

**2009 Master Plan and Development Regulations
Reexamination Report for Lebanon Township, Hunterdon
County, New Jersey**

(Adopted on March 3, 2009)

**2009 Periodic Reexamination Report of the Master Plan and Development
Regulations
for Lebanon Township, Hunterdon County, New Jersey**

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

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

The most recent reexaminations completed by the Planning Board occurred in 1988, 1994, 2000 and 2002. The 1994 Reexamination Report followed the adoption in 1991 of a Master Plan Review and Update. The 1991 Master Plan Review and Update was prompted by recommendations in the 1988 Reexamination Report to update the background data that forms the basis for the Master Plan. The Planning Board adopted the most recent Housing Plan Element and Fair Share Plan in 2005, which revised the former Housing Plan Element and Fair Share Plan adopted in 1998.

The August 2000 Reexamination Report recommended the preparation of a new statement of objectives, a new Land Use Plan Element, a new Conservation Plan Element, and new background studies relating to land use, natural resources, planning capacity indicators, rural conservation strategies and an assessment of the Township’s hydrogeology. The 2000 Reexamination Report also recommended the preparation of an Open Space and Recreation Plan Element, to meet the guidelines of the Municipal Land Use Law (MLUL) and the N.J.D.E.P. Green Acres Program concerning acquisition funding, and a Farmland Preservation Plan Element, to participate in the farmland preservation Planning Incentive Grant Program.

In September 2001, the Planning Board adopted a new Statement of Goals and Objectives, Land Use Plan Element and Conservation Plan Element. These Plan Elements recommended a series of changes to the Land Use Plan, including the establishment of a new zoning district/land management area, revisions to the existing

Master Plan and zoning boundaries, and the incorporation of creative land subdivision techniques to address the protection of the Township's land and water resources. The new Conservation Plan Element recommended a series of policies and strategies to address the preservation, conservation and utilization of a range of natural resources, including energy and air quality, forest resources and native vegetation, groundwater, scenic resources, steep slopes, stream corridors, surface waters, threatened and endangered plant and animal species, and wetlands.

The recommendations of the September 2001 Master Plan amendments were endorsed as part of the May 2002 Reexamination Report. The 2002 Reexamination Report identified the major problems and objectives from the prior Reexamination Report; the extent to which such problems and objectives have been reduced or have increased; the extent to which there have been significant changes in the assumptions, policies and objectives forming the basis for the master plan and development regulations; and, the specific changes for the master plan and development regulations.

The Township's Master Plan currently consists of the following adopted documents:

- 2000 Reexamination Report, adopted August 2000
- 2001 Master Plan, adopted September 2001
- 2001 Statement of Goals and Objectives, adopted September 2001
- 2001 Land Use Plan Element, adopted September 2001
- 2001 Conservation Plan Element, adopted September 2001
- 2002 Reexamination Report, adopted May 2002
- 2002 Farmland Preservation Plan Element, adopted November 2002
- 2002 Open Space and Recreation Plan Element, adopted November 2002
- 2005 Stormwater Management Plan Element, adopted March 2005
- 2005 Housing Plan Element and Fair Share Plan, adopted November 2005

The Municipal Land Use Law (MLUL) requires consideration of the following five areas within the Reexamination Report.

C. 40:55D-89a "The major problems and objectives relating to land development in the municipality at the time of the adoption of the last reexamination report."

There were several major problems expressed in the prior 2002 Reexamination Report, most of which had been identified in the August 2000 Reexamination Report. The Board was concerned with protecting environmentally sensitive areas and natural resources in the face of continuing development pressure. The preservation of the Township's rural character, a landscape where the predominant feature is the natural environment, such as open space, farmland, woodlands and water bodies, and the intrusion of development is minimal, was a dominant theme expressed in the 2002 and prior Reexamination Reports. The same attributes which the Township seeks to protect, its scenic quality, natural resources and agricultural lands, are those which draw new

development, which often results in the destruction of the very qualities that provide the attraction.

The 2002 Reexamination Report also noted the importance that the Township's planning program places on the preservation of small farms and the lifestyle they promote, while also noting the difficulty in achieving this objective. The Report indicated that the pressure on the Township's farmland and open space remains, and that increased attention and action was required to accomplish local objectives. The Report also suggested that the local objectives espoused in the Township's Master Plan should be supported by zoning ordinance amendments to more comprehensively address the Township's vision for the future.

