

SUMMARY

Hopewell Township in many ways boasts not only the best of central New Jersey, but also the best of the American dream – rolling rural vistas where kids can run or ride horses after school, small towns where neighbors shop and turnout for holiday parades, and working farms.

By October 2000, Hopewell Township will also be home to the first phase of a Merrill Lynch office complex the size of 10 Home Depot Stores, drawing 3,500 employees daily. When fully completed, the multi-user two-campus complex with its hotel and other business amenities will be roughly the size of 35 Home Depot stores, and will employ some 10,000 permanent employees: a working population nearly equal to the current residential population of its host community Hopewell Township.

The impact of this development has been felt far beyond the 450 acres now under construction. Local citizens outraged by the project's expected impacts turned out local officials in late 1998 and early 1999 and elected the township's first Democratic majority in two decades. The Governor herself, who demonstrated her support for the project 18 months earlier when she waived her right to veto sewer financing, startled a Princeton University audience in May 2000 by acknowledging publicly that "Frankly, (the Merrill Lynch) development is a prime example of the kind of thing that probably would not have happened with (new wastewater) rules."

Though public sentiment and controversy suggest otherwise, the Merrill Lynch project is the end result of some 25 years of zoning and planning, much of it regional in scope, involving a patchwork of state, county, corporate and local agencies, each focused on its own expertise and needs. As a result, it offers a textbook case study of the flaws in New Jersey's unruly system of land-use governance with its myriad municipal governments, school districts, municipal and regional sewer utilities, and state agencies, so many of which have a role in development decisions.

This case study illustrates both the difficulties in the current decision-making process for major region-shaping projects in New Jersey; and gives insight into the specific public policy changes that could make the system work to the better advantage of citizens, communities, business and government alike. Such policy changes include: improving each municipality's capacity to accommodate growth; offering economic incentives and compliance requirements for local consistency with the State Development and Redevelopment Plan; requiring zoning and planning that embrace "how" and not merely "where" growth should occur; and sharing of taxes among municipalities to encourage greater regional distribution of the benefits – and costs – of development.

BACKGROUND

The Merrill Lynch development is located on a 450-acre site in Hopewell Township, NJ, just off interstate I-95 and roughly midway between Philadelphia and New York. Although a large township of more than 60.4 square miles, Hopewell Township is sparsely populated with only 236 persons per square mile – a fairly low density for New Jersey, which averages more than 1,000 persons per square mile, and in fact has the lowest population density in Mercer County. According to 1990 US Census figures, 80 percent of Hopewell Township's 11,500¹ people live in an area classified by the census as rural. It is precisely this rural image that many residents are drawn to and hope to preserve into the future.

The land in question was originally owned by Bristol-Myers – later merged to become Bristol-Myers Squibb (BMS). BMS began marketing the site in the mid-1990s, once the company determined that it did not require the property for expansion, deciding instead to plan its expansion in another portion of the Township. In order to make the site attractive to purchasers, BMS sought to secure sewer service for the property making the land more developable. In January 1997, the Ewing-Lawrence Sewerage Authority (ELSA) agreed to reserve – for 10 years – 330,000 gallons per day of its capacity for the 450-acre tract. In October 1997, BMS and Merrill Lynch entered into a purchase agreement that was finalized in April 1999, once all necessary approvals and permits were granted to the project.

25 Years of Planning

There were many land use plans at a variety of levels of government in place related to the development of the land in question, and the Township as a whole. The Merrill Lynch project seemed to both conform and conflict with several of the plans. Much of the planning took place in the late 1980s and early 1990s, reinforced by local participation in the establishment of the first State Development and Redevelopment Plan (State Plan) in 1992.

As early as 1974, Hopewell Township had designated the Merrill Lynch site along I-95 as suitable for large-scale development. The property's "I-500" designation was for an industrial zone that allowed scientific research labs, light machinery operations, warehouses, and business/office uses on lots with a minimum of 20 acres. The Hopewell Township Zoning Ordinance was later amended, and by 1991 the property was rezoned as "IOP-G," or industrial office park. The G suffix indicated a requirement for assisting in the development of lower-income housing within the Township. The purpose of the IOP district was and is to "establish an area where industries, warehousing, and office-oriented businesses not involved with retail sales may be located". These districts have been identified as emerging employment centers with highway access and major tracts of land available for development².

Mercer County also had plans for the Merrill Lynch site. Under the Mercer County Growth Management Plan, the site was designated as a Regional Growth Area (RGA). This plan was adopted in 1986 "with the intent to guide land development in such way as to preserve and enhance the county's existing communities, economy, and quality of life." It "represents the master plan for the physical development of Mercer County required under the New Jersey County Planning Act and incorporate[s] county functional plans for transportation, recreation, water quality management, and other county responsibilities"³.

The plan breaks the county into three areas: Growth Areas (urban, regional, suburban), Limited Growth/Agricultural Areas, and Special Areas (conservation, Village Centers). The idea is to direct growth into those areas with the necessary infrastructure in place or available.

Approximately 60 percent of Mercer County is considered to be within some sort of Growth Area. Such areas are to “include substantial amounts of ‘developable’ land served by infrastructure with existing or proposed capacity to sustain forecasted rates of new development”⁴. The development intensity suggested for the RGAs is 5 or more dwelling units per acre for residential and 32,000 or more square feet per acre for non-residential uses. The county’s Growth Management Plan also encourages – where appropriate – high-intensity, mixed-use development and prioritizes “public investments to establish, maintain, and improve growth-inducing infrastructure in the Regional Growth Areas”⁵.

CHRONOLOGY OF LAND USE PLANS IN HOPEWELL TOWNSHIP

- 1974** Hopewell Township zoning ordinance designates Merrill Lynch site as I-500, industrial zone allowing for business/office uses. By 1991, zone changed to IOP-G, industrial/office Park.
- 01/1986** . . Mercer County releases its Growth Management Plan that designates the Merrill Lynch site as a Regional Growth Area.
- 12/1987** . . MSM Regional Council (now Regional Planning Partnership - RRP), an independent civic planning organization, issues a revised Regional Forum report that shows the Merrill Lynch site as the proper location for a Prospective Regional Center.
- 03/1989** . . First State Plan cross-acceptance meeting in Hopewell Township.
- 04/1990** . . Mercer County Transportation Development District (TDD) Plan for the I-95/295 Corridor sets boundaries that include the Merrill Lynch site.
- 03/1991** . . Hopewell Township amends its Wastewater Management Plan to include the Merrill Lynch site into the Ewing Lawrence Sewerage Authority's sewer service area.
- 06/1992** . . The State Development and Redevelopment Plan (State Plan) and the Resource Planning and Management Map (RPMM) are adopted. The Merrill Lynch site is included in the Metropolitan Planning Area (PA1) and is identified as a potential Planned Regional Center.
- 12/1992** . . Hopewell Township Land Use Element with its Master Plan cites the Scotch Road area as an "excellent location for an employment center" and calls for more intense development in places such as the I-95 "regional center".
- 03/1998** . . Hopewell Township and Merrill Lynch sign off on a general development contract that remains valid for 20 years

The idea of the Merrill Lynch site as a prospective regional center also emerged from the MSM Regional Council (now Regional Planning Partnership), an independent civic planning organization, and its Regional Forum in their report entitled "An Action Agenda for Managing Regional Growth". The motivation behind the report (issued in 1987) was a concern for the drastically increased rate of

growth within central New Jersey. Five particular areas formed the base for their recommendations, namely: land use, environment/infrastructure, transportation, economic development, and growth management. Similar to the County's Growth Management Plan, the "Action Agenda" called for "a new pattern of development which would increasingly concentrate development and redevelopment in mixed-use centers and neighborhoods... The centers would be located in areas that are well situated with respect to transportation, sewerage and other infrastructure"⁶. The "Action Agenda" included the Merrill Lynch site within an area deemed appropriate for a prospective regional center.

