



CAUCUS SESSION

6:30PM

Second Floor Conference Room
Municipal Building
Deal & Monmouth Roads, Oakhurst

MEETING

7:00PM

Public Meeting Room, Municipal Building
Deal & Monmouth Roads, Oakhurst

**MEMBERS
PRESENT:**

Chairman Ed DiFiglia
Julia Valente
Jemal Beale
Eric Menell
Jack Mamiye
Robert Goslin

**MEMBERS
ABSENT:**
Gita Kaplan
Vice Chairman Michael Palutis
Jack Ades
David Bodnovich
Amir Bercouicz

**OTHERS
PRESENT:**

Marc Leckstein, Esq.
Colleen Mayer
Nicole Acri

Board Attorney
Planning Administrator
Board Secretary

SALUTE THE FLAG

CHAIRMAN'S STATEMENT

Chairman Ed DiFiglia announced the notice requirements for the Open Public Meetings Act have been satisfied. A copy of the notice was sent to the Asbury Park Press and the Coaster, posted in the Township Hall, and filed in the Office of the Township Clerk

EMERGENCY NOTICE

There is an emergency exit through the courtroom doors and two exits at the rear of the room

NO SMOKING OR VAPING

BOARD POLICY

No new cases will be started after 9pm, and no new testimony taken after 9:30pm

NOTICE

All meetings will be video and audio taped and shown on the Township of Ocean's Community Cable Channel, Channel 22, on Verizon FiOS, and Channel 77 on Cablevision. All cell phones must be turned off, or if you need to make a call, please do so outside of the meeting room.

NEW CASES

Resolution of the Township Council authorizing the Planning Board to undertake a study area to determine if certain property known as Township of Ocean Municipal Complex identified as Block 25 Lot 2 on the Tax Map to determine whether the Study Area meets the criteria set forth in

the Redevelopment Law, and should be designated as an area in need of redevelopment without the powers of eminent domain.

Topology, LLC will present a redevelopment investigation report for the property designated as Block 34 Lot 11 on the Township's Tax Map and commonly known as 1610 Highway 35 as to whether all or a portion of the area meets the criteria for an area in need of redevelopment pursuant to N.J.S.A. 40A:12A-5 and should be designated as such.

Phil Abramson, the proprietor from Topology LLC and a licensed Planner, begins by introducing himself and explaining to the Board Members that he will be presenting the findings of the aforementioned report this evening. After the findings have been presented, the meeting will be opened to the Board Members, and then the public, to ask any questions of Mr. Abramson and/or the report.

Mr. Leckstein explains that this is not a typical Planning Board application in which the Board Members are asked to look for the positive and negative criteria and make a decision based on such. The Board Members will be asked to find, based on the report being presented this evening, whether or not the criteria meets the definition of an area in need of redevelopment. Mr. Leckstein makes it very clear that the Board Members can only vote against the report if they do not feel that it meets the criteria. The decision cannot be based off of personal feelings toward redevelopment and condemnation. If it is found that the report does meet the criteria, the Board Members will be obligated to vote yes. Mr. Leckstein also states that the report does not have to be accepted in its current state, as is. The Planner can be instructed to make changes at the request of the Board Members. He reiterates that this is not a yes or no issue. The Board Members will need to determine if the Planner, who is a representative of the Town, has established the criteria needed to meet the definition of an area in need of redevelopment.

Mr. Abramson begins his presentation. He explains that he is here this evening to present his findings on the Orchard Plaza Shopping Center, which is one of the largest parcels of land on the Highway 35 frontage. It is very important that this report is done right and that the Board Members understand everything that is being asked of them this evening. Ensuring that this is done right will protect and insulate the municipality from future challenges. This report is foundational, so if there are cracks in the foundation everything built on top of it can be vulnerable. Moving on, there are two types of redevelopment, which are non-condemnation and condemnation. It is important that the type of redevelopment be determined at the beginning of the process so that the property owner has advance notice of what to expect and what rights are at play. The resolution directing Topology to undertake the study was adopted by the Mayor & Council on January 9th. The Planning Board will make their determination this evening and report back to the Mayor & Council, who can accept, reject, or modify.

