

2007
Periodic Reexamination Report
of the
Master Plan and Development
Regulations

Andover Township
Sussex County, New Jersey

December 18, 2007

Prepared by the Andover Township Land Use Board

with assistance from

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Land Use Board – 2007

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Executive Summary

This Master Plan Reexamination Report addresses the statutory requirements set forth in the Municipal Land Use Law. Sections 1 and 2, respectively, provide an introduction and the framework for this report.

Section 3 reviews the most recent Master Plan documents, all of which were adopted in October 2005. These include a partial Master Plan Reexamination Report, (Residential) Land Use and (Resource) Conservation elements and a Housing/Fair Share Plan. Section 4 reviews the extent to which the recommendations established in 2005 have been implemented.

In Section 5, this Reexamination Report establishes a new direction for the Township's land use policies by shifting focus away from the larger "village"- type centers which promote levels of growth incompatible with the Township's desire to retain its rural character and which necessitate significant infrastructure improvements to a "hamlet" concept while simultaneously recommending new strategies to create affordable housing opportunities. Certain changes to New Jersey Department of Environmental Protection (NJDEP) stormwater management and water quality rules that bear upon Andover's future are also identified.

Specific recommendations are presented in Section 6. These include a call to prepare a new comprehensive Master Plan, including a revised Housing Element / Fair Share Plan, structured around three guiding principles and a series of goals covering land use; design; natural, historic and cultural resources; housing; agriculture; transportation; community facilities, recreation and open space. Concurrent with this effort, the Report encourages continued work towards achieving Plan Endorsement in order to investigate the potential for a new hamlet-scale center to advance the objectives of smart growth while also satisfying the Township's affordable housing obligation. Section 6 establishes an action plan to implement the findings of this Reexamination Report. The components of this action plan include:

- New regulations to factor in the environmentally sensitive features of a site when calculating the development capacity;
- Standards to protect existing tree canopy where possible and to replace same, where necessary;
- Regulations for aquifer testing in all development applications;
- Improved standards for driveway design and general development plans;
- Revision of certain conditional use categories;
- Adoption of "sustainable" development guidelines; and
- Systematic revisions to the Township's land use regulations consistent with the changes outlined above.

Finally, Section 7 briefly discusses redevelopment and rehabilitation planning strategies in accordance with the Redevelopment and Housing Law.

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1.0 INTRODUCTION

The Municipal Land Use Law at N.J.S. 40:55D-89, includes the following statement relative to the periodic examination of a municipal Master Plan:

The governing body shall, at least every six years, provide for a general reexamination of its master plan and development regulations by the planning board which shall prepare and adopt by resolution a report on the findings of such reexamination, a copy of which report and resolution shall be sent to the county planning board and the municipal clerk of each adjoining municipality. The first such reexamination shall have been completed by August 1, 1982. The next reexamination shall be completed by August 1, 1988. Thereafter, a reexamination shall be completed at least once every 6 years from the previous reexamination.

The most recent Master Plan Reexamination Report was adopted by the Planning Board in October 2005. Although that report did not address the complete statutory requirements it will serve as the reference point for the present analysis. Prior to 2005 the Township conducted a reexamination of its Master Plan in April 2000, in August 1994, and in November 1982. The first complete Master Plan or Comprehensive Development Plan as it was then known was undated but appears to have been prepared in 1958 or 1959. Another full Master Plan followed in 1976 and again in 1989. In addition, a number of more focused planning studies have been prepared and adopted over the years and are identified in the listing below.

1. Natural Resource Inventory: February 2007
2. Build-Out and Capacity Analysis: May 1, 2007
3. Master Plan Reexamination Report: October 15, 2005; Revised October 31, 2005
4. Amendment to the Master Plan Residential Land Use Plan and Resource Conservation Element: October 15, 2005
5. Housing Plan and Fair Share Plan: October 15, 2005
6. Stormwater Management Plan: April 2005
7. Andover Township State Plan Cross Acceptance Report: December 18, 2004
8. Andover Township Sussex County Strategic Growth Report: December 18, 2004
9. Master Plan Amendment: May 15, 2000
10. 2000 Master Plan Reexamination Report: April 10, 2000

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11. Natural Resource Inventory 1999
12. Amendment to Andover Township Master Plan: adopted March 16, 1998
13. Wastewater Management Plan: Revised February 1997
14. Housing Element / Fair Share Plan: adopted June 3, 1996
15. Wastewater Management Plan: Revised December 1996
16. Housing Element / Fair Share Plan: May 15, 1995
17. Master Plan Reexamination Report: 1994
18. Master Plan “From 1989 to 1992”: December 7, 1992
19. Route 206 Corridor [Study]: September 1991
20. 1989 Master Plan: September 1989, adopted on August 21, 1991
21. Master Plan Reexamination Report: adopted November 15, 1982
22. Andover Township Recreation Master Plan: 1978
23. Andover Township Master Plan: 1976
24. A Comprehensive Development Plan (1958 estimated)

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2.0 FRAMEWORK FOR THE PERIODIC REEXAMINATION OF THE MASTER PLAN

The Municipal Land Use Law sets forth the following five questions to be addressed in preparing the Reexamination Report:

- C. 40:55D-89a The major problems and objectives relating to land development in the municipality at the time of the adoption of the last reexamination report.
- C. 40:55D-89b The extent to which such problems and objectives have been reduced or have increased subsequent to such date.
- C. 40:55D-89c The extent to which there have been significant changes in the assumptions, policies and objectives forming the basis for the master plan or development regulations as last revised, with particular regard to the density and distribution of population and land uses, housing conditions, circulation, conservation of natural resources, energy conservation, collection, disposition and recycling of designated recyclable materials, and changes in State, county and municipal policies and objectives.
- C. 40:55D-89d The specific changes for the master plan or development regulations, if any, including underlying objectives, policies and standards, or whether a new plan or regulations should be proposed.
- C. 40:55D-89e The recommendations of the planning board concerning the incorporation of redevelopment plans adopted pursuant to the “Local Redevelopment and Housing Law”, P.L. 1992, c. 79 (C. 40A:12A-1 et seq.) into the land use plan element of the municipal master plan, and recommended changes, if any, in the local development regulations necessary to effectuate the redevelopment plans of the municipality.

Each of the above is addressed in detail in the following sections of this Master Plan Reexamination Report.

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3.0 C.40:55D-89a: THE MAJOR PROBLEMS AND OBJECTIVES RELATING TO LAND DEVELOPMENT IN THE MUNICIPALITY AT THE TIME OF THE ADOPTION OF THE LAST REEXAMINATION REPORT.

In October 2005 the Andover Planning Board adopted a Master Plan Reexamination Report dated October 15, 2005, revised October 31, 2005. Simultaneously, the Planning Board adopted an Amendment to the Master Plan entitled Residential Land Use Plan and Resource Conservation Element, both dated October 15, 2005.

3.1 MASTER PLAN REEXAMINATION REPORT: OCTOBER 15, 2005; REVISED OCTOBER 31, 2005

The 2005 Master Plan Reexamination Report was an abbreviated version of the statutory requirements in that it was limited to only two of the five areas of inquiry cited above with the following explanation: *“This is a modified reexamination report prior to the six-year requirement to address the Affordable Housing Growth Share Rules and the most recent information from the NJDEP Landscape Project.”*¹ As such the Report limited its scope to the following two questions:

40:55D-89c The extent to which there have been significant changes in the assumptions, policies and objectives forming the basis for the master plan or development regulations as last revised, with particular regard to the density and distribution of population and land uses, housing conditions, circulation, conservation of natural resources, energy conservation, collection, disposition and recycling of designated recyclable materials, and changes in State, county and municipal policies and objectives.

40:55D-89d The specific changes for the master plan or development regulations, if any, including underlying objectives, policies and standards, or whether a new plan or regulations should be proposed.

The Reexamination Report did not analyze the assumptions, policies and objectives which guided the previous Master Plan and development regulations; instead it called attention to five external factors to be considered. These were:

1. COAH Third Round rules concerning the Township’s growth share obligation;
2. The availability of NJDEP’s Landscape Project as a resource to be utilized in crafting new land use policies for the Township;
3. The existence of the New Jersey State Plan [State Development and Redevelopment Plan] adopted in 2001 and its policy guidelines promoting

¹ Master Plan Reexamination Report For Andover Township, dated October 15, 2005; revised October 31, 2005, prepared by David R. Troast, PP, AICP, page 2.

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“...compact development patterns that respect the natural systems and eliminate sprawl development”;

4. The Sussex County Strategic Growth Plan and its impact on the Township’s Master Plan; and
5. The impact of new Storm Water Management Rules on both residential and commercial development.

The Reexamination Report offered four recommendations with regard to proposed changes to the Township’s Master Plan and its development regulations. These were:

1. The Andover Township Master Plan specifically the Housing Plan and Fair Share Plan should be amended to comply with the COAH Growth Share Rules. The Governing Board should prepare the appropriate ordinances and apply to COAH for Certification.
2. The policies of the State Plan and Sussex County Strategic Growth Plan should be incorporated into the Andover Township Master Plan and Zoning Ordinance.
3. Andover Township should evaluate the latest environmental information from NJDEP to evaluate the current land use districts and densities. The Master Plan and Zoning ordinances should be amended recommending the appropriate changes to protect the rural character, critical environmental features and habitats consistent with the Municipal Land Use Law, State Plan, Sussex County Strategic Growth Plan.
4. The Township should adopt stormwater ordinances consistent with the new rules.

The Reexamination Report concluded with an endorsement of the proposed changes contained in the Residential Land Use Plan and Resource Conservation Element and the Housing Element / Fair Share Plan. The simultaneous adoption of these Elements in October 2005 was designed to implement the objectives cited in the Reexamination Report. An overview of these Elements is presented below.

