

**CITY OF NORWALK
PLANNING COMMITTEE
NOVEMBER 6, 2008**

ATTENDANCE: Rev. Phyllis Bolden, Chair; Amanda Brown; Andrew Conroy;
Kelly Straniti; Douglas Hempstead (7:48 p.m.)

STAFF: Timothy Sheehan, Executive Director

OTHERS: Keal Evans, West Avenue

CALL TO ORDER

Rev. Bolden called the meeting to order at 7:41 p.m.

PUBLIC PARTICIPATION

Mr. Evans asked who was in charge of everything. He said that he had not heard from the developers until last Tuesday, when he received a packet delivered to his office. Mr. Evans said that Mr. Savas has not heard anything since July. They are not against the project, but said that their lives have been in limbo. He said that they want to go along with the plan without eminent domain hanging over their heads. Mr. Evans said that there are three of them who have retained the same lawyer. Ms. Esposito is the third, but she has a signed contract.

Mr. Sheehan said that when they had this conversation at the last meeting, Mr. Evans indicated there were environmental issues with the proposed relocation site.. The redeveloper posted the deposit in place so that he and Mr. Evans could understand the level of environmental contamination. Mr. Sheehan said that the Agency is not authorized to negotiate with Mr. Evans.

Mr. Hempstead joined the meeting at 7:48 p.m.

Mr. Sheehan said that the deposit has been made and the environmental findings have been forwarded to Mr. Evans. He told Mr. Evans that it is his responsibility to determine his own comfort level with the environmental condition. The redevelopers want to be sure there are no major environmental contaminants on the site.

Mr. Evans said that he spoke with the developer and they are not going to spend any money if they do not have a contract. Mr. Sheehan told Mr. Evans that he can't force the developer to honor the contract if there are major environmental issues.

Mr. Sheehan told Mr. Evans that in order to drill down the numbers, the environmental report was delivered to the Agency. He said that he would be happy to share that with him, but stressed that the Agency was not responsible for the information.

Mr. Evans said that he would rather be on the Council approved list and have the Agency work on his behalf. Mr. Sheehan said that he would be happy to go to the Common Council with that request.

Mr. Sheehan said that the contract is still standing and the environmental issues need to be resolved. The whole issue is for Mr. Evans and the developer to come together to a resolution. The property owner provided 17 environmental reports, but a deposit from the redeveloper was required before the reports would be released.

Mr. Evans said that he was willing to go along with the negotiations, but needed to have a time stamp. Mr. Sheehan said that he would be happy to talk to the developer about putting forward a schedule for negotiations.

There were no other members of the public present.

APPROVAL OF MINUTES – October 11, 2008 – Special Meeting

**** MS. BROWN MOVED TO ACCEPT THE MINUTES AS SUBMITTED
** MOTION PASSED WITH THREE (3) ABSTENTIONS (MR. CONROY,
MR. HEMPSTEAD AND MS. STRANITI)**

BUSINESS

- a. West Avenue Redevelopment Project**
1. Discussion of Waypointe Master Development Agreement

Rev. Bolden said that she was glad everyone was here tonight. In regard to the schedules, she said that she hoped when they go through the MDA that everyone keeps an open mind and everyone works together. She said that she was very proud of this Committee and that they need this development to happen.

Mr. Krummel asked Mr. Sheehan how they were moving forward on this and what he thought the time constraints were. Mr. Sheehan said that there are no time constraints. Given the current financial situation and given the issues within the Agreement, the developer needs Zoning approval and site controls before the Common Council can vote on this. At the last meeting, the Committee wanted to focus on the issue of foreclosures.

Mr. Sheehan said that he feels there is a potential conflict of interest having the Agency as staff to the Committee. He said that the Agency should bring critical issues before the Committee. Mr. Sheehan asked the Committee for a list of issues in the document, so they could be presented to Robinson & Cole. He said that he does not see it being productive to the Committee to be convinced by the Agency who had a major hand in developing this document.

