

**2020 Master Plan Reexamination Report
Master Plan Update
Township of Upper
Cape May County, New Jersey**

Adopted after a public hearing of the
Township of Upper Planning Board on _____ by Resolution # _____

Certified by the Pinelands Commission on _____

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Township of Upper
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INTRODUCTION

A vital part of any Municipality's future is its Master Plan. The Master Plan enables a municipality to plan for its future growth. A Master Plan is not a static document and should be reviewed on a periodic basis in order to address changes that inevitably occur as a municipality grows. Recognizing this, the Municipal Land Use Law (N.J.S.A. 40:55D-89) requires a re-examination of the master plan to be completed every ten years. The report must state the major land development problems and objectives present when the last report or plan was prepared and the status of these conditions today. The report must also make any recommendations for changes to the master plan or development regulations that would further achieve the original goals or address any significant changes that have occurred since the last report was adopted. This report is separated into five sections addressing each element required by the Municipal Land Use Law.

The following planning documents have been adopted:

- Master Plan Reexamination Report, Adopted 2011
- Affordable Housing Trust Fund Spending Plan, adopted December 2008, amended April 2012
- Traffic Analysis Report (Upper Township Form Base Code), November 2012
- Application for Access Classification Change for Marmora Town Center, December 2012
- Land Use Changes and Zone Change, 2014
- All-Hazards Mitigation Plan adopted in June 2016
- Annual Update to the All-Hazard Mitigation Plan, October 2017
- 2018 Master Plan Reexamination Report and November 2018 Amendment
- Complete Streets Policy by the Township Committee on August 12, 2019

This report is being prepared subsequent to the 2018 Reexamination Report. The findings in the 2018 report remain valid, however over the past year there have been several developments within the Municipality which were not fully addressed or known in the prior report. These include impacts from the Township's Affordable Housing Plan, Planning concerns in the Strathmere area; and ownership/land use issues surrounding the BL England property. These are Township issues which impact the community as a whole and should be addressed accordingly through the Master Plan Reexamination Process.

**PART I:
MAJOR PROBLEMS AND OBJECTIVES**

40:55D-89.a.

The major problems and objectives relating to land development in the municipality at the time of the adoption of the 2018 Master Plan Reexamination Report.

The last Reexamination Report was adopted in 2018 and several items were identified as problems and objectives at that time.

Marmora Town Center

A new Marmora Town Center District was created to provide for mixed-use development throughout the area as part of the implementation of the Housing Element and Fair Share Plan. The intent is to permit a mix of commercial and residential uses while creating a Route 9 streetscape which is walkable and incorporates the village and walking atmosphere of a downtown area. The new Marmora Town Center zoning district ordinance was proposed in the Housing Element and Fair Share Plan and adopted.

Strathmere

The Township has seen a recent increase of development in the Strathmere area. The size of the structures has raised some concerns. The Township believes there should be an appropriate balance in the development and controls should be reviewed to reduce overbuilding. Some items of concern include the size and the height of the structures and lot coverages. The Township is also concerned with the creation of duplex units and multiple families in a single unit. All of these items should be reviewed and controls created accordingly to preserve the character of the Strathmere area.

Affordable Housing

The Township updated their affordable housing ordinances, affirmative marketing plans and development fee ordinances in accordance with the recommendations and ordinances pursuant to the approval of the Housing Element and Fair Share Plan. This includes the amendment to the Zoning Map to create the new Marmora Town Center District as discussed above.

Plan Endorsement

The Township was granted Plan Endorsement in February of 2007 from the State Planning Commission. Subsequently the Township adopted extensive land use and zoning amendments. As a condition of the Plan Endorsement the State Planning Commission required Biennial Reviews. The Township has completed its last Biennial Review on February 17, 2011.

**PART II:
CHANGES SINCE LAST REPORT**

40:55D-89.b.

The extent to which such problems and objectives have been reduced or have increased subsequent to the adoption of last 2018 Master Plan Reexamination Report.