The Merrill Lynch site also fell within the purview of the 1990 Mercer County Transportation Development District Plan for the I-95/295 Corridor. The Transportation Development District Act of 1989 (NJSA 27:1C-1) provides for the assessment of fees for off-tract transportation improvements. The act gives counties the power to establish Transportation Development Districts (TDDs) with the cooperation of NJDOT and the private sector. The fees assigned are based on a formula that assesses the developer according to their "fair share" of transportation improvements.⁷ (According to the Hopewell Township resolution for the general development plan, the TDD fee for the Merrill Lynch proposal is \$983 per peak hour trip generated, which amounts to approximately \$10.8 million. Merrill Lynch will meet nearly half of this obligation via actual construction of improvements on Scotch Road and the intersection with Washington Crossing-Pennington Road.⁸)

The transportation development plan was assembled using a Joint Planning Process (as required by the TDD Act) that provided for all levels of government, citizens, and the private sector to participate in its development. Hopewell, Ewing, and Lawrence Townships each have portions of their communities within the district and each participated in the planning process. The existing zoning within these townships as well as current development proposals were used to estimate the future demand on the transportation systems within the district. "The boundaries were originally proposed by the County to generally coincide with areas in the Wastewater Management Plan Amendment approved by NJDEP".⁹ Essentially, the creators of the transportation plan looked at current conditions, projections, and land use/sewer plans to determine the transportation needs of the district through 2010.

In March 1991, Hopewell Township's Wastewater Management Plan was amended to incorporate the southeastern portion of the Township, including the Merrill Lynch site, into Ewing Lawrence Sewerage Authority's (ELSA) sewer service area. As part of the justification for the decision, it was determined that "the proposed service area [was] consistent with Township zoning."¹⁰ It is important to note that Hopewell Township is not a member of ELSA, and "developers must contract on a case-by-case basis for capacity".¹¹ Such was the case with this amendment to the Wastewater Management Plan.

Though county and civic organizations may have envisioned a more community-centered, mixed-use type of development of the site, Hopewell Township's own Master Plan adopted in 1992 simply designates the Merrill Lynch site as suitable for industrial/office/flex-space. It states, "The Scotch Road area is an excellent location for an employment center because of its access to Route 95, access to the railroad, proposed water and sewer services, and convenience to the Township's high density residential areas (22)". The plan suggests a maximum floor area ratio (FAR) – the ratio of the gross floor area of a building to the land area of its lot – of 12 percent, a typical percentage in New Jersey "due to the tradition of campus-like office parks, and low-rise retail and commercial structures".¹² A

modest FAR bonus is allowed in exchange for participation in the Township's affordable housing program.

Also in 1992, New Jersey's long-awaited State Development and Redevelopment Plan was adopted. The Plan accepted the vision of the local and county plans for the Merrill Lynch tract through its cross-acceptance process. The map accompanying the State Plan identified the Merrill Lynch corner of Hopewell Township as suitable for intensive development with a "Planning Area 1" designation and a suggestion for a regional center designation. This characterization is usually reserved for already-developed urban areas. At the same time, the State Plan contained statewide goals and policies for preservation and development that would be countered by such an intense development of the Merrill Lynch site.

Planned office development at the site received its formal blessing in 1998 with a General Development Plan (GDP) contract between the Township and Merrill Lynch allowed under the Municipal Land Use Law. Merrill Lynch chose to exercise this option before purchasing the property, and the Township approved the GDP on March 23, 1998. The GDP allows the property owner to submit a general to the planning board that contains a variety of elements such as a general land use, circulation, open space, etc. It also requires submission of a fiscal report, proposed timing schedule and a municipal development agreement.¹³ Most significantly, once the GDP is approved, it gives vested rights to develop the site for 20 years.

THE MERRILL LYNCH PROPOSAL

The overall design concept for the Merrill Lynch project was agreed upon in the GDP contract between Hopewell Township and the developer. The plan for the Merrill Lynch project, also called the Scotch Road Office Park, is broken into six phases (1A, 1B, and 2 through 5) and two campuses, north and south. Each campus is described as being surrounded in "key buildable pockets with retail, commercial facilities, conference center, hotel, recreational, and light industrial uses. Each primary campus is to consist of concentric rings with the core area being designed open space".¹⁴ Although the project is described as having multiple users and uses, it is important to emphasize that they are private facilities. The retail and recreational components are intended to serve Merrill Lynch and other prospective tenants of the office park.

Phases 1A and 1B of the project consist of a total of eight office and four shared-assembly buildings. No structure exceeds four stories and building size ranges from some 100,000 to more than 200,000 square feet. Each of these linked, but independent buildings will face a 120-acre Campus Commons. According to the general development plan, Merrill Lynch intends occupy the first phases of construction comprising more than 1 million square feet in approximately five buildings each on its own separate lot. This portion of the development will house approximately 3,500 Merrill Lynch employees. In order to accommodate these employees as well as future tenants, more than 6,000 parking spaces – on-grade and in garages – are planned for these phases.

Phases 1A and 1B also require transportation improvements, namely the installation of a new cloverleaf interchange at I-95 and Scotch Road, the widening of Scotch Road into a divided, multilane road from I-95 to County Route 546, as well as the upgrade of sections of County Route 546. The improvements at I-95 will be funded by the NJ Department of Transportation and are estimated to cost more than \$15.8 million.¹⁵ The other work is to be funded mostly by the

Transportation Development District, into which Merrill Lynch has agreed to contribute more than \$10 million (half in the form of construction of actual improvements).

Subsequent phases will include the construction of the hotel, recreation center, conference center, research/development facilities, day care center, and other support uses, according to market demand. The agreement with Hopewell Township, as per planning board resolution 98-015, requires that the recreational facilities be available to the public on a limited basis. Merrill Lynch must also contribute \$285,000 toward the design and construction of a fire/rescue squad building within five years of final site plan approval for Phase 1A. One acre must also be reserved for the future train station along the Conrail line, potentially contributing to the revival of commuter service between West Trenton, Hopewell Borough, and Newark.

In September 1998, the Hopewell Township Planning Board granted final site plan and subdivision approval for Phase One of the Merrill Lynch development. By the following month, construction of storm water management detention basins for the office park began. To date, the road widening on Scotch Road and the construction of one office building and neighboring parking deck has commenced. The first office building is expected to be open by October 2000.

THE STATE PLAN CONTRADICTION

New Jersey's long awaited State Development and Redevelopment Plan was adopted in 1992, with a vision of development at the site so contradictory that eight years later, the State Plan would be cited by both sides in opposing and defending the development.

The State Plan is a policy guide for State, regional and local agencies and governing bodies to use when exercising their delegated authority. The Plan is intended to serve as a guide for state agencies in their decision-making. Executive Order 114, issued by Governor James Florio, directs all State departments and agencies to "adopt and incorporate as part of their agency programmatic mission, policies which comport with the State Plan and act in a coordinated fashion in investing resources at the State and local level in implementing the State Plan and achieving their programmatic missions."¹⁶ The Plan puts forward nine "State Planning Goals and Strategies" and calls for new development to be organized around existing and planned centers, thereby furthering the nine goals. The goals are as follows:

1. Revitalize the State's urban centers and areas
2. Conserve the State's natural resources
3. Promote beneficial economic growth, development and renewal
4. Protect the environment
5. Provide adequate public services at a reasonable cost
6. Provide adequate housing at a reasonable cost
7. Preserve and enhance historic, cultural, open space and recreational lands and structures
8. Ensure sound and integrated planning statewide
9. Achieve state planning goals by coordinating public and private actions to guide future growth into compact forms of development and redevelopment, located to make the most efficient use of infrastructure systems and to support the maintenance of capacities of infrastructure, environmental, natural resource, fiscal, economic and other systems.

These statewide goals are supplemented by specific policies that are connected to planning areas. The planning area concept is designed to recognize that difference policies and strategies need to be used to create an overall mechanism that encourages development in certain places and discourages it in others. Growth is to be channeled into areas with existing infrastructure, labeled Metropolitan Planning Areas 1 or 2, or into areas designated by the State Planning Commission as centers. The intended result: "smart growth" that maximizes the benefits of new development and maximizes the protection of New Jersey's resources. It is when this common sense approach is applied to specific places through the mapping process that it becomes most controversial and contradictions arise.

