

ORDINANCE 2021-21

*Borough of Metuchen
County of Middlesex
State of New Jersey*

**ORDINANCE DESIGNATING QUALIFIED REAL PROPERTY
WITHIN THE BOROUGH OF METUCHEN AS AN
ENVIRONMENTAL OPPORTUNITY ZONE**

WHEREAS, pursuant to N.J.S.A. 54:4-3.153 of the Environmental Opportunity Zone Act, a municipality is authorized to designate one or more “qualified real properties” within the municipality as an “environmental opportunity zone;” and

WHEREAS, N.J.S.A. 54:4-3.152 defines “qualified real property” as “any parcel of real property that is now vacant or underutilized, which is in need of a remediation due to a discharge or threatened discharge of a contaminant;” and

WHEREAS, the area designated as “Parcel C” on the map prepared by LRK entitled “Amended Oakite Redevelopment Plan, Exhibit B, Project Area Map,” attached hereto as Attachment A (“Parcel C”), is currently vacant and underutilized; and

WHEREAS, according to the plan prepared by CB&I, entitled “Remedial Cap As-Built, PI No. 024790,” dated 12/20/13, attached hereto as Attachment B, a portion of Parcel C currently contains a contaminated area which is covered by a 2 foot soil cap (“Parcel C Cap”); and

WHEREAS, it is anticipated that a Parcel C will be redeveloped with a coffee shop use, which is a permitted use under the Redevelopment Plan adopted for the area by way of Ordinance 2021-15 on September 13, 2021; and

WHEREAS, it is anticipated that development of Parcel C will result in the alteration or disturbance of the Parcel C Cap, which will require remediation to be undertaken; and

WHEREAS, it is anticipated that designation of Parcel C as an “environmental opportunity zone” will encourage the remediation of Parcel C so that it can be fully used for commercial purposes; and

WHEREAS, the area designated as “Parcel E” prepared by LRK entitled “Amended Oakite Redevelopment Plan, Exhibit B, Project Area Map,” attached hereto as Attachment A (“Parcel E”), is currently partially underutilized as there are portions of Parcel E which are not fully developed; and

WHEREAS, according to the plan prepared by CB&I, entitled “Remedial Cap As-Built, PI No. 024790,” dated 12/20/13, attached hereto as Attachment B, a portion of Parcel E currently contains a contaminated area which is covered by a 2 foot soil cap and a portion covered by a 6 inch impervious asphalt cap (“Parcel E Cap”); and

WHEREAS, it is anticipated that a portion of Parcel E will be redeveloped with a daycare use, which is a permitted use under the Redevelopment Plan adopted for the area by way of Ordinance 2021-15 on September 13, 2021; and

WHEREAS, it is anticipated that development of Parcel E will result in the alteration or disturbance of the Parcel E Cap, which will require remediation to be undertaken; and

WHEREAS, it is anticipated that designation of Parcel E as an “environmental opportunity zone” will encourage the remediation of Parcel E so that it can be fully used for commercial purposes; and

WHEREAS, N.J.S.A. 54:4-3.154 requires that a governing body who has designated any real property as an environmental opportunity zone provide for exemptions of real property taxes for said environmental opportunity zones; and

WHEREAS, the Borough Council has determined that it is in the best interest of the Borough to designate Parcel C and Parcel E as an Environmental Opportunity Zone in accordance with the Environmental Opportunity Zone Act and to provide for tax exemptions of real property taxes for the same.

NOW THEREFORE BE IT ORDAINED by the Borough Council of the Borough of Metuchen, Middlesex County, State of New Jersey, as follows:

Section 1. FINDINGS. The Borough Council hereby finds that Parcel C, and Parcel E, as depicted on the map prepared by LRK entitled “Amended Oakite Redevelopment Plan, Exhibit B, Project Area Map,” attached hereto as Attachment A, constitute “qualified real property” as defined in N.J.S.A. 54:4-3.152 because: (a) Parcel C and Parcel E each contain a contaminated area which is covered by a 2 foot soil cap and/or a portion covered by a 6 inch impervious asphalt cap; (b) Parcel C is currently vacant and Parcel E is currently underutilized; (c) redevelopment of both Parcel C and Parcel E will likely require remediation; and (d) upon completion of remediation Parcel C and Parcel E will each be used for new commercial uses.

Section 2. DESIGNATION. The Borough Council hereby designates the following real property as an Environmental Opportunity Zone pursuant to N.J.S.A. 54:4-3.153:

- A. The portion of Block 71, Lot 37.01 depicted as “Parcel C” on the map prepared by LRK entitled “Amended Oakite Redevelopment Plan, Exhibit B, Project Area Map,” attached hereto as Attachment A.

