

SPECIAL MEETING/PUBLIC HEARING – APRIL 24, 2012

A Special Meeting of the Highland Park Mayor and Council was held in Borough Hall, 221 South 5th Avenue, on Tuesday, April 24, 2012 and was called to order at 8:00 PM. Mayor Minkoff read the Open Public Meetings Statement.

Present: Mayor Minkoff; Councilpersons Brill Mittler, Foster-Dublin, Millet, Morris, Welkovits; Borough Attorney Schmierer; Borough Administrator Kovach; Borough Clerk Hullings; Special Planner Caton.

Absent: Councilperson Erickson.

Mayor Minkoff began the meeting by reading the following statement:

"I would like to open tonight's public hearing on the proposed interim settlement agreement between the Borough of Highland Park and River Road LLC, with a brief comment and request.

"This process has unfolded over an extended period of time and I hope that tonight our focus will be on questions and concerns related specifically to where we are now with this proposed agreement and how we can hopefully move forward should the Council vote in favor of the proposed interim settlement.

"With any negotiation involving a matter of this scope, impact and sensitivity, comes a great deal of complexity and uncertainty. Further, as I said to many of you from this seat in January, there will be times when, notwithstanding your desire for us to be completely transparent, that would not be possible without jeopardizing the very interests we have sought to protect. At times, this has frustrated some, if not many of you; I appreciate that. There have been many times I would like to have shared information but could not have done so for the Borough's protection and best interest.

"People will take away from tonight's discussion what they will...but I would like to frame the discussion this way.

"The Borough, through this lawsuit, has validated something that I have always believed and which this Governing Body sought to make a priority in this negotiating process, protection of the inclusionary zoning which was at the heart of this litigation. We believe the fact that we in fact are presenting a plan to demonstrate compliance with our obligation and in fact, have, based on advice of our professionals, been in compliance for some time, informed our discussions to ask could the proposed settlement be enhanced as it related to this issue? To that point, the Borough has an ordinance that discusses an 11% affordable housing obligation as par of new construction and the questions then get asked:

- "1. If an agreement with this developer is reached and the number is lower than that percentage of units, are we being sufficiently proactive as Governing Body in planning for the future?
- "2. Can we effectively balance the very interests that have been discussed in this Chamber, a density we believe is appropriate, creating appropriate buffering that could have been jeopardized at higher density, and considering traffic considerations in a potentially new neighborhood that address the needs of those specific residents and consider potential impacts that these could have for other proposed or future development projects?
- "3. Knowing that this proposal called for much lower density and ownership units, as well as an access point to River Road to/from this development, why not just take the proposal as is? Because we have a responsibility to be sure that we are keenly sensitive to all that has been expressed by each of you, but ensure that in doing so we don't neglect responsibilities such as COAH obligations, setting precedents that could be problematic later, undermining our own land use code for non-litigated agreements, seeking our best opportunity for coordinated development of this, as well as the American Properties parcel and ensuring that all of these efforts could lead to an agreement that would be acceptable throughout Highland Park and in the Court of Judge Paley. And those are only the aspects of our discussions I can talk about. We know many of you here believe that this proposed agreement is a good one and share our desire to serve the needs of the entire Borough. I say thank you for caring and for your active participation throughout this process.
- "4. So, with all of that said, the Council has really been wrestling with a simple question: Could we preserve the best of the proposal we received and find a way to make it better? The desire of this Council, during this process, has been to demonstrate that we respect the concerns that have been brought forth with regard to neighborhood impact and balance that, as we have been charged to do, for the good of all of Highland Park. This takes time and the necessity for each member of the Governing Body to engage with our professionals and each other to satisfy their particular questions using the parameters I mentioned. That's their job and I thank each of my colleagues for taking the time to do that.
- "5. I am keenly aware of the anxiety and uncertainty you have felt while we navigated what has appeared to be a murky process. It's my hope that tonight we will have clarity on at least one of the 2 properties in litigation and in doing so, achieved a result that addresses all of the foregoing questions.

