

BOROUGH OF BERLIN
CAUCUS/COUNCIL MEETING MINUTES
TUESDAY, NOVEMBER 27, 2012
MUNICIPAL BUILDING
59 SO. WHITE HORSE PIKE
BERLIN NJ
7:00 PM

MEETING CALLED TO ORDER BY MAYOR ARMANO.

FLAG SALUTE LED BY THE MAYOR.

SUNSHINE NOTICE: Adequate notice of this meeting has been given in accordance with the Open Public Meeting Act, Pursuant to Public Law 1975, Chapter 231. Said notice has been published in the Courier Post and Philadelphia Inquirer and special hearing notice has been published in the Courier Post showing the date, place and time of this meeting was read by the clerk.

ROLL CALL: Mayor John J. Armano, Council President Scott Scelso, Council members Maccaroni, Chance, Bilella, Kupchik and Pearce were all present.

PRESENT ALSO: Solicitor George Botcheos, Special Counsel Stuart Platt, Borough Planner Brian Slaugh, Planning Board Solicitor Mark Rinaldi and Planning Board Chairman Jack Gangluff.

Mayor Armano asked all of council to speak right into the microphones to be able to hear the tape better.

- The mayor opened the hearing on the proposed settlement of litigation known as Nexus Properties, Inc. v. the Borough of Berlin and the Planning Board of the Borough of Berlin pending in the Superior Court of New Jersey, Law Division, Camden County. Mayor asked Stuart Platt to present a synopsis of this settlement proposal.

Stuart Platt presented a synopsis of the process that has been going on since 2006 until present with Nexus and this proposed settlement that is going to be heard. He sworn in both Brian Slaugh and Clerk Charleen Santora for their testimony. Clerk confirmed the actual notice of this publication was done for this hearing and affidavit of publication was part of exhibit 1. Clerk confirmed exhibit 2 as the proposed settlement and has been in the clerk's office for the public to inspect since November 16. Clerk confirmed that exhibit 3 has been in the clerk's office also since Nov. 16 an also in this packet.

Hearing is to consider a proposed settlement between the Borough of Berlin, the Planning Board and Nexus that has been going on for many years. . A builders remedy suite was filed in 2006 by Nexus under principals known as Mt. Laurel Affordable Housing, An order was entered by the court finding that 600 units would be approved at this Nexus location known as block 1700 , lot 1 and 3. At this time the parties began to negotiate this case. Several proposals have gone back and fourth subsequently coming to the one that is up for hearing this night. There

was a court appointed Master assigned to this case, Elizabeth Mackenzie. Stuart states that he and Brian Slaugh have been guided by the Mt. Laurel principals and sound planning principals. Exhibit 4 shows a map of the locations being discussed, a 30 plus acre parcel. Stuart states that Nexus is under contract to purchase this site. He has been working on getting the best settlement for the borough and also complies with the borough's affordable housing obligation plus in settlement the borough's affordable housing trust fund will be unfrozen. There is also a sewer settlement in this proposal allowing Nexus to claim a certain amount of sewer capacity.