In the 1940's a legal structure was created to allow municipalities to fix problematic properties. Sometimes a property can have issues that can be very difficult for an owner to fix and/or solve. Rather than waiting to receive an application for development, municipalities are able to step in when a property becomes a detriment to the health, safety, and welfare of the community, which is the step that is currently being taken. This can only happen when a property meets the criteria that will be discussed in great depth this evening.

According to Mr. Abramson, the site was visited on two separate occasions and aerial photos were obtained using a drone. To get a better understanding of the subject property and how it operates, he and his team reviewed municipal records as well as the environmental maps, historic imagery, zoning ordinance, and market data. No stone was left unturned.

This site, known as Orchard Plaza and located at 1610 Highway 35, is a commercial strip center that was built around the 1980's and is almost 11 acres in size. It is unique in that it offers

substantial parking in both the front and rear of the property. All of the vehicular access comes from Highway 35. This property received Site Plan Approval in 1979 and was initially 14 acres in size, as it contained an additional parcel next to Willow Drive. In 1980 this parcel of land was subdivided and was later developed with AutoZone. Although several applications have been made throughout the years for a tenant fit-out, no major changes have been made to the building since it was first constructed.

There are two buildings on the site totaling 72,000sf and consisting of 17 separate suites. There is one ingress and one egress and a total of 332 parking spaces between the front and rear lots. There is also a wetland in the rear of the property.

Now that Mr. Abramson has provided background information on the site, he moves on to the criteria and what the property needs to exhibit, under the law. The State of NJ has come up with 8 different criteria to determine whether a property can be deemed an area in need of redevelopment. Mr. Abramson explains that Topology has an obligation to the Township of Ocean to provide substantial evidence on the record. In the case Eretc vs. City of Perth Amboy, substantial evidence describes "the importance of inspecting the interiors of the buildings, reviewing applications for building permits, reviewing occupancy rates or the number of people employed in the area, and making detailed block-by-block findings concerning the condition of the buildings in the proposed redevelopment area and the nature and level of the economic activity being conducted there". When reviewing a property, Topology uses this case as a checklist to ensure that all aspects have been taken into consideration and nothing has been missed.

According to Mr. Abramson, the subject property meets 3 of the 8 criteria, which are Criteria B, Criteria D, and Criteria H. Criteria B, in a nutshell, deals with commercial buildings that are not being used anymore. Criteria D pertains to properties and/or dwellings that are dilapidated or have fallen into a state of disrepair. As a result, the property/dwelling can no longer be used as intended, causing a negative impact to the welfare of the general public. Lastly, Criteria H deals with smart growth principals. Mr. Abramson explains that the bar for Criteria H is relatively low, therefore it is not something he would have stand alone and he would not ask that the Board designate an area based solely on Criteria H. He refers to it as an accompanying criterion. The real meat of the findings are Criteria B and Criteria D.

Mr. Abramson goes on to give a more in-depth explanation of each Criteria. To start, Criteria B is the discontinuance of the use of a building previously used for commercial, retail, shopping malls or plazas, office parks, manufacturing, or industrial purposes, or the abandonment of such a building. The building must have significant vacancies for at least two consecutive years or have fallen into such a state of disrepair as to be untenantable. The statute was updated within the last 3-4 years to include language pertaining to significant vacancies, as it allows municipalities to deal with vacant properties and create redevelopment areas. In order to determine if this site has significant vacancies, Mr. Abramson and his team reviewed municipal records and lease schedules, and found that the building is 85% vacant. This means that approximately 10,880sf of the plaza is occupied and roughly 60,335sf is vacant. The statute does not define significant vacancy. Instead, the legislature uses vague terms and allows municipalities and courts to give them meaning. In order to determine if 85% vacancy is considered significant, Topology looked along the Highway 35 corridor 0.5 miles in each direction. Only 4 or 5 properties are vacant, none of which are large shopping centers like the subject property. There is a vacant commercial property, some partial vacancies in a plaza, an old boarded up house and a vacant dental building, none of which normalize the type of vacancies seen in Orchard Plaza. He then shows several photos of the site, all of which show obvious signs of disrepair. The property has been allowed to fall into such a great state of disrepair that it is no longer tenantable. The repairs are beyond a fresh coat of paint, which is shown in the photos taken by Topology.

