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Re-Examination Report

Township of Union, Hunterdon County

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Prepared for Union Township by:

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INTRODUCTION

The municipal Master Plan is a document, adopted by the Planning Board, which sets forth the policies for land use as envisioned by the municipality. The Master Plan is the principal document that addresses the manner and locations in which development, redevelopment, conservation and/or preservation occur within a municipality. It is intended to guide the decisions made by public officials and those of private interests involving the use of land. Through its various elements, the Master Plan sets out a vision for the community in the coming years.

The Master Plan forms the legal foundation for the zoning ordinance and zoning map. New Jersey, among a handful of other states, specifically ties the planning of a community as embodied in the Master Plan with the zoning ordinance and zoning map. The zoning ordinance and map, which are adopted by the Township Council, constitute the primary law governing the use of land at the local level. Under New Jersey's Municipal Land Use Law *N.J.S.A.* 40:55D-1 et seq., (hereinafter "MLUL") a zoning ordinance must be substantially consistent with the land use plan.

A Reexamination Report is a review of previously adopted master plans, amendments and local development regulations to determine whether the ideas and policy guidelines set forth therein are still applicable. Under the Municipal Land Use Law, the Planning Board must conduct a general reexamination of its master plan and development regulations at least every ten years. This provision was amended in 2011 from requiring a reexamination every six years to every 10 years. Additionally, the Municipal Land Use Law now includes a waiver provision, where a municipality may waive the reexamination requirement through a determination by the State Planning Commission and the municipal Planning Board that the municipality is built-out, defined as there being no significant parcels, whether vacant or not, that currently have the capacity to be developed or redeveloped for additional use of the underlying land.

Five specific topics are to be considered in the Reexamination Report. These are:

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

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

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

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

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

A Reexamination Report may recommend that the Planning Board examine certain land use policies or regulations or even prepare a new Master Plan. Alternatively, "if the recommendations set forth in the Reexamination Report are themselves substantially in such form as might or could be set forth as an amendment or addendum to the Master Plan, the reexamination report, if adopted in accordance with the procedures [prescribed by the MLUL for adoption of a Master Plan], may be considered to be an amendment to the Master Plan." New Jersey Zoning & Land Use Administration, Cox & Koenig, 2013 Edition, p. 965.

MAJOR PROBLEMS AND OBJECTIVES RELATING TO LAND DEVELOPMENT IN UNION SINCE THE ADOPTION OF THE LAST REEXAMINATION REPORT

In the past, the Planning Board has prepared various documents to guide development in the Township. In 1984 John Madden completed a Comprehensive Master Plan. This document was later the subject of Reexamination Reports adopted in 1990 and 1994, both of which were completed by Carter Van Dyke Associates. Carter Van Dyke Associates completed a Comprehensive Master Plan that was adopted in August 1999. In February 2006 Clarke Caton Hintz prepared a Re-Examination Report which supersedes previous reports. This last Re-Examination Report is being revised recognizing changed circumstances in land development, and changes in policy or statutes at the state level. Therefore, the following is a list of previous planning documents and their status or validity.

- Population Characteristics, prepared by Carter Van Dyke Associates, adopted August 1999. **No Longer Valid- Superseded**.
- Housing Element and Fair Share Plan, prepared by Carter Van Dyke Associates, adopted June 1996 and updated August 1999. **No Longer Valid- Superseded.**
- Existing Land Use, prepared by Carter Van Dyke Associates, adopted August 1999. **No Longer Valid- Superseded.**

