

Suite 400
301 Carnegie Center
Princeton, NJ 08543-5276
609.452.0808
Fax 609.452.1147

Michael J. Mann
Partner-in-Charge, Princeton Office

Brian R. Zurich
direct dial: 609.951.4158
zurichb@pepperlaw.com

July 22, 2015

VIA HAND DELIVERY

Clerk, Superior Court of New Jersey
Law Division, Mercer County
175 South Broad Street - 1st floor
Trenton, NJ 08650

RE: In the Matter of the Application of the Township of Hopewell
Docket No. MER-L-1557-15

Dear Sir/Madam:

We represent CF Hopewell CC&L LLC (“CF Hopewell”). Enclosed for filing in the above-captioned matter please find an original and one (1) copy of the following documents:

1. Notice of Motion to Intervene;
2. Letter Brief in support of Motion to Intervene;
3. Certification of Jonathan M. Preziosi, Esq.;
4. Certification of David Moore;
5. Proposed Order; and
6. Certificate of Service.

Please stamp the extra copy “received/filed” and return it with the messenger, who has been instructed to wait. A copy has been delivered via hand delivery directly to Judge Jacobson. Kindly charge our account no. 140272 for any filing fees.

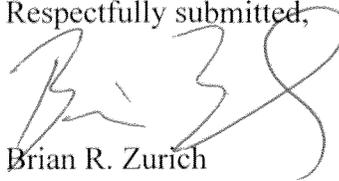
Clerk, Superior Court of New Jersey

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Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brian R. Zurich", written over the typed name below.

Brian R. Zurich

Enclosures

cc: Kevin A. Van Hise, Esq. (via email and regular mail)

Suite 400
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July 22, 2015

VIA HAND DELIVERY

Hon. Mary C. Jacobson, A.J.S.C.
Mercer County Courthouse
400 South Warren Street
Trenton, New Jersey 08650

RE: In the Matter of the Application of the Township of Hopewell
Docket No. MER-L-1557-15

Dear Judge Jacobson:

We represent CF Hopewell CC&L LLC ("CF Hopewell"). Enclosed please find a copy of the following documents that were submitted to the Clerk for filing in the above-captioned matter: (1) Notice of Motion to Intervene; (2) Letter Brief in support of Motion to Intervene; (3) Certification of Jonathan M. Preziosi, Esq.; (4) Certification of David Moore; (5) Proposed Order; and (6) Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Respectfully submitted,



Brian R. Zurich

Enclosures

cc: Kevin A. Van Hise, Esq. (via email and regular mail)

Jonathan M. Preziosi, Esq. #002041992
Brian R. Zurich, Esq. #017982009
PEPPER HAMILTON LLP
(A Pennsylvania Limited Liability Partnership)
Suite 400
301 Carnegie Center
Princeton, NJ 08543-5276
(609) 452-0808

Counsel for CF Hopewell CC&L LLC

IN THE MATTER OF THE APPLICATION
OF THE TOWNSHIP OF HOPEWELL IN
MERCER COUNTY

SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY – LAW DIVISION
DOCKET NO.: MER-L-1557-15

Civil Action

**NOTICE OF MOTION TO INTERVENE
BY CF HOPEWELL CC&L LLC**

To: Clerk, Superior Court of New Jersey
Law Division, Mercer County
175 South Broad Street - 1st floor
Trenton, New Jersey 08650

Hon. Mary C. Jacobson, A.J.S.C.
Mercer County Courthouse
400 South Warren Street
Trenton, New Jersey 08650

Kevin A. Van Hise, Esq.
Mason, Griffin & Pierson PC
101 Poor Farm Road
Princeton, New Jersey 08540

PLEASE TAKE NOTICE that on August 7, 2015 at 9:00 a.m., or as soon thereafter as counsel may be heard, CF Hopewell CC&L LLC (“CF Hopewell”), by and through their undersigned counsel, shall move before the Superior Court of New Jersey, Law Division, Mercer County, for an Order granting CF Hopewell’s Motion to Intervene pursuant to R. 4:33-1, R. 4:33-2 and the Declaratory Judgment Act, N.J.S.A. 2A:16-56.

PLEASE TAKE FURTHER NOTICE that in support of this motion, CF Hopewell shall rely upon the accompanying Certification of Jonathan M. Preziosi, the Certification of David J. Moore, and supporting letter brief.

PLEASE TAKE FURTHER NOTICE that CF Hopewell requests oral argument. A proposed form of Order is provided herewith.

PEPPER HAMILTON LLP
A Pennsylvania LLP
Attorneys for CF Hopewell CC&L LLC

BY:  _____

Jonathan M. Preziosi
Brian R. Zurich

Dated: July 22, 2015

Suite 400
301 Carnegie Center
Princeton, NJ 08543-5276
609.452.0808
Fax 609.452.1147

Michael J. Mann
Partner-in-Charge, Princeton Office

Jonathan M. Preziosi
direct dial: (609) 951-4153
preziosj@pepperlaw.com

July 22, 2015

VIA HAND-DELIVERY

Hon. Mary C. Jacobson, A.J.S.C.
Mercer County Courthouse
400 South Warren Street
Trenton, New Jersey 08650

Re: In the Matter of Hopewell Township
Docket No. MER-L-1557-15

Dear Judge Jacobson:

This office represents CF Hopewell CC&L LLC (“CF Hopewell”). Please accept the following letter in lieu of a more formal brief on behalf of CF Hopewell in support of its motion for leave to intervene in this matter pursuant to R. 4:33-1, R. 4:33-2 and the Declaratory Judgment Act, N.J.S.A. 2A:16-56.

As set forth within, CF Hopewell’s motion should be granted because CF Hopewell’s property meets each of the statutory criteria for properties that are to serve as affordable housing sites pursuant to N.J.A.C. 5:93-5.3. CF Hopewell is thus an “interested party” because the characteristics of its property make it particularly suitable to serve as a site for a very substantial number of Hopewell Township’s obligation of affordable housing units. CF Hopewell should therefore be permitted to participate in the judicial process that will determine Hopewell’s fair share affordable housing obligation.

#34785304 v1

Philadelphia

Boston

Washington, D.C.

Los Angeles

New York

Pittsburgh

Detroit

Berwyn

Harrisburg

Orange County

Princeton

Wilmington

Hon. Mary C. Jacobson, A.J.S.C.

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I. PRELIMINARY STATEMENT

The Mount Laurel series of cases recognized that the power to zone carries a constitutional obligation to do so in a manner that creates a realistic opportunity for producing a fair share of the regional present and prospective need for housing low- and moderate-income families. The Legislature enacted the Fair Housing Act of 1985 (“FHA”), N.J.S.A. 54:27D-301 to -329, to assist in municipal compliance with that obligation. The FHA created the Council on Affordable Housing (“COAH”), which was designed to provide an optional administrative alternative to litigating constitutional compliance through civil exclusionary zoning actions.

COAH, in turn, was required to adopt rules governing municipal housing obligations and initially did so by adopting First and Second Round Rules, which expired in 1999. Since then, COAH’s proposed Third Round Rules have been invalidated on two occasions and no further Third Round Rules have been proposed. In March 2014, the New Jersey Supreme Court entered an Order requiring COAH to take specific rule-promulgation steps, that would lead to the adoption of the required Third Round Rules by November 17, 2014. COAH subsequently failed to promulgate the necessary Third Round Rules.

As a result, on March 10, 2015, in In re Adoption of N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015), the New Jersey Supreme Court shifted jurisdiction over fair share plans from COAH to judges assigned to Mt. Laurel matters in each vicinage, and created transitional procedures for Court intervention. Among other things, the Court’s decision gave municipalities that obtained “participating status” before COAH an opportunity to seek to obtain a court declaration that their

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affordable housing plans are presumptively valid and no more than five months in which to submit their supplemental housing element and affordable housing plan. The decision further provided that during the five-month period, courts *may* provide initial immunity preventing any exclusionary zoning actions from proceeding. The Court also provided that in the event a municipality seeks such a declaration, it must do so on notice and an opportunity to be heard to *interested parties*.

On July 8, 2015, in accordance with the procedures set forth by the Supreme Court, Hopewell Township filed a declaratory judgment action seeking a declaration that, among other things, its Fair Share Housing Plan is presumptively valid. Additionally, Hopewell filed a motion for an initial five-month grant of immunity from exclusionary zoning actions, as also permitted by the March 10 decision. As required, Hopewell Township provided notice of the filings to CF Hopewell as an “interested party.”

N.J.A.C. 5:93-5.3, which was adopted as part of the Second Round Rules, sets forth the criteria and general requirements for sites which may be designated for new construction of low and moderate income units. CF Hopewell seeks to intervene in this action because it is the owner of property in Hopewell Township that meets each of the statutory criteria of N.J.A.C. 5:93-5.3, in that its property is “available, suitable, developable and approvable.” Indeed, CF Hopewell’s approximately 200 acres of developable property is located adjacent to two major centers of employment, has exceptional access to major roadways, and perhaps most importantly, is within a sewer service area unlike the vast majority of other undeveloped

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properties in the Township. CF Hopewell is thus an “interested party” because its property is particularly suited to accommodate affordable housing, and it has a true stake in the outcome of the Township’s declaratory judgment action. CF Hopewell should therefore be permitted to participate in the judicial process that will determine Hopewell Township’s fair share affordable housing obligation. Accordingly, CF Hopewell respectfully requests that the Court grant its motion to intervene and allow it to join as a defendant in this action.

II. FACTUAL BACKGROUND

CF Hopewell is the owner of property in Hopewell Township located on the west side of Scotch Road, designated as Block 93, Lot 6.01 consisting of approximately 200 acres (the “CF Hopewell Property”). Certification of David Moore (“Moore Cert.”) at 2. The CF Hopewell Property is currently zoned “Office Park.” Id. at 3. Under a General Development Plan approval, 1 million square feet of office space is permitted to be built on the property, including conference center, restaurant and hotel as approved uses. Id. Throughout much of 2014, the Hopewell Township Planning Board worked on a Master Plan Amendment to change the zoning for mixed use development on the subject property, including inclusionary development with an affordable housing component. Id. at 4. A true and correct copy of the Master Plan Revision for the Scotch Road Area is attached to the Moore Cert. as Exhibit 1. During this time period, the Township hired experts that determined, among other things, that the CF Hopewell Property was an appropriate location for the construction of affordable housing. Id. at 4. Ultimately, the

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Planning Board did not adopt the amendment, in major part because it did not know its affordable housing obligation. Id. CF Hopewell supported such an amendment. Id.

Importantly, the property is one of the few locations in Hopewell Township within a sewer service area. Id. at 5. It is designated for sewer in the Township's Wastewater Management Plan ("WMP") and in Mercer County's Water Quality Management Plan ("WQMP"). Id. In 2011-2012, the Township planned to acquire sewer for the southern part of the Township, but that effort failed due to public opposition. Few other undeveloped properties in the Township have access to sewer. Id. at 6.

Finally, the CF Hopewell Property has exceptional access on Scotch Road across from two major centers of employment. Id. at 7. The Bank of America/Merrill Lynch office campus has approximately 1.25 million square feet of office space and 7,000 employees. Id. Additionally, Capital Health recently built a new hospital with 367 beds and approximately 150,000 square feet of medical office space. Id. Capital Health currently employs more than 1,500 employees and continues to grow. Id. Indeed, Capital Health has plans to expand its medical space by approximately another 126,000 square feet to add 144 more beds. Id. The CF Hopewell Property is also very close to the I-95/295 Scotch Road interchange which is just south of the site along Scotch Road. Id.

III. PROCEDURAL HISTORY

Prior to COAH's December 31, 2008 deadline for filing a Third Round Plan, and prior to the invalidation of COAH's Third Round Rules, Hopewell Township adopted a Third Round

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Housing Element and Fair Share Plan and Spending Plan and submitted it to COAH. Compl. at ¶¶ 10-14. From that point forward, Hopewell remained under COAH jurisdiction, but never achieved substantive certification, *id.* at ¶ 22, and thus remained a “participating jurisdiction” as of the date of the New Jersey Supreme Court’s March 10, 2015 decision in In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015). As a result of the Supreme Court’s March 10, 2015 decision, the Court provided a 90-day grace period for the effective date of its order in order to “allow[] all parties to prepare for the actions that are authorized pursuant to that order.” *Id.* at 6.

During the 90-day preparation period, CF Hopewell took actions to solidify its status as an “interested party.” At a Township Committee meeting held on March 23, 2015, counsel for CF Hopewell publicly advised that CF Hopewell is an interested party in Hopewell Township’s compliance with its affordable housing obligations and requested that CF Hopewell be included on the Township’s “notice list” since the Court’s decision noted that any municipal filing should be on notice to “interested parties.” Certification of Jonathan M. Preziosi (“Preziosi Cert.”) at 2. The Township agreed. *Id.* Further, on April 30, 2015, CF Hopewell submitted a letter to Laurie E. Gompf, the Municipal Clerk of the Township of Hopewell, to advise that CF Hopewell is an “interested party” in providing low and moderate income housing pursuant to the New Jersey Supreme Court’s March 10, 2015 decision. *Id.* at 3. A true and correct copy of the April 30, 2015 letter is attached to the Certification of Jonathan M. Preziosi as Exhibit 1.

Shortly thereafter, on June 30, 2015, CF Hopewell submitted to Ms. Gompf a conceptual plan for an inclusionary development on its property. Preziosi Cert. at 4. The conceptual plan

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included an open space and recreational component that would link two neighborhoods to each other via open space. Id. In addition, CF Hopewell indicated that it would be willing to modify the plan to include a neighborhood commercial center to make possible a convenient and walkable location for a convenience store, restaurant, cleaners, and other related amenities. Id. The set asides were proposed to be 15% rental and 20% for-sale, with not less than 209 low and moderate income units provided, calculated at 15% of the 1,388 total number of units. Id.

