

BOROUGH OF BERNARDSVILLE
Mayor & Borough Council Meeting Minutes
August 28, 2023

Mayor Canose called this meeting to order at 7:00 p.m remotely on Zoom only. Present were Council Members Jay Ambelang, Diane Greenfield, Jena McCredie, Chad McQueen, Al Ribeiro, and Christine Zamarra. Also present were Nancy Malool, Administrator, Anthony Suriano, Borough Clerk, and John Pidgeon, Borough Attorney.

STATEMENT OF PRESIDING OFFICER

Notice of this meeting was provided to the Bernardsville News, Courier News and the Star Ledger, filed with the Municipal Clerk and posted on the Municipal Bulletin Board on August 15, 2023 and revised August 22, 2023 and August 24, 2023 to add additional items.

PLEDGE OF ALLEGIANCE

PRESENTATIONS

OPEN SESSION

Mayor Canose opened the meeting to the public.

Kristi MacDonald, Anderson Hill Road and Advisor to the Environmental Commission, commented on environmental impacts of the cyclocross development at 267 Mine Brook Road. She gave a background on the area as it consists of large open lawn areas as well as a significant forested portion. She provided an overview of what she observed on her visit to that location in the morning and commented on environmental impacts. She saw four or five areas that had been mowed or sprayed with herbicides to open up access for cyclocross trails so that participants could move through heavily vegetated areas along the lawn and into the forests adjacent to the open lawn. Work had been completed on a couple of the access areas had been abandon and at other locations the access was completed. Three or four areas with deep slopes in the forest along the ravine above the stream have been completely cleared of vegetation. Given that there is a stream at the base of the slope, the group should seek advice from an environmental engineer on designing a trail that will not damage the slopes or the stream. There needs to be something put in place to stabilize the slopes such as native trees and shrubs and no trees or other vegetation should be removed. There was a large area where debris including pipes, plant pots and other discarded items had been dumped into the riparian stream buffer when one of the slopes was cleared presumably as part of the cyclocross development. The stream has a 50-foot regulated buffer we need to uphold. Ms. MacDonald said she is open to helping and joining to try to make a plan that will mitigate these issues because it has a lot of environmental value.

Johanna Wissinger, Washington Corner Road and Environmental Commission member, said she is also concerned about the cyclocross. She said she would like to know who is going to be overseeing the cyclocross and the use of our open space land. She said she'd also like to know what the future plans are such as if they going to desire to widen the trail to three meters. She

said she really endorses the suggestions that Kristi MacDonald made and we really had to think about the consequences of this for the future. Ms. Wissinger said she hopes council will seriously think about this as it is a very serious topic and deserves good decision making.

Pat Wry, Anderson Hill Road, discussed political campaign signs. She said the current ordinance allows them to be displayed 60 days prior to Election Day, which is November 7th this year. With the early voting option that is now available, she suggested changing this to allow political campaign signs to be displayed 60 days prior to the start of the early voting period. For this upcoming election, that would be August 29th as opposed to September 8th.

Christina Balas, Old Fort Road, said she heavily utilized the Recreation Department camp this summer and it was beyond wonderful as they had a great mix of kind of traditional camp as well as some add-ons that they took full advantage of. She complimented Recreation on having a great overall department. She said she is concerned about the herbicide usage as she has small children and does not spray any such things on her property. She said she is extremely concerned about allowing any kind of potential contaminate to our soil and possibly endanger the community. She said it's shocking to think that somebody could randomly do whatever they want with our public space and there should be a clear understanding that if you do something on town property that you will be held accountable.

Jack Frost, Crestview Drive, said he and his wife Bonnie have lived in town here for 45 years and are very concerned about the Palmer project. He said the drawing that was in the Bernardsville News overpowers the whole town and it's just not Bernardsville.

Bonnie Frost, Crestview Drive, asked if the only drawing that's proposed for consideration is the drawing that was in the Bernardsville News, on what basis would it be accepted or rejected. Mayor Canose said the drawing that was yesterday or newspaper was not accurate and was an old drawing. Mayor Canose said the council wrote the Redevelopment Plan and the developers are charged with making the design fit within the zoning that's in that plan and it to go to the Planning Board for review.