The Resource Planning and Management Map (RPMM) section of the 1992 State Plan designated the rural southeast portion of Hopewell Township (which includes the Merrill Lynch site) as a Planning Area 1. Most areas within PA 1 borders are, as described by State Plan, "fully developed, or almost fully developed, with little vacant land available for new development."¹⁷ The inclusion of southern Hopewell in this planning area seemed to ignore the fact that this portion of the Township had remained largely undeveloped. It also appeared to ignore that immediately adjacent to this PA1 area are Fringe and Rural Planning Areas (PA3 and PA4 respectively)¹⁸ where intense development is discouraged.

In addition to the PA 1 designation, the Merrill Lynch site was also identified as an area suitable for a planned regional center. According to the State Plan, Planned Regional Centers "should be located in the State's major corridors and designed to organize growth that otherwise would sprawl throughout the corridor".¹⁹ The site's proximity to I-95/295 coupled with its central location between New York and Philadelphia were likely integral factors contributing to its Planned Regional Center designation. However, this decision did not seem to account for the other centers nearby. No analysis has been undertaken as to how many centers can be sustained in a region without harming existing neighboring centers, in this case Ewing and Trenton. Nor has there been any projection or analysis about how much growth is expected in central New Jersey or where it could or should be accommodated.

Acknowledgement of the potential conflict with the regional center identification is found within the State Plan itself. The document directs that "Planned Regional Centers in the Metropolitan Planning Area should be carefully located, scaled and designed so as not to drain the economic growth potential of the Urban Centers".²⁰ The center's proximity to Trenton, especially with respect to the Merrill Lynch plans, clearly jeopardizes the economic potential of the distressed municipality. The location of a large, mixed-use employment center within eight miles of the State Capital would surely have a negative impact on the city's attempts at revitalization.

It is important to note that although the site was identified as a potential Planned Regional Center, the State Planning Commission as a Regional Center never officially designated it as such. Hopewell Township never entered into the designation process with the Office of State Planning. The State Plan calls for compact, mixed-use development within these centers. The guidelines for a Planned Regional Center in PA1 prescribe a mixed-use development with more than 10,000 residents and jobs, a gross housing density of more than 5,000 people per square mile (or three units per acre), and a jobs-to-housing ratio between 2-to-1 and 5-to-1. Access to a variety of public transportation options is also a significant component to the development of a regional center.

Hence the Merrill Lynch proposal does not conform to the State Plan ideal of a planned regional center. Given the Township's single-use plan for the site, it is unlikely that the Office of State

Planning would have granted a Planned Regional Center petition. The office park does not have the combination of uses (residential, retail, office), the density, the community component, or the links to public transportation in order to further the intent of the State Plan.

MERRILL LYNCH IN TRENTON?

A common criticism of the Merrill Lynch development in Hopewell Township is that the development could have been more beneficial if it had occurred in Trenton, a mere eight miles away. The public record of this decision does not indicate that Trenton was a possibility on the table for the state, county or Merrill Lynch.

Trenton has the most sophisticated plan for revitalization of any New Jersey city thanks to legislation passed in the Kean administration that established a state role in Trenton by creating the Capital City Redevelopment Corporation (CCRC). The corporation makes grants and loans for development projects, promotes activities that attract visitors, and encourages private sector investment in the capital district. These activities are carried out in accordance with a plan created by the nation's preeminent new urbanist architecture team, Andreas Duany and Elizabeth Plater-Zyberk.

The plan is detailed and has been influential in shaping important buildings and site improvements including the Mercer County Court House expansion and the Marriott Hotel now under construction. Despite these new buildings and others, such as State Street Square and Renaissance Center, there remains significant underutilized and vacant land available. Trenton's current planning and zoning does not allow for a 3.5 million square feet, multi-user facility on any one site. However, the city would be able to accommodate the approximate 1 million square feet of office space that Merrill Lynch intends to occupy. Buildings in the range of 400,000 square feet have been built on sites in the district. Additional sites are identified in the CCRC plan. While it would take initiative and cooperation by state and local government, a major private sector development is feasible in Trenton.

State Development Incentives

There were a variety of reasons behind Merrill Lynch's selection of Hopewell Township for its largest office park construction project to date. It is probable that geography, such as proximity to I-95 and Route 1, a central location between New York and Philadelphia, as well as large parcels of land available for construction were contributing factors in the company's decision to locate in the Township. Access to a large, professional labor pool is likely to have been another. (See Box: Corporate Location Decision-Making)

Clearly influencing Merrill Lynch's decision to locate in Hopewell Township were the State support and incentives granted for development in New Jersey. In announcing the move with a press release dated October 30, 1997, Merrill Lynch stated: "The selection of Hopewell, New Jersey [was] the result of the efforts of the Governor's Business Development Office, Hopewell Township, and Mercer County Economic Development."²¹ Subsidies included:

- Approximately \$225 million from the New Jersey Economic Development Authority (NJEDA) through the structured finance program.²² These funds are used toward the purchase of equipment, computers, and furniture for the company. The NJEDA, financed by a consortium of banks, purchases the materials and then leases them to Merrill Lynch. By leasing the equipment from a State agency, Merrill Lynch saves \$13.5 million in State sales tax.
- A second NJEDA grant awarded through the Business Employment Incentive Program (BEIP) amounting to \$6.4 million over a 10-year period. The program grants 80 percent of the total amount of state income taxes withheld by the company for new employees hired during the year.²³
- A \$3 million grant from the New Jersey Department of Labor (NJDOLE) under its Customized Training Grant. This program receives its funding from the Unemployment Insurance Trust Fund, which redirects funds to the training program annually.
- Substantial state-financed road improvements, especially the Scotch Road/I-95 interchange, at an estimated cost of more than \$15 million dollars.

Large subsidy packages such as these are available to all companies that meet predetermined program requirements. For example, the Business Employment Incentives Program stipulates that the applying business must create a minimum of 75 jobs within New Jersey. The BEIP does offer some incentive to locate in the state's 56 urban aid communities by reducing the minimum to 25 new jobs in these locations.

From Blueprint to Reality

The Scotch Road Office Park is quickly becoming a reality in Hopewell Township and the community is beginning to prepare for its new neighbor. In August 1999, the Township Committee voted to fund a \$200,000 project to update Hopewell's environmental and zoning ordinances, in an effort to prevent future developments of this magnitude. The Township is also in the process of conducting meetings and work sessions for the purpose of revisiting its Master Plan, land use, and wastewater ordinances.

At a town meeting in April 2000, Township residents were presented a build-out analysis conducted by Banisch Associates using current zoning. The analysis revealed more than seven million square feet of office park already in the approval process, including the Merrill Lynch project, along with an additional eight million square feet zoned for non-residential use. These statistics have helped to illustrate to residents the tremendous development potential in the Township. According to Kathy Bird²⁴, Township Committeeperson and former Mayor, residents have moved away from the regional center concept, finding the overall scale and size too big for Hopewell. Residents are less inclined toward the traditional office park developments and have begun to consider other options such as a town center plan.

Hopewell Township is also completing negotiations with the local sewage company, Ewing-Lawrence Sewerage Authority (ELSA), for the purpose of bringing down the high rates imposed upon the users in Brandon Farms, a newer residential area within the Township. The agreement with ELSA will drastically change the planned sewerage areas within the Township. It appears that the new arrangement will remove all planned sewerage areas, except for the Merrill Lynch and a few other office park sites, from the new map, in an attempt to limit future township development.

CORPORATE LOCATION DECISION-MAKING

Corporate location decision-making is both mysterious and perfectly clear. While few outsiders are privy to the specific discussions that take place at the highest levels of corporations about when and where they will locate their facilities, the factors that influence these decisions are studied professionally and tracked and reported in the real estate press. They change somewhat over time in response to economic variables, public policy and technology.

