

**MEETING MINUTES
OF THE LAND USE BOARD,
BOROUGH OF HOPATCONG,
HELD AT THE HOPATCONG HIGH SCHOOL AUDITORIUM,
2 WINDSOR AVENUE
HOPATCONG, NEW JERSEY
SEPTEMBER 6, 2016
OPEN PUBLIC MEETING 7:30 PM**

CALL TO ORDER: Chairman Alan Gilbert called the meeting to order at 7:30pm.

Chairman Gilbert informed the public that there was to be no standing in the aisles, nor standing in the back, as well as the location of the fire exits in case of emergency.

OPEN PUBLIC MEETINGS ACT STATEMENT: Chairman Alan Gilbert stated “that this meeting is held in accordance with the Open Public Meetings Act 10:4-1 et seq. annual notice been forwarded to the New Jersey Herald, the New Jersey Sunday Herald and posted on the bulletin board maintained in the Municipal Building for public announcements.”

SALUTE TO THE FLAG: Chairman Gilbert invited all present to salute the flag.

ROLL CALL: The Recording Secretary called the roll.
PRESENT: Councilman Michael Francis, Councilman Richard Schindelar, Ron Jobeless, Robert Rehe, Robert Duncan, Ken Trumpore, Mike Rahill, Justin Lijo, Phillip Reilly, and Alan Gilbert

ABSENT: Mark Gaffney

**PROFESSIONALS
IN ATTENDANCE:** John Ruschke- Engineer
William Haggerty- Attorney
Bill Donegan- Zoning Officer

ABSENT: None

PUBLIC HEARING:

Chairman Gilbert explained to the public that the purpose of this public hearing is to present to the public Redevelopment Study Area Determination of Need – River Styx Area. There was a committee of the Borough Council consisting of Councilman Padula, Councilman Schindelar, and Councilman Bunce to look at the possibility of and recommend to the Borough Council of whether or not to proceed with a Redevelopment Study. The Council passed a motion to proceed with the study which was then prepared by the town engineer/planner John Ruschke of Mott MacDonald.

PRESENTATION:

Redevelopment Study Area Determination of Need – River Styx Area
May 2016
Prepared by John K. Ruschke, P.P., and P.E.
Vice President
Hatch Mott MacDonald

Mr. Ruschke explained that the River Styx area is defined by what is shown on the map. Both the Borough Council and the Land Use Board are looking at ways to improve development in the River Styx area; and the first step that was taken was to develop a Form Base Code. Mr. Ruschke further explained the current projects being worked on in the River Styx area, and stated that the Borough has been seeking grant opportunities for assistance, and has not been looking to invest into capital improvements. Mr. Ruschke explained that the Board is at the point of determining the need of a redevelopment, and after to develop and adopt a redevelopment plan. At this point there is no redevelopment plan. Please see attached copy of Mr. Ruschke’s presentation.

Chairman Gilbert opened the meeting to the public stating that “we ask that land owners in the affected area be given the courtesy of speaking first” and “that we are going to limit the time of comment to 5 minutes per speaker” to allow for all members of the public to be heard.

William Clough (stated he lives next door to Patrick's Pub) came before the Board.

Mr. Clough questioned what the redevelopment statute was.

Mr. Haggerty stated that the statute was the Local Redevelopment and Housing Law 40:12A-1 sequentially with various sections after.

Mr. Clough discussed the abandoned businesses in the area that have been that way since he's lived here in 2014. Mr. Clough questioned the condos on River Styx being too close the road.

Chairman Gilbert explained that the condos did meet all of the requirements and that while working with the County, they did re-align the road to meet the required setbacks.

Mr. Haggerty explained that the Form Base Code is an option, it did not take away from the prior zoning. It gave developers and land owners the right to develop under the Form Base Code or under the pre-existing zoning. This development was proposed and consistent with the Form Base Code.

Chairman Gilbert asked if there were any further land owners in the affected area that would like to come forward and be heard.

Mark Levy (Lakeside Blvd.) came before the Board.

Mr. Levy questioned the Borough's pursuit of grants, further questioning if grants could be obtained for more sewer construction or the weed problem in the lake.

Chairman Gilbert explained that to his knowledge, there is no intent to expand the sewer system at this time and that the weed problem in the lake is State controlled.

Chairman Gilbert asked if there were any further land owners in the affected area that would like to come forward and be heard.

Steven Stein (Attorney for the Hopatcong Jewish Center) came before the Board.

Mr. Stein questioned why eminent domain was in the "toolbox" if there was no intent to use it; to his understanding, they can approach redevelopment without the need of invoking the eminent domain part of the statute. If the intent is not to use eminent domain, will the Board and the Committee (even accepting the property on the corner of Durban and Lakeside) make the commitment? Mr. Stein questioned Mr. Ruschke calling the Jewish Center "obsolete" and "underutilized" and what that means for a synagogue or a church. Mr. Stein explained that they have been there for 68 years and they are not moving or going anywhere and they don't want the town to infringe on their use.

