

Township of Montague

COUNTY OF SUSSEX

STATE OF NEW JERSEY

LAND USE CHAPTERS

Chapter 10	Land Use Procedures
Chapter 19A	Affordable Housing
Chapter 55	Site Plan Review
Chapter 57	Soil Erosion and Sediment Control
Chapter 60	Subdivision of Land
Chapter 76	Zoning

Current through December 31, 2006

CODED SYSTEMS LLC
120 MAIN STREET
AVON, NEW JERSEY 07717

FILING INSTRUCTION SHEET

TOWNSHIP OF MONTAGUE

SUPPLEMENT NO. 21, 3-06

LAND USE CHAPTERS BOOKLET

Following are filing instructions for Supplement No. 21, 3-06 to the Land Use Chapters Booklet of the Township of Montague. When filed, the Booklet will be current to March 14, 2006.

PAGE NUMBERS:

Remove:	Insert: (3-14-06)
Title Page	Title Page
1033—1036	1033—1036
5513—5514	5513—5514.1
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To assure that your copy of the Booklet is current, the pages comprising Supplement No. 21, 3-06 which were amended and which you have inserted in the Booklet carry the symbol, "3-14-06".

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LAND USE PROCEDURES

Chapter 10

LAND USE PROCEDURES*

- § 10-1. Establishment of Land Use Board.
- § 10-2. Membership
- § 10-3. Term of office.
- § 10-4. Vacancies
- § 10-5. Organization.
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- § 10-8. Land Use Administrator/Land Use Board Secretary.
- § 10-9. General powers and duties of Land Use Board.
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- § 10-11. Time limits for approval.
- § 10-12. Procedure for filing applications.
- § 10-13. Citizens' Advisory Committee.
- § 10-14. Submission of application to Environmental Commission.
- § 10-15. Rules and regulations.
- § 10-16. (Reserved)

* Editor's Note: This chapter has been enacted in conformance with the provisions of the Municipal Land Use Law (P.L. 1975, c. 291) to revise administrative procedures for land use development (including subdivision of land and zoning) in the Township of Montague. Where conflicts or inconsistencies exist between this chapter and other chapters or sections of the Code, Section 10-41 of this chapter has provided for the repeal of such inconsistencies. Action will be taken in the future by the Township Committee to amend other sections of the Code in conformity with this chapter and the Land Use Law.

MONTAGUE CODE

- § 10-17. (Reserved)
- § 10-18. (Reserved)
- § 10-19. Appeal and application procedures.
- § 10-20. Power of Board to reverse or modify decisions.
- § 10-21. Expiration of variance.
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- § 10-27. Minutes of meetings.
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- § 10-34. Complete application: certification of completeness; decisions on applications.
- § 10-35. Publication of decision.
- § 10-36. Payment of taxes.
- § 10-37. Disclosure of ownership by corporation or partnership.
- § 10-38. Conditional approvals.
- § 10-39. Appeals to Land Use Board.
- § 10-40. Definitions.
- § 10-41. Repealer.

§ 10-42. Ordinances continued.

§ 10-43. Pending applications.

§ 10-44. Filing of copies

Schedule A—Fee Schedule

[HISTORY: Adopted by the Township Committee of the Township of Montague 8-10-76 as Ord. No. 76-12; amended 9-14-76 by Ord. No. 76-13; 3-14-78 by Ord. No. 78-2; 5-13-80 by Ord. No. 80-9; 4-13-82 by Ord. No. 82-5; 10-12-82 by Ord. No. 82-13; 9-24-85 by Ord. No. 85-7; 4-28-87 by Ord. No. 87-4; 11-10-87 by Ord. No. 87-18; 4-12-88 by Ord. No. 88-3; 5-9-89 by Ord. No. 89-5; 11-28-89 by Ord. No. 89-19; 3-25-97 by Ord. No. 97-2; 8-12-98 by Ord. No. 98-9; 6-13-00 by Ord. No. 2000-13; amended in its entirety 12-12-00 by Ord. No. 2000-018. Further amendments noted where applicable.]