Key Locations Factors 1999

The May 1999 issue of *Site Selection*, a magazine for the corporate real estate business, cited the proximity to trained or trainable workers as the number one criteria for location choice at the turn of the century. Other key factors are access to global markets; proximity to major transportation facilities; *near*, but not *in*, large urban areas; affordability and short development time between the decision and occupancy. With the expanding impact of global commerce, for many corporations the question is more one of what country or region rather than what town. So, from a corporate viewpoint, Hopewell Township is just a place between Boston and Washington—a commodity that can provide quick affordable access to workers.

Key Locations Factors

1993

1. Proximity to customer/clients
2. Access to Interstate highway
3. Reasonable real estate costs
4. Availability of skilled workers
5. Pro-business government officials
6. Reasonable wage rates
7. Reasonable/stable utility rates
8. Reasonable costs of living
9. Reasonable business taxes
10. Cultural/recreational facilities

Source: Conway Data survey of corporate real estate executives, September 1993.

1973

1. Environmental regulations
2. Labor factors, quality and supply
3. Availability of utilities
4. Transportation, primarily highways
5. Trend to rural areas and suburbs
6. Community attitudes toward industry
7. Low-cost financing
8. Supply and cost of available land
9. Markets
10. Taxes

Source: Industrial Development, March 1973.

THE CONTROVERSIES

Despite all of the state, county, and local planning that pointed to the Merrill Lynch site as a suitable setting for an office park, when the extent of the proposed development became clear, tremendous opposition developed.

The initial proposals were welcomed by officials at the local, county, and state levels, primarily because of the potential for tax revenues. The Township went as far as spending \$1.2 million in legal and engineering fees to support an extension of sewer service from the city of Trenton to the Township. Local politicians used the need to remedy failing septic systems and high sewer rates in other parts of the community as a fundamental reason for their support of this 8-mile connector.

The Mercer County Improvement Authority (MCIA) issued \$3 million in bonds to finance appraisals, easements and planning work for the sewer project.²⁵

Specific supporters of the project ranged from a majority of the Hopewell Township Committee²⁶ to the County Executive and, until most recently, the Governor. These supporters cited a variety of economic and fiscal benefits as well as proximity to I-95 as the primary justification for their support of the project.

Meanwhile, a large coalition of civic and environmental groups opposed the construction on the grounds that it will promote overdevelopment in the region, damage the character of the Township, drain potential from Trenton and negatively impact an environmentally sensitive area.

Hopewell Township residents made their concerns clear in the November 1998 elections. While New Jersey residents statewide voted to preserve one million acres of open space, Hopewell Township residents elected two growth-cautious candidates to the Township committee. Jon Edwards and Marylou Ferrara were also the first two Democrats to be elected onto the Hopewell Township committee in twenty years.²⁷ The following January, the committee appointed the growth-cautious Kathy Bird as Mayor. Soon after hiring a consultant to review the Trenton-Hopewell sewerage option, the plans for the 8-mile extension were cancelled and negotiations with ELSA commenced. In November of 1999, Kathy Bird and John Higgins successfully ran for Township Committee on the Democratic ticket, tipping the balance to four Democrats and one Republican and demonstrating considerable popular support for a new, “smart growth” rather than the historic pro-growth regime.

The Sewers Controversy

Much of the controversy surrounding the Merrill Lynch development was sparked by the now-defunct proposal to extend sewer service from the City of Trenton to the development site. Interestingly, much of the land-use planning and support for development of the site existed because of sewerage plans to service the property through ELSA another service provider.

This eight-mile Trenton connector would have allowed for 2.5 million gallons per day, later reduced to 1.3 million gallons per day, of wastewater capacity through the Trenton system, and would have cost more than \$24 million to construct. Even with the decrease in capacity, the engineering (or pipe size) for the connector never changed, only the approved discharge. Thus there was a potential for the service to be expanded at a later date. Included in the service area would have been a portion of the areas presently within the ELSA sewer service area plus approximately 800 additional acres.²⁸ This area included the existing housing at the Brandon Farms development and would have allowed a switch from the ELSA system – that charged higher user fees – to the new Trenton system. The Trenton option would have also allowed some homeowners with failing septic systems to tap into the sewer line. The Township and Merrill Lynch, under the Trenton option, agreed to a \$6.45 million connection fee with payments to the Township to begin in 2002 and end by 2008.

Given that the Merrill Lynch development, once fully built, required only about a third of the Trenton connection’s sewer capacity, the Trenton option allowed for much more additional development to occur in the area. Put another way, Merrill Lynch would have required capacity for approximately 330,000 gallons of discharge per day. The average home septic system discharges 350 gallons per day. A Trenton connector capacity of 1.3 million gallons per day would therefore have

supported four Merrill Lynch-sized developments, or the Merrill Lynch development and nearly 3,000 new homes.

This vast expansion of sewer service into Hopewell Valley – and its potential to encourage over-development throughout the region – mobilized many environmental and civic organizations into action. Robert Shinn, Commissioner of the NJ Department of Environmental Protection (DEP), acknowledged this activism in a memorandum dated April 23, 1998 that "the extent of local public opposition to this project exceed[ed] that associated with any prior project".²⁹ Local groups argued that "paying for the service before the growth occurs puts the Township in the classic development squeeze: the Township will need significant growth quickly or will face significant rate increases".³⁰ In other words, the need to pay for the additional sewage capacity would require rapid build-out of the connected properties to recoup connection costs, thus making way for hasty development decisions or becoming a grave financial liability to the Township.

In January 1998, the Stony Brook-Millstone Watershed Association along with the MSM Regional Council released a report that detailed the potential secondary impacts of the various sewerage options available to Hopewell Township. The document, entitled "Wastewater Management Planning in Hopewell Valley" by Heyer, Gruel & Talley, PA, raised citizen awareness of and concern for the true cost of sewer extension into the Township. The report evaluated the impacts on development potential, traffic, housing, environment, and local economics. The Trenton Sewer option was found likely to generate more than 2,200 new homes, create 105,000 auto trips daily and cause more than \$13 million in tax deficits annually, when including indirect costs. Shortly after the report was released, hundreds of residents turned out for a public meeting to express concern and interest regarding the Trenton sewer line. This report – commissioned by non-governmental actors – was the only attempt to quantify the secondary impacts of Trenton sewer proposal. Given the potential for tremendous negative secondary impacts, the newly elected Hopewell Township Committee in January 1999 canceled plans for the Trenton extension.

A REGULATORY FRAMEWORK FOR SEWER CONSTRUCTION IN NJ

The presence of sewers is a key determinant of where development takes place in New Jersey. The Department of Environmental Protection controls the issuance of permits for this vital infrastructure. The existing regulatory framework, described below, would change under proposed wastewater rules issued by the DEP in July 2000. The proposed rules would more closely link the State Plan with the decisions to permit sewers. It was in response to a question about whether these new rules would have permitted the Merrill Lynch development, that Governor Whitman stated, "Frankly, (the Merrill Lynch) development is a prime example of the kind of thing that probably would not have happened with (new wastewater) rules." The existing process is as follows:

Initial Local Approvals

In order to construct a new sewer, or wastewater treatment facility, a developer first needs to request a written statement of consent from governmental entities, any regulated sewer or water utilities that may be affected by or have a substantial interest in the construction, and most importantly the local sewage authority. The local sewerage authority can be a municipality or county or a combination of the two.

The approval of the local sewer authority is guided by local zoning and master plans, the authority's own wastewater management plans (written and graphic descriptions of existing and future wastewater-related jurisdictions, wastewater service areas, and selected environmental features and treatment works) and area-wide water quality management plans (plans prepared pursuant to Sections 208 and 303 of the Clean Water Act, 33 U.S.C. §§ 1251 et seq., and the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., including the Statewide, areawide, and county WQM Plans).

The area-wide Wastewater Management Plan may be inconsistent with local zoning ordinances or master plans for compelling reasons; however, these inconsistencies must be identified and adequately documented. After receiving the approval of the local sewerage authority, the project must next obtain a Treatment Works Approvals permit from the State.

