

JOSEPH J. MARAZITI, JR.
DIANE ALEXANDER¹
BRAD CARNEY
ANDREW M. BREWER
JOANNE VOS
ALYSE LANDANO HUBBARD
HEATHER A. PIERCE
ROBERT MELLINGER
ALEXANDRA B. KNOTH
OF COUNSEL
CHRISTOPHER H. FALCON

¹ ALSO ADMITTED IN NY

MARAZITI
FALCON, LLP
ATTORNEYS AT LAW

240 CEDAR KNOLLS ROAD
SUITE 301
CEDAR KNOLLS, NEW JERSEY 07927

PHONE: (973) 912-9008
(973) 912-9007
www.mflaw.com

Direct Dial Number: (973) 912-6801
Via Email: jvos@mflaw.com

MEMORANDUM

To: Hon. Keith Cafferty, Mayor
Members of the Neptune Township Committee
Members of the Neptune Township Redevelopment Committee

From: Joanne Vos, Esq.

Date: December 1, 2023

Re: OG North End Development, LLC (“OGNED”)
Settlement Agreement and Amended and Restated Redevelopment Agreement

Background

The purpose of this Memorandum is to provide a summary of the major provisions of the proposed Settlement Agreement and Amended and Restated Redevelopment Agreement (“Agreement”) for the redevelopment of the real property located at 914-930 Monroe Street, designated as Block 1.01, Lots 3 and 4 and a portion of Lot 2 (“Project Site”) within the North End Redevelopment Area (“Redevelopment Area”). While the Redevelopment Area is located within the Ocean Grove Historic District to which the Historic District Design Guidelines (“Guidelines”) apply, ***it is subject to the North End Redevelopment Plan (“Redevelopment Plan”) pursuant to the Local Redevelopment & Housing Law, N.J.S.A. 40A:12A-1, et seq. (“LRHL”).*** Under the LRHL, the Township Committee alone is the redevelopment entity of the municipality – and the Redevelopment Plan only applies to those properties that fall within the Redevelopment Area, which was designated as an Area in Need of Redevelopment years ago.

Prior Approvals of the Project

The project at issue ***was already approved*** by the Township Committee in 2019. By Resolution No. 19-335 adopted by the Township Committee on September 9, 2019, the Township

and OGNED entered into a Redevelopment Agreement on or about October 4, 2019 (the “Original Redevelopment Agreement”). The Original Redevelopment Agreement described the project as including two (2) buildings, the first of which would be a new, iconic Victorian boutique Hotel with a Hotel Roof Deck, a residential condominium building containing no more than thirty (30) 2-bedroom condominiums at market rate with a Large Condo Roof Deck (“Large Condo Building”), boardwalk retail, a second building containing no more than nine (9) condominium units with small private roof decks (“Small Condo Building”), and no more than ten (10) 3-bedroom single family homes (“Single Family Homes”) (collectively, the “Project”). Thereafter, OGNED sought and ultimately obtained preliminary and major site plan approval from the Planning Board¹. The detailed plans that were submitted to the Planning Board were consistent with the Original Redevelopment Agreement (“Original Plans”).

The Original Redevelopment Agreement also required OGNED to obtain a Certificate of Appropriateness (“COA”) from the HPC. After several public hearings, on June 8, 2022, the HPC denied OGNED’s application for a COA on the record. A formal Resolution was adopted by the HPC on October 25, 2022 detailing the bases for the denial. OGNED filed a Verified Complaint in Lieu of Prerogative Writs against the Township of Neptune and the Zoning Officer in the Law Division of the Superior Court of New Jersey (Docket No. MON-L-2916-22) (the “Complaint” or “Litigation”) seeking a Writ of Mandamus to compel the issuance of a COA permitting the construction of the project as reflected in the Original Plans and as same were approved by the Planning Board. The HPC, which is an advisory board created by the Township Committee pursuant to statute, is not a party to the Complaint.

The Litigation

OGNED alleged in its Complaint that the HPC failed to meet its statutory obligation to issue a resolution and report of its findings within 45 days of the hearing on OGNED’s application, and that as such, is deemed to have reported in favor of the COA². ***The Count in the Complaint is procedural in nature and not substantive;*** hence, the Complaint was filed in the Superior Court (as opposed to a substantive appeal of the HPC Resolution to the Zoning Board). The matter would likely be deemed ripe for the pending summary judgment Motion that has been filed by OGNED (and the Cross Motion that has been filed by the Township). As is the case in any litigated matter, the motions could, of course, be decided either way. In the event that OGNED were ultimately successful, the

¹ It should be noted that the Planning Board approval was conditioned on certain requirements having been met; items such as stormwater management, CAFRA compliance, etc. would have been addressed during the Planning Board approval process. Numerous reports were also submitted for consideration during the public hearings of the Planning Board including a Stormwater Management Report, Community Impact Statement, Environmental Impact Statement, and a Traffic Impact Statement. Consistent with the Planning Board Resolution, the Agreement requires OGNED to obtain an Amended Site Plan Approval for the implementation of the New Plans. Included in this package is a copy of the Planning Board Resolution dated February 26, 2020.

