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## SUPPLEMENTAL PLANNING EVALUATION AREA IN NEED OF REDEVELOPMENT STUDY 615 RIVER ROAD, BLOCK 76, LOTS 1 & 5 BOROUGH OF EDGEWATER BERGEN COUNTY, NEW JERSEY

*Prepared for:*

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*and*

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Peter G. Steck, P.P.  
N. J. Planner License No. 1776  
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## INTRODUCTION

On February 11, 2020 the Borough of Edgewater Planning Board conducted a public hearing at the Edgewater Municipal Building to determine whether the site at 615 River Road known as Lots 1 and 5 in Block 76 qualified as an “area in need of redevelopment” under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. During those proceedings consulting planner Paul Grygiel presented his December 20, 2019 investigation titled “Area in Need of Redevelopment Study, 615 River Road, Borough of Edgewater, New Jersey.” That Study concluded that Lots 1 and 5 in Block 76 on the east side of River Road qualified as an area in need of redevelopment based on redevelopment criteria “b” and “d” in N.J.S.A. 40A:12A-5.

Following his presentation, consulting planner Grygiel responded to questions from Planning Board members and staff, from the public, and from attorney Alan Pralgever representing SJ 660 LLC, the owner of nearby property at 660 River Road and designated as Lot 1.02 in Block 74 on the Borough Tax Maps. Planner Peter Steck (the author of this document) then presented his February 10, 2020 Planning Evaluation concluding that no substantial credible evidence had been presented or could be presented that would serve as a basis for designating Lots 1 and 5 in Block 76 as an area in need of redevelopment. He was then subject to cross examination by board members and the public. With no more questions for planner Steck, the hearing was closed to the public and Board Attorney Craig Bossong announced that the hearing would be carried to March 24, 2020\* so that Planner Grygiel could further review Planner Steck’s February 10, 2020 Planning Evaluation which was just received the day before.\*

Subsequent to the February 11, 2020 public hearing, planner Grygiel produced a March 10, 2020 memorandum to the Edgewater Planning Board titled “Additional Information – 615 River Road Redevelopment Study” and regular Board planner Kathryn Gregory produced a March 12, 2020 memorandum also to the Planning Board regarding the same area in need of redevelopment study.

As background, an important element of this Planning Board process is a complaint filed by 615 River Road Partners, LLC against the Borough of Edgewater and certain other entities and a Settlement Agreement arising from that litigation. Among the terms of the Settlement Agreement are that 615 River Road Partners, LLC donate a 4.83 acre parcel on the west side of River Road to the Borough, that Lots 1 and 5 in Block 76 be designated as an area in need of redevelopment and be rezoned via an already drafted redevelopment plan permitting up to 1,200 dwelling units. Item 20 of the Settlement Agreement states in part “This Settlement Agreement is to be interpreted as if Edgewater, RRP [615 River Road Partners, LLC] and the Planning Board and their respective counsel were equally authors of this document....”

This Supplemental Planning Evaluation reviews the additional March 10 and March 12, 2020 memoranda prepared by planners Grygiel and Gregory as well as the transcript of the February 11, 2020 public hearing. Upon review, I continue to conclude that no substantial credible evidence has been presented or could be presented that would serve as a basis for designating Lots 1 and 5 in Block 76 as an area in need of redevelopment. The basis for this conclusion is contained in the remainder of this May 29, 2020 Supplemental Planning Evaluation.

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\*Owing to the COVID-19 pandemic, the hearing was carried to June 1, 2020 to be held on a virtual basis.

## **SUMMARY OF THE GRYGIEL MARCH 10, 2020 MEMORANDUM**

The March 10, 2020 Grygiel memorandum consists of 96 pages comprised of 5 pages of text with the remaining 91 pages containing new information that was not presented by planner Grygiel at the February 11, 2020 public hearing nor in his December 20, 2019 "Area in Need of Redevelopment Study, 615 River Road, Borough of Edgewater, New Jersey." By way of introduction his memorandum claims that it focuses on questions raised at the February 11, 2020 public hearing as well as a review of my February 10, 2020 Planning Evaluation.

Under the heading "Existing Conditions in Study Area" planner Grygiel now opines that the study area is not a "cleared, clean site that is ready for development" and list the remnants of the prior Hess petroleum terminal use. Underground pipes running to Bayonne and Bogota are referenced, although they extend outside of the Study Area.