On July 8, 2015, Hopewell Township filed the instant declaratory judgment action as a “participating jurisdiction” before this Court, and moved for temporary immunity for a period of five months. That motion is returnable September 18, 2015, and CF Hopewell has thus timely moved to intervene in this case so as to not delay any proceeding before the Court.

As set forth both above and below, CF Hopewell’s site satisfies the applicable criteria for properties that are to serve as affordable housing sites pursuant to N.J.A.C. 5:93-5.3, and the site can accommodate a substantial number of the fair share units that the Township will be required to create. CF Hopewell therefore has a very substantial interest in the outcome of the Township’s declaratory judgment action. CF Hopewell is thus an “interested party” and should be afforded the opportunity to participate in this matter. See R. 4:33-1, R. 4:33-2 and N.J.S.A. 2A:16-56.

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IV. LEGAL ARGUMENT

A. N.J.A.C. 5:93-5.3

N.J.A.C. 5:93-5.3 of the Second Round Rules sets forth the criteria for properties that are to serve as affordable housing sites. Pursuant to N.J.A.C. 5:93-5.3:

Municipalities shall designate sites that are available, suitable, developable and approvable, as defined in N.J.A.C. 5:93-1. In reviewing sites, the Council shall give priority to sites where infrastructure is currently or imminently available.

N.J.A.C. 5:93-5.3. Here, CF Hopewell's Property meets each of the statutory criteria for sites that are to serve as affordable housing sites in that its property is "available, suitable, developable and approvable," and should be given priority as its infrastructure, unlike most other locations in the Township, is currently or imminently available.

"Available site" means "a site with clear title, free of encumbrances which preclude development for low and moderate income housing." N.J.A.C. 5:93-1.3. As set forth in the Certification of David Moore, CF Hopewell holds clear title to the property and the property is free of encumbrances which preclude development for low and moderate income housing. Thus, the site is "available."

"Suitable site" means "a site that is adjacent to compatible land uses, has access to appropriate streets and is consistent with the environmental policies delineated in N.J.A.C. 5:93-4." N.J.A.C. 5:93-1.3. As outlined above, the CF Hopewell property is adjacent to, and just west of, the Capital Health Medical Center and the Bank of America/Merrill Lynch office

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campus, and is therefore appropriately located across from two major centers of employment. The CF Hopewell Property is also very close to the I-95/295 Scotch Road interchange which is immediately south of the site along Scotch Road and therefore provides easy access to major roadways. Moreover, since Scotch Road is a four-lane roadway – which is rare for the Township – it is already improved with necessary capacity for large-scale development and increased traffic. Finally, approximately 200 acres of the CF Hopewell Property are developable and not subject to environmental constraints, and is therefore consistent with the environmental policies delineated in N.J.A.C. 5:93-4. Thus, the CF Hopewell Property is “suitable.”

“Developable site” means “a site that has access to appropriate water and sewer infrastructure, and is consistent with the applicable areawide water quality management plan (including wastewater management plan) or is included in an amendment to the areawide water quality management plan submitted to and under review by the DEP.” N.J.A.C. 5:93-1.3. As outlined above, the CF Hopewell property is one of the few developable locations in Hopewell Township within a sewer service area. It is designated for sewer in the Township’s Wastewater Management Plan (“WMP”) and in Mercer County’s Water Quality Management Plan (“WQMP”). Since few other properties in the Township with land available for development have sewer access, the CF Hopewell property is particularly well suited for development as its infrastructure is currently or imminently available. Moreover, in 2011-2012, the Township planned to acquire sewer for the southern part of the Township, but that effort failed due to public opposition. Thus, not only is the CF Hopewell property “developable,” but it is one of

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few properties in the Township that qualifies as “developable” because of its unique access to sewerage.

Finally, “approvable site” means “a site that may be developed for low and moderate income housing in a manner consistent with the rules or regulations of all agencies with jurisdiction over the site. A site may be approvable although not currently zoned for low and moderate income housing.” N.J.A.C. 5:93-1.3. As discussed above, the CF Hopewell Property is currently zoned for use as an office. Such zoning, however, can be changed to allow a residential inclusionary development. Indeed, the Planning Board spent a considerable portion of 2014 working on a Master Plan Amendment to make such a change to the zoning. See Preziosi Cert., Exh. 1. CF Hopewell would support such a change. As a result, the CF Hopewell Property is “approvable.”

Based on the foregoing, CF Hopewell meets each of the statutory criteria for sites that are to serve as affordable housing sites in that its property is “available, suitable, developable and approvable,” and must also be given priority consideration as an approved inclusionary site because, unlike most other locations in the Township, its infrastructure is currently or imminently available. Thus, as discussed below, CF Hopewell should be permitted to intervene in this action.

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B. New Jersey's Broad and Liberal Standard for Intervention

Rule 4:33-1 provides:

Upon timely application anyone shall be permitted to intervene in an action if the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

R. 4:33-1. A motion to intervene should be liberally viewed. Atlantic Employers v. Tots & Toddlers, 239 N.J. Super. 275 (App. Div.) certif. denied, 122 N.J. 147 (1990). Whether to grant intervention under R. 4:33-1 is not discretionary. Chesterbrooke Ltd. P'ship v. Planning Board of Twp. of Chester, 237 N.J. Super. 118, 124 (App. Div. 1989). Rather, if all of the rule's criteria are met, intervention must be approved. Id.

New Jersey's permissive intervention rule further provides in relevant part as follows:

Upon timely application anyone may be permitted to intervene in an action if the claim or defense and the main action have a question of law or fact in common. . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

R. 4:33-2. Thus, where a non-party seeks to intervene, it must satisfy three requirements: (1) that its motion is timely; (2) that its claim and an existing claim in the litigation have a common question of law or fact; and (3) that its intervention will not "unduly delay or prejudice" the rights of the existing parties. In considering a motion for permissive intervention, the trial court must construe R. 4:33-2 liberally with consideration as to whether intervention would unduly

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delay or prejudice the adjudication of the rights of the original parties, whether intervention would eliminate the need for subsequent litigation, and the extent to which the intervention might further complicate a litigation that is already complex. Zirger v. Gen. Accident Ins. Co., 144 N.J. 327, 341 (1996); see also N.J. Div. of Youth & Family Servs. v. D.P., 422 N.J. Super. 583, 590-91 (App. Div. 2011) (“Permissive intervention pursuant to R. 4:33-2 requires a trial court to liberally determine ‘whether intervention will unduly delay or prejudice the adjudication of the rights of the original parties.’”) (citations omitted); Comment 1 to R. 4:33-2.

The right to intervene is also established under the Declaratory Judgment Act, N.J.S.A. 2A:16-56, which provides that “[w]hen declaratory relief is sought, all persons having or claiming any interest which would be affected by the declaration shall be made parties to the proceeding.” Here, the Supreme Court recognized that “[i]f a municipality seeks to obtain an affirmative declaration of constitutional compliance, it will have to do so on notice and opportunity to be heard to FSHC and *interested parties*.” In re N.J.A.C. 5:96 and 5:97, 221 N.J. at 23. As discussed in greater detail above, CF Hopewell is an interested party because it owns a 200-acre parcel in Hopewell Township and has submitted plans to the Township for the construction of a substantial, inclusionary development. Moreover, intervention by CF Hopewell is consistent with longstanding precedent regarding standing in Mount Laurel proceedings.¹

¹ “New Jersey courts have ‘historically taken a much more liberal approach on this issue of standing than have the federal cases.’ New Jersey courts . . . have never allowed ‘procedural frustration’ to prevent determinations on the merits where the plaintiff can demonstrate a legitimate interest in the lawsuit.” Southern Burlington Ctr. N.A.A.C.P. v. Mt. Laurel Twp., 92

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Applying these standards, CF Hopewell respectfully submits that its motion to intervene should be granted. First, its application is timely, as this matter was just recently filed on July 8, 2015. The Court has not yet entered a case management order, nor has any proceeding taken place. Intervention of CF Hopewell at this early stage will not delay or prejudice the rights of any of the existing parties in the action. Second, CF Hopewell seeks to address the same issue that Hopewell Township has already pleaded in this case, namely, Hopewell's fair share affordable housing obligations. More specifically, as outlined above, the CF Hopewell Property meets each of the statutory criteria set forth in N.J.A.C. 5:93-5.3 for sites that are to serve as affordable housing sites in that its property is "available, suitable, developable and approvable." Thus, CF Hopewell has an interest that will be affected by the Township's requested declaration as it has already submitted site plan proposals to the Township for a residential inclusionary development consisting in part of low- and moderate-income affordable housing on the CF Hopewell Property. Finally, and as alluded to above, intervention by CF Hopewell at such an

N.J. 158, 337 (1983) (Mount Laurel II) (quoting Crescent Park Tenants Ass'n v. Realty Equities Corp., 58 N.J. 98, 101 (1971)). The Mount Laurel II Court adopted a standard for standing that would encourage the enforcement of the Mount Laurel doctrine, writing:

We believe that the need for a "liberal" approach to standing is especially important in Mount Laurel litigation. . . . Thus, *we hold that any individual demonstrating an interest in, or any organization that has the objective of, securing lower income housing opportunities in a municipality will have standing to sue such municipality on Mount Laurel grounds.*

Id. at 337 (emphasis added).

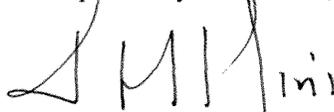
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early stage will not protract or complicate this declaratory judgment action in any manner. Indeed, if anything, CF Hopewell will serve to assist the Court in determining the Township's fair share housing obligations and the Township in meeting such obligations. Under the broad and liberal standard for intervention prescribed by R. 4:33-1, R. 4:33-2 and the Declaratory Judgment Act, CF Hopewell respectfully submits that its motion for leave to intervene should be granted.²

V. **CONCLUSION**

For the foregoing reasons, CF Hopewell respectfully requests that the Court grant its motion to intervene and allow it to join as a defendant in this action.

Respectfully submitted,



Jonathan M. Preziosi

cc: Kevin A. Van Hise, Esq. (via email and regular mail)

² In similar litigation, on June 26, 2015 and July 9, 2015, Hon. Douglas K. Wolfson, J.S.C., of the Superior Court of New Jersey, Middlesex County, entered a Consent Order and Opinion granting a motion to intervene by a developer, Monroe 33 Developers, in a virtually identical affordable housing matter under the caption *In the Matter of the Adoption of the Monroe Township Housing Element and Fair Share Plan, and Implementing Ordinances*, MID-L-3365-15. The Consent Order and Opinion are attached to the Certification of Jonathan M. Preziosi as Exhibit 2.

Jonathan M. Preziosi, Esq. #002041992
Brian R. Zurich, Esq. #017982009
PEPPER HAMILTON LLP
(A Pennsylvania Limited Liability Partnership)
Suite 400
301 Carnegie Center
Princeton, NJ 08543-5276
(609) 452-0808

Counsel for CF Hopewell CC&L LLC

IN THE MATTER OF THE APPLICATION
OF THE TOWNSHIP OF HOPEWELL IN
MERCER COUNTY

SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY – LAW DIVISION
DOCKET NO.: MER-L-1557-15

Civil Action

**CERTIFICATION OF JONATHAN M.
PREZIOSI IN SUPPORT OF CF
HOPEWELL’S MOTION TO
INTERVENE**

Jonathan M. Preziosi, Esq., of full age, certifies as follows:

1. I am an attorney-at-law, a member of the Bar of the State of New Jersey, and a partner in the law firm of Pepper Hamilton LLP, attorneys for CF Hopewell CC&L LLC (“CF Hopewell”) in the above-captioned matter. I make this Certification in support of CF Hopewell’s motion to intervene as a defendant in the above-captioned matter.

2. At a Township Committee meeting held on March 23, 2015, my partner at Pepper Hamilton LLP Mark Solomon publicly advised that CF Hopewell is an interested party in Hopewell Township’s compliance with its affordable housing obligations and requested that CF Hopewell be included on the Township’s “notice list” since the Court’s decision noted that any municipal filing should be on notice to “interested parties.” The Township agreed.

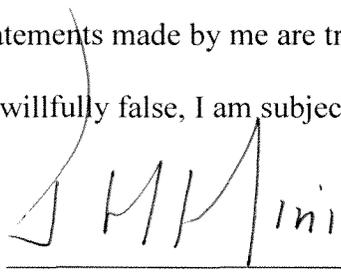
3. Further, on April 30, 2015, CF Hopewell submitted a letter to Laurie E. Gompf, the Municipal Clerk of the Township of Hopewell, to advise that CF Hopewell is an “interested party” in providing low and moderate income housing pursuant to the New Jersey

Supreme Court's March 10, 2015 decision. A true and correct copy of the April 30, 2015 letter is hereto as Exhibit 1.

4. Shortly thereafter, on June 30, 2015, CF Hopewell submitted to Ms. Gompf a conceptual plan for an inclusionary development on its property. The conceptual plan included an open space and recreational component that would link two neighborhoods to each other via open space. In addition, CF Hopewell indicated that it would be willing to modify the plan to include a neighborhood commercial center to make possible a convenient and walkable location for a convenience store, restaurant, cleaners, and other related amenities. The set asides were proposed to be 15% rental and 20% for-sale, with not less than 209 low and moderate income units provided, calculated at 15% of the 1,388 total number of units.