John Donahue, South Street and lead volunteer with Cyclocross, said he is a little disappointed about the responsiveness it's getting this year. He said it's been going on for three years and been approved by the Council. He said the property was walked with the former Administrator, JIF representatives, and grounds people helped do some of the trails. He said that property was purchased for active recreation and he'd like to see it used more for active recreation which takes some work to make it happen. Mr. Donahue said he would like to carry on because it is a popular volunteer driven event and asked to let them hold Cyclocross as it'll be run the same way it's always been.

Harvey Goldberg, Bernardsville Cinema owner, president of Olcott Square Condominium Association, spoke about the Palmer property. He said he is very concerned about the impact of the building that faces Morristown Road. He said it's four stories, towers above everything else, and he is in complete agreement that that building alone should be scaled down. He said he does not understand how the Palmer redevelopment project got approval for a four-story building and the Quimby Village property redevelopment project only has a limit of three stories in height.

He said the whole property of the Quimby Village redevelopment slopes down from the square. Mr. Goldberg said while he likes the project, he would like to see it scaled back because it just doesn't fit with the tone of the town. He said the borough needs to decide if redevelopment projects will have a height of three stories or four stories. If it is four stories then the redevelopment project in Quimby Village should be scaled up to four stories to make it even.

Kerry Haselton, Mine Brook Road, said she was stunned on August 16th to see the recent and widespread herbicide application and clearing of steep slopes underway at the park. She said the new trails created intersect the approved trail at right angles and are an attractive nuisance, tempting for kids to cycle off and collide with other park users or each other. She asked that the Council immediately:

- 1) prohibit cyclocross and mountain biking use of the two areas recently cleared on the hill.
- 2) erect wooden snow fence to keep all users off the slopes. This fence should be supplemented with silt fence, as necessary.
- 3) initiate a cleanup, supervised by Public Works, of the debris thrown downslope. This slope also requires a snow fence for safety.
- 4) consult with knowledgeable Borough personnel to stabilize the upper slopes to last the winter- perhaps leaf litter and mesh to hold it in place.
- 5) approve and initiate replanting and restoration of slopes with native plants. These plantings should be planned and undertaken by Borough personnel and members of the Trails subcommittee, with approval of Recreation and Public Works, and in consultation with the Environmental Commission.

Ms. Haselton said these actions will help to ensure the safety of all park users and get a jump start on restoring this beautiful 22 acre park.

Rosalie Ballantine, Pheasant Hill Drive, said she is 100% behind downtown revitalization, however the purpose of this meeting is premature and we need to first see the elevation plans/drawings of this project. She said before council grants Advance Realty as redeveloper of the project. She questioned the legality of appointing a redeveloper on the basis of unseen plans. She said basing it on assumptions and previous plans is wrong. She said the next big issue aside from not appointing a redeveloper is scale.

Aaron Duff 51 Crestview Drive, said every property owner in the state of New Jersey has the right to develop property using their contractor of choice provided that the development plan complies with underlying zoning for the property or the owner can demonstrate to the local Land Use Board that it meets criteria for variance relief. He said this is not the circumstance before the council tonight. He said in January 2022 the Palmers and their chosen redeveloper, Advanced Realty, presented a proposal to develop their lot with a massive four-story apartment complex. He said the proposal did not even remotely comply with the zoning restrictions of the downtown district where the property is located. He said rather than follow the legal procedures for obtaining a variance, they approached the council for a designation of a property as an area in need of redevelopment. He said council obliged, over the dissent of councilwoman Greenfield, overruling the Planning Board in the process and opening the door to overdevelopment. He said doing this injected the government into the redevelopment of a private property and undertook a fiduciary obligation to its residents. He said a municipality can choose from any number of potential redevelopers to be the developer whose plan for the property provides the greatest

benefit to the community and the council has chosen to consider only the development plan submitted by Advance Realty. He said in the architect's presentation at the August 10th council meeting, this plan involves construction of a 55 foot tall four-story apartment tower with three sides of the one acre lot, no public green space, and destruction of borough heritage sites. He said it is not a plan that serves the interests or needs of the Bernardsville community. He said the question tonight is whether council is going to push through the designation of Advance as this property's redeveloper or open the process to other bidders leveraging the power of free market.