Strathmere

The Village of Strathmere has seen an increase of redevelopment. The Township has worked with the local community in Strathmere to develop regulations to control the bulk dimensions of new structures. These meetings with members of the local area have resulted in additional concerns which are recommended for implementation that have extended beyond what was envisioned in the 2018 Reexamination Report. Items addressed and discussed later in this report include Floor Area Ratio standards and regulations for roof-top decks, landscaping and stormwater control.

Additionally, there have been changes to the standards regulating the construction of wastewater systems. These changes will result in the need for walls to surround the septic areas on residential lots. As such, it is appropriate to review the local impacts and ordinances to determine if ordinance amendments are warranted to address the changes to the regulations.

BL England

The B.L England Facility consists of approximately 487 acres of land located in the northern section of the Township to the west of Route 9 at the terminus of the former Beasley's Point Bridge. The B.L. England facility formerly operated as a coal and oil electrical generating system. The facility, which had operated for over 50 years, closed in early 2019 and was decommissioned. The plant also included a nine-hole golf course which was closed in 2008.

The B.L. England facility was the source of significant tax revenues over the years. With the closure of the facility, the appropriate reuse/redevelopment of the property is important. The site has been identified to contain soil and ground water contamination and remediation is ongoing pursuant to NJDEP regulations. These conditions must be taken into consideration as the municipality works toward ensuring the appropriate reuse/redevelopment of the property.

Housing Plan

The Township had prepared and adopted a Round Three Housing Element and Fair Share Plan on December 18, 2008. The Council on Affordable Housing (COAH) had determined the Township's petition as complete. The Supreme Court invalidated the most recent version of the regulations adopted by the New Jersey Council on Affordable Housing ("COAH") on September 26, 2013 in In re Adoption of N.J.A.C. 5:96 & 5:97 by NJ Council on Affordable Housing, 215 N.J. 578 (2013), this Affordable Housing Plan comports with COAH's rules at N.J.A.C. 5:91 et seq. and N.J.A.C. 5:93 et seq., and subsequent applicable laws and regulations such as amendments to the FHA, therefore the adopted Housing Element and Fair Share Plan was not certified by COAH.

Accordingly, the Township filed a Declaratory Judgment action in July of 2015 in accordance with the NJ Supreme Court's March 10, 2015 decision. As a result of this filing the Township entered into a Settlement Agreement with Fair Share Housing Center which was approved by the Court at a Fairness Hearing under Docket CPM-303-15 on April 10, 2018. The implementation of the agreement includes the adoption of a new Housing Element, Fair Share Plan and Spending Plan. The Housing Plan includes the recommendation to create a new Marmora Town Center Zoning District to address the Township's affordable housing obligation. These ordinances were adopted, however additional changes are required to fully address the terms of the Settlement Agreement.

Public Access / Recreation Plan

The Township has prepared a comprehensive public access plan which lays out a vision for providing access to tidal waters and shorelines within the municipal boundary. This Municipal Public Access Plan (MPAP) was developed in accordance with the Coastal Zone Management Rules. The development and implementation of this MPAP supports the policy of local determination of public access locations and facilities, while safeguarding regulatory flexibility.

The New Jersey Department of Environmental Protection (DEP) encourages municipalities to develop and adopt MPAPs to govern public access. The MPAP consists of an inventory of public access locations and plans to preserve and enhance access based on community needs and State standards.

The plan has been developed in collaboration with the DEP, the Planning Board, Strathmere Improvement Association, Strathmere Fishing and Environmental Club, Green Team and was

presented to the Planning Board on 10/17/2019 and approved for submission to the DEP at the Planning Board on February 20, 2020 . Upon receiving approval from the DEP, the MPAP will be incorporated into the Recreation Element of the Master Plan. All public access decisions made within Township of Upper after the adoption of the Public Access Plan will be consistent with this plan. A copy of the Public Access Plan is included in the Appendix of this report.