Rev. Bolden said that the Committee is trying to deal with the major points. Mr. Sheehan said that the Committee identified the sections to be reviewed and the Agency is

responsible for providing an executive summary. He said that he would rather put forth issues for consideration by the Committee.

Ms. Brown asked Mr. Sheehan how different the Agency's position was from the City's position. Mr. Sheehan said that he did not want the Agency in the position where the Common Council will say that the Agency did not identify a major point in the document.

Mr. Krummel noted that several times in the documents, it talks about "tri-party". Mr. Sheehan said that the third party is the Redevelopment Agency.

Ms. Brown asked Mr. Sheehan if he would be more comfortable if Attorney Jacobson attended these meetings. Mr. Sheehan said that he feels personally conflicted. If you look at the tri-party agreement, the redeveloper is part of the tri-party. Mr. Hempstead said that he would much prefer to talk to the person who negotiated the deal. He added that he believes that Mr. Sheehan negotiated in the best interest of the City and would rather keep to this path. Mr. Hempstead told Mr. Sheehan that he has no wish for him to leave.

Mr. Sheehan said that the best way to handle the review is to get questions on the table with Robinson & Cole as areas of concern. That can be done fairly quickly. Then the questions will be answered by the City's legal counsel.

The Committee reviewed Article XXIX – XXXI (Transfers) and asked Mr. Sheehan to provide clarity.

Mr. Hempstead asked what the sticking points were for Seligson Properties and what was the pushback for Waypointe. Mr. Sheehan said that the pushback was that the transferee needs to be approved by the City. Other pushbacks were that the condo purchase was conceded. Any transferee under the Agreement has to abide by all of the provisions under the Agreement.

Mr. Krummel said that he was concerned about other things that could happen after the Certificate of Completion. Mr. Sheehan said that the control is the Master Development Agreement. Mr. Krummel said that the Committee is concerned with the well-being of this project.

Mr. Conroy asked how the City would buttress itself so that the courts do not divide the property. He asked if there is a history in the State where the mortgagee unloads portions of MDA. He said that there may be some consideration of modifying the Agreement in the event of a bankruptcy. Mr. Hempstead said that he did not believe the courts provide relief in land use dealings. Mr. Sheehan said that they can not deviate from the Agreement without approval from the City. Mr. Sheehan said that there are controls in place; the City has to approve any deviations to the MDA.

The Committee discussed mortgages. Mr. Sheehan explained that the City has approval who the transferee is. Should the property be assumed by the bank, the City will then have no approval over who the property is sold to. Mr. Krummel said that he has a problem with the phrase "without restriction". Mr. Sheehan said that he believes they will get specific direction from Robinson & Cole. He added that he did not believe there are restrictions about who they are selling to. Mr. Krummel asked to add "does no harm" to SSD and MDA in bullet point #2.

Mr. Hempstead noted that the bank will not want restrictions. Mr. Krummel said that the City should have the ability to restrict who the bank sells to in the event of a foreclosure. Mr. Hempstead replied that the City wants to see this site redeveloped; no one will be able to get financing with those restrictions. Mr. Krummel said that he wants the City to have the opportunity to look at prospective purchasers of the foreclosed properties. Ms. Brown said that the City may not have the right to impose those restrictions on the property owner.

Mr. Krummel said that the City is given the right of Eminent Domain. Mr. Sheehan said that was not correct. The City can authorize the Redevelopment Agency to use eminent Domain. Mr. Hempstead stressed that they can not over restrict this project. Banks do not want to sit on non-performing assets.

Ms. Brown suggested that the Committee start reviewing the document from the beginning. Mr. Sheehan said that at last week's meeting, it was clearly indicated that this is where the Committee wanted to begin. Mr. Hempstead said that the question about restrictions should be forwarded to Robinson & Cole. Mr. Krummel said that this is a valid concern.

Ms. Brown left the meeting at 9:04 p.m.

There were no comments under the Default and Remedy sections of the document.

