



TOWNSHIP OF TOMS RIVER

**PERIODIC REEXAMINATION REPORT UPDATE & LAND USE PLAN ELEMENT UPDATE
PART 1
HOUSING ELEMENT & FAIR SHARE PLAN**

**Township of Toms River
Ocean County, NJ**

Adopted February 15, 2017
by the
Toms River Township Planning Board

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The Municipal Land Use Law calls for regular reviews and updates of the master plan and land use regulations, as set forth in the following section of the statute:

40:55D-89. Periodic examination

The governing body shall, at least every 10 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. A notice that the report and resolution have been prepared shall be sent to the municipal clerk of each adjoining municipality, who may, on behalf of the governing body of the municipality, request a copy of the report and resolution. A reexamination shall be completed at least once every 10 years from the previous reexamination.

The Toms River Planning Board adopted a Periodic Reexamination Report on August 3, 2016. The Reexamination Report addresses two significant planning and regulatory issues that had emerged since the last comprehensive Master Plan update in 2006: 1) the evolving and uncertain status of determining the fair share obligation of municipalities for providing affordable housing under the New Jersey Supreme Court cases of Mount Laurel I and II; and 2) the recovery from Superstorm Sandy after the devastation caused on October 29, 2012 and the related Plan Endorsement process intended to identify and reinstate centers after the expiration of the CAFRA Center previously referenced in the Master Plan.

Since the adoption of the Reexamination Report of August 3, 2016, significant events have occurred with regard to planning and zoning in both of these areas. As such this update to the Periodic Reexamination Report is necessary and, due to court ordered deadlines, is presented as Part 1 – Housing Element and Fair Share Plan and Part 2 – Master Plan Update.

Reexamination Report – August 3, 2016

The 2016 Reexamination Report made the following determinations:

The reexamination report shall state:

a. The major problems and objectives relating to land development in the municipality at the time of the adoption of the last reexamination report.

The following language is found in the Reexamination Report adopted by the Township Planning Board on July 5, 2006, several months prior to the adoption of the Master Plan update on October 25, 2006:

“Since the last comprehensive revision of the Master Plan in 2000, COAH has adopted its new rules, the NJ Office of Smart Growth has become a more integral part of the local planning process through its relationship to the State Development and Redevelopment Plan and interdepartmental coordination, and the CAFRA Coastal Center designation has a sunset provision related to the designation of Centers through the Office of Smart Growth.

“In addition, traffic problems on Route 9 have intensified, with little relief anticipated from the NJ Department of Transportation. The Township has continued to encourage the development of comprehensive plans for the downtown area of Toms River in order to identify those measures necessary to enhance it as a regional center.

“Efforts are continuing to provide a comprehensive solution to the redevelopment of several areas of the Township, including the easterly end of Route 37 between Fischer Boulevard and the bridge, and the Ciba-Geigy tract. Clean up of the Ciba tract continues to be a major issue in the Township, with the redevelopment effort geared to addressing clean up as well as a comprehensive planning approach to the development of the almost two square mile tract.

“Water supply and water quality issues have become a more apparent problem in recent years and the Township is looking toward a more comprehensive solution to both aspects of potable water supply.”

b. The extent to which such problems and objectives have been reduced or have increased subsequent to such date.

1. The regulation and administration of affordable housing through the Council on Affordable Housing has changed significantly since 2006. COAH made several efforts to promulgate rules that would appropriately allocate affordable housing requirements for the entire state, its sub-regions and each region's municipalities. The objective was to identify municipal and regional housing needs in a manner that was consistent with the NJ Supreme Court's Mount Laurel 2 decision in 1983. After several failed attempts to adopt rules that were compliant with the decision, the Supreme Court determined that jurisdiction on affordable housing matters would return to the courts, which is where it stands at this time. Toms River is actively involved in securing Court approval of its Housing Element and Fair Share Plan.
2. At the time of the last Master Plan update, efforts were underway to achieve Plan Endorsement through the Office of Smart Growth and the State Planning Commission. Plan Endorsement is a process by which a determination is made that the municipal master plan is consistent with the intent and purpose of the State Development and Redevelopment Plan. Subsequent to those efforts, the Office of Smart Growth was dissolved and replaced by the Office of Planning Advocacy. The Township is now resuming its efforts to secure Plan Endorsement in order to reinstate the higher impervious coverage that was associated with the 1999 CAFRA Coastal Center that expired on March 16, 2016.
3. Traffic problems on Route 9 continue to be an issue, as they have been for many years through both Toms River and Lakewood. New development in the Route 9 corridor in both municipalities has added to congestion on the highway and placed pressure on alternate routes in attempts to avoid Route 9. NJDOT is looking into short term solutions in an attempt to find cost-effective improvements that will alleviate some problems typically associated with left-turn movements and high traffic volume intersections. Long term solutions, such as widening the roadway from two to four lanes, are not being addressed at this time.
4. Traffic problems continue at certain key intersections in the Township. Route 37 and Main Street has been identified by NJDOT as a location in need of improvements, although the improvements proposed are related more to cost-effective traffic safety measures rather than improvements that would accommodate more traffic and improve traffic flows. Work is anticipated to begin at this location in 2017, although earlier starting dates announced by NJDOT did not materialize. Another critical intersection is Hooper Avenue and Route 37, for which there are no current proposals under consideration for traffic improvements. Some efforts are underway for the intersection of Route 9 and Route 571 that should improve traffic flows, including the widening of the Parkway overpasses on both Routes, construction of a by-pass between Route 571 and Route 166, and certain other egress options from the Parkway southbound onto Route 571.