**PART III:
CHANGES IN ASSUMPTIONS, POLICIES AND OBJECTIVES**

40:55D-89.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:

Plan Endorsement

The Township has not completed any recent Biennial Reviews. The Township is currently taking the necessary steps to extend their Plan Endorsement with the Office of State Planning. The Township's State endorsed centers are set to expire on June 30, 2020. The Township has decided to pursue extending their Plan Endorsement for the designated areas under the jurisdiction of the State Plan. This decision will protect the planning and designations of centers and development areas that were completed through the original Plan Endorsement process.

The Township participated in a pre-petition meeting on June 26, 2019 where the Township meet with representatives from the various State Agencies including State Planning, Environmental Protection, Transportation and Emergency Management. The following items were discussed as action items for the Township's Plan Endorsement update process:

- Review Center Boundaries within the 2' Sea Level Rise and 100-year flood zone
- Work on a water supply plan which would need coordination with the New Jersey American Water Company
- Review ordinance adoption for wellhead protection, riparian zone and water conservation
- Incorporate the Township's Getting to Resiliency Report (GTR) into the Master Plan under the Conservation Plan Element and encouraging municipal decisions to consider the GTR report. (Upper Township "Getting to Resilience" Recommendations Report, Prepared by the Jacques Cousteau National Estuarine Research Reserve, dated April 2015)
- Update the Transportation Element of the Master Plan to reflect adoption of the Complete Streets Policy by the Township Committee on August 12, 2019.

Marmora Town Center

A Marmora Town Center District was created to provide for mixed-use development throughout the area as part of the implementation of the Housing Element and Fair Share Plan. The ordinance is part of the Court Approved Durational Adjustment, which means that the development requires sewer infrastructure in order to be realized. There is currently no public sewer in Marmora and until such is extended or unless community wastewater treatment facilities are constructed, the Town Center development will not be realized.

In accordance with an approved Settlement Agreement with Fair Share Housing, the ordinance is being amended to address the proportion of residential to non-residential land uses. The ordinance continues to permit a residential density of up to 12 units per acre with an amended requirement to include non-residential land uses as part of every development proposal at a ratio of 60% residential to 40% non-residential. Once the Township meets the required 295 affordable housing units in the town center area, the proportion of non-residential land uses may be revised.

Strathmere

Over the past year the Township Planning Board has worked with members of the Strathmere community to update the current land use ordinances regulating development on the island. There are unique conditions that influence development on the island that are not present on the mainland and this has resulted in special attention to portions of the land development ordinances.

In Strathmere there is a concern over the size of the structures that are being developed. Some of the impact is directly correlated to the need to increase the height to meet flood hazard standards. The community believes there should be an appropriate balance in the development controls to reduce overbuilding. Some items of concern include the size and the height of the structures and lot coverages. The Township is also concerned with the creation of duplex units and multiple families in a single unit. All of these items should reviewed with an aim towards preserve the character of the Strathmere area.

**PART IV:
RECOMMENDED CHANGES**

40:55D-89.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.

Marmora Town Center

Amend the Marmora Town Center District to address the proportion of residential to non-residential land uses. The ordinance continues to permit a residential density of up to 12 units per acre with an amended requirement to include non-residential land uses as part of every development proposal at a ratio of 60% residential to 40% non-residential. Once the Township meets the required 295 affordable housing units in the town center area, the proportion of non-residential land uses may be revised. The development intensity proposed in the Marmora Town Center is predicated on the availability of public sewer or treatment plants.

The Marmora Town Center ordinance is also being amended to clarify the permitted uses and the mixed-use requirement. The permitted land uses from the Table of generalized uses in the ordinance do not reflect the intent and purpose of the district. More specifically, the ordinance needs to clearly address the mixed-use requirements. The purpose of the district is intended to promote a desirable mix of commercial, office, civic and inclusionary residential land uses within a vibrant, pedestrian-friendly, village environment with an emphasis on uses that service local needs. It is intended to encourage pedestrian flow throughout the area by generally permitting stores and shops and personal service establishments on the ground floor of buildings and promoting the use of upper floors for offices and inclusionary residential dwelling units in order to enhance the orientation of land uses toward pedestrian shopping and circulation within a village-style mixed-use environment. The district promotes a denser development through the use of community wastewater treatment facilities or sanitary sewer connection. The MTCD District is intended to create a variety of residential housing densities and options including affordable housing units. The MTCD district is further intended to promote non-residential development and balance the mix of residential to non-residential uses.

