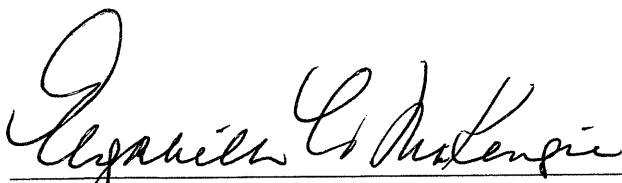


WYCKOFF TOWNSHIP
Bergen County

2018
Amendment to July 14, 2010
Periodic Reexamination Report

Presented to the Planning Board

October, 2018



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INTRODUCTION

The purpose of this 2018 Amendment to the July 14, 2010 Periodic Reexamination Report ("2010 Report") is to provide an update to the statistical background, affordable housing status and land use policies expressed in the 2010 Report and to recommend the adoption of a new 2018 Third Round Housing Element and Fair Share Plan as well as an Amendment to the Township's Master Plan Land Use Plan Element addressing the Township's current Fair Share Obligation. The two Master Plan Elements, in particular have to be reconciled with one another for consistency and to facilitate the adoption of any zoning changes needed to implement the Housing Element and Fair Share Plan.

The 2010 Report is a comprehensive and still relevant planning document and does not need to be wholly replaced at this time. According to the Municipal Land Use Law, a new Periodic Reexamination Report is not due to be prepared until July of 2020, ten years from the date of the previous Report.

Nevertheless, certain conditions that existed at the time of the 2010 Report have changed, and the 2010 Report must be updated to reflect such changes so that it remains a relevant and current document.

CHANGES IN AVAILABLE STATISTICAL INFORMATION

At the time the 2010 Report was prepared and adopted, the 2010 Census was not yet available to municipalities for evaluation. Consequently, the 2010 Report presented an analysis of demographic and housing characteristics for Wyckoff that was based primarily on the 2000 Census, updated using available 2008 *estimates* published by the Census Bureau. At the time, that was the best available information.

The 2018 Housing Element and Fair Share Plan contains, in Appendix A to the Housing Element, entitled **Housing, Demographic and Employment Background**, an analysis of statistical information that is based on the 2010 Census, updated using available 2013 *estimates* published by the Census Bureau.

Thus, among the recommended changes to the 2010 Report is the deletion of a significant portion of the subsection entitled **Statistical Changes**, beginning on page 18 and extending through page 37 and its *replacement with a reference to the more current information provided in Appendix A to the Housing Element*.

This same recommendation applies to the Employment subsection found on page 40.

CHANGES IN COAH STATUS AND AFFORDABLE HOUSING REQUIREMENTS

At the time the 2010 Report was prepared, the Council on Affordable Housing (“COAH”) was still functioning, although its final set of adopted Third Round Rules was under appeal, and Wyckoff was awaiting COAH’s review of the Township’s December, 2008 Third Round Housing Element and Fair Share Plan, which it had submitted to COAH along with a petition for Substantive Certification. Since then, however, much has changed.

In the fall of 2010, COAH’s third and final set of Third Round Rules was invalidated by the Appellate Division. In 2013, the Supreme Court upheld the Appellate Division’s decision and ordered COAH to adopt new valid third round Rules, which it failed to do. In March of 2015, the Supreme Court determined that COAH had ceased to operate as it was intended to do by the Fair Housing Act and that the Courts would take back the responsibility for enforcement of constitutionally mandated municipal Fair Share Obligations. The Supreme Court provided for municipalities, like Wyckoff, that had been proceeding in good faith before COAH, to submit Housing Elements and Fair

Share Plans to the trial court in each vicinage for a declaratory judgment of compliance with the Fair Housing Act.

Wyckoff filed a request for a declaratory judgment with the Superior Court, Bergen County, in July of 2015, and, as part of that action, settled with interested party (now intervenor) Fair Share Housing Center as to the extent of the Township's Third Round Fair Share Obligation and how that Third Round Fair Share Obligation would be satisfied, and also settled with intervenor Canterbury Development Corp. as to the disposition of the Maple Lake property. The Maple Lake property, along with all other vacant sites in the Township, had been included in Wyckoff's first and second round Housing Elements and Fair Share Plans, but was recommended to be taken out of the Plan in 2005, as it did not appear to be a suitable site for such development, had not developed in accordance with its previous inclusionary residential zoning, and was no longer needed to fulfill the Township's affordable housing obligations as they were understood to be in 2005.