3.2 AMENDMENT TO THE MASTER PLAN – RESIDENTIAL LAND USE PLAN AND
RESOURCE CONSERVATION ELEMENT: OCTOBER 15, 2005

3.2.1. Residential Land Use Element

The Residential Land Use Element did not address nonresidential land uses within the Township, however; the Element did offer five broad objectives to guide land use

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policies with respect to residential development and more specific alterations to the Township's residential zone districts. The five objectives are as follows:

- Encourage land use planning techniques for residential development to minimize environmental impacts, preserve farmland, secure or control land as open space and minimize infrastructure maintenance.
- Provide a variety of housing opportunities for all income levels consistent with the Housing Element.
- Establish housing densities that relate to the carrying capacity of the land, ambient air standards, water quality and quantity standards, infrastructure, roads, and utilities by promoting resource protection, housing alternatives and interconnected greenways.
- Preserve the natural features of the Township including the rolling, wooded hill-sides, rock outcroppings, ridge-lines, wetlands, and forested areas.
- Discourage development along ridgelines and steeply sloped areas to preserve the visual rural environment.

The Residential Land Use Element noted that the Township falls within Planning Areas 4, 4B, and 5 on the State Plan Policy Map of the State Development and Redevelopment Plan and offered the following assessment:

The State Plan policy for the Planning Areas recommends limited growth and encourages protection of the farmland and the "Environs". Development and economic growth are recommended in "existing, and planned centers" served by sewers, alternative waste water treatment facilities, public water and adjacent to transportation corridors. Typical suburban development is not recommended in the State Plan for Andover Township because of the negative impacts to the water resources and the limitations on the carrying capacity of the land.²

The Residential Land Use Element called for an analysis of residential land use patterns guided by the following principles:

The recommendations set forth in the Element for residential zone districts were "...formulated by combining State Plan Policies, Sussex County Strategic Growth Policies, the existing residential land use conditions, the Goals and Objectives and other Master Plan Elements, specifically the

² **Amendment to the Master Plan Residential Land Use Plan and Resource Conservation Element** dated October 15, 2005, prepared by David R. Troast, PP, AICP, page 8.

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Conservation or Resource Element conclusions and the residential densities in the adjacent municipalities (ranging from three to six acres per lot with the majority of the land area in the larger lot category).”

The proposed lot area for each land use category should be increased at least one and one half times the average common lot areas to reduce further impacts on the natural resources and rural character of Andover Township.³

This approach necessitated modification to some zone districts, the creation of a new category to be known as the Residential Environmentally Sensitive (RES) Zone District, and two proposed “centers” in proximity to Andover Borough. Each district is described in Table I, below.

³ Ibid. Page 13.

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Table I
Residential Zone District Recommendations
October 2005 Land Use Plan

Zone District	Description	Density
Mount Laurel	Provide opportunities for redevelopment of an historic structure for moderate and low income residents; proximity to Newton/Hampton Regional Center and existing wastewater treatment facility at the Abbey property	6 to 10 units per acre
Multifamily Residential	Existing nursing facility; limited growth potential based on the on-site wastewater treatment facility	No recommendation
Special Residential	Located in a sewer service area with long standing approvals for a senior living project and residential age restricted community	4 units per acre for nursing home; 3 acre lot area for SF development
Planned Retirement Community	Provides opportunities for an active adult or continuing care retirement community in combination with a golf course and/or open space with an affordable set-aside requirement of 20% for low and moderate income units. Minimum tract in Andover: 200 acres; "aligned" with a 300 acre parcel in Lafayette. <i>"This is an "environs" protection district permitting concentrated growth, while preserving large tracts of open space."</i>	1 unit per 1.5 acres
Residential Medium Density (R-1)	Comprised of mainly existing platted lots of ¼ acre to 1 acre; nearly fully developed; maintain character and integrity of existing neighborhoods	1 unit per acre; no lot averaging
Residential Low Density (R-3)	Preserve various existing neighborhoods with existing lot areas of 1-to-5 acres; mostly developed	1 unit per 3 acres; no lot averaging
Residential Environmentally Sensitive (RES)	New residential land use district addressing the environmental and rural character issues identified in the Resource and Residential Land Use Elements of the Master Plan. Lot area of six acres <i>"with development ordinances promoting preservation of critical areas required to preserve critical habitats and the rural character of Andover Township."</i>	6 acre lots Use of off-site and on-site cluster, lot averaging and ordinance standards of maximum land disturbance, minimum contiguous non-constrained land, tree removal standards and restricted development on steep slopes are recommended and should be considered in the Land Management Code.
Andover Borough Center Expansion	Provide opportunities for a mixed use planned compact growth adjacent to the Designated Center of Andover Borough. The planned expansion of the existing Borough Center is consistent with the smart growth policies of the New Jersey State Development and Redevelopment Plan. Plan Endorsement approval by the State Planning Commission will be required.	Mixed use with approximately 300 housing units with 20% low/moderate income housing set-aside
Transit Village	An extension of the Designated Andover Borough Center with the transit stop along Roseville Road for the anticipated reactivation of the Lackawanna Cutoff passenger rail line.	Mixed use with approximately 300 to 350 housing units with 20% low/moderate income housing set-aside

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The 2005 Residential Land Use Element advanced the concept of two new centers where future development would be concentrated in conjunction with reducing densities in the areas beyond the centers to protect the environmental sensitive characteristics evident in such locations. The two centers were to be known as the “Transit Village” located in proximity to the proposed restoration of the Lackawanna Cutoff rail passenger line in the vicinity of Roseville Road and the “Andover Borough Center Expansion District” (also referred to as the “Limecrest / Brighton Road Expansion District”). These were described as follows:

The purpose of this District is to provide opportunities for a mixed use planned compact growth adjacent to the Designated Center of Andover Borough. The planned expansion of the existing Borough Center is consistent with the smart growth policies of the New Jersey State Development and Redevelopment Plan. Plan Endorsement approval by the State Planning Commission will be required.

The parcel identified to the west of the Borough is the property adjacent to the planned realignment of Limecrest Road/Brighton Road (County Route 603). The proposed residential density will generate approximately three hundred housing units with a 20% set aside for low and moderate housing units. Wastewater and public water will need to be planned concurrently with the proposed development in Andover Borough.

The Growth area to the east of the Borough is the planned Transit Village identified under New Jersey Transit’s plan to reactivate the Lackawanna Cutoff passenger rail line. The estimated residential component of the mixed-use village is a range of 300 to 350 housing units with a low and moderate-income housing set aside of 20%. The existing commercial shopping center district should have interim zoning requirements adopted to provide a mandatory set-aside equivalent of 20% for the construction of low and moderate-income housing units. Design standards should be adopted immediately to insure compatible site development to accommodate the future Transit Village.⁴

3.2.2. Resource Conservation Element: October 15, 2005

The Resource Conservation Element called attention to the need to protect environmentally sensitive areas within the Township with the following prologue:

An inventory and analysis of natural features serves as a basis for comprehensive land use planning and the establishment appropriate densities for residential land uses. An inventory and analysis of the New Jersey Department of Environmental Protection’s (NJDEP) Landscape

⁴ **Amendment to the Master Plan Residential Land Use Plan and Resource Conservation Element** dated October 15, 2005, prepared by David R. Troast, PP, AICP, pages 14, 15.

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Project and other natural resource data was conducted in order to investigate and document the information necessary to evaluate the natural capacity for development within Andover Township. This information as well as on-site environmental data should be utilized during the subdivision and the site plan review process to determine the appropriate development scenarios under the ordinances. The inventory includes information on soils, slope, flood prone areas, geology, critical forest areas, wetland areas, forested wetland areas, emergent wetlands, wood turtle habitat and grasslands. All maps utilized in this Master Plan Amendment are for general planning purposes and not for site-specific plan review. Onsite inspections and testing along with professional reports will be required as per the ordinance for all development applications.⁵

This Element set forth the following seven objectives:

- Identify environmentally sensitive areas such as wetlands, stream corridors, steep slopes, flood plains, poor soils, endangered species habitat etc.
- Encourage development that preserves the natural landscape and features, and protects against potential drainage problems.
- Encourage proper soil erosion and sediment control practices to protect water quality.
- Develop standards to promote residential development in the appropriate areas on the least restricted lands to preserve open space and to protect the environment.
- Preserve contiguous forested lands to maintain the rural character and wildlife habitat through greenway planning.
- Examine residential densities and provide adjustments to avoid environmental degradation and to protect the rural character.
- Landscaping in a disturbed area adjacent to environmentally sensitive areas should be replanted with indigenous plant material.

The specific areas of concern includes soil characteristics, steep slopes (25% or greater), flood prone areas, geology (particularly carbonate rock formations), freshwater wetlands

⁵ **Amendment to the Master Plan Residential Land Use Plan and Resource Conservation Element** dated October 15, 2005, prepared by David R. Troast, PP, AICP, page 9.

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and Category 1 streams. The Element cross-referenced other sources such as State Plan Policy Map, the New Jersey Landscape Project and offered the following conclusion:

The Objectives of the Conservation Element establish the policies for managing development. The Resource Inventory and the NJDEP Landscape Project provide the criteria and the analysis to determine the appropriate residential densities for vacant or underdeveloped land.⁶

3.3 HOUSING PLAN AND FAIR SHARE PLAN: OCTOBER 15, 2005

The Planning Board also adopted a Housing Plan and Fair Share Plan (hereinafter HP/FSP) on October 31, 2005 and submitted same to COAH on December 5, 2005 with a petition seeking substantive certification. The HP/FSP was designed to address both the cumulative affordable housing obligation in Andover (for the period of time between 1987 and 1999) and the anticipated third round growth share requirement. As noted above, each new center was expected to generate affordable housing based upon a 20 percent set-aside. At the densities indicated, this would have resulted in approximately 120 units.

⁶ Ibid. Page 12.

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4.0 C. 40:55D-89b: THE EXTENT TO WHICH SUCH PROBLEMS AND OBJECTIVES HAVE BEEN REDUCED OR HAVE INCREASED SUBSEQUENT TO SUCH DATE.