5. A true and correct copy of the Consent Order and Opinion entered by the Hon. Douglas K. Wolfson, J.S.C. on June 26, 2015 and July 9, 2015 under the caption *In the Matter of the Adoption of the Monroe Township Housing Element and Fair Share Plan, and Implementing Ordinances*, MID-L-3365-15, is attached hereto as Exhibit 2.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



JONATHAN M. PREZIOSI

Dated: July 22, 2015

EXHIBIT 1

Suite 400
301 Carnegie Center
Princeton, NJ 08543-5276
609.452.0808
Fax 609.452.1147

Michael J. Mann
Partner-in-Charge, Princeton Office

Jonathan M. Preziosi
direct dial: 609-951-4153
preziosj@pepperlaw.com

April 30, 2015

REGULAR & CERTIFIED MAIL - RRR

Laurie E. Gompf, Municipal Clerk
Township of Hopewell
201 Washington Crossing - Pennington Road
Titusville, NJ 08560

***Re: Request for Inclusionary Development Pursuant to N.J.S.A. 52:27D-310(f)
and Addition to Township Service List***

Dear Ms. Gompf:

This office represents CF Hopewell CC&L LLC ("CF Hopewell"), an interested party in the plans of Hopewell Township (the "Township") to demonstrate affordable housing constitutional compliance. CF Hopewell owns the properties designated on the Hopewell Township Tax Map as Block 93, Lots 3.01, 6.01, 20 and 46, Block 93.05, Lot 2, and Block 91, Lots 3.11 and 3.95 (the "Properties"). CF Hopewell requests that the Township consider the Properties for inclusionary zoning and/or development in connection with any revision to the Township's 2008 Third Round Housing Element and Fair Share Plan ("Fair Share Plan"). In addition, confirming my oral request to Township Committee (the "Committee") at its March 23, 2015 meeting, CF Hopewell requests that Pepper Hamilton LLP be added to the notice/service list so as to be notified promptly of: (1) any public meeting of the Committee or the Township Planning Board ("Planning Board") at which the Committee or the Planning Board intends to consider or take action on any revision to the Township's Fair Share Plan; or (2) the filing of any declaratory judgment or other action in the New Jersey Superior Court pursuant to the New Jersey Supreme Court's March 10, 2015 Opinion and Order.

As the Committee and the Planning Board are aware, the New Jersey Supreme Court has established a time frame for identifying the Third Round Mount Laurel affordable housing obligations and provided each municipality with the opportunity to file a Fair Share Plan that will provide a realistic opportunity for the construction of affordable housing that satisfies its obligation. It is clear that Hopewell Township will have a significant housing obligation and

#33634096 v1

Philadelphia

Boston

Washington, D.C.

Detroit

New York

Pittsburgh

Berwyn

Harrisburg

Orange County

Princeton

Wilmington

Laurie E. Gompf, Municipal Clerk

Page 2

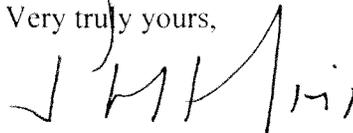
April 30, 2015

need to demonstrate realistic opportunities for the construction of affordable housing to satisfy that obligation. Accordingly, pursuant to N.J.S.A. 52:27D-310(f), CF Hopewell requests that the Township consider the Properties for a substantial inclusionary development.

CF Hopewell of course is aware that in 2014 the Planning Board developed and considered a draft Master Plan Amendment for mixed-use development, potentially including affordable housing, of certain lands on the west side of Scotch Road owned in large part by CF Hopewell. That proposal diverges from the Settlement Agreement dated October 25, 2004, between CF Hopewell's predecessor-in-title and the Township, the current zoning, and the General Development Plan Approval for office development obtained by CF Hopewell's predecessor-in-title for lands on the west side of Scotch Road. Notably, the property designated as Block 93, Lot 6.01 consisting of approximately 200 acres and owned by CF Hopewell is one of the few properties in the municipality within a designated sewer service area. In connection with the request set forth in this letter, CF Hopewell is prepared to work with the Township to amend the existing zoning and existing approvals in order to allow for an inclusionary development and requests the opportunity to do so. However, until such time as agreement is reached, the request made herein should not be construed as a waiver or abandonment of CF Hopewell's existing development rights.

Thank you for your attention to this matter.

Very truly yours,



Jonathan M. Preziosi

JMP:tr

cc: Honorable Harvey Lester, Mayor
Karen Murphy, Planning Board Chair
Steven P. Goodell, Esq., Township Attorney
Ronald C. Morgan, Esq., Planning Board Attorney
Edwin W. Schimierer, Esq., Special Affordable Housing Attorney

EXHIBIT 2

FAIR SHARE HOUSING CENTER
510 Park Boulevard
Cherry Hill, New Jersey 08002
P: 856-665-5444
F: 856-663-8182
Attorneys for Defendant-Intervenor
Fair Share Housing Center
By: Kevin D. Walsh, Esq. (030511999)
Adam M. Gordon, Esq. (033332006)

FILED

JUN 26 2015

JUDGE DOUGLAS K. WOLFSON

**IN THE MATTER OF THE ADOPTION OF
THE MONROE TOWNSHIP HOUSING
ELEMENT AND FAIR SHARE PLAN, AND
IMPLEMENTING ORDINANCES.**

SUPERIOR COURT
Law Division
Middlesex County

DOCKET NO: MID-L-3365-15

CIVIL ACTION

CONSENT ORDER

These matters having been brought before the Court on the application of Movant Fair Share Housing Center (FSHC), through its counsel, Kevin D. Walsh, Esq., through a cross-motion for intervention and for the preliminary determination of Monroe Township's Third Round present and prospective needs and through the application of Movant Monroe 33 Developers, LLC ("Monroe 33") through a motion to intervene and opposition to Monroe Township's motion for immunity;

And it appearing that the Township of Monroe, FSHC, and Monroe 33 have consented to the following terms as part of a case management conference with the Honorable Douglas Wolfson, J.S.C. held on June 26, 2015;

And it further appearing that the Township of Monroe, FSHC, and Monroe 33 have proposed a process by which the Court will be asked to make decisions involving the Township's compliance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015), including its fair share obligations and the application of the 1000-unit cap, and that the Court has accepted this process as an appropriate way to facilitate compliance with the Mount Laurel doctrine by the Township and to adjudicate legal and factual issues relating to compliance,

NOW, THEREFORE, IT IS on this 26th day of June, 2015
ORDERED as follows:

1. Fair Share Housing Center's (FSHC) Motion to Intervene as a Defendant is granted. FSHC shall file an answer and counterclaim within 10 days of the date of this order and provide a copy of this order to the clerk.
2. Monroe 33's motion to intervene as a defendant is granted. Monroe 33 shall file an answer within 10 days of the date of this order and provide a copy of this order to the clerk.
3. Service of FSHC's answer and counterclaim and Monroe's answer shall be accomplished through the forwarding of a signed copy of those pleadings to counsel for Monroe Township by regular mail. The answer to FSHC's counterclaim shall be filed within 30 days of receipt of the signed pleading.

4. Monroe Township shall prepare and file for review by this court a lawful and valid Housing Element and Fair Share Plan on or before November 9, 2015, which is five months from the filing of the complaint in this matter.

5. The parties to this litigation agree to the following process. FSHC has filed a cross-motion for preliminary determination asserting that the Township's Present Need is 104 units; that the Township's Prior Round Prospective Need is 554 units; and that the Township's Third Round prospective obligation is 2323 units. No later than July 24, 2015, the parties to this litigation and any experts either party may wish to involve shall meet for an off-the-record settlement conference in which the parties shall see if they can reach agreement as to the Township's Present Need, Prior Round prospective need, and the Third Round prospective need and the parties' positions as to the 1,000 unit cap and its potential application in the Township.

6. Monroe 33 will file papers in response to FSHC's pending cross-motion for a preliminary determination on or before July 24, 2015.

7. If the parties do not reach agreement in connection with the meeting occurring on or before July 24, 2015, the Township may file opposition to FSHC's cross-motion and the papers filed by Monroe 33 no later than August 7, 2015, with any supporting expert reports and/or other relevant

evidence that the Township wishes to include; FSHC and Monroe 33 may file any reply, including any supplemental expert reports and/or other relevant evidence, no later than August 14, 2015; and oral argument will be held on the cross-motion for a preliminary determination on August 24, 2015.

8. The Township's fair share plan due on or before November 9, 2015 shall demonstrate how it provides a realistic opportunity for its present need, Prior Round prospective need, and Third Round prospective need obligation, which obligations shall be established through the process set out by this order.

9. Case management conferences are hereby scheduled for the following dates and times:

- a. August 24, 2015 at 9:30 a.m.
- b. October 9, 2015 at 9:30 a.m.

10. Notice of the adoption of the Township's plan shall be mailed and published for a 30-day comment period on or before November 15, 2015.

11. The trial in this matter ^{will} ~~is~~ ^{be} scheduled ^{at a} ~~for~~ ^{later} ~~on~~ ^{date} ~~_____~~, 2015 at _____ a.m./p.m.

12. The Court provides five months of immunity to Monroe Township commencing with the filing of the complaint by Monroe Township in this matter.

12. Elizabeth McKenzie is appointed as special master in this matter, with fees to be paid as allocated by

the court as required by Mount Laurel II, with all parties recognizing that FSHC will not be directed to pay the Special Master's fees. The municipality may use funds from its affordable housing trust fund for the special master and other eligible administrative expenses, up to the 20 percent cap for administrative expenses as provided in N.J.S.A. 52:27D-329.2(c)(5). The master shall attempt to mediate disputes in this matter as part of the plan preparation process.

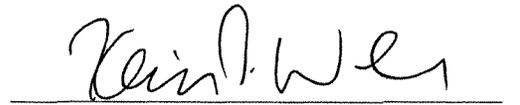
13. Counsel for FSHC shall forward a copy of this Order to all parties of record and the Court's Master within five (5) days of receipt.

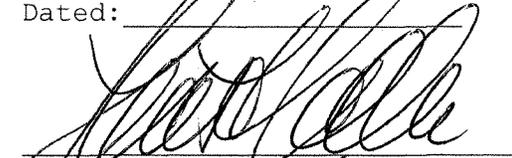

Hon. Douglas Wolfson, J.S.C.

The undersigned on behalf of the parties they represent hereby consent to the form, content and entry of the within Order on the condition that their consent is withdrawn and the matter will return to the status quo ante if the Court declines to enter the order, with the terms of the order not being binding on the parties to this Consent order:


Jerome J. Convery, Esq.
Counsel for Monroe Township
Dated: 6/26/15


Marguerite M. Schaffer, Esq.
Counsel for Monroe Township
Dated: _____


Kevin D. Walsh, Esq.
Counsel for Fair Share Housing Center
Dated: 6/20/2015


Thomas F. Carroll, Esq.
Counsel for Monroe, 33
Dated: 6/26/15

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – CIVIL PART (MT. LAUREL)

*In the Matter of the Adoption of the Monroe
Township Housing Element and Fair Share
Plan and Implementing Ordinances*

DOCKET NO: MID-L-3365-15

CIVIL ACTION

OPINION

Decided July 9, 2015

Not for Publication Without
the Approval of the
Committee on Opinions

Jerome J. Convery, Esq. and Marguerite M. Schaffer, Esq. (*Shain, Schaffer & Rafanello, P.C.*) appeared on behalf of the Township of Monroe

Thomas F. Carroll, III, Esq. and Stephen Eisdorfer, Esq. (*Hill Wallack, LLP*) appeared on behalf of proposed intervener, Monroe 33 Developers, LLC

Kevin D. Walsh, Esq., appeared on behalf of proposed intervener Fair Share Housing Center

WOLFSON, J.S.C.

I. Jurisdictional Posture

Following the March 10, 2015 decision of the Supreme Court of New Jersey in In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), hereinafter referred to as Mount Laurel IV, the adjudication of a municipality's compliance with its constitutional obligation to create a realistic opportunity for producing a fair share of

affordable housing was removed from the Council on Affordable Housing (“COAH”) and returned to the judiciary. The Supreme Court instructed the designated Mount Laurel judges within the State to adjudicate the issue of whether a given municipality’s housing plan satisfies its Mount Laurel obligations and provided detailed guidelines regarding the manner in which the judges should do so. The within matter comes before me by virtue of that grant of jurisdiction.

II. Statement of the Case

The Township of Monroe filed this declaratory judgment action pursuant to the authorization provided by Mt. Laurel IV, *supra*, 221 N.J. 1, seeking a judicial declaration that its housing plan is presumptively valid, and, while the declaratory matter relating to its constitutional compliance proceeds to adjudication, a five-month period of temporary immunity from exclusionary zoning lawsuits. Monroe 33 Developers, LLC (“Monroe 33”) sought to intervene as a defendant and for leave to file a counterclaim, which included a demand for site-specific relief – a builder’s remedy. Fair Share Housing Center (“FSHC”) also sought to intervene as a defendant and for leave to file a counterclaim challenging the constitutionality of Monroe’s affordable housing plan.

For the reasons set forth below, the Township of Monroe’s motion for a five-month period of immunity is **GRANTED**; the cross-motions of Monroe 33 Developers, LLC and Fair Share Housing Center to intervene as defendants are **GRANTED**; the cross-motion of Monroe 33 Developers, LLC to file a counterclaim seeking site-specific relief is **DENIED without prejudice**; and the cross-motion of FSHC to file a counterclaim challenging Monroe’s proposed compliance plan is **GRANTED**.