5. The strengthening of Downtown Toms River continues to be a matter of strong interest. Since the last update of the Master Plan, a large portion of Downtown has been declared to be an Area in Need of Redevelopment. For the most part that determination applies to the area lying south of Water Street, but it also includes properties north of Water Street in the vicinity of Main Street and Irons Street. Discussions have been held on adopting a redevelopment plan for the area, which would set the parameters for future development. Among the problems that need to be addressed in the redevelopment plan are the impact of Sandy-related flooding in the area, the mandated coal tar cleanup that impacts development potential in the westerly portion of the redevelopment area, and the ability of the road network to accommodate increases in traffic.
6. Redevelopment of other locations in the Township is an ongoing area of study that will be largely dependent on development potential and market interest. One successful redevelopment plan has taken place at the northwesterly corner of Route 37 and Route 9 where an older shopping center is undergoing an update, removing older buildings, adding new stores anchored by a large supermarket, and making major improvements in stormwater management, which was virtually non-existent in the initial development of the center.
7. Two other redevelopment areas have been designated, both of which involve complex planning and development problems. The largest of these is the Ciba-Geigy site, which is about 1,200 acres in size and is a Superfund site. A fairly large portion of the site has no evidence of contamination (about 700 acres), another 400 acres has been cleaned up to a nonresidential standard of development, and the remaining land contains a large enclosed cell of toxic materials along with other structures related to soil cleanup, ongoing groundwater cleanup, and related activities. This constrained portion of the site has been determined to have no potential for development in the foreseeable future. A second redevelopment area was declared in 2003 along both sides of Route 37 between Fischer Boulevard and the bridge to the barrier island. While the development pattern in this area could be improved, it is not certain whether the area continues to qualify as a redevelopment area, perhaps lending itself to rezoning. At present, bridge improvements are being made, but a potentially significant constraint for this area is the current lack of public water.
8. Most of the water supply issues that were mentioned in the 2006 Reexamination Report have been resolved, although certain portions of the southeasterly section of the mainland portion of Toms River continue to rely on private wells.
9. Open space preservation was identified as an area of particular interest in the last Reexamination Report, and the Township has made use of cluster development and open space acquisitions as a means of diminishing potential long-term impacts of development on Barnegat

Bay, and improving the quality of life of existing and future residents of the Township. An updated Natural Resources Inventory is underway, which will assist in identifying the long-range balance between environmental protection and new development.

c. 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.

1. Superstorm Sandy has brought about not only significant damage to private property and public infrastructure, but as private redevelopment takes place, accommodations are being made for sea level rise and related flooding along with supplementary dune protection through the efforts of the Army Corps of Engineers. As new development and redevelopment continues, attention needs to be given to streets that experience frequent flooding, not simply flooding related to major storm events, as they can compromise access not only for the general public but for emergency services as well.
2. Affordable housing continues to be a major focus of attention. It is now under the jurisdiction of the New Jersey courts. The Township's Housing Element is under review by the court to determine if it is sufficiently responsive to the Township's fair share of the regional housing need to grant a judgment finding that it has addressed its housing need for the period 1987-2026.
3. Traffic circulation continues to be an issue, particularly with respect to reluctance by the NJ Department of Transportation to assist in providing comprehensive solutions to some of the worst traffic trouble spots, including Route 9 and many of the intersections along Route 37.
4. The Township's Environmental Commission has been taking an active role in promoting environmental protection, and the Township has taken steps to increase the amount of open space in environmentally sensitive areas. Open space preservation continues as a top priority in the ongoing process of updating the Master Plan, not only for the protection of environmentally sensitive areas but for park and active recreation areas as well.
5. Statewide, the local planning process is seeing a higher level of coordination with County and State planning policies. The Township is continuing to attempt to attract economic development in an effort to offset rising property taxes, but it is approaching this in a comprehensive manner by also recognizing the need for affordable housing as well as consistency with the State Development and Redevelopment Plan. Increasing the ratable base in the Township will have the desired effect of increasing local employment. That will result in fewer workers having to leave the County for employment, reducing

the strain on the north-south highway system made up mainly of the Garden State Parkway and Route 9.