Chairman Gilbert explained that the Land Use Board does not have the power/authority to give that commitment; this Board cannot invoke eminent domain, it would be the Borough Council. The current Borough Council (may not) be able to tie the hands of any future Borough Council.

Mr. Haggerty explained that the statute is an option whether or not to include eminent domain in the toolbox; they could also explore the redevelopment without eminent domain. But if there was a particular property was deemed appropriate/necessary to exercise this item under the statute, they would have to re-notice, and go through this whole process again. The process is time consuming and costly. The Board does not have the authority to decide to proceed or not, the Governing Body does. The Governing Body can accept or reject it or reject it in part. The Board can only recommend to the Governing Body.

Mr. Stein stated that they are not trying to stand in the way of progress, but would request that the Jewish Center be excluded from the zone.

Chairman Gilbert accepted on behalf of the Board a written objection statement for consideration from Peter Frechtling (443 River Styx Road) to be added to the record.

Chairman Gilbert asked if there were any further land owners in the affected area that would like to come forward and be heard.

Bernie Lelling (70 Ithanell Road) came before the Board.

Mr. Lelling questioned if the Governing Body was a part of this Board (and asked if the Mayor and Council President were present).

Chairman Gilbert explained that Councilman Francis and Councilman Schindelar are the two Council Members that sit on the Board.

Mr. Lelling further questioned the dirt and rock where the Madhouse property was and what development was being done there.

Chairman Gilbert briefly explained the Greentree III project work being done on the old Madhouse property.

Mr. Lelling asked the Board what their definition of “need” was.

Chairman Gilbert explained that this was seen as a stagnant area in terms of residential and commercial use and the need is that the Governing Body would like to see it revitalized.

Chairman Gilbert further explained that there currently is no plan.

Chairman Gilbert asked if there were any further land owners in the affected area that would like to come forward and be heard.

David Hughes (102 Chinopee Ave) came before the Board.

Mr. Hughes explained that he attends a lot of Mayor and Council meetings as well as a lot of Land Use Board meetings and that he is upset at the way that the people in the River Styx area are being treated further stating that Mr. Donegan has decided what is unsightly. Mr. Hughes went on to address the Board regarding property maintenance issues in regards to the Mayor and Councilwoman Galate.

Chairman Gilbert asked if there were any further land owners in the affected area that would like to come forward and be heard.

Barbara Loring (Ithanell Road) came before the Board.

Ms. Loring questioned the use of eminent domain and stated that she felt lied to. Ms. Loring went on to say that if there is no plan to use eminent domain then they should take it out because the Governing Body and/or Land Use Board will change and they may decide to use it. It will be hard to sell homes in the community. Ms. Loring felt that there was a conflict of interest having Mr. Ruschke “picking these buildings”; further stating she would like an independent engineer with a community based group and a uniform façade for the redevelopment. Ms. Loring stated that the older buildings should be grandfathered in and further stated that the taxpayers would have to pay the school taxes for those who aren’t paying through the five year pilot program. Ms. Loring commented on the Governing Body not being in attendance.

Chairman Gilbert explained that if any additional members of the Governing Body attended the meeting, it would be considered a quorum.

Chairman Gilbert asked if there were any further land owners in the affected area that would like to come forward and be heard.

Lynn St. Angelo (resident of Hopatcong) came before the Board.

Ms. St. Angelo explained that she owns a tailoring shop in the River Styx area and that she would like the eminent domain portion taken out. Ms. St. Angelo went on to say that the attractive part of a lake community are the “quirky little buildings”. Ms. St. Angelo questioned the idea of a public access to the lake as well as the shopping in the River Styx area. Ms. St. Angelo stated that she doesn’t see how the redevelopment would help the town.

Chairman Gilbert commented that they do not yet have a plan.

Chairman Gilbert asked if there were any further land owners in the affected area that would like to come forward and be heard.

Christy Glesdale came before the Board.

Ms. Glesdale mentioned her concern for the condos in the River Styx area, and stating that they are making this rural area into a metropolitan area. Ms. Glesdale questioned how the redevelopment would affect the 44 properties as well as the section 8 homes.

Chairman Gilbert asked if there were any further land owners in the affected area that would like to come forward and be heard.

Lisa Kurzman (member of the Lake Hopatcong Jewish Center)

Ms. Kurzman questioned Mr. Ruschke's presentation where the Jewish Center was considered underutilized. Ms. Kurzman went on to say that she understands that there was no plan, but there must be a vision, and she would like to know where the Jewish Center fits into the vision.