III. Procedural History

Throughout its opinion in Mt. Laurel IV, *supra*, 221 N.J. 1, the Supreme Court addressed COAH's failure to adopt revised constitutional rules ("Third Round Rules") regarding municipal housing obligations under the Fair Housing Act, N.J.S.A. 52:27D-301 to -392 (the "FHA"). As a result of COAH's failure to comply with prior Orders of the Supreme Court, a new procedure was established whereby the issues relating to compliance with a municipality's constitutional obligation to create a realistic opportunity for producing a fair share of affordable housing would be returned to the courts.¹

Recognizing that some municipalities had embraced the COAH process in good faith, but were stymied by that agency's inability to function, the Supreme Court set forth procedures by which municipalities that had either received substantive certification from COAH or had filed resolutions of participation prior to the judicial invalidation of COAH's the third-round methodology, could seek a judicial declaration that its housing plan satisfied its constitutional obligations. The process outlined by the Court affords such towns a reasonable opportunity to demonstrate constitutional compliance to a court's satisfaction (including time to take curative action if the municipality's plan requires further supplementation), without the specter of a

¹ See Mt. Laurel IV, *supra*, 221 N.J. at 6 ("Our order effectively dissolves, until further order, the FHA's exhaustion-of-administrative-remedies requirement. Further, as directed, the order allows resort to the courts, in the first instance, to resolve municipalities' constitutional obligations under Mount Laurel."); see also Southern Burlington County NAACP v. Twp. Of Mount Laurel, 67 N.J. 151 (1975) (hereinafter referred to as Mt. Laurel I); and see Southern Burlington County NAACP v. Twp. Of Mount Laurel, 92 N.J. 158 (1983) (hereinafter referred to as Mt. Laurel II).

builder's remedy action hanging over them like a "sword of Damocles."² Importantly, the Supreme Court authorized the courts to grant a period of temporary immunity for up to five months, "preventing any exclusionary zoning actions from proceeding,"³ to those municipalities that promptly sought such declaratory relief.⁴

Accordingly, I am tasked with determining first, whether Monroe has demonstrated an entitlement to a period of immunity, and second, whether the procedures and protocols crafted by the Supreme Court authorize the relief sought by the proposed interveners.

IV. The Township of Monroe's Request for Temporary Immunity

The Township of Monroe enjoys "participating" status and has now affirmatively sought judicial approval of its affordable housing plan through the filing of its declaratory judgment action. Thus, it "should receive like treatment to that which was afforded by the FHA to towns that had their exclusionary zoning cases transferred to COAH when the Act was passed." *Mt.*

² See e.g., *Mt. Laurel IV*, *supra*, 221 N.J. at 3 ("In the event of a municipality's inability or failure to adopt a compliant plan to a court's satisfaction, the court may consider the range of remedies available to cure the violation, consistent with the steps outlined herein and in our accompanying order."); *id.* at 24 ("[A]s part of the court's review, we also authorize... a court to provide a town whose plan is under review immunity from subsequently filed challenges during the court's review proceedings, even if supplementation of the plan is required during the proceedings.").

³ *Id.* at 23-24.

⁴ See *id.* at 5-6. ("We will establish a transitional process and not immediately allow exclusionary zoning actions to proceed in recognition of the various states of municipal preparation that exist as a result of the long period of uncertainty attributable to COAH'S failure to promulgate Third Round Rules. During the first thirty days following the effective date of our implementing order, the only actions that will be entertained by the courts will be declaratory judgment actions filed by any town that either (1) had achieved substantive certification from COAH under prior iterations of Third Round Rules before they were invalidated, or (2) had "participating" status before COAH.").

Laurel IV, *supra*, 221 N.J. at 27, *citing* N.J.S.A. 52:27D-316.⁵ These towns received “insulating protection” by virtue of their submission to COAH’s jurisdiction, “provided that they prepared and filed a housing element and fair share plan within five months.” N.J.S.A. 52:27D-316. So too here, as a “participating” town, Monroe similarly has “no more than five months in which to submit their supplemental housing element and affordable housing plan. During that period, the court may provide initial immunity preventing any exclusionary zoning actions from proceeding.” Mt. Laurel IV, *supra*, 221 N.J. at 27-28.

Since Monroe had actually devised a housing element and took action toward adopting ordinances in furtherance of its plan, it has earned a more “favorable” or “generous” review of its request for immunity.⁶ Even where granted, however, immunity “should not continue for an undefined period of time; rather, the trial court’s orders in furtherance of establishing municipal affordable housing obligations and compliance should include a brief, finite period of continued immunity, allowing a reasonable time as determined by the court for the municipality to achieve compliance.” Id. at 28. Only where that goal cannot be accomplished, with good faith effort and reasonable speed, and the town is “*determined to be constitutionally noncompliant*” may

⁵ While the Court cautioned that the judicial role “is not to become a replacement agency for COAH,” the process developed in Mt. Laurel IV “seeks to track” the processes provided for in the FHA “as closely as possible,” so as to create “a system of coordinated administrative and court actions.” Id. at 6, 29.

⁶ For those municipalities that made good faith attempts to implement their affordable housing obligations by, for example, devising a housing element and taking action toward adopting ordinances in furtherance of its plan, the Supreme Court “expect[s] a reviewing court to view more favorably such actions than that of a town that merely submitted a resolution of participation and took few or perhaps no further steps toward preparation of a formal plan demonstrating its constitutional compliance.” Id. at 28.

exclusionary zoning actions seeking a builder's remedy proceed against "certified" or "participating" towns.⁷

Based upon my preliminary review of the Township's submissions, detailed below, I am satisfied that Monroe has made a good faith attempt to satisfy its affordable housing obligations, and hence, deserves immunity from exclusionary zoning actions, on the condition that it prepares and files its housing element and fair share plan within five months (as would have been required if it were subject to COAH's jurisdiction).⁸

In or around December 2008, Monroe adopted its Third Round Housing Element and Fair Share Plan, as well as its Third Round Housing Trust Fund Spending Plan. Promptly thereafter, the Township petitioned COAH for substantive certification by submitting: (1) a document regarding the status of inclusionary development Stratford Monroe with its proposed two-hundred and five (205) affordable units; (2) a document regarding the status of inclusionary development Monroe Manor with its proposed one-hundred and twenty-seven (127) affordable units; and (3) a document encompassing a general description of the Township's Rehabilitation Program, which included sixty-one (61) units proposed for rehabilitation.

During early 2009, Monroe created the Planned Residential Development Affordable Housing District ("PRDAH"). Said district requires that 23.03% of the dwelling units be designated and set aside for low- and moderate-income households. According to the Board Planner for the Monroe Township affordable Housing Board ("the Planner"), the PRDAH zone

⁷ Id. at 33 (emphasis added); see also id. at 29 ("Only after a court has had the opportunity to fully address constitutional compliance and has found constitutional compliance wanting shall it permit exclusionary zoning actions and any builder's remedy to proceed.").

⁸ See N.J.S.A. 52:27D-316(a) ("If the municipality fails to file a housing element and fair share plan with the council within five months from the date of transfer [to COAH], or promulgation of criteria and guidelines by the council pursuant to section 7 of this act, whichever occurs later, jurisdiction shall revert to the court.").

should produce two-hundred and ninety-three (293) age-restricted affordable housing units and one-hundred and eight (108) family rental affordable housing units.

During 2011, the Monroe Township Planning Board denied a developer's application to concert a previously-approved plan to all non-age restricted units. Through a reconsideration by the parties, said developer dedicated part of its site to the municipality for a municipally sponsored 100% affordable housing complex which is expected to yield one-hundred and fifty (150) family rental units. Later in 2011, the Monroe Township Zoning Board approved an application which required the construction of twenty-six (26) affordable family rental units at the Monroe Chase site, ten (10) of which have already been constructed.

In May 2012, the Township amended its Third-Round Housing Element and Fair Share plan to include a municipally sponsored affordable housing project and, in addition, designated two new overlay zones – actions intended to produce additional affordable housing. The Township Council also passed a Resolution endorsing the recommendation of its Affordable Housing Board reserving and dedicating funds for affordable housing purposes, and thereafter adopted an ordinance authorizing the creation of an Affordable Housing Irrevocable Trust.

In February 2014, a developer was granted a use variance for construction of residential units on State Highway 33. The approval required construction of forty-seven (47) affordable family rental units in the VC-2 Village Center Overlay Zone. In July 2014, as a result of other, unrelated litigation, the Township also rezoned two sites – one along Route 33, which, when developed, will yield one-hundred and thirty-one (131) affordable age-restricted rental units; and another known as “the Villages,” which, when developed, will generate an additional sixty-six (66) affordable age-restricted rental units.

In September 2014, Monroe amended the Affordable Housing Mixed Use Development/Highway Development overlay zone (hereinafter “AHMUD/HD overlay zone”), which, according to the Planner, should produce two-hundred and ninety-five (295) affordable housing units under a 100% municipally sponsored development. Monroe also amended the VC-1 and VC-2 Village Center overlay zones to create mixed-use environments which, according to the Planner should produce an additional one-hundred (100) affordable housing units and twelve (12) family rental affordable housing units, respectively, under the set-aside provisions of those zones.

As the Supreme Court recognized: “...not all towns that had only ‘participating’ status may have well-developed plans to submit to the court initially. A town in such circumstances poses a difficult challenge for a reviewing court, particularly when determining whether to provide some initial period of immunity while the town’s compliance with affordable housing obligations is addressed.” Undoubtedly, Monroe (a “participating” municipality) has provided *prima facie* documentation of its good faith efforts to comply with its fair share obligation. Accordingly, the Township’s motion seeking a five-month period of temporary immunity from exclusionary zoning suits is granted.⁹

V. Proposed Interveners’ Motions to File Answers and Counterclaims

a. The Right of Interested Parties to Participate in the Adjudication of Constitutional Compliance

Both substance and procedure permit, and perhaps, demand that “interested parties” be permitted to “participate” in any assessment of a municipality’s purported compliance with its affordable housing obligation. First, absent intervention, a municipality’s declaratory judgment

⁹ See Mt. Laurel IV, *supra*, 221 N.J. at 27-28; see also N.J.S.A. 52:27D-316(a).

action would be, essentially, unopposed. While the appointment of a Special Master is, ideally, both a welcome and necessary protocol, a blanket rule prohibiting any interested party from intervening, fundamentally silences potentially useful and critical voices which may have legitimate insights or analyses relevant to the constitutionality of the town's proposed plan. Second, while I am mindful of the Supreme Court's clear mandate to adjudicate such actions as quickly as prudence and justice will allow, it is amply clear that the Court specifically contemplated, and in the case of FSHC, for example, directly encouraged, interested parties to weigh in on the extent and methods by which a given municipality proposed to fulfill its affordable housing obligations.

The Supreme Court was unequivocal in its mandate that all declaratory judgment cases are to be brought on notice to interested parties and with an opportunity for them to be heard. Id. at 35. I can discern no legitimate basis, therefore, to deny any interested party the opportunity to intervene as a defendant, albeit limited to the question of whether the particular town has complied with its constitutional housing obligations. Accordingly, Monroe 33 and FSHC's motions to intervene as defendants and to file Answers are both granted.

b. Counterclaims Seeking Site-Specific Relief – i.e., Builder's Remedy Actions – are Barred as Against "Certified" or "Participating" Municipalities

Despite the Supreme Court's clear directive affording interested parties an "opportunity to be heard," I am equally confident that this right does not extend so far as to authorize them to contest the municipality's site selections and/or methods of compliance by suggesting or claiming that other sites (owned or controlled by them) are superior to, or perhaps, better suited for an inclusionary development. While such parties' "participation" may, of course, include proofs related to whether the proposed affordable housing plan passes constitutional muster, so

long as the plan does so, the municipality's choices (including site selection and the manner and methods by which it chooses to satisfy its affordable housing obligations) remains, as it was under the FHA and COAH's oversight¹⁰, paramount. Accordingly, claims that a "better" and/or "more suitable" site is, or may be available will not be entertained in any declaratory judgment action brought by a certified or participating municipality. Simply stated, to hold otherwise would be to permit an interested party to do indirectly that, which the Supreme Court has specifically prohibited from being done directly.

i. Monroe 33's Counterclaim

At its core, Monroe 33's counterclaim seeks site-specific relief – i.e., a builder's remedy, relief that goes beyond the limited participation envisioned the Supreme Court. In discussing whether and when exclusionary zoning actions and builder's remedies would actually be permitted (or, if permitted, "stayed"), the Court used various limiting phrases such as "may be brought"¹¹ and "may proceed."¹² Irrespective of its choice of language, the Supreme Court's overarching intent was clearly to foreclose such litigation until such time as constitutional compliance has been judicially addressed and found "wanting." Mt. Laurel IV, *supra*, 221 N.J. at 29. Then, and only after the court has concluded that a municipality is "determined to be noncompliant" (by refusing to supplement or amend its plan to remedy any perceived

¹⁰ See generally N.J.S.A. 52:27D-309-311; see also Hills Dev. Co. v. Bernards Tp., 103 N.J. 1, 22 (1986) (hereinafter referred to as Mt. Laurel III) (Under the FHA, municipalities retain the right "to exercise their zoning powers independently and voluntarily" along with the means to determine what combination of ordinances and other measures will achieve their fair share of affordable housing).

¹¹ See e.g., Mt Laurel IV, *supra*, 221 N.J. at 28.

¹² See e.g., id. at 26, 27 and 35.

deficiencies) would exclusionary zoning actions be warranted.¹³ Limiting participation of interested parties in such a fashion comports with the specified protocols mandated by the Supreme Court that: (1) interested parties must be given notice and an opportunity to be heard *on the issue of constitutional compliance*; and (2) exclusionary zoning suits are not authorized unless the court fully addressed the issue of constitutional compliance, and has determined the town's affordable housing plan to be deficient.¹⁴

Barring interested parties from pursuing builder's remedies, either via an independent action, or as here, by way of a counterclaim, results in no discernible prejudicial impact.¹⁵ Indeed, site-specific relief is wholly irrelevant to the larger, and preliminary, question of constitutional compliance. Builders choosing to participate as defendants¹⁶ in constitutional compliance actions pending before the trial courts may do so in much the same manner as they

¹³ *Id.* at 33; *see also* n. 6, *supra*.