At this point, he feels this settlement proposal would fit the obligation of the borough for affordable housing. The proposal calls for 471 units to be built, adding that 399 would be market housing and 71 would be affordable housing with one rental office and two superintendent units in addition to the 470 units. He notes that the borough's biggest concern is the impact on the school system and borough services. He states the developer agreed to a limitation on the total number of bedrooms being that of 710 not to exceed for all 399 market units. He states the developer has the option to build as single dwelling, town houses, condos or apartment houses. The borough or any municipality does not have any control over the type. There is a proposed ordinance change on agenda that creates the R5 Zone. In this zone we make sure there are appropriate controls on the nature of this development, Stuart states. Some include adequate set backs, club houses, walking trails, etc. The fire marshal was also included for safety issues that the governing body was adamant about. The normal process will be done by the planning board on every normal procedure they follow with any new construction he explained. Other provisions provide that if this settlement gets approved by both the Governing Body and the Planning Board, the court will still have to approve. The borough will get second record compliance and immunity for years and not subject to further builder remedy's law suits. He assures all the COAH is still being implemented in New Jersey, unless there is a constitutional amendment, this is not going away. There will be a third round requirement and will be somewhat met through this settlement along with the second round being met completely. This settlement if approved will result in dismissal litigation and will end long standing expensive litigation for the borough. Exhibit 3 is the sewer agreement. He explains that Berlin has been under a sewer moratorium for treatment allocation for future developments. A positive agreement was done by Botcheos years ago that once the regional sewer plan being constructed today and completed by 2013, the borough will be allocated 250,000 gallons per day for usage. The borough would have to do some I & I remediation to adhere to this allocation from the CCMUA. The borough now has to do its fair share of remediation. Nexus will pay \$142,500 towards the borough's remediation with contingencies. Nexus would get approximately 107,000 gallons per day. The borough will have to reserve this amount for this project for at least five years or if Nexus pays the amount of \$142,500. If they do not, the allocation for Nexus will go away. During the time period that Nexus does not pay, the borough can continue to issue sewer to new projects, being an important benefit to the borough, as long as we reserve a certain percentage of allocation that goes towards the 107,000 gallons. The goal is for Nexus to go to the planning board, get their approvals to build and pay for the sewer capacity share, or \$142,500. Stuart states that if this proposal is approved, the council will still have to pass the R5 Zoning ordinance and also an Ordinance to amend the affordable housing ordinance. There is also an amendment to the zoning map ordinance that is scheduled on the

agenda for possible approval. The planning board will have a similar hearing on December 10 in regards to these approvals, if so approved. The hearings on the ordinances will be December 27, 2012. There will be a hearing date set after we apply. He states the master feels this settlement is more than fair. Once completed he will try and get compliance and judgment of reproach with the courts to relieve us from any further law suits such as this. He states if not approved, the litigation will continue and there is no way of knowing what the court will decide towards this litigation.

Mayor asks Stuart when the court order was for the 600 units. Stuart states 2007. The Mayor asks who appointed the court master. Stuart's reply is the court.

Planner Brian Slaugh. Three land use ordinances on agenda for approval. He notes the R5 is the newest ordinance being created. It creates the frame work under which the properties need to approve application of development to the planning board. The plan is for the entire 30 acres with the number of units allowed; it would probably be apartments and townhouses or single family dwellings. There are requirements in this ordinance that will require certain set backs, etc. coming under fire safety, especially when apparatus has to get around the buildings. 3 stories and 48 feet in height is how the ordinance is set up. He notes that the original height of the project was a huge issue. A certain height is needed to create a roof pitch. 150 square feet of recreational space is calculated for each dwelling unit. Other amenities are being talked about by the developer. The design is being structured on a new façade look rather than a cookie look. He feels the R5 Ordinance protects the borough and meets the demand of the plaintiff.

Stuart Platt states the settlement agreement will control the form of how this works out. A maximum number is 470 units the developer can build. They could build less therefore that is why the percentage factor is being used he explains from Councilwoman's Kupchik's question regarding the percentage of what is to be built.

Councilman Pearce questions why the Zoning Map Ordinance is on the agenda involving the Simone tract when he did not believe the council was in favor of any more high density approvals in the borough. Brian explains that this ordinance was a house keeping Ordinance, however, the council could table if they so desire and he will make a few adjustments before the December 10 hearing in the ordinance.

Stuart explains that if this matter is not settled, the borough will lose control on a lot of the decisions that will be made for this borough and if a judge issues an order, we can get any type of development in this town.

Mayor Armano points out those low and moderate units are not recognizable from the outside in these types of construction as agreed to by Brian Slaugh.