Christina Balas, Old Fort Road, said she would not advocate to make irresponsible or quick decisions. She said it would be really hard to have a developer that couldn't be certain there was a good return on their investment and more residential space would help that. She advocated that council take these things very seriously. She said she would push towards continuing progress and thinking things through. She said she wants things developed in a responsible way that keeps to the integrity and charm of the town.

Aaron Duff, Crestview Drive, said when there is only one redeveloper being considered, how does the council or anyone have an idea on what return of investment Advance plans on making on this project. He said if we open it up to other developers there would be competition and could bring down the scale and intensity of the project. He said markets with competition will bring the optimal use of resources. He said the purpose of the meeting tonight is to decide whether we're just going to push through the property owner's developer or if we're going to utilize free market systems to provide competition in a way that would benefit the borough.

Mayor Canose said the borough does not own the Palmer property, the Palmers own it. She said what happened with the Quimby project and why it's not going anywhere is that people didn't want to sell their property. She said if the borough goes out to bid and receives four bids and the Palmers won't sell to them, nothing will happen. She said the Palmers have the right to do with their property as they wish and they have done their due diligence and interviewed a number of developers and selected Advance Realty to sell their property to because they would keep the Palmer building. She said that was their decision and we can't try and have someone else buy the property if the Palmers won't sell it to them.

Mr. McQueen said condemnation is not something that he is willing to consider and doesn't believe it's the right of government to take people's property. He said with that being off the table, it requires negotiation with the owners to make it work as best as possible. He said there's a lot of public benefit to be had if we move forward the Palmer properties.

Mayor Canose said while people are asking for more detail, that is not happening with the council and it is what happens at the Planning Board.

Pat Wry, Anderson Hill Road, said there was a change to the speed limit at the top of Anderson Hill Road. She said she has talked to the prior police administration about traffic calming measures on Anderson Hill Road. She said the area at Seney Drive and Anderson Hill Road are concerning, especially with school back in session, and suggestion a study or some kind of traffic calming solution to that area. Ms. Wry suggested a box or "x" to help pedestrians and kids cross

the street at intersections at Anderson Hill Road. She will send the locations to Ms. Greenfield for discussion by the Public Safety committee.

Kathy Peachey, Chilton Street, said she appreciates the concern showed for Anderson Hill Road safety and the environmentally sensitive and active residents regarding 267 Mine Brook Park. She said she appreciates the time of more than three years that the council has been working on downtown redevelopment and the informed and proactive residents that are at tonight's meeting. She said she has come to know indirectly the council members by attending so many meetings and believes that they have the best interest of everyone at heart.

Rosalie Ballantine, Pheasant Hill Drive, reiterated her concerns about the Palmer redevelopment project and pleaded to council not to grant the exclusive redeveloper designation of the project to Advance Realty.

Hearing no further comments, Mayor Canose closed the open session to the public.

Matt Jessup, Redevelopment Attorney, at the request of Mayor Canose, explained where we are with the agreement and gave a summary of the changes that were made.

Mr. Ribeiro asked about the affordable housing provision and the timing of payment being at issue of certificate of occupancy versus a payment that might be earlier to the borough considering we may not be issuing the certificate of occupancy until 2026 or 2027. Mr. Jessup said we want this project to be a success and are sensitive to our needs and trying to balance it with the redeveloper's needs. He said the thought with requiring it prior to the first certificate of occupancy is an effective healthy hammer for two reasons. One is that it puts a meaningful payment closer to the time when the developer will start receiving some revenue, because they won't receive any revenue from this project until they get a certificate of occupancy and they can move residents in. He said at the same time, it's an important payment to us so we don't want the developer to be able to move forward and start collecting revenue until they've made that payment to us. He said they will want to get revenue moving as quickly as possible, so they will be incentivized to move as quickly as possible and need to pay us before they can collect revenue. He said it's a balancing point of when is the right time.