State Approvals and Oversight

The DEP's Division of Water Quality operates the Treatment Works Approvals (TWA) program. The TWA is a construction and operation permit for wastewater collection, conveyance and treatment facilities, including treatment plants, pumping stations, interceptors, sewer mains and other collection, holding and conveyance systems. A TWA permit is necessary for sewer laterals that convey at least 8,000 gallons per day, and for septic systems with a projected flow of more than 2,000 gallons per day.

The Division of Water Quality reviews and approves plans prepared by municipalities with respect to planning and design of municipal wastewater treatment and conveyance facilities. Their Construction Control Section inspects funded facilities to ensure compliance with approved plans and specifications, as well as all state and federal requirements.

Under the Capacity Assurance Program, sewers may not be connected to treatment plants that fail to meet their New Jersey Pollutant Discharge Elimination System (NJPDES) effluent discharge permit requirements or to conveyance systems that do not have adequate conveyance capacity. NJPDES permits are issued limiting the mass and/or concentration of pollutants that may be discharged into ground water, streams, rivers, and the ocean.

Sewer Funding

State and federal funding for sewer planning, design and/or construction is available through the New Jersey Environmental Infrastructure Financing Program (Financing Program) and the New Jersey Environmental Infrastructure Trust (EIT), an independent state financing authority. The Financing Program loans money to local government units for sewers and wastewater treatment facilities. The sources of these funds are federal Clean Water and Safe Drinking Water Acts and various state bond acts. The Financing Program provides zero percent loans to local governments for up to half the project costs. The EIT provides market rate loans for the remaining project costs.

To prioritize funding of wastewater projects, DEP uses a point system. Points are awarded for various criteria (discharge, water use, and water quality) that a proposed project may meet. For example, points are awarded to projects that address combined sewer overflow and major pipeline rehabilitation to stop discharges of raw sewage. Priority is also placed on projects impacting coastal areas. After a project has received its point allocation, it is placed on a priority list in rank order. With some exceptions, funding from the Financing Program is made available to projects that are ready to proceed in the order they appear on this list.

The Environmental Review Controversy

The DEP's environmental protection review of the Trenton-Hopewell sewer project was, in and of itself, another cause of controversy.

As part of its application for sewer funding, Hopewell Township was required to submit a "Level 2 Environmental Appraisal" of the project. The DEP was subjected to quite a bit of criticism over its decision to accept a Level 2 rather than a more stringent Level 3 environmental review. The Level 3 environmental impact study would have required further examination of the proposal as well as a significant delay to its implementation. Level 2 opponents argued that under state law (N.J.A.C. 7:22-10.6(a)), the DEP had the power to require a Level 3 environmental review based upon the "significant adverse comment" received regarding the proposed project.³¹ The adverse public comment was evidenced by the concerned and dissenting voices present at numerous township meetings as well as the multitude of documents sent to the DEP by various citizens and organizations.

A BRIEF CHRONOLOGY OF THE TRENTON SEWER LINE

12/01/97	Hopewell Township submits Amendment of its Wastewater Management Plan to DEP. The amendment requests the change/expansion of service in southern Hopewell from ELSA to Trenton.
01/09/98	"Wastewater Management Planning in Hopewell Valley" report sponsored by the Stony Brook-Millstone Watershed Association and MSM Regional Council is released. The report quantifies the secondary impacts of the various sewer options and fuels public outcry.
08/18/98	DEP issues its Environmental Assessment of the Trenton sewer line. The report indicates "no significant impacts will result from the proposed action".
09/17/98	Coalition to Save Hopewell Valley submits 400-page document to DEP disputing the Level 2 Review of the Trenton sewer proposal. (Potter & Dickson report)
09/18/98	DEP certifies the project as ready for financing.
09/20/98	Governor Whitman announces decision to waive right to veto bond issuance at the request of the NJ Environmental Infrastructure Trust.
09/21/98	NJ Environmental Infrastructure Trust approves sale of bonds for the \$24.6 million Trenton sewer line.
10/08/98	Motion filed by coalition of local activists against DEP decision allowing for a moderate (Level 2) environmental review of the project.
10/14/98	NJEIT postpones the sale of bonds due to lawsuit.
11/03/98	Democrats Jon Edwards and Marylou Ferrara elected to Township Committee based on anti-development campaigns.
01/1999	Kathy Bird appointed Mayor of Hopewell Township.
01/1999	Plans for Trenton-Hopewell sewer line cancelled after hearing recommendations of independent consultant.

It was also argued that the Level 2 review did not adequately take into consideration the potential for adverse impacts to the environment. This lesser assessment did not produce much original investigation into the alternatives to and impacts of the Hopewell-Trenton sewer line.

In August 1998, the DEP released the results of its Level 2 Review and Environmental Appraisal of the project indicating a finding of “no significant environmental impacts.”³² One month later, the DEP certified the project as ready for financing, thereby clearing the way for the New Jersey Environmental Infrastructure Trust (EIT) approval of a \$24.6 million bond issue to finance the Trenton-Hopewell sewer connection. Governor Whitman showed her support for the project by waiving her right to veto the bond issuance. The bonds were to be paid off by the Township over a 20-year period.

Ultimately, the New Jersey Audubon Society, the Delaware RiverKeeper, the Coalition to Save Hopewell Valley, the New Jersey Taxpayers Taskforce, and the New Jersey Sierra Club decided to file two appeals against the DEP's Level 2 finding of "no significant impact" (as well as a lawsuit against the Township committee and then-Mayor John Hart) to voice their position on the sewer project.

ANALYSIS

The Merrill Lynch/Hopewell Township case study points to four primary failures in land-use governance in New Jersey.

State Plan Contradictions

One of the major difficulties in analyzing the Merrill Lynch development is the fact that the State Plan (June 12, 1992 version, *Communities of Place*) seems to both support and discourage development in southern Hopewell Township.

The most overt contradiction exists between the State Plan's designation of the site as within Planning Area 1, and thus suitable for development, despite the site's failure to meet the Plan's PA1 standards. Such inconsistency with the goals and intent of the State Plan raises the question, why was this portion of Hopewell Township ever designated as PA 1? Did we rely too much on planned infrastructure rather than existing? What is the meaning of planning areas? Have tastes simply changed since the original map was decided upon? Are we less supportive of highway exit development nodes? Did the cross-acceptance process fail to raise the right questions? Such questions make the State Plan's vision for the site ambiguous at best.

This lack of a clear vision also played out in the way State agencies failed to implement Plan goals.

As example: the New Jersey Environmental Infrastructure Trust's approval of the sale of bonds for an 8-mile sewer line between Trenton and Hopewell. This approval violated **Plan Goal 1** – to revitalize the State's urban centers and areas – by tapping into the infrastructure resource of Trenton to promote growth in its suburbs. Similarly, the approval violated **Plan Goal 2** – to conserve the State's natural resources – by endorsing the development of a rural landscape rather than reinvesting in existing infrastructure within Trenton. **Plan Goal 5** – to provide adequate public services at reasonable cost – was also seemingly ignored in that the Trenton-Hopewell project ignored other,

more efficient, sewerage options available (i.e. the ELSA option) at a total cost of more than \$24 million. Lastly, **Plan Goal 9** – to achieve state planning goals by coordinating public and private actions to guide future growth into compact forms of development and redevelopment, located to make the most efficient use of infrastructure systems and to support the maintenance of capacities – was threatened in that the project stood to promote overdevelopment in the region.

These issues also arise when considering the *state subsidies* provided to Merrill Lynch, which essentially further tipped the balance of new development away from a distressed urban center and into a primarily rural community. Likewise, the DEP's certification of the Trenton-Hopewell sewer line made no connection between the proposal and the State Plan. In fact, the decision allowed "the Township to continue the isolated, disconnected pattern of land uses in the area" by failing to require that the area be developed "into an integrated, mixed-use, pedestrian and transit-oriented, compact regional center".³³ This is particularly perplexing in that DEP Commissioner Shinn's own Administrative Order (No. 1996-06) calls for consistency with the State Plan.