4.1 Centers and Environs

The Township has not adopted zoning to implement the proposed centers nor changed the zoning to reduce development in the environs as recommended by the 2005 Residential Land Use Plan and Resource Conservation Element. The objective to protect the environs remains valid and should be implemented, however; the concept of creating a new center is reevaluated in Sections 5 and 6 of this Reexamination Report. Andover Township did take one step in satisfying a long-standing objective by implementing regulations to control development on steep slopes in 2006.

Since 1999 through the spring of 2004, Andover Township pursued center designation for an area located along Route 206 and Springdale Road, commonly referred to as the “Springdale Village Center”. Considerable progress had been achieved in this regard. In November 2003 this concept was one of several analyzed at a design workshop sponsored by the Office of Smart Growth (OSG), NJDOT, NJDEP and the Sussex County Planning Department. As late as March and May 2004 the Planning Board communicated its interest in continuing with this project to the Office of Smart Growth and expressed a commitment to pursue Plan Endorsement to accomplish this aim. OSG staff, in a memorandum dated May 21, 2004, concurred with the idea of pursuing Plan Endorsement for this and several other potential centers in Andover and recommended the Township incorporate the various center proposals with a Plan Endorsement application.

Other potential centers were also mentioned leading up to the 2005 Master Plan changes. The Andover Township State Plan Cross Acceptance Report dated December 18, 2004 called for three centers, as follows:

The Andover Plan proposed three planned “centers” consisting of the Springdale Village Center, the Andover Township Village Center in the area of the Municipal Building and the Andover Transit Village planned with the new passenger rail proposed for the Lackawanna Cutoff. The future growth is focused in the three “centers” for commercial and residential needs with incentives and development standards to limit environmental impacts in the “environs”.⁷

By the time the Residential Land Use Plan and Resource Conservation Element were adopted on October 15, 2005, the Transit Village center remained but the other two were replaced by a new center to be located adjacent to Andover Borough.

⁷ **Andover Township Cross Acceptance Report**, dated December 18, 2004, prepared by David R. Troast, PP, AICP, CLA, page 1.

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4.2 Affordable Housing

Andover Township did submit its Housing Plan and Fair Share Plan in accordance with the deadline for third round substantive certification. Subsequent to the December 2005 petition for substantive certification, COAH issued an initial review letter in May 2006 requesting additional information and clarification on the certain matters including the following⁸:

- Delineation between the affordable housing units and sites which will address the 1987 to 1999 prior round obligation and those which will address the 1999 to 2014 growth share obligation.
- A copy of the draft zoning or land use ordinance which includes the affordable housing requirement for Limecrest Brighton Road site, Transit Village site and Mount Laurel Receiving District pursuant to N.J.A.C. 5:94-4.4(a).
- A description of the suitability of the Abbey House site, Planned Retirement Community site and Mount Laurel Receiving District pursuant to NJAC 5:94-4.5 and NJAC 5:94-4.6(a)2.
- Additional information for the Abbey House project:
- A pro-forma statement pursuant to N.J.A.C. 5:94-4.6(a)8i
- A construction schedule or timetable pursuant to N.J.A.C. 5:94-4.6(a)9
- Designation of the entity responsible for monitoring the construction and overall development activity pursuant to N.J.A.C. 5:94-4.6(a)9

In response, the Township advised COAH that certain assumptions regarding potential affordable housing sites identified in the HP/FSP are under reconsideration. In accordance with the new policy recommendations to emerge from this Master Plan Reexamination Report and, equally important, in response to COAH's revised third round rules anticipated in early 2008, Andover Township will submit a modified Housing Element / Fair Share Plan for substantive certification.

The problem in Andover Township remains the same, namely a serious deficiency in meeting its prior round obligation and the need to proactively plan for its current obligation. The Township's prior round affordable housing obligation of 47 units has not been met and to date the only inventory consists of a four bedroom group home resulting

⁸ Correspondence from Lucy Voorhoeve, Executive Director, Council On Affordable Housing, to Mayor Tom Walsh, dated May 1, 2006.

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in a total of 8 credits (one credit per bedroom and a total of 4 rental bonus credits). This leaves a prior round outstanding balance of 39 units.

In April 2005 Andover Township adopted a Development Fee Ordinance (Ordinance No. 2005-7) codified in Chapter 190 “Zoning” in §190-32.2. It requires development within residential zones to contribute not less than one percent (1%) of equalized assessed value or \$4,356, whichever is the greater amount, for any site plan or subdivision of two (2) to eight (8) building lots or units. Existing vacant building lots are likewise subject to the fee. Commercial and industrial development must contribute not less than two percent (2%) of equalized assessed value of any new building or an addition to an existing building.

According to the “Andover Township Development Fee Spending Plan” attached to the Housing Plan and Fair Share Plan, \$1,470,200 in development fees were projected through the entire third round period concluding January 1, 2015.⁹ The Development Fee Spending Plan stated that \$1,420,200 or 96 percent of the total would be dedicated to the “...reconstruction of the Abbey Stone House or a Regional Contribution Agreement (RCA)...”¹⁰

As of this Reexamination Report a total of \$17,369.17 has been collected from development fees raising concern that the projected revenues will require a downward adjustment and, as a consequence, new strategies will be needed to address the Township’s affordable housing obligation.

⁹ **Andover Township Housing Plan and Fair Share Plan**, October 15, 2005, “Andover Township Development Fee Spending Plan”, page 2

¹⁰ *Ibid.* Page 3.

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5.1 Land Use Policies

Certain assumptions, policies and objectives that guided the 2005 Master Plan Reexamination Report and the Residential Land Use Plan and Resource Conservation Element remain viable while others are replaced by the recommendations contained in this Master Plan Reexamination Report and will thus provide the basis for a new comprehensive Master Plan.

Andover Township will resume the effort to secure Plan Endorsement. This will ensure coordination of effort with the State Planning Commission and the Sussex County Planning Board. The Township will continue to pursue substantive certification with a revised Housing Element and Fair Share Plan to be prepared once COAH adopts revised third round rules pursuant to the findings set forth in the Appellate Division's decision of January 25, 2007 directing changes to the growth share methodology.

There is one major policy change in this Master Plan Reexamination Report concerning the Township's future Land Use Plan in general and its affordable housing plan in particular. That is, Andover Township should limit any new center to one location rather than several and that such a center should be developed at the "hamlet" scale in accordance with the standards set forth in the State Development and Redevelopment Plan. At this time it is not possible to determine whether the scale of such a hamlet will require central water and sanitary sewer facilities thus requiring Sussex County and NJDEP wastewater management plan amendments, therefore the Township should continue on its recent course to secure Plan Endorsement.

This policy shift also recommends the Township move away from exclusively relying upon a new center to address its affordable housing obligation in order to seek opportunities for municipally sponsored projects, in collaboration with non-profit entities, to create units on individual septic systems which do not require new or expanded water and sanitary sewer infrastructure. In so doing, Andover will be better positioned to demonstrate a "realistic opportunity" when revising its third round Housing Element and Fair Share Plan.

For the past 18 years Andover Township has attempted to satisfy its affordable housing obligation through the creation of one or several centers. The implications of this approach have caused the Township to continuously search for land and, equally important, infrastructure in the form of sanitary sewer and potable water to serve the level

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of development needed to provide not just the affordable housing but the market-rate units that would be needed to entice private investment for such a purpose.

In February 1989 the first attempt at meeting this objective was launched with the creation of the ML-Mount Laurel zone district which remains in place today. Over the course of the 18 years since its inception there has been no affordable housing produced in the zone established expressly for that purpose. Despite the fact that COAH granted Andover a “conditional” substantive certification for its second round Housing Element and Fair Share Plan in September 1999 – 10 years after the creation of the ML-Mount Laurel zone district – predicated upon the Township amending the ML district to permit a minimum density of 10 units an acre, the zoning remains today unchanged at 6 units per acre.

The Springdale center concept was focused primarily on the Benedictine Order’s property, commonly known as the St. Paul’s Abbey. Work on this concept progressed to the stage where, in 2003, State, County, and municipal representatives came together to draft a concept plan for this new center. A design charrette, sponsored by various State agencies (OSG, DOT, DEP) and the Sussex County Planning Department was conducted in late 2003. In a follow-up memorandum the Office of Smart Growth described the ideas which emerged from the planning sessions otherwise known as a “charrette” as follows:

During the charrette, a concept plan for the Springdale Village center evolved, such that the Abby [sic] site would be able to support a new neotraditional village design. This would be an outgrowth but very much related to the existing Springdale Village. It also became apparent that the larger boundaries for the originally proposed center were unrealistic, thus providing land that could become a greenbelt.

Both the Abby [sic] property and the existing Springdale community could be brought together in the center as distinct neighborhoods. In the new village neighborhood plan, the monastery is converted into a civic use with a mixed use plan including retail on the first floor and apartments above along with townhouses, detached SFH, off-street parking, and a green leading from the Abbey property.¹¹

To date there has been no interest from the property owner in selling or leasing the land to create such a center and given that the efforts to establish a center at this location has consumed some 18 years of the Township’s attention with no results it is time to explore alternative locations.

The idea of creating a focal point for the Township has its origins in Andover’s first Comprehensive Development Plan which called for a town center to include Town Hall,

¹¹ Memorandum from Adam Zellner and Paul Drake to Plan Implementation Committee [OSG], dated May 21, 2004.

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a future school site, recreational facilities and shopping all within the vicinity of Twin Lakes. Subsequently the Twin Lakes area was incorporated into the 1,055 acre tract that became Kittatinny Valley State Park in 1994 but the concept, first advanced in Andover some 50 years ago, has been seen as a primary objective up to the present.

Initially there was the proposed Springdale Village Center envisioned for the ML zone district that emerged from 1989 Master Plan and subsequently reaffirmed in the April 2000 Master Plan Reexamination Report. Several years later, in the Andover Township Cross Acceptance Report dated December 18, 2004, three centers: Springdale Village Center, Andover Township Village Center, and Andover Transit Village were suggested. One year later the 2005 Residential Land Use Plan Element and Housing Plan Element kept the “Transit Village” center but jettisoned the others in favor of a new center known as the “Andover Borough Center Expansion District”.

