

Reply to Letter Regarding Emerson's Downtown Redevelopment

In February of 2017, Emerson's governing body mailed a letter to Borough households entitled "**Important Information Regarding Our Downtown Business District, Redevelopment and Affordable Housing Mandates.**" As stated in the first paragraph, the purpose of the letter was purportedly to "provide facts and hopefully dispel the rumors and misinformation that may be circulating throughout the community". But far from dispelling "rumors and misinformation", the letter itself seems a deliberate attempt to mislead the public. The following is a reply from former councilman Kenneth Hoffman, which seeks to correct the misinformation found in the mayor and council's letter. Quotes from the original letter have been highlighted in yellow. (It is important to note that any reference to the "mayor and council" or "governing body" does not include Councilwoman Danielle DiPaola, who refused to sign the letter replied to here.)

1. In paragraph three, the letter states that "**As the result of that 2002 Court Order, the Borough, in 2004, created the Central Business District and designated the downtown as an Area in Need of Redevelopment.**" Not exactly. Although a plan had yet to be created, the idea of redeveloping Emerson's downtown predated the 2002 Court Order by Superior Court Judge Jonathan Harris. At the time, the motivating purpose behind redevelopment was *not* to meet the Borough's affordable housing obligation, but rather to make aesthetic improvements to Emerson's downtown and to increase ratables. Harris himself made no mention of a downtown redevelopment in his opinion dated October 19, 2001, but it is addressed briefly in the Planning Board's "Supplemental Housing Element and Fair Share Plan," drafted and adopted as a result of the Court Order. Although the Board acknowledged that a proposal was pending to create a redevelopment area in the Borough's downtown, and that it "could include a housing component and affordable housing provisions," it concluded that "use of a site in this area for inclusionary zoning as part of a comprehensive redevelopment plan cannot be considered at this time ..." Thus, affordable housing in the downtown as part of a possible redevelopment was, according to Emerson's Planning Board, a future possibility but certainly not a court-ordered requirement.

Furthermore, there is absolutely no mention of affordable housing (see Determination of Area in need of Redevelopment; Emerson Redevelopment Area, Borough of Emerson, New Jersey; December 8, 2016) among the criteria cited by Emerson's Borough Planner, Brigitte Bogart, for designating Block 419 as an Area in Need of Redevelopment. Nor does any of the five goals for Commercial Development set forth by the Borough's Planning Board in its 2007 Reexamination of the Borough's Master Plan (cited in Ms. Bogart's December 2016 report), include the building of affordable housing. And if the redevelopment were mainly for the purpose of providing affordable housing, then why did the redeveloper originally propose building the low income housing off site?

2. In paragraph four, the letter states that "**[The redeveloper, JMF Properties] has been in negotiations with six of the affected property owners in Block 419, none of whom live in Emerson.**" (Bold in original.) While the owners don't reside in Emerson, they pay

property taxes like every other property owner, and have been doing so for years. The mayor and council's apparent implication that the property owners have nothing invested in the town is false.

3. Further on in paragraph four, the letter states that **“According to the current assessments, the offers to purchase the properties are considered to be above the market value of each property.”** (Bold in original.) As a result of the redevelopment designation and the high density permitted by Emerson's governing body for Block 419, the value of the properties has undoubtedly increased. It would make sense that the property owners are taking this into account in their discussions with the developer. If your property were suddenly in high demand by an interested buyer, and you had no previous desire to sell, wouldn't you be inclined to look for the best price you could get? Wouldn't you be foolish not to? The mayor's remark on social media, that the property owners are “greedy” simply because they are looking for the best price for their property, seems to be nothing more than a calculated attempt to turn the community against them to further his own agenda.
4. Again in paragraph four, the letter states that **“Borough officials have learned that certain business owners in Block 419 are demanding hundreds of thousands of dollars to relocate their businesses.”** (Bold in original.) The fact is that one of the business owners has expressed what the approximate expense of relocating certain necessary components of his business would be. This is what it would realistically cost him to move; it is not a demand for some kind of special payment in order for him to comply with redevelopment, as the statement misleadingly implies.
5. Further in paragraph four, the letter states that **“... in order that the redevelopment move forward for the Borough taxpayers and to comply with the Court Order, the Borough retains the ability to use the eminent domain powers provided to municipalities throughout the state.”** As stated above, the Borough Planner did not cite affordable housing as one of the criteria for designating Block 419 as an Area in Need of Redevelopment, nor is this one of the goals cited in the Borough's Master Plan. In fact, New Jersey's Local Redevelopment and Housing Law (LRHL) does not include affordable housing as one of the eight criteria for establishing an Area in Need of Redevelopment. It appears that the governing body may be intentionally trying to mislead the public into thinking that Judge Harris' Court Order explicitly mandated the redevelopment (and possible condemnation) of Block 419 and that refusing to do so would violate his Court Order. This is simply not true.
6. In paragraph five, the letter states that **“It is important to know that since 2008, each property owner has had the opportunity to take advantage of the benefits of the redevelopment law to redevelop their own properties.”** In addition to the severe recession that began in the fall of 2008, the property owners in the redevelopment zone still had the cloud of condemnation hanging over their heads. As a councilman in 2009, I proposed an

ordinance that would have prohibited the use of eminent domain by the Borough of Emerson for the purpose of seizing one person's property to give it to another for private development. Although this would have confirmed the Borough's commitment to allowing property owners to develop on their own without the threat of eminent domain, the proposal was rejected by the rest of the council – on the grounds that they might wish to exercise eminent domain in the future. Why would a property owner risk investing significant money in redeveloping his/her property, if the town could condemn it at a later date for a larger redevelopment?

