

Planning & Zoning

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Overview

What is planning?

N.J. Planning and Zoning overview

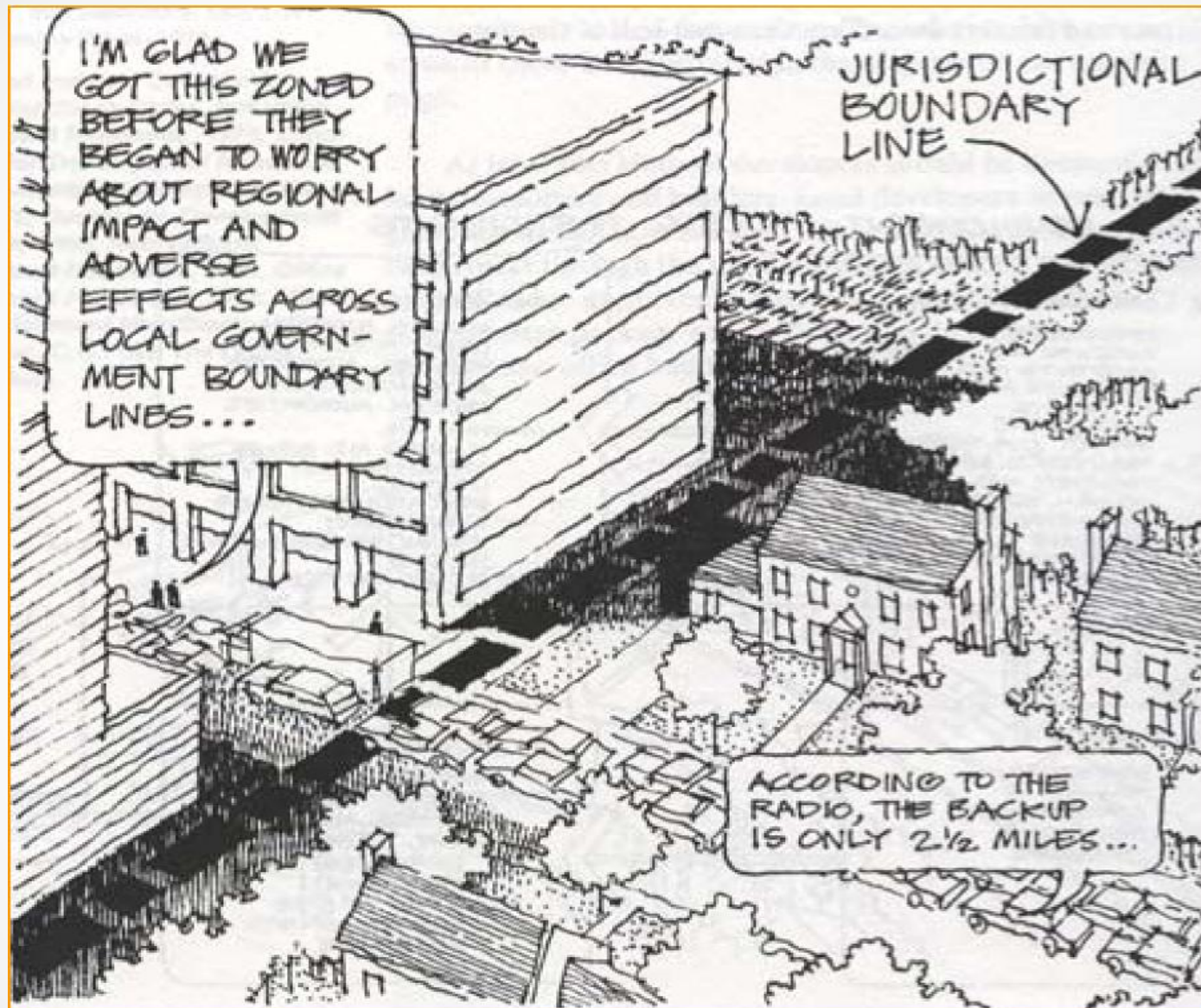
The Master Plan

Zoning and subdivision control

Boards

Part I

**What is planning and
Why do we do it?**



What is planning?

Planning is the effort to infuse action with foresight

A plan:

is something someone intends to carry out
is prepared with the understanding of its
consequences

What is planning?

Comprehensive or “master” plan defined in N.J. as the:
“composite of one or more written or graphic proposals for the development of a municipality”

Master plan concerns the “physical, economic, and social development of the municipality”

Must be adopted by the planning board to be effective

The Planning Process

Agree on problems

Gather information and opportunities and set goals

Identify alternatives

Select best alternative(s)

Monitor implementation to ensure goals are met

Implement goals

What are the purposes of planning?

Planning

- Is mandated
- gives local officials the big picture
- allows coordination
- involves the public
- guides public regulations and investment

Planning vs. Zoning

Planning

Addresses systematic and orderly development of a community

Concerned with land use, community facilities, transportation, housing, and the environment

Looks out to the future

Zoning

Concerned with the regulation of buildings, structures, and land

Deals with present conditions

Addresses what can be built now

Enabling legislation

Enabling legislation delegates state police power to local governments

It establishes:

- Organizational structures
- Procedures
- Standards
- Limitations or scope of power
- State constitution, Article IV, Section VI, Paragraph II:
grants legislature power to authorize zoning

Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-1 *et seq.*

Administrative rulemaking

Administrative Rulemaking

State departments, boards, and commissions have rulemaking powers

Rules implement general laws

Rulemaking power involves the publication and adoption of regulations

Affected groups comment on rules when they are proposed

Examples of State Agencies with rulemaking powers

Department of Community Affairs

Council on Affordable Housing

Department of Environmental Protection

Department of Transportation

Part II

Overview of Planning and Land Use Control in New Jersey

Who has planning and land use control powers?

Department of Community Affairs

State Planning Commission

Office of Smart Growth

Council on Affordable Housing

Site Improvement Advisory Board

Meadowlands Commission

Pinelands Commission

Highlands Council

Who has planning and land use control powers?

Department of Environmental Protection

Department of Transportation

Regional planning commissions & metropolitan planning organizations

County planning boards

Municipal planning boards

Municipal zoning boards of adjustment

Other boards

New Jersey Department of Community Affairs

Umbrella agency for local government:

- Codes and standards
- Housing
- Local government services
- Grants
- Smart growth

<http://www.nj.gov/dca/>

State Planning Commission

Located within Department of Community Affairs

17 members representing state government, local government and the public

Responsible for State Development and Redevelopment Plan (SDRP) and related activities

