



West Orange Resident Sues Township to Reverse Essex Green and Executive Drive Designation as Area in Need of Redevelopment

Township Decision Claimed to be Unreasonable, Arbitrary, and Capricious

WEST ORANGE, N.J. - FEBRUARY 26, 2018 -- A West Orange resident has filed a lawsuit against the Township of West Orange, N.J., and its Council and Planning Board, alleging that the recent decision to create a redevelopment area at the Essex Green Shopping Center and the adjacent Executive Drive Office Park was "unreasonable, arbitrary and capricious".

Filed February 14, 2018 in Essex County Superior Court, the lawsuit seeks to overturn the Township Council's January 9, 2018 decision to create the redevelopment area under the state Local Redevelopment and Housing Law (LRHL), a law that seeks to improve "blighted" areas that would not attract private investment without financial assistance or other aid from municipalities. The redevelopment proposal, pushed by the administration of Mayor Robert Parisi whose insurance business the lawsuit noted is a tenant at Executive Drive, is controversial because the redevelopment designation opens the way for the Township to provide tax abatements for up to thirty years to the Essex Green Shopping Center and the Executive Drive Offices that could be worth millions of dollars in reduced taxes to the owners of those properties and also permits the Township to appoint without public bidding a developer to build the project.

The lawsuit by Township resident Kevin Malanga alleges that the Essex Green Shopping Center, which was purchased for \$ 98,000,000 in 2016, and the Executive Drive Offices, which was purchased in 2017 for \$ 14,000,000, are valuable pieces of real estate that are not "blighted" as the redevelopment law requires.

Challenging the conclusions of a report required by the LRHL prepared by the Township, the lawsuit alleges that:

- There is no evidence that the use of the buildings was "discontinued," or that the buildings were "abandoned," or "untenantable" as the law requires since Essex Green's tenants presently include Shoprite, Loews AMC Dinner Theater movie theaters, TGI Friday's, Panera Bread, Macy's, Total Wines, Petco, and GNC Nutrition, and Executive Drive's tenants include the Department of Homeland Security, Geico Insurance, Lincoln Educational Services Corp, and Mayor Parisi's insurance business.

- There is no evidence that the condition of the properties "are detrimental to the safety, health, morals, or welfare of the community," as is required by the law, and

that the Township's report "makes absolutely no attempt" to explain whether this legal standard is met.

The suit alleges that "the 2018 Redevelopment Designation was the result of the administration of the Township wishing to serve the interests of private developers and not to address the conditions sought to be ameliorated by the LRHL."

The lawsuit alleges that the redevelopment designation fails to meet necessary legal requirements in other ways, including:

- The properties are not "blighted," a condition required by law, as reflected by the recent purchases of the two properties for more than \$112 million, as well as the high-value residential and commercial properties adjacent to the site.
- Before the redevelopment designation had been made by the Council, the Township administration had chosen the redeveloper for the Essex Green Shopping Center and the Executive Drive Offices, such choice having been made by the Township administration without any public requests for proposals, public bidding or public hearings.
- The Planning Board resolution recommending to the Council the creation of the redevelopment area failed to set forth specific evidence upon which its finding was based, as is required by law, and therefore was not based on "substantial evidence" as the law requires.
- Township Council members were deliberately prevented from participating in the redevelopment process by being given legal advice by the Township administration that they could not ask questions at the Planning Board hearings when the Township Planner, the author of the report, testified.
- Township Attorney Richard Trenk, who is described in the lawsuit as "advocating" for the redevelopment proposal, refused to allow the Township Planner to appear before the Township Council at its January 9, 2018 meeting. Mr. Trenk claimed that the law did not permit such an appearance, a position that the lawsuit alleges was based on "unsubstantiated legal reasoning." Consequently, the Township Council voted 4-1, Councilman Joe Krakoviak being the sole dissenting vote, to create the redevelopment area without the Council or the public being given the opportunity to question the Township employee whose report was basis of the redevelopment decision.
- The purported high vacancy rate at the Executive Drive offices was the result of the property owner's unwillingness to enter into any new leases. The lawsuit cites as evidence the testimony of a Township resident at the January 9, 2018 Council meeting who stated that he sought to lease at Executive Drive office space for his law practice but was told by more than one rental agent that the building owner was not executing new leases.

- Neither the Planning Board nor Council understood the basics of the redevelopment law, thus leading to their faulty decisions. The lawsuit alleges that at a Planning Board meeting Board Chairman Robert Bagoff disputed Mr. Malanga's contention that by law a redevelopment area is considered to be "blighted" despite Mr. Malanga having cited the New Jersey Supreme Court case of *62-64 Main Street v. City of Hackensack* that used the terms "blight" and "blighted" approximately 260 times.

The suit also alleges that two members of the Planning Board should have been recused from Planning Board deliberations to ensure an impartial hearing.

- In one case, recusal was necessary because of the close relationship between Township Attorney Richard Trenk and his son, Planning Board member Andrew Trenk, a college student who lives at home with his parents. The suit alleges that, "A close relationship is grounds for disqualification of a land use board member."
- In the other case, recusal was called for because Councilwoman and Planning Board member Susan McCartney on two occasions publicly declared that she had already decided, even before the Planning Board hearings had concluded, that Essex Green and Executive Drive qualified as an area in need of redevelopment.

The lawsuit alleges that Malanga introduced a motion of recusal at the December 6, 2017 Planning Board meeting, a request that was perfunctorily handled by Planning Board Chairman Robert Bagoff asking Trenk and McCartney if they believed they could act impartially.

The suit alleges that, "The recusal of A. Trenk and McCartney was necessary in order for an impartially constituted Planning Board to consider the proposed recommendation of Essex Green Shopping Center and the Executive Drive Offices as an area in need of redevelopment."

The lawsuit can be found here <http://bit.ly/2osaQlo>.

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About Our Green West Orange

Our Green West Orange is a community-based, resident-led organization focused on improving West Orange for its residents, businesses, and environment to make the Township a safer, greener, & more affordable place to live, work, visit, & shop. For more information, please visit www.OGWO.org.