1 *N.J.S.A.* 40:55D-89

- Regional Consideration in the Land Use, prepared by Carter Van Dyke Associates, adopted August 1999. **No Longer Valid- Superseded.**
- Conservation, prepared by John Madden, Matthew J. Mulhall, and Carter Van Dyke, adopted September 1984 and updated August 1999. **No Longer Valid- Superseded.**
- Parks and Recreation, prepared by Carter Van Dyke Associates, Inc., adopted December 1991 and updated August 1999. **Outdated.**
- Community Facilities, prepared by John Madden, adopted September 1984 and updated August 1999. **Outdated.**
- Groundwater Evaluation, prepared by Matthew J. Mulhall, adopted August 1999. **No Longer Valid- Superseded.**
- Wastewater Evaluation, prepared by Robert C. Bogart & Associates, adopted September 1998. **Outdated.**
- Economic Development, prepared by John Madden, adopted 1984. **No Longer Valid.**
- Traffic and Circulation Analysis, prepared by John Madden, adopted September 1984. **No Longer Valid.**
- Land Use Plan Element, prepared by Carter Van Dyke Associates, Inc., adopted April 2000. **No Longer Valid- Superseded.**
- Housing Element and Fair Share Plan, prepared by Carter Van Dyke Associates, Inc., adopted June 1996 and updated August 1999. **No Longer Valid- Superseded.**
- 2005 Land Use Plan Element Prepared by Clarke Caton Hintz.
- 2006 Re-Examination Report prepared by Clarke Caton Hintz.
- 2002 Analysis of Population Characteristics, prepared by Clarke Caton Hintz.

Updated by 2010 Housing Amendment and Fair Share Plan

- Farmland Preservation Plan prepared January 2010 by Clarke Caton Hintz adopted April 8, 2010.
- Amended Third Round Housing Element and Fair Share Plan, prepared by Clarke Caton Hintz, Adopted May 2010.
- Stormwater Management Plan prepared by Maser Consulting, April 2006, Revised September 2006.
- Natural Resource Inventory prepared by Princeton Hydro, 2003.

The required plans or documents are as follows:

- Land Use Plan Element currently 2005;
- Housing Element and Fair Share Plan currently 2010;
- Stormwater Management Plan currently 2006;

- Natural Resource Inventory currently 2003 along with updates by Land Use Plan of 2005.

CHANGES IN ASSUMPTIONS, POLICIES AND OBJECTIVES AT THE LOCAL, COUNTY AND STATE LEVELS

The township continues to permanently preserve farmland generally in areas south of the Lehigh Railroad through purchase of development rights. A large portion (76.96 acres) of the Milligan Farm has been set aside for farmland preservation and open space. Other open space, preserved farms and conservation easements on shown on the map on the next page.

The New Jersey Highlands Council has created map inventories of the township as well. Outside of existing approvals of projects approved but not built such as Renaissance, and PS Construction, the Council only calculates an additional 21 housing units on septic. The township will essentially be "built-out" once the approved but not built projects come on line. The township continues to have a policy of low density in order to address the critical groundwater quality and quantity limitations of the soils and hydrology.

2001 STATE DEVELOPMENT AND REDEVELOPMENT PLAN

In March, 2001 a new State Development and Redevelopment Plan was adopted by the State Planning Commission. As with the first State Plan (adopted in 1992), the 2001 State Plan delineated a series of Planning Areas based on natural and built characteristics and sets forth the State's vision for the future development of those areas. The five Planning Areas (listed in descending order from the most developed to the least developed condition) include the Metropolitan Planning Area (PA1), Suburban Planning Area (PA2), Fringe Planning Area (PA3), Rural Planning Area (PA4) and Environmentally Sensitive Planning Area (PA5.).

In April 2004, the State Planning Commission released a Preliminary Plan proposing amendments to the 2001 State Plan, triggering a third round of the State Plan Cross-Acceptance process. While significant input was gathered from municipalities and Counties during the Cross-Acceptance process, this Plan was never adopted.

Rather, a new State Plan, the State Strategic Plan: New Jersey's State Development & Redevelopment Plan, was drafted and released in 2012. This draft State Plan takes a significantly different approach than the 2001 State Plan with the elimination of Planning Areas in favor of "Investment Areas". The Plan identifies four investment areas to be used for identifying locations for growth, preservation and related investments (listed in descending order from the most developed to the least developed condition): Priority Growth, Alternate Growth, Limited Growth and Priority Preservation. The locations of the Investment Areas are determined not by a State

Plan Map, as in the past, but by a criteria-based system applied during State agency decisions on investments, incentives and flexibility on State land use regulations, programs and operations.

After a series of public hearings at various locations throughout the State, the 2012 Plan was scheduled for adoption by the State Planning Commission on November 13, 2012. However, the adoption was delayed to further refine the Plan and to better account for the impact of Superstorm Sandy which occurred on October 30, 2012. No Plan revisions have been released to date and no further public hearings on the Plan have been scheduled. Until such time as a new State Plan is adopted, the 2001 State Plan remains in effect. The Township will monitor the State's efforts toward adopting a new State Plan and respond accordingly.

