, zoning, or health violations.

Charles Heydt, PP, AICP, was sworn. He provided his background and qualifications. He reviewed a report he prepared titled "Planning Report", dated November 19, 2020. Based on his review he finds no evidence of abandonment since the property is maintained and the taxes are paid. He stated there are areas on the sites that are not in the wetlands that could be buildable. He stated the study area is irregular and inconsistent. He discussed the constraints on the property and easements. He discussed a new law

allowing land use boards to consider redevelopment without condemnation. The threat of condemnation hanging over the process puts the owners long time interest in transitioning the property at odds with any future sales or buyers. He stated that some of the foundations and buildings could be used for other things such as commercial and industrial uses. He feels the board has the power to undergo the redevelopment process on this site, but he feels it would be wise to remove the condemnation element since there is an active and willing participant. He believes the designation of non-condemnation is appropriate.

Mr. Heydt testified he was licensed as a planner in 2012. He has done more than 30 redevelopment designation studies. The WTC district does not specifically list Ocean Wind as a permitted use.

Mrs. Morrissey testified the WTC zone does not allow Ocean Wind but there maybe other uses that could be listed in the redevelopment plan. Ten acres were assigned to the electric substation. Given the NJ Energy Master Plan and the requirements for meeting the environmental regulations she believes that generating electricity from coal is not a viable option. For gas there may be some opportunity, but she is not sure if the structures can be reused without an investment.

Mr. Dietrich testified the ordinance allows for the expansion of the existing substation. If Ocean Wind proceeds some adjustments will need to be done to the ordinance.

The meeting was open to the public. Hearing no comment, the meeting returned to the board.

A motion was made by Mr. Kingston and seconded by Mr. Riordan, to recommend designation of the property outlined in the report as an area in need of redevelopment based upon the testimony and report by Tiffany Morrissey. In favor: Costello, Kingston, McCrosson, Reeves, Riordan, Palombo, Young, Harney.

PUBLIC PORTION

BILLS

A motion to pay the vouchers was made by Ms. McCrosson, seconded by Mr. Young, and approved.

ADJOURNMENT

A motion to adjourn the meeting was made by Ms. McCrosson, seconded by Mr. Young, and approved.

Submitted by,