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The Stop & Shop Supermarket Company LLC

THE STOP & SHOP SUPERMARKET
COMPANY LLC

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO.

Plaintiff,

Civil Action

v.

TOWNSHIP OF TEANECK; TOWNSHIP
COUNCIL OF THE TOWNSHIP OF
TEANECK; PLANNING BOARD OF THE
TOWNSHIP OF TEANECK; XYZ
CORPORATION 1-5; and JOHN DOES 1-5,

COMPLAINT
IN LIEU OF PREROGATIVE WRITS

Defendants.

Plaintiff, The Stop & Shop Supermarket Company LLC (hereinafter “Plaintiff” or “Stop & Shop”), a limited liability company organized and existing under the laws of the State of Delaware, having its principal offices at 1385 Hancock Street, Quincy, Massachusetts, 02169, by way of Complaint in Lieu of Prerogative Writs, alleges and says:

GENERAL ALLEGATIONS

Nature of Action

1. This is an action in lieu of prerogative writs by which Plaintiff seeks an order (i) declaring Resolution Nos. 87-2021 and 88-2021, adopted by the Township Council of the Township of Teaneck on April 13, 2021, improper, invalid, unlawful, arbitrary, capricious, null and void, and of no force or effect; and (ii) vacating the finding that the properties listed in

Resolution No. 87-2021 are a “non-condemnation area in need of redevelopment” pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (“LRHL”).

The Parties

2. Plaintiff, Stop & Shop, is a Delaware limited liability company having its principal offices at 1385 Hancock Street, Quincy, Massachusetts, 02169, and is the fee owner of certain real property located at Block 707, Lots 3 & 4 in the Township of Teaneck, which is among the properties purportedly designated by Resolution No. 87-2021 as a “non-condemnation area in need of redevelopment”

3. Defendant, Township of Teaneck (“Township”), having its principal place of business at 818 Teaneck Road, Teaneck, New Jersey, is a municipality organized under the laws of the State of New Jersey.

4. Defendant, Township Council of the Township of Teaneck (“Township Council”), having its principal place of business at 818 Teaneck Road, Teaneck, New Jersey, constitutes the duly elected governing body of the Township.

5. Defendant, Planning Board of the Township of Teaneck (“Planning Board”), having its principal place of business at 818 Teaneck Road, Teaneck, New Jersey, is the duly created planning board of the Township pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 to -163.

6. Defendant XYZ Corporation is a fictitious name representing one or more public and/or private corporations that are associated with or are acting in concert with defendants in connection with the allegations contained herein, and whose identities are presently unknown to Plaintiff.

7. Defendant John Doe is a fictitious name representing one or more persons who are associated with or are acting in concert with defendants in connection with the allegations contained herein, and whose identities are presently unknown to Plaintiff.

BACKGROUND

8. The Township Council, on or about September 22, 2020, adopted Resolution No. 203-2020 by which it authorized Phillips Preiss Grygiel Leheny Hughes LLC, Planning and Real Estate Consultants, to undertake professional planning services in connection with the potential redevelopment of certain properties located along American Legion Drive within the Township, including assisting the Planning Board in conducting an investigation concerning whether the area is an area in need of redevelopment.

9. The Planning Board undertook a preliminary investigation concerning whether the areas commonly known as the American Legion Drive Parking Lot and 719, 713, 699, 689 and 665 American Legion Drive, being also known and designated as Block 705, Lot 4.01, and Block 707, Lots 1-5, as shown on the Tax Map of the Township of Teaneck, bordered by Water Street, Alma Terrace, American Legion Drive and North Street, should be designated as a “non-condemnation area in need of redevelopment” in accordance with the criteria set forth in N.J.S.A. 40A:12A-5 (the “Proposed Redevelopment Area”). A true copy of a map designated as Figure 2 in said preliminary investigation depicting the Proposed Redevelopment Area is annexed hereto as Exhibit A.

10. Block 705, Lot 4.01, is owned by the Township and is improved with a surface parking lot operated by the Township (the “Municipal Parking Lot”).

11. Block 707, Lot 1 (“Lot 1”), located on American Legion Drive at the corner of Water Street, opposite the Municipal Parking Lot, is owned by 713-719 Teaneck LLC, and is leased to Soka Gakkai International-USA (“SGI”) or its affiliate.

12. Block 707, Lot 2 (“Lot 2”), also located on American Legion Drive opposite the Municipal Parking Lot, south of Lot 1, is owned by 719 Teaneck LLC, and also is leased to SGI.

13. SGI operates a Buddhist center in the existing building on Lot 2, which is served by parking located on adjacent Lot 1.

14. Block 707, Lots 3 and 4 (“Lots 3 & 4”), also located on American Legion Drive opposite the Municipal Parking Lot, south of Lot 2, are owned by Plaintiff, and are improved with parking to serve Plaintiff’s adjacent supermarket.

15. Block 707, Lot 5 (“Lot 5”), also located on American Legion Drive opposite the Municipal Parking Lot, and mostly behind (east of) Lots 1 through 4, is owned by NNN Teaneck NJ and leased to Plaintiff under a long-term lease.

16. Lot 5 is improved with a supermarket which was constructed in the 1990s and operated initially as an Edwards Super Market, and later, since approximately 2000, as a Stop & Shop.

17. Upon taking over operation of the supermarket from Edwards and rebranding it as a Stop & Shop, Stop & Shop sought to improve the customer shopping experience, and in addition to making improvements to the store itself, also sought to provide additional, more convenient parking, since the parking lot on Lot 5, although compliant with zoning requirements, was (and remains) long and narrow, with some parking spaces located a significant distance from the store entrance.

18. To provide more convenient parking, Stop & Shop, through the affiliated entity Teaneck R.E. Partners, LLC, acquired Lots 3 & 4 in 2001, in fee, at a cost of over \$1 million; obtained site plan approval from the Planning Board; and developed additional parking to serve the supermarket on Lot 5.

19. Lots 3 & 4, and the parking lot on Lot 5, function as a single, unobstructed parking lot which serves the supermarket on Lot 5.

20. Having made the substantial investment to develop more convenient parking on Lots 3 & 4 to better serve its customers, Stop & Shop has diligently taken steps to ensure the continued availability of that parking for customers.

