

July 5, 2023

Borough of Pennington
Mayor and Council
30 N. Main Street
Pennington, NJ 08534



Re: Redevelopment Process Summary

Dear Mayor and Council:

From time to time over the last few years we have discussed the possibility of designating certain properties within the Borough as “areas in need of redevelopment” under the provisions of the New Jersey Local Redevelopment and Housing Law (LRHL), N.J.S.A. 40A:12A-1, et seq. This brief summary has been prepared to outline the steps required to designate an area in need of redevelopment and prepare a redevelopment plan.

There are many benefits to utilizing the redevelopment process, the most important of which is the ability to offer a redeveloper a tax abatement under New Jersey’s Long Term Tax Exemption Law (LTTEL), N.J.S.A. 40A:20-1. In accordance with the provisions of the law, the Borough may enter into a financial agreement with a redeveloper for a period of not more than 30 years where ad valorem taxes are deferred in favor of an “annual service charge”, commonly referred to as “payment in lieu of taxes” or PILOT. The amount of the service charge is determined by project revenues or construction costs and divided into phases, with each phase after the first being required to equal at least a certain percentage of the taxes that would otherwise be assessed for the project. Currently the Long Term Tax Exemption Law provides that 95% of the annual service charge is collected by the municipality with the remaining 5% collected by the County. The municipality may also collect a 2% administrative fee to offset the cost of administering the financial agreement. Generally speaking, all PILOT financial agreements are more favorable to both the municipality and redeveloper than ad valorem taxation.

Another advantage of redevelopment is the ability to engage in a small, self-contained planning process specific to each property or group of properties considered. This allows for careful review of unique circumstances which may affect redevelopment of a property and the area surrounding it. The redevelopment process ultimately results in a redevelopment plan that sets forth development standards applicable only to the designated redevelopment area and often represents a significant departure from underlying zoning with respect to uses permitted and bulk requirements. It also offers an opportunity to implement more stringent requirements for important elements like architectural design and buffering.

The Redevelopment Process

New Jersey's Local Redevelopment and Housing Law outlines specific requirements related to the redevelopment process, which must be followed in detail to result in a valid "area in need of redevelopment" and redevelopment plan. Responsibilities are divided between the governing body and the land use board, but the governing body always maintains ultimate control of the overall process.

Potential designation of an area in need of redevelopment begins with the governing body authorizing the land use board to conduct a preliminary investigation of the property or properties to be considered. This is done via resolution and must identify the property or properties by block and lot and must also set forth whether the use of eminent domain is anticipated. Typically our office would prepare a preliminary investigation report for the land use board, which is reviewed at a public hearing held by the board. At a minimum the report must include a map identifying the boundaries of the area studied along with a statement setting forth the basis for the investigation or how the criteria for designation are met. Under the provisions of the LRHL, N.J.S.A. 40A:12A-5, provided any one or more of the following criteria are met, the studied area can be designated as an area in need of redevelopment:

- a. The generality of buildings are substandard, unsafe, unsanitary, dilapidated, or obsolescent, or possess any of such characteristics, or are so lacking in light, air, or space, as to be conducive to unwholesome living or working conditions.
- b. The discontinuance of the use of a building or buildings previously used for commercial, retail, shopping malls or plazas, office parks, manufacturing, or industrial purposes; the abandonment of such building or buildings; significant vacancies of such building or buildings for at least two consecutive years; or the same being allowed to fall into so great a state of disrepair as to be untenable.
- c. Land that is owned by the municipality, the county, a local housing authority, redevelopment agency or redevelopment entity, or unimproved vacant land that has remained so for a period of ten years prior to adoption of the resolution, and that by reason of its location, remoteness, lack of means of access to developed sections or portions of the municipality, or topography, or nature of the soil, is not likely to be developed through the instrumentality of private capital.
- d. Areas with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community.
- e. A growing lack or total lack of proper utilization of areas caused by the condition of the title, diverse ownership of the real properties therein or other similar conditions which impede land assemblage or discourage the undertaking of improvements, resulting in a stagnant and unproductive condition of land potentially useful and valuable for contributing to and serving the public health, safety and welfare, which condition is presumed to be having a negative social or economic impact or otherwise being detrimental to the safety, health, morals, or welfare of the surrounding area or the community in general.

- f. Areas, in excess of five contiguous acres, whereon buildings or improvements have been destroyed, consumed by fire, demolished or altered by the action of storm, fire, cyclone, tornado, earthquake or other casualty in such a way that the aggregate assessed value of the area has been materially depreciated.
- g. In any municipality in which an enterprise zone has been designated pursuant to the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et seq.) the execution of the actions prescribed in that act for the adoption by the municipality and approval by the New Jersey Urban Enterprise Zone Authority of the zone development plan for the area of the enterprise zone shall be considered sufficient for the determination that the area is in need of redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and 40A:12A-6) for the purpose of granting tax exemptions within the enterprise zone district pursuant to the provisions of P.L.1991, c.431 (C.40A:20-1 et seq.) or the adoption of a tax abatement and exemption ordinance pursuant to the provisions of P.L.1991, c.441 (C.40A:21-1 et seq.). The municipality shall not utilize any other redevelopment powers within the urban enterprise zone unless the municipal governing body and planning board have also taken the actions and fulfilled the requirements prescribed in P.L.1992, c.79 (C.40A:12A-1 et al.) for determining that the area is in need of redevelopment or an area in need of rehabilitation and the municipal governing body has adopted a redevelopment plan ordinance including the area of the enterprise zone.
- h. The designation of the delineated area is consistent with smart growth planning principles adopted pursuant to law or regulation.