<http://www.nj.gov/state/planning/spc-state-planning-commission.html>

POLICY MAP
of the
New Jersey State Development
and Redevelopment Plan

DESIGNATED CENTERS

- ★ Urban Centers
- ☆ Regional Centers
- Towns
- Villages
- Hamlets

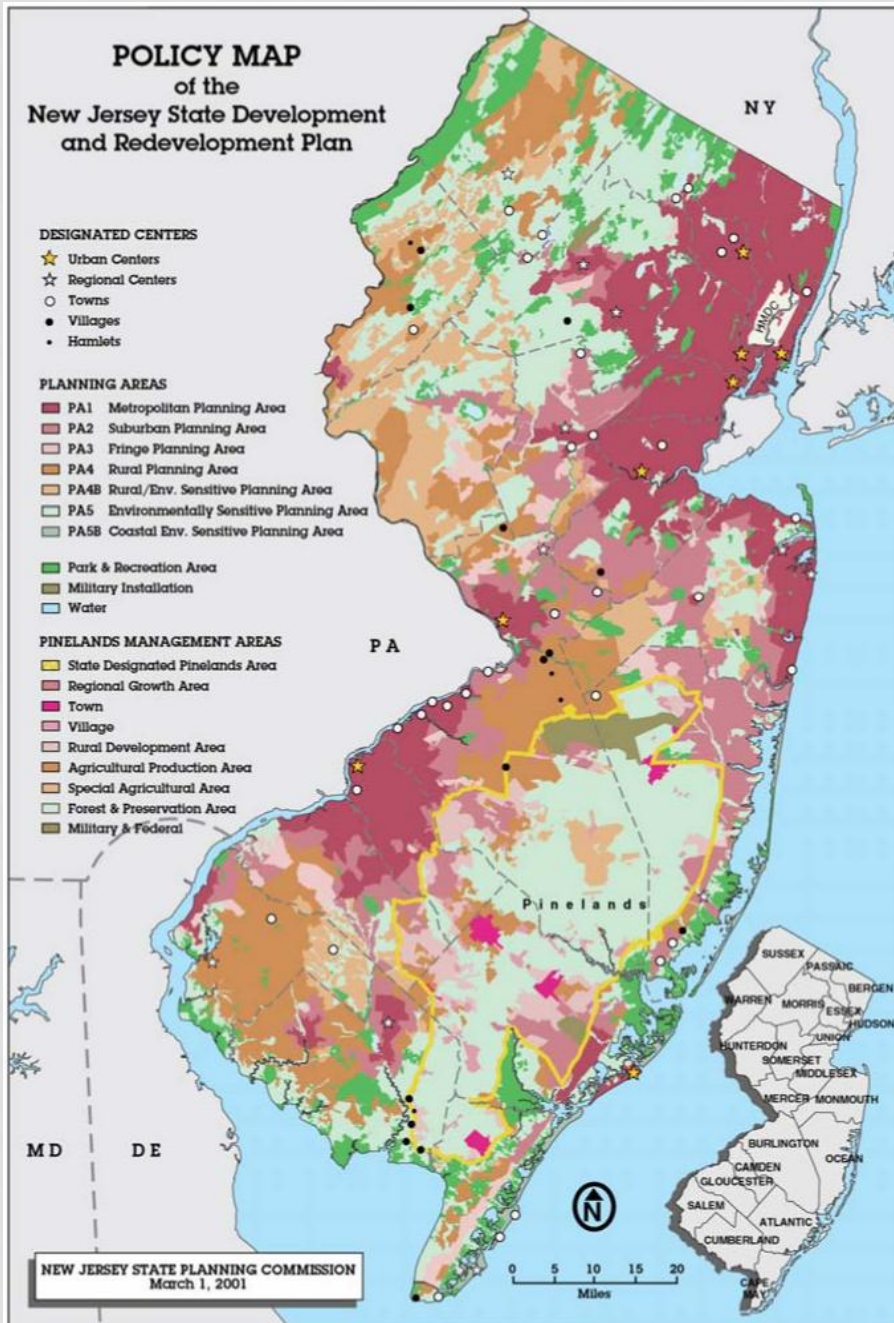
PLANNING AREAS

- PA1 Metropolitan Planning Area
- PA2 Suburban Planning Area
- PA3 Fringe Planning Area
- PA4 Rural Planning Area
- PA4B Rural/Env. Sensitive Planning Area
- PA5 Environmentally Sensitive Planning Area
- PA5B Coastal Env. Sensitive Planning Area

- Park & Recreation Area
- Military Installation
- Water

PINELANDS MANAGEMENT AREAS

- State Designated Pinelands Area
- Regional Growth Area
- Town
- Village
- Rural Development Area
- Agricultural Production Area
- Special Agricultural Area
- Forest & Preservation Area
- Military & Federal



State Development & Redevelopment Plan

1. Written and mapped policies
2. Planning areas
3. Hierarchy of centers
4. Cross acceptance
5. Center designation

Office of Smart Growth

Staffs the State Planning Commission

Manages center designation and plan
endorsement process for the SPC

Oversees mandatory training program for
planning and zoning boards

Assists in brownfields redevelopment

Works with smart growth policy council

<http://www.nj.gov/state/planning/spc-research-resources-sga.html>

Council on Affordable Housing: Mt. Laurel Decisions by N.J. Supreme Court

Mt. Laurel I (1975): Developing communities have a state constitutional obligation to provide a realistic opportunity for the construction of low and moderate income housing

Mount Laurel II (1983): Extended obligation to **all** municipalities

Council on Affordable Housing

Created in response to *Mt. Laurel* anti-exclusionary zoning rulings by New Jersey Supreme Court

Responsible for administering New Jersey Fair Housing Act of 1985

Prepares affordable housing goals for municipalities

Gives “substantive certification” to municipal housing elements and fair share plans

<http://www.nj.gov/dca/services/>

Site Improvement Advisory Board

DCA Commissioner adopts standards by administrative rule

Standards supersede local regulations

Developer or municipality can apply for waiver of standard for a specific development

12-person board within DCA

Recommends statewide site improvement standards to be followed by municipalities in granting development approval

Meadowlands Commission

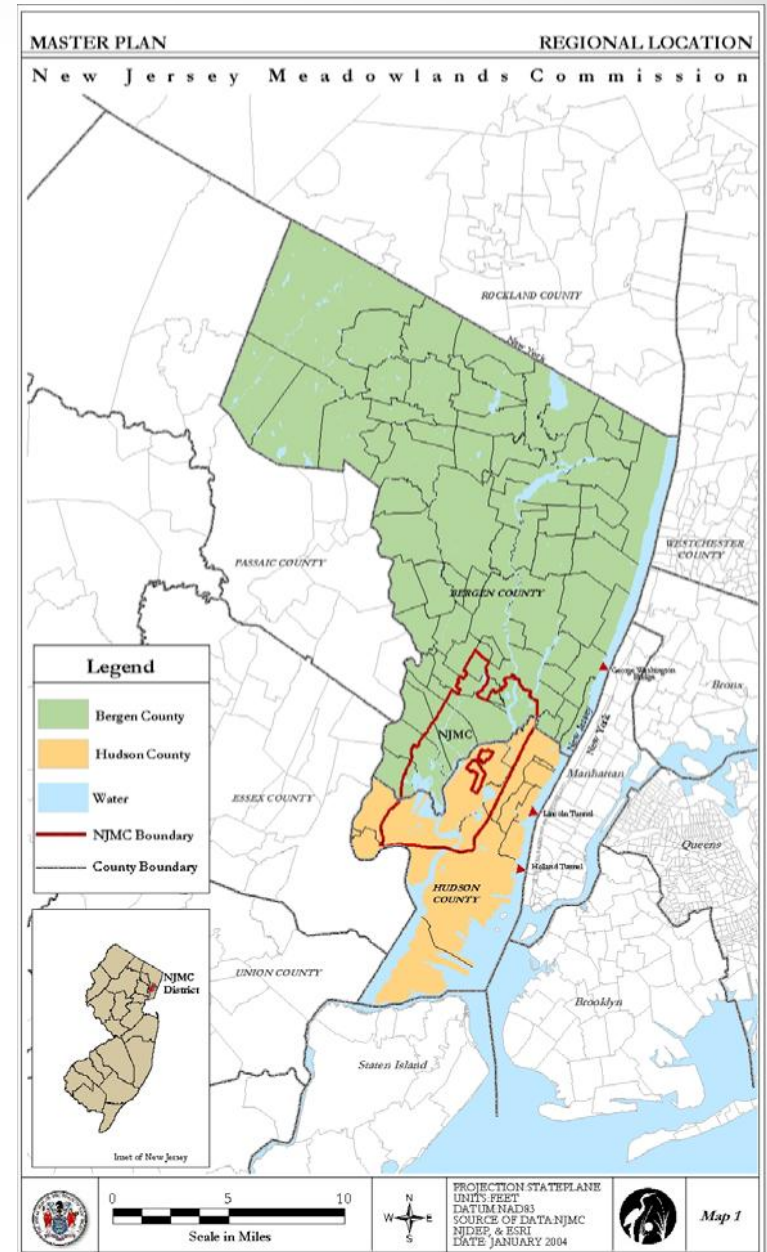
Responsible for “orderly development” of Meadowlands