GENERAL REFERENCES

Uniform construction codes — See Ch. 32.

Improvement certificates — See Ch. 43.

Site plan review—See Ch. 55.

Soil erosion and sediment control — See Ch. 57.

Subdivision of land — See Ch. 60.

Zoning — See Ch. 76.

§10-1. Establishment of Land Use Board

- A. Pursuant to N.J.S.A. 40:55D-25(c), there is hereby created and established in the Township of Montague a Land Use Board, entitled the Montague Township Land Use Board to act as both the Planning Board and the Board of Adjustment. The Land Use Board will assume all statutory duties currently handled by the Montague Township Planning Board and the Montague Township Zoning Board of Adjustment.

- B. The Montague Township Planning Board previously established under the laws of the Township of Montague and the laws of the State of New Jersey is hereby abolished in the manner and within the time frame set forth in this chapter.
- C. The Montague Township Zoning Board of Adjustment previously established under the laws of the Township of Montague and the laws of the State of New Jersey be and is hereby abolished in a manner and within a time frame as more particularly set forth in this chapter.
- D. Upon passage of this chapter, neither the Montague Township Planning Board nor the Montague Township Board of Adjustment shall accept any new applications. They shall, however, each continue consideration of pending applications that have been deemed complete by those Boards and for which public hearings have been set and publicly noticed. In those situations, each Board shall have ninety (90) days in which to hold hearings and to render a decision on the particular application. In the event that either Board anticipates that an application cannot be finally determined by the Board within the ninety (90) day period, the application should be immediately transferred to the Land Use Board for immediate resumption of the application process before the Land Use Board. Scheduling preferences shall be given to such applications by the Land Use Board.

§ 10-2. Membership

- A. The Montague Township Land Use Board will consist of nine (9) members and two (2) alternate members, as appointed by the Mayor and Township Committee. The Land Use Board shall exercise, to the same extent and subject to the same restrictions, all the powers given to Zoning Boards of Adjustment and Planning Boards by the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq.

- B. The membership of said Land Use Board shall be in accordance with N.J.S.A. 40:55D-23. The nine (9) members of the Land Use Board shall consist of the following four classes:
- (1) Class I - The Mayor or the Mayor's designee in the absence of the Mayor;
 - (2) Class II - One (1) of the officials of the municipality, other than a member of the Governing Body, to be appointed by the Mayor;
 - (3) Class III - One (1) member of the Governing Body to be appointed by it; and
 - (4) Class IV - Five (5) other citizens of the municipality to be appointed by the Mayor upon recommendation of a majority of the Governing Body and one (1) other citizen of the municipality to be appointed by the Mayor.
- C. There may also be not more than two (2) alternate members appointed to the Land Use Board in the same manner as Class IV members who shall be designated by the Chairman of the Land Use Board as Alternate No. 1 and Alternate No. 2.
- D. Alternate members may participate in all matters, but may not vote except in the absence or disqualification of a regular member of any class. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice be made as to which alternate member is to vote, Alternate No. 1 shall vote.
- E. The members of Class IV shall hold no other municipal office. A member of the Environmental Commission who is also a member of the Land Use Board as required by N.J.S.A. 40:56A-1, shall be a Class IV Land Use Board member.

§ 10-3. Term of office.

- A. The term of the member composing Class I shall correspond with his official tenure. The terms of the members comprising Class II and Class III shall be for one (1) year or terminate at the completion of their respective terms of office, whichever occurs first. The term of the Class IV member who is also a member of the Environmental Commission shall be for three (3) years or terminate at the completion of his term of office as a member of the Environmental Commission, whichever occurs first.
- B. The terms of all Class IV members first appointed pursuant to this chapter shall be so determined that to the greatest practicable extent the expiration of such terms shall be distributed evenly over the first four (4) years after their appointment, as determined by resolution of the Governing Body; provided however, that no term of any member shall exceed four (4) years. Thereafter, all Class IV members shall be appointed for terms of four (4) years except as otherwise hereinabove provided. All terms shall run from January 1 of the year in which the appointment is made.
- C. The terms of alternate members shall be for two (2) years, except that, of the alternate first appointed, one (1) shall be appointed for a one (1) year term and one (1) shall be appointed for a two (2) year term, said terms to run from January 1 of the year in which the appointment is made. Thereafter, all appointments shall be made for a term of two (2) years.