Significantly, the Report indicated that the Board explored the use of alternative land development techniques, including open lands ratio zoning, clustering and lot averaging. The Board noted that the current practice of permitting only conventional subdivisions with a rigid minimum lot size requirement has resulted in a geometric pattern of land subdivision that ignores the characteristics of the land and seeks to maximize development yield. With this development pattern the qualities that the Township's objectives, policies and guiding principles seek to maintain are destroyed. The Board viewed the perpetuation of conventional subdivision practices as inimical to the accomplishment of the Township's goals and objectives. As a result, the Township's 2002 zoning ordinance amendments incorporated alternative land development techniques.

The Report further discussed the Planning Board's continuing concern with municipal road standards and their adequacy in meeting local objectives, and suggested that the Board continue to evaluate the effectiveness of the standards, in order to balance the need for safe roadway improvements with the desire to maintain a rural road network.

The 2002 Reexamination Report indicated that an Open and Recreation Plan Element, addressing both the requirements of the MLUL and the guidelines of the N.J.D.E.P. Green Acres Program, and a Farmland Preservation Plan Element, addressing the requirements of the MLUL and the State Agricultural Development Act, should be prepared.

C. 40:55D-89b "The extent to which such problems and objectives have been reduced or have increased subsequent to such date."

Since the time of the last Reexamination Report the Township Committee adopted zoning standards to implement the recommendations of the Reexamination Report and the 2001 Land Use Plan adopted in September 2001. These zoning amendments resulted in reduced development density for the Township's constrained vacant land, and provided alternative development techniques in order to further protect environmental and land use characteristics.

The Township Committee and Planning Board have been upgrading the ordinances that apply to land development activities, with the goal of addressing the problems that were seen relative to the protection of public health, safety and welfare and natural resources. The Township revised the standards governing the design and installation of individual subsurface sewage disposal systems (septic tanks and related facilities) in order to more accurately identify suitable locations for these systems. The Township also adopted an ordinance requiring the installation of underground water storage tanks for fire protection in order to provide a minimum standard for fire fighting capability.

In addition, the Township has adopted standards requiring the submission of an Environmental Inventory Plan to identify critical environmental resources in the subdivision and site plan review process. In order to ensure the availability and adequacy of groundwater supply, since the Township's residents rely on this resource for one of their essential needs, the Township adopted an aquifer-testing ordinance to identify suitable locations for individual potable water supply wells. Concerned with the impact to surface water resources by the unbridled intrusion into stream corridors, the Township adopted an ordinance regulating the activities that occur in stream corridors, and established a stream corridor protection area to maintain the quality and quantity of surface water resources.

While these actions have provided the Township with a series of tools to address the maintenance of a safe, healthy and sustainable physical environment, they are intended to protect individual resources and are parcel specific. Since they are designed to address specific concerns in the land development process, they do not address comprehensively the overall maintenance of a sustainable development pattern. Noting this inadequacy, the Township implemented a planning program that sought to protect the interrelationship of land and water resources. The site specific standards included in the above-referenced ordinances go hand-in-glove with the implementation of overall zoning standards in order to comprehensively address the community's vision. The zoning standards establish the overall framework for land development, development options create the form and pattern that comports with the community vision, while the site specific standards help to define the location of development and protect individual resources.

Following the adoption of the 2001 Master Plan and development regulations in 2002, the Planning Board continued on an ambitious program to implement other recommendations from the prior Reexamination Report. In November 2002 the Planning Board adopted a Farmland Preservation Plan and an Open Space and Recreation Plan. The adoption of these documents furthered the goals and objectives of the Master Plan, and most importantly made the Township eligible for Planning Incentive Grants offered by the SADC and NJDEP, respectively. In March 2005 the Planning Board adopted the Stormwater Management Plan Element, which was a requirement of NJDEP rules.

C. 40:55D-89c “The extent to which there have been significant changes in the assumptions, policies and objectives forming the basis for the master plan or

development regulations as last revised, with particular regard to the density and distribution of population and land uses, housing conditions, circulation, conservation of natural resources, energy conservation, collection, disposition and recycling of designated recyclable materials, and changes in State, county and municipal policies and objectives.”