Prepares Meadowlands master plan and zoning ordinance

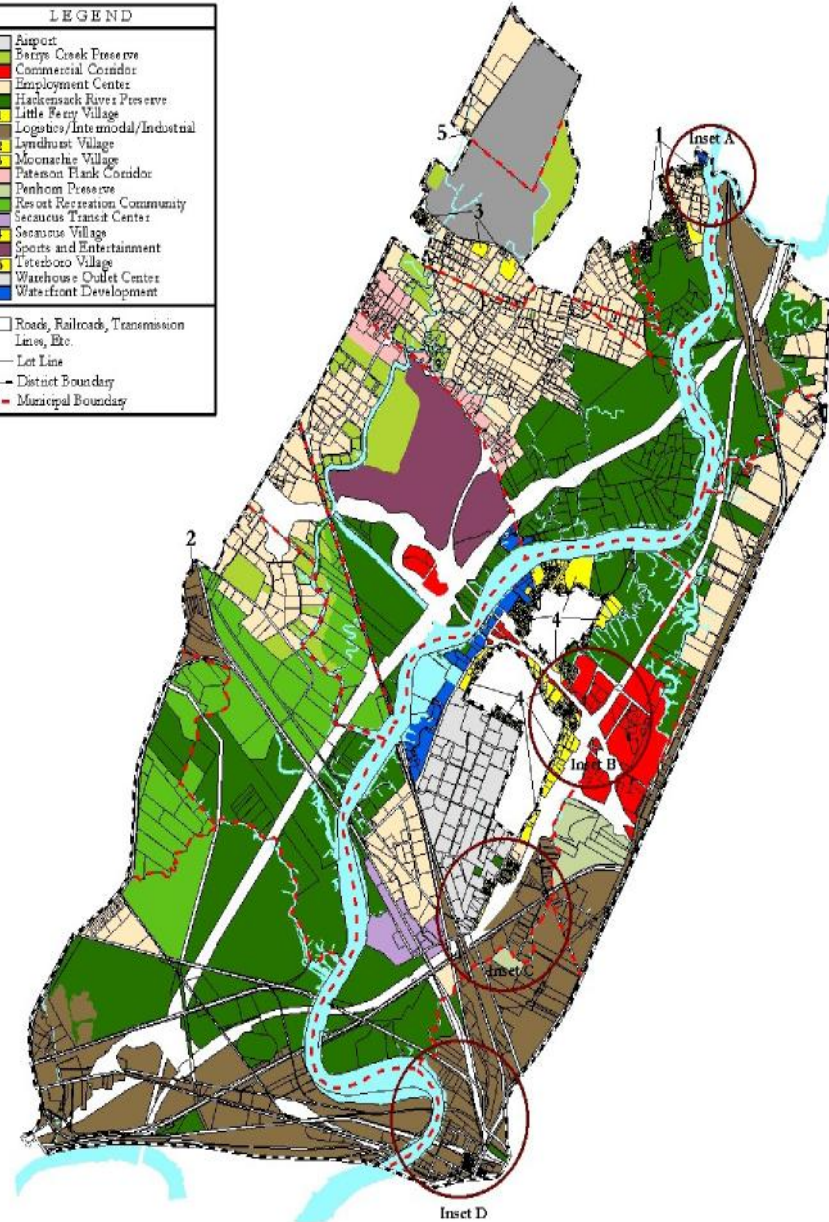
Reviews site plans, subdivisions, and building plans

<http://www.njsea.com/>

Meadowlands



LEGEND	
	Airport
	Barry Creek Preserve
	Commercial Corridor
	Employment Center
	Hackensack River Preserve
	Little Ferry Village
	Logistics/Intermodal/Industrial
	Lyndhurst Village
	Moonsic Village
	Paterson Park Corridor
	Penhryn Preserve
	Recreation Community
	Secaucus Transit Center
	Secaucus Village
	Sports and Entertainment
	Teterboro Village
	Warehouse Outlet Center
	Waterfront Development
	Roads, Railroad, Transmission Lines, Etc.
	Lot Line
	District Boundary
	Municipal Boundary



Pinelands Commission

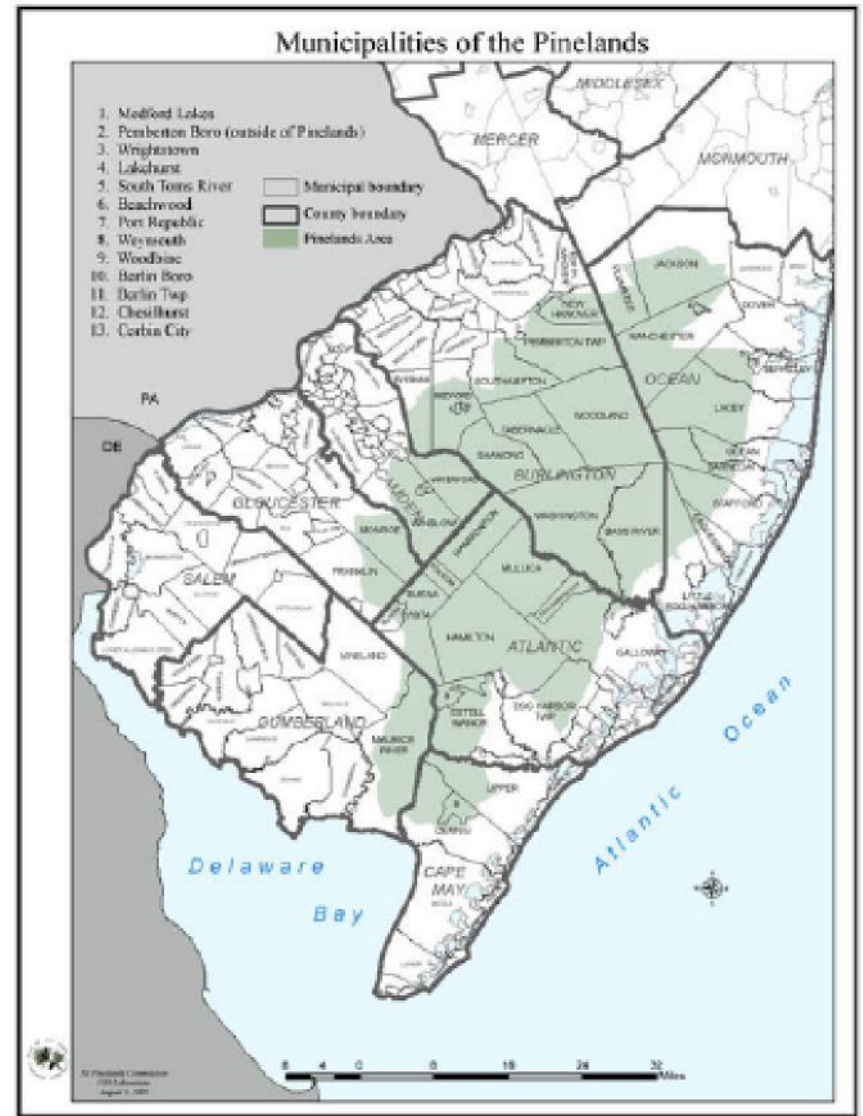
Develops and implements Comprehensive Management Plan