- B. The portion of Block 71, Lot 37.02 depicted as “Parcel E” on the map prepared by LRK entitled “Amended Oakite Redevelopment Plan, Exhibit B, Project Area Map,” attached hereto as Attachment A.

Section 3. DEFINITIONS. The following definitions shall apply:

- A. “Application Form” shall mean the form proscribed by the Director of the Division of Taxation, in the Department of Treasury, known as form “E.O.Z. – 1” as may be amended or supplemented.
- B. “Application” shall mean the Application Form and all required attachments thereto, required to be provided pursuant to Section 6.C of this Ordinance.
- C. “Assessor” shall mean the Tax Assessor of the Borough of Metuchen.
- D. “Certificate of Occupancy” shall have the meaning set forth at N.J.A.C. 5:23-1.4, as may be amended and/or supplemented.
- E. “Contamination” or “Contaminant” shall have the meaning set forth in N.J.S.A. 54:4-3.152.
- F. “Environmental Opportunity Zone” shall mean real property that has been designated as an environmental opportunity zone pursuant to this Ordinance.
- G. “Full Taxes Due” shall mean the amount of real property taxes due on the property in a particular tax year as if no tax exemption had been granted, as determined by the Tax Assessor in accordance with all applicable Tax Laws.
- H. “Financial Agreement” shall mean the agreement prepared in accordance with the requirements of N.J.S.A. 54:4-3.156 and this Ordinance.
- I. “Owner Certification” shall mean the certification required to be executed in accordance with Section 6.C.v of this Ordinance.
- J. “Payment in Lieu of Property Taxes” shall mean the payment, which is calculated pursuant to Section 5 of this Ordinance, which is made in lieu of paying Full Taxes Due on the property.
- K. “Property Owner” shall mean a person or entity that holds fee simple title to real property.
- L. “Qualified Real Property” shall have the meaning set forth in N.J.S.A. 54:4-3.152.
- M. “Remediation” shall have the meaning set forth in N.J.S.A. 54:4-3.152.
- N. “Remediation Cost” shall have the meaning set forth in N.J.S.A. 54:4-3.156(c).

- O. "Tax Laws" shall mean the laws applicable to the assessment and collection of real property taxes set forth in N.J.S.A. 54:4-1 et seq., as amended or supplemented to date.
- P. "Taxes Otherwise Due" shall have the meaning set forth in N.J.S.A. 54:4-3.152.
- Q. "Total Remediation Cost" the total amount of Remediation Costs paid by the Property Owner to remediate the property after the property has been designated as an Environmental Opportunity Zone. Total Remediation Costs shall not include any Remediation Costs paid by a third party who is not the Property Owner. Total Remediation Costs shall also not include any Remediation Costs that were paid by the Property Owner prior to designation of the property as an Environmental Opportunity Zone.
- R. "Total Tax Exemption" is defined in Section 4.C of this Ordinance.
- S. "Underutilized" shall mean, as it relates to real property:
 - i. Land(s) which contain buildings that are not actively used for any purpose, or which have been abandoned; or
 - ii. Land(s) which contain buildings where less than 50% of the building thereon is being utilized and where utilization of the remainder of the building cannot occur without completion of remediation; or
 - iii. Land(s) on which only limited improvements have been constructed because the land(s) has not been developed to its maximum capacity, and where additional proposed development cannot take place without completion of remediation of the vacant or unused portions of the property.

Section 4. TAX EXEMPTION ELIGIBILITY.

- A. A Property Owner who owns property located within an Environmental Opportunity Zone shall be eligible to apply for a tax exemption pursuant to this Ordinance provided that all of the following requirements have been satisfied:
 - i. As of the date of the filing of the Application and as of the date that the tax exemption is granted, the Property Owner owns the property for which a tax exemption is sought;
 - ii. The property for which a tax exemption is sought is located within an Environmental Opportunity Zone;
 - iii. As of the date that the property was designated as an Environmental Opportunity Zone, the property contained Contamination that requires Remediation;

