

**MUNICIPAL LAND USE BOARD MINUTES
BOROUGH OF EMERSON
January 5, 2017**

This meeting of the Emerson Land Use Board was held in the Municipal Building. Chairman Schwinder opened the meeting at 8:06PM. In compliance with the Open Public Meeting Act, the Clerk has notified The Record and The Ridgewood News of this meeting and notice has been posted in the Municipal Building.

Pledge of Allegiance

REORGANIZATION:

Mayor Lamatina accepted the oath of Gary Schwinder, Evan Kutzin and Gerald Falotico.

Mr. Martin asked for a nomination of the Land Use Board Chairman. Mr. Goursky made a motion to nominate Mr. Schwinder, which was seconded by Mr. Kutzin. No other nominations were made, so Mr. Martin closed to floor to nominations and requested a roll call vote. Aye votes were cast by Mr. Goursky, Mr. Malone, Mr. Rieger, Mr. Sudano, Councilman Falotico, Mayor Lamatina, Mr. Kutzin, and Mr. Schwinder. Mr. Schwinder accepted the position.

Chairman Schwinder made a motion to nominate Mr. Gary Goursky as Land Use Board Vice Chairman, the motion was seconded by Mr. Malone. Hearing no other nominations, the floor was closed and a roll call vote requested. Aye votes were cast by Mr. Malone, Mr. Rieger, Mr. Sudano, Councilman Falotico, Mayor Lamatina, Mr. Kutzin, Mr. Schwinder and Mr. Goursky. Mr. Goursky accepted the position.

Mr. Martin requested that the appointment of Professional Positions (Attorney, Planner, Engineer, etc) be held over to the next meeting, which was accepted by Mr. Schwinder.

Mr. Schwinder made a motion to keep the current Land Use Board bi-laws in place, which was seconded by Mr. Goursky. There was no discussion from the board and a roll call vote was taken. Aye votes were cast by Mr. Malone, Mr. Rieger, Mr. Sudano, Councilman Falotico, Mayor Lamatina, Mr. Kutzin, Mr. Schwinder and Mr. Goursky.

Mr. Schwinder asked for a motion to accept the budget as proposed in November. The motion to accept was made by Mr. Goursky, and seconded by Mr. Malone, a roll call vote was requested. Aye votes were cast by Mr. Malone, Mr. Rieger, Mr. Sudano, Councilman Falotico, Mayor Lamatina, Mr. Kutzin, Mr. Schwinder and Mr. Goursky.

Mr. Schwinder asked for a motion to retain all Administrative positions, including the Interim Board Secretary Marie Shust. The motion was made by Mr. Goursky and seconded by Mr. Rieger. A roll call vote was requested. Aye votes were cast by Mr. Malone, Mr. Rieger, Mr. Sudano, Councilman Falotico, Mayor Lamatina, Mr. Kutzin, Mr. Schwinder and Mr. Goursky.

With the Reorganization complete, Mr. Schwinder then commenced the meeting of January 5th,

Roll Call:

Robert Adams	Absent
Thomas Callagee	Absent
Michael DeOrio	Absent
Gary Goursky	Present
Trudy Grimaldi	Absent
Louis Lamatina, Mayor	Present
Evan Kutzin	Present
Steven Malone	Present
Doug McKendry	Absent
Norman Rieger	Present
Thomas Sudano	Present
Gerry Falotico, Councilman	Present
Gary Schwinder, Chairman	Present
Christopher Martin, MLUB Attorney	Present
Gary Ascolese, MLUB Engineer	Present
Bridgette Bogart, Borough Planner	Not Requested
Michael Sartori, CCO/Zoning	Not Requested
Perry Solimando, DPW Interim Super.	Not Requested
Robert Hoffmann, Borough Admin.	Not Requested
Marie Shust, Interim Secretary	Present

After roll call was taken, Mr. Schwinder asked for a motion to approve the minutes of the meetings of December 8th and December 20th. Mr. Malone stated that there was an error on the minutes of December 8th, as Mr. Doyle's last name had been omitted on page 10. The Board Secretary will make the correction.