Attached as Appendix 1 on page 6 of his memorandum is a "site plan" of the Study Area as well as property on the west side of River Road. That plan is described as "showing the location of site improvements." Appendix 2 contains photos of the site taken on March 3, 2020.

Contrary to his prior testimony, planner Grygiel now claims that the subject site is "not available to be developed for another use as it has ongoing environmental remediation." He indicates that a new witness will be present at the next public hearing regarding the environmental conditions of the site.

Under the heading "Additional Information Related to Redevelopment Area Designation Criteria" planner Grygiel restates that the site is eligible for designation as an area in need of redevelopment based on the applicability of criteria "b" and "d" and adds a new finding that criterion "h" is applicable. He also notes that redevelopment criteria "b" was broadened in 2019 but does not indicate how this affects his conclusions.

Referenced as appendices are certain code violations from 2012 and 2013 as well as past evidence of asbestos removal. Not demolished, according the planner Grygiel, is the pump house on the west side of River Road that is outside of the Study Area.

With respect to criterion "d" planner Grygiel now references what he characterizes as "a significant number of improvements from the prior industrial use that remain on the site which satisfy the criteria d standard."

Finally, despite announcing that one of the purposes of the March 10, 2020 memorandum was to review the February 10, 2020 Planning Evaluation of Peter Steck, no comments are offered with respect to that document. Similarly, the other purpose of the March 10, 2020 memorandum was to focus on questions raised at the public hearing. However, the Grygiel memorandum never identifies what questions raised on February 11, 2020 were being addressed by his 96 page memorandum.

## PLANNING COMMENTS ON THE MARCH 10, 2020 GRYGIEL MEMORANDUM

Upon review of the February 11, 2020 Edgewater Planning Board proceedings as witnessed by me and as documented in a transcript and upon review of the March 20, 2020 Memorandum by planner Grygiel, the following planning observations are offered:

### 1. Planner Grygiel may have a conflict of interest.

Disclosed for the first time at the February 11, 2020 Planning Board hearing and in response to questions by attorney Pralgever, Planner Grygiel testified that his planning consulting firm has been working with the potential redeveloper of the subject site prior to providing services to the Borough of Edgewater. In fact, Planner Grygiel indicated that both the "Area in Need of Redevelopment Study, 615 River Road, Borough of Edgewater, New Jersey" and the "615 River Road Redevelopment Plan" were initially drafted on behalf of the potential redeveloper rather than on behalf of the Edgewater Planning Board. [See transcript excerpts below.]

By drafting both the study and the plan for the potential redeveloper, there is an automatic artificial presumption that the Study Area satisfies the statutory criteria for designation as an area in need of redevelopment. The Local Redevelopment and Housing Law stipulates that a governing body is the only entity that directs a planning board to conduct such an investigation. Moreover, a governing body is powerless to adopt a redevelopment plan until a site has been designated as in need of redevelopment. As a result, the subject investigation process has the clear appearance of being biased in favor of redeveloper's interests rather than the interests of the public as embodied in the procedures stipulated by the Local Redevelopment and Housing Law.

Pages 28-29.

21 PAUL GRYGIEL: Well, with regard to our  
22 retainage, it was -- we've been working for the  
23 potential redeveloper for some time. With regard  
24 to the borough, it was during the course of the  
25 settlement negotiations, when it was determined  
1 that I would prepare the study -- our firm would  
2 prepare that and the plan for this project.

Page 31.

7 ALAN PRALGEVER: Yeah, the table of  
8 contents does, but not the face of the report,  
9 which I understand is something that should be --  
10 the date should appear. Notwithstanding, is it  
11 your testimony that you did not prepare this for  
12 the Planning Board?  
13 PAUL GRYGIEL: Well, as it was prepared  
14 originally, not for the Planning Board directly,  
15 that's correct.

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6 ALAN PRALGEVER: So, when you were  
7 retained, did you anticipate writing this report  
8 on behalf of the Planning Board, or was that  
9 something that evolved later?  
10 PAUL GRYGIEL: My recollection is, it  
11 evolved. I prepared the report, was asked to  
12 prepare it on behalf of my client, who was not  
13 the borough at the time, but that it was to due  
14 the investigation as if it was to be presented to  
15 the Planning Board.