Chairman Gilbert explained that they are not talking about just the Jewish Community Center, they are concerned with the entire River Styx area.

Mr. Haggerty stated that this is strictly the preliminary study, and the public will have an opportunity at the time (if it gets to that point) to discuss the plan and implementation.

Ms. Kurzman asked that eminent domain be removed as an option and asked that the Jewish Center be removed from the plan.

Chairman Gilbert asked if there were any further land owners in the affected area that would like to come forward and be heard.

Thomas Wesnel Jr. came before the Board.

Mr. Wesnel explained that his family has been in this town for 58 years, and it used to be quaint. Mr. Wesnel recommended to the Board that they not allow it to become overdeveloped and to keep it quaint.

Chairman Gilbert asked if there were any further land owners in the affected area that would like to come forward and be heard.

Norman Shapiro came before the Board.

Mr. Shapiro questioned as to how many members it would take to make the Jewish Center a viable Jewish Center, further questioning when the pictures of it were taken. Mr. Shapiro further explained that the pictures don't show the back of the temple which show the religious process. Mr. Shapiro questioned the use of the term "obsolete" in terms of the Jewish Center.

Chairman Gilbert asked if there were any further land owners in the affected area that would like to come forward and be heard.

Clifford R. Lundin (resides in Byram Cove) in came before the Board.

Mr. Lundin explained his previous experience with the being the Mayor of Hopatcong as well as being a member of the Planning Board. Mr. Lundin commented that the report with eminent domain hits people in the face, and the report is a subjective analysis and is an insult to the property owners. Mr. Lundin commented on the history of the River Styx area and it being the center of activity, and how they need a vision. Mr. Lundin further commented on his distaste for the condos in the River Styx area. Mr. Lundin recommended forming a citizens committee to form a vision.

Chairman Gilbert asked if there were any further land owners in the affected area that would like to come forward and be heard.

Ellen Renaud came before the Board.

Ms. Renaud questioned the "key" in the presentation and stated it was difficult to read.

Chairman Gilbert explained that all this information was delineated in a previous report; and all the information is available on the Borough website.

Mr. Haggerty explained that all of the "key" information is in the Form Base Code which was adopted and in Ordinances which are already in effect.

Ms. Renaud questioned the parking in the Redevelopment area.

Chairman Gilbert briefly explained the residential and commercial parking requirements.

Ms. Renaud recommended forming a citizens committee.

Chairman Gilbert asked if there were any further land owners in the affected area that would like to come forward and be heard.

John Kurzman came before the Board.

Mr. Kurzman questioned (from the engineering perspective) what was considered “obsolete” with regards to the Jewish Center?

Mr. Ruschke explained that the terms obsolete and underutilized are subjective terms; there is no definition under the law. Mr. Ruschke further explained that the representation that was made to him was that there was not a significant congregation (which is an objective analysis) though there are other activities at the church, not all on a regular basis (subjective observation). Mr. Ruschke discussed the Form Base Code as the vision, stating that the Jewish Center can function as it is. The entire River Styx area does fall under the “town center” criteria, which makes it consistent with the planning guidelines to make this a Redevelopment zone. If there is an objection, it can be noted.

Mr. Kurzman questioned the use of tax abatements and eminent domain.

Chairman Gilbert stated that they could take those designations off of that property, and the 44 properties in the redevelopment area would still fit the criteria.

Mr. Haggerty reiterated that the Governing Body has the right to accept or reject (in part or in whole) any recommendation of the Land Use Board.

Mr. Kurzman explained that the Religious Land Use Institutionalized Persons Act was supposed to protect religious institutions against things such as eminent domain, and went on to say he thought the Jewish Center was beautiful.

Chairman Gilbert asked if there were any further land owners in the affected area that would like to come forward and be heard.

John Quirk came before the Board.

Mr. Quirk explained that he has been a resident of Hopatcong for 50 years and went on to say that this was a beautiful place to live, but the condition of the lake as well as the condition of some of the properties were a problem. Mr. Quirk also commented on litter on the roads, and doesn't want the community to become a “slum”.

Chairman Gilbert asked if there were any further land owners in the affected area that would like to come forward and be heard.

Louise Bagby came before the Board.

Ms. Bagby explained that she has lived here for 29 years and she believes that the condo creation looks like the city and that she likes the look of Hopatcong.

Chairman Gilbert asked if there were any further land owners in the affected area that would like to come forward and be heard.

Ruth Fouda came before the Board.

Ms. Fouda commented on the meeting being the first night of school. Ms. Fouda went on to explain that there are only two synagogues in Sussex County, and they need their synagogue.

Chairman Gilbert stated that there is no plan to take the property from the Jewish Community Center.