§ 10-4. Vacancies.

If a vacancy in any class shall occur otherwise than by expiration of term, it shall be filled by appointment as above provided for the unexpired term.

§ 10-5. Organization.

The Land Use Board shall elect a Chairman and Vice Chairman from the members of Class IV and select a Secretary who may be either a member of the Land Use Board or a municipal employee designated by it.

§ 10-6. Land Use Board Attorney.

There is hereby created the office of Land Use Board Attorney. The Land Use Board may annually appoint, fix the compensation of, or agree upon the rate of compensation of the Land Use Board Attorney, who shall be an attorney other than the Municipal Attorney.

§ 10-7 Experts and staff.

The Land Use Board may also employ or contract for the services of experts and other staff and services as it may deem necessary. The Board shall not however exceed, exclusive of gifts or grants, the amount appropriated by the Governing Body for its use.

§ 10-8. Land Use Administrator/Land Use Board Secretary.

There is created hereby the position of Land Use Administrator/Land Use Board Secretary who shall be appointed by the Land Use Board, after consultation with the acceptance by the Township Committee. The Land Use Administrator/Secretary shall have general knowledge of the workings of the Land Use Board and the Zoning Officer, and shall serve as Administrative Assistant to the Land Use Board and Zoning Officer during such weekly hours and for such compensation as set by the Township Committee

§ 10-9. General powers and duties of Land Use Board.

The Land Use Board is authorized to adopt by-laws governing its procedural operation. It shall also have the following powers and duties:

- A. To make and adopt and from time to time amend a Master Plan for the physical development of the township including any areas outside its boundaries, which in the Board's judgment bear essential relation to the planning of the township, in accordance with the provisions of N.J.S.A. 40:55D-28.
- B. To administer the provisions of the Land Subdivision Ordinance and Site Plan Review Ordinance of the Township in accordance with the provisions of said ordinances and the Municipal Land Use Law of 1975, N.J.S.A. 40:55D-1 et seq.*
- C. To participate in the preparation and review of programs or plans required by state or federal law or regulations in accordance with N.J.S.A. 40:55D-25.
- D. To assemble data on a continuing basis as part of a continuous planning process.
- E. To annually prepare a program of municipal capital improvement projects projected over a term of six (6) years, and amendments thereto, and recommend same to the Governing Body.
- F. To consider and make report to the Governing Body, within thirty-five (35) days after referral as to any proposed development regulation submitted to it pursuant to the provisions of N.J.S.A. 40:55D-26(a); and also to pass upon other matters specifically referred to the Land Use Board by the Township Committee pursuant to the provisions of N.J.S.A. 40:55D-26(b).

*Editor's Note: See Ch. 60, Subdivision of Land and Ch. 55, Site Plan Review.

G. When reviewing applications for approval of subdivision plats, site plans or conditional uses, to grant, to the same extent and subject to the same restrictions as the Zoning Board of Adjustment:

- (1) Variances pursuant to N.J.S.A. 40:55D-70c from lot area, lot dimensional setback and yard requirements provided that such relief from lot area requirements shall not be granted for more than one (1) lot.
- (2) Direction pursuant to N.J.S.A. 40:55D-34 for issuance of permit for a building or structure in the bed of a mapped street or public drainage way, flood control basin or public area reserved pursuant to N.J.S.A. 40:55D-32.
- (3) Direction pursuant to N.J.S.A. 40:55D-36 for issuance of a permit for a building or structure not related to a street.