While the concept of creating a transit village and a center contiguous with new development in Andover Borough has merit, a key consideration in creating one or more centers is the need to create affordable housing. The Township is confronted with a significant deficit from prior rounds and a looming third round obligation that must be addressed in a proactive fashion. As evidenced by COAH’s response to Andover’s 2005 Housing Plan and Fair Share Plan, it is essential that the affordable housing in any center have a “realistic opportunity” to be constructed in the third round. COAH’s Substantive Rules state this clearly as follows:

“Realistic opportunity” means a reasonable likelihood that the affordable housing in a municipality’s Housing element and Fair Share Plan will actually be constructed or provided during the ten-year period of certification based upon a careful analysis of the elements in the municipality’s plan, including the financial feasibility as set forth in N.J.A.C. 5:94-4.2(a) and the suitability of specific sites as set forth in N.J.A.C. 5:94-4-5.¹²

The recommendation of this Reexamination Report therefore is to create affordable housing opportunities through innovative strategies including, but not limited to, municipal acquisition of land and partnership with qualified nonprofit development organizations to construct 100 percent affordable housing projects. To the extent it remains necessary to establish a center with densities to support the inclusion of affordable units Andover should continue to focus its efforts on the locations described in Section 6 of this Reexamination Report.

As indicated above, a new center should be at the scale of a hamlet and, as such, the Transit Village and Borough Center Expansion as advocated in the 2005 Residential Land Use Plan Element and Housing Plan Element are no longer operative concepts based on a number of considerations. While studies continue at various levels of government concerning the restoration of the Lackawanna Cutoff passenger line, the fact

¹² N.J.A.C. 5:94-1.4.

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remains that the absence of funding coupled with the serious questions regarding the ability to provide water and sanitary sewerage in light of the environmentally sensitive characteristics found in this area of the Township argues against this center becoming a reality in the foreseeable future.

So, too, the feasibility of the proposed Andover Borough Center Expansion District, otherwise referred to as the “Limecrest / Brighton Road Extension”, is in question following Andover Borough’s revocation of the General Development Plan and with it the major mixed-use project planned for 235 acres within the Borough. It was anticipated that this new development in the Borough would bring with it water and sanitary sewerage facilities with sufficient capacity to serve this proposed center in the Township. Given the uncertainty of the Borough project, Andover Township cannot reasonably rely upon this development to satisfy any of its affordable housing need.

The challenge in Andover Township in meeting its affordable housing obligation has been and continues to be the lack of sanitary sewerage facilities to serve development at a scale commensurate with the need. Evolving regulatory controls will make this task all the more demanding particularly as the number of streams and water bodies in the Township proposed for reclassification to Category One status has expanded dramatically. Proposed NJDEP rule changes to Surface Water Quality Standards regulations (N.J.A.C. 7:9B) and to the Stormwater Management regulations (N.J.A.C. 7:7E-8.7) will place the majority of the Township’s surface waters and streams in the Category One (C1) classification with a requisite 300 foot buffer along the perimeter of all affected water bodies. It is estimated that between 2,177 to 2,530 acres will be impacted by this new standard.

Further, proposed revisions by NJDEP to the Water Quality Management Planning rules (N.J.A.C. 7:15) are very clear that environmentally sensitive areas are off-limits to this type of infrastructure. A summary of the proposed rule revisions states, in part:

N.J.A.C. 7:15-5.24(b) establishes the criteria or delineating a sewer service area boundary in consideration of environmentally sensitive areas. **The Department selected four environmental features to be used in determining if centralized sewer service is inappropriate for an area: threatened and endangered species habitats, Natural Heritage Priority Sites, Category One streams buffers, and wetlands.** These four environmental features are unique and sensitive features whose protection is central to the Department’s mandate to protect ecological integrity and water quality.¹³ (Emphasis added.)

All of the above: Category One streams, freshwater wetlands, threatened and endangered species habitats, and Natural Heritage Priority sites are found in Andover as documented

¹³ NJDEP Water Quality Management Planning; Proposed Readoption with Amendments: N.J.A.C. 7:15, June 4, 2007, Summary, page 73.

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within the 2007 Natural Resources Inventory (NRI). Indeed as Figures 24 and 25 in the NRI clearly indicate, the available areas within the Township suitable for the type of infrastructure to support a center are extremely limited.¹⁴ Approximately 9,170 acres fall into the 3, 4 or 5 ranking classification as detailed on page 36, Table 13 of the NRI.

The centrality of the housing plan to a municipality's Master Plan is recognized in the Municipal Land Use Law which makes the adoption of a Housing Element a prerequisite for zoning (N.J.S.A. 40:55D-62). A key component of the housing element is of course the planning for affordable housing and it is acknowledged that COAH's standards for site suitability as set forth in N.J.A.C. 5:94-4.5 favors designated centers in Planning Areas 3, 4, 4B, 5 or 5B. The Township falls within Planning Areas 4, 4B and 5 hence this standard is germane but is not absolute. COAH's rules also state:

The Council shall consider the availability of infrastructure and vacant developable land when determining site suitability.¹⁵

Thus a shift in Township policy regarding affordable housing dating back to the 1989 Master Plan including the Housing Plan Element should be reconsidered. Instead of concentrating all or most of the Township's affordable housing obligation in one location which by necessity requires the type of infrastructure that is increasing difficult to provide for the reasons stated above, Andover should continue its current efforts to create municipally sponsored and/or a 100 percent affordable construction program pursuant to N.J.A.C. 5:94-4.6. In the event this approach cannot fully address both the prior round obligation and the third round need, efforts should continue to identify the most appropriate location for a center.

Andover Township will amend its Housing Element and Fair Share Plan to reflect these changes and re-petition COAH for substantive certification pending the adoption of revised third round rules.

Notwithstanding a change in policy regarding the development of a transit village, Andover Township does support the restoration of the Erie Lackawanna Cut-off rail line with an appropriately-scaled passenger platform and parking area, subject to a detailed review process to ensure compatibility with adjacent residential areas and adherence to applicable environmental concerns.

5.2 Zoning in the Environs

The need to protect environmentally sensitive areas of the Township as recommended in the 2005 Residential Land Use Plan and Resource Conservation Element (and many of the prior Master Plan reports throughout the years) remains urgent. Zoning to create

¹⁴ **Andover Township Natural Resource Inventory**, February 2007, Andover Township Environment Commission / Banisch Associates, Figure 24 "Critical Habitat – Forest and Grassland Areas"; Figure 25 "Critical Habitat – Forested Wetlands, Emergent and Wood Turtle".

¹⁵ N.J.A.C. 5:94-4.5 (a) 6.

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residential densities consistent with the policies of the SDRP for the “Environs” should be implemented.

5.3 Cross Acceptance

The Andover Township Cross Acceptance Report, dated December 18, 2004, noted the Township’s intention to seek Plan Endorsement including center designation for three centers identified as Springdale Village, Andover Township Village, and Transit Village. New policies with regard to proposed centers resulting from this Reexamination Report, and an updated Master Plan to follow, will be done concurrently with the Plan Endorsement process and will thus supersede earlier policy statements in the Township’s Cross Acceptance report.

5.4 Stormwater Management

Additional external regulatory changes that should be addressed concern NJDEP’s nonstructural stormwater management strategies as set forth in N.J.A.C. 7:8-5.3 (b). As the Township crafts a new Master Plan and revised development regulations to implement the policies therein, careful attention must be given to ensuring consistency with these standards.

5.5 Limestone and Shale Formations

More than 50% of Andover Township is underlain by limestone and shale. Shallow depth to bedrock over the Martinsburg Shale and seasonal high water tables in limestone formations pose on-site septic challenges. Kittatinny Limestone, like many limestone formations, contains sink holes, outcropping, and caves that are the result of chemical and physical processes. Proposed development on limestone and shale rich sites should be carefully evaluated.

Wells in the Martinsburg Shale are generally shallow and located in rock fissures, but even in the water-rich Limestone Valley, many wells are hundreds of feet deep, suggesting that caution be exercised.

5.6 History of Groundwater Table in the Limestone Valley

The Limestone Valley in the Township has been altered over the past 100 years by the operation of the Limestone Quarry, which was permitted to pump millions of gallons of water out of the 145-foot deep pit and to discharge it into the Paulinkskill River. In 2005, the Limestone Quarry ceased its limestone mining operations. As a result, beginning in early 2005, and continuing throughout the summer and fall, the groundwater table throughout the Limestone Valley of Andover Township and adjacent towns began to rise to historically natural levels.

During the years that the quarry had been pumping water, developments in the Limestone Valley continued to be built, some in what were once pond beds and wetlands. With the

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cessation of quarry operations and rise of the water table, flood conditions in the Valley became evident. At current levels, developments and sewage treatment plants are facing flooding and critical failures. While there is no immediate solution to the problems of existing developments, any proposed new construction in the Limestone Valley, now or in the future, needs to be carefully evaluated with these restrictions in mind.

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6.0. C. 40:55D-89d: THE SPECIFIC CHANGES FOR THE MASTER PLAN OR DEVELOPMENT REGULATIONS, IF ANY, INCLUDING UNDERLYING OBJECTIVES, POLICIES AND STANDARDS, OR WHETHER A NEW PLAN OR REGULATIONS SHOULD BE PROPOSED.

6.1 New Comprehensive Master Plan

Andover Township should proceed to draft and adopt a comprehensive new Master Plan which has not been done since 1989. This new Plan should go beyond the minimum statutory requirements to incorporate all the Elements required by the Plan Endorsement Guidelines¹⁶, which are as follows:

- Statement of Goals and Objectives
- Land Use Plan
- Housing Element / Fair Share Plan
- Conservation Plan
- Circulation Plan Element
- Water Infrastructure Plan
- Community Facilities Plan
- Open Space and Recreation Plan
- Economic Development Plan Element

6.1.1 New Goals and Objectives

The new Master Plan will be guided by the following three primary principles:

- The Township will actively investigate the potential for a new “Hamlet” center.
- The rural and agricultural characteristics of the Township will be preserved.
- Andover Township will address its affordable housing obligation: past, present and future through techniques which shall preserve and enhance the rural character of the community.