Ms. Fouda explained that she doesn't live in the River Styx area, but she cares about the synagogue, the residents, and the other businesses there and she would like to know who the “need” is for.

Chairman Gilbert asked if there were any further land owners in the affected area that would like to come forward and be heard.

Valerie Quinn came before the Board.

Ms. Quinn questioned the occupancy of the new retail spaces in the Greentree building, and stated that this town needs help. Ms. Quinn commented on the parking in the River Styx area and stated that she doesn't feel that they don't have enough information if there is no plan and there is no vision.

Chairman Gilbert asked if there were any further land owners in the affected area that would like to come forward and be heard.

Joseph Buongiorno (Marne Road) came before the Board.

Mr. Buongiorno explained his history on the Hopatcong Zoning Board and passed out two documents.

Mr. Haggerty entered the two documents into the record (see attached):
"Eminent Domain in New Jersey After *Kelo*: What's Next?" by James J. Ferrelli
"Takings and Tax Revenue: Fiscal Impacts of Eminent Domain" dated October 2014 by Carrie B. Kerekes and Dean Stansel

Mr. Buongiorno read and commented on the abstract from "Takings and Tax Revenue: Fiscal Impacts of Eminent Domain". Mr. Buongiorno referenced the cases in "Eminent Domain in New Jersey After *Kelo*: What's Next?" and explained that the courts ruled against the municipalities because of their definitions of what the requirements were for taking.

Chairman Gilbert asked if there were any further land owners in the affected area that would like to come forward and be heard.

Mara Modes came before the Board.

Ms. Modes read the Municipal Land Use Law in regards to the consolidation of the Planning and Zoning Board as well as quoting the Conflicts of Interest and Local Government Ethics Law. Ms. Modes further requested that Mr. Ruschke recuse himself and reimburse the Borough for money paid for the Redevelopment Determination. Ms. Modes questioned if there were any environmental concerns with the Redevelopment in the River Styx area.

Ms. Modes entered two documents/statements into the record (see attached).

Chairman Gilbert asked if there were any further land owners in the affected area that would like to come forward and be heard.

Michelle Guttenberger came before the Board.

Ms. Guttenberger questioned the use of pilot programs and read from the State of New Jersey Office of the State Comptroller A. Matthew Boxer, "A Programmatic Examination of Municipal Tax Abatements". Ms. Guttenberger questioned if the Lakepointe development was under a pilot or tax abatement program.

Chairman Gilbert stated that the Board members have all received this document and that the Lakepointe project did not receive any tax abatement program.

Ms. Guttenberger went on to say that pilot programs do not give funds to our schools, and that it is a discretionary budget.

Chairman Gilbert asked if there were any further land owners in the affected area that would like to come forward and be heard.

Evan Kurzman came before the Board.

Mr. Kurzman explained that he is a member of the Jewish Community Center, and stated that the area has been utilized. Mr. Kurzman further questioned the parking in the area and questioned overflow parking.

Chairman Gilbert asked if there were any further land owners in the affected area that would like to come forward and be heard.

Jim Malloy came before the Board.

Mr. Malloy explained that all the things that they are looking for are incorporated already. Mr. Malloy commented on the possible problems to arise such as increased down payments and increased liability insurance. Mr. Malloy commented on the parking in the River Styx area.

Chairman Gilbert asked if there were any further land owners in the affected area that would like to come forward and be heard.

Jeff Sterns came before the Board.

Mr. Sterns stated that he is favor of the idea revitalizing River Styx. Mr. Sterns questioned who determines the fair market value of their properties.

Mr. Haggerty explained that the process is time consuming and expensive; there are appraisers and commissioners that are appointed, but there is not money in the budget for eminent domain.

Chairman Gilbert asked if there were any further land owners in the affected area that would like to come forward and be heard. Seeing none, **Chairman Gilbert** brought the meeting back to the Board.

Mr. Haggerty stated that the Board will make a recommendation in regard to whether the Governing Body would be encouraged to proceed with the area designation as in need of redevelopment.

Chairman Gilbert explained that they would not be taking action at the present meeting, and would hopefully take action at a future meeting (September 20, 2016).

Mr. Stein (Lake Hopatcong Jewish Center Attorney) requested that the Board consider excluding the Jewish Center properties from the Redevelopment Zone.

After giving all persons present an opportunity to address the Land Use Board, **Chairman Gilbert** will request a motion to close the meeting to the public and return to the regular order of business.

Motion by: _____ Seconded by: _____ All in favor? _____

ADJOURNMENT: Chairman Alan Gilbert requested a motion to adjourn the meeting at 9:36pm.

Motion by: Justin Lijo Seconded by: All All in favor? Aye

Amanda Nevins
Land Use Board Recording Secretary