Wyckoff has prepared a new 2018 Third Round Housing Element and Fair Share Plan, which is ready to be considered by the Planning Board at a public hearing. Wyckoff has also prepared a 2018 Amendment to Master Plan Land Use Plan Element addressing the zoning changes that will be needed to implement the 2018 Third Round Housing Element and Fair Share Plan. Consequently, the following changes are recommended to be made to the various sections of the 2010 Report that deal with affordable housing:

1. On page 11 of the 2010 Report, under the section addressing Major Problems (facing Wyckoff in 2010) there is subsection entitled **COAH Compliance**. It is recommended that this subsection be re-titled and rewritten as follows:

"Affordable Housing

Wyckoff has, since the late 1980's consistently sought to maintain compliance with its affordable housing fair share obligations."

2. On page 17 of the 2010 Report, in the section addressing the Extent to Which Such Problems or Objectives Have Been Reduced or Increased, it is recommended that the subsection entitled **COAH Compliance** also be re-titled and rewritten as follows:

"Affordable Housing

The Fair Housing Act of 1985 had established the Council on Affordable Housing ("COAH") as the State agency to regulate and administer Constitutionally-mandated municipal low- and moderate-income "fair share" requirements. Subsequent to the adoption of the Fair Housing Act by the Legislature, and before Wyckoff was able to prepare and submit its First Round Housing Element and Fair Share Plan to COAH, it was sued by a builder/plaintiff seeking a builder's remedy under the terms of the 1983 Mount Laurel II decision. Wyckoff settled with that builder/plaintiff and prepared and adopted a compliant Housing Element and Fair Share Plan. It received a Judgment of Compliance and Repose from the Court in 1992. Thereafter, Wyckoff sought and received substantive certification of its second round Housing Element and Fair Share Plan from COAH in July of 1998, just before its first round Judgment of Compliance and Repose was set to expire. COAH was delayed in adopting its first set of third round Rules. The Rules that COAH finally adopted in 2004 were invalidated in 2007 by the Appellate Division. In 2008, COAH adopted a second set of third round Rules but simultaneously proposed amendments to those Rules, and adopted the amendments in the fall of 2008. The 2008 Rules were appealed, and in 2010, they, too, were invalidated by the Appellate Division.

Meanwhile, Wyckoff, in an effort to comply with its affordable housing obligations, had adopted a Third Round Housing Element and Fair Share Plan in 2005 and another in December of 2008. Wyckoff's petition for Substantive Certification of its 2008 Third Round Housing Element and Fair Share Plan was still pending before COAH when the 2008 Rules were invalidated.

Wyckoff filed a declaratory judgment with the Superior Court, Bergen County, seeking approval of its Third Round Housing Element and Fair Share Plan on July 2, 2015. It was granted immunity by The Honorable Menelaos Toskos, JSC, now retired, so that it could reach a determination as to its fair share obligation and develop a valid plan for meeting that obligation. Wyckoff has now done this, with the assistance of Special Master Frank Banisch, PP, settling with interested party (now intervenor) Fair Share Housing Center as to the extent of the Township's Third Round Fair Share Obligation and how that Third Round Fair Share Obligation would be satisfied, and also settling with intervenor Canterbury

Development Corp. as to the disposition of the Maple Lake property. A Fairness Hearing and Preliminary Compliance Hearing was conducted by Judge Toskos on July 18, 2018, following which, on July 23, 2018, Judge Toskos entered an Order approving the settlement, subject to a number of conditions, including the adoption of a revised third round Housing Element and Fair Share Plan.”

3. On the bottom of page 50/top of page 51, at the end of the section presenting Recommended Changes to Master Plan or Development Regulations, add a new subsection entitled **Affordable Housing** as follows:

“Affordable Housing

The Land Use Plan Element of the Master Plan for Wyckoff Township is recommended to be amended to add proposals for zoning changes to implement the terms of the settlement agreements reached in In the Matter of the Application of the Township of Wyckoff’s Housing Element and Fair Share Plan, Docket No.: BER-L-6224-15, and the 2018 Third Round Housing Element and Fair Share Plan, which is also recommended to be adopted..