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16 ALAN PRALGEVER: But you were initially  
17 retained by the borough, not by the Planning  
18 Board, correct?  
19 PAUL GRYGIEL: No, that's -- I didn't  
20 say that. We've been working, actually, for the  
21 redeveloper, potential redeveloper, for some  
22 time.  
23 ALAN PRALGEVER: On this study.  
24 PAUL GRYGIEL: Yes.

**2. The Edgewater Planning Board may be biased owing to the Settlement Agreement.**

As noted in the introduction, this redevelopment investigation did not arise following the typical chain of events. The investigation of Lots 1 and 5 in Block 76 arose from past litigation and a Settlement Agreement that imposes an obligation on the Borough to direct the Planning Board to study and find that Lots 1 and 5 in Block 76 are in need of redevelopment. The Settlement Agreement even contains a draft “615 River Road Redevelopment Plan” for the site. Moreover, although the Borough of Edgewater is specifically named as a party to the Settlement Agreement, the Edgewater Planning Board is also treated as an “author” of the Settlement Agreement along with the Borough and 615 River Road Partners, LLC. Hence, this Settlement Agreement introduces in improper bias into the Planning Board’s investigation of the Lots 1 and 5 in Block 76.

**3. The actual purpose of the Grygiel Memorandum is to introduce new evidence not provided at the February 11, 2020 public hearing.**

The February 11, 2020 Planning Board hearing was announced to be continued in order to give planner Grygiel an opportunity to review the February 11, 2020 Planning Evaluation which had been received by planner Grygiel on February 10, 2020. However, absent from the March 10, 2020 Grygiel memorandum is any review or commentary regarding the February 11, 2020 Planning Evaluation. In actuality, the March 10, 2020 memorandum is a “back door” attempt to enter new evidence after the evidentiary portion of the Planning Board hearing had been concluded. Following the same after-the-fact theme, the March 10, 2020 memo also announces that a new witness will be presented concerning environmental contamination, again despite the evidentiary portion of the hearing having been concluded.

**4. Criterion “b” remains inapplicable because no buildings are on the site.**

<p><b>b.</b> The discontinuance of the use of buildings previously used for commercial, 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.</p>
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The prior Hess use was decommissioned in 2013 with demolitions following. There are no buildings left on Lots 1 and 5 in Block 76. The Grygiel memorandum references a pump house, but that building is located on the west side of River Road outside of the Study Area. Planner Grygiel hearkens back to a time when buildings were on the site prior to their subsequent demolition and removal by permit in an effort to claim that criterion “b” is satisfied.

If the site was blighted prior to 2013 because of building conditions, that blight has since been eliminated. The issue at hand is the condition of the property at this time during the area in need of redevelopment investigation. Common sense dictates that prior building conditions that have been remedies by removal are irrelevant. If it were proper to reach back into the past, it is likely that every site in Edgewater along the Hudson River was eligible for a blight determination. This does not make sense.

In addition to this simple logic, *Spruce Manor Enterprises v. Borough of Bellmawr*, 315 N.J. Super. 286, 717 A.2d 1008 decided on June 11, 1998, stands for the proposition that code standards upgraded over time cannot be retroactively used as the sole basis for declaring a site as in need of redevelopment. Similar reasoning dictates that prior building conditions no longer extant cannot serve as the basis for an area in need of redevelopment designation.

**5. Criterion “d” continues to be misapplied to the site.**

**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.

The March 10, 2020 Grygiel memorandum concludes that redevelopment criterion “d” is applicable because of the “significant number of improvements from the prior industrial use that remain on the site....” Planner Grygiel also adds a new conclusion that “there is on-going environmental remediation on the study area, which qualifies the site under the ‘deleterious land use’ and the ‘detrimental to the safety, health, morals or welfare of the community....”

These observations are contrary to planner Grygiel’s testimony on February 11, 2020. At the prior hearing, he said that the site was “essentially cleared” and “essentially vacant and unused other than being remediated” and “the improvements are essentially all cleared” and “sitting vacant.” In response to the question “And the property is essentially unimproved at this time?” planner Grygiel responds “Yes.” Pertinent excerpts from the February 11, 2020 transcript are provided below.

Page 18

4 PAUL GRYGIEL: Just with regard to the  
5 site, currently it's essentially cleared, other  
6 than some remaining improvements, but there were  
7 over -- around a dozen above-ground storage tanks  
8 on there at one time, various smaller tanks and  
9 buildings, and there's still a pier as well, as  
10 well as that bridge over River Road that still  
11 exists. But since 2013, the site's been  
12 essentially vacant and unused, other than being  
13 remediated in terms of environmental  
14 contamination.