Whenever relief is requested pursuant to this section, notice of a hearing on the application for development shall include reference to the request for a variance or direction for issuance of a permit as the case may be. The developer may elect to submit a separate application requesting approval of the variance or direction of the issuance of a permit, and a subsequent application for any required approval for a subdivision, site plan, or conditional use. The separate approval of the variance or the direction of the issuance of a permit shall be conditioned upon grant of all required subsequent approvals by the Land Use Board. The variance and subsequent approval shall not be granted unless such approval can be granted without substantial impairment of the intent or purpose of the zone plan and zoning ordinance.

H. To perform such other advisory duties as are assigned to it by ordinance or resolution of the Governing Body for the aid and assistance of the Governing Body or other agencies or officers.

In addition to the powers stated above, the Land Use Board shall exercise to the same extent, and subject to the same restrictions, all powers of a Zoning Board of Adjustment as said powers are listed and provided under the Municipal Land Use Law.

§ 10-10. Duties of Land Use Administrator/Land Use Board Secretary.

The duties of the Land Use Administrator/Land Use Board Secretary shall include the following:

- A. Receive all applications for development, determine whether such applications are complete as set forth by the township ordinance, notify applicants whether submissions are complete or incomplete, solely for the purpose of placing the application on the calendar, within the time provided by law;
- B. Establish the calendar of cases for the meetings of the Land Use Board;
- C. Notify the applicants of the dates upon which matters will be heard in sufficient time so that notices can be given within the time required by N.J.S.A. 40:55D-12;
- D. Attend all Land Use Board meetings and provide for the making of a verbatim record of all proceedings before each Land Use Board;
- E. Be responsible for giving notice by advertisement or otherwise, in accordance with statutory authority, of all public notices required to be given by the Board pursuant to the Municipal Land Use Law or by the Open Public Meetings Act;
- F. Maintain and have general charge and control of all records of the Land Use Board and Zoning Officer; take minutes of meetings of the Land Use Board and prepare same as required by the Municipal Land Use Law; and receive and present the correspondence of the Board and Zoning Officer;

- G. Keep a record of all complaints received and all actions taken to abate any violations of the township zoning ordinances and immediately notify the proper board or official of said complaint. Prepare such correspondence or documents needed by the Zoning Officer to fulfill the Zoning Officer's duties under these ordinances;
- H. Provide general administrative support to the Zoning Officer and Land Use Board.

§ 10-11. Time limits for approval.

- A. Minor subdivisions and site plans. Minor subdivision approvals shall be granted or denied within forty-five (45) days of the date of certification of submission of a complete application to the Land Use Board or within such further time as may be consented to by the applicant. Approval of a minor subdivision shall expire one hundred ninety (190) days from the date of Land Use Board approval unless within such period a plat in conformity with such approval and the provisions of the Map Filing Law, or a deed clearly describing the approved minor subdivision, is filed by the developer with the County Recording Officer, the Township Engineer and the Township Tax Assessor. Any such plat or deed must be signed by the Chairman and the Secretary to the Land Use Board before it will be accepted for filing by the County Recording Officer. Minor site plan approval shall be deemed to be final approval of the site plan by the Board, provided that the Board or a site plan committee of the Board appointed by the Chairman finds that the application conforms to the definition of minor site plan, and further provided that the Board or said subcommittee may condition such approval on terms ensuring the provision of improvements pursuant to N.J.S.A. 40:55D-38, N.J.S.A. 40:55D-39, N.J.S.A. 40:55D-41, and N.J.S.A. 40:55D-55. Any approvals given pursuant to this section shall be

conditioned upon timely receipt of a favorable report on the application by the County Planning Board or approval by the County Planning Board by its failure to report thereon within the required time period.

B. Preliminary approval of site plans and subdivisions.

- (1) Upon submission of a complete application for a site plan which involves ten (10) acres of land or less and ten (10) dwelling units or less, or for a subdivision of ten (10) or fewer lots, the Land Use Board shall grant or deny preliminary approval within forty-five (45) days of the certification of completeness of such submission or within such further time as may be consented to by the developer.
- (2) Upon submission of a complete application for a site plan which involves more than ten (10) acres or more than ten (10) dwelling units, or for a subdivision of more than ten (10) lots, the Land Use Board shall grant or deny preliminary approval within ninety-five (95) days of the date of certification of completeness of such submission or within such further time as may be consented to by the developer. Otherwise, the Land Use Board shall be deemed to have granted preliminary approval for the subdivision or site plan.