The Land Use Board, with the assistance of an advisory committee established in accordance with Plan Endorsement Guidelines, should conduct a series of public sessions to establish a vision for the Township’s future guided by the above-referenced principles and with a focus on the following objectives:

¹⁶ Draft Municipal Plan Endorsement Guidelines, State of New Jersey, Department of Community Affairs, State Planning Commission, Office of Smart Growth, revised as of August 13, 2007, pages 16 – 37.

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LAND USE

- To exercise stewardship over the lands and waters of Andover Township to ensure that these resources are available for the sustenance and enjoyment of present and future generations.
- To protect and maintain the prevailing rural character and unique sense of place of the Township, which includes diverse residential neighborhoods, attractive non-residential uses, scenic landscapes which result from the natural topography, agricultural lands, woodlands and watercourses.
- To establish development densities and intensities at levels that do not exceed the carrying capacity of the natural environment and available infrastructure, both existing and planned.
- To promote cooperation with neighboring municipalities in the region to advance consistent development and open space goals, policies and plans.
- To promote the goals and objectives of Andover Township through the incorporation of local policies and strategies that respond to the basic premises, intent and purposes of the State Development and Redevelopment Plan and the Sussex County Strategic Growth Plan.
- To provide a future land use pattern that serves the needs of the community for housing, community services and a safe and healthful environment.
- To continue and expand upon land use policies that promote controlled development at suitable locations by discouraging the extension of growth-inducing infrastructure into rural areas and exploring the possibility for a “hamlet” center.
- To provide for a reasonable balance among various land uses that respects and reflects the interaction and synergy of community life.
- To offer flexibility in development techniques which recognize new approaches and technologies which are responsive to evolving demographic, economic and environmental needs.

COMMUNITY DESIGN

- To develop standards to ensure good visual quality and design for all land use categories.
- To ensure that new development is visually and functionally compatible with the physical character of the Township.

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- To provide for a proactive approach to physical design and community planning so that adjacent land uses function compatibly and harmoniously in terms of scale and location.
- To improve the visual and physical appearance of developed areas while protecting residential neighborhoods from encroachment by incompatible uses.
- To establish land use policies and design standards that will enhance views along existing commercial corridors.
- To retain to the greatest extent practicable attractive vistas from public rights-of-way, including views of hills, valleys, ridgelines, woodlands, farmlands, hedge rows, stream corridors, flood plains and other natural areas.

NATURAL RESOURCES

- To protect sensitive environmental resources from destruction or degradation, including but not limited to steep slopes, ridgelines, trout streams, wetlands, stream corridors, potable water supplies, watersheds, aquifers, rivers, view sheds, forests and other vegetation, soils, habitats of threatened and endangered species and unique natural systems.
- To preserve and maintain the interrelationships between land and water resources which contribute to their functioning as an ecological system.
- To relate the intensity of development, in areas relying on groundwater supplies and on-site sewage disposal, to conservative estimates of available water resources and the ability of the soil and ground water to sustain on-lot disposal systems without degrading or impairing the water quality.
- To protect biological diversity through the maintenance of large contiguous tracts and corridors of recreation, forest, flood plain and other open space lands.
- To protect prime agricultural soils, soils of statewide importance and soils of local importance for their contribution to agricultural production.
- To continue the acquisition of important open space through the use of the Township's open space tax and other sources of funding.
- To promote private conservation efforts (donations, easements) that help protect natural assets.
- To promote land use and management policies that provide for clean air and protection from noise and light impacts.

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- To promote the development and adoption of resource management standards to manage land use activities in a manner that protects the integrity of natural resources for the future use and enjoyment of generations to come.
- To identify and manage stream corridor buffer areas by maintaining undisturbed vegetation in order to protect and improve water quality, and provide wildlife corridors and opportunities for passive and active recreation.
- To protect and preserve the woodlands of Andover Township and to promote reforestation and appropriate landscaping in response to the loss of tree canopy resulting from development.
- To protect groundwater supply and quality through the adoption of aquifer management programs, including relevant standards for wellhead protection programs, and standards to protect and enhance groundwater recharge areas, such as impervious coverage limitations.
- To promote the use of minimal necessary levels of nighttime outdoor lighting so as to protect and preserve the dark sky quality of the Township and to prevent negative impacts on neighboring properties.

HOUSING

- To provide for a variety of housing types which respond to the needs of households of varying size, age, and income, persons with disabilities and emerging demographic characteristics.
- To promote and support the development and redevelopment of affordable housing intended to address the Township's fair share obligation.
- To provide a range of housing opportunities within the Township, with densities and lot sizes that respond to the capabilities and limitations of natural systems and available infrastructure.

AGRICULTURE

- To encourage the preservation of agriculture through proactive planning where there are suitable conditions for the continued operation and maintenance of agricultural uses.
- To preserve a large contiguous land base to assure that agriculture remains a viable, permanent land use.
- To promote agricultural preservation activities and other open space preservation activities in the Township.

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- To provide financial incentives, financing mechanisms and enhanced opportunities for agricultural businesses that assist in maintaining agriculture as a viable economic activity.
- To encourage compatibility between agricultural operations and neighboring non-agricultural development through the right-to-farm ordinance.

TRANSPORTATION

- To create a circulation plan sufficient to accommodate planned development.
- To coordinate efforts with Sussex County and NJDOT with respect to improvements to, or in proximity of County roads and State Highway 206 consistent with the County's Strategic Growth Plan and the NJDOT Highway Access Code.
- To establish transportation policies and programs that improve connections among housing, employment and commercial uses, including provisions for vehicular and pedestrian travel and bicycle paths.
- To promote bicycle paths and walking trails linking civic, cultural, recreational, and education facilities throughout the Township and to neighboring communities.
- To evaluate existing zoning in rural parts of the Township, particularly in areas where the ability to widen existing roads or create new streets is limited by the established development pattern and sensitive environmental conditions, in order to better match the permitted densities to the capacity of the existing rural road network to provide safe, efficient and convenient traffic movements, particularly for school buses and emergency services based on rural road service standards designed to maintain the character of the community.
- To recognize that roadways are public lands deserving of aesthetic design consideration as well as efficient movement of vehicles by evaluating existing landscaping standards and signage regulations and, where necessary, modify or enhance such standards and regulations.
- To promote the design and development of roadway improvements necessary to serve existing population and employment sectors of the Township.

ECONOMIC DEVELOPMENT

- To provide for desirable non-residential development in appropriate areas of the Township that will complement the existing character of the community and aid in broadening the local tax base.

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- To promote the redesign of existing commercial sites to provide a more efficient land use pattern through such approaches as reduced curb cuts, interconnecting driveways, improved pedestrian and bicycle linkages and enhanced landscaping.
- To coordinate such items as architectural design, access, landscaping, lighting, signs, and similar design features to produce visually and functionally compatible economic development.

HISTORIC AND CULTURAL RESOURCES

- To safeguard the heritage of the Township by preserving those resources that have historic, archaeological, scenic, social, cultural, economic and architectural significance based on national, state and local importance and criteria.
- To encourage the preservation, rehabilitation or adaptive reuse of historic buildings and structures that protects their architectural integrity and preserves their context within the historic landscape.
- To encourage the development of land use regulations which acknowledge and permit special treatment for historic landscapes, view sheds districts, sites, and structures including setbacks, buffers and other design criteria.

COMMUNITY FACILITIES AND UTILITIES

- To plan for the expansion of necessary public services, including but not limited to utilities, community, emergency service, and recreation facilities, consistent with the future vision plan for Andover Township.
- To establish a system whereby necessary capital improvements can be programmed and planned in advance, and land can be reserved to meet the future needs for community facilities and open space.
- To provide facilities for community groups and cultural activities.
- To ensure that the development process acknowledges and addresses the impact on community facilities and utilities through the payment of the fair share of any off-tract improvements for community facilities to the extent permitted by law.

RECREATION AND OPEN SPACE

- To promote the provision of appropriate and balanced public open space and recreational facilities through public action and the development review process.
- To prepare and maintain a recreation and open space master plan element to establish and enhance recreational lands and public open space; to establish

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- linkages of public spaces through the use of greenways, greenbelts, waterways, paths and bikeways; and, to establish as the highest priority for public acquisition, areas of recreational, scenic or environmental value.
- To promote cultural activities providing recreational opportunities for a broad spectrum of residents and visitors.
 - To assess and provide opportunities for active and passive recreation to meet the needs of all citizens.
 - To devise appropriate strategies for the public and private ownership and maintenance of open space and recreation lands.

6.2 Plan Endorsement

The New Jersey State Planning Commission defines Plan Endorsement as follows:

Municipal Plan Endorsement is a voluntary review process designed to ensure the coordination of state, county and municipal planning efforts in achieving the goals and policies of the State Planning Act. The State Development and Redevelopment Plan (State Plan) is the blueprint for achieving these goals and provides the template for coordination. The endorsement process expands upon the requirements of the Municipal Land Use Law (MLUL) and incorporates the planning initiatives of the state agencies. It is through Plan Endorsement that local, county and state governments may work together to develop coordinated capital investment and planning decision-making mechanisms that are consistent with the State Plan and with each other.¹⁷

Andover Township first expressed its intention to the Office of Smart Growth in March and again in May 2004 to pursue Plan Endorsement in order to secure center designation for Springdale Village, to create a transit village and a “municipal village center”.¹⁸ Apparently between May 2004 and October 2005 when the Master Plan Reexamination Report, Residential Land Use Plan and Housing Element were adopted, the effort to pursue Plan Endorsement was suspended as the locations of the proposed centers shifted.

This Reexamination Report takes note that in June 2007 Andover Township reinstated an application to proceed with Plan Endorsement and on September 4, 2007 held a pre-petition meeting with OSG. Andover realizes that it must address its affordable housing obligation and is exploring center-based development as one of its options. If it becomes necessary to create a new sanitary sewer service area the Township will require an

¹⁷ Ibid. Page 4.