21. In 2004, when Popcorn Indiana, a specialty retailer which sold different varieties of popcorn and also held children's birthday parties, filed an application with the Planning Board to occupy Lot 2, Stop & Shop objected to the application due to concerns that Popcorn Indiana's customers would use Stop & Shop's newly constructed parking on Lots 3 & 4. After multiple hearings, the application was approved over Stop & Shop's objection. Popcorn Indiana operated for a period of time, and eventually closed.

22. In 2015, when SGI filed an application for a use variance and site plan approval to occupy Lot 2 as a Buddhist center with associated parking on Lot 1, Stop & Shop was concerned that the Buddhist center would attract large numbers of people for worship services and other events, and that some of them would park on Lots 3 & 4. Ultimately, Stop & Shop reached an agreement with SGI that requires SGI to take certain actions to ensure its visitors do not use Stop & Shop's parking, and in return, Stop & Shop did not object to its application for development.

Preliminary Investigation

23. The investigation authorized by Resolution No. 203-2020 was conducted by or under the direction of Richard Preiss, P.P., a principal of the firm Phillips Preiss Grygiel Leheny Hughes LLC.

24. The investigation produced a report by Mr. Preiss titled "Area in Need of Redevelopment Investigation for Block 705 Lot 4.01 & Block 707 Lots 1-5" (the "Preliminary Investigation"), dated February 2, 2021.

25. The Preliminary Investigation included in the Planning Board's agenda packet for the meeting on March 25, 2021, at which the public hearing was conducted, was labeled "draft" and was not signed and sealed as required by N.J.A.C. 13:41-1.2.

26. Mr. Preiss testified at the public hearing that the draft document was the basis for the public hearing.

27. The Preliminary Investigation concluded that the Municipal Parking Lot (Lot 4.01), as well as the Stop & Shop supermarket and its associated parking (Lots 3, 4 & 5), satisfied LRHL criteria "d." as set forth in N.J.S.A. 40A:12A-5.d., and recommended that the Township Council designate them as in need of redevelopment.

28. The Preliminary Investigation acknowledged that the Buddhist center (Lots 1 & 2), did not meet any of the LRHL criteria set forth in N.J.S.A. 40A:12A-5.d., but nevertheless recommended that they be included within the redevelopment area based on N.J.S.A. 40A:12A-3, which provides that "[a] redevelopment area may include lands, buildings, or improvements which of themselves are not detrimental to the public health, safety or welfare, but the inclusion of which is found necessary, with or without change in their condition, for the effective redevelopment of the area of which they are a part."

Municipal Parking Lot (Block 705, Lot 4.01)

29. The Municipal Parking Lot is a permitted use under current zoning laws.

30. The Preliminary Investigation focused on the Municipal Parking Lot's configuration, striping and minimal landscaping or other design elements, to conclude that its current conditions "represent an obsolete parking solution."

31. The Preliminary Investigation asserts that a municipally owned property currently operating as a parking lot – consistent with present zoning – is inconsistent with the Master Plan and, therefore, detrimental to future development and to the morals and welfare of the community.

32. The Preliminary Investigation thus concludes that the Municipal Parking Lot is obsolete based solely on the parking lot's striping pattern, lack of landscaping and screening, and the future interests of the Township to instead encourage structured parking.

Stop & Shop (Lots 3, 4, & 5)

33. The Preliminary Investigation's conclusions with respect to Lot 5 (containing the supermarket) substantially relied on a "Store Analysis" prepared by Robert R. Volosin, the Chief Executive Officer of Supermarket Consulting Group, LLC, dated January 29, 2021.

34. The Store Analysis resulted from inspections of the supermarket in October and December 2020 "to evaluate the store conditions, and to review the Facility in terms of 'Today's Industry Standards,' to ascertain whether or not a significant investment in the Facility was required, and whether or not that investment would generate sufficient returns to warrant the capital infusion."

35. The Store Analysis described the present condition of the supermarket, documented what it concluded were examples of deferred major renovation and deferred significant capital investment, and set forth what it claimed were the costs of upgrades to mechanical systems, fixtures and equipment, as well as the cost of completely renovating and modernizing the entire supermarket.

36. These conclusions do not demonstrate any present condition at the supermarket that conflicts with the Master Plan, or are in any way detrimental to the safety, health, morals, or welfare of the community.

37. Mr. Volosin's expertise in store design and maintenance were very generally stated, with no specifics that qualify him to give the opinions presented, thereby rendering them net opinions.

38. The Store Analysis asserts that the supermarket building features outdated design and dilapidated utilities, that the store has an unusual layout, and that it utilizes outdated and dilapidated mechanical and utility systems; however, there is little photo evidence or descriptions presented concerning specific deficiencies with mechanical systems, and many of the items cited are cosmetic in nature or can be easily addressed (for example, water damage, rust, leaking freezer cases, etc.) and do not support a finding that the entire store is dilapidated or obsolete.

39. Similarly, the conclusions of the Store Analysis are stated without foundation or adequate support (concerning, by way of example but not limitation, utility consumption and carbon footprint).

40. The Store Analysis references "typical" costs but the analysis is speculative, generalized and not specifically tailored for this store, and is irrelevant to the statutory criteria established by the LRHL. By way of example and not limitation, the Store Analysis contends that the placement of the mechanical equipment would be different on a newer or retrofitted store, and potentially more economically efficient, but failed to address how it is actually positioned in this specific store and failed to provide an estimate of what the retrofit would cost in this specific store.

41. The Store Analysis also makes generalized and unsupported conclusions when discussing the costs of upgrades/renovations versus the costs of constructing an entirely new store of an unspecified size, providing a ballpark estimate without explanation as to its derivation rather than a cost breakdown specific to this store, and without reference to how any of that is relevant to the statutory criteria or is detrimental to the safety, health, morals, or welfare of the community.

42. A number of the alleged deficiencies are asserted as negatively impacting profitably, but this too is generalized and there are no specific conclusions about the profitability of this store and how these conditions do, or do not, impact profitability.

43. The primary focus of the Store Analysis is on profitability, which is not a criteria for designation as a “non-condemnation area in need of redevelopment.”