AFFORDABLE HOUSING RULES & LEGISLATION – STATE LEVEL

The Council on Affordable Housing's (COAH) 2004 third round Substantive Rules were partially invalidated in a January 25, 2007 Appellate Court decision. In a unanimous decision, the Court invalidated some of COAH's key third round rules, such as the concept of "growth share", the size of each municipality's fair share obligation and the manner in which the obligation can be satisfied. COAH revised its third round rules (*N.J.A.C.* 5:96 [procedural rules] and 5:97 [substantive rules]), effective June 2, 2008 as well as a further rule revision which was effective on October 20, 2008. These revised rules were intended to address the 2007 Appellate Court decision, while still relying on a revised "growth share" approach.

The 2008 COAH rules were also challenged in an Appellate Court Case. On October 8, 2010, the Appellate Court again invalidated several key provisions of COAH's rules, including the revised "growth share" approach. The Court directed COAH to revise its third round methodology and regulations by March 8, 2011 using a methodology substantially similar to COAH's first and second round methodologies. COAH later sought a stay from the NJ Supreme Court of the March 8, 2011 deadline imposed by the Appellate Division to prepare revised third round rules. On January 18, 2011, the NJ Supreme Court granted the stay. To date, no new third round rules have been promulgated.

Subsequently, the NJ Supreme Court granted petitions and cross-petitions to all of the various challenges to the Appellate Division's decision. The NJ Supreme Court heard oral argument on the challenges to the Appellate Court's ruling on November 14, 2012; the court decided recently that COAH has five months to revise its fair share calculations. Therefore, the township along with other NJ Municipalities will be required to prepare a new housing element and fair share plan in 2014.

PERMIT EXTENSION ACT

In response to the "Great Recession", which is defined as the period from December 2007 through June 2009, the Permit Extension Act was signed into law July 2008. It was extended twice with the most recent extension signed in September 2012. The Act extends all approvals

issued on or after January 1, 2007 through December 31, 2014. As a result of this statute, the township has outstanding development approvals from several years ago which might otherwise have expired.

TIME OF APPLICATION LAW

The "Time of Application" Law was signed on May 5, 2010 and took effect on May 5, 2011. The effect of this statutory change is that the municipal ordinance provisions that are in place at the time an application for development is filed are those which are applicable, regardless of whether or not an ordinance is amended subsequent to such an application. This is a departure from previously established case law, where courts in New Jersey have consistently held that the ordinance that is in place at the "time of decision" (the moment the Planning Board or Zoning Board of Adjustment votes on the application) is the law that applies to the application.

This provision has raised many concerns with municipalities. Principal among these is whether the new law will provide opportunities for developers to have their development rights "locked in" by submitting applications that are incomplete. The township should revise the Land Use Regulations to revise the definition of "application for Development" to state that the documents required for approval is defined as all of the required information within the relevant development application checklists unless waivers for such information have been granted by the Board having jurisdiction. This amendment will require that a complete application be submitted by an applicant prior to "locking in" the current municipal ordinance provisions.

GREEN BUILDINGS & ENVIRONMENTAL SUSTAINABILITY PLAN ELEMENT

In August 2008, the Municipal Land Use Law was amended to include the Green Buildings and Environmental Sustainability Element in the list of permitted Master Plan Elements. The Element is permitted to address such topics as natural resources, renewable energy, impact of buildings on the global environment, ecosystem, stormwater and optimizing climatic conditions through site and building design. The township may wish to incorporate this newly permitted element in a future master plan since sustainability concepts have a direct relationship to the resiliency, land use and transportation policies expressed herein.

RENEWABLE ENERGY LEGISLATION

The New Jersey Legislature has been active since the 2006 Reexamination Report legislating to facilitate the production of alternative forms of energy. The following new statutes that are applicable to Union, in particular, have changed the way alternative energy can be produced in New Jersey.