¹⁸ Correspondence from Thomas F. Collins, Jr., Esq. to Paul M. Drake, PP, AICP, Manager: Office of Smart Growth, March 9, 2004; Correspondence from Thomas F. Collins, Jr., Esq. to Adam Zelner [sic], Director and Paul M. Drake, PP, AICP, Manager, Office of Smart Growth, May 25, 2004.

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amendment to the Sussex County Wastewater Management Plan. Both the County's April 2005 Strategic Growth Plan and its June 2007 Draft Wastewater Management Plan mandate that new sewer service areas be consistent with the policies of the SDRP as determined through the Plan Endorsement process.

In addition, COAH's third round procedural rules (N.J.A.C. 5:95-9.4) require a municipality to secure plan endorsement within three years of receiving substantive certification or risk having the certification revoked. In accordance with the Plan Endorsement Guidelines, the Township will proceed with the Municipal Self Assessment analysis, followed by the public visioning sessions concurrent with the Master Plan process outlined in this Reexamination Report.

6.3 Affordable Housing

A new Housing Element / Fair Share Plan must be prepared and submitted within the required timeframe to COAH to repetition for substantive certification. It will not be possible to prepare this Element until COAH's third round revised rules are adopted which is anticipated in early 2008.

6.4 Center-Based Development

There are a number of very important policy decisions to be made with regard to the issue of establishing a center such as scale, residential density, and the ability to provide the necessary infrastructure particularly in light of the presence of Category One streams and other environmentally sensitive areas as described in Section 5 of this report. Equally important is the issue of where growth should be limited consistent with the policy objectives of the SDRP, the Sussex County Strategic Growth Plan and in furtherance of the Township's efforts to preserve its rural character.

One of the SDRP policy guidelines for the Rural Planning Areas (PA 4 and 4B) is to "confine programmed sewers and public water services to Centers." The SDRP elaborates on this point as follows:

Development and redevelopment in the Rural Planning Area should be encouraged in well defined Centers located and designed to achieve the area's Policy Objectives. Development should be guided to Centers with capacity to absorb growth in cost-effective ways that minimize impacts on rural features. **Public water, wastewater, and other capital-intensive infrastructure should be provided only in Centers, except to mitigate life threatening and emergent threats to public health and safety.** Private sector investment should provide the infrastructure for new Centers, except where public/private partnerships in Centers would benefit the public interest.¹⁹ (Emphasis added.)

¹⁹ **State Development and Redevelopment Plan**, New Jersey State Planning Commission, March 1, 2001, pages 208-209.

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The policy guideline for the Environmentally Sensitive Planning Area (PA5) is virtually the same where it states:

New development in the Environmentally Sensitive Planning Area should be consistent with Statewide Policies and should be in Centers. Centers should absorb the growth otherwise projected for the Environs. Development and redevelopment should be guided to Centers with capacity to absorb growth in cost-effective ways that minimize impacts on environmentally sensitive features. Wastewater treatment facilities should be provided only in Centers, except to mitigate life threatening and emergent threats to public health and safety. Private sector investment should provide this infrastructure for new Centers, except where a public/private partnership would benefit the public interest. The Environs should be protected from the effects of Center development and should be maintained as open land. Centers should serve as receiving areas for density transfers.²⁰

Given the limitations that must be confronted in establishing a center, a couple of locations merit further consideration. The first is the Jump Airport and vicinity which is actually adjacent to the former Springdale center proposal. The other location worthy of continued analysis represents a variation on the “Andover Township Village Center” cited in the 2004 Cross Acceptance Report. As with the Jump Airport site, there is recent development interest in establishing a center on the Rolling Greens Golf Course and immediate vicinity.

For Andover, the appropriate scale for a center should be no larger than a “Hamlet”. Accordingly the description and criteria for a hamlet as set forth in the SDRP is cited below to establish the parameters for Andover’s planning efforts.

Hamlets are the smallest places eligible for Center designation in the State Plan. Existing Hamlets are found primarily in rural areas, often at crossroads. Hamlets are not synonymous with conventional single-use residential subdivisions. Although Hamlets are primarily residential in character, they may have a small, compact Core offering limited convenience goods and community activities, such as a multi-purpose community building, a school, a house of worship, a tavern or luncheonette, a commons or similar land uses. The density of a Hamlet should conform to the carrying capacities of natural and built systems.

While existing Hamlets presently have no public water or sewer system, if they are planned to accommodate new development, small-scale systems or potable water systems may be required and are encouraged. New development in existing and new Hamlets should absorb the development that otherwise would occur in the Environs. The amount or level of new

²⁰ Ibid. Page 217.

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development should conform to the capacities of natural resource and infrastructure systems that would exist in the absence of the water and sewer systems.

New Hamlets are expected to continue primarily as residential development forms, offering a limited range of housing choices, predominantly geared to various single-family configurations, and perhaps with some very small lot and some accessory units. New Hamlets are distinct from conventional subdivisions in a number of ways. They are designed with an integrated and interconnected circulation system, which facilitates internal movement, including pedestrians and bicycles, and does not preclude future transit service. They are structured around a community focal point, such as a small green or simply an important intersection, which may contain a convenience store, a local business or a church, and which constitutes an appropriate pick-up/drop off for flexible- or fixed-route transit, car/van pooling, etc. This is the Core of the Hamlet, the center of the community. New Hamlets should be effectively linked to other Centers in the region by way of regional bikeways, corridor transit or para-transit.

New Hamlets in the Suburban Planning Area may not resemble the more self-contained Hamlets of Fringe, Rural and Environmentally Sensitive Planning Areas in that they are not likely to be surrounded by farmland or pristine open space but rather by Environs containing limited development.²¹

The following criteria are intended as a general guide for designating Hamlets. Local conditions may require flexible application of the criteria to achieve the Policy Objectives of the Planning Area:

1. It functions (or is planned to function) primarily as a small-scale, compact residential settlement with community functions (including, for example, a commons or community activity building or place) that clearly distinguishes it from the standard, single-use, residential subdivision; and
2. It has (or is planned to have) a population of at least 25 people and not more than 250 people; and
3. It has (or is planned to have) a minimum gross housing density of two dwelling units per acre;
4. It has an area that encompasses, generally, 10 to 50 acres, unless wastewater systems are not reasonably feasible, in which case the boundary may encompass as much as 100 acres (wastewater systems are

²¹ Ibid. Page 247.

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preferred and should be installed to assure compact development, unless there are mitigating environmental factors that make septic systems, and the resulting larger lot sizes, preferable);

5. It has (or is planned to have) up to 100 dwelling units and a range of housing types within the Center.

In addition, a new Hamlet should meet the following criteria:

- It is identified as a result of a municipal planning effort conducted with the participation of the county and reflected in municipal and county master plans; and
- It is a small, compact, primarily residential settlement. It should be planned to absorb the development that would otherwise occur on tracts of land in the Environs. A new Hamlet may require a small-scale public water, wastewater treatment, or potable water system. The total amount or level of development within both the Hamlet and the Environs should conform to the Policy Objectives of the Planning Area and to the capacities of natural resource and infrastructure systems that would exist in the Planning Area in the absence of the water and wastewater facilities; and
- It is planned to be integrated into a regional network of communities with appropriate transportation linkages; and
- It is planned and designed to preserve farmlands or environmentally sensitive areas.²²

While there are many examples in planning literature of good design, Sussex County's Strategic Growth Plan cites the work of Anton Nelessen as a recommended template. This Reexamination Report likewise recommends the concepts set forth by Professor Nelessen to guide new zoning for center development in Andover Township. The public "visioning" sessions should be organized around the following conceptual framework:

- Design for human scale: design for the human scale and perceptions, creating a sense of neighborhood;
- Ecological responsibility: design in harmony with nature not against it;
- Pedestrianism: define the primary community by walking dimensions;
- Open space: design for internal and peripheral open spaces;

²² Ibid. Page 248.

- Community focus: design for a neighborhood or community center;
- Streetscapes: design for streets internal to the community and highways on the periphery, incorporate complementary movement opportunities;
- Variation: design for buildings of smaller scale in a pattern of various footprints;
- Mixed use: design for mixed and multiple land uses, also include a mix of housing types, incomes, and a horizontal and vertical mix of uses;
- Design vocabulary: specify an architectural style or styles for the community including façade treatment, walls and fences, streetscapes, materials, and colors; and
- Maintenance: design community materials, and organizations that facilitate short term and long term maintenance and security.²³

6.5 The Environs

“Environs” are the areas beyond the boundaries of a center. The concept is described in the State Development and Redevelopment Plan as follows:

The Environs encompass a diversity of conditions, and throughout New Jersey, it varies in form and function. Existing conditions in the Environs also vary among Planning Areas. The Environs may include greenbelts: predominantly open areas that mark the outer edge of Centers. The Environs may also include some existing Nodes, which are encouraged to be retrofitted over time to reduce automobile dependency, diversity land uses, and enhance linkages to communities, wherever possible.

The Environs are the preferred areas for the protection of large contiguous areas, including the preservation of farmland, open space and large forest tracts. The Policy Objectives for the Fringe, Rural and Environmentally Sensitive Planning Areas specifically call for protection of the Environs from development. Strategies for preserving the Environs include density transfers into Centers, purchasing or donating easements, restricting the extension of capital facilities and adopting ordinances that limit development.²⁴

²³ **Visions For A New American Dream: Process, Principles, and an Ordinance to Plan and Design Small Communities**, by Nelessen, Anton Clarence, Edwards Brothers, Ann Arbor, Mich. January 1994, page 134

²⁴ **State Development and Redevelopment Plan**, New Jersey State Planning Commission, March 1, 2001, pages 252; 253.