44. The analysis provided by Mr. Volosin in the Store Analysis failed to address with any specificity the operations of Stop & Shop, the operations of this store, and are based solely on industry experience, generalities and speculation.

45. The Store Analysis concludes that renovations and capital improvements have been deferred, but does not reference any investigation having been made to determine when renovations last occurred and whether any are anticipated.

46. The Store Analysis contains no evidence of any code violations.

47. The Store Analysis ignores that the supermarket is developed consistent with the municipal code, and failed to consider that any future redevelopment would be similarly limited by the configuration of the lot, such that even a new or “replacement” store at this location, while potentially more energy efficient, would still be constrained by the site configuration which precludes a typical prototype layout for a store of comparable size.

48. Moreover, Lot 5 was developed specifically for use as a supermarket, and was therefore deemed suitable for that use from an operational standpoint, was worth the initial investment to develop it, and was consistent with the municipal master plan and code.

49. The Store Analysis is a general report, providing an overview of market conditions and a description of the considerations that typically come into play in the development of a new store and as a supermarket ages, with little particularized data for this specific store.

50. Additionally, the Store Analysis relies on generally accepted accounting principles (commonly referred to as GAAP) for depreciation of frozen food cases as a justification supporting the conclusion that the supermarket is obsolete, but GAAP and depreciation are not relevant to the statutory criteria.

51. Stop & Shop had no notice of Mr. Volosin's inspections, did not consent to them, and disputes their alleged findings as well as the conclusions purportedly based on those findings.

52. Although the Preliminary Investigation references having "[h]eld conversations with representatives of the Township and the property owners to obtain additional information on the historical and existing uses of the properties in the Study Area," neither it nor the Store Analysis reflects any conversations with Stop & Shop regarding the operation of the supermarket, its present condition, and any future plan for improvements.

53. In fact, no such conversations occurred with Stop & Shop.

54. On or about February 11, 2021, the Planning Board conducted a remote public information session at one of its meetings, during which Mr. Preiss presented the Preliminary Investigation and responded to questions from members of the Planning Board.

55. Stop & Shop had no notice that the discussion of a redevelopment designation, and the findings and conclusions of the Preliminary Investigation, would be taken up at that meeting.

56. The Planning Board conducted a remote public hearing on March 25, 2021, during which the Planning Board considered the Preliminary Investigation and the testimony presented by Mr. Preiss in support thereof.

57. Mr. Preiss, noting that he had given a complete presentation at the February 11, 2021 public information session (which was not noticed as a public hearing), said that as a result he would keep his presentation at the public hearing brief.

58. In addition to summarizing the conclusions of the Preliminary Investigation, which was prepared by him or under his direction, he also purported to summarize the conclusions of the Store Analysis, which he did not prepare.

59. Mr. Volosin did not testify.

60. Mr. Preiss offered no evidence of having any expertise in supermarket design, operation or maintenance, instead relying on the conclusions by Mr. Volosin in the Store Analysis after conducting a walk-through of the supermarket on January 26, 2021 (three days *before* the Store Analysis was issued) to confirm that the physical conditions were as the Store Evaluation described them.

61. Since Mr. Preiss has no expertise regarding the matters described in the Store Analysis, any opinions he offered concerning the condition of the supermarket constitute net opinions.

62. Stop & Shop had no notice of Mr. Preiss' walk-thru, did not consent to it, and disputes his alleged findings as well as the conclusions purportedly based on those findings.

SGI Buddhist Center (Lots 1 & 2)

63. The Preliminary Investigation found that Lots 1 & 2 did not meet any of the LRHL criteria set forth in N.J.S.A. 40A:12A-5.d., but nevertheless recommended that they be designated as part of the redevelopment area because their inclusion is necessary for the effective redevelopment of the area of which they are a part.

64. Since the Municipal Parking Lot, and Lots 3, 4 & 5, do not satisfy the statutory criteria for designation, there is no basis for designation of Lots 1 & 2 since there would be no redevelopment area in which their inclusion could be necessary.

Designation of Redevelopment Area

65. During the public hearing, as well as at the earlier public information session, it was stated erroneously by Mr. Preiss and by members of the Planning Board that the Buddhist center (Lots 1 & 2), Stop & Shop (Lot 5), and its associated parking (Lots 3 & 4), are in common ownership.

66. At the conclusion of the public hearing, the Planning Board voted to recommend to the Township Council that it designate the Proposed Redevelopment Area as a “non-condemnation area in need of redevelopment.”

67. Following the vote, the Planning Board then adopted a resolution memorializing its recommendation. However, unlike the other resolution which was considered and voted upon that evening, the resolution concerning the redevelopment designation was not included in the agenda packet posted on the Township’s website for inspection by the public.

68. On or about April 13, 2021, the Township Council as part of its consent agenda, which is reserved for matters routine in nature, followed the Planning Board’s recommendation and adopted Resolution No. 87-2021, with no discussion, declaring and determining the Proposed Redevelopment Area to be a “non-condemnation area in need of redevelopment” (the “Redevelopment Area”). A true copy of Resolution No. 87-2021 is annexed hereto as Exhibit B.

69. The LRHL provides that “[n]otice of the determination shall be served, within 10 days after the determination, upon all record owners of property located within the delineated area....” N.J.S.A. 40A:12A-6.b.5(d).

70. Stop & Shop did not receive notice of the determination.

71. At its meeting on April 13, 2021, the Township Council by Resolution No 88-2021 authorized the firm Phillips Preiss Grygiel Leheny Hughes LLC to prepare a redevelopment plan.

72. Absent a valid designation as an “area in need of redevelopment,” the Township Council cannot adopt and the Township cannot enforce any redevelopment plan for the Redevelopment Area.

73. This complaint in lieu of prerogative writs challenging the designation of the Redevelopment Area as a “non-condemnation area in need of redevelopment” is timely filed, both on the basis of filing within 45 days of the determination on April 13, 2021, and within 45 days of receiving notice of the determination (which Stop & Shop has yet to receive).