¹⁴ *See id.* at 33-34 (stating that if the court is unable to secure "prompt voluntary compliance from municipalities... with good faith effort and reasonable speed, and the town is determined to be constitutionally noncompliant, *then* the court may authorize exclusionary zoning actions seeking a builder's remedy to *proceed*." (emphasis added)).

¹⁵ As recognized nearly thirty years ago in *Mt. Laurel III*:

If there is any class of litigant that knows the uncertainties of litigation, it is the builders. They, more than any other group, have walked the rough, uneven, unpredictable path through planning boards, boards of adjustments, permits, approvals, conditions, lawsuits, appeals, affirmances, reversals, and in between all of these, changes in both statutory and decisional law that can turn a case upside down. No builder with the slightest amount of experience could have relied on the remedies provided in *Mt. Laurel II*, in the sense of justifiably believing that they would not be changed, or that any change would not apply to the builders. *Id.*, *supra*, 103 N.J. at 55.

¹⁶ Irrespective of whether a "certified" or "participating" municipality chooses to file a declaratory judgment action or waits to be sued, "*the trial court may grant temporary periods of immunity prohibiting exclusionary zoning actions from proceeding[.]*" *Mt. Laurel IV*, *supra*, 221 N.J. at 35.

would have, had COAH not ceased to function; a parallel process that neither affords builders any greater rights, nor deprives them of any that they would have had, including the rights to participate in the processes authorized under both Mount Laurel II and the FHA – conciliation, mediation, with the use and assistance of special masters.¹⁷ Certainly, the Court’s dissolution of the FHA’s exhaustion-of-administrative-remedies requirement and its resurrection of the judiciary’s role as the forum of first resort to evaluate municipal compliance was not intended to signal a return to Mount Laurel II and its “reward-based” system for vindicating the constitutional rights of the poor.¹⁸ In point of fact, the Court’s newly established framework fundamentally alters that “reward-based” approach. In so doing, it rendered obsolete the “first to file” priority scheme adopted in J.W. Field Co., Inc., v. Franklin Tp., 204 N.J. Super. 445 (Law Div. 1985), since the ultimate location and satisfaction of a certified or participating municipality’s affordable housing obligation ought be based upon a more interactive process,

¹⁷ As noted by the Supreme Court in Mt. Laurel II, *supra*, 92 N.J. at 283, special masters were intended to be “liberally used” to provide expertise and to assist the parties as “a negotiator, a mediator, and a catalyst.” See also N.J.S.A. 52:27D-315 (mediation and review process by council).

¹⁸ The procedures articulated herein are not intended to prevent builders or other interested parties from bringing exclusionary zoning actions against any municipality that was neither certified nor participating. Indeed, the approximate 200 towns that never subjected themselves to COAH’s jurisdiction remain “open to civil actions in the courts... [and] will continue to be subject to exclusionary zoning actions as they have been since inception of Mount Laurel...” Mt. Laurel IV, *supra*, 221 N.J. at 23.

guided by the equities¹⁹ of the particular participants and principles of sound planning,²⁰ rather than on a race to the courthouse.²¹

Indeed, even under Mount Laurel II, no builder's remedy would be awarded unless the plaintiff's proposed site was "*located and designed in accordance with sound zoning and planning concepts, including its environmental impact.*"²² As originally intended, builder remedies were authorized to incentivize builders to vindicate this constitutional imperative largely because the Court's landmark decision in Mount Laurel I was widely ignored and failed to achieve the desired goal of producing balanced communities and affordable housing, but also

¹⁹ As opposed to the "date of filing," such equitable considerations could include, for example, an assessment of "whether any project was clearly more likely to result in actual construction than other projects and whether any project was clearly more suitable from a planning viewpoint than other projects." See J.W. Field Co., Inc., *supra*, 204 N.J. Super. at 460.

²⁰ The Court has consistently demonstrated its sensitivity to and the importance of sound planning and environmental conditions over builder preference. See, e.g., Mount Laurel II, *supra*, 92 N.J. at 211 (The obligation to encourage lower income housing, therefore will depend on "natural long-range land use planning" rather than upon "sheer economic forces."); and see *id.* at 238 ("the Constitution of the State of New Jersey does not require bad planning.").

²¹ While the priority system articulated in J.W. Field Co., Inc., *supra*, 204 N.J. Super. 445, has never been specifically embraced by any appellate authority, it has, for all intents and purposes, become embedded and generally followed in Mount Laurel jurisprudence for more than thirty years. It seems reasonable to conclude that it remains a viable protocol for determining priorities among multiple plaintiffs in litigation against towns that were neither "certified" nor enjoyed "participating status" before COAH. Nonetheless, with regard to the certified and participating municipalities now before the courts, the Court encouraged "present day courts" to employ "flexibility in controlling and prioritizing litigation." Mt. Laurel IV, *supra*, 221 N.J. at 26.

²² Mount Laurel II, *supra*, 92 N.J. at 218 (emphasis added); see also *id.* at 279 (a builder's remedy award is only appropriate where a builder demonstrates that "the construction can be implemented without substantial negative environmental or planning impact.").

because, after eight years, the decision had produced only “papers, process, witnesses, trials and appeals.”²³

By way of contrast, the Supreme Court’s current framework expressly *prohibits* exclusionary zoning litigation until *after* the compliance phase of the declaratory judgment action has concluded.²⁴ As such, a builder/plaintiff may be hard pressed to assert convincingly that its actions were the catalyst or procuring cause in vindicating the constitutional rights of low and moderate income persons. This is especially so in the context of a municipally initiated declaratory judgment action, or one defended by a town that was “certified” or enjoyed “participating status” but opted to “wait until sued” before seeking a judicial blessing of its affordable housing plan.²⁵

This is not to say that participation by builders or other interested parties in the constitutional compliance action is unwelcome or unnecessary. In fact, the opposite is true. Involvement of, and input from such parties may be among the most beneficial sources of practical and economic information in helping to achieve expedient municipal compliance. By

²³ Mount Laurel II, *supra*, 92 N.J. at 199; see also Orgo Farms & Greenhouses, Inc. v. Colts Neck, 192 N.J. Super. 599, 601 (Law. Div. 1983) (wherein Judge Serpentelli, one of the three original Mount Laurel judges, recognized that “unless a strong judicial hand was applied, Mount Laurel I would not result in the housing which had been expected.”). Consequently, the builder’s remedy was designed “to assure a builder who shouldered the burden of Mount Laurel litigation that the end result of a successful litigation would be some specific relief in terms of a right to proceed with construction of a specific project.” Orgo Farms, *supra*, 192 N.J. Super. at 602. At present, the framework crafted in Mt. Laurel IV, *supra*, 221 N.J. 1, has replaced, at least temporarily, the builder’s remedy as the “strong judicial hand.”

²⁴ Mt. Laurel IV, *supra*, 221 N.J. at 35-36.

²⁵ See Mt. Laurel IV, *supra*, 221 N.J. at 28 (stating that both “certified” and “participating” towns have the option either to proceed with their own declaratory judgment actions during the thirty-day period post the effective date of the Order, or to wait until their affordable housing plan is challenged for constitutional compliance).

engaging in mediation, negotiation, conciliation, and, with the assistance and planning expertise of special masters, there exists a unique opportunity for municipal officials, on the one hand, and ready, willing and able builders, on the other, to craft mutually workable plans for the construction of affordable housing.²⁶ In addition to the practical benefits that such a streamlined approach provides all participants, such a cooperative resolution of these competing interveners may very well diminish the likelihood of future litigation.

ii. FSHC's Counterclaim

As distinct from Monroe 33's pleading, FSHC's counterclaim does not seek site-specific relief. Instead, its two-count counterclaim alleges: (1) that the Township's Housing Plan Element and Fair Share Plan is unconstitutional – i.e., a violation of its Mount Laurel obligation; and (2) that the Township has violated the New Jersey Civil Rights Act, N.J.S.A. 10:6-2, by failing to comply with the Mount Laurel doctrine and other sources of law. Since both of these claims fit squarely within the scope of issues authorized by the Supreme Court in Mount Laurel IV – challenges to compliance – FSHC's motion for leave to file its counterclaims is hereby granted.

VI. Conclusion

The Supreme Court's newly crafted framework for ensuring municipal compliance with Mount Laurel obligations, unlike the “reward” based process envisioned in Mount Laurel II, is

²⁶ Compare, Mount Laurel II, *supra*, 92 N.J. at 284 (acknowledging the need for the special master to “work closely” with all those connected to the litigation, including “interested developers.”).

not dependent upon site-specific remedies to achieve constitutional compliance.²⁷ Instead, as envisioned by the Supreme Court, “certified” and “participating” towns will likely subject themselves to a judicial evaluation of their constitutional compliance either by initiating declaratory judgment actions, or defending them – circumstances which, for all practical purposes, preclude, at least during the compliance phase of litigation, any party from being a “successful” plaintiff as required by Mount Laurel II.²⁸ Accordingly, all declaratory judgment actions involving “certified” or “participating” municipalities shall be subject to the procedures and protocols set out below:

1. Interested parties shall be permitted to intervene, but only for the limited purpose of participating (through mediation, negotiation, conciliation, etc.) in the court’s adjudication of the subject municipality’s constitutional compliance with its affordable housing obligation;
2. Interested parties shall not be permitted to file exclusionary zoning/builder’s remedy actions, via counterclaims or through independently filed separate actions, until such time as the court has rendered an assessment of the town’s affordable housing plan and has decided that the municipality is constitutionally noncompliant, and is determined to remain so by refusing to timely supplement its plan to correct its perceived deficiencies; and

²⁷ To be clear, this conclusion pertains only to “certified” or “participating” towns (whether they filed declaratory judgment actions or whether they chose to “wait to be sued”), and not to those towns that were neither “certified” nor “participating.” Nothing in this opinion is meant to diminish the rights of parties seeking builder’s remedies through the filing of exclusionary zoning actions in the latter category of town. The builder’s remedy schemes laid out by both Mt. Laurel II and J.W. Field Co., Inc. seem perfectly viable *in those towns that made no effort to satisfy their fair share obligations*, as the need to incentivize builders to bring constitutional compliance and/or exclusionary zoning litigation in such towns remains of paramount importance. See Mt. Laurel IV, *supra*, 221 N.J. at 23.

²⁸ See Mt. Laurel II, *supra*, 92 N.J. at 279.

3. If, after having received a full and fair opportunity to comply with its constitutional obligations, the court concludes that a municipality is “determined to be noncompliant,” builders and any other interested parties may then initiate and prosecute exclusionary zoning actions against the town, through which any builder’s remedies to be awarded would be guided by equitable considerations and principles of sound planning, and not upon who filed first.

Adherence to these protocols will help focus the litigation and assist in fostering a prompt, efficient, and fair resolution of the constitutional compliance issues, without unnecessary distractions or impediments from builder/developers or other interested parties.

It is so ordered.

Jonathan M. Preziosi, Esq. #002041992
Brian R. Zurich, Esq. #017982009
PEPPER HAMILTON LLP
(A Pennsylvania Limited Liability Partnership)
Suite 400
301 Carnegie Center
Princeton, NJ 08543-5276
(609) 452-0808

Counsel for CF Hopewell CC&L LLC

IN THE MATTER OF THE APPLICATION
OF THE TOWNSHIP OF HOPEWELL IN
MERCER COUNTY

SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY – LAW DIVISION
DOCKET NO.: MER-L-

Civil Action

**CERTIFICATION OF DAVID J. MOORE
IN SUPPORT OF CF HOPEWELL'S
MOTION TO INTERVENE**

David J. Moore, of full age, certifies as follows:

1. I am David J. Moore of CF Hopewell CC&L LLC (“CF Hopewell”). I submit this certification in support of CF Hopewell’s motion to intervene as a defendant in the above-captioned matter. I have personal knowledge of the facts set forth below.

2. CF Hopewell is the owner of property in the Township of Hopewell located on the west side of Scotch Road, designated as Block 93, Lot 6.01 consisting of approximately 200 acres (the “CF Hopewell Property”). CF Hopewell holds clear title to the property and the property is free of any encumbrances which might preclude development for low and moderate income housing.

3. The CF Hopewell Property is currently zoned “Office Park.” Under a General Development Plan approval, 1 million square feet of office space is permitted to be built on the property, including conference center, restaurant and hotel as approved uses.

4. Throughout much of 2014, the Hopewell Township Planning Board worked on a Master Plan Amendment to change the zoning for mixed use development on the subject property, including inclusionary development with an affordable housing component. A true and correct copy of the last draft of the Land Use Plan Amendment for the Scotch Road Area is attached hereto as Exhibit 1. During this time period, the Township hired experts that determined, among other things, that the CF Hopewell Property was an appropriate location for the construction of affordable housing. Ultimately, the Planning Board did not adopt the amendment, in major part because it did not know its affordable housing obligation. CF Hopewell supported such an amendment.

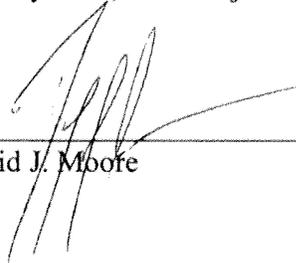
5. The CF Hopewell Property is one of the few locations in Hopewell Township within a sewer service area. It is designated for sewer in the Township's Wastewater Management Plan ("WMP") and in Mercer County's Water Quality Management Plan ("WQMP").

6. In 2011-2012, the Township planned to acquire sewer for the southern part of the Township, but that effort failed due to public opposition. Consequently few other undeveloped properties in the Township have access to sewer.

