



City of Newark

City Hall
920 Broad Street
Newark, New Jersey 07102

Legislation Text

File #: 20-0579, Version: 1

Dept/ Agency: Law

Action: () Ratifying (X) Authorizing () Amending

Purpose: Settlement of Civil Litigation

Docket No.: ESX-L-005072-18

Claimant: Dutch Neck Land Company, LLC v. Municipal Council of the City of Newark and the Newark Central Planning Board

Claimant's Attorney: Patrick J. McAuley, Esq.

Attorney's Address: Connell Foley, LLP, 56 Livingston Avenue, Roseland, New Jersey 07068

Settlement Amount: N/A

Funding Source: N/A

Account Code Line:

Additional Comments:

WHEREAS, the Municipal Council adopted Resolution 7R2-a on January 19, 2017, which authorized the Newark Central Planning Board (the "Board") to conduct a preliminary investigation of a designated Study Area located at Doremus Avenue ("Study Area") to determine whether those certain properties located within the Study Area qualify as a "Condemnation Redevelopment Area" pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. ("LRHL"); and

WHEREAS, Dutch Neck Land Company, LLC ("Dutch Neck"), is the owner of real property known as 279-295 Doremus Avenue, Newark, New Jersey 07105, more formally known as Block 5016, Lot 4, including additional Block 5060.01, Lot 130.02, and 271-277 Doremus Avenue, Newark, New Jersey 07105, more formally known as Block 5016, Lot 5 (collectively the "Property"); and

WHEREAS, the Property was included within the Study Area; and

WHEREAS, Topology NJ, LLC, ("Topology") in cooperation with the City and the Newark Community Economic Development Corporation (presently known as "Invest Newark"), conducted a preliminary investigation to determine whether the designation of the Study Area as an Area in Need of Redevelopment is appropriate and in conformance with the statutory criteria set forth in N.J.S.A. 40A:12A-5; and

WHEREAS, the report, prepared by Topology, dated October 6, 2017, and entitled "Doremus Avenue Area in Need of Redevelopment Investigation Report" states that, based upon the Property's inclusion in the Industrial River Urban Renewal Project Area (Project NJR-121), ("Industrial River Area"), and the Municipal Council's prior designation of the Property as blighted by Resolution adopted on November 6, 1963 ("1963 Resolution"), the prior designation of the Property by the 1963 Resolution remains valid and no further action is necessary; and

WHEREAS, on November 20, 2017, and continuing on December 18, 2017, January 8, 2018, January 29, 2018, and March 5, 2018, the Board conducted Public Hearings; and

WHEREAS, on March 5, 2018, the Board voted to recommend that the Study Area be designated by the Municipal Council as an “area in need of redevelopment” with condemnation rights; and

WHEREAS, by Resolution, dated April 23, 2018, the Board memorialized its decision to recommend that the Study Area be designated as a “Condemnation Redevelopment Area”; and

WHEREAS, on June 7, 2018, the Municipal Council adopted Resolution 7R2-d(S), as amended, determining that the Property, among others, qualifies as a “Condemnation Redevelopment Area” pursuant to the LRHL; and

WHEREAS, upon further review of Resolution 7R2-d(S), the Municipal Council adopted Resolution 7R2-a, adopted on January 23, 2019, as amended, determining that the Property, among others, qualifies as a Condemnation Redevelopment Area” pursuant to the LRHL; and

WHEREAS, on July 20, 2018, Dutch Neck filed a Complaint Action in Lieu of Prerogative Writs in the Superior Court of New Jersey, Law Division, entitled Dutch Neck Land Company, LLC v. Municipal Council of the City of Newark and the Newark Central Planning Board, Docket No. ESX-L-005072-18, challenging the Board’s recommendation and the Municipal Council’s subsequent determination that the Property qualifies as a Condemnation Redevelopment Area, pursuant to the LRHL (“Dutch Neck Litigation”); and

WHEREAS, the Parties have now reached a settlement of this dispute in order to avoid costly litigation expenses; and

WHEREAS, this Settlement Agreement and General Release neither admits nor should it be construed as an admission of liability or violation of any law, statute or regulation or a breach of any duty by the City of Newark, its agents, officers and/or employees whatsoever and is entered into to resolve this matter and prevent the incurring of additional costs and fees; and

WHEREAS, the City of Newark has determined that it is in the best interest of the taxpayers to settle and avoid the cost, expense, delay and uncertainty of litigation; and

WHEREAS, the terms of the settlement are set forth in the Settlement Agreement and General Release and does not include any monetary payment on the part of the City of Newark to the Plaintiff.

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

1. The Mayor and/or his designee, the Corporation Counsel, is authorized, on behalf of the City of Newark to negotiate and execute a Settlement Agreement and Release, and any other documents, sufficient in form and content to the Corporation Counsel and to take whatever actions

are necessary to effectuate the terms of the within resolution and settlement of this matter pursuant to the terms contained in the within resolution.

2. The Municipal Council authorizes the City of Newark to de-designate the Property and remove same from the Condemnation Redevelopment Area as set forth in Resolution 7R2-a, as amended, on January 23, 2019. In order to effectuate same, a resolution amending Resolution 7R2-a, as amended, shall specifically remove the Property from the Condemnation Redevelopment Area. Said resolution shall also set forth an amendment to Municipal Council Resolution 7RF, dated November 6, 1963 and as subsequently amended, to remove the Property from the designation as a blighted area under a predecessor statute to the LRHL.

3. In exchange for the execution by Dutch Neck Land Company, LLC (Dutch Neck) of the Settlement Agreement and Release, acceptable in form to the Corporation Counsel and after passage of this resolution and upon receipt by the Corporation Counsel, within seven (7) calendar days of Dutch Neck's receipt of the certified copy of the adopted resolution, Dutch Neck will dismiss the Dutch Neck Litigation, without prejudice and without costs, by filing a Stipulation of Dismissal without Prejudice.

4. Upon the passage of fifty-five (55) days of the adoption of the resolution, if there have been no legal challenges filed with the court contesting the legality of said resolution, Dutch Neck will dismiss the Dutch Neck Litigation, with prejudice and without costs, by filing a Stipulation of Dismissal with Prejudice within seven (7) calendar days of the expiration of the fifty-five (55) day period.

5. The settlement and resolution does not admit nor should it be construed as an admission of liability or violation of any law, statute or regulation or a breach of any duty by the City of Newark, its agents, officers and/or employees whatsoever and is entered into based upon recommendations of the Corporation Counsel and to eliminate all risks and future litigation costs.

6. The Corporation Counsel shall file a fully executed copy of the Settlement Agreement and Release in the Office of the City Clerk.

7. This resolution shall be effective upon adoption in accordance with applicable laws of the State of New Jersey.

STATEMENT

This resolution authorizes the Corporation Counsel on behalf of the City of Newark to execute the Settlement Agreement and General Release to resolve the pending matter entitled Dutch Neck Land Company, LLC v. Municipal Council of the City of Newark and the Newark Central Planning Board, Docket No. ESX-L005072-18, without the need and expense of future litigation. This Settlement Agreement and Release does not include any monetary payment on the part of the City.