Mr. Ribeiro asked about the public improvements privilege in that the \$35,000 was not specified but to affirm that it will be specified per agreement later on between the borough and the developer. Mr. Jessup said that is correct. He said the redevelopment agreement basically says that the parties will come together and agree on the use of that money for improvements, basically related to the site but not necessarily on this site. Mr. Ambelang asked if what happens if the developer doesn't come to an agreement with the borough on those funds. Mr. Jessup said both parties are obligated to act reasonably and he feels that saying no to everything would not be acting reasonably and we would tell them that they're breaching the redevelopment agreement and they're in default.

Mr. Ribeiro said it had been previously discussed with our prior attorney about putting a provision in the agreement that the developer would have to have a relocation plan for businesses located at the property. Mr. Jessup said there is a provision (Section 14.1) in the redevelopment

agreement currently that talks about neighborhood issues and neighborhood impacts and it does acknowledge that the project is going to have impact to the neighborhood and in the vicinity of the redevelopment project. He said they are obligated to take reasonable steps to minimize those material negative impacts.

Mr. Ribeiro asked if a business came to council and was not satisfied that their needs are being met inside of that provision, what recourse would Council have to help them rectify it. Mr. Jessup said council would start by exercising their right under this provision to meet with the redeveloper, as long as it's a reasonable accommodation, and try and map out a plan that addresses that concern. He said in the future we can always dispute about what reasonable means if the parties don't and can't see eye to eye, but council would first go to the redeveloper and they'd be obligated to sit with council and in good faith try to reasonably accommodate whatever that circumstance is.

Ms. Greenfield asked how \$1,000,000 was calculated for the affordable housing when 10 units at a going rate of \$177,000 totals \$1,770,000. She said she would like to know how the additional \$770,000 will be made up to the borough. Mr. Jessup said the affordable housing payment was the result of the negotiation between the borough and the redeveloper in light of the total project cost. He said the borough's financial advisor has confirmed that the project could not afford a \$1,770,000 payment and would not be moving forward. He said the task and the goal in order to effectuate the Redevelopment plan and to put the property to the use intended by the Redevelopment plan was to negotiate to a payment, time, and term that was acceptable to both parties and that the borough knows is an amount that they can pay without financially risking the viability of the project. He said that's how we got to that \$1,000,000 number. He said the PILOT analysis is all-encompassing and what we are doing is looking at all of the project costs including construction costs, revenue assumptions, and operating expense assumptions. He said the project cost will include the \$1,000,000 in the affordable housing fee. From there we are determining, through the municipal advisor, what the appropriate level of PILOT is for the project. He said the PILOT will be a function of what the project costs are and we now know what the locked project costs are.

Ms. Greenfield asked if Advanced can't afford to pay \$1,770,000 then why can't they put the 10 units within the Palmer development. Mr. Jessup said it's the same problem because each affordable housing unit comes at a loss. He said that's what makes the affordable housing piece such a challenge because basically in lieu of making the payment, we're asking them to spend the same money but to put it into the project they wouldn't be able to afford either way.

Ms. McCredie asked about COAH payment. Mr. Jessup said the payment is included in the financial agreement math. He said if the project cost numbers are not locked in, we're trying to decide a variable with another moving variable. He said one of the nice things about locking in the affordable housing payment now is that all of those variables are locked and it's all in the math on the financial agreement which is forthcoming.

Ms. Greenfield said the PILOT is part of the financial agreement which we don't have yet, so wouldn't it make more sense to be doing this whole thing at once so we know exactly where the money to the borough is coming from and to make sure the \$770,000 is in there. Mr. Jessup said

that's why the Redevelopment agreement contains the provision that it does allowing either party to terminate. He said if we determine that the math doesn't make sense to the borough we can turn around and terminate the Redevelopment agreement without any liability or cost to the borough and walk away from the project.