² Specifically, the Count states that: Defendants have failed to perform their required ministerial duties pursuant to N.J.S.A. 30:55D-18 and 111 and Ordinance Section 904.C...

Township's control over the Project would be jeopardized and likely lost altogether. As such, the Township determined to engage in detailed settlement negotiations with OGNED.

Scope of Settlement Negotiations

The scope of the settlement negotiations focused on the HPC Resolution and the numerous comments provided by the HPC detailing its bases for the denial of the COA. It was not a re-hashing of the overall Project as same was already approved by the Township Committee in 2019 and by the Planning Board. Although the Complaint is grounded in procedural matters, the negotiations sought to have as many of the HPC's substantive comments addressed as possible as well as allow the Township to exercise certain control over the use of the Roof Decks.

Terms of Settlement

The terms of the settlement are contained within the Agreement which serves as both a Settlement Agreement and the Redevelopment Agreement going forward. The Agreement details the Project as it has been revised vis a vis the negotiations, among other things. Included in this package is a redlined Agreement which tracks all changes to the Agreement as compared against the Original Redevelopment Agreement.

The primary terms of the proposed settlement are as follows:

1. **HPC Comments:** Almost ALL of the comments have been addressed and are reflected in design revisions in a new, revised set of plans for the Project ("New Plans"). Included in this package is a list of responses that addresses the comments contained in the HPC Resolution and which explains how each comment/item was addressed (or not) in the New Plans ("Response List"). If the Litigation were unsuccessful on the part of the Township, it is likely that the Original Plans would be permitted to be constructed without restraint. If the Litigation were successful on the part of the Township, it is likely that an expensive, protracted appeal process would be undertaken by OGNED.
2. **Deed Restriction:** OGNED agreed to a Deed Restriction which would be recorded against the Project Site and would run with the land in perpetuity which restricts the use of the Roof Decks to certain times and requires strict compliance with the Township's Noise Ordinance. The Deed Restriction cannot be vacated/terminated or modified without the Township's consent. Such a Deed Restriction would not otherwise be required to be recorded but for the settlement.
3. **Redevelopment Plan Amendment:** The settlement recognizes that under LRHL, the Township Committee, as the redevelopment entity of the municipality, has the ultimate control over the redevelopment of the Project Site – this is by specific design of the Law. As such, and consistent with the terms of the Agreement and in order to effectuate the

settlement, an amendment of the Redevelopment Plan is simultaneously being proposed. The Redevelopment Plan Amendment would, in short, alleviate the need for a COA for the Hotel, Large Condo Building and Small Condo Building components of the Project. Each of the Single Family Homes, however, would expressly still require a COA from the HPC. Additionally, it should be noted that the HPC is nonetheless provided an opportunity to review and comment on the New Plans; however, it is our understanding that same is declined per the letter from the HPC dated November 13, 2023 (“HPC Letter”), a copy of which is included in this package. Also included in this package is a redlined Redevelopment Plan which tracks all changes to the Redevelopment Plan as compared against the ORIGINAL version of the Redevelopment Plan (i.e. not that version of the Redevelopment Plan that was previously amended – these track changes include ALL proposed amendments to the Redevelopment Plan in connection with the settlement. among others).

Community Benefits

As an aside, it should be noted that the Project will include the following community benefits:

1. Ocean Avenue: Redesign of the circle at the end of Ocean Avenue, in order to make same safer and include an improved arrangement for pedestrians, at no cost to the Township;
2. Wesley Lake: Reconstruction of that section of the Wesley Lake Retaining Wall which lies between the Project Site boundary and Wesley Lake, at no cost to the Township.
3. Promenade: Construction of a Waterfront Promenade, including a Pedestrian Plaza, which shall be improved with permanent seating and lighting fixtures, to which the public shall have access vis a vis an Easement Agreement.
4. Payment: Lump sum payment in order to reimburse the Township for certain Project Costs it incurred associated with the Redevelopment Plan.

Attachments: Redlined Redevelopment Agreement
Redlined Redevelopment Plan
Planning Board Resolution
Response List (to HPC Resolution)
HPC Letter

A full and complete copy of the Agreement, including with all Exhibits thereto, and all related proposed legislation, is also available for review.