



## Legislation Text

File #: 23-1785, Version: 1

**AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF NEWARK AND/OR HIS DESIGNEE, THE DEPUTY MAYOR/DIRECTOR OF THE DEPARTMENT OF ECONOMIC AND HOUSING DEVELOPMENT TO ENTER INTO AND EXECUTE A SETTLEMENT AGREEMENT AND FIRST AMENDMENT TO THE REDEVELOPMENT AND PROPERTY CONVEYANCE AGREEMENT BETWEEN THE CITY OF NEWARK AND 152 RUTHERFORD STREET URBAN RENEWAL, LLC, PERTAINING TO THE SALE OF CITY-OWNED PROPERTY LOCATED AT 152-164 RUTHERFORD STREET, NEWARK, NEW JERSEY 07105, AS IDENTIFIED ON THE OFFICIAL TAX MAP OF THE CITY OF NEWARK, AS BLOCK 5056, LOT 20 (EAST WARD).**

No Action Taken 8-b 111323

**WHEREAS**, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., as amended and supplemented (the "Act"), authorizes municipalities to participate in the redevelopment and improvement of areas that are in need of redevelopment or rehabilitation; and

**WHEREAS**, pursuant to N.J.S.A. 40A:12A-8(f), the City of Newark (the "City") is authorized to arrange or contract with redevelopers for the planning, re-planning, construction or undertaking of any redevelopment project; and

**WHEREAS**, pursuant to N.J.S.A. 40A:12A-8(g), the City may "convey property without public bidding and at such prices and upon such terms as it deems reasonable" and said conveyance is made in conjunction with a redevelopment plan, notwithstanding the provisions of any law, rule, or regulation to the contrary; and

**WHEREAS**, in order to stimulate the reinvigoration of the City, by Resolution 7Rdo(AS) adopted on June 15, 2005, the entire City was designated as an area in need of rehabilitation pursuant to the Act; and

**WHEREAS**, the Municipal Council thereafter adopted Ordinance 6S&Fe on September 21, 2005, adopting the First Amendment to the East Ward Redevelopment Plan, governing the redevelopment of City-owned properties located within the East Ward, which includes the City-owned property commonly known as 152-164 Rutherford Street and identified on the Official Tax Map of the City of Newark, as Block 5056, Lot 20 (the "Property"); and

**WHEREAS**, the City received a proposal for the purchase and redevelopment of the Property from 152 Rutherford Street Urban Renewal, LLC, a New Jersey corporation located at 124 Polk Street, Box S-2, Newark, New Jersey 07105 (the "Redeveloper"); and

**WHEREAS**, the Redeveloper proposed to remediate the Property and construct an industrial storage facility with office space (the "Original Project"); and

**WHEREAS**, on January 15, 2019, the Newark Municipal Council adopted Resolution 7R2-a (S), and therein determined that the costs to remediate the Property was well in excess of the

appraised value of the Property and authorized the sale of the Property to the Redeveloper for Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) for the construction of the Original Project; and

**WHEREAS**, on April 1, 2019, the City and the Redeveloper entered into a Redevelopment and Property Conveyance Agreement (the “Original Redevelopment Agreement”) that provided for the remediation of the Property, the construction of the Original Project, and the sale of the Property to the Redeveloper for Two Hundred Thousand Dollars and Zero Cents (\$200,000.00); and

**WHEREAS**, the Redeveloper claimed that their due diligence activities to pursue remediation of the Property were delayed initially by an inability to access the Property and then by the COVID pandemic and government shutdowns that resulted from the Governor’s Executive Order declaring a public health emergency (“COVID”); and

**WHEREAS**, as a result of the delays caused by COVID, the Redeveloper wrote to the City and invoked the “Force Majeure” provision of the Original Redevelopment Agreement and requested extensions of deadlines set forth in the Original Redevelopment Agreement; and

**WHEREAS**, the Original Redevelopment Agreement identified various material project deadlines between April 1, 2019 and January 1, 2022, and the Redeveloper was unable to meet said deadlines; and

**WHEREAS**, despite not meeting the project deadlines, the Redeveloper requested the City to proceed to closing in May 2022; and

**WHEREAS**, due to the Redeveloper’s failure to meet project deadlines, the City charged that Redeveloper was in default of the Original Redevelopment Agreement, and having been advised that the Property would be acquired through condemnation by the Passaic Valley Sewerage Commission (“PVSC”), advised Redeveloper that the City could not proceed with the sale; and