7. The CF Hopewell Property has exceptional access on Scotch Road across from two major centers of employment. The Bank of America/Merrill Lynch office campus has approximately 1.25 million square feet of office space and 7,000 employees. Additionally, Capital Health recently built a new hospital with 367 beds and approximately 150,000 square feet of medical office space. Capital Health currently employs more than 1,500 employees and continues to grow. It is my understanding that Capital Health has plans to expand its medical space by approximately another 126,000 square feet to add 144 more beds. The CF Hopewell

Property is also very close to the I-95/295 Scotch Road interchange which is just south of the site along Scotch Road.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

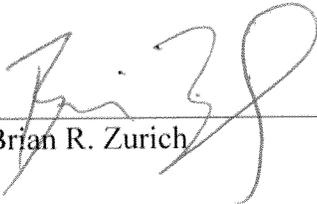


David J. Moore

Dated: July 22, 2015

CERTIFICATION PURSUANT TO R.1:4-4(c)

I hereby certify that David J. Moore acknowledges the genuineness of his signature on the preceding signature page, and that a copy with an original signature affixed will be filed if requested by the Court or a party.



Brian R. Zurich

Dated: July 22, 2015

EXHIBIT 1

Master Plan Revision
for the Scotch Road Area:

*Regenerating Community,
Opportunity, Vitality and Balance*

Hopewell Township
Mercer County, N.J.

Prepared for:

Hopewell Township Planning Board

Prepared by:

Banisch Associates, Inc.

Flemington, NJ

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DRAFT

“The best way to predict your future is to create it”

— Abraham Lincoln

Introduction

Hopewell Township’s desirable community character is the result of a series of proactive steps over a number of decades. Recognizing the lack of sewer infrastructure, early master planning efforts called attention to the limited resources to support development and, more recently, sustainable resource management policies have calibrated the capacity for growth to match the ability of septic systems to adequately treat wastewater and recharge the aquifer.

Over a decade ago, Hopewell Township recognized that most of the jurisdiction will remain beyond the reach of sanitary sewer infrastructure and that the very limited carrying capacity for septic systems has and will continue to limit growth in the township's mostly rural environs.

Hopewell Township has arrived at an unexpected crossroads in its planning and development. Despite local planning policies that provided for balanced growth and prevented suburban sprawl from overtaking the township, Hopewell now finds itself facing dramatically changing circumstances. During changing times, serious problems can usher in important opportunities if proactive steps are taken.

Many of the assumptions on which Hopewell's planning policies are based are substantially changing as the 21st century has progressed.

- The desirability of a suburban home on its own lot has been called into question by lifestyle preferences for walkable places with interesting activity zones.
- The "inevitable" march of suburbia ever outward has become less of a threat as urban places have become more desirable.
- Farming as an industry, previously threatened by suburban development, is in a resurgent mode in Hopewell Township as the “eat local” movement has evolved.
- Office ratables, once a growing sector of the local economy, are in decline throughout suburban New Jersey and are a shrinking portion of Hopewell’s tax base. A tax appeal has already been filed on the Merrill Lynch complex that could result in the loss of substantial ratable value.

The most surprising paradigm shift in the New Jersey suburban landscape has been the dramatically reduced demand for suburban office and retail floor area. These markets are already substantially overbuilt and the Internet continues to make brick and mortar floor area less important to the business of business.

It is not surprising, in light of the above, that the 2.7 million square feet of unbuilt office permitted on Scotch Road is not in great demand. And with only 1.3 million square feet built to date, it is unlikely that much more office space will be constructed there in any near term horizon. These market realities prompted the current owner of the undeveloped portions of the Office Park (OP) zone to request a rezoning of the property for residential use, including a 700-unit retirement community west of Scotch Road and 300 apartment and townhouse units on the east side.

The Hopewell Township Committee referred this request to the Planning Board for study and recommendations within the context of the master plan. This master plan amendment addresses these changing circumstances, reviews local needs and preferences and proposes an alternative future that can advance the long-standing objectives of Hopewell Township.

Hopewell's Changing Demographics

Since 1950, Hopewell Township has grown from a lightly populated rural community of less than 5,000 to roughly 18,000 today. Suburban expansion more than doubled the population between 1950 and 1970, followed by a period of modest growth during the 1970s and 1980s. While the 1990s saw a 4000+ (40 %) increase in township population, the opening decade of the 21st century saw a return to single digit population growth, adding about 1,200 persons between 2000 and 2010.

The total housing increased from 5,629 units (2000) to 6,551 units (2010). Hopewell's housing stock is largely occupied by family households and 92% of all housing is owned, with only 8% of all units available for rent. Owners occupied 5,780 units, renters occupied 502 units and 269 units were vacant. This contrasts with Mercer County, New Jersey and the USA where roughly 2/3 of all units are rental units.

Community vitality and health requires opportunities for persons of all ages to find employment and settle in suitable housing. Among indicators of a community's future prospects is the growth or decline of the population between the ages of 25 and 34, a key demographic. Of particular concern is the dramatic decline (32% drop) in the number of persons 25-34 living in Hopewell Township between 2000 (1,632) and 2010 (1,114).

In light of these statistics, it is no surprise that few right sized rental units are available for start-up households or empty nesters looking to downsize. As a result, present and former residents, many of whom were raised in the Township, are forced to leave Hopewell Township when a life phase or lifestyle change requires a new housing choice.

Employment in the Township has also been negatively affected by the Great Recession, with the average labor force shrinking from 12,310 in 2000 to 9,915 in 2010. Thus Hopewell Township has lost both jobs and the young people looking for them.

Hopewell Township's 2002 Land Use Plan

Calling for the Township to “abandon the paradigm” that created sprawl and replace it with “more holistic approaches to the merger of built places with farmlands, natural lands and rural features”, the primary focus of the 2002 Land Use Plan was the conservation of land and water resources throughout Hopewell Township. In part, this goal was advanced through capacity-based low density zoning in the Mountain and Valley Resource Conservation Districts and the elimination of some non-residential districts.

Residential Policies

Community design goals were included in the 2002 Land Use Plan to define the objectives for placemaking. These included:

- *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.*
- *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.*

In response to these objectives, permitted zoning options were “targeted at building neighborhoods and communities, not ‘developments’...” and the 2002 land use plan advocated novel neighborhood-building opportunities with walkable neighborhoods and enhanced opportunities for human interaction, promoting non-contiguous clustering with open space preservation and compact neighborhood designs.

Non-Residential Policies

Hopewell Township has long attracted research and office uses to its rural setting with zoning for Research Office (RO) Districts and Office Park (OP) at Scotch Road.

The RO Districts, which are not served by centralized sewerage treatment systems but rather use on-site sewage treatment facilities, are situated in three distinct sectors of the Township:

- Janssen Pharmaceutica occupies a research office complex and farm on 242 acres on Bear Tavern Road (Route 579) in the southwest corner of the Township;
- Bristol Meyers-Squibb on Pennington-Rocky Hill Road in the central part of the Township; and
- A multiuser campus on Carter Road (Route 569) in the southeast corner of the Township.

General Development Plan (GDP) approvals were granted for two RO tracts, including the 433-acre Bristol-Myers Squibb campus (formerly Mobil), which permits approximately 2,820,000 square feet of building floor area, of which approximately 990,000 square feet have been developed, and the GDP approval for Carter Road, which allows approximately 800,000 square feet of development, of which approximately 300,000 square feet have been developed.

Noting that the widespread RO districts are “vestiges of a period when the Township permitted major corporate research and office uses in the agricultural and residential areas”, in 2002 the Master Plan eliminated many of the industrial office park districts “...in favor of less intensive residential uses.”

The Office Park district, which replaced a former industrial office park district, includes the more recent the Merrill Lynch office campus complex on Scotch Road, which is discussed in further detail below.

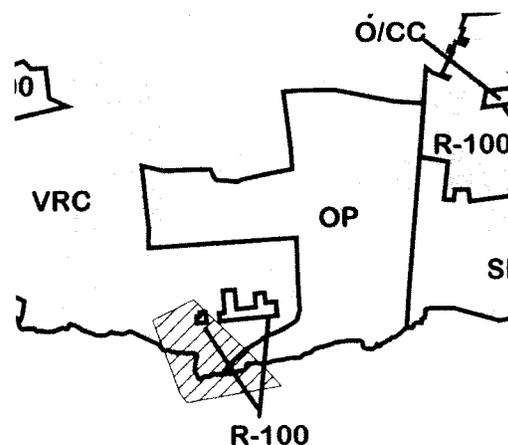
Merrill Lynch and the OP Zone

The OP District straddles Scotch Road just north of I-95. Here Merrill Lynch has constructed 1.3 million square feet of office and Capital Health has established a new medical campus within view of the Interstate.

Original 1998 GDP Approval

General Development Plan (GDP) approval granted by Board Resolution No. 98-105 adopted March 23, 1998, revised April 27, 1998 granted long-term, vested approval for a mixed-use/multiple user development not to exceed 3,500,000 square feet on approximately 450 acres to include the following uses:

- Offices*
- Research and development facilities*



*Operations, manufacturing, warehousing, packaging,
assembly, printing, etc
A conference center
A hotel
Retail and personal service uses
Utilities
Recreation uses
Nursery school and/or day care centers
Open space*

The GDP approved specific bulk standards, including lot standards, building heights and setback standards and waivers from parking requirements for the property, characterized as a large rectangle, which was found to be:

- A. gently rolling with four small intermittent streams that eventually drain into Jacobs Creek.
- B. traversed by three major utility easements (high tension power lines, gasoline, and natural gas).
- C. Designed as a pair of hillside campuses (North and South) linked by an internal landscaped loop road and buffered by the natural stream valleys with a limited number of access points with the existing public road system.
 - a. The concentric rings of each campus find an inner core of man-made "open space" surrounded by buildings surrounded by parking ringed by natural common open space in the form of wooded wetlands and meadows and
 - b. Buildable pockets beyond this outer ring are reserved for a range of satellite uses designed to support the core campuses.

Settlement Agreement

Hopewell Township entered into a settlement (October 25, 2004) involving the Merrill Lynch Property and adjacent Garden Property, finding a GDP amendment necessary to adjust and regulate the development of both properties to implement the Settlement. Principal details of the settlement can be briefly summarized as follows:

- A. GDP amendment involves permitting *no more than 4,000,000 square feet of floor area on both ML and Garden Property.*
- B. The ML proposed phasing schedule shows that a *maximum of 3,500,000 square feet may still be developed on ML.*
- C. *If Garden Property develops its permitted 1,000,000 square feet, ML would be limited to 3,000,000 square feet.*
- D. *If Garden Property is developed for less than 1,000,000 square feet, ML may then build the difference up to 3,500,000 square feet.*

Amended GDP

Resolution No. 05-066 Amended the 1998 GDP approval for the Property. The original GDP approval permitted a phased development not to exceed 3,500,000 square feet on

the Property. Phase 1 of the project, totaling 1,251,313 square feet of development, consisting of a campus-type office complex, a day care center, a construction office, open space and various passive and active recreation elements had been constructed as authorized.

Changes to the GDP, shown graphically below, included

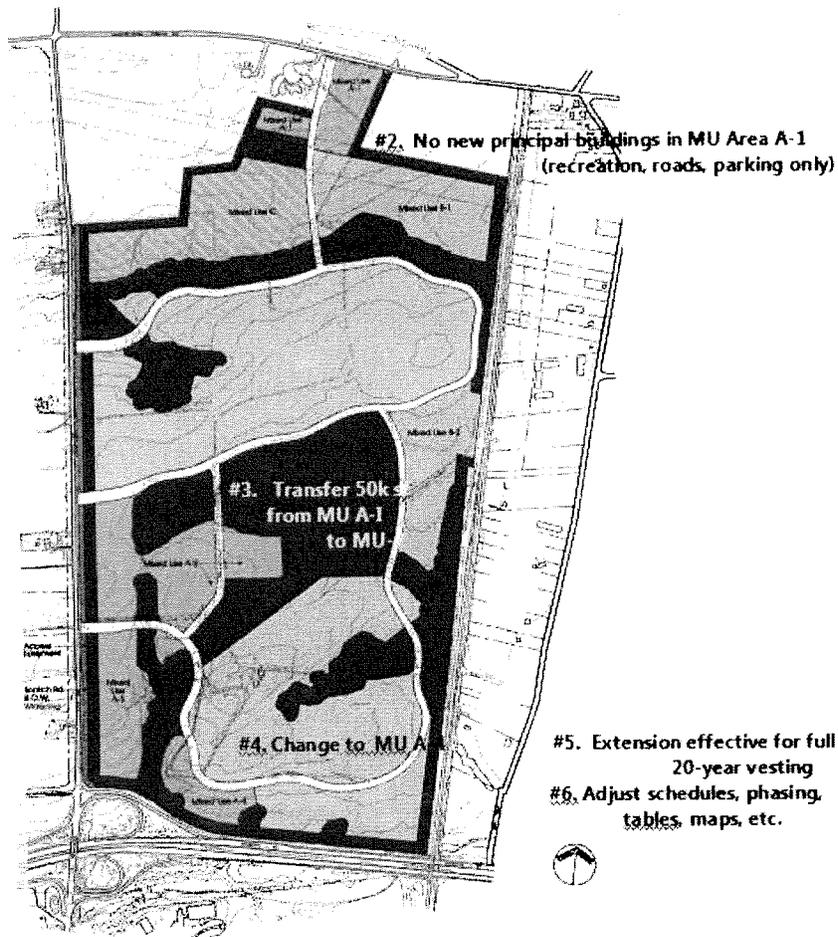
A. A **reduction of 500,000 square feet** of floor area from the 3,500,000 square feet permitted on the east side of Scotch Road;

B. **No new principal buildings** (but roads, parking areas and recreational uses OK) **north of the existing power lines** (Mixed Use Area 1-A) on the amended GDP Plan;