Mr. Martin stated that if there were any differences between the minutes of the Board Secretary and those of the court reporter for the December 8th meeting, the court reporter's transcript would be deemed the official record.

Mr. Goursky made a motion to accept the minutes of December 8th and December 20th with the correction in the December 8 minutes on page 10 and the specification made by Mr. Martin, seconded by Mr. Rieger. Aye votes were cast by Mr. Malone, Mr. Rieger, Mr. Sudano, Mayor Lamatina, Mr. Kutzin, Mr. Schwinder and Mr. Goursky. Councilman Falotico abstained as he had not been present at the previous meetings.

Mr. Schwinder then asked if there was any correspondence. Ms. Shust replied that we had received letters from the Law Offices of Stephen P. Sinisi, and the Law Offices of McKirdy & Riskin, which had been emailed to the Board members.

Mr. Schwinder then asked for the vouchers received

Vouchers		5-Jan-17			
12/14/16	Shust	\$	150.00	12/8 LUB meeting	16-01922
12/14/16	NJ Planning	\$	325.00	Single Membership	16-01921
12/14/16	Boswell Eng	\$	857.00	Starbuck's 322 KK	16-01920
12/14/16	North Jersey Media	\$	27.40	Unity Bank	16-01916
12/14/16	North Jersey Media	\$	226.80	Master Plan	16-01916
12/14/16	North Jersey Media	\$	30.24	Verizon	16-01916
12/14/16	North Jersey Media	\$	15.37	Verizon	16-01916
		\$	1,631.81		

There was an additional voucher from Bogart Planners that was in question as to which Borough Department should be charged, and was tabled. The Interim Board Secretary will investigate.

Mr. Schwinder asked for a motion to approve the vouchers, which was given by Mr. Goursky, seconded by Mr. Sudano, all were in favor.

Mr. Martin then stated that Mr. De Angelis of McKirdy & Riskin would like to address the Board, and was advised he could do so when the floor was opened to the public.

Mr. Schwinder then asked for a motion to approve the Resolution for the logo sign for Club Pilates. Mr. Kutzin made the motion to approve, which was seconded by Mr. Malone. Mr. Goursky, Mr. Kutzin, Mr. Malone, Mr. Rieger, Mayor Lamatina and Mr. Schwinder all voted yes to memorialize the Resolution.

Mr. Schwinder then asked for a motion in regard to the Resolution to Recommend to the Mayor and Council that the Property located in Block 419, lots, 1, 2, 3, 4, 5, 6.01, 6.02, 7. 8 9 & 10 be designated as a condemnation redevelopment area.

Mr. Goursky made a motion to accept, which was seconded by Mr. Malone. Aye votes were cast by Mr. Goursky, Mr. Kutzin, Mr. Malone, Mr. Rieger, Mr. Schwinder & Mr. Sudano.

Mr. Schwinder asked for a motion to open the floor to the public, which was made by Mr. Gursky, seconded by Mayor Lamatina, all were in favor.

Mr. Richard DeAngelis of McKirdy and Riskin Law Offices approached the podium. He represents 214 Kinderkamack Rd, LLC, which are block 419, Lots 2, 3, 4. A letter had been sent to the Board as well as to the Mayor and Council requesting that the Resolution be rescinded as it was inaccurate and the properties involved were not blighted. He stated that the information provided by the Planner will not stand up in court. He also noted that the property owners were given a minimum period of time to have counter information provided. The notices were received the Monday before Thanksgiving for a meeting to be held the 8th of December. With the holiday weekend, there was not enough time to hire professionals, have them examine the area and provide a report. He also stated that the information provided by the Planner was not sufficient to declare the area blighted and in need of condemnation. He again requested that the Board reconsider and rescind the Resolution.

Mr. DeAngelis also confirmed that some of the property owners had been asked to leave the meeting of December 8 before they were able to speak. He wondered why the Borough was in such a hurry that they could not hear the testimony of the business and property owners in the area. The Mayor and Council had met several times in discussion of this matter and the business/property owners were only allowed a two hour window to testify.