Councilman Bilella asks if the R5 zoning ordinance is a combination of the previous zoning ordinances. Brian states it is the closest to the R3 Zoning Ordinance. He is concerned about the language regarding the sewer allocation. Stuart explains that the CCMUA that a remediation plans will approve the 250,000 per day capacity as long as the borough starts working on an I & I study somewhere in the town. The phasing of the sewer allocation will be proportioned. He

also feels the borough will have worked on some I & I study long before any project is started by Nexus. The borough has to reserve this sewer for Nexus but only up to five years and only up to a first come first serve basis.

Brian brought up three areas on the Affordable Housing amendment ordinance that he asked to be corrected for the record. He will send a new draft of this ordinance.

Public who spoke were all sworn to the testimony by Stuart Platt.

Nicholas Guerere

12 Glenview Avenue

Berlin N J

He feels the council has no choice as to approve this agreement and ordinances; he is still concerned that the class room sizes will increase and there will be a need for additional space and classrooms in the future. Affordable housing money that has been frozen will be unfrozen if this settlement is approved per Stuart Platt.

Joe Theurer

21 Coleman Road

Berlin N J

He feels property taxes will increase due to low income housing being approved. He is against the approval of this project. Mayor notes the borough is aware of possible increases.

Harry Earle

3 Schaeffers Way

Tansgate

Berlin N J

He asks if there are plans of the project. Stuart states that the builder has an option of rental versus single family versus town houses. The borough has no say on this option. He would have liked to have more notice on this six year battle asking for the process the residents can take from this point on. Stuart explains that the planning board will hear this on Dec. 10, the court still has to approve and the developer will still have to go through the normal planning board process with the filing of an application, etc. The public will then again be able to speak on the application. All plans have to be on file for the public. He would like to see all of this posted on the web site. Mayor explains we are in the process of revamping the web site on a daily basis. He would like a sub committee from the residents put together for these types of considerations.

Pastor Charles Clark

Solid Rock Baptist Church

Berlin N J

Pastor Clark feels this approval will decrease the value of his property and he is against this agreement.

Diane Fair

537 Riggs Avenue

Winslow Twp N J

She asks if there is a time constraint on the building of this project not wanting to live through several years of construction. Stuart states that there are time restraints.

Paul Werner

516 Riggs Avenue

Winslow Twp N J

He asks what stage the development at the K Mart site is at and asks if there will be affordable housing at that development. Stuart states that the owner of this site is not moving on anything at this point, possibly due to lack of sewer. This site is also involved in a builders remedy suite. Brian states this site is approved for town homes. He asks if the helipad at Vertua Hospital affects the height restrictions. He asks if there will be restrictions on keeping up the maintenance on these properties noting that he is concerned about this development and his property value and the value of other homes in Berlin.

Mayor Armano explains that if we don't approve this agreement, it is possible the Borough will suffer worse with more units.

Mr. Theurer from Coleman Avenue asks how all of the traffic will be handled.

Mayor Armano closed the public hearing.

RESOLUTION R11-13; 2012 RESOLUTION REGARDING SETTLEMENT OF LITIGATION KNOWN AS NEXUS PROPERTIES INC. vs. BOROUGH OF BERLIN AND THE PLANNING BOARD OF THE BOROUGH OF BERLIN PENDING IN THE SUPERIOR COURT OF NEW JERSEY LAW DIVISION, CAMDEN COUNTY.

Motion to approve was made by Maccaroni seconded by Scelso. Mayor notes that no one on council wants to approve this settlement but we could be dealing with worse. Roll call; Scelso votes aye but notes that he lives in Tansgate across from development but he does not want to see the courts decision that could lead to more units, Maccaroni votes aye stating he has been on council since this has come to light hiring the best attorney in the state filing a 93 brief before the State with a page and an half response. The funding has been drained to litigate this suit noting the council has done the best for the Borough, Chance votes aye stating the money

being spent has to stop, Bilella votes aye stating our town does not have the supports of the courts regarding the impact on our town fearing if the courts decide we could have a lot more units, Kupchik votes aye stating that all of council has fought this to the best of their ability, Pearce votes aye also.