Page 22

14 In terms of the conditions on the site,  
15 some of the -- again, my report lists a number of  
16 these. But on multiple site visits, you know,  
17 it's clear that from driving around the property,  
18 looking at it, it's fenced off. The improvements  
19 are essentially all cleared. You have some  
20 partial pavements, concrete walls, things like  
21 that out there -- some barrel drums. But really,  
22 no -- you no longer have the tanks that were  
23 previously there, some of the other buildings  
24 that existed previously on the site.

Page 25

8 The other criteria that I cited, D,  
9 talks about deleterious land uses, deleterious  
10 effect on surrounding areas. In this case, a  
11 property that's sitting vacant, other than some  
12 remediation for seven years, is not the type of  
13 land use you typically would like to have amidst  
14 the mix of uses that exist in this portion of  
15 Edgewater. As I mention in the report and in my  
16 prior testimony, the site is littered with some  
17 barrels, some walls. There's some vegetation in  
18 spots, some pavement. But essentially, it's an  
19 abandoned property. Again, there's been activity  
20 on it, but it's really been basically to clean up  
21 the site.

Pages 45-46

15 ALAN PRALGEVER: ....  
25 At the current time,  
1 the subject property is vacant and unused, isn't  
2 it?  
3 PAUL GRYGIEL: Yes.

The items that remain on the site are remnants of the prior Hess use or related to the past or ongoing environmental remediation of the site. In this regard it is noted that there are many sites in New Jersey that are on NJDEP's "Known Contaminated Sites" list for active sites, but this listing or that environmental contamination is in fact present are not dispositive of an area in need of redevelopment designation.\* For example, sites on the list include the residential developments at 361 River Road (Independence Harbor), 725 River Road (The Marketplace at Edgewater), and 435 River Road (River Club Apartments). Outside of the Borough notable listings on the NJDEP active contaminated sites inventory include the Newark Museum, the New Jersey Performing Arts Center, and Fairleigh Dickenson University. None of these sites would be considered in need of redevelopment.

The improvements referenced by Planner Grygiel are minor in nature and do not constitute impediments to future development of the subject site. As evidence of marketability, it is noted that the subject sight was sold by Hess Oil & Chemical Corp in 2014 to the current owner and proposed redeveloper for twenty-six million dollars. Planner Grygiel may be aware of this since transaction because he testified at the February 11, 2020 Planning Board hearing that his consulting firm provided services to a "potential redeveloper" which may well have been the 615 River Road Partnership, LLC. Additionally, 615 River Road Partnership, LLC was the applicant for a development application previously filed with the Edgewater Zoning Board of Adjustment further affirming the development interests of the current owner without the necessity of designating the site as in need of redevelopment.

Additionally, the remnant improvements on the site remain secured by six-foot chain link fencing topped with barbed wire. While minor sections of the fence structure are bent or a horizontal member is missing, it still adequately secures the site and is easily repaired. In this regard, it is noted that the March 3, 2020 photographs included in the March 10, 2020 memorandum appear to all be taken from outside the perimeter fencing. Even planner Grygiel (or whoever took the photographs) could not access the interior of the site.

Contrary to planner Grygiel's contention that the existing site conditions have been detrimental to surrounding properties, it remains a fact that the surrounding properties have been successfully developed for commercial uses. To the north is the Marketplace at Edgewater and to the south is the Mitsua Shopping Center, both of which were developed when the tanks were still on the subject site. Because of the Hess tank farm use that existed at the time, it was logical for those two abutting commercial developments to orient their buildings away from the subject site use the rear building area for emergency exits and refuse storage areas.

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\* See HJB Associates, Inc. v. Council of the Borough of Bellmawr, et al., A-6510-05T5 (N.J. Super. App. Div. 2007).

It is also noted that ongoing environmental remediation activities such as monitoring wells are not considered a type of land use as apparently is the new contention of planner Grygiel. This new position is contrary to his previous testimony characterizing the site as vacant and unused. These NJDEP authorized activities are not regulated by local zoning or site plan regulations, are not taxed as site improvements, and in many cases continue after sites are successfully developed.

Finally, confirming the minor nature of the remnant "improvements" on the site are the tax assessment records for the Borough of Edgewater which classify both Lots 1 and 5 in Block 76 as vacant land with no assessed improvement value as noted on Plates II and III.