- iv. The Property Owner has executed a memorandum of agreement (MOA) or administrative consent order (ACO) with the State of New Jersey, Department of Environmental Protection, Site Remediation Program, after designation of the property as an Environmental Opportunity Zone and which includes a binding obligation by the Property Owner to perform Remediation of the property;
 - v. The Property Owner has obtained site plan approval to construct a use that is permitted under the applicable zoning for the property in accordance with the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., or if applicable, pursuant to an adopted redevelopment plan adopted pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.;
 - vi. As of the date of the filing of the Application, the property for which the tax exemption is sought is either vacant or Underutilized;
 - vii. As of the date of the filing of the Application, construction has not yet commenced on the proposed use for which site plan approval has been granted;
 - viii. As of the date of the filing of the Application, Remediation of the property is necessary in order to permit the use of the property for commercial, industrial, residential or another productive use that is permitted under the applicable zoning for the property;
 - ix. Operation of the property for the use authorized in the site plan approval will begin during the time period during which the tax exemption is granted; and
 - x. No tax exemption or abatement has been previously granted to the property or to any prior Property Owner of the property because of the property's designation as an Environmental Opportunity Zone.
- B. Any tax exemption granted pursuant to this Ordinance shall be granted in the name of the Property Owner who filed the Application for the tax exemption. A property tax exemption granted to a Property Owner pursuant to this Ordinance is not transferrable or assignable to a subsequent Property Owner without the express written approval of the Governing Body, adopted by ordinance. Unless the Governing Body has adopted an ordinance approving the transfer or assignment of the tax exemption prior to the sale or transfer of the property to a new Property Owner, any tax exemption granted will end on the date of the sale or other transfer of the property to the new Property Owner.
- C. Any tax exemption granted pursuant to this Ordinance shall be available only until the Total Tax Exemption equals the Total Remediation Cost paid by the Property Owner, which shall be determined in accordance with the following:

- i. In each tax year following the date of the approval of the tax exemption, the Tax Assessor shall calculate the Full Taxes Due for the property for the applicable tax year.
 - ii. The Tax Assessor shall also determine the “Annual Tax Exemption” for each tax year by subtracting the Payment in Lieu of Taxes due in the applicable tax year from the Full Taxes Due in the applicable tax year. The difference between the Full Taxes Due and the Payment in Lieu of Taxes in each tax year shall be the Annual Tax Exemption.
 - iii. The Tax Assessor shall determine the “Total Tax Exemption” by adding together the amounts of all of the Annual Tax Exemptions granted from the date on which the tax exemption was granted to the then present date. The sum of all Annual Tax Exemptions shall be the Total Tax Exemption.
 - iv. Once the Total Tax Exemption equals the Total Remediation Cost paid by the Property Owner, the tax exemption granted pursuant to this Ordinance shall end and the property will be assessed and subject to taxation in the same manner as other taxable properties within the Borough, taking into consideration the property’s remediated state.
- D. A tax exemption granted pursuant to this Ordinance shall terminate upon the occurrence of any of the following:
- i. Failure to make a payment of a Payment in Lieu of Taxes;
 - ii. Termination of the memorandum of agreement (MOA) or administrative consent order (ACO) entered into with the State of New Jersey, Department of Environmental Protection, unless an administrative consent order (ACO) is issued in its place;
 - iii. The Property Owner has failed to undertake and complete the remediation pursuant to the memorandum of agreement (MOA) or administrative consent order (ACO) entered into with the State of New Jersey, Department of Environmental Protection;
 - iv. The Property Owner has failed to use the property for a commercial, industrial, residential or other productive purpose upon completion of remediation, during the period for which the tax exemption was given;
 - v. The property has been sold or otherwise transferred and the Governing Body has not adopted an ordinance approving the transfer or assignment of the tax exemption prior to the sale or transfer of the property to the new Property Owner;

- vi. The date on which the Total Tax Exemption equals the total Remediation Costs paid by the Property Owner; or
- vii. Upon commencement of the tenth year following execution of a memorandum of agreement (MOA) or administrative consent order (ACO) entered into with the State of New Jersey, Department of Environmental Protection.

Section 5. PAYMENTS IN LIEU OF TAXES.