RESOLUTION R11-14;2012, A RESOLUTION OF THE COUNCIL OF THE BOROUGH OF BERLIN, COUNTY OF CAMDEN, NEW JERSEY, AUTHORIZING THE PLANNING BOARD OF THE BOROUGH OF BERLIN TO AMEND THE MASTER PLAN OF THE BOROUGH OF BERLIN REGARDING THE HOUSING ELEMENT AND FAIR SHARE PLAN IN ACCORDANCE WITH THE REQUIREMENTS OF N.J.S.A. 40:55D-28.

Motion to approve made by Bilella seconded by Maccaroni. Bilella asks if this Ordinance will remove the Simone tract. All were in favor.

ORDINANCE INTRODUCTIONS:

ORDINANCE NO. 2012-19, AN ORDINANCE AMENDING CHAPTER 335, ZONING AND LAND USE, TO CREATE THE R-5 ZONING DISTRICT.

Motion to introduce Chance seconded by Maccaroni. All were in favor.

ORDINANCE NO. 2012-20, AN ORDINANCE AMENDING CHAPTER 193, AFFORDABLE HOUSING, AND CHAPTER 335, ZONING AND LAND USE, TO COMFORM WITH REQUIREMENTS OF N.J.A.C. 5:96-1 ET SEQ. AND N.J.A.C. 5:97-1 ET SEQ. with corrections noted by Planner Brian Slaugh.

Motion to introduce made by Chance seconded by Bilella. All were in favor.

ORDINANCE NO. 2012-21, AN ORDINANCE AMENDING THE ZONING MAP, 335-75, OF THE CODE OF THE BOROUGH OF BERLIN TO IMPLEMENT THE HOUSING PLAN.

Motion to table this Ordinance by Pearce seconded by Kupchik. All were in favor..

Hearing for ordinances will be held on Thursday, December 27, 2012

Stuart Platt thanks Mayor and Council noting that they had a difficult decision to make but he feels the biggest benefit will be not to lose control of the town's decisions by the courts. He thanks Brian Slaugh and Planning Board Chairman Jack Gangluff.

There was a five minute break.

CAUCUS MEETING:

All of council held their reports for the council meeting.

- DISCUSSION ITEMS:
- MAYOR JOHN J. ARMANO

- BUILDINGS & GROUNDS, Chairman Scott Scelso
- STREETS & ROADS, Chairman James Bilella
- WATER & SEWER, Chairman Lynn Kupchik
- HEALTH & RECREATION, Chairman Jim Pearce
- PUBLIC SAFETY, Chairman Dennis Chance Three candidates will be interviewed for the police position at the Dec. 3 meeting.
- FINANCE, Chairman Nick Maccaroni Asks if the Clerk and Assistant clerk to compile all six years of the Nexus file making two copies, one for the library for the public to see.
- SOLICITOR, George Botcheos
- ADMINISTRATOR, Charleen Santora Bus contract will be on the agenda for the next meeting plus another Ordinance for construction fees.

Mayor notes a bid was received for the senior bus for \$57,800.

RESOLUTIONS:

RESOLUTION R12-1; 2012, A RESOLUTION TO ENTER INTO THE RECORD THE RESULTS OF THE PUBLIC QUESTION HELD ON THE NOVEMBER 6, 2012 BALLOT BY THE BOROUGH OF BERLIN ON WHETHER A FREE PUBLIC LIBRARY BE ESTABLISHED IN THE BOROUGH OF BERLIN PURSUANT TO SECTIONS 40:54-1 TO 40:54-29 OF THE TITLE, MUNICIPALITIES AND COUNTIES OF THE REVISED STATUTES WHEREAS A VOTE WAS RECORDED FROM THE SIX VOTING DISTRICTS OF 1464 YES'S AND 1220 NO'S.