**PLATE II  
EDGEWATER TAX ASSESSMENT RECORDS FOR LOT 5 IN BLOCK 76**

Block:	76	Prop Loc:	615 RIVER ROAD	Owner:	615 RIVER RD PRTRN LLC%ENVIROFIN	Square Ft:	0
Lot:	5	District:	0213 EDGEWATER	Street:	4601 DTC BLVD STE#130	GR	Year Built:
Qual:		Class:	1	City State:	DENVER, CO 80237		Style:
Additional Information							
Prior Block:		Acct Num:		Addl Lots:		EPL Code:	0 0 0
Prior Lot:		Mtg Acct:		Land Desc:	14.25 AC	Statute:	
Prior Qual:		Bank Code:	0	Bldg Desc:		Initial:	000000
Updated:	02/10/20	Tax Codes:		Class4Cd:	218	Desc:	
Zone:		Map Page:		Acreage:	14.25	Taxes:	182016.00
Sale Information							
Sale Date:	12/23/14	Book:	1850	Page:	1767	Price:	26000000
						NU#:	24
Sr1a	Date	Book	Page	Price	NU#	Ratio	Grantee
More Info	12/23/14	1850	1767	26000000	24	36.92	615 RIVER ROAD PARTNERS LLC
TAX-LIST-HISTORY							
Year	Owner Information			Land/Imp/Tot	Exemption	Assessed	Property Class
2020	615 RIVER RD PRTRN LLC%ENVIROFIN GR 4601 DTC BLVD STE#130 DENVER, CO 80237			9000000 0 9000000	0	9000000	1

**PLATE III  
EDGEWATER TAX ASSESSMENT RECORDS FOR LOT 1 IN BLOCK 76**

Block:	76	Prop Loc:	SOUTH RIVER ROAD	Owner:	615 RIVER RD PRTRN LLC%ENVIROFIN	Square Ft:	0
Lot:	1	District:	0213 EDGEWATER	Street:	4601 DTC BLVD STE#130	GR	Year Built:
Qual:		Class:	1	City State:	DENVER, CO 80237		Style:
Additional Information							
Prior Block:		Acct Num:		Addl Lots:		EPL Code:	0 0 0
Prior Lot:		Mtg Acct:		Land Desc:		Statute:	
Prior Qual:		Bank Code:	0	Bldg Desc:		Initial:	000000
Updated:	01/27/16	Tax Codes:		Class4Cd:	0	Desc:	
Zone:		Map Page:		Acreage:	0.18	Taxes:	1655.21
Sale Information							
Sale Date:	12/23/14	Book:	1850	Page:	1757	Price:	1
						NU#:	25
Sr1a	Date	Book	Page	Price	NU#	Ratio	Grantee
TAX-LIST-HISTORY							
Year	Owner Information			Land/Imp/Tot	Exemption	Assessed	Property Class
2020	615 RIVER RD PRTRN LLC%ENVIROFIN GR 4601 DTC BLVD STE#130 DENVER, CO 80237			87300 0 87300	0	87300	1

**6. Criterion “h” cannot serve as a basis for an area in need of redevelopment designation.**

**h.** The designation of the delineated area is consistent with smart growth planning principles adopted pursuant to law or regulation.

As another attempt to introduce evidence after the evidentiary portion of the hearing was closed, the March 10, 2020 Grygiel memorandum adds criterion “h” as a potential third basis to declare the site eligible for designation as an area in need of redevelopment. He opines that it is generally improper to solely apply criterion “h” to individual sites but that the “h” criterion can be a companion justification when combined with one of the other criteria.

This opinion is essentially an admission that criterion “h” is impotent. It is necessary only to find that one of the statutory criteria in N.J.S.A.40A:12A is applicable to declare a site as in need of redevelopment. Hence, if there is substantial credible evidence that a criterion other than “h” applies, the invocation of criterion “h” is irrelevant according to the planner Grygiel’s logic.