The State Plan failed both its proponents and its detractors in this case. Its language portrays a vision of concentrated, mixed-use, pedestrian-friendly places where people live, work and play in close proximity to each other. Other places in the state can remain rural in character and yet others, can be denser, or have an industrial mix. Its implied, if not actual, promise is that if developers go to those places where growth is to be channeled, the process will work to speed its completion. The State Plan map seems to imply that this is possible. But when the map is compared to the situation on the ground in Hopewell Township, the vision falls apart.

Failure to Consider the "How" of Smart Growth

For the most part, planning efforts for this portion of Hopewell Township have focused primarily with the "where" of growth. Local land use plans called for an employment center on the Merrill Lynch site, citing the State Plan's planned regional center identification as further justification for the zoning. Unfortunately, these planning documents neither consider nor convey a clear picture of the appropriate physical form for the development: the important "how" growth should occur.

The Merrill Lynch design proposal is not consistent with the State Plan ideal of a planned regional center that serves as "a focal point for economic, social and cultural activities of its region, with a compact, highly intense, mixed-use core and neighborhoods."³⁴ There is no design element within the Hopewell Township Master Plan that requires consistency with this vision.

A look at the Merrill Lynch proposal reveals a development that has a variety of office, light industrial, and recreational uses isolated from the Township by a loop road and multiple parking facilities. A closer look reveals no truly mixed-use facilities, no pedestrian orientation, no plans for housing integrated into the development, nor designs that reflect an intense, compact style characteristic of a planned regional center. The lack of connectivity to the rest of the Township is another element missing from the Merrill Lynch design. While the site is highly convenient to major interstate and county roadways, the development is isolated from the Township at large. The campus-style design, like a college campus, is intended to create an environment for its private users – in this case the employees within the office park, not the residents of Hopewell Township.

It is perhaps more useful to consider smart growth as being both *where* and *how* a community develops. In this case, the where (or location) of the development has been much debated. Yet the office park also fails to achieve the appropriate "how" to best enhance the existing community.

Location without a design that relates to surroundings and community character is not enough. The State Plan attempts to convey this message with the idea of regional centers, but the municipal land use policies in place in Hopewell (and through much of the rest of the state) do not produce the desired “communities of place”.

Disjointed Decision-Making

The fate of the Merrill Lynch site, and perhaps that of the Township, was determined not by one unified plan for the area; rather it was determined by a series of decisions made by a variety of actors, acting on different interests at different times throughout the history of the site.

In the 1970s, Hopewell Township turned down the opportunity to enter into the ELSA coalition. This decision ultimately helped to keep much of the area in question undeveloped while the surrounding townships built up. In 1991, southeastern Hopewell Township was officially included on the ELSA sewer service map, which helped to set the stage for the future employment and the regional center designations that took place in the early 90s. In the 1990s the high user fees charged by ELSA (perhaps a result of Hopewell’s declination of membership in the authority in the 70s) became a point of contention for Hopewell residents living in Brandon Farms. These high fees contributed to the pressure felt to pursue the Trenton option because the switch would have resulted in a fee decrease for Hopewell customers. At the same time, the economically stressed City of Trenton felt pressure to sell off its excess sewage capacity in order to receive much needed revenue.

More recently, the controversy was sparked by a private actor (Bristol-Myers Squibb) that decided to purchase sewerage for its site in order to make it more marketable to another corporate entity. The subsequent pursuit of the Trenton option created a polarization of the community: those perceived as for and those against development of the area. In order to attract Merrill Lynch to the site, various state agencies attempted to lure the corporation using subsidies and incentives at their disposal. The DEP granted approval for the financing of the Trenton option, a decision that would have paved the way for development throughout the region. Each of these decisions was made at a separate time and place, and in a different context than the other.

Merrill Lynch went through an extensive approval process at the state, county, local, and even regional levels in order to proceed. Permits from a variety of entities including the Township planning board, county planning board, Mercer County Soil Conservation District, Delaware and Raritan Canal Commission, and the Department of Environmental Protection were among the many needed in order to proceed with the development process. The corporation went as far as to hire the GluckShaw Group, a lobbying firm, in order to get "the Merrill Lynch project through the layers of government".³⁵

The State Plan is intended as a planning and policy guide for the state, ostensibly coordinating the decisions of various actors at a variety of levels. However, because State Plan consistency is not mandatory at the local level – and not enforced at the state agency level – the decision-making remains disjointed. These entities will continue to grant approvals and make choices independently, thus contributing to confusion and poor land use decision-making.

The Ratable Chase

The land use decision-making process is made more disjointed by the realities of home rule in New Jersey. The autonomy of each municipality creates a system whereby each government is rewarded

– fiscally and politically – for land-use decisions that enhance its ratable base. This structure forces municipalities to seek ratables (tax-paying entities that provide more revenue than they consume) and often pits neighboring communities against one another, especially when developments of regional impact are involved.

In the case of Merrill Lynch, the Township was faced with an increasing tax burden due to a predominately residential tax base. The prospect of a corporate development that at full build-out would add approximately \$370 to \$400 million³⁶ in assessed value to Hopewell Township's tax base was hard for local leaders to resist. But the lure was not just at the municipal level. County Executive Bob Prunetti was a vocal supporter of the project, as was the state. A representative from the Governor's office gave the following perspective: "The state works to encourage companies to expand and locate in New Jersey. The project is found to be in the best interest of the community and environment and consistent with the State Plan."³⁷

The problem with this type of outlook is that it makes very specific, and perhaps problematic assumptions as to the future impact that a development of this nature will have on the region. There are limitations inherent to impact assessments, primarily being that they do not touch upon the cumulative impacts on the whole system/region. The Fiscal Impact Statement³⁸ produced by Merrill Lynch for the Township indicated a net fiscal benefit resulting from the proposal. However, those numbers can be called into question if there are changes in any of the underlying assumptions within the report. For instance, the assessment used an assumption of complete build-out (3.5 million square feet) as its basis for analysis. What if Merrill Lynch opts not to complete the final phases of the General Development Plan? It is possible that the demand for office space might decrease thus causing Merrill Lynch to reconsider developing the balance of the project due to a lack of prospective tenants. It is also conceivable that the multipliers used in the study were incorrect and the number of households generated by the development might be greater than expected. The development is also likely to increase the Township's affordable housing requirements under COAH. In short, it is distinctly possible that a development of this size could result in an overall negative fiscal impact for the Township.

CONCLUSIONS AND RECOMMENDATIONS

Local Planning and Zoning

Conclusions: "Be careful what you zone for, you may get it." This seems obvious but it is not widely understood by the public-at-large or even local officials. The Merrill Lynch site was zoned for an office park for more than 25 years and that was the type of development ultimately attracted to the site. The zoning ordinance supported Merrill Lynch's proposal, and as a result Hopewell Township could do little to alter or prevent its location within their community. The result: a single-use, isolated office park just as prescribed by the zoning ordinance.

Zoning is often perceived as being fixed or unchangeable, and therefore does not necessarily reflect the public's current vision for their community. For example, Hopewell Township's zoning for the Merrill Lynch site remained fixed for office development despite county, regional, and state planning processes that stressed mixed-use, not traditional office park development.

The large degree of public involvement (both for and against development) in the Merrill Lynch proposal illustrates that local forces are a significant presence. The citizen involvement in the effort to eliminate the Hopewell-Trenton sewer proposal (and the subsequent political overhaul) shows how effective a mobilized community can be. The Township is now trying to harness this momentum and public interest into a Master Plan and zoning revision. Unfortunately, these current efforts reflect land-use planning after the fact, rather than the reverse. For example, it would have been more constructive if the Hopewell Township build-out analysis had been conducted prior to the Merrill Lynch proposal, thus encouraging citizen involvement and land-use amendments prior to the onset of the large development.