- **Inherently Beneficial Use.** The Municipal Land Use Law was amended to define inherently beneficial uses and to include solar, wind and photovoltaic energy generating facilities in the definition.
- **Wind, Solar and Biomass on Farms.** A law signed on January 16, 2009 restructured statutes regarding alternative energy and preserved farms, commercial farms, right to farm, and farmland assessment. In response, the State Agriculture Development Committee (SADC) adopted rules establishing an Agricultural Management Practice (an "AMP") for on-farm generation of solar energy which extends to protections of the Right to Farm Act to the generation of solar energy on commercial farms. Additionally, the Right to Farm Act was amended to permit and protect up to 10 acres or 2 megawatts (2MW) maximum production of electricity on commercial farms not subject to farmland preservation, provided the acreage of the electrical facility does not exceed a ratio of 1 acre of energy facility to 5 acres of agricultural acres, or approximately 17% of the farmland. In addition, farms developing electrical facilities not exceeding these limits will remain eligible for farmland assessment for the entire farm including the area under the electric generating facility.
- **Solar Not Considered Impervious.** On April 22, 2010 an act exempting solar panels from being considered impervious surfaces was signed into law. This bill exempts solar panels from impervious surface or impervious cover designations. It mandates that NJDEP shall not include solar panels in calculations of impervious surface or impervious cover, or agricultural impervious cover and requires that municipal stormwater management plans and ordinances not be construed to prohibit solar panels to be constructed and installed on a site.

RECOMMENDATIONS FOR THE MASTER PLAN AND DEVELOPMENT REGULATIONS

The Milligan Farm site was purchased in 2006 and subsequently subdivided creating several parcels. In the north end of the property, 14 acres to accommodate a multi-family housing project of 78 up to 95 units for senior housing and affordable family housing. This portion of the property has preliminary and final site plan approval. The zoning for this subdivided parcel should remain in the RM Multi-family Residential zone district. However, the large central portion has been set aside for open space and farmland preservation which contains 76.96 acres of preserved land and an 8.44 acre easement parcel. The Milligan farmstead at the southern end of the property was subdivided into a 2.4 acre parcel with the house and outbuildings. The zoning for these parcels should be changed to CR Country Residential. Alternatively, the open space parcel could be zoned from RM to P Parkland. The attached map illustrates the proposed change.

The township has three quarries, Red Hills, Green Rock Recycling and Pattenburg. Pattenburg Quarry has been fairly inactive with all quarrying ceased. Green Rock Recycling is currently active used for recycling stone and other materials. An approval for Pattenburg was granted by the township to fill a portion of the site with construction fill. Red Hills has been winding down operations as a quarry as well and has been required by the township to restore the site by eliminating steep slopes and fencing the property. All three quarries are not served by public sewer and water, and Pattenburg and Red Hills have limited access. The sites should remain zoned as Q Quarry and properly restored to eliminate any dangerous slopes, and re-vegetated with native plant materials.

Other changes to the Land Use Plan (and subsequent Zoning Map) are shown on the map with a draft date of October 2013. After checking ownership several properties north of Route 78 are proposed to change from INS Institutional to WM Watershed Management.

Conformance with the Highlands Plan is still under consideration by the township. There has been a continuing dialogue with the Council's staff to address the township's concerns. The benefits of Highlands conformance and implementation must be weighed against the township's policies of very limited development and the potential loss of municipal control of the approval process.

The Circulation Plan Element of the Master Plan was last prepared in 1984. There have been some changes to the traffic volumes over the last two decades such as the increase along Interstate 78, County Route 513, and interchange 12 (Perryville) by Pilot Travel Center. The latter has been primarily caused by the impact of the Pilot Travel Center. Therefore, the old Circulation Plan is no longer relevant in many respects and should be updated.

The Recreation Plan Element and the Community Facilities Plan Element are also both outdated plans. Although not required plan elements, new ones should be prepared in the future. The Recreation Plan Element is needed if the township ever decides to seek State Green Acre loans to fund park improvements.

Finally, the Wastewater Plan was last prepared in 1998. It is important to update or prepare a new Utility Services Plan Element incorporating the various agreements for provision of wastewater with the Town of Clinton, and other approvals such as the community wastewater systems at Lookout Point, Village Square and Renaissance. The county and the Highlands Council have been charged with the preparation of wastewater management plans.

REDEVELOPMENT PLAN

The Planning Board does not recommend any areas in need of redevelopment at this time.