- A. The method of computing the Payment in Lieu of Taxes under a tax exemption granted pursuant to this Ordinance shall be calculated in accordance with this Section.
 - i. Upon the approval of a tax exemption pursuant to this Ordinance, the Tax Assessor shall determine the Taxes Otherwise Due for the Property as of the date that the tax exemption was granted.
 - ii. Payments in Lieu of Taxes shall be determined each tax year in accordance with the following schedule:
 - a. In the first tax year following execution of a memorandum of agreement (MOA) or administrative consent order (ACO) entered into with the State of New Jersey, Department of Environmental Protection, the Payment in Lieu of Taxes shall be \$0.00;
 - b. In the second tax year following execution of a memorandum of agreement (MOA) or administrative consent order (ACO) entered into with the State of New Jersey, Department of Environmental Protection, the Payment in Lieu of Taxes shall be 10% of the Taxes Otherwise Due;
 - c. In the third tax year following execution of a memorandum of agreement (MOA) or administrative consent order (ACO) entered into with the State of New Jersey, Department of Environmental Protection, the Payment in Lieu of Taxes shall be 20% of the Taxes Otherwise Due;
 - d. In the fourth tax year following execution of a memorandum of agreement (MOA) or administrative consent order (ACO) entered into with the State of New Jersey, Department of Environmental Protection, the Payment in Lieu of Taxes shall be 30% of the Taxes Otherwise Due;
 - e. In the fifth tax year following execution of a memorandum of agreement (MOA) or administrative consent order (ACO) entered into with the State of New Jersey, Department of Environmental Protection, the Payment in Lieu of Taxes shall be 40% of the Taxes Otherwise Due;

- f. In the sixth tax year following execution of a memorandum of agreement (MOA) or administrative consent order (ACO) entered into with the State of New Jersey, Department of Environmental Protection, the Payment in Lieu of Taxes shall be 50% of the Taxes Otherwise Due;
 - g. In the seventh tax year following execution of a memorandum of agreement (MOA) or administrative consent order (ACO) entered into with the State of New Jersey, Department of Environmental Protection, the Payment in Lieu of Taxes shall be 50% of the Taxes Otherwise Due;
 - h. In the eighth tax year following execution of a memorandum of agreement (MOA) or administrative consent order (ACO) entered into with the State of New Jersey, Department of Environmental Protection, the Payment in Lieu of Taxes shall be 70% of the Taxes Otherwise Due;
 - i. In the ninth tax year following execution of a memorandum of agreement (MOA) or administrative consent order (ACO) entered into with the State of New Jersey, Department of Environmental Protection, the Payment in Lieu of Taxes shall be 80% of the Taxes Otherwise Due;
 - j. In the tenth tax year following execution of a memorandum of agreement (MOA) or administrative consent order (ACO) entered into with the State of New Jersey, Department of Environmental Protection, the exemption shall expire and the Full Taxes Due on the property in the tenth tax year and all subsequent tax years shall be due and payable.
- B. Payment of the Payment in Lieu of Taxes shall be made in quarterly installments according to the same schedule as real property taxes are due and payable in the Borough.

Section 6. APPLICATION PROCEDURE AND EXEMPTION APPROVAL.

- A. A Property Owner can obtain an Application Form from the Tax Assessor's office.
- B. In order to apply for a tax exemption, the Property Owner must submit the Application Form, along with all additional documents required pursuant to Subsection C below (collectively referred to as the "Application"), to both the Tax Assessor and the Borough Administrator. The Application Form must be filled out in its entirety.
- C. In addition to a completed Application Form, the Property Owner must provide all of the following documents:
 - i. A copy of the Deed showing ownership of the property;

- ii. A survey showing that the property is located within an Environmental Opportunity Zone;
- iii. A copy of an executed memorandum of agreement (MOA) or administrative consent order (ACO) with the State of New Jersey, Department of Environmental Protection, Site Remediation Program, which has been executed after designation of the property as an Environmental Opportunity Zone and which includes a binding obligation by the Property Owner to perform Remediation of the property;
- iv. A copy of an approved site plan for the property depicting the proposed commercial, industrial or residential use that will be constructed on the property;
- v. A certification signed by the Property Owner which includes the following:
 - 1. A representation, that as of the date that the property was designated as an Environmental Opportunity Zone, the property contained Contamination, along with supporting documentation identifying the location and identity of all such Contamination;
 - 2. A representation that Remediation is necessary in order for the property to be put to a commercial, residential, industrial or other productive use, along with a detailed description of all of the Remediation that is required to be undertaken on the property on or after the date that the property was designated as an Environmental Opportunity Zone, as certified by the licensed site remediation professional;
 - 3. A representation that the Property Owner will remediate the property in accordance with the memorandum of agreement (MOA) or administrative consent order (ACO) entered into with the State of New Jersey, Department of Environmental Protection;
 - 4. A representation as to the Total Remediation Cost to remediate the Property to be incurred by the Property Owner on or after the date that the property was designated as an Environmental Opportunity Zone, along with documentation containing a breakdown of all costs comprising the Total Remediation Costs as certified by the licensed site remediation professional;
 - 5. A representation that the Property Owner has not included in the Total Remediation Cost any Remediation Cost that has not been or will be directly paid by the Property Owner.