"So I am glad you are here. I would like us to have a robust discussion and then the Governing Body will be asked to vote in favor of, or against, the proposed interim settlement agreement. I also want to say a word about that before we get started. I have read in a variety of communications that people should come here and demand that we take a particular action, whatever that desired action is. My own experience with many of you has been the opposite; that despite your concerns and anxiety, you have been respectful and we have engaged in a civil, if not sometimes spirited discourse. I fully expect that to be the tone of tonight's discussion. We are neighbors and many of us are friends. I believe we can reach a positive outcome tonight that should satisfy many, if not of you, but I ask your indulgence while the Council listens to you and while you hear whatever concerns they feel they want to share as part of this discussion. To emphasize this point, I think there is much on which we can agree, but should we disagree, I would hope we can still be respectful of each other and maintain the civility which I believe has been a hallmark of these discussions. I think we have tried to respond to every question by phone and email as quickly, respectfully and transparently as we could, given the legal limitations imposed on us and I plan to have us respond in that same fashion this evening.

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"I've asked our Mt. Laurel Planner, Phil Caton, Principal of Clarke, Caton and Hintz, who is widely respected for his expertise to join us, and as appropriate, will ask him to inform our discussions. If, on advice of Counsel, he does not give a direct answer, it's because litigation is still pending with American Properties and we cannot compromise or undermine those positions.

"The bottom line is this: Mayor's prior to me have said this, Democracy can be messy; to ensure people have the opportunity to have their say can sometimes be frustrating if someone believes its time to take action. No one is more impatient than me in this regard, but I think it's been crucial for everyone to have their say and I consider that the highest form of citizenship. So when we talk about Highland Park demonstrating leadership as a community, let's please realize that this one of the things that makes us special, our passion, commitment to our principles and our high level of engagement. We value that, we cherish it and let's have that be the spirit in which tonight's discussion is conducted.

"So, I will turn this discussion over to Ed Schmierer, our Attorney, to delineate the proposed agreement that the Council is considering for public passage and my ground rules are simple.

- "1. We will go as long as practical, that is, if people begin repeating what others have already said, we probably have heard the bulk of what we needed to hear.
- "2. Please remember that I want to hear what you have to say, but let me recognize you while you stand at the microphone, so please resist the temptation to call out questions from your seats.
- "3. I would prefer that you address your remarks to us directly and then let me decide who is best positioned to answer the question or comment, and if others from the dais would like to add to that we will have them do so.

Borough Attorney that over the last several months at each Council Meeting he has reported on the status of the Mt. Laurel litigation matters, particularly River Road. The Borough Council will consider interim settlement agreement with the developer. This will allow the Borough to move forward in sixty (60) days to a final agreement. The Borough will rezone parcel of land so that 89 market rate ownership/for sale units can be built. The development will be a mixture of single family homes, townhomes and condo flats. There will be five (5) affordable units, for a total of ninety-four (94) units. The proposed concept plan needs additional work, as it is missing four (4) units, and one of the site issues would be to connect spine road to River Road to accommodate most of the traffic. Additional amenities were discussed such as tot lot, benches, and the detention facility. There will be preservation of buffer along homes adjacent to property on Cleveland Avenue. They have committed to the developer that the concept plan will not be materially changed. After zoning is created, the ordinance will be introduced by the Council and a public hearing held prior to final adoption. Final drawings and engineering plans will move on to the Planning Board as a site plan application under the new ordinances. The developer will have to comply with all of the regulations and there will be another public hearing before the Planning Board. The development is not a gated community but will be part of the greater neighborhood in the area. The interim and final settlement agreements will bind whoever develops the lot to the terms and conditions finalized. Before rolling out the settlement, the five (5) units of affordable housing was discussed with the Court Master. They shared with the Court Master the current status of affordable housing plan which must include seventy-five (75) units of rehab housing. Thanks to Mr. Caton's office they have found units the Borough was unaware of to count towards the COAH obligation and we are confident we have met and exceeded our obligation. This information will be shared with the Court Master for review. We do believe we have compliant plan to submit to Judge Paley for approval.

Mayor Minkoff opened the meeting for public discussion and called upon all those wishing to speak to identify themselves.