Most importantly, criterion “h” has not been activated because there is no New Jersey law or regulation adopted that establishes smart growth planning principles. The so-called smart growth planning principles are essentially bullet point statements on a website as shown below:

- Mixed land uses
- Take advantage of compact design
- Create a range of housing opportunities and choices
- Create walkable neighborhoods
- Foster distinctive, attractive communities with a strong sense of place
- Preserve open space, farmland, natural beauty, and critical environmental areas
- Direct development towards existing communities
- Provide a variety of transportation choices
- Make development decisions predictable, fair and cost effective
- Encourage community and stakeholder collaboration in development decisions

The highly generalized nature of the above smart growth planning principles does not offer a predicable or constitutionally valid basis upon which to designate a site as eligible for a blight designation. The overly generalized nature of these principles is illustrated by a claim that keeping the site undeveloped is smart growth because it preserves open space in a location that is subject to flooding which is a critical environmental condition. The seriousness of this matter is illuminated by the realization that the exact same standards apply to designation whether a site is in a condemnation redevelopment area or a non-condemnation redevelopment area, the latter of which allows a municipality to use its powers of eminent domain to acquire property against the wishes of the property owner.

Finally, to be considered is that the constitutional integrity of criterion “h” has been analyzed and found to be wanting in a May 18, 2006 report of the New Jersey Public Advocate. [See “Reforming the Use of Eminent Domain for Private Redevelopment in New Jersey,” May 18, 2006, published by the New Jersey Department of the Public Advocate, <http://hdl.handle.net/10929/25113>]

## **SUMMARY OF THE GREGORY MARCH 12, 2020 MEMORANDUM**

Edgewater Planning Board consulting planner Kathryn Gregory prepared a March 12, 2020 memorandum to the Board titled "Area in Need of Redevelopment Study, 615 River Road, Edgewater, NJ" consisting of seven pages. The introduction indicates that planner Gregory had been asked by the Planning Board "to undertake a preliminary investigation of whether Block 76, Lots 1 and 5...qualifies as an Area in Need of Redevelopment. Planner Gregory characterizes her conclusions as her "own independent analysis, findings and opinion."

Following the introduction, the memo indicates that the last two master plan reexamination reports referenced Lot 1 in Block 77 (on the west side of River Road) and Lots 1 and 5 in Block 76 as eligible for redevelopment recommending that a "Careful analysis of this site should be performed through a Redevelopment Plan..." This is followed by a reproduction of the eight statutory criteria for designation of a site as an area in need of redevelopment.

In support of a finding that criterion "b" applies, the memorandum offers the same observations as Planner Grygiel in his March 10, 2020 memorandum regarding past use of the site. She provides a list of site "improvements" that is essentially the same as that provided by planner Grygiel, except for a few word changes. Although planner Gregory concedes that there are no buildings currently on the site, she concludes that the site is not vacant land and that the presence of the current remnant improvements satisfies "the intent and spirit of Criteria 'b'."

In support of a finding that criterion "d" applies, planner Gregory concludes that the existing site conditions are detrimental to the public health, safety, and welfare. She observes that the perimeter fencing "is in various stages of disrepair and does not encompass the pier and dock, which creates a safety hazard," and that the site conditions create an attractive nuisance.

Planner Gregory alleges that my February 10, 2020 Planning Evaluation mis-states the development dates of the Alexander Residential Development and the SoJo Spa which she indicates were approved in 2008 and 2011 respectively and constructed in 2011 and 213 respectively apparently making the point that these time periods were when the Hess facility was in operation and not when the tanks and buildings were removed. Planner Gregory adds that there is no guarantee that this development would have occurred after the tanks and buildings were removed.

Planner Gregory then offers as an additional finding that redevelopment criterion "h" also justifies designation of the site as an area in need of redevelopment.

The March 12, 2020 memorandum then reproduces Municipal Land Use Law purposes a, c, e, g, j and m from N.J.S.A.40:55D-2.

Under the heading "New Jersey State Development and Redevelopment Plan" Planner Gregory indicates that the subject Study Area is within a PA-1 Metropolitan Planning Area which is considered a "smart growth" area and that its designation as an area in need of redevelopment would be consistent with the purposes of the State Plan and would satisfy criterion "h."

Planner Gregory then reproduces eight state-wide policies of the State Development and Redevelopment Plan concluding that designation of the site would advance the goals of the Plan. Finally, planner Gregory concludes that the current conditions warrant designation of the Study Area as in need of redevelopment as both her independent finding and in consideration of the findings of planner Grygiel in his latest March 10, 2020 memorandum.