6. Economic development in Ocean County appears to be compromised by a lack of effective truck routes to serve the Ocean and Monmouth County area from the New York Metropolitan Area. The Garden State Parkway has truck restrictions north of Exit 105. As a part of coordinating regional and statewide planning policies, the New Jersey Turnpike Authority should be encouraged to allow truck traffic on the Parkway to and from the interchange with the New Jersey Turnpike. There do not appear to be any serious physical impediments related to truck traffic on the Parkway until you get north of the Turnpike.

d. The specific changes recommended for the master plan or development regulations, if any, including underlying objectives, policies and standards, or whether a new plan or regulations should be prepared.

1. A Master Plan update is in preparation and is anticipated to be completed by the end of this year. The update process will include a review of the objectives and policies set forth in the last Master Plan, as amended. The Master Plan will include clear statements of objectives and policies.
2. The development regulations have been under regular review since the last comprehensive Master Plan update in 2006. Numerous amendments have been made to the development standards, many of which related to rebuilding efforts after Superstorm Sandy. In the last comprehensive Reexamination Report adopted in 2006, and bound into the Master Plan, it was noted that there would be a need for a two stage revision to the ordinance. The first stage would consist of the updated map and district regulations and the second stage would be the comprehensive re-write of the entire ordinance. The first stage was implemented in the latter part of 2006 following the adoption of the Master Plan. The comprehensive rewrite was initiated in 2007 and over the next five years it was under regular staff review. As it evolved into a document that the staff felt was suitable for consideration by Township Council, it was set aside in order to focus on the rebuilding efforts related to Superstorm Sandy. The comprehensive rewrite of the development regulations ordinance will be coordinated with the findings and conclusions of the Master Plan reexamination.

e. 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 al.) 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.

Four redevelopment areas have been identified by the Planning Board and have been determined to be Areas in Need of Redevelopment by action of Township Council. One of the four redevelopment areas has

resulted in the adoption of a Redevelopment Plan, which is a document adopted by Township Council as an ordinance following recommendations from the Planning Board regarding consistency with the adopted Master Plan. That area lies at the northwest corner of the intersection of Route 37 and Route 166.

Planning efforts are continuing to identify reasonable land use controls for the other three redevelopment areas, which include the Ciba-Geigy tract, the Water Street Redevelopment Area in Downtown Toms River, and the Route 37 Redevelopment Area lying between Fischer Boulevard and the Route 37 Bridge to the barrier island.

To the extent additional redevelopment areas should be considered, they will be identified as part of the Land Use Plan Element of the Master Plan, including the broad parameters of land use standards that would serve as the basis for development controls.

Reexamination Report Update – Part 1: HOUSING ELEMENT & FAIR SHARE PLAN

This Periodic Reexamination Report Update is prepared in accordance with the provisions of the Municipal Land Use Law as found at N.J.S.A. 40:55D-89. This report is intended as the first part of a general reexamination update of the 2016 comprehensive Periodic Reexamination Report related to the 2006 Master Plan and the update of various Elements based on two major events that have occurred since the last Master Plan in 2006. This Part 1 of the Periodic Reexamination Update deals with the outcome of years of litigation and court decisions related to affordable housing, specifically the “Third Round” obligation. It is written in response to a rezoning required pursuant to the Settlement Agreement between the Township, the Fair Share Housing Center (FSHC) and Dover Shopping Center Associates, LLC (“Dover”). It is prepared for review by the Planning Board in association with the Township of the Toms River Housing Element and Fair Share Plan (HEFSP), as amended in accordance with the aforementioned Settlement Agreement, which Settlement Agreement was the subject of an Order On Fairness And Preliminary Compliance Hearing entered by Judge Mark A. Troncone, JSC, on December 31, 2016.

BACKGROUND AND PURPOSE

In accordance with Township procedures, the Planning Board adopted an amended Housing Element of the Master Plan on October 2, 2014. However, The New Jersey Supreme Court, in its decision of March of 2015, transferred the evaluation of municipal compliance with the Mount Laurel doctrine from the Council on Affordable Housing (COAH) to the trial courts. In accordance with the Order of Judge Marlene Lynch Ford, A.J.S.C., dated September 18, 2015 in the Matter of the Township of Toms River for a Judgement of Compliance of its Third Round Housing Element and Fair Share Plan (Docket No. OCN-L-1867-15) (“Action”), the Township was required to submit a preliminary housing element and affordable housing plan to the Court on or before

December 8, 2015. In accordance with Judge Ford's Second Revised Case Management Order of November 17, 2015, the Township was directed to utilize the fair share allocation numbers set forth in the analysis prepared by Regional Court Master Richard Reading's report, dated October 30, 2015, entitled: "Preliminary Review and Assessment of Low and Moderate Income Housing Needs of Ocean County Municipalities", Appendix 1, Preliminary Adjusted Affordable Housing Obligations, as their affordable housing obligation for the preliminary housing element to be submitted on or before December 8, 2015.