COUNT ONE

The Redevelopment Area Does Not Meet the Criteria for Designation Pursuant to the LRHL

74. Plaintiff repeats each and every allegation contained above as if fully set forth at length herein.

75. N.J.S.A. 40A:12A-5 requires a governing body, after investigation, to conclude in a resolution that the area to be designated meets one or more of the criteria set forth in the statute.

76. The Preliminary Investigation failed to adequately analyze whether the Proposed Redevelopment Area met the statutory criteria in N.J.S.A. 40A:12A-5.

77. Due to its failings, the Preliminary Investigation should not have been considered by the Township Council in making a determination concerning the Proposed Redevelopment Area.

78. The designation of the Redevelopment Area as a “non-condemnation area in need of redevelopment” was based on the Preliminary Investigation, which failed to demonstrate how each of the properties in question satisfied the statutory criteria of the LRHL on which it based its conclusions.

79. The Preliminary Investigation relied on criteria “d.” with respect to designation of the Municipal Parking Lot and Lots 3, 4 & 5.

80. Criteria “d.” authorizes designation of “[a]reas 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.” N.J.S.A. 40A:12A-5.d.

81. The Preliminary Investigation failed to inquire into numerous relevant considerations, including but not limited to the extent of compliance with zoning requirements, the duration of Stop & Shop’s lease on Lot 5 and the remaining lease extensions, the duration of SGI’s lease on Lots 1 & 2 and the remaining lease extensions, the number of persons employed in the Proposed Redevelopment Area, whether there have been any zoning code, fire code or building code violations in the Proposed Redevelopment Area, whether any construction permit applications have been filed or construction permits issued for improvements within the Proposed Redevelopment Area, whether property values are increasing or decreasing, and the extent of police and fire calls.

82. The Preliminary Investigation also failed to make adequate findings concerning how the conditions it relies upon “are detrimental to the safety, health, morals, or welfare of the community.”

83. Neither the Preliminary Investigation nor the Store Analysis proves how Stop & Shop’s allegedly “atypical” layout is detrimental to the safety, health, morals or welfare of the community, as required by criteria “d,” and neither the Planning Board nor the Township Council made any findings in this respect.

84. Nothing about the Municipal Parking Lot or the supermarket negatively impacts, or has been shown to impact, the “safety, health, morals or welfare of the community” notwithstanding the conclusory opinion in the Preliminary Investigation which lacks any basis in fact.

85. Obsolete conditions do not in and of themselves satisfy criteria “d.” without a showing of how those specific conditions are detrimental to the safety, health, morals or welfare of the community as required by criteria “d.”

86. Each of the lots found to meet criteria “d.” (Municipal Parking Lot, and Lots 3, 4 & 5) are utilized in a manner consistent with its zoned purpose, and the two lots that do not meet criteria “d.” but are included in order to facilitate redevelopment of the area, are being used contrary to their zoned purpose for a Buddhist center pursuant to a use variance.

87. Resolution No. 87-2021 contains critical errors and omissions.

88. Resolution No. 87-2021 states that the Township Council considered the Preliminary Investigation, yet the Preliminary Investigation is not included in the Township Council’s agenda packet for the April 13, 2021 meeting¹ at which the Redevelopment Area was designated.

89. The adoption of Resolution No. 87-2021 violated N.J.S.A. 40A:12A-5.

90. Accordingly, Resolution No. 87-2021 must be declared null and of no effect and the designation of the Redevelopment Area as a “non-condemnation area in need of redevelopment” must be rescinded.

WHEREFORE, Stop & Shop demands judgment against Defendants as follows:

- A. Declaring Resolution No. 87-2021 arbitrary, capricious, unreasonable, invalid, illegal, null, void and of no force or effect;

¹ Available at <http://teanectownnj.ig2.com/Citizens/FileOpen.aspx?Type=1&ID=1611&Inline=True>.

- B. Rescinding the designation of the Redevelopment Area as a “non-condemnation area in need of redevelopment;”
- C. Enjoining Defendants from applying or enforcing Resolution No. 87-2021;
- D. Enjoining Defendants from adopting or enforcing a redevelopment plan;
- E. Awarding attorney fees and costs of suit to Plaintiff; and
- F. Awarding such further relief as the Court deems just and proper.

COUNT TWO

**The Planning Board’s Recommendation, and Township Council Resolution No. 87-2021,
Were Arbitrary, Capricious, and Unreasonable and Must Be Rescinded**

91. Plaintiff repeats each and every allegation contained above as if fully set forth at length herein.

92. The Planning Board failed to follow the proper statutory procedures for designating the Proposed Redevelopment Area as a “non-condemnation area in need of redevelopment.”

93. The Township Council failed to follow the proper statutory procedures for designating the Proposed Redevelopment Area as a “non-condemnation area in need of redevelopment.”

94. The Planning Board relied on the Preliminary Investigation, which was inadequate and failed to meet the statutory requirements for such a study, and made conclusions that are unsupported by substantial evidence in the record.

95. The Township Council relied on the Preliminary Investigation, which was inadequate and failed to meet the statutory requirements for such a study, and made conclusions that are unsupported by substantial evidence in the record.

96. The adoption by the Planning Board of its recommendation to designate the Proposed Redevelopment Area as a “non-condemnation area in need of redevelopment” was arbitrary, capricious and unreasonable.

97. The adoption by the Township Council of Resolution No. 87-2021 declaring and determining the Proposed Redevelopment Area to be a “non-condemnation area in need of redevelopment” was arbitrary, capricious and unreasonable.

98. The purported goals of facilitating construction of a parking structure and residential development could be achieved with a simple rezoning of the Municipal Parking Lot, without the need for a redevelopment designation.

99. The Preliminary Investigation relied substantially on the Store Analysis, which itself was flawed, incomplete, inaccurate and a net opinion.

100. The Preliminary Investigation and the Store Analysis contain critical errors and omissions.

101. The Planning Board failed to discuss and weigh adequately the reasons for recommending that the Proposed Redevelopment Area is or should be declared to be a “non-condemnation area in need of redevelopment.”

102. The Township Council failed to discuss and weigh adequately the reasons for determining that the Proposed Redevelopment Area is or should be declared to be a “non-condemnation area in need of redevelopment.”