Reviews and certifies all municipal zoning and land use ordinances and master plans for consistency with CMP

Supports permanent land protection

<http://www.nj.gov/pinelands/>

Pinelands



Highlands Council

Council created in 2004 to protect Highlands area, especially water quality and supply

Council charged with preparing a regional master plan

Counties and municipalities must bring master plans into conformity with regional master plan

Council may review local government decisions on development in preservation area and may approve, reject or modify them

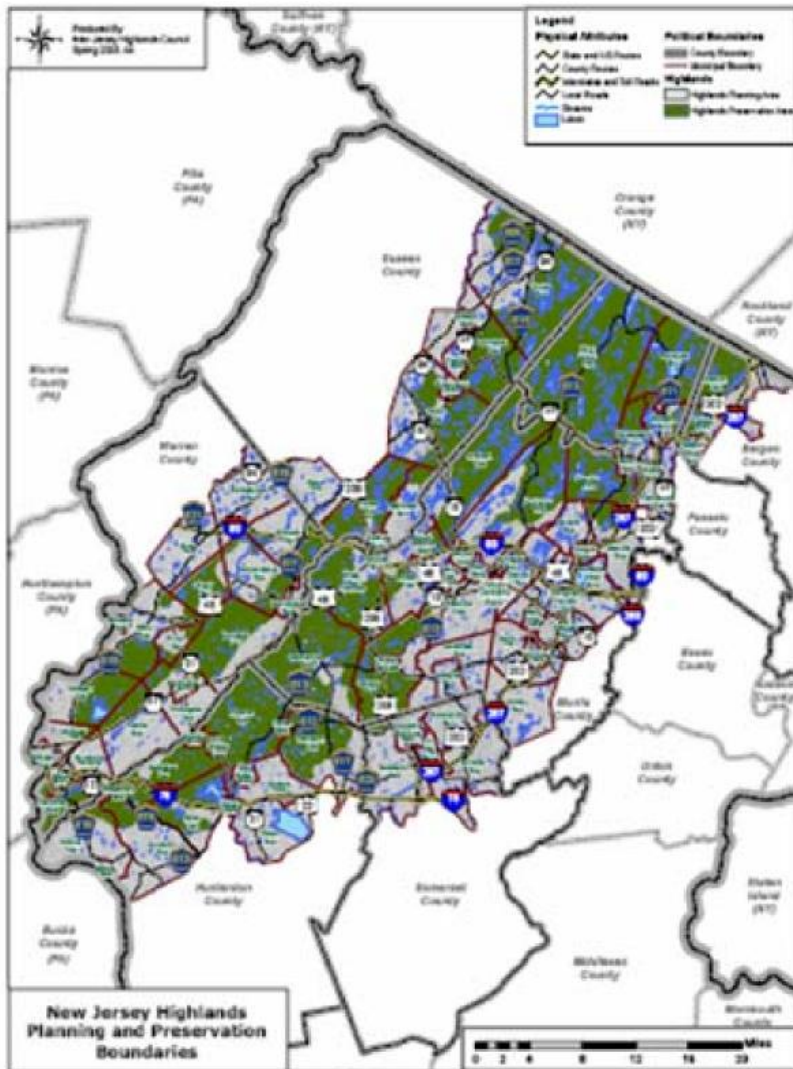
Highlands Council

All “major Highlands development” requires DEP approval

Renewed in 2015

<http://www.nj.gov/njhighlands/>

Highlands Area



Located in Northeast part
of state

Approximately 1,250
square miles

Covers 88 municipalities
and portions of 7 counties

Department of Environmental Protection

Regulates development in coastal areas, on waterfronts, in wetlands, floodplains, and tidelands

Has authority over “major Highlands developments”

Issues storm water permits

<http://www.nj.gov/dep/>

Department of Transportation

Required to prepare a long-range transportation plan and state transportation improvement program (STIP)

STIP establishes funding priorities for the state for subsequent three years

NJDOT works with state's three regional transportation planning agencies

<http://www.state.nj.us/transportation/>

Metropolitan Planning Organizations

The North Jersey Transportation Planning Authority

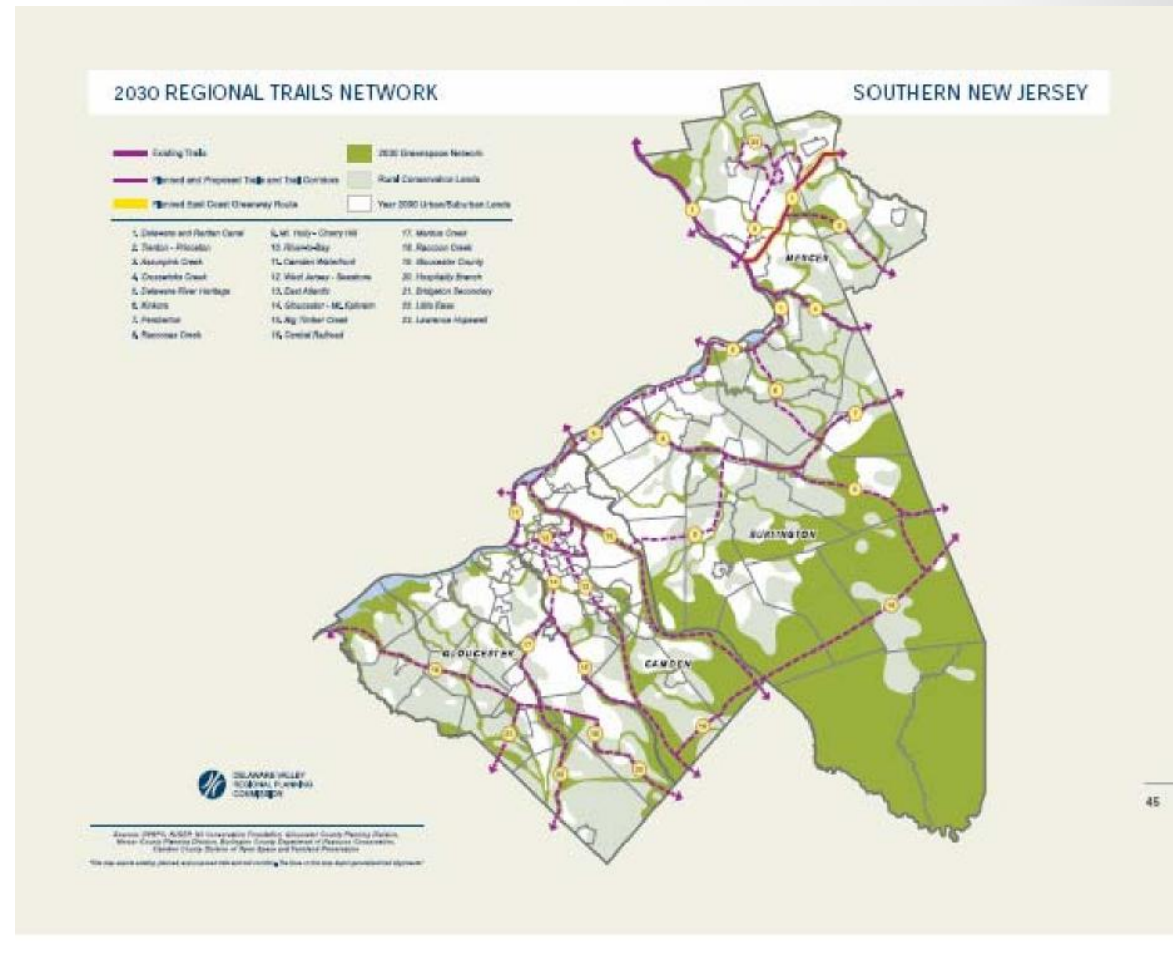
The Delaware Valley Regional Planning Commission