Strathmere

With the cooperation of the Strathmere subcommittee the following items were proposed in a comprehensive ordinance to address new residential construction in Strathmere.

- Building Height – specifically the roof top access points and enclosed cupolas that acted as a “third floor” are proposed to be restricted so that there is a consistency of building height across the island.
- The amount of habitable space in the residential units – and conversions of storage space to habitable space on the ground floor is proposed to be addressed through the use of a Floor Area Ratio (FAR). The purpose of the FAR is to control the habitable space within the building and to encourage the use of decks and open porches in building design. All habitable space above Flood Elevation is included in the FAR and an exception is made for decks and porches.

If a property owner elects to enclose a deck or porch in the future they will have to meet FAR or request a variance. The intent here is to make the enclosing of space more difficult and encourage the architectural interest in the building façade.

- The desire to ensure architecturally desirable buildings in terms of encouraging outdoor decks so that flat walls were not the dominate design pattern.
- The need to elevate homes so that future improvements can be made to local roadways in terms of flood protection.
- The ordinance creates a conditional use in the RC zone (the commercial area) for residential uses. The issue here was that property owners were requesting variances to build a residential structure to conform to the RC standards. This permitted larger homes and increased coverages. To keep the residential development consistent throughout Strathmere the RC zone permits residential development as a conditional use provided it meets all the requirements of the RR zone as we are amending in this ordinance.

- The ordinance includes stormwater management controls and requires a minimum ground floor elevation for garages. This is to ensure that future roadway improvements to address flooding can be completed.

The process of preparing the proposed ordinance included a thorough review of all the concerns and development patterns. There were various factors to consider including the importance of ensuring all new construction met flood protection standards. The final draft of the ordinance balanced many opinions and concerns to create what we feel is an improvement to the current development trends. The proposed ordinances for Strathmere are included in the Appendix of this report.

BL England

The BL England property sits along the water with redevelopment opportunities. The site should be considered for an advanced Redevelopment Designation. In the interim, the current zoning is recommended to be changed from the current Center Residential (R) and Utility (U) to a new Waterfront Town Center (WTC) {Utility to WTC Block 479, p/o lots 76 & 76.01} {R to WTC Block 479, Lots 107 107.01, 108, 108.01, 106.2 and p/o Lots 76 & 76.01} and the balance of the golf course area from the Residential (R) to Recreation and Park (RP) {Block 479, p/o Lots 76 & 94.01}. The proposed WTC district would also incorporate the existing Town Center (TC) on the eastern side of Route 9 {Block 682 Lots 1, 2 & 3 and Block 683, Lots 2, 3, 4, 5, 7} to create one single comprehensive Waterfront Town Center District. (The exact changes are shown on the proposed Zoning Map)

The new Waterfront Town Center (WTC) district would permit marina and resort-oriented entertainment uses. This would include restaurants, retail, recreational marinas, hotels, and other similar resort-oriented uses. The WTC district would also permit the existing substation area to remain and allow for a new substation if needed for future off-shore wind-generating electrical uses. The substation would be considered a conditional use and the ordinance would include siting and location standards to ensure that these uses would not interfere with the overall redevelopment of the tract.

The following is a draft ordinance for the new district:

20-4.22 "WTC" Waterfront Town Center.