103. Therefore, for all the reasons enumerated throughout this Complaint, the adoption by the Planning Board of its recommendation, and the adoption by the Township Council of Resolution No. 87-2021, was arbitrary, capricious, and unreasonable.

104.As such, the Planning Board’s recommendation and the Township Council’s Resolution No. 87-2021 must be declared null and void and of no further force and effect.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- A. Declaring the Planning Board’s recommendation and the Township Council’s Resolution No. 87-2021 arbitrary, capricious, unreasonable, invalid, illegal, null, void and of no force or effect;
- B. Rescinding the designation of the Redevelopment Area as a “non-condemnation area in need of redevelopment;”
- C. Enjoining Defendants from applying or enforcing Resolution No. 87-2021;
- D. Awarding attorney fees and costs of suit to Plaintiff; and
- E. Awarding such further relief as the Court deems just and proper.

COUNT THREE

Designation of the Redevelopment Area Is Invalid Due To Conflict Of Interest

105.Stop & Shop repeats each and every allegation contained above as if fully set forth at length herein.

Conflict Arising from Store Analysis

106.Resolution No. 203-2020 provides that the cost of conducting the Preliminary Investigation is “to be paid through escrows posted by the proposed redeveloper.”

107.The Contract for Planning Services between Phillips Preiss Grygiel Leheny Hughes LLC and the Township of Teaneck, relating to the Preliminary Investigation and authorized by Resolution No. 203-2020, provides that “[t]his contract is subject to the posting of a cash escrow in an amount sufficient to pay for the cost thereof.”

108. Resolution No. 88-2021 provides that the cost of preparing the redevelopment plan is “to be paid through escrows posted by the proposed redeveloper.”

109. The initial Contract for Planning Services contemplated preparation of a redevelopment agreement, if authorized by the Township, and therefore preparation of the redevelopment plan is similarly subject to the posting of a cash escrow by the proposed redeveloper.

110. On information and belief, the proposed redeveloper is Crossroads Companies of Mahwah, New Jersey (“Crossroads”).

111. On information and belief, Crossroads proposes a redevelopment project which anticipates (i) redevelopment of the Municipal Parking Lot on Lot 4.01 with a parking deck surrounded by a four-story residential building, (ii) relocation of American Legion Drive to the east, so as to occupy much of Lots 1 & 2 (owned by affiliates of Crossroads) and Lots 3 & 4 (owned by Stop & Shop); (iii) reconfiguration of the remainder of Lots 1-4, as well as the western portion of Lot 5, to provide replacement parking for the supermarket, which is less convenient than the parking which Stop & Shop developed and currently exists on Lots 3 & 4; (iv) construction of a traffic circle where American Legion Drive intersects with Water Street; and (v) development of commercial uses, a 6-story residential building and associated parking on the southerly portion of Lot 5, which would be subdivided off from the supermarket parcel.

112. The project which Crossroads proposes would involve eliminating much of the parking on Lots 3 & 4 which Stop & Shop developed in the early 2000s, at substantial expense, and has diligently sought to keep available for the convenience of its customers ever since.

113. Township Council Resolution No. 203-2020, authorizing Phillips Preiss Grygiel Leheny Hughes LLC to conduct the Preliminary Investigation, does not authorize the Store Analysis or any other study or analysis.

114. The Contract for Planning Services between Phillips Preiss Grygiel Leheny Hughes LLC and the Township similarly does not authorize the Store Analysis or any other study or analysis.

115. On information and belief, no official action of the Township Council authorizes or funds the Store Analysis.

116. The Store Analysis was commissioned by Phillips Preiss Grygiel Leheny Hughes LLC, the owner's consultant, under the mistaken belief that all of the properties within the Proposed Redevelopment Area, other than the Municipal Parking Lot, were owned by a common owner.

117. The owners of Lots 1 & 2 (713-719 Teaneck LLC and 719 Teaneck LLC, respectively) are affiliates of Crossroads, as indicated both by a page titled CROSSROADS TEANECK, 713-719 AMERICAN LEGION DRIVE, TEANECK, NJ on Crossroads' website (<https://crossroads-companies.com/properties/713-719-american-legion-drive/>), and by the fact that tax records show the mailing address for the owners of Lots 1 & 2 to be the same as the mailing address for Crossroads as shown on its website (<https://crossroads-companies.com/contact/>), i.e., 20 Ridge Road, Mahwah, New Jersey.

118. The recommendations of the Preliminary Investigation, concerning whether or not the Proposed Redevelopment Area should be designated as a "non-condemnation area in need of redevelopment," were the sole basis for the Planning Board's recommendation and the Township Council's determination.

119.This arrangement creates, at minimum, an appearance of impropriety because the proposed redeveloper is the sole source of funding for the study which is the determinative factor in whether or not a redevelopment designation occurs, and hence, whether there is a project for the redeveloper to build.

120.That study – the Preliminary Investigation – relies substantially on the conclusions of the Store Analysis written by Robert S. Volosin, Chief Executive Officer of The Supermarket Consulting Group, LLC.

121.During the public hearing, Mr. Preiss described Mr. Volosin as the owner’s consultant.

122.The Store Analysis presents a description of his experience in the supermarket industry, beginning as a cart boy at age 16 and subsequently advancing over a 40 year period into various corporate and executive positions at Pathmark, Wakefern Food Corporation and A&P Supermarkets, presumably in an effort to establish his qualifications for the opinions presented in the Store Analysis.

123.Despite this comprehensive discussion of his background and qualifications, Mr. Volosin neglected to mention in the Store Analysis that he is also the Executive Vice President, Retail Development, for Crossroads, the proposed redeveloper.

124.The opinions presented by Mr. Volosin in the Store Analysis were relied upon substantially by Mr. Preiss, both in the Preliminary Investigation and in his testimony, neither of which disclosed Mr. Volosin’s senior position with Crossroads.

125.This arrangement goes well beyond an appearance of impropriety, rising to the level of an actual and material conflict of interest, because the author of the Store Analysis, which was the basis for the conclusions of the Preliminary Investigation, which in turn was the basis for the Planning Board’s recommendation and the Township Council’s determination, is a senior

executive employed by Crossroads — which is both the proposed redeveloper and an affiliate of the owner of two of the five privately-owned lots within the Proposed Redevelopment Area — and would benefit financially from a Store Analysis which supported a conclusion that the redevelopment criteria were met.