The South Jersey Transportation Planning Organization

Work with NJDOT

Develop regional transportation plans

Prepare three-year transportation Improvement programs



Municipal Planning Board's Duties

May participate in preparation and review of plans required by state or federal law or regulation

May function as a board of zoning adjustment in certain cases

May assemble data

May perform other duties as assigned by governing body

Municipal Planning Board's Duties

Prepare and adopt master plan and re-examination report

Undertake subdivision and site plan review

Review proposed zoning ordinance and amendment

Prepare, upon request, a capital improvement program

Review capital projects

Review official map or amendment

Approve conditional use permits

Municipal Planning Board's Duties

Provide direction for permits for buildings and structures not related to a street; or in beds of mapped streets, public drainage ways, flood control basin, or reserved public area

Prepare reports on proposed development regulations or amendments

Approve “c” variances, excluding use (or “d”)variances in connection with subdivisions and site plans

Board of Adjustment's Duties

Hear appeals from administrative officers in connection with zoning ordinance

Hear and decide requests for interpretations of zoning ordinance or other “special questions”

Grant bulk “c” variances and use “d” variances

Board of Adjustment's Other Duties

In connection with “d” (use) variances, hear and decide subdivision or site plan applications

Hear applications for structures proposed within the bed of a mapped street or public drainage way or structures not related to a street

Hear appeals of actions affecting historic sites

Prepare annual report on variances

Governing Body

Adopt ordinances, including zoning and subdivision regulations

Hear appeals from the board of zoning adjustment

Refer matters to the planning board

Appoint one of its members to the planning board

County Planning Board

Prepare county master plan and official map

Review subdivisions and site plans

Municipalities must file development regulations with county planning board in order that they may take effect

Other Boards

Environmental Commission

Historic Preservation Commission

Shade Tree Commission

Emergency Services

Part III

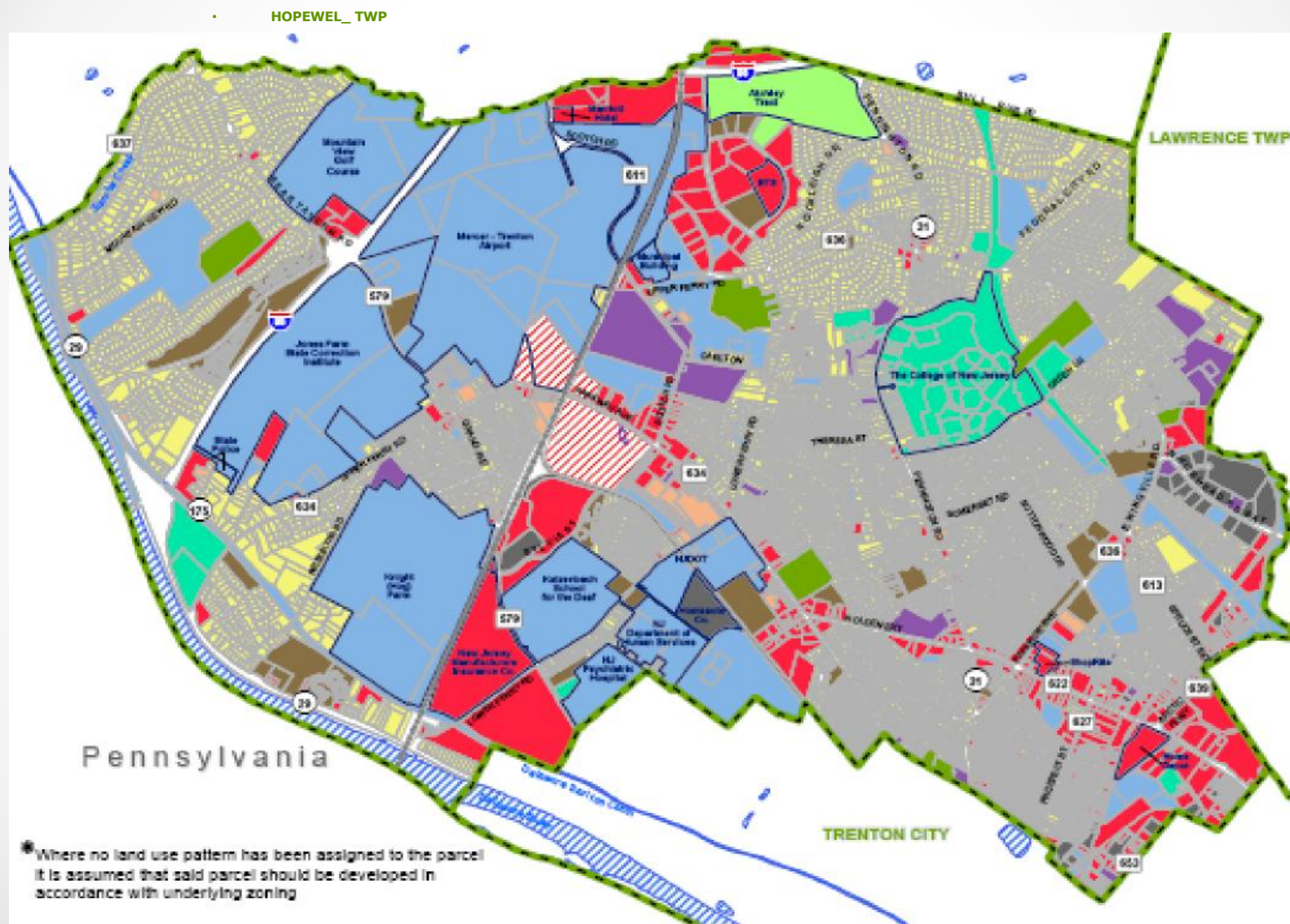
The Master Plan

The Master Plan

MLUL § 28: A master plan is “at least”:

1. A statement of objectives, principles, assumptions, policies and standards upon which proposals for the physical, social, and economic development of the municipality are based; and
2. A land use plan element

Master Plan of Ewing Township



The Master Plan: Other Elements

Housing*
Circulation
Community facilities
Recreation
Conservation
Economic Development

Historic preservation
Recycling
Farmland preservation
Development transfer

*Needed to enact zoning

The Master Plan: Other requirements

Policy statement indicating the relationship of master plan to:

