

NEW JERSEY APPLESEED  
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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY  
DOCKET NO. ESX-L-008631-17

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:  
PLANEWARK, BUTTON FACTORY :  
CONDOMINIUM ASSOCIATION, INC., :  
ALEIX MARTINEZ, MADELINE RUIZ, :  
LISA SANDERS, : CIVIL ACTION  
:  
                                Plaintiffs, :  
:  
                                v. :  
:  
MUNICIPAL COUNCIL OF THE CITY : **STATEMENT OF UNDISPUTED**  
OF NEWARK, NEWARK CENTRAL PLANNING : **MATERIAL FACTS**  
BOARD, KENNETH LOUIS, in his :  
official Capacity as City Clerk :  
of the City of Newark, :  
:  
                                Defendants. :  
\_\_\_\_\_ X

Plaintiffs, PLANewark, the Button Factory Condominium Association and the named individuals, hereby submit the following facts as material and uncontroverted.

1. In Newark's 2009 Master Plan Re-examination Report, former Mayor Booker noted that the last comprehensive revision of all elements of Newark's Master Plan had been in 1990.

[http://www.ci.newark.nj.us/government/City\\_departments/economic\\_housing\\_development/newark\\_masterplan.php](http://www.ci.newark.nj.us/government/City_departments/economic_housing_development/newark_masterplan.php).

2. At that time, only the Land Use Element of the Master Plan had been updated in 2004 "to align with current conditions," id., but the City had not acted to implement the necessary zoning changes.

3. The Future Land Use Plan of the 2004 Land Use Element of the Master Plan designated the zone at issue herein as S-T Transitional which, was intended to encourage the redevelopment and revitalization of areas within the City that were adjacent to the Central Business District. The primary focus for the area east of the Broad Street train station was on mid-rise residential, mixed use, office space and retail use. Land Use Element of Master Plan at p. 193. Scorsolini Cert., ¶5, Ex. B.

4. In 2010, the City Administration "set in motion a citywide process for citizens to participate and plan for the future of [the] City." 2012 Master Plan. The culmination of that extensive process that included numerous stakeholders, including members of PLANewark, the Button Factory Condominium Association, the named individual plaintiffs in this case and people who spoke at the June 26, 2017 Central Planning Board hearing, was the Newark Master Plan of 2012. Scorsolini Cert., ¶¶2,3, Ex. A.

5. On September 24, 2012, the Newark Central Planning Board adopted the 2012 Master Plan, including a revised land use element. The Master Plan contains several "elements" which take into account the various "systems" or layers" of the City in order to achieve the enumerated goals for future land use and development throughout the City of Newark. 2012 Master Plan at page 10. Eben Cert., ¶9, Ex. A.

6. The Land Use Element of the 2012 Master Plan recommends the designation of certain blocks located within the Ironbound north of Green Street and west of McWhorter Street, and part of a block north of Hamilton Street and west of Union Street as multi-family Mid-rise Residential ("R-MM or R-5"). 2012 Master Plan, Vol. II, p. 24. Eben Cert., ¶12, Ex.A. The R-MM designation proposed buildings with a maximum height limitation of eight stories.

7. The R-MM designation was mapped in "a few select locations in the vicinity of transit stations. Its purpose is to promote more intense residential development within walking distance of transit and other service -- but in locations not suited for high-rise residential." 2012 Master Plan, Vol II, p. 27. Eben Cert., ¶13, Ex.A.

8. In contrast, the High-rise Multifamily Residential (R-HM) designation is defined as "buildings over eight stories in

height" but limited to a maximum height of 20 stories. 2012 Master Plan, Vol II, p. 28. Eben Cert., ¶11, Ex.A.

9. The R-MM designation is only mapped for a select few locations and deliberately carves out the area around Penn Station in the Ironbound as not suitable to high-rise development. Eben Cert., ¶13.

10. The Urban Design Element of the 2012 Master Plan describes the height and massing of both Mid-rise and High-rise multifamily buildings. It recommended that Mid-rise multifamily buildings not exceed eight stories, and that "the area of transparent windows and doorways on the primary faces of the building should be maximized." 2012 Master Plan, Vol. II, pg. 65. Eben Cert., ¶16, Ex. A.

11. The Neighborhood Element of the 2012 Master Plan specifically recommends preserving "the physical character and vitality of the Ironbound neighborhood by establishing and enforcing strong design and planning standards." It further recommends controlling "transitions between downtown and the Ironbound to prevent encroachment on the neighborhood." Moreover, it recommends retaining "the neighborhood's historic flavor" "wherever possible." 2012 Master Plan, Vol II, p. 192. Eben Cert., ¶15, Ex. A.