C. Ancillary powers. Whenever the Land Use Board is called upon to exercise its ancillary powers before granting a variance as set forth in subsection 10-9G of this chapter, the Land Use Board shall grant or deny approval of the application within ninety-five (95) days after submission by the developer of a complete application or within such further time as may be consented to by the applicant. Failure of the Land Use Board to act within the period prescribed shall constitute approval of the application and a certificate of the administrative officer as to the failure of the Land Use Board to act shall be issued on request of the applicant.

- D. Final approval. Application for final subdivision or site plan approval shall be granted or denied within forty-five (45) days of certification of completeness of the application or within such further time as may be consented to by the applicant. Final approval of a major subdivision shall expire ninety-five (95) days from the date of signing of the plat, unless within such period the plat shall have been duly filed by the developer with the County Recording Officer. The Land Use Board may, for good cause shown, extend the period for recording for an additional period not to exceed one hundred ninety (190) days from the date of signing of the plat.

§ 10-12. Procedure for filing applications. [Amended 2-10-04 by Ord. No. 2004-02]

- A. Certification of completeness of application. Applications for development within the jurisdiction of the Land Use Board shall be reviewed for completeness in accordance with the provisions of Section 10-33 of this chapter.
- B. Procedure for filing application.
- (1) Applications for development within the jurisdiction of the Land Use Board pursuant to the provisions of N.J.S.A. 40:55D-1 et seq. shall be filed with the Land Use Administrator/Secretary. Applicant shall file at least twenty-one (21) days before the date of the monthly meeting of the Board:
- (a) Fourteen (14) copies of any conceptual plan to be reviewed by the Board, for which no charge shall be made;
 - (b) Fourteen (14) copies of applications for minor subdivision approval;
 - (c) Fourteen (14) copies of applications for major subdivision approval; and

- (d) Fourteen (14) copies of an application for either major or minor site plan review, conditional use approval, or planned development.
- (2) The applicant shall also obtain all necessary forms from the Land Use Administrator/Secretary. The Land Use Administrator/Secretary shall inform the applicant of the steps to be taken to initiate applications and of the regular meeting dates of the Land Use Board.
- (3) At the time of filing the application, the applicant shall also file fourteen (14) copies of all plot plans or site plans and shall also file all other papers required by virtue of any provisions of this chapter or the land use subdivision, site plan or zoning ordinances of the township or required by any rule or regulation of the Land Use Board. When the application has been certified to be complete, the applicant shall be notified of the date set for hearing and shall give all notices as required by ordinance or statute.

§ 10-13. Citizens' Advisory Committee.

The Mayor may appoint one (1) or more persons as a Citizens' Advisory Committee to assist or collaborate with the Land Use Board in its duties, but such person or persons shall have no power to vote or take other action required of the Board. Such person or persons shall serve at the pleasure of the Mayor.

§ 10-14. Submission of application to Environmental Commission.

Whenever the Environmental Commission has prepared and submitted to the Land Use Board an index of the natural resources of the municipality, the Land Use Board shall make available to the Environmental Commission an informational

copy of every application for development to the Land Use Board. Failure of the Land Use Board to make such informational copy available to the Environmental Commission shall not invalidate any hearing or proceeding.

§ 10-15. Rules and regulations.

The Board shall adopt such rules and regulations as may be necessary to carry into effect the provisions and purposes of this chapter. In the issuance of subpoenas, administration of oaths and taking of testimony, the provisions of the County and Municipal Investigations Law of 1953 (N.J.S.A. 2A:67A-1 et seq.) shall apply.

§ 10-16—10-18. Reserved.

§ 10-19 Appeal and application procedures.