In September 2001 the Planning Board adopted a new Statement of Goals and Objectives, Land Use Plan Element and Conservation Plan Element. The new Land Use Plan Element supplanted a Land Use Plan Element that had not been substantially revised since 1979, while the Planning Board had never before adopted a comprehensive Conservation Plan. In November 2001 the Planning Board also amended the Housing Plan Element to replace the unsuccessful accessory apartment program with a regional contribution agreement, and in November 2005 adopted a new Housing Plan Element to address what were then the adopted Council on Affordable Housing rules for the Third Round (1999 to 2018, and also considering the period from 1987 to 2018).

In developing the new Master Plan the Planning Board carefully considered the prior goals and objectives, and found that the existing goals and objectives did not adequately address the Planning Board’s vision for the community, nor were the Township’s land use regulations responsive to the identified goals and objectives. Instead of a pattern of open lands, small farms and single-family homes, land development practices in the Township were producing a geometric pattern of subdivision, where all land was consumed in residential lots.

As part of the program to update the Master Plan the Planning Board commissioned a study of the Township’s groundwater resources. This study, titled “Evaluation of Groundwater Resources of Lebanon Township, Hunterdon County, N. J.”, analyzed the ability of the groundwater system to provide a sustainable yield of potable water, and examined the parameters that affect the quality of groundwater. The study noted that the Township’s groundwater resources are of value not only to the current and future residents of the Township, but also to downstream consumers and ecological receptors. As a recharge and headwaters area for one of the most populous and fastest growing regions in the State, the Board concluded that the responsible course of action is for the Township to protect these resources through all available measures.

The groundwater study is an important feature of the Township’s capacity-based planning approach, which involves the measurement of a municipality’s ability to accommodate growth and development within limits defined by natural resource capabilities and existing infrastructure. The capacity analysis determines the limiting factors in an area’s ability to grow and evaluates the capacity of the limiting factor. In Lebanon Township, where public water and sewer infrastructure are absent, the limiting factor becomes an element of the natural environment, in this case groundwater. The capacity analysis leads to sustainable development, which provides a land use framework that meets the needs of the present without compromising the ability of future generations to meet their own needs.

In reviewing the density and distribution of population, the Planning Board also explored the use of alternative land development techniques, including open lands ratio zoning, clustering and lot averaging. The Board noted that the current practice of permitting only conventional subdivisions with a rigid minimum lot size requirement has resulted in a geometric pattern of land subdivision that ignores the characteristics of the land and seeks to maximize development yield. With this development pattern the qualities that the Township's objectives, policies and guiding principles seek to maintain are destroyed. The Board viewed the perpetuation of conventional subdivision practices as inimical to the accomplishment of the Township's goals and objectives.

The 2001 Master Plan included an extensive analysis of natural resource features, including maps and descriptions of geology, topography, steep slopes, forested areas, wetlands, trout maintenance and trout production streams, prime and statewide important agricultural soils, on-site septic limitations, depth of the soil to bedrock and depth of the soil to the seasonal high water table. The Conservation Plan Element included categorical recommendations to address these resources and energy conservation. The findings of the 2000 Reexamination Report relative to circulation remain unchanged. The Planning Board awaits the detailed results of the 2000 U. S. Census in order to assess housing conditions, as housing conditions were assessed in the Housing Plan Element.

The State Planning Commission adopted a revised State Development and Redevelopment Plan (SDRP) in March 2001. The SDRP includes a Resource Planning and Management Structure that divides the State into five Planning Areas, ranging from urban to rural and environmentally sensitive, and provides policy objectives for each Planning Area. Lebanon Township includes two Planning Area designations, Planning Area 4B (PA 4B), the Rural/Environmentally Sensitive Planning Area, and Planning Area 5 (PA 5), the Environmentally Sensitive Planning Area, and a small area designated as Park. These Planning Areas establish policy objectives that seek to enhance agricultural viability and rural character, and to protect large contiguous areas of critical natural resources and farmland.