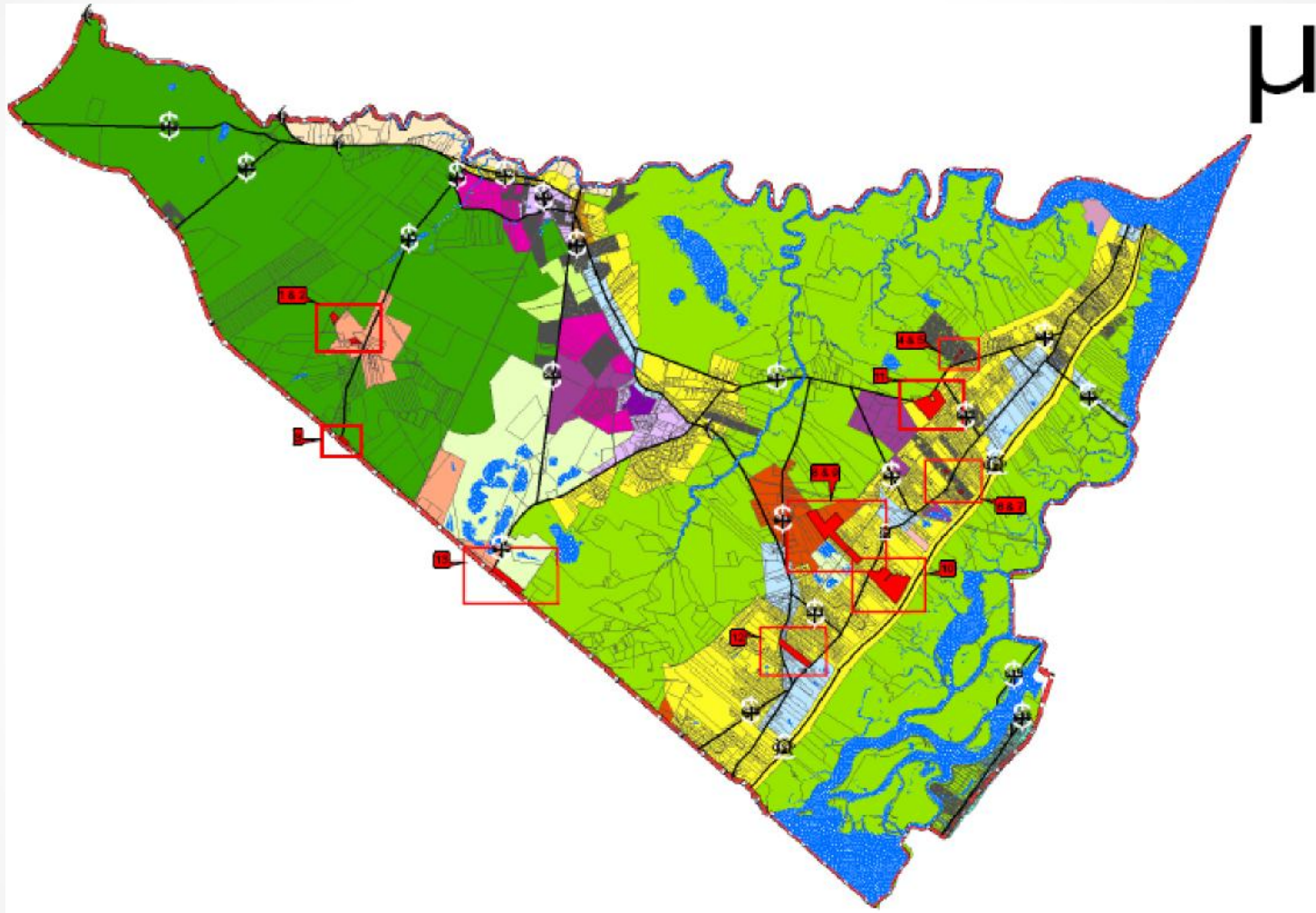
- Master plans of adjacent municipalities
- Master plan of county
- SDRP
- District solid waste plan
- Highlands master plan, if applicable
- Fair Housing Act of 1985
- Requires that a master plan include a housing element if municipality intends to seek substantive certification by COAH

The Master Plan: Other requirements

Housing element requirements:

- Inventory of housing stock
- A projection of housing stock
- An analysis of demographics
- Present and prospective need for low/moderate housing
- Areas of community suitable for low/moderate housing construction or rehabilitation

Upper Township Housing Element Excerpt



Preparing the Master Plan

Review the existing plan and re-examination report

Decide who is going to write the new plan

- In-house
- Consultant
- Combination
- If consultants are used, develop a scope of work and request for qualifications
- Establish a schedule and budget

Preparing the Master Plan

Decide how citizens are going to be involved:

- Public hearings and workshops/visioning
- Websites
- Charrettes
- Alternatives analysis/modeling
- Questionnaires
- Professional facilitation
- Advisory task forces to planning boards

Preparing the Master Plan

Agree on issues to be addressed

Collect and analyze data

Agree on goals, policies, and guidelines

Develop a draft of the plan

Hold public hearing(s) per MLUL

Revise plan, as necessary, and adopt

Relationship of the Master Plan to SDRP

Cross-acceptance process

State Planning Commission Plan Endorsement

Initial endorsement

Advanced endorsement

Benefits

The Hearing Process/Plan Adoption

Published notice at least 10 days
prior to hearing

Notice to clerk of adjoining
municipalities at least 10 days
prior to hearing

Notice to county planning board



The Re-examination Report

Required every six years

Applies to master plan and development regulations

Development moratoria prohibited in order to prepare new master plan or development regulations

Failure to adopt--the “rebuttable assumption” of unreasonableness

Re-examination Report Contents

Major problems and objectives contained in last report

Extent to which problems and objectives have been
reduced or have increased

Significant changes affecting master plan

Recommendations for changes to plan or regulations

The Official Map

Shows:

Location and width of streets and public drainage ways

Location and extent of flood control basins and public areas

Facilities can be existing or proposed, improved or unimproved

Areas designated on official map are to be reserved for future public use

The Official Map

Official map reflects master plan

Municipality uses official map in reviewing application for development

Examines the relationship of development to existing and proposed facilities

Building permits cannot be issued for buildings or structures in street, public drainage way, flood control area, or area reserved for public use

The Official Map

Board of Zoning Adjustment or Planning Board can direct, under certain circumstances, or grant a building permit where there is a conflict with the official map

Capital Improvement Program (CIP)

Long-term (6 years) schedule of capital projects

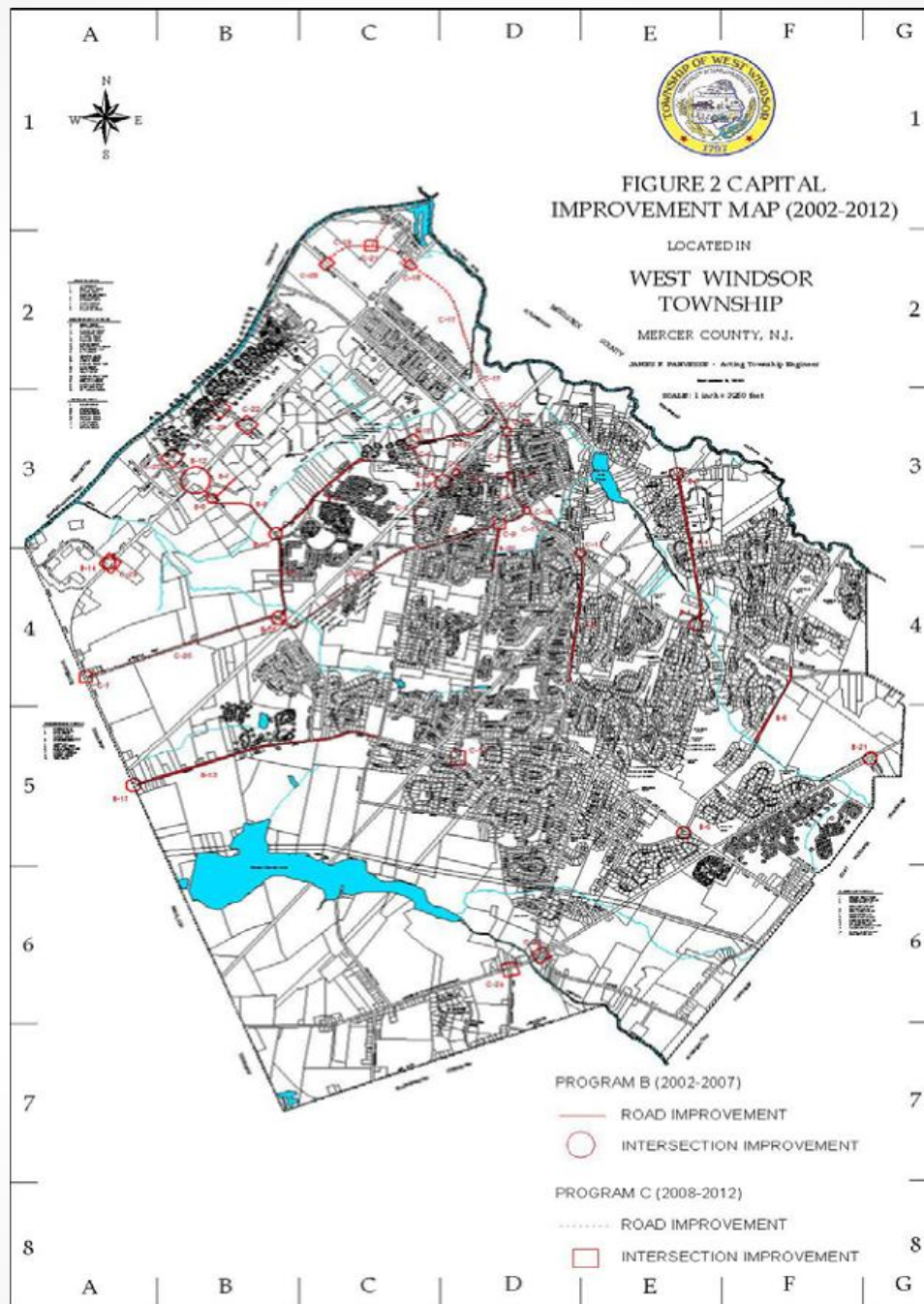
Contains estimated capital and additional operating and maintenance costs and sources of funds