Mr. Dan O'Brien approached the podium. His property is 17A,B.C Palisade Ave and 38 Palisade Ave. He also questioned the validity of the condemnation of buildings in Block 419 based on the violations that had been issued by the Borough over the last two years. There was an improper sign location in the Vapes store, unplowed snow for the Hot Dog Heaven building, weeds in the cracks of the sidewalk for the European dessert store, and the restaurant, Rancho Cantina, was cited as the seasonal lights did not turn off at 11 pm. There were no citations for garbage, debris, or properties that were not kept up.

Mr. Schwinder replied that the vote of each Board Member was based on the expert opinion of the professional Planner and on her study of Block 419, lots 1, 2, 3, 4, 5, 6.01, 6.02, 7, 8, 9 & 10 and position that this area qualified as an area in need of redevelopment.

Mr. O'Brien asked who hired the Planner, and was told by Mr. Martin that the Planner had been hired by the Board several years ago.

Mr. O'Brien stated that the redevelopment plan had been in effect for several years and why the hurry now?

Mr. Schwinder replied that the Planner gave her opinion based on her education and experience.

Mr. O'Brien asked if the opinion of another Planner had been sought or if one could be hired.

Mr. Doyle replied that the property owners had been given notice of the meeting and could have obtained rebuttal information in that time.

Mr. Martin stated that the information should be brought before the Mayor and Council at their next meeting.

Mr. O'Brien asked about the hiring date of their Planner, to which Mr. Martin replied about 5 years ago.

Mr. O'Brien stated that the developer had offered 214 Kinderkamack, LLC a price of \$3 million when there was competition for the redevelopment, but once he was the sole developer he dropped the price to \$1.75 million.

Mr. O'Brien stated that he had been verbally told his property was not in the redevelopment area, but according to the area maps, his property is now included.

Mr. Doyle replied that the Planner had not completed her study, and that there was no plan at this time in regard to his property. The Board is only considering this one block currently. He said the Planner had been directed to concentrate on block 419, and to publish and certify her findings.

Mr. O'Brien wanted to know the definition of fair and just notice. Mr. Martin replied that newspaper ads once a week for a minimum of two consecutive weeks, and via U.S. mail no less than 10 days.

Mr. O'Brien stated that the property owners had been given 14 days notice, which included a 4 day holiday weekend, and wanted to know how they property owners were expected to find and hire an expert and have them make a full report in that period of time.

Mr. Doyle replied that the property owners knew of the plan to redevelop since 2004 and this was no surprise.

Mr. O'Brien wanted to know why this would have to come out of the pocket of the property owners and not the taxpayers.

Mr. Doyle replied it was the responsibility of the property owners to rebut the Planners findings.

Mr. O'Brien stated that he is a local contractor working with some of the property owners in the redevelopment area, who cannot afford to do anything to their properties with the cloud of condemnation hanging over them, nor is it easy to rent their buildings as prospective tenants are worried they will have the expense of packing up and moving in the not too distant future. He stated that he had purchased his properties as a sort of retirement plan and hoped he and his family would live off the rentals of the properties involved for many years to come. He said the Borough is tying the hands of the property owners as far as renting out their units go. This condemnation plan would actually cut his retirement investment in half.

Mayor Lamatina replied that although Rancho Cantina had closed, it had already been rented and would be opening in February. He said the location next to the nail salon had also been rented recently. And Mr. O'Brien was incorrect in his statement.

Mr. O'Brien stated that the Bland St. properties remain unrented due to the uncertainty.

Mr. DeAngelis stated that Rancho was closed due to the fact that they had not met the terms of their lease, and that business closures were not a sufficient reason for blight and condemnation determination.

Mr. DeAngelis requested that the Board review their decision and reexamine their evidence.

Mr. Doyle noted that 214 Kinderkamack Rd, LLC had been represented at previous meetings by another attorney, but the attorney did not speak at those meetings.

Mr. De Angelis confirmed there had been representation by another attorney. He said that the current plans are for the benefit of the developer and his opportunity to make money, and not for the benefit of the residents, business owners and the Borough. All of the amendments and resolutions have been made to the advantage of the developer.