- A. Appeals to the Land Use Board may be taken by any person aggrieved, or by any officer, department, board or bureau of the township affected by any decision of the Administrative Officer. Each appeal shall be taken within the twenty (20) days prescribed by the statute by filing a notice of appeal with the officer from whom the appeal was taken, together with four (4) copies of such notice with the Land Use Administrator/Secretary. Such notice of appeal shall specify the grounds for the appeal. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.
- B. Applications addressed to the original jurisdiction of the Land Use Board without prior application to an administrative officer shall be filed with the Land Use Administrator/Secretary. Four (4) copies of the application shall be filed. At the time of filing the appeal or application, but in no event less than ten (10) days

prior to the date set for hearing, the applicant shall also file all plot plans, maps, or other papers required by virtue of any provision of this chapter or any rule of the Land Use Board. The applicant shall obtain all the necessary forms from the Land Use Administrator/Secretary. The Land Use Administrator/Secretary shall inform the applicant of the steps to be taken to initiate proceedings and of the regular meeting dates of the Board.

- C. An appeal stays all proceedings in furtherance of the action in respect of which the decision appealed from was made, unless the officer from whom the appeal is taken certifies to the Land Use Board, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Land Use Board or by the Superior Court of New Jersey on application or notice to the officer from whom the appeal is taken and on due cause shown.

§ 10-20 Power of Board to reverse or modify decisions.

In exercising the above-mentioned power, the Land Use Board may, in conformity with the provisions of P.L. 1975 c. 291, or amendments thereto or subsequent statutes applying reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and make such other requirement, decision or determination as ought to be made, and to that end have all the powers of the administrative officer from whom the appeal was taken.

§ 10-21 Expiration of variance.

Any variance from the terms of this chapter hereafter granted by the Land Use Board permitting the erection or alteration of any structure or structures, or permitting a specified use of any

premises shall expire by limitation unless such construction or alteration shall have been actually commenced on each and every structure permitted by said variance, or unless such permitted use has actually been commenced, within nine (9) months from the date of entry of the judgment or determination of the Land Use Board, except, however, that the running of the period of limitation herein provided shall be tolled from the date of filing an appeal from the decision of the Land Use Board to a court of competent jurisdiction, until the termination in any manner of such appeal or proceeding.

§ 10-22 Powers granted by law.

The Land Use Board shall have such powers as are granted by law to:

- A. Hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by an Administrative Officer based on or made in the enforcement of the Zoning Chapter.
- B. Hear and decide requests for interpretation of the map or Zoning Chapter, or for decisions upon other special questions upon which such Board is authorized to pass by provisions in the Zoning Chapter.
- C. Variances.
 - (1) Where: (a) By reason of exceptional narrowness, shallowness or shape of a specific piece of property; (b) By reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property; or (c) By reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to the Zoning Chapter would result in peculiar and exceptional practical difficulties to, or exceptional and undue

hardship upon the developer of such property, grant, upon an application or an appeal relating to such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship.

- (2) Where, in an application or appeal relating to a specific piece of property, the purposes of the Act would be advanced by a deviation from the Zoning Ordinance requirements and the benefits of the deviation would substantially outweigh any detriment, grant a variance to allow departure from such regulations of the Zoning Chapter, provided, however, that no variance from those departures enumerated in N.J.S.A. 40:55D-70(d) shall be granted under this subsection; and provided further that the proposed development does not require approval by the Land Use Board of a subdivision, site plan or conditional use in conjunction with which the Land Use Board has power to review a request for a variance pursuant to N.J.S.A. 40:55D-60(a) of the Municipal Land Use Law.

D. In particular cases and for special reasons; grant a variance to allow a departure from regulations set forth in the Zoning Chapter to permit:

- (1) A use or principal structure in a district restricted against such use or principal structure,
- (2) An expansion of a nonconforming use,
- (3) Deviation from a specification or standard pursuant to N.J.S.A. 40:55D-67 pertaining solely to a conditional use,
- (4) An increase in the permitted floor area ratio as defined in N.J.S.A. 40:55D-4,
- (5) An increase in the permitted density as defined in N.J.S.A. 40:55D-4, except as applied to the required lot area for a lot or lots for detached one- or two-dwelling unit buildings which lot or lots are either

undersized lot or lots resulting from minor subdivision, in which event applications would be made pursuant to Subsection C above. A variance under this section shall be granted only by affirmative votes of at least five (5) members of the Board.