126. Thus, the proposed redeveloper not only funded the Preliminary Investigation, but its senior executive wrote the report on which the Preliminary Investigation's conclusions and recommendations were based.

127. None of these facts were disclosed on the record during proceedings concerning the “non-condemnation area in need of redevelopment” before the Planning Board or the Township Council.

128. The entirety of both proceedings was tainted by the Store Analysis and Mr. Volosin's involvement.

Conflict Arising from Participation by Planning Board Member Rose

129. During the public information session on February 11, 2021, Planning Board member Howard Rose actively participated in the discussion concerning the Proposed Redevelopment Area.

130. Mr. Rose asked questions and made comments concerning the possibility of expanding the Proposed Redevelopment Area to include lands along Cedar Lane.

131. During the remote public hearing on March 25, 2021, Mr. Rose again actively participated, and again asked questions and made comments concerning the possibility of expanding the Proposed Redevelopment Area to encompass the area immediately north of the Municipal Parking Lot, bounded by American Legion Drive, Alma Terrace, Chestnut Avenue and Cedar Lane.

132.A discussion then ensued in which it was disclosed, for the first time, that Mr. Rose has an interest in property within the area of a potential expansion.

133.The property in which Mr. Rose holds an interest is within 200 feet of the Proposed Redevelopment Area.

134.Mr. Rose therefore had a conflict of interest and, acknowledging that fact, reluctantly recused himself midway through the public hearing.

135.Despite his recusal, Mr. Rose not only remained in the virtual meeting, but sought to participate, until he was muted by the Chair.

136.The proceedings by the Planning Board as well as the Planning Board's recommendation in support of designating the Proposed Redevelopment Area as a "non-condemnation area in need of redevelopment" were tainted due to Mr. Rose's active participation both in the public information session (at which the more extensive presentation by Mr. Preiss occurred) without disclosing the conflict of interest and without recusing himself, and in the public hearing from which he belatedly recused himself and sought to continue to participate even after his recusal.

137.Therefore, the Planning Board's recommendation and the Township Council's Resolution No. 87-2021 must be declared null and void and of no force or effect.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- A. Declaring the Planning Board's recommendation and the Township Council's Resolution No. 87-2021 arbitrary, capricious, unreasonable, invalid, illegal, null, void and of no force or effect;
- B. Rescinding the designation of the Redevelopment Area as a "non-condemnation area in need of redevelopment;"

- C. Enjoining Defendants from applying or enforcing Resolution No. 87-2021;
- D. Awarding attorney fees and costs of suit to Plaintiff; and
- E. Awarding such further relief as the Court deems just and proper.

COUNT FOUR

Designation of the Redevelopment Area Is Invalid Due To Procedural Deficiencies

138. Stop & Shop repeats each and every allegation contained above as if fully set forth at length herein.

139. The Planning Board failed fully or adequately to comply with the requirements of, and to take all steps required by, the LRHL for designation of a “non-condemnation area in need of redevelopment” as set forth in N.J.S.A. 40A:12A-6.

140. The Planning Board failed fully or adequately to comply with the requirements of the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.

141. The Planning Board failed fully or adequately to comply with the requirements for conducting remote meetings and remote public hearings, including but not limited to the Emergency Remote Meeting Protocol for Local Public Bodies, N.J.A.C. 5:39-1.1 et seq.

142. The Planning Board failed fully or adequately to comply with the requirements of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., including but not limited to requirements for conducting meetings and for making recommendations on matters referred to it.

143. The Township Council failed fully or adequately to comply with the requirements of, and to take all steps required by, the LRHL for designation of a “non-condemnation area in need of redevelopment” as set forth in N.J.S.A. 40A:12A-6.

144. The Township Council failed fully or adequately to comply with the requirements of the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.

145. The Township Council failed fully or adequately to comply with the requirements for conducting remote meetings and remote public hearings, including but not limited to the Emergency Remote Meeting Protocol for Local Public Bodies, N.J.A.C. 5:39-1.1 et seq.

146. By failing to comply with the aforesaid requirements, the Planning Board's recommendation to designate the Proposed Redevelopment Area as a "non-condemnation area in need of redevelopment" was an *ultra vires* act.

147. By failing to comply with the aforesaid requirements, the Township Council's adoption of Resolution Nos. 87-2021 and 88-2021 were *ultra vires* acts.

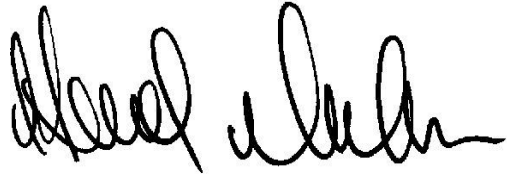
148. Accordingly, Resolution Nos. 87-2021 and 88-2021 must be declared null and of no effect and the designation of the Redevelopment Area as a "non-condemnation area in need of redevelopment" must be rescinded.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- A. Declaring the Planning Board's recommendation and the Township Council's Resolution Nos. 87-2021 and 88-2021 arbitrary, capricious, unreasonable, invalid, illegal, null, void and of no force or effect;
- B. Rescinding the designation of the Redevelopment Area as a "non-condemnation area in need of redevelopment;"
- C. Enjoining Defendants from applying or enforcing Resolution Nos. 87-2021 and 88-2021;
- D. Enjoining Defendants from adopting or enforcing a redevelopment plan;
- E. Awarding attorney fees and costs of suit to Plaintiff; and

F. Awarding such further relief as the Court deems just and proper.

GIBBONS, P.C.
Attorneys for Plaintiff,
The Stop & Shop Supermarket Company LLC

By: 
Howard D. Geneslaw

Dated: May 28, 2021

CERTIFICATION PURSUANT TO R. 4:5-1

Pursuant to Rule 4:5-1, I hereby certify that, to the best of my knowledge, the above-captioned action is not the subject of any other action pending in any court or the subject of a pending arbitration proceeding, and that no other action or arbitration proceeding is contemplated by Plaintiff. I further certify that I know of no other non-parties who should be joined in this action pursuant to R. 4:28 or who are subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts at this time.