12. High-rise development is currently allowed in the area adjacent to Penn Station within the Downtown Core Redevelopment

Plan and the Living Downtown Redevelopment Plan. These areas lie directly west of the train station and are not considered part of the Ironbound neighborhood. These redevelopment plans were recommended for adoption in the 2012 Master Plan. 2012 Master Plan, Vol II, pp. 33-34. Eben Cert., ¶17, Ex. A.

13. In and during February 2015, the City of Newark adopted the current Zoning & Land Use Ordinance, which incorporates and is consistent with the 2012 Master Plan. As recommended in the Master Plan, the City of Newark designated the area at issue as Mid-rise residential (R-MM or R-5). Eben Cert., ¶¶18-22.

14. The largest permitted Building Type in the R-5 zone is the "Mid-rise Multifamily," which, in addition to the 8-story maximum height, also requires 60% percent maximum lot coverage, and a minimum lot area per dwelling unit of 350 SF. "High-rise Multifamily" is not permitted in R-5 zone. Eben Cert., ¶21.

15. On June 21, 2017, the Newark City Council introduced an amendment to the City's Zoning Ordinance which established the MX-3 Zoning classification for the relevant R-5 zone in the Ironbound. Pursuant to Resolution No. 7R2-G it referred Ordinance 17-1131 to the Central Planning Board for "formal review, report and recommendation as required by N.J.S.A. 40:55D-26." Scorsolini Cert., ¶6, Ex. C.

16. On June 26, 2017, the Central Planning Board held a hearing. John Barree, a Senior Planner with Heyer, Gruel & Associates, appeared before the Planning Board in support of the draft proposed Ordinance. Mr. Barree testified that the proposed MX-3 zone was consistent with the 2012 Master Plan in that the increase in height and density for the area surrounding Newark Penn Station was synonymous with areas designated as "transit-oriented development." However, he did not acknowledge that the 2012 Master Plan specifically marked out the area east of Penn Station in the Ironbound neighborhood as not suitable for High-rise development. Scorsolini Cert., ¶8, Ex. D.

17. At this hearing over 150 Newark residents objected to the proposed Ordinance citing lack of participation, inconsistency with the Master Plan and lack of proper notice. Testimony at this hearing lasted several hours. Scorsolini Cert., ¶9.

18. At the conclusion of the public hearing, the Planning Board voted to delay making any findings and instead passed a motion to defer action until "a public meeting [was] held in the community shared by the economic development group." Scorsolini, Cert., ¶10, Ex. A.

19. On July 6, 2017, a community meeting was conducted at the Portuguese Sports Club located at 55 Prospect Street in Newark. Members of the Department of Economic and Housing

Development presented information regarding the proposed Ordinance, but did not present any studies regarding the actual impacts on the community that could be expected from the proposed Ordinance. Scorsolini Cert., ¶11.

20. There were no translators provided for the predominantly Portuguese and Spanish speaking residents present during the meeting. No detailed information regarding the specifics of the proposed Ordinance was provided. Councilman Augusto Amador read a public statement opposing the maximum building height allowed by the proposed Ordinance, which only added to the confusion as to what was the exact maximum building height proposed by the Ordinance. Scorsolini Cert., ¶12.

21. The meeting went on for almost three hours with every speaker criticizing the proposal. Many "talked about the character, look, and feel of Ironbound and how massive buildings did not fit in." LusoAmericano, July 12, 2017, Scorsolini Cert., Ex. D.

22. On July 24, 2017, the proposed Ordinance was listed on the Planning Board agenda for a second hearing. The Board decided that it was "just building upon the original record," and only heard testimony from Mr. Fred Heyer, of the firm of Heyer Gruel & Associates, consultants for the Planning Board. Mr. Heyer made factual findings on the record, but did not explicitly make a finding of consistency or inconsistency.

Rather he noted defects in the proposed Ordinance and recommended that changes be made to it. Eben Cert., Ex. F.

23. At this meeting no member of the public was permitted to speak, give testimony, cross-examine Mr. Heyer or ask questions of the Board. Mr. Heyer's testimony added confusion as to what the proposed Ordinance actually required. Scorsolini Cert. ¶15.

24. At the conclusion of Mr. Heyer's testimony, the Planning Board passed a motion to refer [the Ordinance] to the Municipal Council. Scorsolini Cert., ¶16, Ex. E.

25. The Planning Board formalized its Resolution and sent it to the Municipal Council in a document dated July 24, 2017. Such Resolution was never disclosed to the public or discussed at a public meeting either of the Planning Board or the City Council. Scorsolini Cert., ¶17.

26. The Memorialization Resolution states that "While the MX-3 Zone ordinance may advance portions of the Master Plan, it is proposing a density, height, and mix of uses that differ in some ways from the vision put forth in the Plan's Land Use Element." Eben Cert., ¶25, Ex. C.