Planning Area 4B, which comprises 72 percent of the land area in the Township, represents lands in the State that have environmentally sensitive features, yet still possess agriculturally productive soils or may have a prevalence of farming as an industry. This is the case over most of the Township, which possesses unique forest resources that provide contiguous habitat for many threatened or endangered species, yet also possesses a number of viable farms and agriculturally based businesses. The challenge in this Planning Area is the continuation of agriculture as a viable business, through continued funding of farmland preservation efforts, while balancing environmental resource protection. Planning Area 5, which comprises 23 percent of the Township's land area, possesses many of the State's significant environmental resources, yet lacks the farming and productive soils found in Planning Area 4B. It is comprised mainly of land that has wetlands, forests and steep slopes, yet may also possess scenic views and other valuable qualities as well. The portion of the Township that is categorized as PA 5 is found in both the northern and southern areas.

The two most significant changes affecting the basis for the Master Plan and development regulations have occurred at the State level, with the Highlands Act and associated Regional Master Plan, and with the finalization of COAH's Third Round rules.

In December 2004 the Council on Affordable Housing adopted the long-awaited regulations governing the Third Round (1999-2014) municipal obligation to provide affordable housing. In November 2005 the Planning Board adopted a new Housing Plan Element and Fair Share Plan, which was endorsed by the Township Committee and submitted to COAH in December 2005.

Subsequent to the Superior Court suspension of the rules in January 2007 COAH promulgated new rules, new compliance schedules, and action by the Legislature. The Third Round rules were not adopted in the final version until October 2008. On the legislative front, as part of A-500, also known as the Roberts bill and now codified as Chapter 46 of P.L. 2008, which amended the Fair Housing Act of 1986, the Highlands was designated as a regional special area.

On August 10, 2004 the Highlands Water Protection and Planning Act (Highlands Act, PL 2004, c. 120) was enacted by the state Legislature. The Act established the Highlands Water Protection and Planning Council (Highlands Council). The Act included the designation of a Preservation Area and Planning Area; Lebanon Township originally was included entirely in the Preservation Area, but a subsequent determination by the Council removed approximately 7 acres from the Preservation Area and included it in the Planning Area. An adequate description of this revision has never been provided to the Township.

On September 8, 2008 the Governor approved the minutes of the Highlands Council, thus approving the Highlands RMP. On September 5, 2008, the Governor signed an Executive Order requiring that COAH and the Highlands Council to enter a Memorandum of Understanding (MOU) designed to coordinate the regulations of both agencies by maximizing affordable housing opportunities while preserving critical environmental resources. The MOU was adopted by COAH on October 29, 2008 and by the Highlands Council on October 30, 2008. In its most pertinent part relative to the Township, the MOU provided for an extension of the December 31, 2008 COAH deadline for a Third Round petition to December 8, 2009, which coincides with the Highlands deadline for submission of a petition for plan conformance.

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

As mentioned previously, in September 2001 the Planning Board adopted a new Master Plan, including goals and objectives, a Land Use Plan Element, and a Conservation Plan Element. This Master Plan refined and amplified the Township's goals for environmental protection, natural resource conservation, preservation of agricultural lands and activities, and the maintenance of rural character. The Master Plan

also included new goals relative to land use and management, community design, natural resources, housing, agriculture, transportation, economic development, historic and cultural resources, community facilities and utilities, and recreation and open space.

Subsequent to the adoption of the 2001 Master Plan, the Planning Board prepared an ordinance to implement the recommendations of the Land Use Plan Element. The ordinance included the following major provisions to address the recommendations of the Master Plan:

- A new zone was established, termed the RC, Resource Conservation Zone, intended to comprehensively address the goals of protecting groundwater quantity and quality, preserving surface water resources, conserving the scenic rural character and promoting continued agricultural use opportunities. This Zone corresponds to those areas in the Township with the lowest groundwater supply potential, the greatest concentrations of steep slopes, the most limiting soil characteristics, the highest quality surface water, the best agricultural soils and the most scenic vistas. The RC Zone permits the same principal, conditional and accessory uses that are permitted in the R-5 Zone.
- Open lands, cluster and lot averaging provisions for the RC Zone were added, based on an overall tract density of one unit per 7.5 acres, and open lands and lot averaging provisions for the R-5 Zone were included, based on an overall tract density of one unit per 5 acres. The open lands provision permits lot sizes as small as 2 acres, provided that 65 percent of the parcel is retained in private ownership for continuing agricultural or resource conservation use. Clustering also permits minimum lot sizes as small as 2 acres, provided that 65 percent of the tract is retained as open space, with the open space dedicated to either a public body or homeowners' association, or retained for agricultural use. Lot averaging permits the reduction in the size of some lots provided that other lots exceed the minimum lot area requirements. Open lands and cluster subdivisions are permitted on tracts of 30 acres or more, while lot averaging is permitted on tracts of 30 acres or less. Conventional subdivisions in the RC Zone were recommended for a maximum density and minimum lot size of 10 acres.