C. **Transfer the approximately 50,000 square feet** previously proposed for Mixed Use Area 1-A to within and adjacent to **Mixed Use Area A-2** (adjacent to the existing athletic fields), for **retail, restaurant use, professional services and community facilities**;

2005 Changes to Merrill Lynch GDP

Up to 1M sf on West side Up to 3.5M sf on East Side #1. Not to exceed 4,000,000 square feet total for both sides of Scotch Road



D. **Extend Mixed Use Area A-4** which permits a hotel, *to the east side of the proposed loop road into the Office 2 area*;

E. Extend the term of the GDP to be effective for a full twenty (20) year vested term;

F. **Adjust the schedules**, phasing, various calculations, tables and maps as have been modified and updated *to reflect Phase 2 Site Plan and Subdivision approvals as well as above-referenced requested amendments to the GDP.*

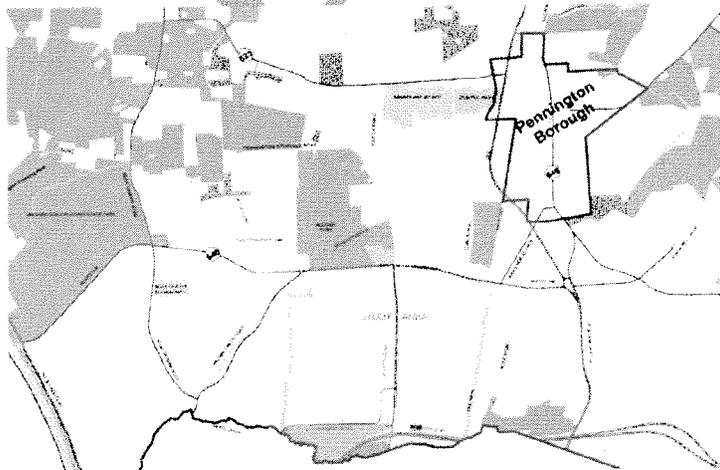
The 2005 Amendment to the GDP, which extended the twenty (20) year vesting term for the affected properties, included the following finding by the Planning Board:

B. Coordinating the development of the Property with the Garden Property over a twenty (20) year vesting term will facilitate the appropriate development of both properties as envisioned by the Settlement Agreement. Extending the time frame within which coordination of development of both properties can take place will facilitate the construction of appropriate infrastructure for both properties and allow the development on both properties to be *phased in over an appropriate period of time so that the impact of development on both properties can be appropriately managed and integrated into the land use development occurring within the Township.*

The 2005 Amendment also eliminated the 1998 GDP approval condition requiring that public access be permitted by appointment to on-site recreational facilities, including athletic fields and walking paths at Merrill Lynch. In return, the Township secured a donation of the 170 acres north of Garden Property and adjacent to Merrill Lynch Property, which was accepted as an improved open space and recreational plan.

Scotch Road Study Area

The request for a rezoning involves lands formerly planned and approved for up to 4 million square feet of office and associated uses. To date, just 1.3 million square feet have been developed around Merrill Lynch Drive.

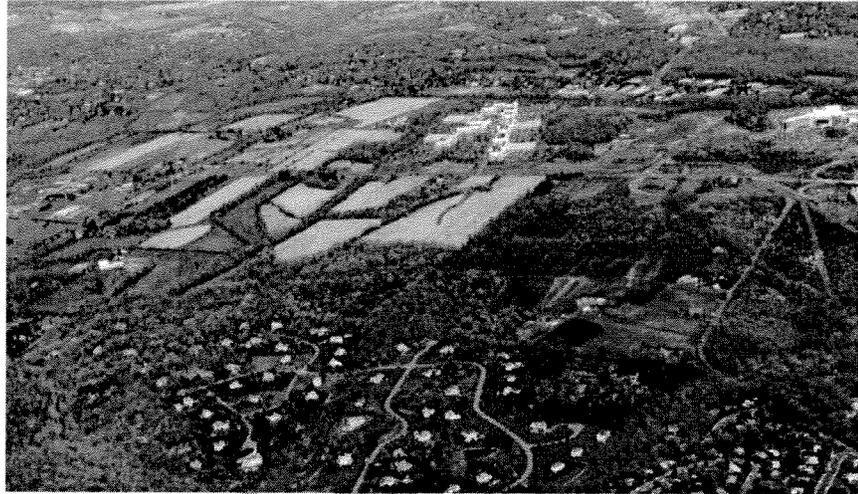


Hopewell's comprehensive planning approach, as reflected in the Township's 2002 Master Plan, gave careful consideration to the uses most suited for lands within the Township, based on their locational and resource characteristics. However, in the intervening 12 years, some of the

assumptions that underpinned the plan have changed, as noted above.

In order to provide an area-wide approach and avoid the pitfalls of a narrow, site-specific rezoning, it is important to examine more than just OP-zoned lands. The area surrounding the OP Zone includes upland and lowland farmland and woodlands and wetlands. Roads, rails and residential development are the manmade features that create logical boundaries for this planning area, with Nursery Road/I-95 to the south, the railroad on the east, County route 546 on the north and a residential neighborhood on the west.

This area is the interface between the urban areas to the south and the rural and suburban countryside to the north. A variety of natural and man-made features affect the study area, including



Natural

- Stream corridors
- Wetlands
- Woodlands
- Habitat
- Landform
- Topography

Man-Made

- Farms and farmsteads
- Offices and industry
- Hospital
- Residential neighborhoods
- Regional Transportation (Highway/Airport)

Some key factors in evaluating this area include:

Location and Access

Direct access is provided to Scotch Road from I-95 and Scotch Road extends into northward to connect with east/west collectors through the Township. West Trenton Airport offers nearby air transportation.

Infrastructure

- Sewers** Ewing Lawrence Sewerage Authority will serve existing Sewer Service Area;
- Water** Public Water is available;
- Roads** Interstate Highway access and dualized Scotch Road;
- Rail** Possible passenger station for future rail service;
- Air** West Trenton Airport is just south of I-95.

Existing Land Use

Adjoining the Study Area

The perimeter of the study area spans a range of uses and intensities, with West Trenton Airport and a landscape of office and industrial uses in Ewing Township, south of I-95 and a number of homes along Nursery Lane. A suburban single family neighborhood abuts most of the western boundary of the study area while the area north of CR 546 is divided between actively farmed lands and municipal facilities and playfields. Beyond the railroad that forms the eastern study boundary, homes and businesses are interspersed along Reed Road.



Within the Study Area

East of Scotch Road, the area is largely undeveloped along CR 546, where existing farmland remains in cultivation, interrupted only by a small office complex and the driveway into the Merrill Lynch office campus, which dominates the central portion of the study area.

This campus consists of a series of interconnected buildings and parking structures arrayed around a loop road with a green center core.

To the south, the expansive Capital Health campus anchors

2007 Land Use/Land Cover
Hopewell Township, NJ
March 2014

Legend

- Zone Boundary
- Commercial
- Industrial
- Rural Residential
- Low Density Residential
- Medium Density Residential
- High Density Residential
- Agriculture
- Barren Land
- Forest
- Urban
- Water
- Wetlands

0 500 1,000
Feet

City of Hopewell
NJDEP
Morris County
R.A.N.L.S.C.B.



the southeastern corner of the study area, south of the new community facility building along the connecting road with Merrill Lynch Drive.

West of Scotch Road, the area appears largely as it has for more than a generation. Apart from the ribbon pattern of homes along Nursery Road, the area remains open and is actively farmed or woodland. None of the permitted office development has been initiated here to date.

The distribution of land cover types within the study area is shown in the table below. The undeveloped west side includes 519 acres and remains 60% agricultural and 27% forest with 6% wetlands and 6% existing homesites and developed areas. This open lands profile applied equally to the 635-acre east side before the Merrill Lynch project, but the east side is now 35% agricultural and 18% forest with 7% wetlands and 38% developed areas.

Land Use/Land Cover	East Side acres	%	West Side acres	%	Both sides	%
AGRICULTURE	181.89	35	379.88	60	561.77	49
FOREST	95.75	18	172.78	27	268.53	23
URBAN	194.85	38	41.18	6	236.03	20
WATER	8.53	2	1.39	0	9.92	1
WETLANDS	38.06	7	39.99	6	78.05	7
Total	519.08	100	635.22	100	1,154.31	100

Farming in the Study Area

Most of the study area is actively farmed or woodlands at present. Prime farmland soils dominate the study area, the balance of which includes Soils of Statewide and Local Importance.

As seen in the graphic here, the study area is surrounded on the north and west by farms targeted for preservation.

Farmland Capability

Hopewell Township, Mercer County

Legend

-  Hopewell Project Area
-  Target Farms
-  Prime Farmland
-  Soils of Statewide Importance
-  Soils of Local Importance

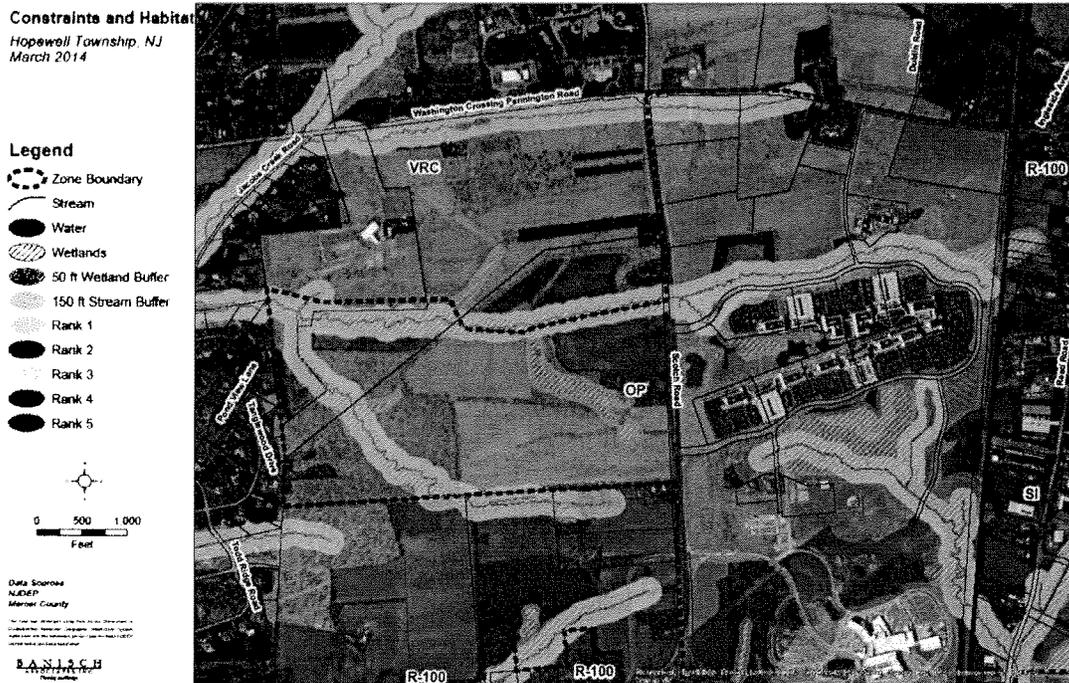


Environmental Characteristics

The general landform in the study area consists of gently rolling hillsides that achieve the highest elevations in this area of the Township. A series of stream corridors tributary to Jacobs Creek extend across the study area, generally from east to west.

Wetlands are most prominent in the central portion of the study area, hugging Merrill Lynch Drive on the north and south and extending west of Scotch Road towards Jacobs Creek.

Woodlands generally follow wetlands along the stream corridors but are also present in upland forest stands. The largest are on the west side, although remaining upland woodland patches also remain east of Scotch Road.



Habitat rankings provided by NJDEP (1-5 scale) are higher when rare or endangered species are in evidence through sightings. Landscapes Project data indicate that there is little concern for rare and endangered species throughout most vacant portions of the study area, although the Merrill Lynch campus was constructed in an area with higher ranking habitat.

Hopewell Valley's Farming Future

Young farmers are the key to farming in the future, In the not distant past, competition from development was hiking land costs and producing nuisance complaints that discouraged farmers from expanding or even operating. However, the thrust to build suburban housing in rural environs has diminished at the same time as inner-ring transit-served neighborhoods have regained popularity, especially among millennials.

This offers a unique opportunity for young farmers that has been seized upon by a number of entrepreneurial new farmers, with community sponsored agriculture (CSA) farms springing up all around and the new Brick Farm eat local farm-to-table concept catching on here and around the country.

Development of the Scotch Road area can be a strong tool in the toolbox of preservation and placemaking. The TND has found favor around the country and offers a policy solution that can also bring subsidiary benefits if development rights are leveraged for farmland preservation.

A number of target farms for acquisition are in close proximity to the study area and the TND offers a method of using non-contiguous clustering to retire development from desired preservation sites and relocate it within the TND. An important part of this process will be defining the preservation universe from which development can be retired. Another key concern will be determining the value of development to be relocated.

Agritourism has caught on around the state and in Hopewell Township, with winery tours, pick-your-own and other invitations to enjoy the agricultural countryside. In combination with the stellar Revolutionary War history and other elements of local culture, the landscape for tourism is ripe and blooming.

Council on Affordable Housing

Every New Jersey municipality has an affirmative constitutional obligation to provide a realistic opportunity for the construction of its fair share of affordable housing, according to the Fair Housing Act.

After proposing third round rules that were overturned three times, COAH was ordered by the Supreme Court to promulgate new rules, with housing need estimates and assignments based on the second round methodology. The COAH Rules published in the June 2, 2014 N.J. Register in response to this directive assign Hopewell Township an unsatisfied affordable housing obligation of nearly 1,500 units for the period 1987 through 2024.

These proposed rules assign Hopewell Township a cumulative affordable housing obligation of 1,291 affordable units for the period 1987 through 2014 and a 487-affordable unit "fair share" for the period 2014-2024. This results in a cumulative obligation for the period 1987-2024 of 1,778 affordable housing units.