27. In contrast to the R-5 zone, the MX-3 zone permits the "High-rise Multifamily" Building Type (Ordinance 17-1437, p. 6) (Exhibit D). This Building Type permits a maximum of 20 stories in height and a minimum lot area per dwelling unit of



300 SF. The minimum building transparency for the primary facade for this Building Type is generally set at 50 percent in other parts of the City, but is set as 40 percent specifically in the MX-3 zone. Eben Cert., ¶28, Ex. D.

28. In addition, the new Ordinance reduces restrictions for bulk and design standards for the "Ground Floor Commercial with Commercial or Residential above" Building Type. Buildings of this type specifically in the MX-3 zone are permitted a maximum of 12 stories, and a minimum lot area per dwelling unit of 130 SF. In addition, as I note in the previous paragraph, the minimum primary front facade transparency is reduced to 40 percent only for buildings in the MX-3 zone, and maximum lot coverage for such Building Type has increased to 85% from 80%. Mid-Rise residential buildings that had been permitted only 60% lot coverage, are now permitted 85% lot coverage if some retail space is placed on the ground floor. Eben Cert., ¶29, Ex. D.

29. The new Ordinance permits many additional uses in the MX-3 zone which are not permitted in the R-5 zone of the 2015 NZLUR. Some of these uses include Breweries, Data Centers, Light Manufacturing, and Research and Development. Eben Cert., ¶30, Ex. D.

30. On August 2, 2017, the City Council introduced a revised MX-3 Reclassification Ordinance for first reading. Proposed Ordinance 17-1437 was not referred back to the Planning

Board for a finding of consistency or inconsistency with the 2012 Master Plan. There was no additional testimony by either Planning Staff or the public before the Planning Board regarding Ordinance 17-1437. Scorsolini Cert., ¶19.

31. On September 6, 2017, PLANewark submitted a protest petition to the City Clerk pursuant to N.J.S.A. 40:55D-63 signed by 60 owners of "the area either (1) of the lots or land included in such proposed change, or (2) of the lots or land extending 200 feet in all directions therefrom inclusive of street space, whether within or without the municipality." Scorsolini Cert., ¶20, Ex. F.

32. On October 3, 2017, PLANewark submitted supplemental pages containing an additional 36 signatures to attach to its protest petition submitted on September 6, 2017 opposing the proposed Ordinance creating an MX-3 zone. Scorsolini Cert., ¶21, Ex. F.

33. On October 4, 2017, the City Council adopted Ordinance 17-1437 by a vote of 7 to 1. It was signed by Mayor on October 10, 2017. Scorsolini Cert., ¶25.

34. The Council did not acknowledge that the Ordinance was inconsistent with the Master Plan. Moreover, the Council did not state its reasons as to justify why it was making changes to the current Zoning Ordinance barely two (2) years after adoption, and did not set forth in a resolution and recorded in

its minutes its reasons for so acting as required by N.J.S.A.  
40:55D-62a. Scorsolini Cert., ¶26, Ex. H.

35. The purpose of Ordinance 17-1437 is to replace the R-5 zone mapped in the Ironbound neighborhood with a newly created MX-3 zone. Eben Cert., ¶27.

36. In contrast to the R-5 zone, the MX-3 zone permits the "High-rise Multifamily" Building Type, which permits a maximum of 20 stories in height and a minimum lot area per dwelling unit of 300 SF. The minimum building transparency for the primary facade for this Building Type is generally set at 50 percent in other parts of the City, but is set as 40 percent specifically in the MX-3 zone. Eben Cert., ¶28.

37. Further, Ordinance 17-1437 lessens restrictions for bulk and design standards for the "Ground Floor Commercial with Commercial or Residential above" Building Type. Buildings of this type specifically in the MX-3 zone are permitted a maximum of 12 stories, and a minimum lot area per dwelling unit of 130 SF. Eben Cert., ¶29.

38. Ordinance 17-1437 permits a number of uses in the MX-3 zone that were not previously not include in the R-5 zone, such as Data Centers, Breweries, Light Manufacturing and Research and Development, that do not further the goals of the Master Plan for this area and change the character of the zone. Eben Cert., ¶30.

39. N.J.S.A. 40: 55D-62.1 requires notice to property owners within 200 feet of property subject to change in a zone classification or boundary. Such notice extends to condominium associations, and unit owners of such associations.

40. Plaintiff Button Factory Condominium Association, Inc. and individual unit owners Aleix Martinez and Lisa Sanders did not receive such statutory Notice. See Certification of Aleix Martinez and Lisa Sanders Cert., Scorsolini Cert., Ex.G.

NEW JERSEY APPLESEED PILC  
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August 1, 2018