Mary Curran, 67 Cleveland Avenue, thanked the Governing Body for listening to them. They feel like the plan they heard fits in more closely with original master plan and they support the proposal.

Hadassah Geretz, 49 Cleveland Avenue, asked how interim settlement came about. Borough Attorney indicated that when there is litigation, everyone thinks they have a good case. Discussions have taken place over the last 18 months. The developer filed motion to say as a matter of law we are entitled to develop land with 356 units. Borough filed motion and said they are entitled to none. Most cases settle because someone would win and someone would lose. Settlement discussions began in earnest and they reported to Judge Paley about reasonable discussions for settlement and he granted postponements, with the latest date being May 11th. Ms. Geretz commented that the outlet on River Road would help, but would not help that much. Mayor Minkoff commented that they are sensitive to that issue and have taken advice of their professionals. If Council agrees to this, they will be in discussions with County on how best to alleviate traffic concerns. Ms. Geretz asked if traffic turns out to be worse, would the Borough consider traffic lights. Mayor Minkoff noted that it is a hypothetical question at this point. If we move forward, it would be monitored and a decision made on how best to handle it. Ms. Geretz spoke about the buffering as her house is within 10' of the fence. She asked about foliage and noted that she would like to see as much buffering as possible. Borough Attorney advised that his project will go through complete site plan review and she will get a chance to comment about her specific property.

Jane Rein, 47 Cleveland Avenue, gave her support to everyone. The Borough has done a great job. 90 owner occupied units is fantastic. She thanked the Council.

Sue Anderson, 63 Cleveland Avenue, commented that this is a good solution. She was in favor of reasonable low density development all along and inclusion of affordable housing. It mirrors very closely to the zoning of the property. Thanked Efrem Gerzberg, the developer, for being reasonable and working with the Mayor and Council and the residents. She urged the Council to pass the interim agreement.

Resident, 45 Cleveland Avenue, agreed with her neighbors and urges the Council to pass the agreement.

Karen Swaine, 55 Cleveland Avenue, commented that she is particularly please that if indeed all trees are not leveled that that would be an amazing feat. Backyard to backyard is just like houses in Highland Park everywhere. She asked about grade change. Councilman Millet indicated that issue would be dealt with during Planning Board phase and design phase. Ms. Swaine commented that she is in favor of the agreement.

Barnett Hoffman, 58 Harrison Avenue, asked for description of this will look and how it relates to other piece of property. Mr. Caton noted that there will be homes along Cleveland Avenue with backyards backing up to other properties. Beyond that there will be a series of townhomes and stacked townhomes going towards rail line. The main street through the development will run east/west to 2nd Avenue. There will be 2 to 2 ½ story units.

Zev Brown, 217 Cleveland Avenue, echoed the comments of his neighbors and thanked the developer. He asked about access for emergency vehicles. Mayor Minkoff noted that public safety officials will get to comment on plans when they are designed and submitted to the Planning Board.

Larry Perfetti, 214 Cleveland Avenue, commented that he is happy proposal is before Council. He thanked the Council, his neighbors and Mr. Gerzberg.

Sue Anderson, 63 Cleveland Avenue, asked if settlement is passed what affect will it have on American Properties litigation. Borough Attorney noted that he cannot comment, but hopes it will have a beneficial effect.

Steve Nolan, 97 Lincoln Avenue, thanked the Council for hanging tough and working through the issues. He gave them a lot of credit for staying with it and keeping it in balance. The residents on Cleveland Avenue should be commended for their grass roots efforts. Did not think the Borough would get the developer down to that number. He thanked Efreem for his efforts and for his sense of community.

No one else appearing to be heard, the Mayor closed the public portion.

Borough Attorney outlined substance of proposed settlement and asked that each Council Member provide a comment after they have voted.

A motion to approve interim settlement agreement was made by Councilman Millet, seconded by Councilwoman Brill Mittler, and carried by the following roll call vote, to wit:

Ayes: Councilperson Brill Mittler, Millet, Morris, Welkovits.

Opposed: None.

Abstained: Councilperson Foster-Dublin.

Absent: Councilperson Erickson.