The Township of Toms River prepared a Preliminary Housing Element of the Master Plan, dated December 7, 2015, which was submitted to the Ocean County Court and intended to demonstrate satisfaction of the Township's prior round obligation and present a viable and realistic plan to address the third round obligation set forth in Mr. Reading's Preliminary Review and Assessment, per the November 17 Order, and thereby receive continued immunity and repose.

FSHC and Dover intervened in the Action as interested parties. Through a series of mediation sessions, a Settlement Agreement was negotiated and approved by the Township Council. The Settlement Agreement was approved by Judge Troncone at a fairness hearing, which was held on December 16, 2016 and memorialized in an Order on Fairness and Preliminary Compliance Hearing, dated December 31, 2016. The Agreement requires changes to the RHB Zone in two locations, one near Bimini Drive on Route 37 and the other on Route 9. The RHB zone locations for the two properties that were the subject of the Settlement Agreement are consistent with the Land Use Plan Element of the Master Plan adopted in 2006, but this Reexamination Report recommends the creation of two Affordable Housing districts within the RHB, the RHB-AH37 for the Bimini Road site and the RHB-AH9 for the site on Route 9.

The RHB Zone provides for Planned Unit Development (PUD) as a permitted use on tracts of 10 acres or more and enables a combination of commercial and residential development. In order for the proposed RHB-AH37 and RHB-AH9 projects to generate the affordable units needed for the Settlement Agreement, modifications to the RHB requirements are necessary that would not be applicable to the RHB district as a whole.

REEXAMINATION REPORT CONSIDERATIONS

N.J.S.A. 40:55D-89.d. is the statutory provision found in the Municipal Land Use Law that relates most directly to a zoning district change of this type. It should be noted that a Reexamination Report is not an amendment to the Master Plan unless it includes an actual update that is adopted with the notice required for a master plan in the MLUL. 40:55D-89.d. reads as follows:

d. The specific changes recommended for the master plan or development regulations, if any, including underlying objectives, policies and standards, or whether a new plan or regulations should be prepared.

1. This Reexamination Report will constitute an amendment to the Land Use Plan Element of the existing 2006 Master Plan as it relates to the creation of two "subdistricts" of the Rural Highway Business (RHB) Zone required

to effectuate the Settlement Agreement with the intervenors in the Township's Petition for Declaratory Judgement for consistency of its Housing Element and Fair Share Plan with the statutory obligations for affordable housing for the Third Round (through 2025). This Reexamination Report and Land Use Element update are recommended for the Master Plan to accommodate two new Affordable Housing (AH) districts within the RHB Zones along Route 9 and Route 37.

2. The creation of the two new AH districts within the RHB zone meets the statutory test found at N.J.S.A. 40s:55D-62a that "...all of the provisions of such zoning ordinance or any revision or amendment thereto shall either be substantially consistent with the land use plan element and the housing plan element of the master plan or designed to effectuate such plan elements;" The Planning Board can reasonably conclude that the change proposed is "substantially consistent" and can be considered by Council, as the changes are specifically linked to the Settlement Agreement and implements the simultaneous amendment to the Township's Housing Element and Fair Share Plan that are also required by the Settlement Agreement.
3. It is not necessary for the Planning Board or Township Council to make a finding that the existing RHB Zone is inappropriate in order to create the RHB-AH9 and RHB-AH37 zones. A finding can be made that both new zoning district designations are substantially consistent (specifically linked to) the intent and purpose of the now amended Land Use Plan Element and the associated amendment of the Housing Element and Fair Share Plan, both of which are actions required of the Township under the Settlement Agreement.

From a planning perspective, both the Planning Board and Township Council are in a position to support the creation of the two new AH zones. There should not be any concern about "spot zoning" in either case because the zoning district applies to specific properties related to the creation of affordable housing that is different than adjoining lots in the existing RHB Zone. That is an insufficient test. A generally accepted definition of spot zoning is found in the Moskowitz and Lindbloom publication "The Latest Illustrated Book of Development Definitions", Rutgers Center for Urban Policy Research 2004. It reads "*Rezoning of a lot or parcel of land to benefit an owner for a use that is incompatible with surrounding land uses and that does not further the comprehensive zoning plan.*" In this case the proposed AH zones achieve a significant public purpose in advancing the Township's compliance with its affordable housing obligation until July of 2025 under the Settlement Agreement. Both proposed AH zoning districts will retain the PUD combination of commercial and residential uses that are comparable with the existing PUD standards in the RHB zone and therefore are compatible with the surrounding land uses and furthers the comprehensive zoning plan.

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