### **PLANNING COMMENTS ON THE MARCH 12, 2020 GREGORY MEMORANDUM**

Upon review of planner Gregory's March 12, 2020 memorandum, the following planning observations are offered:

**1. The Gregory memorandum introduces a new opinion after the evidentiary portion of the public hearing was closed.**

The burden of proof falls to the Borough and its Planning Board in redevelopment investigations. Both the March 10, 2020 Grygiel memorandum and the March 12, 2020 Gregory memorandum represent efforts to introduce testimony and exhibits after the evidentiary portion of the February 11, 2020 public hearing was closed. This raises issues of fairness in the proceedings.

**2. The recommendation in the two prior reexamination reports is irrelevant.**

Planner Gregory draws attention to recommendations in the 2012 and 2014 reexamination reports that Lots 1 and 5 in Block 76 and Lot 1 in Block 77 be considered redevelopment sites. This recommendation has no bearing because no investigative study was conducted. That redevelopment is recommended in a reexamination report is a policy statement of the Planning Board that has no bearing as to whether any of the statutory redevelopment criteria are satisfied.

**3. Planning Gregory uses the wrong standard with respect to criterion "b."**

Planner Gregory concludes that conditions of the Study Area meet the "intent and spirit" of criterion "b" despite there being no buildings present. This is contrary to the Local Redevelopment and Housing Law and case law which require substantial credible evidence that conditions in the Study do actually meet the statutory standard rather than the "intent and spirit" of the law. Applying this "intent and spirit" standard results in capricious, arbitrary and unreasonable actions.

**4. Planner Gregory offers no credible evidence that criterion "d" is applicable.**

Contrary to Planner Gregory's observations, the subject site is secured by intact fencing that prohibits access. No evidence has been presented that trespassing or vandalism or accidents have occurred. That the adjacent shopping centers backing up to the Study Area have some refuse outside of dumpsters is a maintenance condition generic to many shopping centers. It is a condition outside of the Study Area, it is easily remedied, and there is no causal connection demonstrated with respect to conditions within the Study Area. The abutting portions of the adjacent shopping centers are designed to function as rear yards, and these areas are not readily visible to the public or to shoppers. It is the logical place to store refuse.

**5. The adjacent shopping centers were designed and constructed when the Hess facility was in operation.**

The 2014 satellite photo on page 6, Plate II, of my February 10, 2020 Planning Evaluation shows that when the adjacent shopping centers were designed and built, the Hess facility in the Study Area was fully improved with storage tanks and handling equipment. Hence, those previous Hess facilities and buildings (alleged to be the basis for an area in need of redevelopment designation at the time) did not deter newer development to the north and south. It is more than reasonable to conclude that once these alleged blighted facilities were removed, there would be less of an adverse impact on adjacent properties. Planner Gregory appears to take the position that the current site conditions are more detrimental to the immediate area than when the site was used as a petroleum and chemical storage and distribution facility. This is not a credible opinion.

**6. Criterion “h” by itself or with other criteria is not a basis to declare a site in need of redevelopment.**

As indicated in the review of the Grygiel memorandum, criterion “h” cannot serve as a legitimate basis to declare a site in need of redevelopment whether that criterion is used alone or in conjunction with other criteria. Criterion “h” has not been activated, is future-oriented rather than based on existing site conditions, and is too vague to withstand constitutional scrutiny.

Planner Gregory opines that the Study Area is eligible for designation as an area in need of redevelopment because it is in the PA-1 Planning Area in the 2001 New Jersey Development and Redevelopment Plan. In fact, all of Edgewater Borough is in a PA-1 classification.

According to the 2001 State Plan, growth areas include PA-1 Metropolitan Planning Areas and PA-2 Suburban Planning Areas as well as designated centers outside of these planning areas. Hence, if planner Gregory’s opinion is correct, then more than 1.38 million acres of the State is automatically eligible for designation as an area need of redevelopment and subject to eminent domain without any regard to the actual on-site conditions. This further reinforces the invalidity of declaring a site in need of redevelopment based on criterion “h.”

**7. The references to the Municipal Land Use Law purposes and findings in the State Planning Act are not relevant to an area in need of redevelopment investigation.**

Planner Gregory lists six purposes of the Municipal Land Use Law from N.J.S.A.40:55D-2 as well as legislative findings from the 1985 State Planning Act. These are pertinent when crafting a master plan, amending a zoning ordinance, or evaluating the merits of a variance request. They are not the focus of an area in need of redevelopment investigation which is conducted under the standards of the Local Redevelopment and Housing Law which in turn arises from the blighted areas clause of the New Jersey Constitution.

End file: