

**RESOLUTION OF
THE PLANNING BOARD OF THE TOWNSHIP OF
MONTGOMERY, SOMERSET COUNTY, NEW JERSEY,
RECOMMENDING THAT THE REAL PROPERTY DESIGNATED AS BLOCK
28010, LOTS 57 58, 59, 60.01, 61, 62 AND 64 ON THE TAX MAP OF
MONTGOMERY, AND GENERALLY LOCATED WITHIN THE VICINITY OF
THE INTERSECTION OF STATE HIGHWAY ROUTE 206 AND COUNTY
ROUTE 518 SHOULD BE DECLARED A CONDEMNATION
REDEVELOPMENT AREA PURSUANT TO N.J.S.A. 40A:12A-1, ET SEQ.**

WHEREAS, the Township Committee of the Township of Montgomery, by Resolution #21-6-151 adopted on June 17, 2021, directed the Planning Board to undertake a preliminary investigation to determine whether the property designated as Block 28010 (Formerly 28005) Lots 57, 58, 59, 60.01, 61, 62 and 64; Block 29002 Lots 46, 46.01, 47, 48, 49 and 50; Block 34001 Lots 46.01, 56, 77, 78, 79 and 80 and Block 35005 Lots 1, 2, 3, 4, 5 and 9 (the “Study Area”) constitutes and shall be established as a “Condemnation Redevelopment Area” pursuant to the criteria set forth in in N.J.S.A. 40A:12A- 1 et. seq.; and

WHEREAS, the Montgomery Township Planning Board on July 19, 2021, authorized and directed its planning consultant, Clarke Caton Hintz, to undertake a preliminary investigation to determine whether the Study Area should be declared a condemnation redevelopment area pursuant to N.J.S.A. 40A:12A-1, et seq.; and

WHEREAS, because the preparation of the preliminary investigation report is a resource intensive process that requires extensive data gathering and comprehensive analysis and in light of the number of properties in the Study Area, the Planning Board by Resolution dated January 24, 2022, adopted the recommendation of its Planning Director and Board Planner that the preliminary investigation of the Study Area be prepared in phases, with Phase I to consist of the properties known as Block 29002 Lots 49 and 50 on the tax map of the Montgomery Township (the Phase 1 Properties), Phase II to consist of Block 28010 (Formerly 28005) Lots 57, 58, 59, 60.01, 61, 62 and 64; Block 29002 Lots 47 and 48 and Block 34001 Lots 46.01, 56, 77, 78, 79 and 80 (the Phase 2 Properties) and Phase III to consist of Block 35005, Lots 1,2,3,4,5 and 9 (the Phase 3 Properties); and

WHEREAS, Clarke Caton Hintz prepared a report entitled “Preliminary Investigation of an Area in Need of Redevelopment (Condemnation) for Phase 1 Gateway Redevelopment: Princeton Gamma-Tech Instruments, Inc.” dated February 2022 (the “Investigative Study Report for Phase I”); and

WHEREAS, on February 28, 2022, the Planning Board in accordance with notice and jurisdictional requirements conducted a public hearing at which the Board considered the

Investigative Study Report for Phase I which was presented by Emily Goldman, PP, AICP, Clarke Caton Hintz to determine whether to recommend that the Phase 1 properties should be established as a “Condemnation Redevelopment Area” pursuant to N.J.S.A. 40A: 12A- 1 et. seq; and

WHEREAS, the Investigative Study Report for Phase 1 concluded that the Phase 1 properties satisfied the criterion “b” and “d” of N.J.S.A. 40A: 12A- 5(b) and (d) due to conditions of deterioration, obsolescence, and disrepair of the structures on the site such that the building has been abandoned and the structures have been allowed to fall into such a state of disrepair as to be untenable, referencing a series of notices of violation issued by the Township Construction Office and Health Department regarding the Phase 1 Properties, a court order declaring the subject properties as abandoned pursuant to N.J.S.A. 55:19-81 and N.J.S.A. 54:5-86(h) and the Properties’ location within a remediated EPA Superfund site; and

WHEREAS, the Board considered public comment provided by the property owners and members of the public, as set forth in the record; and

WHEREAS, by Resolution adopted on March 14, 2022, the Planning Board recommended to the Township Committee that the Phase 1 properties be determined to have met the criteria for designation as Condemnation Area in Need of Redevelopment and adopted the recommendations set forth in the “Preliminary Investigation of an Area in Need of Redevelopment (Condemnation) for Phase 1 Gateway Redevelopment: Princeton Gamma-Tech Instruments, Inc.” dated February 2, 2022, prepared by Clarke Caton Hintz, with the exception the Board did not recommend that one of the factors referenced in the Investigative Study for Phase 1, specifically the inclusion of the Phase 1 properties in the Superfund site, be considered as satisfying the criterion “d” of N.J.S.A. 40A:12A-5 (d) in light of the EPA remediation but instead recommended that the significant dilapidation of the existing building and parking areas be considered as the basis for satisfaction of the “d” criterion.; and

WHEREAS, at public hearings on April 11, 2022, May 9, 2022, and July 11, 2022, in accordance with notice and jurisdictional requirements, the Board considered a “Preliminary Investigative Study of an Area in Need of Redevelopment (Condemnation) for Gateway Redevelopment: Phase 2” dated March 23, 2022 for the Phase 2 Properties prepared by Clarke Caton Hintz (the “Investigative Study Report for Phase 2”); and the “Preliminary Investigative Study of an Area in Need of Redevelopment for the Gateway Redevelopment Study Area: Phase 3” dated June 20, 2022 for the Phase 3 properties prepared by Clarke Caton Hintz (the“ Investigative Study Report for Phase 3”) along with the following testimony, exhibits and public comment:

(1.) Emily Goldman, PP, AICP of Clarke Caton Hintz presented the Investigative Study for Phase 2 along with an illustrative power point slide presentation which was entered into the record as Board Exhibits 1 and 2, respectively and the Land Use element of the municipal 2003 Master Plan, entered into the record as Exhibit 3. Ms. Goldman is a

licensed professional planner in the State of New Jersey and a member of the American Institute of Certified Planners. She advised that she has been accepted as an expert in land use planning by various land use boards in New Jersey and the Board agreed to so accept her.

Ms. Goldman explained the redevelopment process and redevelopment statutory criteria. She reviewed the current zoning of the Phase 2 properties noting that the majority of the Phase 2 Study Area is located within the Highway Commercial zoning district.

Ms. Goldman opined regarding the application of the statutory criteria to each of the properties as follows:

Block 28010, Lots 57 and 58 (Horowitz site)-meets the criteria for redevelopment area designation set forth in N.J.S.A. 40A:12A-5(h), and that it represents an integral component of the redevelopment, including a portion of a Master Plan roadway and the remaining tract area that it is planned to share utility and street infrastructure with the remainder of the Study Area;

Block 28010, Lot 59 (Thule) -meets the criteria for redevelopment area designation set forth in N.J.S.A. 40A:12A-5(b);

Block 28010, Lot 60.01 (Township site) -meets the criteria for redevelopment area designation set forth in N.J.S.A. 40A:12A-5(c);

Block 28010, Lots 61 and 62 (Tiger's Tale)-meets the criteria for redevelopment area designation set forth in N.J.S.A. 40A:12A-5(d);

Block 28010, Lot 64 (Former Texaco Gas Station)-meets the criteria for redevelopment area designation set forth in N.J.S.A. 40A:12A- 5(b);

Block 29002, Lot 47 (Billboard site)- meets the criteria for redevelopment area designation set forth in N.J.S.A. 40A:12A-5(d) and 5 (h);

Block 29002, Lot 48 (Wawa site)- meets the criteria for redevelopment area designation set forth in N.J.S.A. 40A:12A-5(h);

Block 34001, Lots 46.01, 56, 77, 78 and 79 (Montgomery Promenade)- meets the criteria for redevelopment area designation set forth in N.J.S.A. 40A:12A-5(c), 5 (d) and 5 (h);

Block 34001, Lot 80 (First Constitutional /Lakeland Bank)- meets the criteria for redevelopment area designation set forth in N.J.S.A. 40A:12A-5(h);

Ms. Goldman further advised that she also relied upon the criteria in N.J.S.A. 40A:12A-3 which permits the designation of areas where the properties are themselves not detrimental to the public health, safety and welfare but the inclusion of which is found necessary for the effective redevelopment of the area of which they are a part. Ms.

Goldman responded to Board questions and questions from objector's counsel and opined that the redevelopment process would facilitate better zoning and future economic development of the properties.

(2.) Peter Dawson, owner of Block 29002, Lot 47 (Billboard site) testified in opposition to the inclusion of this property in the area in need of redevelopment designation. He advised that he believes that the use of his property is not inconsistent with the current municipal zoning because a prior owner obtained variance relief for billboard use. Mr. Dawson further testified that the location of the property adjacent to Route 206 makes maintaining plants difficult and that he removes litter from the site monthly. He does not believe that inclusion of the site in a redevelopment area will be helpful to him.

(3.) Corey Wingerter testified that he is the principal owner of the Tiger's Tale restaurant (Block 28010, Lots 61 and 62) and indicated his support of inclusion of the site in the proposed redevelopment area.

(4.) Benjamin Wine, Esq. appeared on behalf of the contract purchaser of Block 28010, Lots 57, 58 and 59 (Horowitz and Thule sites) to express support of the inclusion of the sites in the proposed redevelopment area.

(5.) Joseph W. Grather, Esq. appeared on behalf of NM Property LLC, owner of Block 29002, Lot 48 (WaWa site), in opposition to the inclusion of the site in the redevelopment area. Mr. Grather argued that the Investigative Study for Phase 2 does not properly establish the necessary criteria for inclusion of the majority of the Phase 2 properties including inclusion of his client's site in the proposed redevelopment area. Mr. Grather also entered an appearance on behalf of the Montgomery Shopping Center.

(6.) Peter Steck, PP testified on behalf of NM Property LLC in opposition to inclusion of the site in the redevelopment area. Mr. Steck advised that he is a licensed professional planner in the State of New Jersey and has been accepted as an expert in land use planning by a number of land use boards in New Jersey. The Board agreed to so accept him.

Mr. Steck presented his planning evaluation dated May 9, 2022, which was entered into the record as Exhibit O-1. Mr. Steck opined that the Investigative Study Report for Phase 2 did not properly establish the necessary criteria for inclusion of Block 29002, Lots 47 and 48 (the Billboard and WaWa sites) nor for the other properties in the proposed redevelopment area. In particular, Mr. Steck challenged the use of the criterion "h" in the Phase 2 Study arguing that New Jersey has not yet adopted any law or regulation which adopts "smart growth planning principles" and that criterion "h" should not be considered to have a bearing on whether a property is blighted. In addition, Mr. Steck argued that Section 3 of the Local Redevelopment and Housing Law, NJSA 40A:12A-1 et seq. is misapplied in the Phase 2 Study Area because neither Lots 47 nor 48 are necessary for the development of the remaining properties in the proposed redevelopment area.

(7.) Michael Sullivan, PP, AICP of Clarke Caton Hintz presented the Investigative Study for Phase 3 which was entered into the record as Board Exhibit 4. Mr. Sullivan testified that he is a licensed professional planner in the State of New Jersey and a member of the American Institute of Certified Planners. He advised that he has been accepted as an expert in land use planning by numerous land use boards and the Board agreed to so accept him. In addition, Mr. Sullivan presented three Power Point slides entitled “Recommended Area in Need of Redevelopment”, “Summary of Investigation of Phases 1, 2, & 3”, and “Phase 3 Investigative Properties” all dated July 2022 which were entered into the record as Board Exhibit 5. Mr. Sullivan also reviewed a concept plan, upon which the Township’s Planned Mixed Use Development zoning district is based. The concept plan is an illustrative site plan overlain on a satellite photo of the entire PMUD overlay district, dated October 2017 which was entered into the record as Board Exhibit 6. This exhibit depicts a comprehensive redevelopment concept that embodies the principles of smart growth: mixing of multi-family residential and commercial uses, common access and infrastructure, open space and integrated pedestrian and vehicular circulation. Block 28010, Lots 57, 59, 60.01, 61, 62 and 64 of the Phase 2 Study Area properties are within the PMUD overlay and are depicted on the concept site plan.

Mr. Sullivan testified that the Phase 3 study area consists of approximately 34.5 acres located to the north and to the south of the intersection of NJSH Route 206 and County Route 518, on the east side of NJSH Route 206. Mr. Sullivan further testified that the properties consist of commercial, residential and public uses which are generally well-kept and in relatively good condition. Mr. Sullivan further testified the Montgomery Shopping Center and the Princeton North Shopping Center comprise the largest properties in the Phase 3 study area with a 95% occupancy rate. Based on the foregoing, Mr. Sullivan opined that that none of the Phase 3 properties satisfy the necessary criteria for inclusion on the proposed redevelopment area.

Mr. Sullivan further provided an integrative review of the entire Study Area in light of the investigation of the Phase 3 properties. Based on his conclusion that none of the Phase 3 properties satisfy the redevelopment statutory criteria, he opined that the following properties should be excluded from the proposed redevelopment area as follows:

Block 28010, Lot 47 (Billboard site) and Lot 48 (WaWa)- Mr. Sullivan opined that there is no current need to include these sites to facilitate redevelopment of the adjacent Montgomery Shopping Center given his recommendation to remove that site from the redevelopment area. In addition, he noted that the owner of the adjacent property, Block 29002, Lots 49 and 50 (Gamma Tech site) has not advised that it requires the WaWa site to facilitate the redevelopment of its site.

Block 34001, Lots 46.01, 56, 77, 78 and 79 (Montgomery Promenade site)-Mr. Sullivan opined that because the new owner of the site has applied for and received a new amended preliminary site plan approval, an extension of the NJ Department of Transportation permits and has filed for a final amended approval, inclusion in the redevelopment area is not necessary to facilitate development of the site.

Block 34001, Lot 80 (First Constitutional/ Lakeland Bank)-Mr. Sullivan opined that this site, which is adjacent to the Montgomery Promenade, would no longer be needed to facilitate redevelopment of the Promenade site in light of his recommendation to exclude the Promenade property from the redevelopment area.

In response to Board questions, Mr. Sullivan opined that the following properties should still be designated as areas in need of redevelopment in accordance with the criteria and analysis set forth in the Investigative Study for Phase 2:

Block 28010, Lots 57 and 58 (Horowitz site)-meets the criteria for redevelopment area designation set forth in N.J.S.A. 40A:12A-5(h), in that it is necessary for, and will facilitate fulfillment of, the implementation of the Planned Mixed Use Development overlay district, which is based on a comprehensive “smart growth” approach to redevelopment of this property along with lots 59, 60.01, 61, 62 and 64;

Block 28010, Lot 59 (Thule) -meets the criteria for redevelopment area designation set forth in N.J.S.A. 40A:12A-5(b);

Block 28010, Lot 60.01 (Township site) -meets the criteria for redevelopment area designation set forth in N.J.S.A. 40A:12A-5(c);

Block 28010, Lots 61 and 62 (Tiger’s Tale)-meets the criteria for redevelopment area designation set forth in N.J.S.A. 40A:12A-5(d);

Block 28010, Lot 64 (Former Texaco Gas Station)-meets the criteria for redevelopment area designation set forth in N.J.S.A. 40A:12A- 5(b); and

WHEREAS, based on the foregoing, the Board finds, as set forth in the Investigative Study for Phase 3, that none of the Phase 3 properties meet the criteria for designation as an area in need of redevelopment.

The Board further finds, based on the testimony and recommendation of its land use planner Michael Sullivan, PP, AICP, that as a result of the exclusion of the Phase 3 properties as areas in need of redevelopment, Block 28010, Lot 47 (Billboard site), Lot 48 (WaWa) and Block 34001, Lot 80 are no longer needed to facilitate redevelopment of adjacent properties.

The Board further finds that following sites continue to meet the criteria for a redevelopment designation in accordance with the Investigative Study for Phase 2 and the testimony of Emily Goldman, PP, AICP and Michael Sullivan, PP, AICP:

Block 28010, Lots 57 and 58 (Horowitz site)-meets the criteria for redevelopment area designation set forth in N.J.S.A. 40A:12A-5(h);

Block 28010, Lot 59 (Thule) -meets the criteria for redevelopment area designation set forth in N.J.S.A. 40A:12A-5(b);

Block 28010, Lot 60.01 (Township site) -meets the criteria for redevelopment area designation set forth in N.J.S.A. 40A:12A-5(c);

Block 28010, Lots 61 and 62 (Tiger's Tale)-meets the criteria for redevelopment area designation set forth in N.J.S.A. 40A:12A-5(d);

Block 28010, Lot 64 (Former Texaco Gas Station)-meets the criteria for redevelopment area designation set forth in N.J.S.A. 40A:12A- 5(b); and

NOW THEREFORE BE IT RESOLVED that the Montgomery Township Planning Board recommends to the Township Committee that the following properties be determined to have met the criteria for designation as Condemnation Area in Need of Redevelopment: Block 28010, Lots 57 and 58 (Horowitz site), Block 28010, Lot 59 (Thule) Block 28010, Lot 60.01 (Township site), Block 28010. Lots 61 and 62, and Block 28010, Lot 64 (former Texaco Gas Station) in addition to Block 29002, Lots 49 and 50 which was previously recommended by Planning Board resolution adopted on March 14, 2022.

ROLL CALL VOTE ON MOTION TO RECOMMEND THAT BLOCK 28010, LOTS 57 ,58, 59, 60.01, 61, 62 AND 64 ON THE TAX MAP OF MONTGOMERY SHOULD BE DECLARED A CONDEMNATION REDEVELOPMENT AREA PURSUANT TO N.J.S.A. 40A:12A-1, ET SEQ.

(July 11, 2022)

Moved by: Mr. Glockler

Seconded by: Mr. Mani

Those in Favor: Glockler, Hamilton, Keenan, Mani, Roberts, Schuldiner, Todd and Campeas

Those Opposed: None

Those Abstained: Blodgett

ROLL CALL VOTE ON MOTION TO APPROVE
RESOLUTION OF MEMORIALIZATION (August 22, 2022)

Moved by: Mr. Mani

Seconded by: Mr. Glockler

Those in Favor: Glockler, Hamilton, Keenan, Mani, Schuldiner and Campeas

The foregoing Resolution was adopted at a regular meeting of the Montgomery Township Planning Board on August 22, 2022.

A handwritten signature in cursive script, appearing to read "Lori Savron", written over a horizontal line.

Lori Savron, Secretary