6. A representation that the Property Owner has not included in the Total Remediation Cost any Remediation Cost paid for or incurred by the Property Owner prior to designation of the property as an Environmental Opportunity Zone.
 7. A representation setting forth the timeline for completion of construction of the project improvements, including a date for application of the Certificate of Occupancy;
 8. A representation that the Property Owner will apply for a Certificate of Occupancy for the project depicted in the approved site plan within the time period set forth in the Owner Certification;
 9. A representation that the property will be used for the use depicted in the approved site plan during the time period for which the real property tax exemption is granted;
 10. A representation that there are no delinquent taxes on the property as of the date of the application;
 11. The following statement: "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."
- vi. A copy of the proposed Financial Agreement to be entered into between the Borough and the Property Owner pursuant to this Ordinance. The Financial Agreement shall include, at a minimum, the following representations and/or promises:
1. That all statements and representations made in, and information provided as part of, the Application are true and correct, and that the Application is made a part of and incorporated within the Financial Agreement;
 2. That the Property Owner will undertake all required Remediation pursuant to the memorandum of agreement (MOA) or administrative consent order (ACO) entered into with the State of New Jersey, Department of Environmental Protection submitted as part of the Application;
 3. That the Property Owner will construct the project improvements depicted in the site plan approval in accordance with the site plan approval and the timeline for completion provided in the Application;
 4. That operation of the property for the use authorized in the site plan approval will begin during the time period during which the tax exemption is granted;

5. That the Property Owner will make all Payments in Lieu of Taxes as calculated pursuant to Section 5 above. All such Payments in Lieu of Taxes shall be made in quarterly installments according to the same schedule as real property taxes are due and payable;
6. That the tax exemption granted shall terminate in accordance with Section 4.D of this Ordinance; and
7. That the Borough shall have all available all remedies authorized in the Environmental Opportunity Zone Act, N.J.S.A. 54:4-3.150 et seq.

D. Upon submission of the Application to the Borough Administrator and Tax Assessor, the Tax Assessor shall provide an estimate of the anticipated assessed value of the property upon completion of the proposed improvements and shall transmit the same to the Borough Administrator. Upon receipt of the estimated tax assessment from the Tax Assessor, the Borough Administrator shall determine whether Application is complete, and if it is not complete, shall notify the Property Owner of any deficiency. Upon determining that the Application is complete, the Borough Administrator shall transmit the complete Application to the Borough Council for its review.

E. No tax exemption shall be granted unless approved by the Borough Council through the adoption of an ordinance at a public hearing upon a finding that the Application is consistent with the provisions of this Ordinance.

Section 7. All ordinance or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Section 8. In the event any clause, section paragraph or designation of or under this Ordinance is deemed invalid or unenforceable for any reason, it is the intent of the Borough Council that the balance of the Ordinance remains in full force and effect to the extent it allows the Borough to meet the goals of the Ordinance.

Section 9. This Ordinance shall take effect after final adoption and publication according to law.

Introduction: November 22, 2021

Date of Publication: November 26, 2021

COUNCILMEMBER	YES	NO	NV	AB	COUNCILMEMBER	YES	NO	NV	AB
DELIA	X				KOSKOSKI	X			
HIRSCH	X				RASMUSSEN	X			
KANDEL	X				RUBIN	X			
MOTION	KOSKOSKI				SECOND	RASMUSSEN			
X – INDICATES VOTE		AB- ABSENT			NV- NOT VOTING				

I hereby certify the foregoing to be a true copy of an ordinance introduced by the Borough Council of the Borough of Metuchen, Middlesex County, New Jersey at a regular meeting held on November 22, 2021.

 Deborah Zupan
 Acting Borough Clerk
 Adoption: December 13, 2021
 Date of Publication: December 16, 2021

COUNCILMEMBER	YES	NO	NV	AB	COUNCILMEMBER	YES	NO	NV	AB
DELIA	X				KOSKOSKI	X			
HIRSCH	X				RASMUSSEN	X			
KANDEL	X				RUBIN	X			
MOTION	KOSKOSKI				SECOND	RUBIN			
X – INDICATES VOTE	AB- ABSENT				NV- NOT VOTING				

I hereby certify the foregoing to be a true copy of an ordinance adopted by the Borough Council of the Borough of Metuchen, Middlesex County, New Jersey at a regular meeting held on December 13, 2021.

 Deborah Zupan
 Acting Borough Clerk

ATTEST:

BOROUGH OF METUCHEN

 Deborah Zupan
 Acting Borough Clerk

By: _____
 Jonathan M. Busch
 Mayor