Moving on, Orchard Plaza also meets Criteria D, which Mr. Abramson defines as an “area 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”. Mr. Abramson feels that the type of dilapidation seen here is not only operational, but also due to a lack of care and maintenance. There are old couches, trash, and debris in the rear of the property, which does not necessarily mean the building is dilapidated, however, lack of maintenance is a characteristic of Criteria D. Roof damage and roof leaks were observed in the arcade area, which is a space that is accessible to the public, as well as obvious signs of water damage. The parking areas are cracked with vegetation coming through and the sidewalks have not been maintained or re-poured since the building was constructed in 1980. There is also broken curbing, cracked walls, and significant pot holes that appear to have been repaired in a slap dash way. In regards to the parking lot, almost all of the striping and directional painting is gone. This reinforces Criteria D, specifically dilapidation and faulty arrangement. All of the things that were previously approved by the Planning Board to keep the general public safe no longer exist. According to Mr. Abramson, he and his team observed faded and obstructed signs, hanging wires, graffiti, broken utility boxes, etc. The stormwater basin, which is something that requires regular maintenance in order to function as intended, is filled with trash and debris. This has caused the inlets to clog and, as a result, the basin has become ineffective in conveying stormwater through the pipes. A shopping cart was also seen within the basin. During a site visit there was evidence that the drainage may not be working properly, as puddles and pools of water were seen. As for the lighting, some work, and some don't. Mr. Abramson and his team observed parents parked in the fire lane while waiting to pick their children up from the day-care center within the complex. Faulty arrangement can also mean operational in that the property is not being operated correctly.

Additionally, the ingress and egress drives are too wide and should be located within the center 1/3 of the frontage of the site. Mr. Abramson obtained accident records from the Police Department, as there were a few incidents in which a pedestrian was hit riding a bicycle down Highway 35. He feels that these accidents occurred due to signage (or a lack thereof) or overgrown vegetation that obstructed the drivers view. Moving on, the land coverage for this site was calculated to be 78%, where 27% is the maximum permitted, as per the municipal zoning ordinance. The land coverage for this site is excessive, especially because of the close proximity to the wetland area.

Lastly, this property meets Criteria H, or the Smart Growth Planning Principles, which promotes a mix of land uses, an attractive community, a sense of place, etc. Mr. Abramson feels that this parcel is an established commercial center that has access to a good road network and is capable of handling mixed uses, should that be the long-term desire.

In conclusion, it is the recommendation of Mr. Abramson and Topology LLC, that this parcel qualifies for redevelopment with condemnation under Criteria B, D, and H. He feels that the Planning Board can safely make this conclusion, however, he encourages the Board Members to ask any questions they may have related to the report and/or the process of redevelopment with condemnation. To give an idea of what happens next, tonight is the public hearing. From here, Mr. Leckstein will prepare a report that will be given to the Governing Body. The Governing Body will then prepare a resolution to reject, accept, or modify the Planning Board's conclusion and determine whether or not this parcel qualifies as an area in need of redevelopment.