The open lands zoning option for the R-5 Zone also permits minimum lot sizes of 2 acres, provided that 50 percent of the tract is retained for continuing agricultural or resource conservation use. With the lot averaging option, a majority of the proposed lots should fall within a specified range of smaller lot sizes (2 to 3 acres), in order to create larger lots designed to meet specific conservation objectives. Open lands subdivisions are permitted on tracts of 30 acres or more, while lot averaging subdivisions are permitted on tracts of 30 acres or less.

- A provision for the “grandfathering” of existing, developed lots, so that these lots could have additions and accessory buildings in accordance with the zoning standards that formerly applied. The Township Committee had adopted a provision for the “grandfathering” of vacant lots in 2001.

- Minimum lot sizes for conditional residential uses in non-residential zones were increased.
- Flag lots were permitted in the RC Zone with a lot size of 10 acres, and accessory apartments were permitted on a lot of 15 acres.
- In lot averaging subdivisions in the RC and R-5 Zones flag lots were permitted on a reduced lot size.

The ordinance drafted by the Planning Board was referred to the Township Committee in January 2002. Following the referral from the Planning Board, the Township Committee reviewed, analyzed and revised the draft ordinance referred by the Planning Board. In large part, the Township Committee included the zoning provisions and recommendations referred by the Planning Board. However, the Township Committee included in the proposed ordinance the following provisions that deviate from the Master Plan adopted by the Planning Board:

- The Master Plan recommended a maximum density and minimum lot size of one unit per 10 acres in the RC Zone when a conventional subdivision is proposed. The draft zoning ordinance includes a maximum density and minimum lot size of one unit per 7.5 acres in the RC Zone when a conventional subdivision is proposed, which is inconsistent with the recommendations of the Master Plan. In its review of the ordinance under N.J.S.A. 40:55D-26a, the Planning Board indicated its support for the change, as the anticipated density of development of one unit per 7.5 acres has not changed. The Board indicated the change was a reasonable compromise, and that it could be revisited if problems emerge.

In addition, the ordinance introduced by the Township Committee revised the following provisions that had been in the ordinance referred by the Planning Board:

- Agricultural use has been added as one of the purposes to which open space in a cluster subdivision in the RC Zone could be put.
- In the RC Zone flag lots were permitted on lots of 7.5 acres, and accessory apartments on lots of 11 acres.
- Minimum lot sizes for conditional residential uses in non-residential zones were revised to be consistent with the minimum lot sizes permitted for non-residential uses.

The greatest challenges now facing the Township are compliance with COAH and the Highlands Regional Master Plan. Relative to COAH, the Third Round rules, coupled with A-500, and further coupled with the Highlands RMP, make it virtually impossible for a community such as the Township to comply. The Fair Housing Act indicates that no municipality should have to raise local taxes in order to comply with the affordable housing obligation. However, for the Township, which is caught among the above

statutes and regulations, there is likely no other way than increasing local expenditures to address the obligation. The Township does not object to the provision of affordable housing, and the existing housing stock demonstrates a range, including affordable, of housing availability, but is put in an untenable position given the variety of State mandates.

The Township awaits with great interest the coordination between COAH and the Highlands Council and how that might affect the Township's planning programs. In addition, the Township is pursuing diligently the steps that might lead to a petition for plan conformance to the Highlands Council.

The Planning Board also recommends that the programs outlined in the Conservation Plan be implemented.

C. 40:55D-89e “The recommendations of the planning board concerning the incorporation of redevelopment plans adopted pursuant to the “Local Redevelopment and Housing Law”, P.L. 1992, c. 79 (C. 40A:12A-1 et seq.) into the land use plan element of the municipal master plan, and recommended changes, if any, in the local development regulations necessary to effectuate the redevelopment plans of the municipality.”

The Township has not adopted a redevelopment plan pursuant to the “Local Redevelopment and Housing Law”, and therefore the Planning Board does not need to comment on its incorporation into the Land Use Plan Element.

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