The public hearing conducted by the land use board is subject to notice requirements specific to the LRHL as outlined in N.J.S.A. 40A:12A-6b. Any redevelopment investigation report must be on file and available for inspection in the office of the Borough Clerk at the time required notice is published and served. Each owner of property within the studied area must be provided with certified mail notice of any public hearing, which must be mailed at least 10 days prior to the hearing. In addition, notice must be published in a newspaper of general circulation once each week for two consecutive weeks, with the second publication occurring at least 10 days prior to the hearing. Mailed and published notice must specify whether the power of eminent domain will be utilized or not.

At the conclusion of its public hearing relative to the preliminary investigation, the land use board is required to recommend to the governing body whether the parcel or parcels identified, in whole or in part, should be determined to be an area in need of redevelopment. This is generally done by resolution of the land use board, which is then forwarded to the governing body for review and consideration. After receiving the land use board recommendation, the governing body may adopt a resolution representing an official determination and designation as an "area in need of redevelopment". Once the governing body resolution is adopted, within 10 days the Borough Clerk must send a copy to the Commissioner of Community Affairs for explicit approval, as the Borough is located in Planning Area 3. Notice of the determination must also be sent to all property owners within the delineated area within 10 days. It is worth noting that the governing body is not required to hold a public hearing when considering the recommendation

of the land use board, but the matter should be specifically listed on any agenda where such consideration may occur.

Once an area in need of redevelopment is officially designated by the governing body and approved by the Commissioner of Community Affairs, the Borough can undertake preparation of a redevelopment plan, which can be authored by the governing body or the land use board at the direction of the governing body. All redevelopment plans must be prepared in accordance with the requirements of N.J.S.A. 40A:12A-7, and include the following:

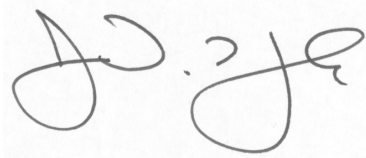
- (1) Its relationship to definite local objectives as to appropriate land uses, density of population, and improved traffic and public transportation, public utilities, recreational and community facilities and other public improvements.
- (2) Proposed land uses and building requirements in the project area.
- (3) Adequate provision for the temporary and permanent relocation, as necessary, of residents in the project area, including an estimate of the extent to which decent, safe and sanitary dwelling units affordable to displaced residents will be available to them in the existing local housing market.
- (4) An identification of any property within the redevelopment area which is proposed to be acquired in accordance with the redevelopment plan.
- (5) Any significant relationship of the redevelopment plan to (a) the master plans of contiguous municipalities, (b) the master plan of the county in which the municipality is located, and (c) the State Development and Redevelopment Plan adopted pursuant to the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.).
- (6) As of the date of the adoption of the resolution finding the area to be in need of redevelopment, an inventory of all housing units affordable to low and moderate income households, as defined pursuant to section 4 of P.L.1985, c.222 (C.52:27D-304), that are to be removed as a result of implementation of the redevelopment plan, whether as a result of subsidies or market conditions, listed by affordability level, number of bedrooms, and tenure.
- (7) A plan for the provision, through new construction or substantial rehabilitation of one comparable, affordable replacement housing unit for each affordable housing unit that has been occupied at any time within the last 18 months, that is subject to affordability controls and that is identified as to be removed as a result of implementation of the redevelopment plan. Displaced residents of housing units provided under any State or federal housing subsidy program, or pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), provided they are deemed to be eligible, shall have first priority for those replacement units provided under the plan; provided that any such replacement unit shall not be credited against a prospective municipal obligation under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), if the housing unit which is removed had previously been credited toward satisfying the municipal fair share obligation. To the extent reasonably feasible, replacement housing shall be provided within or in close proximity to the redevelopment area. A municipality shall report annually to the Department of Community Affairs on its progress in implementing the plan for provision of comparable, affordable replacement housing required pursuant to this section.
- (8) Proposed locations for zero-emission vehicle fueling and charging infrastructure within the project area in a manner that appropriately connects with an essential public charging

network.

Whether prepared by the governing body or land use board, redevelopment plans are adopted by the governing body in the same manner as any other land use ordinance. The only difference is related to the referral requirements contained in the LRHL, N.J.S.A. 40A:12A-7e. If the land use board prepares the redevelopment plan, then the governing body is not required to refer the ordinance adopting the plan to the Board upon introduction for identification of any provisions of the plan which are inconsistent with the master plan and recommendations related to those inconsistencies.

We trust this short summary provides the Mayor and Council with an overview of the redevelopment process. We will attend the Council meeting on July 10th to answer any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Kyle". The signature is stylized with a large initial "J" and a cursive "Kyle".

James T. Kyle, PP/AICP
Borough Planner

Attachments

Cc: Betty Sterling, Borough Clerk
Walter Bliss, Esq., Borough Attorney
Ed Schmierer, Esq., Planning Board Attorney