RESOLUTION R12-2; 2012, AUTHORIZATION TO ENTER INTO AN AGREEMENT FOR SOLID WASTE DISPOSAL SERVICES BETWEEN THE CAMDEN COUNTY ENERGY RECOVERY ASSOCIATES, L. P. AND THE BOROUGH OF BERLIN AT THE RATE OF \$61.00 PER TON FOR THE PERIOD OF JANUARY 1, 2013 THROUGH DECEMBER 31, 2013 AND THE RATE OF \$63.00 PER TON FOR THE PERIOD OF JANUARY 1, 2014 THROUGH DECEMBER 31, 2014.

RESOLUTION R12-3;2012, A RESOLUTION OF THE BOROUGH AUTHORIZING 3RD QUARTER 2012 UTILITY BILL ADJUSTMENTS FOR THE FOLLOWING PROPERTIES IN THE AMOUNT OF \$5488.16;

386 COOPER ROAD	-164.75
257 S. WHITE HORSE PIKE	-73.40
460 RT. 73 N	-3575.00
13 CROSS KEYS ROAD	-595.50

540 ROUTE 73 N -706.50

11 SEVILLE CT. -373.00

RESOLUTION R12-4;2012, A RESOLUTION AUTHORIZING THE TAX REFUND FOR BLOCK 1001 LOT 3.01 FOR \$1398.92 AND BLOCK 2203 LOT 8 FOR \$2262.07 DUE TO MORTGAGE CO. OVERPAYMENT.

RESOLUTION R12-5; 2012, A RESOLUTION AUTHORIZING THE REFUND OF RESIDENTIAL RESALE INSPECTION APPLICATION FEE FOR BLOCK 2401, LOT 34 FOR 108 WILSON LANE IN THE AMOUNT OF \$100.00.

RESOLUTION R12-6, 2012, A RESOLUTION AUTHORIZING THE REFUND OF RESIDENTIAL RESALE INSPECTION APPLICATION FEE FOR BLOCK 1302, LOT 6 FOR 10 W BROAD AVENUE IN THE AMOUNT OF \$100.00.

RESOLUTION R12-7; 2012, A RESOLUTION AUTHORIZING THE REFUND OF DEVELOPER ESCROW BALANCE FOR BLOCK 101, LOT 1 IN THE AMOUNT OF \$21.50.

RESOLUTION R12-8;2012, APPROVAL TO AUTHORIZE BOROUGH TAX COLLECTOR TO PLACE LIENS ON PROPERTIES LISTED BELOW FOR LAWN CUTTING, SEWER JETTER AND VARIOUS SERVICE NEEDED THAT WAS DONE BY THE DEPARTMENT OF PUBLIC WORKS ON AUGUST 8 AND AUG 30, 2012;

14 SO. FRANKLIN AVENUE, BLOCK 613, LOT 20	\$1165.00
LEROY AVENUE	3480.00
136 S. FRANKLIN AVENUE, BLOCK 505, LOT 32	610.00
34 EAST BROAD, BLOCK 1103, LOT 5	1165.00
42 JOANS LANE	1165.00

R12-9;2012, AUTHORIZATION TO APPROVE A MERCANTILE LICENSE FOR RENEE ANTOINE, T/A THE STUDIO SHOP OF RENEE FRANCE DESIGNS LOCATED AT 41 CLEMENTON ROAD, STORE # 316, BERLIN NJ.

RESOLUTION R12-10; 2012, AUTHORIZATION TO APPROVE APPROPRIATION TRANSFER FROM INSIDE CAP TO INSIDE CAP IN THE AMOUNT OF \$12,000 FROM GENERAL BUDGET AND \$9900.00 FROM WATER UTILITY.

Councilman Bilella asks if we can table the yard sale ordinance that will be on agenda. Mayor explains is it a safety issue.

Motion to adjourn was made by Scelso seconded by Pearce. All were in favor.

Charleen Santora, RMC, Borough Clerk