Ms. Greenfield asked if it's often practice that developers can't afford to do the COAH obligation. Mr. Jessup said every project is unique.

Mr. Ambelang said we're also limiting the number of units they have. If we went back to them and said we wanted to get the full number of units for them to cover their affordable housing component we might need to raise the number of units in the development to cover that cost. Mr. Jessup said if they can't afford it now the only way to make them be able to afford it is to give them more units where they can drive up revenue. He said revenue is from a limited source.

Mr. Ribeiro said in Article 8, Section E, it states the Borough should not amend or modify the Redevelopment plan without consent of the redeveloper and the borough. He asked if that's supposed to be the plan or this agreement. He said the Redevelopment plan is the underlying zoning and asked if this provision will then lock us into not being able to therefore modify any underlying zoning without a renegotiation. Mr. Jessup said yes and that's intentional and important because what the developer wants to make sure of is that we're not telling them we want them to build a 64 unit residential over retail project which we have zoned, designed, engineered, for them and contracted with them but then tomorrow we're going to turn around and zone it for grocery store, auto dealership, or something else and completely eliminate their ability to build what we contracted with them to build. He said it's important that the developer knows, as they're about to spend tens of millions of dollars, that we're not going to change the rules of the game on halfway through.

Mr. Ambelang moved to adopt Resolution #23-162, **RESOLUTION OF THE BOROUGH OF BERNARDSVILLE, COUNTY OF SOMERSET, NEW JERSEY DESIGNATING AR AT BERNARDSVILLE LLC, AS REDEVELOPER FOR THE PROPERTY LOCATED AT 35-39 OLCOTT SQUARE AND 5 MORRISTOWN ROAD AND IDENTIFIED AS BLOCK 125, LOTS 1, 2 AND 3 (A/K/A LOTS 1 AND 3) AS SHOWN ON THE OFFICIAL TAX MAP OF THE BOROUGH OF BERNARDSVILLE AND AUTHORIZING THE EXECUTION OF A REDEVELOPMENT AGREEMENT WITH THE REDEVELOPER FOR THE REDEVELOPMENT OF SUCH PROPERTY IN ACCORDANCE WITH THE REDEVELOPMENT PLAN.** Mr. Ribeiro seconded and a roll call vote followed.

Mr. Ambelang voted yes.

Ms. Greenfield said she does not believe this project as it is currently designed is in the best interest of the borough and the future of the borough. She said therefore she cannot support moving it forward. Ms. Greenfield voted no.

Ms. McCredie said with the financial agreement that's coming in the future and that we will have the opportunity to terminate the contract if it is not in the best interest of the borough, she is voting yes.

Mr. McQueen said we've been discussing this for well over a year. He said in any good negotiation there comes a point where it's painful for both parties and he feels we're at that point. He said we've done our due diligence, hired and fired attorneys, and done everything we could possibly do to get this right. He said he has thought for a long time this would help the borough and thinks we've gotten even more. Mr. McQueen voted yes.

Mr. Ribeiro said he likes Kathy Peachey's comments and is really grateful for all the participation on this at the August 10th council meeting. He said he knows everybody has the intention of doing what's best for the future of our community and is grateful for all the perspectives including those who disagree with it. He said we started talking about this when he joined Council in January 2022 so it's been well over a year and a half. He said he understands if people don't like it because of traffic impact, questions around parking, don't like the design, or they don't agree with the 2019 master plan that allows projects like this, but he does not feel that it's been rushed. He said we have been talking about it for some time and this is the ninth public meeting that we've had some type of action regarding the Palmer project over the course of that period of time. He said two of those meetings had over 100 residents attending including one solely dedicated to this topic. He said he likes the benefits that we're getting as a Borough. He said the fact that we're going to be significantly increasing the revenue that this property pays to the borough is a big provision. He said the borough only takes 6% to 7% of its revenue from commercial properties and 93% to 94% from taxpayers. He said that needs to change and this is a good step in the right direction, not to mention the first floor commercial, the changing of the traffic pattern, the frontage, the open space, and the larger sidewalks that we're getting. He said he is interested to see the financials and making sure that they work is the key. He said he is excited for the way that this property is heading and there's still a lot of other steps such as the financial agreement and the Planning Board review before this project sees the light of day. Mr. Ribeiro voted yes.