After crediting the township with 301 affordable units completed ("completions"), these proposed rules leave the Township with a remaining unsatisfied obligation of 990 affordable units for the 1987-2014 period. In addition to these 990 units of "unanswered" need, the 487-affordable unit "fair share" combine for a total remaining obligation of 1,477 affordable units.

Between new construction and regional contribution agreements, Hopewell deserves credit for over 500 affordable units. Hundreds of units of housing for low and moderate income households have been provided in Hopewell Township pursuant to fair share plans certified by the Council on Affordable Housing (COAH). Additionally, affordable housing resources were also provided by the Township to the City of Trenton through a Regional Contribution Agreement (RCA), for which the township is entitled to credit for 198 units.

Nonetheless, if the proposed rules are enacted, and if the township receives credit for all 500 COAH housing units (new and RCA), the township will still have a remaining obligation of nearly 1,300 units. Inclusionary zoning is the preferred method of satisfying this obligation, with a 10% set aside (1 affordable unit for every 10 market units). Economic analysis would be required to confirm required density standards, but producing 1,277 affordable units through 10% set aside zoning would require construction of nearly 13,000 total units, with a likely population of over 25,000.

A Place that Fits: Meeting Needs and Providing Opportunity and Balance

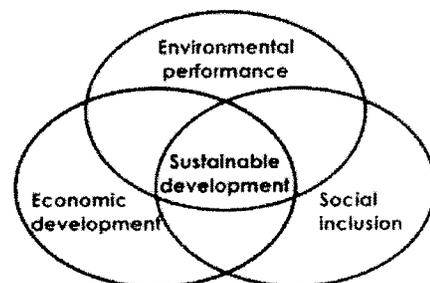
Changing circumstances have shown that the research/office campus, once heralded as the solution, is now the problem for many New Jersey municipalities. Along with the employment and other impacts of office vacancies, tax appeals are increasingly eroding the tax base. As towns regroup and look for a new approach that returns these lands and buildings to productive use, it is important to look to local goals, objectives, needs and opportunities and to examine successful placemaking models.

Since 2000, Hopewell Township has lost millennials at an alarming rate. About one third of those in the 25-34 age cohort in 2000 were gone by 2010. This precipitous decline accompanied a loss of jobs that will take years to recover.

With over 90% single family homes average-priced near a half million dollars and few housing alternatives, it is not surprising that Hopewell is losing its young people. In many cases, young adults who grew up in the Township have little hope, and even less desire to return to this expensive community of single family homes with limited walkability, no nightlife, few jobs and limited opportunities to interact with their peers.

Hopewell Township has long had a vision for creating place that retains the integrity of its landscape and cultural origins. This vision for enlightened neighborhood design retains the best features of the countryside and brings the excitement of engaging streetscapes. It is a process that imagines place and creates community, opportunity, vitality and balance.

Placemaking along Scotch Road should stress the “triple bottom line” of sustainable development, sometimes referred to as “people, profit, planet”. The triple bottom line is the intersection of environmental, social and economic performance that allows



beneficial development according to principles of equity and fairness to current and future generations.

Management of the landscape should retain farmland in proximity to new residents and retain and enhance woodlands in strategic locations.

The Regenerative Urban Village: A Proactive Vision for Scotch Road

Hopewell Township has long planned and zoned to promote enlightened neighborhood design alternatives that can prevent suburban sprawl and degradation of our natural and cultural resources. Sustainability has become a watchword that means different things to different people. But in the end, this approach only reduces the amount of loss and slows the rate of destruction. To enjoy a rich future full of opportunity for all, “do no harm” is no longer good enough. Rather, regenerative design processes, which celebrate the art of place and the science of living systems, should guide our community building efforts. Regenerative design can compensate for the degeneration resulting from past practices.

As many of the old paradigms are being turned on their head, there is a new awareness that office campuses may not be here forever and that dense residential development creates desirable, healthful, walkable environments that are also good ratables, with very low pupil generation. These new multi-family neighborhoods have been an increasingly important tool in meeting a variety of needs of a community.

The definitions for “regenerate” prescribe a radical change for the better in the way we develop and conserve land. Regeneration creates a new spirit that recognizes human aspirations and will as the ultimate source of sustaining and regenerating people and place.

Growth of the service economy and the decline of noxious industry now permits the compatible mixing of employment and residential activities, in contrast to the single-use zoning that generated urban sprawl by separating housing from commercial, industrial and manufacturing uses. The intrusion of urban growth on the countryside is thus minimized through the compact development of an urban village.

Urban villages also help reverse the demise of community so often associated with suburban sprawl, drawing on the traditional rural village concept to create high-functioning communities. Urban village design uses public space and pedestrianization to promote the development of a community characterized by human interaction, key concepts of the new urbanism.

The Scotch Road study area offers a special combination of the best of the built and the natural, with the impressive designs at Merrill Lynch and Capital Health that stress sustainability and quality of materials and design

To address the series of challenges and opportunities presented along Scotch Road, this Land Use Plan amendment recommends substituting a form-based *regenerative urban*

village (RUV) on the west side of Scotch Road for the current OP zoning. The terminology is descriptive of the urban form and the way it interacts with the environment and the village atmosphere where human interaction is easy and accessible.

In conventional zoning, "form follows function" and the primary basis for regulation is the separation of uses. In form-based zoning, "function follows form" with less emphasis on uses and a primary emphasis on the physical form of buildings and streets and their visual character (building height and bulk, façade treatment, location of parking, relationships of buildings to the street and each other). The appearance and qualities of the places created by the buildings and streetscapes are key elements of form based codes.

Form-based codes regulate the physical form, design, and scale of buildings with the goal of designing a whole built environment that accommodates residents and visitors of all ages and abilities. By focusing on the regulation of the physical form and by being more flexible about the uses allowed in those neighborhoods buildings can adapt to change over time.

Generally, form-based codes:

- recognize how critical these public spaces are to defining and creating a "place";
- are defined around districts, neighborhoods, and corridors;
- pay great attention to the streetscape and the role of individual buildings in shaping the public realm;
- favor rules for building-form rather than use-regulation, recognizing that uses may change over time, but the building will endure;
- emphasize mixed-use development and a mix of housing types to bring destinations close to the housing;
- provide housing choices to meet human needs throughout the life cycle.

Form-based codes help to create walkable, human-scale streetscapes; integrated land uses; diverse housing options; compact neighborhood development; and accessible, lively public spaces, thereby allowing:

- all residents to live in the housing of their choice;
- older people and younger people with disabilities to more successfully age in place;
- strengthening of a sense of community by increasing opportunities for all residents to more easily interact and communicate;
- all residents to engage in walking and biking to work, to amenities, and to neighbors;
- the public to become more actively involved in the planning and development of their communities;
- flexibility and certainty to developers;

- predictability in shaping the “look and feel” of the desired public and private realms and the overall community character they create.

The regenerative urban village, which will utilize form-based mixed use zoning, is characterized by multiple family housing, public transit options, now and in the future, and an emphasis on pedestrianization and public space. It provides a meaningful alternative to decentralization and urban sprawl that

- is compact, facilitating environmentally responsive and energy efficient designs
- reduces auto reliance and promotes cycling, walking and transit use
- provides opportunities for working, recreating and living in the same area
- helps facilitate strong community institutions and interaction
- maximizes preservation of perimeter land and features
- is well-proportioned to human scale
- enables frequent social interactions;
- is a more efficient use of land, lowering the costs of services
- retains natural systems and their functions

In light of the Township’s adopted goals and objectives, which have been refined and updated over time, the RUV provides an appropriate fit for the circumstances prevailing in Hopewell Township now and anticipated in the future.

The map titled “Scotch Road Concept Areas” provides a generalized plan for development and conservation in this quadrant. Of the 1,152 acres in the study area, woodland and farmland conservation sectors, intended for retention and enhancement of these resources, total almost 500 acres. The developed and developable lands east of Scotch Road, extending from the Merrill Lynch campus to Capital Health, total around 340 acres. The RUV will be designed to meet form based code requirements and will be composed of a combination of housing types and mixed use buildings including the following:

Townhouses	3 stories
Stacked flats	4 stories
Stacked flats over retail	5 stories

The RUV is consistent in its built dimensions with the Urban Center Zone (“T-5” of the transect) contained in the Smart Code, the bible of form-based design. According to the transect description,

The Urban Center consists of higher density mixed use building that accommodate retail, offices, rowhouses and apartments. It has a tight network of streets, with wide sidewalks, steady street tree planting and buildings set close to the sidewalks.

General Character:

Shops mixed with Townhouses, larger Apartment houses, Offices, workplace, and Civic buildings; predominantly attached

buildings; trees within the public right-of-way; substantial pedestrian activity

Building placement:

Shallow Setbacks or none; buildings oriented to street defining a street wall

Frontage Types:

Stoops, Shopfronts, Galleries

Typical building height:

3- to 5-Story with some variation

Type of Civic Space:

Parks, Plazas and Squares, median landscaping

While the “future development area” totals over 200 acres, the purple polygon indicates an area of 100 acres located nearest to Scotch Road (and farthest from most neighbors). The entire quadrant would be included in the RUV, but the built elements would be located within this area, where it would have an average density of 25 units per acre. This provides the capacity for a 2,500-unit urban village built around new urbanist design and triple bottom line sustainability principles.

Scotch Road
Concept Areas
Hopewell Township
Mercer County
June 2014

Legend
Category
Existing Development
Farmland Reserve Area
Future Development Area
Woodland Reserve Area

Data Sources
AFCIP
Mercer County
E.A.N.I.S.C.H.



Non-contiguous clustering can be a useful tool for moving development from one area to another. Within the conservation and development regime proposed here, lands to be conserved can benefit from the ability to relocate permitted development from the farmland or woodland preservation areas to the future development area. These transfers should be allowed across Scotch Road.

The RUV concept should also be applied to future development on the east side of Scotch Road, since residential uses and assisted living could help to fortify the vitality of the east side into the future and, as conditions change, invite a more complete integration of the Merrill Lynch campus and Capital Health into a larger urban village that spans both sides of Scotch Road.

Summary

Hopewell Township has been quite successful in protecting its beautiful landscape and natural resources by managing growth effectively. As a result, the Township's desirability as a residential location has increased and families have been the main beneficiary, since nearly all homes are single family dwellings on their own lot.

The Great Recession exacerbated the impact of the substantially overbuilt suburban office market and also resulted in thousands of lost jobs in the Township. At the same time, the 21st century to date might be thought of as the millennials "suburban exodus", with one third of the 25-34 age group disappearing between 2000 and 2010. These are troubling issues and, taken together, they are of even greater concern.

Regardless of the results of the Merrill Lynch tax appeal, the value of suburban office space is on a downward slide and fiscal prudence demands attention and appropriate action. As Hopewell Township has come to expect that its office building plans will not materialize around Scotch Road, good planning requires a response that fine-tunes the policy posture of the township and the RUV offers an integrated model for community building that can preserve and enhance the natural landscape character and cultural features.

As the Township examines its options, it will find that the placemaking impacts of a regenerative urban village in place of millions of square feet of office space will be good for both the soul of the community and the municipal pocketbook.

Jonathan M. Preziosi, Esq. #002041992
Brian R. Zurich, Esq. #017982009
PEPPER HAMILTON LLP
(A Pennsylvania Limited Liability Partnership)
Suite 400
301 Carnegie Center
Princeton, NJ 08543-5276
(609) 452-0808

Counsel for CF Hopewell CC&L LLC

IN THE MATTER OF THE APPLICATION
OF THE TOWNSHIP OF HOPEWELL IN
MERCER COUNTY

SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY – LAW DIVISION
DOCKET NO.: MER-L-1557-15

Civil Action

**ORDER GRANTING CF HOPEWELL'S
MOTION TO INTERVENE**

THIS MATTER, having come before the Court upon motion by CF Hopewell CC&L LLC (“CF Hopewell”), by and through their counsel, Pepper Hamilton LLP, and the Court having received and reviewed CF Hopewell’s moving papers and any opposition submitted thereto; and for good cause having been shown; and for the reasons set forth on the record;

IT IS ON THIS _____ day of _____, 2015, ordered as follows:

1. CF Hopewell’s Motion to Intervene is hereby **GRANTED**;
2. Counsel for CF Hopewell shall serve a copy of this Order upon all counsel of record within _____ days of receipt of the same from the Court.

Hon. Mary C. Jacobson, A.J.S.C.

Opposed
 Unopposed

CERTIFICATION OF SERVICE

I, Brian R. Zurich, hereby certify that on July 22, 2015, I caused an original and two copies of CF Hopewell CC&L LLC's Notice of Motion to Intervene, Letter Brief in Support of Motion to Intervene, Certification of Jonathan M. Preziosi, Certification of David J. Moore, and proposed form of Order to be delivered via hand-delivery to the following:

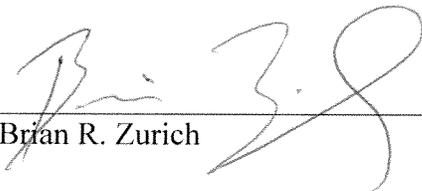
Clerk, Superior Court of New Jersey
Law Division, Mercer County
175 South Broad Street - 1st floor
Trenton, NJ 08650

Hon. Mary C. Jacobson, A.J.S.C.
Mercer County Courthouse
400 South Warren Street
Trenton, New Jersey 08650

And a copy to be delivered via email and regular mail to:

Kevin A. Van Hise, Esq.
Mason, Griffin & Pierson PC
101 Poor Farm Road
Princeton, New Jersey 08540
Attorney for Township of Hopewell

Dated: July 22, 2015



Brian R. Zurich