It is important to note that establishing the true cost of development is difficult if not impossible. There are a tremendous number of variables that must be accounted for when determining the impact of a development of this size. As such, the calculations are often suspect and can lead to public confusion. Impact analyses tend to reflect primary, rather than long-term secondary impacts of development. For instance, the fiscal impact analysis submitted by Merrill Lynch conveys the benefits of the project without reflecting some of the negative impacts on the Township and neighboring communities, such as increased traffic and the likely need for additional taxes for new schools and services. This impact report also focuses on “best-case” scenarios, ignoring the fiscal ramifications for Hopewell in the event that the project fails to achieve complete build-out in 20 years. It is important that local governments perform their own analyses to reflect a variety of possible conditions and outcomes.

Recommendations: In order to affect change at the local level, it is necessary to improve municipal capacity to plan for and accommodate growth. The impact of the Merrill Lynch proposal was a late wake-up call to many citizens in Hopewell Township and the surrounding municipalities. This does not have to be the case. Tools are available to clearly show what will result from today’s municipal plans and zoning regulations. Build-out analyses are a useful means of visually representing to the public the end result of their planning and zoning efforts. The mandatory inclusion of circulation and design elements within master plans would provide better direction to developers and thereby provide more certainty to citizens about the quality of their communities.

The State Plan

Conclusions: The State Plan did not provide enough or clear direction. The Merrill Lynch development has been cited as both antithetical to and in harmony with the State Plan. The ambiguity found within the State Plan made it an ineffective decision-making tool and guide. The conflict between the Resource Planning and Management Map (RPMM) and the text of the Plan nullified it as a tool for smart growth in this case and enabled decision makers to cloak their action in the State Plan and avoid hard choices.

The Merrill Lynch project highlights the inconsistency between State Plan mapping and its goals and policies. On the one hand the map calls the Merrill Lynch site a PA1; on the other hand, policy and goals would lead the reader to believe that a large new regional center eight miles from an ailing urban center would be inconsistent. The fact that both Trenton (existing, under-capacity infrastructure) and Hopewell (planned, limited-capacity infrastructure) are considered within the same planning area (PA1) illustrates the importance of the distinction between existing and planned infrastructure.

This inconsistency has taken on new importance with the state's proposed wastewater rules. Using the State Plan maps, the rules propose to make the issuance of a sewer permit easier or more difficult. As in the State Plan, the concept in the rules is to channel development to those places where the infrastructure exists to support new development. The difficulty arises when the State Plan map is inconsistent with the facts on the ground as was the case in Hopewell.

The PA1 designation points to a flaw in the cross-acceptance process which relied on existing zoning, land use and sewerage plans for the area in order to make mapping decisions. One of the reasons supporting a PA1 regional center designation in Hopewell Township was the pre-existence of sewerage and land-use plans that reflected an office park development on the site. The Land Use, Infrastructure, and the Environment Report (LUIE) commissioned by the Office of State Planning in 1997 documented this problem. The investigators, charged with developing an integrated system for land-use planning, capital improvement programming, and regulatory decision-making found that "the State Plan mapping for the state has generally resulted, by virtue of the 1988 – 1991 mapping process, in Planning Area boundaries that follow existing and planned sewer service areas...The mapping of the area thus does not provide a cohesive scheme for the region as a whole."³⁹ Because the planning for land use and infrastructure primarily takes place at the local level, the use of these local documents in order to make State Plan decisions ultimately fails to achieve a regional outlook.

It is important to note that the concept of smart growth has matured since the first State Plan was created more than a decade ago. Perhaps it is this change that Governor Whitman was reflecting when she commented that the proposed sewer rules would not have permitted a Merrill Lynch to develop in Hopewell. The focus of much of the discussion nationally and in New Jersey is shifting to reinforcing existing communities. The concept of smart growth is receiving stronger public support, and perhaps understanding, than ever before. In New Jersey, we can begin to see the end of newly developable land. We have increased funding for open space preservation and made policy changes to speed Brownfield redevelopment. Nationally, the spread of new urbanist ideals also illustrate the trend toward a more sophisticated understanding of the relationship between quality of life and development decisions. To many, the concept of an "office park" is now an oxymoron.

Recommendations: The State Plan, both map and text, need to be unambiguous about where and how growth should occur – and where and how it should not. In order to do this, the Plan must be informed by how much growth is expected. The Plan must be clear in defining what a planning area designation means. Does it reflect existing conditions or a planned state? This question must be answered and applied consistently across the state for the Plan to have impact in cases such as this.

Implementation and compliance must become the focus of the Office of State Planning and the Commission. State agencies, which are still largely responsible for funding or approving sprawl-inducing sewers and highways, should be required – rather than requested – to comply with the State Plan. Some progress has been made on agency implementation (most notably the pending sewer rules) in recent years. However, legislation is needed to fully institutionalize the process. Similarly, there should be legislation that results in State Plan consistency for county and municipal plans. Consistency reviews for such plans would minimize the conflicts between state, regional, and local goals. Certainty of decision-making—for developers as well as municipal officials and citizens—would result. Under such a system the plans would essentially be "nested" so that the intent of the State Plan, as developed in cross-acceptance, is carried out from the state through the

municipal levels. Such a system would empower municipal governments to make sound land-use decisions that will bring long-lasting benefits to citizens of the municipality as well as the state.

Without a consistency mechanism, the State Plan is not sufficient enough to carry out its goals. Under the current system of land-use governance, local authorities – not the state – have the power to alter the landscape with its zoning ordinances. For this reason, it was the 25-year-old Hopewell Township zoning ordinance – which does not reflect the intent of the State Plan for a mixed-use regional center – which ultimately had the lasting impact on the Merrill Lynch site.

State Development Incentives

Conclusion: State incentives lack a regional approach. The desire to "capture" potential business and jobs from competitor states often causes New Jersey to overlook more regional concerns. For instance, the Economic Development Authority's Business Employment Incentives Program (BEIP) offers Merrill Lynch an economic incentive whereby "payment depends only on jobs brought to the Hopewell site, not the company's overall employment in New Jersey".⁴⁰ It is therefore possible for Merrill Lynch to simultaneously create and eliminate jobs in New Jersey and at the same time receive the full BEIP grant. The focus in offering the incentives seems to be around the individual project or case, without an overall picture of its effect on the state. Any job, without regard to the cost or impact is a "good" job under this scenario.

It is also clear that there is need for better linkages to the intent of the State Plan. Many have argued that despite the State Plan's own inconsistency, common sense dictated that the Merrill Lynch development was an affront to the Plan's ideals. Such an understanding has brought front-page attention to this development in the national press and undermined confidence in New Jersey's planning system.

The provision of State financing and grants to Merrill Lynch in Hopewell does not adhere to state planning goals, including the revitalization of urban centers (Trenton) and conservation of natural resources. The Environmental Infrastructure Trust's approval of the now-defunct Trenton-Hopewell sewer line did not conform to the State Planning goal of providing adequate public services at a reasonable cost. Although the decision-making in the Merrill Lynch case was more problematic given that the site was designated PA1, a more regional view of the project would have shown the conflict with the State Plan goals.

Recommendations: The State Plan must become the driving factor in grants, loans and infrastructure provision for attracting new development. The current requirements established by the legislature whereby corporations qualify for state incentives do not effectively tie into the goals and policies of the State Plan. Providing incentives to develop in Planning Areas or centers where growth is not being encouraged is not good economic, environmental or social policy.

Adding "How" to the Design Equation for Growth

Conclusion: For the most part, public debate and analysis of the Merrill Lynch development has hinged upon the appropriateness of the location (or the *where*) for this office park. Ultimately the impact of this development depends as much on how it is designed as where it is placed.

The 1992 State Plan does not provide much guidance with respect to design issues. The language regarding "Communities of Place" reflects some of the design ideals (mixed-use, multiple transportation modes, etc), but gives few specifics as to what this type of place looks like or how to

go about designing such a place. Equally at question is how large-scale development such as this should occur. It has become increasingly apparent that isolated office parks are not benign entities, bringing increased traffic to local roads, increased pollution and often a demand for additional housing, schools and services which raises local taxes.