No. 4-12-148A

WHEREAS, the Borough of Highland Park and the Planning Board of Highland Park are Defendants in a lawsuit entitled River Road HP, LP vs. Borough of Highland Park, et al., Docket No. MID-L-9377-10; and

WHEREAS, said litigation involves the development of Block 180, Lots 25 through 30, Highland Park Borough Tax Map, consisting of approximately 10.476 acres of land; and

WHEREAS, said development consists of the construction of residential units, including affordable housing units, as that term is defined by the New Jersey Fair Housing Act of 1985; and

WHEREAS, the parties have reached an amicable Interim Settlement Agreement in connection with said litigation; and

WHEREAS, the terms and conditions of the Interim Settlement Agreement were the subject matter of a Special Public Hearing conducted by the Highland Park Borough Council at a Special Meeting held on April 24, 2012; and

WHEREAS, prior to said hearing, the Court-Appointed Special Master in this litigation reviewed and recommended approval of said Interim Settlement Agreement; and

WHEREAS, the Highland Park Borough Council wishes to authorize the execution of the Interim Settlement Agreement which was placed on the record at the above-referenced Public Hearing on April 24, 2012.

NOW, THEREFORE, BE IT RESOLVED by the Borough of Highland Park Council as follows:

1. The Mayor and Clerk of the Borough of Highland Park are hereby authorized and directed to execute an Interim Settlement Agreement in the matter of River Road HP, LP vs. Borough of Highland Park, et al. , Docket No. MID-L-9377-10. The Interim Settlement Agreement authorized by this Resolution is on file in the Office of the Borough Clerk and may be inspected during regular office hours.
2. A certified true copy of this Resolution shall be furnished upon its adoption to River Road HP, LP, c/o Giordano, Halleran and Ciesla, P.C., 125 Half Mile Road, Suite 300, Red Bank, New Jersey 07701-6777, Attention: Marc D. Policastro, Esq., to the Court-Appointed Master, Elizabeth McKenzie, P.P./A.I.C.P., 9 Main Street, Flemington, New Jersey 08822 and to the Highland Park Planning Board.

The Council comments are outlined below:

Councilwoman Brill Mittler thanked all the residents for showing up and voicing their opinions effectively. They have no idea how many late nights the Governing Body spent deliberating. They need to keep entire Borough's interests in mind. She thinks that right now they have the best proposal before them and she therefore voted in favor of the agreement.

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Councilwoman Foster-Dublin thanked everyone for the countless meetings that they attended, emails sent, and arguments proposed to force the Governing Body to take a closer look at development in that area. She has concerns about the project. The process was started at 350 units. They have come a long way to 89 units, with 5 affordable units. As the Mayor said, there should be 11% affordable units and they are only putting in 5%. The 11% should be considered as Highland Park prides itself on making everything affordable and therefore she abstained from voting.

Councilman Millet thanked the Borough Attorney being a constant throughout this process and therefore he voted in favor of the agreement.

Councilman Morris commented that this proposed settlement reflects the Council's and the ideas of the public. They worked hard to get to an equitable decision. Thinks everyone should have a strong feeling and that they took the time to do what is best for Highland Park and therefore he vote yet.

Councilwoman Welkovits thanked the residents for their thoughtful arguments and commitment to this cause. They helped the Council do research. She thanked Councilman Millet for managing this effort along with the Borough Attorney. She thanked the Mayor for being supportive and encouraging. She thanked her fellow Council Members and Special Planner Caton. She is very concerned about issue of dropping below 11%. Working with company they hired to manage rehabs and working with the Special Planner. It is disappointing that it is going below that, but she voted yes.

Mayor Minkoff noted that the motion has passed. He thanked everyone and is proud and privileged to be Mayor. This reflects what Highland Park is all about. He respects his Council colleagues tremendously and is proud to lead them as Mayor.

There being no further business, on motion made by Councilman Millet, seconded by Councilwoman Welkovits, and carried by affirmative voice vote of all Councilpersons present, the meeting adjourned at 8:47 PM.

Respectfully submitted,

Joan Hullings
Borough Clerk