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As indicated in Section 5 of this Reexamination Report, Category One water bodies impact some 2,530 acres or 19 percent of the total land area of the Township. Critical habitat areas in the Landscape Project 3, 4 and 5 classifications affects approximately 9,170 acres or 68 percent of the Township's land area. While there is some overlap between the Category One buffers and the critical habitats, it is clear that a good portion of the Township is recognized to have critical environmental features worthy of protection and subject to regulatory controls to ensure this objective. The 2007 NRI report states the point succinctly:

The wetlands present in Andover are generally forested and are located along most of the stream corridors, overlapped in some areas by FEMA-designated floodways, making this an important riparian habitat area. Riparian areas, an important part of the ecosystem, serve a multitude of functions, including controlling water temperature, stabilizing the stream bank, filtering pollutants from runoff, controlling sedimentation and contributing organic matter to the stream ecosystem. They are uniquely suited to passive recreation activities and can serve as corridors for wildlife migration.

The Township is primarily covered by contiguous forested areas of state endangered species habitat. This type of large contiguous habitat is becoming increasingly rare in New Jersey and should be carefully protected as a valued resource. State endangered species, such as the Red Shouldered Hawk, Barred Owl, wood turtle and the Federally Endangered Bog Turtle require large contiguous areas to forage and breed.

Andover Township contains a diverse set of natural resources that has contributed to the Township's historical development and plays a role in the future health of the regional ecosystem. The surface waters, geology, soils, wetlands and forest combine to create an environment unique to the Township. Loss of or impact to any of these resources can have a direct effect on the biodiversity of the area. Future planning efforts should reflect the need to preserve the natural resource base, which enhances the quality of life of residents in the Township and the future health of the regional ecosystem.²⁵

Zoning in the "environs" should be established to protect and preserve existing rural and agricultural characteristics. The Planned Retirement Community (PRC) and Mount Laurel (ML) zone districts are incompatible with this policy and therefore should be changed. The Township should explore various mechanisms to implement low density zoning in the environs including, but not limited to, a Transfer of Development Rights (TDR) program and non-contiguous clustering.

²⁵ **Andover Township Natural Resource Inventory**, February 2007, Andover Township Environment Commission / Banisch Associates, page 42.

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In light of the build-out analysis prepared for Andover Township in May 2007 which determined that existing single-family residential districts have the potential to yield approximately 1,953 new homes while the various other “special” residential use districts i.e. Mount Laurel and Planned Retirement Community could add several hundred more units²⁶, it is essential that steps be taken to implement zoning which will truly protect the rural and agricultural landscape of the municipality.

6.6 Expansion of the CB-Community Business Zone District

The Land Use Board should consider rezoning the properties having frontage on the south side of Newton Sparta Road (CR 616) situate between Yates Avenue and Stuckles Pond Road, specifically Lots 12, 13, 14, 14.01, 16, 17, 19, 22, 23, and 24.02 in Block 124, from R-1.0 / Single-Family Residential to the CB-Community Business designation. This would mirror the commercial zoning in place on the north side of Newton-Sparta Road creating a commercial node along the County road in proximity to the Town of Newton. All of the above-referenced properties except Lot 24.02, a corner parcel on the southwest quadrant of the Newton-Sparta Road / Yates Avenue intersection, are presently residential in character however; the increased traffic volumes along Newton-Sparta Road has diminished the quality of this area for residential use. Indeed, the County’s Strategic Growth Plan includes this roadway among the proposed transportation improvement projects as describes the roadway as follows:

Newton-Sparta Road is one of the most heavily traveled highways in Sussex County, connecting two of the largest population and commercial centers in the County. Traffic volumes continue to increase on this heavily traveled highway as do safety concerns. In order to address these issues, the County has undertaken a Local Scoping effort to determine the need for and develop improvements to Newton-Sparta Road such as signal upgrades, traffic signal coordination, left turn lanes, and possible common left turn lanes in commercial areas.²⁷

6.7 Environmental Constraints Regulations

The Township should implement a capacity or constraints-based density methodology to adjust density based upon environmental constraints in accordance with the New Jersey Supreme Court’s 2003 decision Rumson Estates v. Fair Haven, 177 N.J. 338. This approach would be applied to existing zoning in the Township. It is consistent with the recommendations of the October 15, 2005 Residential Land Use Plan and Resource Conservation Element, the 1989 Master Plan and with Township land use regulations that were in place prior to the Manalapan decision in 1992.²⁸

²⁶ **Build-Out and Capacity Analysis**, Andover Township Environment Commission / Andover Township Land Use Board / Banisch Associates, May 1, 2007, pages 3; 5.

²⁷ **Sussex County Strategic Growth Plan**, February 2005, Appendix E: County Transportation Projects, page 332.

²⁸ Manalapan Builders v. Township Committee, 256 N.J. Super 295 (App. Div. 1992)

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6.8 Tree Protection and Replacement Regulations

The Township should amend the 2005 Resource Conservation Element to establish a “Forest and Landscape Enhancement Plan” to serve as the basis for an ordinance designed to preserve existing trees and to formulate standards for replacement of trees where preservation is not possible. The objective would be to protect existing forest communities and to provide some measure of compensation for unavoidable losses resulting from permitted development. An amendment to the Township’s land use regulations will be necessary to implement this strategy.

6.9 Development Fees and Growth Share Requirements

The Township should modify the Development Fee Ordinance (Ordinance No. 2005-7) adopted on April 13, 2005 and codified in Chapter 190 “Zoning”, §190-32.2 to be consistent with COAH third round rules. At present it requires development within residential zones to contribute not less than one percent (1%) of equalized assessed value or \$4,356, whichever is the greater amount, for any site plan or subdivision of two (2) to eight (8) building lots or units. Existing vacant building lots are likewise subject to the fee. Commercial and industrial development must contribute not less than two percent (2%) of equalized assessed value of any new building or an addition to an existing building.

COAH’s third round rules, specifically N.J.A.C. 5:94-6.6 does not allow for such variation; rather the Ordinance should establish development fees of one percent and two percent of equalized assessed value of residential and nonresidential development, respectively. Likewise, should the municipality continue with its growth share requirements set forth in §190-32.1, these, too, should be clarified. In so doing, it is recognized that the January 25, 2007 Appellate Division decision regarding COAH’s growth share methodology did not invalidate any municipal growth share ordinance.

6.10 School Bus Safety Concerns

The Township should consider amending its subdivision regulations to require a designated school bus stop location for new development. Where existing neighborhoods do not provide such accommodations, public rights-of-way should be examined in coordination with the Board of Education to determine the possibility of establishing safe locations to pick up and discharge school children. This issue was raised by the Andover Township Board of Education in correspondence dated March 27, 2006 to the Township Committee and the Planning Board (now the Land Use Board) from its vantage point as provider of transporter of school children. The following areas of concern were noted:

Title 18A:39-1 requires any and all elementary students who live more than two miles from their public school of attendance of high school students who live more than 2.5 miles from their high school of attendance, be provided transportation services. Due to the current condition of several roads, specifically: Ballentine [sic], Kilroy, Payne,

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Perona, Current, Skytop, Limecrest, Pinecrest (Luchetti Way), Goodale, Lake Iliff, Walnut, Hidden Valley Way, and Route 517, the school district, along with the bus contractor, have difficulty in providing transportation from these general areas due in part to the current road conditions. While the statute would support that some [of] these students could walk to school, these roads have been labeled “hazardous” and thus require transportation services. Unfortunately, due to the size of a typical school bus, and road conditions, we are unable to safely travel these roadways and require students to walk to the closest, most suitable bus stop. Often times, this means there are no sidewalks, no shoulders and at times, students climbing over guardrails to get out of the way of traffic.

Examples of problem areas were cited, as follows:

Due to an unsafe road condition on Payne, school buses are prohibited from traveling this roadway and make it extremely difficult for the buses to pick up students. Skytop along Mountainside Drive and other streets have been developed with little roadway improvements. More than forty (40) children have Maple and Skytop designated [as] their bus stop, again with no shoulder, no sidewalk, parents parking on the roadway so that buses cannot pass through, coupled with utility poles at the intersections making turning difficult and thus creating a safety issue.

Another recent transportation issue involved a new high school student who required transportation from Ballentine [sic] Road to Newton High School. Unfortunately, a 54-passenger bus cannot travel on this road in its current state and this student is now required to walk approximately three-quarters of a mile on Ballentine [sic] and County Road 613 to a bus stop with limited visibility. Our recent demographic study indicates that this road is due to be developed with twenty-four new homes. In order to provide safe transportation services, it will be necessary for a safe bus stop to be established for any potential students.²⁹

6.11 Aquifer Testing

The Township should adopt regulations to require testing to determine adequate supply and quality of groundwater for new development. In accordance with Township’s consultant hydrogeologist recommendations, testing should be required for residential development involving the creation of two or more lots or dwelling units, all nonresidential developments resulting in groundwater withdrawals greater than 800 gallons per day and all non-exempt agricultural uses.

²⁹ Correspondence from Terry-Lee Van Auken, School Business Administrator/Board Secretary to Andover Township Committee and Planning Board, dated March 27, 2006.

6.12 Driveway Design

Standards for the design of driveways for both residential and nonresidential development are needed. Draft regulations have been prepared by the Township Engineer to address such concerns as appropriate sight distances, drainage control and surface design criteria. It is proposed that the driveway regulations constitute a separate Chapter of the Township Code. Modifications should be made to existing land use regulations such as §190-12, “Residential off-street parking standards” to ensure consistency.

6.13 General Development Plan

The continued viability of the Planned Commercial Development Zone District and the standards regulating this district as set forth in Chapter 190, specifically §190-39, should be reevaluated in light of the policy shift towards a mixed-use hamlet district. New Planned Unit Development standards would address this concern. The Land Use Board should consider the continued need for the definitions for “Planned Industrial Development” and “Planned Residential Development” as contained in §190-4.

6.14 Historic Preservation

The official listing of historic buildings and sites within the Township referenced in Article XIV of Chapter 190 is now 31 years and should be examined to determine if any buildings or sites listed therein should be removed or if new buildings and sites should be added. In conjunction with this effort, the Land Use Board should review the efficacy of the procedures set forth in §§190-109 and present a recommendation to the Township Committee as to whether a Historic Preservation Commission, as referenced in §190-108, B is in order.