The following specific zoning amendments and zoning overlay amendments are provided for in the 2018 Third Round Housing Element and Fair Share Plan and will need to be adopted to implement the Plan. The purpose of these zoning amendments is to provide the types and numbers of affordable housing units that cannot be realistically provided by other means and for which the Township has made a commitment to the Court:

1. Inclusionary residential zoning and development at a density of 12 units per acre on Lots 1 and 2 in Block 259, located adjacent to the railroad tracks, across from Boulder Run Shopping Center. One of these lots is small and contains a gas station. The other is large, but heavily constrained by wetlands to the rear. If these two lots are combined and developed together, a first floor retail component could also be included in the zoning, with the residential portion of the development confined to just the upper level. At the 12 units per acre density and a 15 percent set-aside for rental affordable units, these two lots would yield approximately 22 total units, of which 3 would be affordable rental units.
2. Inclusionary residential zoning and development at a density of 12 units per acre on Block 216, Lots 17.01, 18 and 19, on Greenwood Avenue. These lots, which are currently in separate ownership, total 23,400 square feet or .537 acres of land, with no environmental

constraints. These lots, while currently in single-family residential use, are surrounded by non-residential uses. These lots should be rezoned so that, if assembled into one parcel, they could be developed with apartments at a density of 12 units per acre (perhaps along with a small first floor commercial component), yielding at least six (6) apartments, of which at least one (1) would be an affordable rental unit, based on a 15 percent set-aside rate for rental affordable units.

3. Inclusionary residential/mixed use zoning of what was formerly Block 216, Lots 12.01 and 13.04 (now Block 216, Lots 13.08, 13.09 and 13.10), encompassing a total of 2.39 acres of land. The original two lots were assembled and then re-subdivided for single-family residential development as a result of a 2008 settlement agreement with their owner, who was, at least at the time, also the owner of the Boulder Run Shopping Center. That settlement agreement resulted in 16 affordable family rental units being developed on the Boulder Run Shopping Center property (Block 216.01, Lot 24.01). These particular lots have remained undeveloped, however.

They would be rezoned to allow apartments to be developed above an appropriately sized commercial component, instead of the single-family zoning that is currently applicable. The lots have no environmental constraints, but the permitted residential density will be subject to the limitations imposed by the size of the commercial use and its parking demands, which will constrain the overall size of the building that can be built and determine how many apartments can be provided on the upper levels. It is currently anticipated that the yield would be about 12-18 apartment units, including 2-3 affordable apartments, in addition to the ground floor commercial component. This translates into a maximum residential density of 8 units per acre, with the commercial component added onto that.

4. Inclusionary residential zoning on a portion of the Maple Lake property off Cedar Hill Avenue (Block 320, Lots 10.02 and 11). Canterbury Development Corp. ("Canterbury") is the owner of that property. Canterbury intervened before the Court in the Township's declaratory judgment action. Mediation ensued under the guidance of the Court-appointed Special Master, and a settlement was ultimately reached as to the disposition of the Maple Lake property.

Most of the property will be acquired by the Township as permanent public open space. The southernmost portion of property, closest to Cedar Hill Avenue, and accessed only from Maple Drive, will be rezoned to permit the construction of sixty (60) luxury apartments or condominium units, of which 15% or 9 will be reserved as affordable family rental units (2 very low, 3 low and 4 moderate, distributed as evenly as possible among the

required bedroom mix for the affordable units of 2 three-bedroom units, 1 one-bedroom unit and 6 two-bedroom units. All of this development will occur in a limited and clearly delineated portion of the site.

The settlement with Canterbury resolves a long-standing concern over the eventual disposition of this property, which is severely constrained by steep slopes, wetlands and flood plain areas throughout much of the site. The pockets of "developable land" on the site are not easily accessed without substantial disturbance to environmentally sensitive areas. The decision to allow development in the more accessible and somewhat less constrained southern tip of the site, in exchange for an agreement to sell the balance of the site to the Township as open space, helps the Township to secure most of the site as conservation and passive open space, which has been a long standing recommendation of the Planning Board and Township Committee, while still addressing the need for affordable housing, particularly affordable rental units for families

5. Overlay zoning on several lots (Block 224, Lots 1.01, 2.01, 3, 4, 6.01, and 7, which are currently developed, and Block 224, Lot 5.01, which is vacant), all located along the south side of West Main Street. The developed lots contain small industrial uses and parking that, in combination with vacant Lot 5.01, might well be ready for privately initiated inclusionary residential redevelopment assuming the assemblage of some, several or all of these parcels. The lots to the west of these parcels are all residentially developed. The West Main Street lots together total 4.0 net developable acres (nearly half of Lot 5.01 is constrained by flooding). With overlay zoning permitting consolidation and redevelopment at a density of 12 units per acre, the total yield of all of these lots, taken together, would be about 48 units, 10 of which would be affordable (based on a 20 percent set-aside, rounded up).