Mr. Martin thanked Mr. DeAngleis for his input.

Mr. O'Brien again approached the podium. He testified that he was a hard working contractor who had purchased his property with thoughts of retirement income and declaring his property as condemnation would destroy his dreams as well as the dream of his children; as condemnation of block 419 is destroying the dreams of those property and business owners. He said that the Borough of Emerson was destroying the American Dream for all involved. He said that the Borough has met with the developers many times, but not once with the property owners. Why couldn't the property owners be heard before this was set in motion. He asked to Board to rethink this matter completely.

Mr. Schwinder thanked Mr. O'Brien for his testimony.

Mr. Doyle testified that the property owners would receive just compensation for their properties. That would be based on the current market value of the property, based on the decision of a 3 person panel appointed by the court. The properties would not be taken as is assumed by most people. However, there would be no consideration for future income or increase in value.

Mr. DeAngelis stated that there is no detriment to public health and safety, why the rush?

Mayor Lamatina replied they had to protect the trust of the public as far as the commitment to Affordable Housing, and there was a developer's agreement in effect with time schedule. Mayor Lamatina then referred to several cases that had been won by the law Offices of Mc Kirdy and Riskin against redevelopment. And that 214 Kinderkamack LLC had not

requested reopening the matter in the meeting of January 17th, nor did they ask for transcript of the minutes.

Mr. Sudano asked Mr. Deangelis if 214 Kinderkamack LLC was the owner of Rancho Cantina.

Mr. De Angeles replied that 214 Kinderkamack LLC is the owner of the property and the business is a lease. He said that the redevelopment plans originated in the 90's, were reviewed in 2004 and 2008, and now there is a big rush in 2016, and since the developer could not purchase the property he is obtaining a blight/condemnation designation to expedite the development.

Mr. Martin stated that although he had not been on the Board, he knew that the Borough's then planner, Mr. Burgis had testified for redevelopment of the property, and Ms. Bogart confirmed his opinion.

Mr. Schwinder stated that this project has been on the table for 12 years and the business/property owners had been aware, yet did nothing to improve their properties. It is the responsibility of the Borough to make the downtown area a beautiful working area. To encourage the use of the public transportation options, which Emerson is so fortunate to have, as well as meet the requirements of Affordable Housing.

Mr. DeAngelis replied that it was the Board's duty to explore other options, get other professional opinions, other development suggestions. He reiterated that the property owners would fight for their rights.

Mr. Philip Weiss, Vice President of Oritani Bank approached the podium questioning what was the future for his property, as they had already built and developed in accordance with the plans of the Borough.

Mr. Doyle replied that the area of his building was under study.

Mr. Weis replied that his construction was done in 2008 in accordance with the Master Plan of the time.

Mr. Martin confirmed that the building was in the redevelopment area and believed they had complied with the streetscape requirements that were in effect, which was confirmed by Mr. Weiss. Mr. Martin stated that he would confirm by email once he had reviewed the situation.

Mr. Martin asked Mr. Ascolese of the future of Kinderkamack Rd and the widening in effect.

Mr. Ascolese replied that the roadway was being widened including left-hand turning lanes.

Mr. Schwinder asked Mr. Doyle if the just compensation Fair Market Value included property incomes.

Mr. Doyle replied they do consider rental history.

Mr. DeAngelis replied that according to Chapter 91, rental income and approved new leases would be considered, however, future income is not considered as part of Fair Market Value.

At that point Mr. Schwinder asked for any additional comments, hearing none, he asked for a motion to close the public comment portion of the meeting. The motion was made by Mr. Malone and seconded by Mr. Goursky, all were in favor.

Mr. Schwinder then asked if there was any Good and Welfare to discuss or any other Board business, hearing none, he asked for a motion to close the floor, which was made by Mr. Goursky, second by Mr. Malone, all were in favor.

The meeting was adjourned at 9:38 pm.

Respectfully submitted.

Marie Shust
Interim Board Secretary