Ms. Zamorra said she agrees that all the due diligence that we've done proves that this is not only a fiscally responsible project but it's also very environmentally responsible. She said as some describe it to be a massive building, she disagrees. She said she agrees with the fact that this is an investment in our community. We are talking about 8,000 square feet of space where people can feel safe walking through downtown. We are talking about a \$35,000 investment in potential traffic calming efforts which we desperately need. We are talking about a \$1,000,000 investment in affordable housing. She said if anyone is aware of the way things are going not only in Bernardsville but throughout New Jersey and throughout the country, housing is desperately needed for families. She said she feels it's an investment in families, 68 families to be exact, who are going to be able to become part of our community, part of our downtown livelihood, and part of what makes our community great. Ms. Zamorra voted yes.

The motion to adopt Resolution #23-162 passed.

RESOLUTION

Mr. McQueen moved to adopt **Resolution #23-163, AUTHORIZING THE MAYOR TO SIGN A LETTER OF INTENT FOR LEASE OF UNITS AT 150 MORRISTOWN ROAD.**

Ms. Greenfield seconded and the motion was adopted with the following roll call vote. Mr. Ambelang, Ms. Greenfield, Ms. McCredie, Mr. McQueen, Mr. Ribeiro, and Ms. Zamarra voted yes.

Ms. McCredie moved to adopt the following resolutions:

- #23-164 CREATING THE POSITION OF PART TIME BEAUTIFICATION COORDINATOR**
- #23-165 APPOINTING WENDY BROWN AS PART TIME BEAUTIFICATION COORDINATOR AND PART TIME CROSSING GUARD**
- #23-166 APPOINTING COLETTE ARMENTI AS PART TIME ASSISTANT TO THE TAX ASSESSOR**
- #23-167 APPOINTING DENISE FILARDO AS PLANNING BOARD/BOARD OF ADJUSTMENT SECRETARY AND RECREATION PURCHASING ASSISTANT**

Ms. Greenfield seconded and the motion was adopted with the following roll call vote. Mr. Ambelang, Ms. Greenfield, Ms. McCredie, Mr. McQueen, Mr. Ribeiro, and Ms. Zamarra voted yes.

ITEMS OF BUSINESS

Cyclocross, Ms. Greenfield moved that Cyclocross can start their season as long as they adhere to the borough's trail rules, only use the existing entrance to the left side of the trail, they cannot do anything to permanently alter the property, they cannot use the two entrances they cut out, they cannot use permanent spray paint, this is under the supervision of Bob Markowick, Recreation Director, and is for this season only. Mr. Ambelang seconded and the motion was approved with six yes votes.

Timeframe for Display of Political Signs, council consent was given to allow display of political signs 60 days before the start of early voting.

CLOSED SESSION

It was moved to adjourn to an executive session to consider Contract Negotiations and Personnel Matters and that the time when and circumstances under which the matter can be disclosed to the public is when it is finally resolved. The motion was seconded and approved with six yes votes.

REOPEN

It was moved and seconded to reopen the meeting to the public.

Mr. McQueen moved to adopt **Resolution #23-168, TERMINATING EMPLOYMENT OF PROBATIONARY DPW EMPLOYEE**. Ms. McCredie seconded and the motion was adopted by the following roll call vote. Mr. Ambelang, Ms. Greenfield, Ms. McCredie, Mr. McQueen, Mr. Ribeiro, and Ms. Zamorra voted yes.

ADJOURNMENT

The meeting was adjourned at 11:00 p.m.