Both Mr. Mamiye and Chairman DiFiglia have questions pertaining to the impervious coverage and how it was calculated. According to Mr. Abramson's notes, the 1980 subdivision included Site Plan approval for Orchard Plaza. At that point, the property was 14.13 acres, and included a 4.285-acre parcel of land that only had a billboard on it. This is how the coverage

was calculated, as all of the land was undisturbed. The existing coverage calculations on the signed Site Plan, as well as within the municipal records, were unclear. Mr. Mamiye asks about the center area of the site, as he does not believe the previous areas were taken into consideration when the impervious coverage was calculated. According to Mr. Abramson, these areas add up to half an acre, which Mr. Mamiye feels should be included in the calculations for the sake of accuracy. Chairman DiFiglia suggests that Mr. Abramson refer to Rowan University's mapping project, as they have an excellent impervious coverage calculator. This website calculates the impervious coverage as 81%. Chairman DiFiglia asks that this be verified so that the report is as accurate as possible. Additionally, page 7 of the report has the lot size as 10.71 acres, however, the following page has it as 10.071 acres, which is over half an acre difference. Skipping ahead to page 42, Chairman DiFiglia feels that Mr. Abramson missed one of the biggest things when it comes to Smart Growth Principles, which is that the Township of Ocean does not have a rail line. Instead, the town has a highway. Despite the fact that there is a sidewalk, Highway 35 is not exactly what someone would consider 'walkable'. However, there is a bus stop directly in front of Orchard Plaza. This site has access to public transit that a number of other sites do not, which makes its appeal to Smart Growth and mixed use higher than most other properties along Highway 35. There are only a handful of stops and there are a number of people who use public transportation to get to and from work. Chairman DiFiglia feels that this changes whether or not the site is appropriate for Smart Growth, which he feels is even more appealing when taking public transit into consideration. He asks that Mr. Abramson make the changes discussed this evening, as it is critical that this be done right.

Mr. Menell asks if Topology looked into whether there has been any criminal activity on the site. Mr. Abramson advises that he and his team obtained a number of different complaints from the Police Department, as well as Code Enforcement. There was not much in terms of criminal activity, however, there were several documented code violations. The Planning Administrator, Colleen Mayer, explains to Mr. Menell that Code Enforcement will try to work with a property owner to resolve the issue before issuing a violation and/or summons. In this case, Code Enforcement has been in contact with the property owner on numerous occasions.

Chairman DiFiglia asks if there are any other questions from the Board Members and/or the Public. Anthony Todaro approaches the dais and introduces himself as the Attorney representing Orchard Plaza. According to Mr. Todaro, that he was the one who found out about the meeting this evening, as well as the preliminary investigation, by checking the agenda. He is here this evening to respectfully ask that the Board Members hold off on making their decision to give he and his Client time to review the report and provide meaningful participation in this process, which he feels is paramount when talking about taking someone's property.

Mr. Leckstein confirms that statutory notice was given and jurisdiction is with the Board, otherwise this meeting could not have taken place this evening. He agrees with Mr. Todaro and feels that it is appropriate to carry the case to the following meeting, which is scheduled to take place on June 23rd. The only thing he asks is that should Mr. Todaro produce a counter report, it be submitted to the Board Secretary, Nicole Acri, at least 10 days prior to the meeting date in order to give the Board Professionals an opportunity to review it.

The next resident to approach the dais is a woman named Ettie, who is a local realtor. She informs the Board that she has attempted to rent several units within Orchard Plaza, but has been unable to get in touch with the owner. She attempted to call the number listed on site and also reached out to the business owners but was still unable to get in touch with the owner. She and her office know him very well and are hoping that this will get him going in one way or another, instead of being hesitant and keeping the units vacant.

The last residents to approach the dais are Keith and Lisa Sturn, who live on Perrine Avenue. They are here this evening to discuss a Planning Board application from 2022. They are advised that the meeting is only open to the public in relation to this specific application. They are advised to contact the Township the following morning.

Mr. Leckstein advises there is an agenda item that was not mentioned at the beginning of the meeting. The Township Council has prepared a resolution authorizing the Planning Board to undertake a study to determine if the area known as the Township of Ocean Municipal Complex, block 25 lot 2, meets the criteria set forth in the redevelopment law and therefore should be designated as an area in need of redevelopment. Topology LLC has been hired as the Planner and will undertake the study referenced above. A motion to hire Topology was made by Mr. Beale and seconded by Mr. Menell.

The meeting ends at 7:53pm.