Mr. Krummel asked for an explanation of re-entry. Mr. Sheehan said that the developer's desire is to take the development site and make one universal parcel. The City's ownership would be the streets and the developer would convey those streets back to the City.

Mr. Sheehan said that he raised the question about post bankruptcy. Mr. Krummel said that he would want to approve the mortgagee because that is who the City is dealing with in post bankruptcy proceedings. Mr. Sheehan said that there should not be an automatic assumption that the City will go to a post bankruptcy agreement. The question about legal protection to the City needs to be addressed by Robinson & Cole. Mr. Sheehan said that there are all kinds of notice provisions, but no allocation for costs. All of those responsibilities fall on the City with no recognition that there should be an administrative line item.

Mr. Sheehan said that there is a sentence in the document that says that the City and Agency agree to cooperate with the redeveloper. That is in reference to private financing. He asked the Committee if they were comfortable with the wording. Rev. Bolden requested that Mr. Sheehan add "private financing".

Ms. Straniti asked for an example. Mr. Sheehan explained that if something had to be looked at in regard to an amendment, it would be done at the expense of the developer.

Mr. Sheehan said that he went through the document with an eye to what issues the Committee might raise. He explained that the substantial changes would go before the Common Council. The City will have its own Clerk of the Works in the field overseeing the entire project. That person will make a recommendation on whether a change is substantial or non-substantial.

Mr. Sheehan asked for direction on where to go next. Mr. Hempstead said that he would like to see the Committee moving forward on this. Mr. Sheehan said that the only Zoning concerns he sees is that Zoning controls the number of parking spaces required. Mr. Hempstead said that he would like to get this to Zoning to find out what the issues are. Mr. Sheehan said that the development team has been to Zoning informally to discuss the site plan documents. Rev. Bolden said that she wants to see the developer be responsive to a timeline.

**** MR. HEMPSTEAD MOVED TO AUTHORIZE THE REDEVELOPMENT AGENCY TO AMEND THE DRAFT DOCUMENT TO REMOVE THE PROVISIONS THAT REQUIRE SITE CONTROL AND SITE PLAN APPROVAL BY THE ZONING COMMISSION BEFORE THE DOCUMENT CAN BE VOTED UPON BY THE COMMON COUNCIL
** MOTION PASSED UNANIMOUSLY**

The Committee agreed that they want to start reviewing the document from the beginning.

Mr. Sheehan said that there had been a question about a request for a timeline that was made on June 26th, but was not received. He said that he was not sure this is what the Committee members were looking for.

Mr. Sheehan said that the Agency participation in the negotiation process has commenced. The attorney that the Agency engaged is in the process of going through the land records and business filings for each party involved to verify ownership. Mr. Sheehan said that he cannot provide a time line for all of the negotiations.

Mr. Sheehan reviewed the public approvals required for the Master Development Agreement. The bonding authority will be coming through the Planning Commission. Mr. Krummel asked about site control. Any entity such as a Church would be excluded. It was noted that the Holy Temple Church wants to sell. Rev. Bolden said that Bethel AME met with the Redeveloper to discuss parking concerns. She said that the Church is

a spiritual agency for the people and she can not see suppressing what the Church needs. They are not asking for more, but asking that nothing be taken away from them. Mr. Sheehan said that the pushback from the redeveloper is regarding funeral service parking; Sunday service parking has been resolved. He said that Mr. Seligson offered to build structured parking on the Church site.

Mr. Sheehan said that the developer provided a project timeline. It has to be recalculated for a 2010 start date, rather than 2009.

OLD BUSINESS

There was no old business discussed.

NEW BUSINESS

There was no new business discussed.

ADJOURNMENT

**** MR. HEMPSTEAD MOVED TO ADJOURN
** MOTION PASSED UNANIMOUSLY**

There was no further business and the meeting was unanimously adjourned at 10:20 p.m.

Respectfully submitted,

Rosemarie Lombardi
Telesco Secretarial Services