Local governments, attracted by the prospect of revenues without the additional cost of school children, continue to zone for this use. There are long-term public costs to this type of development that are often left unappreciated by local decision-makers. The local review/approval process fails to account for large-scale or long-term impacts. The Office of State Planning has a new publication "Designing New Jersey" as well as several educational initiatives that attempt remedy this lack of guidance with respect to design.

Recommendation: Development must embrace both the how along with the where. Single use zones, whether for housing or retail or offices, must become the exception rather than the default if we are to decrease the pollution and traffic impacts of new development. Municipalities must include a design element in their master plans to assure their citizens that the new development will have an appropriate place in their towns and to guide developers before plans are submitted.

Tax Reform

Conclusion: Municipal incentives to obtain ratables at any cost must be decreased in order to facilitate smart growth. Property taxes and the desire of municipal officials to lower them are a driving force behind planning and zoning. This results in misplaced development and an imbalance between job centers (with high tax returns) and housing (low tax return).

Recommendation: Tax sharing among municipalities would reduce the incentive to zone for large ratables, and when they are built it would provide some compensation to adjoining municipalities that frequently bear the brunt of the negative consequences of the development. This can be accomplished by distributing an increment of the increased taxes resulting from the new development according to a formula or by allocating additional revenue to the county for redistribution.

IN CONCLUSION

The Merrill Lynch project in Hopewell has spotlighted the contradictions and complexities of New Jersey's planning process. For the past several years, New Jersey received well-deserved attention for the state's attempts to curb sprawl and revitalize cities through the use of a statewide plan. However, what has not been given enough attention is that the State Plan is but a guide. A plan can bend our iron network of federal, state, and local decision-making, but cannot break it. To effect real change, the Plan needs to be augmented by more effective policies, regulations, and capital spending programs at all levels of government. In implementing the Plan it will be necessary to expose and correct the inconsistencies and ambiguities that were highlighted in the Merrill Lynch/Hopewell development.

This article was researched and written by Teri Jover, a Policy and Planning Analyst for New Jersey Future, a statewide smart growth research and advocacy organization. Funding was provided by a special grant from the Victoria Foundation.

ENDNOTES

- ¹ U.S. Bureau of the Census, Population, 1990. The 1998 Population Estimate for Hopewell Township according to the U.S. Census is 14,311.
- ² Minimum Lot Size: 5 acres, Maximum Building Height: 40 feet, Maximum Lot Coverage: 50%, Maximum FAR: .20
- ³ *Mercer County Growth Management Plan*. 1/1986, Executive Summary. p. 3.
- ⁴ *Ibid.*, Chapter 2 p. 7.
- ⁵ *Ibid.*
- ⁶ MSM Regional Council. "Regional Forum: An Action Agenda for Managing Regional Growth", 12/1987. p. ii.
- ⁷ *Transportation Development District Plan for the I-95/295 Corridor*. Prepared by the Mercer County Planning Division, 12/23/1991 and amended 12/23/1993. p. 1.
- ⁸ Hopewell Township Resolution 98-018, 3/23/98 and revised 4/27/98.
- ⁹ *Transportation Development District Plan*. p. 25.
- ¹⁰ Van Cleef Engineering Associates, Najarian Associates, LP. "Wastewater Management Plan for Hopewell Township". Prepared for Hopewell Township, 2/1989. Amended 3/1/91.
- ¹¹ Heyer Gruel & Talley, PA: Community Planning Consultants. "Wastewater Management Planning in Hopewell Valley". Prepared for the Stony Brook-Millstone Watershed Association and MSM Regional Council, 1/9/1998. p. 8.
- ¹² MSM Regional Council. *The Growth Management Handbook: A Primer for Citizen and Government Planners*, 1989. p. 46.
- ¹³ "General Development Plan Contents". *Municipal Land Use Law*. NJSA 40:55D-45.2, Updated 10/1998.
- ¹⁴ *General Development Plan Submission: Scotch Road Office Park*. Prepared for Merrill Lynch by Wells Appel Land Strategies, 12/11/1997. p. 2.
- ¹⁵ *Transportation Development District Annual Report*, 1995/96.
- ¹⁶ Executive Order 114, State of New Jersey Executive Department, 1/11/1994.
- ¹⁷ *Communities of Place*, p. 101.
- ¹⁸ "State Plan in the Hopewell Valley". Map. MSM Regional Council, 12/15/97.
- ¹⁹ *Communities of Place*. p. 96.
- ²⁰ *Communities of Place*, p. 96.
- ²¹ "Merrill Lynch Selects Hopewell Township, New Jersey for New Office Complex". Press release by Merrill Lynch & Co., 10/30/1997. http://www.ml.com/woml/press_release/19971030-1.htm
- ²² Franzini, Caren. Director of the New Jersey Economic Development Authority (NJEDA). "Project Summary: Merrill Lynch - Scotch Road". Prepared for New Jersey Future. sent via fax 3/31/2000.
- ²³ "The Power to Help New Jersey Business Grow: A Guide to Financing and Other Services through the The New Jersey Economic Development Authority". Brochure prepared by NJEDA.

²⁴ Bird, Kathleen. Interview, 4/14/2000.

²⁵ "New Sewers, New Sprawl, New Jersey: A Case Study of the Merrill Lynch Development Plan in Hopewell Township and An Assessment of the New Jersey State Development and Redevelopment Plan". Princeton University Politics Department, 1/1999. p. 16.

²⁶ Prior to the November 3, 1998 election when anti-sprawl Democrats John Edwards and Marylou Ferrara were elected to Township Committee.

²⁷ Ibid., p. 13.

²⁸ Heyer Gruel & Talley, PA, p. 8.

²⁹ Shinn, Robert. Commissioner of NJ Department of Environmental Protection. "Memorandum to Eileen McGinnis, Chief of the Governor's Office of Policy and Planning". 4/23/98. Quote taken from the Potter & Dickson submission in opposition to DEP Level 2 review of Trenton-Hopewell sewer project, 9/17/1998. p. 4.

³⁰ Hawkins, George, Executive Director of the Stony Brook-Millstone Watershed Association. "Toward Some Understanding of the Sewer Proposal". p. 2. (date unknown).

³¹ Comments submitted by Potter & Dickson, Attorneys at Law to NJDEP regarding Project Number S340282-01: Hopewell-Trenton Sewer Line. The comments were submitted on behalf of several organizations and individuals that opposed the Level 2 Environmental Appraisal by the NJDEP, 9/17/1998. p. 4.

³² Binder, Nicholas G., Assistant Director of the Municipal Finance and Construction Element of the Division of Water Quality at NJDEP. "Letter to All Interested Government Agencies and Public Groups regarding Project Number S340282-01 - Hopewell-Trenton Sewer Line", 8/18/1998. p. 2.

³³ Hawkins, George, Executive Director of the Stony Brook-Millstone Watershed Association, "Letter to Commissioner Robert Shinn of the NJ Department of Environmental Protection", 9/17/98. p. 4.

³⁴ Ibid., p. 97.

³⁵ Alexander, Andrea. "High-powered help hired for Merrill Lynch complex". *Trenton Times*, 3/26/99. A1. Quote is of Judy Shaw of the GluckShaw Group.

³⁶ Burchell-Listokin Associates. "Fiscal Impacts of the Scotch Road Office Park Development". Prepared for Merrill Lynch, 12/1997. p.4.

³⁷ Alexander, Andrea. "Trenton-Hopewell sewer link gains Whitman's OK". *Trenton Times*, 9/20/98. A1. Quote of Julie Plocinik, a spokesperson for Governor Whitman.

³⁸ Burchell - Listokin Associates, 12/1997.

³⁹ Lehr & Associates, Inc. "Land Use, Infrastructure, and the Environment: Executive Report". Prepared for the Office of State Planning, 11/1997, p. 31. Note: the report was never released to the public.

⁴⁰ Johnson, Tom. "Job Cuts Won't Cost Merrill its Incentives". *Trenton Times*, 10/15/98.