§ 10-23. Additional powers.

- A. The Land Use Board shall, in addition to the powers specified in Section 10-22 of this chapter, have power given by law to:
- (1) Direct issuance of a permit pursuant to N.J.S.A. 40:55D-34 for a building or structure in the bed of a mapped street or public drainageway, flood control basin or public area reserved on the official map.
 - (2) Direct issuance of a permit pursuant to N.J.S.A. 40:55D-36 for a building or structure not related to a street.
- B. The Land Use Board shall have the power to grant, to the same extent and subject to the same restrictions as the Planning Board, subdivision or site plan approval pursuant to N.J.S.A. 40:55D-37 et seq., or conditional use approval pursuant to N.J.S.A. 40:55D-67, whenever the proposed development requires approval by the Board of a variance pursuant to Subsection d of Section 57 of the Municipal Land Use Law (N.J.S.A. 40:55D-70). The developer may elect to submit a separate application requesting approval of the variance and a subsequent application for any required approval of a subdivision, site plan or conditional use. The separate approval of the variance shall be conditioned upon grant of all required subsequent approvals by the Land Use Board. No such subsequent approvals shall be granted unless such approval can be granted without substantial detriment to the public good and without substantial impairment of

the intent and purpose of the zone plan and Zoning Ordinance. The number of votes of the Land Use Board required to grant any such subsequent approvals shall be as otherwise provided in this Act for the approval in question, and the special vote pursuant to the aforesaid Subsection d of Section 57 (N.J.S.A. 40:55D-70d) shall not be required.

§ 10-24. Time limit for decision.

- A. Land Use Board shall render its decision not later than one hundred twenty (120) days after the date:
 - (1) An appeal is taken from the decision of an Administrative Officer, or
 - (2) The date of certification of completeness of an application for development to the Board. The Board or administrative officer authorized by the Board to review and certify applications shall certify the completeness of any application within forty-five (45) days from the date the application is filed with the Township Clerk, or otherwise the application shall be deemed to be complete and shall immediately be so certified.
- B. Failure of the Board to render a decision within such period of one hundred twenty (120) days or within such further time as may be consented to by the applicant shall constitute a decision favorable to the applicant.
- C. In the event that the developer elects to submit separate consecutive applications for a use variance and site plan review respectively, the one hundred twenty (120)-day provision shall apply to the application for approval of the variance, but the period for granting or denying any subsequent approval shall be otherwise provided in this chapter.
- D. If an application for development is found incomplete, the developer shall be notified, in writing, of the deficiencies therein by the Board, or the Board's designee

for the determination of completeness, within forty-five (45) days of the submission of such application or it shall be deemed properly submitted. When it has been determined by the Board, or the Board's designee for the determination of completeness, that an application meets all requirements specified in the chapter and rules and regulations of the Board, the Land Use Administrator/Secretary shall immediately issue a certificate to the developer that the application is complete, and the application shall be deemed to be complete as of the day it was so certified, for the purposes of the commencement of the time periods for actions by the Board.

- E. The date of certification of completeness of an application for development to the Land Use Board shall be determined in accordance with Section 10-32 of this chapter.

§ 10-25. Conflicts of interest

No member of the Land Use Board shall act on any matter in which he has either directly or indirectly any personal or financial interest. Whenever any such member shall disqualify himself from acting on a particular matter, he shall not continue to sit with the Board on the hearing of such matter nor participate in any discussion or decision relating thereto.

§ 10-26. Meetings

- A. Meetings of the Land Use Board/Planning Board shall be scheduled no less often than once a month and any meeting so scheduled shall be held as scheduled unless canceled for lack of applications for development to process.
- B. Special meetings may be provided for at the call of the Chairman or on the request of any two (2) Board

members, which meetings shall be held on notice to the Board members and the public in accordance with all applicable legal requirements.