Takes into account needs identified in master plan

Governing body may authorize planning board to prepare CIP and may adopt such program

First year of CIP is capital budget

Planning board reviews and makes recommendations on capital projects



Part IV

Zoning and Subdivision Control

What is Zoning?

Zoning:

Legislative method of regulating land use by the division of a local government into districts.

Zoning regulates:

- Use
- Height
- Bulk - Lot area/dimensions, setbacks
- Parking/Loading
- Signs - Landscaping

Structure and Contents of a Zoning Ordinance

Definitions

Establishment of
districts and zoning map

Rules for interpretation

Supplemental district
regulations

District regulations

Signage

Methods of amendment

Planned development
provisions

Conditional uses

ZBA

Enforcement and compliance

Fees and charges

Penalties

Severability clause

Structure and Contents of a Zoning Ordinance other provisions:

Historic preservation

Flood plain regulations

Transfer of development rights

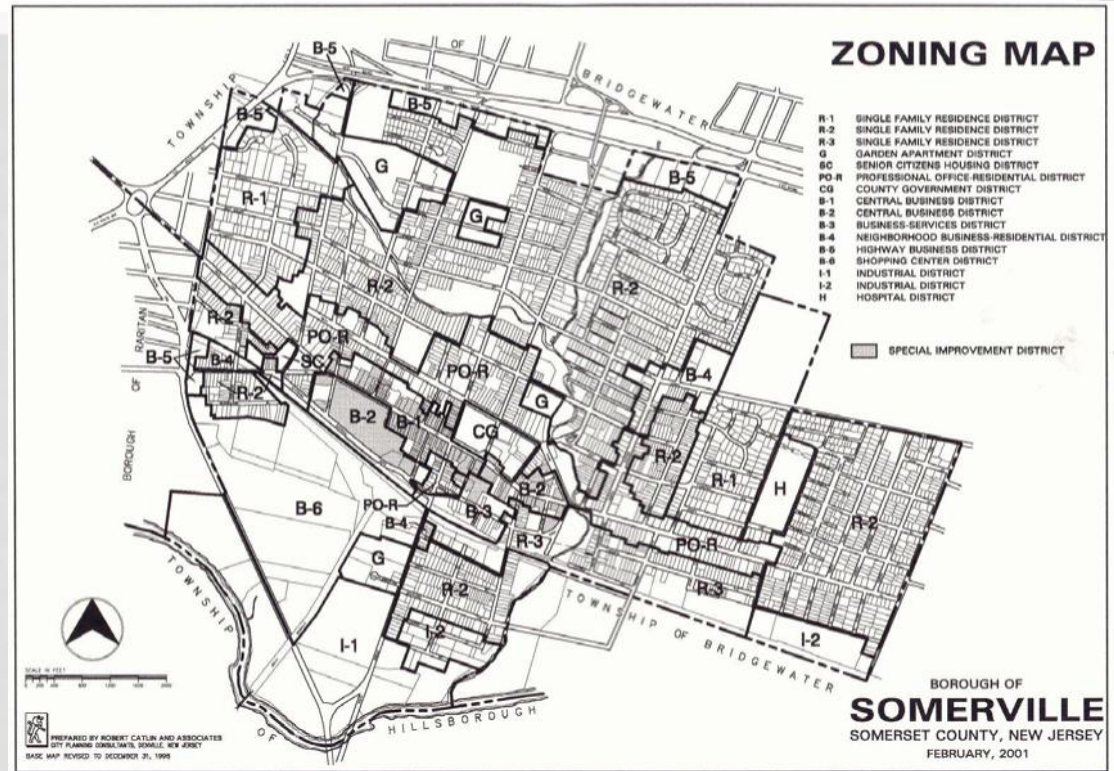
Senior housing

The Zoning Map

An official document

Usually in black and white on Mylar or computerized

List of districts and amendments



Conditional Uses

Use permitted in a particular zoning district only upon a showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in the zoning ordinance.

Zoning ordinance must contain “definite specifications and standards” in order to provide “sufficient certainty and definiteness” so the developer knows the limit and extent

Must incorporate any required site plan review

Variances

Variance is a permitted deviation from a zoning ordinance requirement or standard:

Bulk or “c” variance

“Hardship”

“Flexible c”

Use or “d” variance

Negative and positive criteria

Variances

Negative Criteria:

Applies to all variances

No variance or other relief may be granted without a showing that:

1. it can be granted without “substantial detriment” to the public good
2. it will not “substantially impair the intent and purpose of the zone plan and zoning ordinance”
3. it has “Inherently beneficial uses”

Positive Criteria: “Hardship” Variance - c(1)

Where:

- by reason of exceptional narrowness, shallowness, or shape of a specific piece or property; or
- by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property; or
- by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon,
- the strict application of any [zoning] regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such a property, **then** the ZBA or planning board may grant a variance.