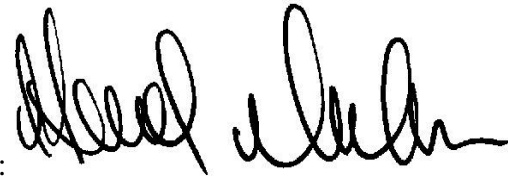
GIBBONS P.C.

One Gateway Center

Newark, New Jersey 07102

Attorneys for Plaintiff,

The Stop & Shop Supermarket Company LLC

By: 


Howard D. Geneslaw

Dated: May 28, 2021

TRIAL ATTORNEY DESIGNATION PURSUANT TO R. 4:5-1(c) AND R. 4:25-4

Pursuant to R. 4:5-1(c) and R. 4:25-4, the undersigned is hereby designated as trial counsel for Plaintiff in this matter.

GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
Attorneys for Plaintiff,
The Stop & Shop Supermarket Company LLC

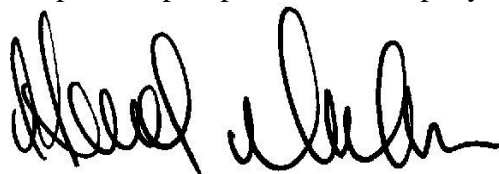
By: 
Howard D. Geneslaw

Dated: May 28, 2021

CERTIFICATION PURSUANT TO R. 4:69-4

Pursuant to Rule 4:69-4, I hereby certify that I ordered or caused to be ordered all necessary transcripts of local agency proceedings in this matter.

GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
Attorneys for Plaintiff,
The Stop & Shop Supermarket Company LLC

By: 
Howard D. Geneslaw

Dated: May 28, 2021

EXHIBIT A

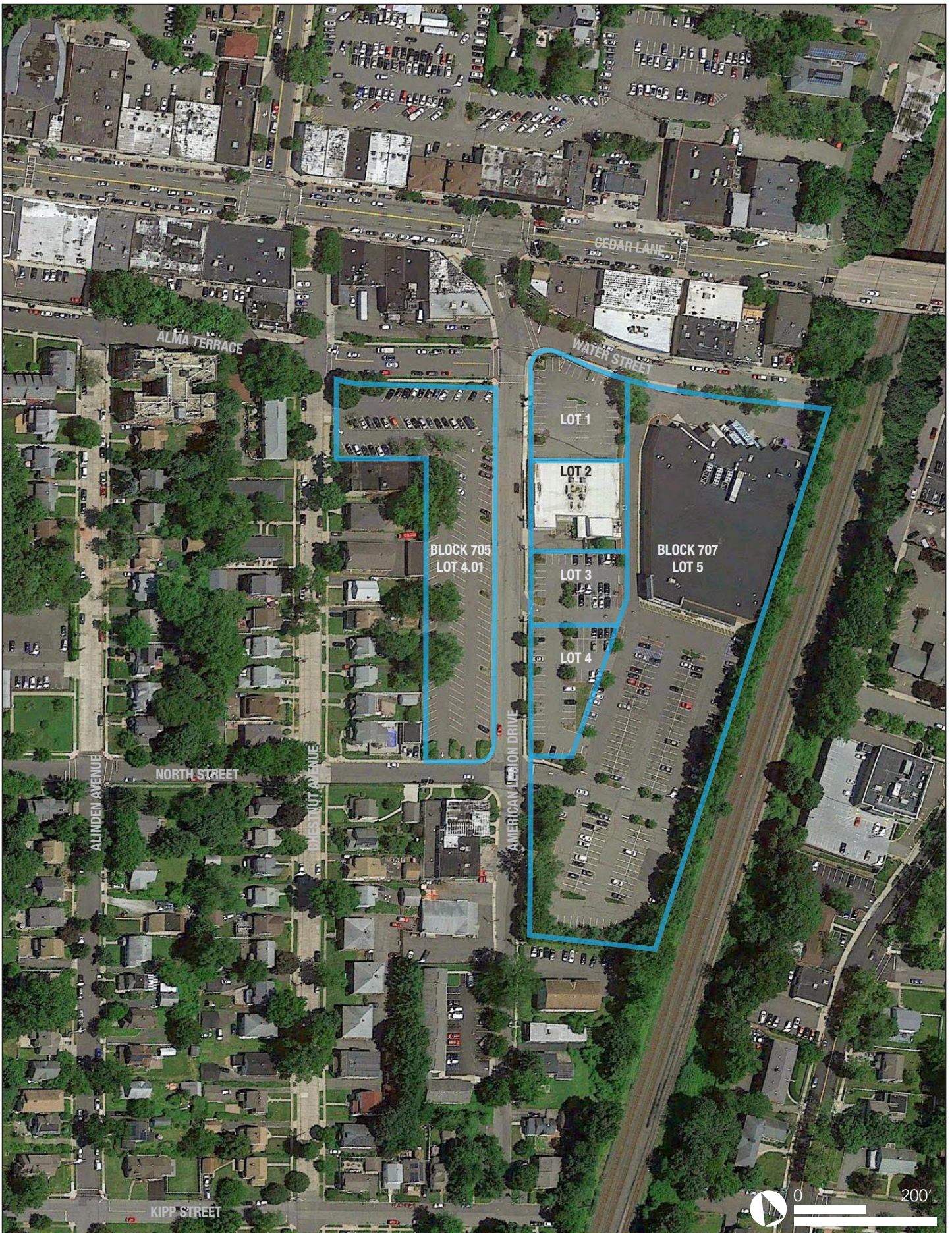


FIGURE 2: STUDY AREA AERIAL CONTEXT | AREA IN NEED OF REDEVELOPMENT INVESTIGATION FOR BLOCK 705, LOT 4.01 & BLOCK 707, LOTS 1-5 | TOWNSHIP OF TEANECK, NJ
PHILLIPS PREISS GRYGIEL LEHENY HUGHES LLC 2021
SOURCE: GOOGLE EARTH