6.15 Conditional Uses

An analysis of the following conditional and accessory use land use categories should be examined for reclassification:

- (a). “Home Occupations” should be changed from a permitted accessory use to a conditional use with the applicable standards being those already established in §190-45. (See Chap. 190, Appendix: Table 1)
- (b). “Professional home office” should be changed from a permitted accessory use to a conditional use and the standards for compliance should be upgraded. (See Chap. 190, Appendix: Table 1) Consideration should also be given to combining this category with “home occupations” as the definition for “home occupation or profession” in §190-4 appears to cover both.
- (c). “Essential Services” should be changed from a conditional use to a permitted principal use or standards to regulate this category should be adopted. (See §190-

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46 where the ordinance states there are “no specific regulations” governing this use.)

- (d). FCC licensed radio stations are included among the conditional uses per §190-55.1, however; this use is not listed in Table 1 (Residential zones), Table 2 (Nonresidential zones) or Table 3 (Residential Airport zones). If this land use category is to remain, it should be assigned to one or more specific zone districts and standards should be established in accordance with its conditional use status.

6.16 Soil Erosion

Standards should be established to require that development on a lot not otherwise subject to site plan or subdivision review will be subject to review by Township Engineer for compliance with soil erosion control standards.

6.17 Affordable Housing

As indicated elsewhere in this Reexamination Report, a revised third round Housing Element and Fair Share Plan will be prepared once COAH adopts its modified substantive rules. A new Fair Share Ordinance should be prepared to update Article XIII in Chapter 190 to reflect COAH’s third round substantive and procedural rule requirements.

6.18 Sustainable Development Techniques

A comprehensive evaluation of the Township’s development regulations should be undertaken to incorporate, where appropriate, green construction, design and technology standards. This effort should be guided by the LEED for Neighborhood Development Rating System.³⁰

6.19 Miscellaneous Modifications to Development Regulations

The following items in the Township’s land development regulations chapters should be updated or eliminated, as appropriate:

- (a). Cluster development continues to be defined in §190-4, however there are no procedures for cluster development.
- (b). Minimum standards for a qualifying map, as defined §190-4 and referenced for lot averaging in §190-35 should be established.
- (c). The Land Use Board should determine if single family dwellings should continue to be a principal permitted use dwellings in the CB-Community Business and HC-

³⁰ Pilot Version: LEED for Neighborhood Development Rating System, developed by Congress for New Urbanism, Natural Resources Defense Council, and the U.S. Green Building Council, June 2007.

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Highway Commercial zone districts as is indicated in Chapter 190, Table 2 (Appendix).

- (d). Existing subdivision regulations require recreational facilities and open space for all residential developments. §159-7, F provides for “in lieu” payments to Township’s Recreation and Open Space Fund at an amount not to exceed \$1,000 per lot. Subsection F should be reviewed to determine if such charges are within the parameters of N.J.S.A. 40:55D-42. In addition, to the extent such fees continue to apply, the basis for same should be established in a current Recreation and Open Space Element of the Master Plan.
- (e). All references to the requirements concerning submission and details for an Environmental Impact Statement, including those set forth in §159-7, subsection D and §131-12, A through F should be revised to reflect the updated regulations mandated by the pending “Natural Resource” ordinance.
- (f). Article XV in Chapter 190 should be updated to recognize the combined Land use Board and all references to “Planning Board” and “Zoning Board of Adjustment” in chapters 131, 159 and 190 should be replaced by the term “Land Use Board”.
- (g). Use of the term “licensed” with regard to landscape architects should be changed to the term “licensed certified” in §131-8.
- (h). The subdivision regulations provide a definition for “Large Lot Subdivision” with reference to provisions in Chapter 190, Zoning. The definition states that the lots shall have a minimum area requirement of six acres, apparently notwithstanding the densities established in each zone district. If this category is to remain, the question of density should be clarified and standards must be created.
- (i). Article X, Chapter 190, §190-76, B describes a process for the Planning Board to issue a recommendation to the Zoning Board of Adjustment regarding performance standards. This is no longer applicable and should be eliminated.
- (j). The minimum distance for the storage of manure associated with the private housing of equine animals in §190-36, C and for riding academies and stables in §190-54, F is fifty (50) feet of any brook or watercourse. A minimum distance of at least one hundred (100) feet with appropriate containment standards should be implemented.

7.0 C. 40:55D-89e: THE RECOMMENDATIONS OF THE PLANNING BOARD CONCERNING THE INCORPORATION OF REDEVELOPMENT PLANS ADOPTED PURSUANT TO THE “LOCAL REDEVELOPMENT AND HOUSING LAW”, P.L. 1992, c. 79 (C. 40A:12A-1 ET SEQ.) INTO THE LAND USE PLAN ELEMENT OF THE MUNICIPAL MASTER PLAN, AND RECOMMENDED CHANGES, IF ANY, IN THE LOCAL DEVELOPMENT REGULATIONS NECESSARY TO EFFECTUATE THE REDEVELOPMENT PLANS OF THE MUNICIPALITY.

7.1 Redevelopment Planning

The Township Committee and the Land Use Board may wish to consider the options available through the Redevelopment and Housing Law (N.J.S.A. 40A:12A-1 et seq.). This important planning tool, when applied in the appropriate circumstances, can prove far more effective than conventional zoning in revitalization efforts and do not necessarily require that the Township employ the power of eminent domain. In fact the “area in need of rehabilitation” approach, effective where the rehabilitation of one or more existing buildings is the goal, actually precludes this option.

The criteria for an area in need of redevelopment and an area in need of rehabilitation are as follows:

40A:12A-5. Area in need of redevelopment; criteria.

A delineated area maybe determined to be in need of redevelopment if, after investigation, notice and hearing as provided in section 6 of P.L.1992, c.79 (C.40A:12A-6), the governing body of the municipality by resolution concludes that within the delineated area any of the following conditions is found:

a. The generality of buildings are substandard, unsafe, unsanitary, dilapidated, or obsolescent, or possess any of such characteristics, or are so lacking in light, air, or space, as to be conducive to unwholesome living or working conditions.

b. The discontinuance of the use of buildings previously used for commercial, manufacturing, or industrial purposes; the abandonment of such buildings; or the same being allowed to fall into so great a state of disrepair as to be untenable.

c. Land that is owned by the municipality, the county, a local housing authority, redevelopment agency or redevelopment entity, or unimproved vacant land that has remained so for a period of ten years prior to adoption of the resolution, and that by reason of its location, remoteness, lack of means of access to developed sections or portions of the municipality, or topography, or nature of the soil, is not likely to be developed through the instrumentality of private capital.

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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.

e. A growing lack or total lack of proper utilization of areas caused by the condition of the title, diverse ownership of the real property therein or other conditions, resulting in a stagnant or not fully productive condition of land potentially useful and valuable for contributing to and serving the public health, safety and welfare.

f. Areas, in excess of five contiguous acres, whereon buildings or improvements have been destroyed, consumed by fire, demolished or altered by the action of storm, fire, cyclone, tornado, earthquake or other casualty in such a way that the aggregate assessed value of the area has been materially depreciated.

g. In any municipality in which an enterprise zone has been designated pursuant to the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et seq.) the execution of the actions prescribed in that act for the adoption by the municipality and approval by the New Jersey Urban Enterprise Zone Authority of the zone development plan for the area of the enterprise zone shall be considered sufficient for the determination that the area is in need of redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and 40A:12A-6) for the purpose of granting tax exemptions within the enterprise zone district pursuant to the provisions of P.L.1991, c.431 (C.40A:20-1 et seq.) or the adoption of a tax abatement and exemption ordinance pursuant to the provisions of P.L.1991, c.441 (C.40A:21-1 et seq.). The municipality shall not utilize any other redevelopment powers within the urban enterprise zone unless the municipal governing body and planning board have also taken the actions and fulfilled the requirements prescribed in P.L.1992, c.79 (C.40A:12A-1 et al.) for determining that the area is in need of redevelopment or an area in need of rehabilitation and the municipal governing body has adopted a redevelopment plan ordinance including the area of the enterprise zone.

h. The designation of the delineated area is consistent with smart growth planning principles adopted pursuant to law or regulation.

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40A:12A-14. Conditions that warrant rehabilitation.

a. A delineated area may be determined to be in need of rehabilitation if the governing body of the municipality determines by resolution that there exist in that area conditions such that

(1) a significant portion of structures therein are in a deteriorated or substandard condition and there is a continuing pattern of vacancy, abandonment or underutilization of properties in the area, with a persistent arrearage of property tax payments thereon or

(2) more than half of the housing stock in the delineated area is at least 50 years old, or a majority of the water and sewer infrastructure in the delineated area is at least 50 years old and is in need of repair or substantial maintenance; and

(3) a program of rehabilitation, as defined in section 3 of P.L.1992, c.79 (C.40A:12A-3), may be expected to prevent further deterioration and promote the overall development of the community. Where warranted by consideration of the overall conditions and requirements of the community, a finding of need for rehabilitation may extend to the entire area of a municipality.

Prior to adoption of the resolution, the governing body shall submit it to the municipal planning board for its review. Within 45 days of its receipt of the proposed resolution, the municipal planning board shall submit its recommendations regarding the proposed resolution, including any modifications which it may recommend, to the governing body for its consideration. Thereafter, or after the expiration of the 45 days if the municipal planning board does not submit recommendations, the governing body may adopt the resolution, with or without modification. The resolution shall not become effective without the approval of the commissioner pursuant to section 6 of P.L.1992, c.79 (C.40A:12A-6), if otherwise required pursuant to that section.

b. A delineated area shall be deemed to have been determined to be an area in need of rehabilitation in accordance with the provisions of this act if it has heretofore been determined to be an area in need of rehabilitation pursuant to P.L.1975, c.104 (C.54:4-3.72 et seq.), P.L.1977, c.12 (C.54:4-3.95 et seq.) or P.L.1979, c.233 (C.54:4-3.121 et seq.).