To achieve this development and also accommodate required parking, it will be necessary to permit parking within the building on the ground floor level with two stories of apartments above. It is intended that the third story be created within the roof space over the second floor to reduce the appearance of height without sacrificing roof pitch, in consideration of the single-family homes to the west, although it is acknowledged that these homes already sit at a higher elevation than the West Main Street lots.

6. Overlay zoning on the Bergen Brick and Tile Property (Block 202, Lot 78.01) that would permit mixed use development, with ground floor retail uses plus one story of apartments above that facing Wyckoff Avenue, and one level of parking within the building plus two stories of apartments in the rear. With overlay zoning permitting a gross residential

density of 15 units per acre, it is anticipated that this 2.0 acre site will yield a total of 30 apartments, of which 6 will be affordable, based on a 20 percent set-aside.

7. Overlay zoning on three properties, including a Chevrolet dealership and two large industrial properties located in the southwest corner of the Township (Block 517, Lot 3.01, and Block 516, Lots 6.03 and 6.04). Currently, the two industrial lots are actively used for industrial purposes (they are owned by Maarten's Farm, LLC, and Precision Multiple Controls), but in the future, they may no longer be so.

If these sites were to be redeveloped for inclusionary residential development at a gross residential density of 16 units per acre, it is estimated that they would yield up to 270 total units, of which 54 would be affordable, based on a 20 percent set-aside. Wyckoff will place an overlay zone on these properties to ensure that when redevelopment of these properties is ready to occur, inclusionary development with affordable housing available to families will be produced. It is intended that Block 517, Lot 3.01, currently developed with the Chevrolet dealership, will include non-residential development on the ground floor facing Goffle Road.

It is intended that building heights within this overlay zone will be varied such that two or two and a half story buildings will be constructed adjacent to existing single-family dwellings at the perimeter of the overlay zone and that three story buildings will be permitted to be constructed internally to the overlay zone.

Intrinsic to the ability to redevelop these sites without undermining the surrounding single-family residential neighborhoods will be the incorporation into the overlay zoning standards of a strong set of buffering standards and a prohibition against access through any of the abutting residential cul-de-sac streets.

8. Overlay zoning on the Wyckoff Shopping Center property (Block 235, Lot 3). The rear of this 2.42 acre site is committed for use as parking for the adjacent park. If this property were permitted to have a full second story added to its roughly 28,000 square foot ground floor, with such second floor to be used only for apartments, it is estimated that 22 apartments could be created on the second floor, keeping the ground floor for the retail and service businesses that are currently permitted. A total of 22 apartments translates to a gross residential density of 10 units per acre calculated on just the 2.16 acre portion of the site that is used for commercial purposes (i.e., excluding the public parking area). An affordable housing yield of 5 affordable units is anticipated (based on a 20

percent set-aside, and rounding up). Wyckoff will place an overlay zone on this property to ensure that should the owner/developer decide to add a full second story to the existing building or to a replacement building of similar size, inclusionary residential development with family affordable housing will be produced.

9. Adoption of a Mandatory Set-Aside Ordinance designed to capture an affordable housing set-aside (which Wyckoff would require to be for families as opposed to seniors) whenever higher density multi-family residential development or redevelopment occurs. The provisions of the Mandatory Set-Aside Ordinance will provide as follows:

A mandatory set-aside requirement of 20% (if the affordable units will be for sale) and 15% (if the affordable units will be for rent) shall be imposed on any multi-family residential development created through any Township or Board action involving a rezoning, use variance, density variance, redevelopment plan or rehabilitation plan permitting redevelopment that provides an incentive in the form of an increase in the density on a site, which density is at or above six (6) units per acre and results in the construction or creation of five or more new dwelling units. This requirement does not affect the requirements for production of affordable housing on sites that are zoned for inclusionary development as part of the Plan, which shall be developed as provided under the zoning or overlay zoning enacted for those sites. **This requirement does not give any developer the right to any such rezoning, variance or other relief, or establish any obligation on the part of Wyckoff Township to grant such rezoning, variance or other relief, nor does it suggest that a density of six (6) units per acre provides a sufficient financial incentive for inclusionary residential development in all cases.** A property shall not be permitted to be subdivided so as to avoid meeting this requirement.

The 2018 Amendment to the Master Plan Land Use Plan Element incorporates recommendations for the preparation and subsequent adoption of the nine (9) zoning amendments described above, which zoning amendments are needed to implement the 2018 Third Round Housing Element and Fair Share Plan. It is recommended that the 2018 Amendment to the Master Plan Land Use Plan Element be adopted. It is also recommended that the 2018 Third Round Housing Element and Fair Share Plan be adopted.