7. In paragraph eight, the letter says that “As a result of this agreement with JMF and the development of low and moderate income housing the Borough continues to protect itself from unwanted and uncontrolled development from builders through ‘builder’s remedy lawsuits.’” The fact is that any affordable housing units that result from the redevelopment of Block 419 will make only a small dent in the Borough’s total fair housing obligation, which has remained a moving target. The public has yet to hear concrete numbers on how many affordable units the Borough should prepare for, nor has there been any comprehensive public discussion on the different options that may be available. Instead, the mayor and council have been using the threat of builder’s remedy lawsuits as an excuse to push through JMF’s high density development, without a thorough consideration of other alternatives for affordable housing.
8. In paragraph nine, the letter states that “Subsequent to that Court decision [by Judge Harris], the Governing Body moved forward to declare the downtown a redevelopment zone so that multi-family properties could be built.” Again, the implication that the Court mandated the redevelopment of Emerson’s downtown, and did so to force affordable housing to be built there, isn’t true. Downtown redevelopment was not part of the Planning Board’s Supplemental Compliance Plan of 2002, nor did Judge Harris or the Special Master appointed by him require its inclusion. While Borough ordinance states that all new buildings with five residential units or more must include a 20% set aside for affordable housing, it stipulates no minimum density for such projects. If the mayor and council are claiming that Judge Harris’s Court Order mandated the high-density project that JMF intends to build, or that it also required the use of eminent domain to make it possible, then they are sorely mistaken, or not telling the truth.
9. In paragraph eleven, the letter references a letter sent at the end of 2016 by the Land Use Board to all property owners in the Central Business District, “advising property owners that their property would be studied [by the Borough Planner and Land Use Board] to determine if their properties should continue to be part of a Condemnation Redevelopment Area.” The governing body’s letter goes on to state that “**That does not mean that the Borough seeks to redevelop those properties or that the Borough has any current intention to acquire such properties. On the contrary, the Governing Body is only interested in moving forward with development of Block 419.**” (Bold in original.) Reader beware! The key words here are “**current intention.**” While the letter

states that the governing body is presently interested only in the development of Block 419, the mayor on several occasions has mentioned this as only the first step in a possible redevelopment of other areas of the downtown – a piece by piece approach, instead of the large scale redevelopment proposed during Mayor Lamatina’s first term. It’s simply a different strategy for achieving the mayor’s same old objective to overdevelop a major portion of the downtown, out of all proportion to Emerson’s small town character.

10. Paragraph twelve states that at the January 20, 2017 meeting of the governing body, the Borough Planner was instructed to study the properties in the Redevelopment Zone (outside of Block 419) in part “to possibly convert some of the areas to non-condemnation zones.” To do so might be a relief to those property owners, but the Borough would not be permanently and legally bound to maintaining that status. At any time, the Borough could change its mind and re-designate those areas as condemnation redevelopment zones. Might this simply be a tactic by the governing body to temporarily appease some of the property owners, in order to weaken any concerted effort against the Borough’s use of eminent domain? Apparently so, since the final sentence of the paragraph states that **“This change would eliminate the possibility of the Borough using eminent domain on such properties.”** (Bold in original.) Only, that is, if the Borough does not choose to re-designate the properties, which it could do at any time. As a guarantee, it is disingenuous and ultimately meaningless.
11. Paragraph thirteen states that **“the Borough must leave the Redevelopment Zone in place to demonstrate to the Court that a ‘realistic opportunity’ for the construction of affordable housing continues to exist.”** (Bold in original). Again, Judge Harris’ decision did not specifically mandate the redevelopment of Emerson’s downtown business district in order to satisfy Emerson’s affordable housing requirements. It’s not any one area that matters, but the total amount of affordable housing. There may be many other, undiscussed, options that would also provide a realistic opportunity for affordable housing in the Borough.
12. In the next-to-last paragraph, the letter concludes that **“The Governing Body does not want to overdevelop the downtown. Or take people’s businesses. Or condemn their property. These are the facts.”** If these are “the facts,” then why do the governing body’s actions strongly suggest otherwise? As for over-development, the proposed project for Block 419 alone would add 147 new residential units to the small block between Linwood Avenue and Lincoln Boulevard (to a height of four stories), and, considering Mayor Lamatina’s desire to also develop elsewhere, may be the first step in the urbanization of our downtown. And if the governing body is sincere in its supposedly “factual” statement that they have no desire to condemn properties or take people’s businesses, then why don’t they drop condemnation (via resolution) as an option? There is nothing stopping them from doing that.

As for their comment that “**fake news and fear mongering is not helpful to moving Emerson into the future** ...”, then why are they doing so, since a careful reading of their letter shows that they are the ones spreading the “fake news” about redevelopment and eminent domain, and are taking advantage of the threats of builder’s remedy lawsuits to frighten the public and further their own agenda. It’s ironically clear that the governing body is their own enemy in the effort to improve Emerson’s downtown, since false and misleading information like that found in their letter only serves to damage the credibility of anything they say. And losing the people’s trust is ultimately fatal to effective local government, and a major impediment to moving Emerson “into the future.”

13. On the reverse side of the last page of the letter is an aerial view of Block 419 and adjacent blocks. In addition, there is an unlabeled photo of the roof of a house on Lincoln Boulevard in some disrepair, and another photo showing an alley way near Kenneth Avenue. While there is no description or commentary explaining these pictures, the likely purpose is to provide a visual argument for why Block 419 should be redeveloped. However, what the two photos show are maintenance issues which can, and should be, addressed by the Borough’s Property Maintenance Official. Why they haven’t is a question that can only be answered by our mayor and council. These maintenance problems do not, in themselves, come close to meeting the criteria for blight, or an Area in Need of Redevelopment, and would likely be rejected as such if challenged in court. These photos turn out to be just as disingenuous and misleading as the text of the letter.