- a. *Purpose.* The purpose of the "WTC" District is intended to promote the redevelopment of the BL England property and surrounding area while promoting the waterfront area. Existing land uses enhancing the waterfront area include restaurants, beach access, and water related recreational rentals.
- b. *Goals.* The goals of the "WTC" District include an appropriate reuse and/or redevelopment of the existing BL England property.
- c. *Permitted Principal Uses.*

The permitted principal uses pertaining to the "WTC" District are as follows:

- 1. Recreational Facilities and Entertainment uses
 - 2. Jet-ski rental facilities
 - 3. Restaurants
 - 4. Retail stores and personal service uses.
 - 5. General or professional offices.
 - 6. Hotels and Motels including ancillary uses such as conference halls, banquet rooms, and recreational facilities.
 - 7. Parks, plazas and playgrounds.
 - 8. Building structures and uses owned or operated by the Upper Township for municipal purposes.
- d. *Permitted Accessory Uses.* The permitted accessory uses are as follow:
 - 1. Marinas
 - 2. Recreational and/or open space facilities, including, but not limited to, walkways, courtyards and plazas.
 - 3. Off-street parking and loading located to the rear of principal buildings or appropriately screened from public view.
 - 4. Signage standards shall be compatible to the architectural design of the buildings. Monument signs, wall and hanging signs shall be limited in size and compatible with the pedestrian scale of the center. Pylon signs are prohibited.
 - 5. Street furnishings, planters, street lights, and exterior, garden type, shade structures (gazebos).
 - 6. Outdoor cafes associated with permitted restaurants.
 - 7. Fences and walls, which shall complement the architectural style, type and design of the building and the overall project design.
 - 8. Decks, patios and terraces, which shall complement the architectural style, type and design of the building and the overall project design.
- e. *Permitted Conditional Uses.*
 - 1. Electrical Substations

- a. The total land area devoted to electrical substations shall not exceed 10 acres.
- b. Electrical substations are permitted but must be located at least 1,200 feet from the most waterward side of Lot 76.01 and 1,400 feet from North Shore Road.
- c. Any new connections to the existing or future substations shall be underground.
- f. *Area and Yard Requirements.* The area and yard requirements pertaining to all permitted uses within the "WTC" District are provided on Schedule C Area and Yard Requirements for Zone Districts except as modified or supplemented by this section.

Recreation Plan

It is recommended that the Public Access Plan as included in the Appendix of this report be incorporated into the Recreation Element of the Master Plan upon the Public Access Plan receiving approval from the DEP. The Public Access Plan was developed in collaboration with the DEP, the Planning Board, Strathmere Improvement Association, Citizens for Strathmere & Whale Beach, Green Team and was presented to the Planning Board on 10/17/2019 and approved for submission to the DEP. All public access decisions made within Township of Upper after the adoption of the Public Access Plan will be consistent with this plan.

Affordable Housing

The Township will need to amend the approved Spending Plan to include proposed expenditures as per the approved Housing Element and Fair Share Plan. These amendments are more technical as the projects proposed remain consistent with the approved Housing Element and Fair Share Plan. The Township has already updated their affordable housing ordinances, affirmative marketing plans and development fee ordinances in accordance with the recommendations. These updates also included the amendment to the Zoning Map to create the new Marmora Town Center District as discussed above.

Conservation Plan

To begin the resiliency planning process Upper Township participated with the NJ Resilient Coastal Communities Initiative and worked with the Jacques Cousteau National Estuarine Research Reserve to access the Township utilizing the Getting to Resilience A Community Planning Evaluation Tool and they prepared The Upper Township Getting to Resilience Recommendations Report "GTR" which can be found at <http://www.prepareyourcommunitynj.org/case-studies/>. The GTR was presented to the Planning Board and Township Committee. To become more resilient Upper Township should

consult the results of the GTR to make sure future conditions are considered when making future planning decisions.

Transportation Plan

It is recommended that the Complete Streets policy be incorporated into the Transportation Plan. All new transportation projects that impact any Right-of-Way made within Township of Upper will be consistent with this plan and the adopted Complete Streets Policy.

**PART V:
REDEVELOPMENT PLANS**

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The recommendations of the Planning Board concerning the incorporation of redevelopment plans adopted pursuant to the “Local Redevelopment and Housing Law,” 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 of Upper does not have any Redevelopment Areas. The Township is considering the possibility of creating a Redevelopment Designation for the Marmora Town Center and for the B.L. England Property. These areas provide redevelopment opportunities which would benefit the entire community.