**WHEREAS**, on December 1, 2022, the Redeveloper filed suit in the Superior Court of New Jersey, Chancery Division, Essex County under Docket No. ESX-C-000218-22 seeking an order and judgment compelling specific performance of the City’s obligations under the Original Redevelopment Agreement to sell the Property to the Redeveloper (“Chancery Action”); and

**WHEREAS**, following the initiation of the Chancery Action, the Redeveloper obtained development approval from the Newark Central Planning Board to construct the Original Project as contemplated under the Original Redevelopment Agreement by Resolution dated March 27, 2023 (“3/27/2023 Approval”) without the written approval of the City; and

**WHEREAS**, on April 13, 2023, PVSC formally rescinded its intent to acquire the Property; and

**WHEREAS**, on May 26, 2023, the City filed a challenge to the 3/27/2023 Approval by way of an action in lieu of prerogative writs in the Law Division under Docket No. ESX-L-3418-23 (“PW Action”) based on the lack of the City’s authorization to file a land use application on the Property; and

**WHEREAS**, the City moved to consolidate the PW Action with the Chancery Action without

opposition from the Redeveloper; and

**WHEREAS**, by Order dated August 9, 2023, the Law Division consolidated the matters under the Chancery Action; and

**WHEREAS**, the parties were ordered by the Court to participate in Court ordered mediation, and the parties convened for a mediation session on September 12, 2023; and

**WHEREAS**, as a result of the mediation, the parties being desirous of amicably resolving all claims and proceeding with the sale, remediation and redevelopment of the Property, desire to enter into a Settlement Agreement; and

**WHEREAS**, as part of the Settlement Agreement, the Redeveloper agrees that the proposed redevelopment of the Property may include an alternative proposal to construct a truck parking and container storage facility ("Revised Project"), subject to City's right to review the Redeveloper's concept plan for the Revised Project, the City's comments to same and the Redeveloper's receipt of government approval from the Newark Central Planning Board; and

**WHEREAS**, in consideration of the City having agreed to the Revised Project, the Redeveloper agrees that upon receipt of local land use approvals for same, it shall increase the purchase price for the Property from Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) to Four Hundred and Twenty-Three Thousand, Five Hundred Dollars and Zero Cents (\$423,500.00), unless the Redeveloper is denied local land use approvals, in which case, the sale of the Property shall occur at the original purchase price of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00); and

**WHEREAS**, the City has agreed that it is in the best interest of the tax payers to avoid the expense of costly litigation to enforce exercising its reversionary powers under the Original Redevelopment, and instead settle the parties' differences by executing the Settlement Agreement and First Amendment to the Redevelopment and Property Conveyance Agreement (attached hereto as Exhibit A) memorializing the foregoing; and

**WHEREAS**, the Settlement Agreement and First Amendment to Redevelopment and Property Conveyance Agreement shall supersede any previous Agreement(s) or conditions related to the rehabilitation of the Property.

**NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:**

**SECTION 1.** The Mayor of the City of Newark, and/or his designee, the Deputy Mayor/Director of the Department of Economic and Housing Development are hereby authorized to enter into and execute the Settlement Agreement and First Amendment to the Redevelopment and Property Conveyance Agreement, which is affixed hereto as Exhibit A.

**SECTION 2.** The Mayor of the City of Newark, and/or his designee, the Deputy Mayor/Director of the Department of Economic and Housing Development are hereby authorized to execute any all instruments and/or Quit Claim Deed to effectuate the sale of the City of Newark owned property

located at 152-164 Rutherford Street and identified on the Official Tax Map of the City of Newark, as Block 5056, Lot 20 (the "Property") to 152 Rutherford Street Urban Renewal, LLC.

**SECTION 3.** A copy of the executed Settlement Agreement and First Amendment to the Redevelopment and Property Conveyance Agreement and Quit Claim Deed of the Property, with all exhibits thereto, shall after Second Reading and Public Hearing on this Ordinance, be placed on file in the Office of the City Clerk by the Deputy Mayor/Director of the Department of Economic and Housing Development.

### **STATEMENT**

This Ordinance authorizes the Mayor of the City of Newark and/or his designee, the Deputy Mayor/Director of the Department of Economic Housing and Development to enter into and execute the Settlement Agreement and First Amendment to the Redevelopment and Property Conveyance Agreement between the City of Newark and 152 Rutherford Street Urban Renewal, LLC and convey the City-owned property located at 152-164 Rutherford Street and identified on the Official Tax Map of the city of Newark, as Block 5056, Lot 20 (East Ward) to 152 Rutherford Street Urban Renewal, LLC.