EXHIBIT B



Township Council

c/o Township Clerk
Teaneck, NJ 07666

Meeting: 04/13/21 08:00 PM
Department: Township Clerk
Category: Designate
DOC ID: 6527

RESOLUTION 87-2021

DECLARING AND DETERMINING BLOCK 705, LOT 4.01 AND BLOCK 707, LOTS 1-5 AS A NON-CONDEMNATION AREA IN NEED OF REDEVELOPMENT

RESULT: ADOPTED BY CONSENT VOTE [6 TO 0]
MOVER: Mark J. Schwartz, Deputy Mayor
SECONDER: Michael S Pagan, Councilman
AYES: Schwartz, Orgen, Dunleavy, Rice, Kaplan, Pagan
ABSTAIN: Elie Y. Katz

TOWNSHIP OF TEANECK
BERGEN COUNTY, NJ

87-2021

**DECLARING AND DETERMINING BLOCK 705, LOT 4.01 AND BLOCK
707, LOTS 1-5 AS A NON-CONDEMNATION AREA IN NEED OF
REDEVELOPMENT**

WHEREAS, by Resolution No. 203-2020, adopted on September 22, 2020, the Township Council authorized Phillips Preiss Grygiel Leheny Hughes LLC, Planning and Real Estate Consultants, having their offices at 33-41 Newark Street, Third Floor, Suite D, Hoboken, N.J. 07030, to undertake professional planning services in connection with the potential redevelopment of properties located along American Legion Drive within the Township of Teaneck, including assisting the Planning Board in an investigation of whether the area is an area in need of redevelopment; and

WHEREAS, the Planning Board of the Township of Teaneck undertook a preliminary investigation as to whether the areas commonly known as the American Legion Drive Parking Lot and 719, 713, 699, 689 and 665 American Legion Drive, Teaneck N.J., being also known and designated as Block 705, Lot 4.01 and Block 707, Lots 1-5 as shown on the Tax Map of the Township of Teaneck, bordered by Water Street, Alma Terrace, American Legion Drive and North Street, should be designated as a non-condemnation area in need of redevelopment in accordance with the criteria set forth in N.J.S.A. 40A:12A-5; and

WHEREAS, a public hearing thereon was held by the Planning Board on March 25, 2021, following the publication of a notice, once each week for two consecutive weeks, the last publication being not less than 10 days prior to the date set for the hearing, in The Record, of the time, date and place of the hearing before the Planning

Board, setting forth the general boundaries of the area to be investigated, and stating that a map, showing the boundaries of the proposed redevelopment area and location of the parcels included therein, along with a statement setting forth the basis for the investigation, as well as any supporting documentation, in accordance with N.J.S.A. 40A:12A-6(b)(1), are on file and available for public inspection at the Office of the Township Clerk, during regular business hours; and

WHEREAS, at said hearing the Planning Board heard and considered the testimony and the Area in Need of Redevelopment Investigation Report for Block 705, Lot 4.01 and Block 707, Lots 1-5, dated February 2, 2021, prepared by Phillips Preiss Grygiel Leheny Hughes LLC, Planning and Real Estate Consultants; and

WHEREAS, following such hearing, the Planning Board voted to recommend to the Township Council the designation of premises commonly known as the American Legion Drive Parking Lot and 719, 713, 699, 689 and 665 American Legion Drive, Teaneck N.J., being also known and designated as Block 705, Lot 4.01 and Block 707, Lots 1-5 as shown on the Tax Map of the Township of Teaneck, bordered by Water Street, Alma Terrace, American Legion drive and North Street, as a non-condemnation area in need of redevelopment; and

WHEREAS the Township Council has considered the recommendations of the Planning Board, the Area in Need of Redevelopment Investigation Report dated February 2, 2021, prepared by Phillips Preiss Grygiel Leheny Hughes LLC, Planning and Real Estate Consultants, comments from the public hearing before the Planning Board and any written objections received;

NOW, THEREFORE BE IT RESOLVED by the Township Council of the Township of Teaneck, Bergen County, New Jersey, pursuant to N.J.S.A. 40A:12A-6 that

the Township Council hereby declares and determines that the premises commonly known as American Legion Drive Parking Lot and 699, 689 and 665 American Legion Drive, Teaneck N.J., being also known and designated as Block 705, Lot 4.01 and Block 707, Lots 3-5 as shown on the Tax Map of the Township of Teaneck, bordered by Water Street, Alma Terrace, American Legion drive and North Street, be designated as a Non-Condensation Area in Need of Redevelopment pursuant to the following criteria set forth in N.J.S.A. 40A:12A-5:

“d. Areas 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,”

and that the premises commonly known as 719 and 713 American Legion Drive, Teaneck, N.J., being also known and designated as Block 707, Lots 1-2 as shown on the Tax Map of the Township of Teaneck, be designated as a Non-Condensation Area in Need of Redevelopment pursuant to the following criteria set forth in N.J.S.A. 40A:12A-3

“A redevelopment area may include lands, buildings, or improvements which of themselves are not detrimental to the public health, safety or welfare, but the inclusion of which is found necessary, with or without change in their condition, for the effective redevelopment of the area of which they are a part.”

as more particularly set forth in the Area in Need of Redevelopment Investigation Report for Block 705, Lot 4.01 and Block 707, Lots 1-5, dated February 2, 2021, prepared by Phillips Preiss Grygiel Leheny Hughes LLC, Planning and Real Estate Consultants, and the recommendation of the Planning Board; and BE IT FURTHER

RESOLVED that the Township Clerk shall forthwith transmit a copy of the within Resolution to the Commissioner of Community Affairs for review; and BE IT FURTHER

RESOLVED that a copy of this resolution shall be placed on file in the Office of the Township Clerk and that the Township Clerk, within 10 days after the adoption hereof, shall serve a copy thereof upon the owner of each parcel of property within the area so designated according to the assessment records of the Township of Teaneck and to all persons at their last known address, if any, whose names are noted on the assessment records as claimants of an interest in any such parcels and to each person who filed a written objection thereto and stated, in or upon the written submission, an address to which notice of determination may be sent.

This is to certify that the above Resolution was adopted by the
Township Council on April 13, 2021

Doug Ruccione

Doug Ruccione
Township Clerk