Positive Criteria: “Flexible c” Variance - c(2)

Where:

in an application or appeal relating to a specific piece of property the purposes of the [MLUL] would be advanced by a deviation from the zoning ordinance requirements, and the benefits of the deviation would substantially outweigh any detriment

then, the ZBA or planning board may grant a variance

Use or “d” variance

Positive criteria: “[I]n particular cases for special reasons . . . ”

A use or a principal structure in a district restricted against such use or principal structure

1. An expansion of a nonconforming use
2. A deviation from a specification or a standard pertaining to a conditional use
3. An increase in the permitted floor area ratio

Use or “d” variance

4. An increase in the permitted density(except as applied to the required lot area for a lot or lots for detached one or two dwelling unit buildings which lots or lots are either an undersized lot or lots resulting from a minor subdivision)
5. Height of a principal structure which exceeds by 10 feet or 10% the maximum height permitted in the district

Differences

- c(1): Emphasis on characteristics of property that create a practical difficulty or hardship on the owner
- c(2): Emphasis on characteristics of property that present an opportunity for a better design in light of MLUL purposes

Zoning Consistency with the Master Plan

Zoning ordinance shall be adopted or amended after the planning board has adopted the land use plan and housing plan element

Zoning shall be “substantially consistent” with both the land use and housing plan elements

Exception:

Zoning ordinance or amendment may be “inconsistent” when majority of full membership of government body approves it and the reasons are stated in resolution and recorded in minutes

Testing consistency

- Examine uses, densities, intensities shown on land use plan map or other plan maps (e.g., housing)
- Analyze goals, objectives, and policies contained in plan text
- Assess proposed public or community facilities or improvements in plan
- Relate zoning ordinance changes against specific recommendations in plan

Zoning/Land use device	Decision-Maker
Rezoning	Legislative body
Zoning text amendment	Legislative body
Conditional use permit	Planning board, unless (d) variance is also sought, then ZBA

Zoning/Land Use device	Decision-Maker
Planned development	Planning board, unless (d) variance is also sought, then ZBA
Major and minor subdivisions and site plans	Planning board, unless (d) variance is also sought, then ZBA

Zoning/Land Use device	Decision-Maker
Bulk or (c) variance	Planning board or ZBA
Use or (d) variance	ZBA
Appeals & interpretations	ZBA
Zoning permit & certificate of occupancy	Permitting official

Public Hearings

Hearings required on “application for development”

Open to public

Notice requirements

Verbatim recordings

Written findings and conclusions

Copies of decisions

Advertised summary of decision

Subdivision and Site Plan Review

Minor subdivision:

A division of land to create lots and specifically permitted by ordinance but excluding:

- Planned development
- Any new street
- The extension of any off-tract improvements whose costs are prorated

Major subdivision:

any subdivision not classified as a minor subdivision

Subdivision and Site Plan Review

Site plan:

Scaled drawing that shows the layout and arrangement of buildings and open space, parking, yard areas, and other matters

Site plan review:

Review of development plan for single site, but excluding one- and two-family dwellings and subdivisions

Purposes of Subdivision Review

1. Coordination
2. Design review
3. Protection of site amenities
4. Effectuate zoning ordinance
5. Provision of improvements
6. Recording of lots
7. Consumer protection

Typical Contents of Subdivision Regulations

Definitions

Procedures for preliminary
and final approval

Design standards:

Layout

Streets

Public facilities

Reservation of open space

Grading

Regulation of flood prone areas

Storm water

Location of recycling facilities
for multi-family development

Performance bond

Planned development

Cluster provisions

Typical Contents of Site Plan Review Ordinances

Standards and requirements related to:

- Preservation of existing natural resources on site
- Vehicular and pedestrian circulation, parking and loading
- Screening, landscaping, and location of structures
- Exterior lighting
- Conservation of energy and use of renewable energy resources
- Recycling

Steps in Subdivision Review

Preliminary Plan

Shows initial planning and layout of streets, lots, utilities, and placement of improvements

Shows contour lines and other site features

Final Plat

Precise drawing with necessary survey information to establishing location of lots and streets

Accompanied by engineering drawings for public and private improvements

Steps in Minor Subdivision Review

Completeness review

Approval or denial within 45 days of submission of a complete application to administrative officer

Steps in Major Subdivision Review

Informal review (typical)

Completeness review

Preliminary plat

Planning Board must approve or deny within:

- 45 days for a subdivision of 10 or fewer lots

- 95 days for a subdivision of more than 10 lots

Board may grant extensions if developer consents

Final approval

Surety

Recording

Similar process for site plans

Planned Development

PD is large-scale development (100+acres) subject to unitary plan

General development plan

- Approved like major subdivision
- Effect of approval not to exceed 20 years
- May include development agreement
- May be developed in phases

Part V

Boards

Municipal Planning Board Composition

Size - 7 or 9 members

Class I - mayor or mayor's designee, or manager

Class II - one of the officials of the municipality,
other than governing body (appointed by mayor)

Class III - member of governing body

Class IV - Citizens (appointed by mayor or manager)

Alternates up to 4

Chairman, vice chairman from Class IV, secretary

Zoning Board of Adjustment

Seven members

Two alternates

Officers

- Chair
- Vice chair
- Secretary (not necessarily a board member)

The Open Public Meetings Act

NJSA 10-4-6 *et seq.*

Annual schedule of regular meetings

Notification of regular meetings

Special and emergency meetings

Keeping of minutes

Executive session-when authorized

Meetings

What constitutes a quorum

Rules of procedure

The agenda

- Roll call
- Minutes
- Old business
- Hearings
- New business
- Adjournment

Hearings - Notice Requirements

Responsibility for giving notice

Published notice - when and where

Personal notice - who receives

Adjoining municipalities

County planning board

Department of Transportation

State Planning Commission

Proof of service

Hearings

Application for development

Master plan adoption, revision, or amendment

Completeness

Exhibits and documents

Oaths and subpoenas

Witnesses

Keeping order - the role of the chair

Limits on length of testimony

Personal attacks and how to deal with them

Part VI

Making Land Use Decisions

Purpose of the site visit

Verify site conditions, including those that require more detailed analysis

Understand the surrounding area, especially the potential for land use conflicts

Provides backdrop to reports by professionals

The Site Visit: Needed Materials

Base maps of an appropriate scale

Aerial photos (available from Google Earth)

Plans submitted by applicant

Engineer's scale

Long nonmetallic tape measure or measuring wheel

The Site Visit: Needed Materials

Permission to enter site

Appropriate clothing

Compass

Clipboard

Animal repellent

The Site Visit:

What to Look For And Record

Topography and vegetation

Age, condition, and character of buildings

Views

Verification of visible infrastructure

Circulation and parking issues

Relationship of proposal to surrounding area

Presence of noise

Odors

Public transit stops

Driveway locations

Zoning Map Amendment

Objective:

Change the designation of a property or group of properties

Criteria:

Must be “substantially consistent” with the land use plan element and housing plan element or designed to effectuate such plan elements

Inconsistency permitted, but only with an affirmative vote of full authorized membership of governing body, with reasons included in resolution and set forth in minutes

Zoning Map Amendment

Factors to take into account:

Character of area

Appropriateness of particular use district to
area/alternate districts

Boundaries of use district

Preliminary Subdivision Review

MLUL § 48c

Upon the submission to the administrative officer of a complete application for a subdivision of more than 10 lots, the planning board shall grant or deny preliminary approval within 95 days of the date of such submission or within further time as may be consented to by the developer. Otherwise, the planning board shall be deemed to have granted preliminary approval to the subdivision.

Subdivision Review

Typical Preliminary Plat Criteria

Whether

- information required by subdivision regulations is provided proposed lots satisfy zoning ordinance
- the specific proposals in the master plan reflected including street location
- proposed streets are properly oriented with existing streets and are of sufficient width
- intersections are safe (no doglegs)
- lot layout is sound
- land required for public facilities (e.g., parks) has been dedicated or reserved

Subdivision Review

Typical Preliminary Plan Criteria

Whether:

- natural areas are protected
- the plan shows utility easements
- streets are named properly
- blocks are excessively long
- storm water detention facilities are addressed

Final Subdivision Review

MLUL § 50(a)

“The planning board shall grant final approval if the detailed drawings, specifications and estimates of the application for final approval conform to the standards established by ordinance for final approval, the conditions of preliminary approval, and, in the case of a major subdivision, the standards [in the Map Filing Law]”