- C. No action shall be taken at any meeting without a quorum being present.
- D. All actions shall be taken by a majority vote of the members present at the meeting, except as otherwise required by any provision of N.J.S.A. 40:55D-1 et seq.
- E. All regular meetings and all special meetings shall be open to the public. Notice of all such meetings shall be given in accordance with the requirements of the Open Public Meetings Law, Chapter 231, Laws of New Jersey, 1975. An executive session for the purpose of discussing and studying any matters to come before either Board shall not be deemed a regular or special meeting in accordance with the provisions of N.J.S.A. 40:55D-9.

§ 10-27. Minutes of meetings.

Minutes of every regular or special meeting shall be kept and shall include the names of the persons appearing and addressing the Board and of the persons appearing by attorney; the action taken by the Board, and the findings, if any, made by it and reasons therefor. The minutes shall thereafter be made available for public inspection during normal business hours at the office of the Municipal Clerk. Any interested party shall have the right to compel production of the minutes for use as evidence in any legal proceeding concerning the subject matter of such minutes. Such interested party may be charged a fee for reproduction of the minutes for his use as provided for in the rules of the Board.

§ 10-28. Fee schedule. [Amended 10-9-01 by Ord. No. 2001-19]

The Land Use Board shall charge and receive application fees, escrow deposits for professional services, and certain miscellaneous fees as set forth in Schedule A of Chapter 10 entitled "Fee Schedule, Land Use Board".*

§ 10-29. Special meeting fees.

All special meetings of the Land Use Board, scheduled at the request of an applicant, shall be scheduled at the convenience of the Board. The fee shall be three hundred dollars (\$300.) per meeting, plus the estimated cost of any professional staff required for the meeting, such as engineer, attorney and/or planner. The application for the special meeting shall be in writing, and must be received a minimum of fourteen (14) days prior to the requested special meeting date. The Chairman shall fix the estimated cost of any professional staff expense and immediately notify the applicant, who shall deposit same with the Land Use Administrator/Secretary of the Land Use Board. All such estimated fees shall be deposited in a trust account and disbursed to pay such fees and expenses as may have been incurred on behalf of the township in connection with such hearing. If such costs exceed the amount of the fees deposited, the applicant shall deposit the additional funds required. In the event that there is an unused portion, it shall be returned to the applicant. The Land Use Board shall designate, by resolution, the officer who is to be responsible for the trust account provided for herein. No portion of the fee of three hundred dollars (\$300.) shall be returned.

*Editor's Note: Schedule A, referred to herein, may be found at the end of this chapter.

§ 10-30. Inspection fees; escrow deposits.

- A. Inspection fees. Inspection fees attributable to the services of the Township Engineer within the contemplation of paragraph h. of N.J.S.A. 40:55D-53, shall be paid pursuant to, and in accordance with that section. The township may require a deposit pursuant to, and subject to the limitations of paragraph h. of N.J.S.A. 40:55D-53. Inspection fees attributable to the services of the Board Engineer for inspection of improvements within the contemplation of N.J.S.A. 40:55D-53.2 shall be paid pursuant to and in accordance with Subsection C of this section.
- B. Deposits; escrows; interest. Whenever an amount of money in excess of five thousand dollars (\$5,000.) shall be deposited by the applicant with the township for professional services employed by the township to review applications for development, for municipal inspection fees in accordance with subsection h. of N.J.S.A. 40:55D-53 or to satisfy the guarantee requirements of subsection a. of N.J.S.A. 40:55D-53, the money, until repaid or applied to the purposes for which it is deposited, including the applicant's portion of the interest earned thereon, except as otherwise provided in this or other land use chapter, shall continue to be the property of the applicant and shall be held in trust by the township. Money so deposited shall be held in escrow. The township shall deposit it in a banking institution or savings and loan association in this state insured by an agency of the federal government, or in any other fund or depository approved for such deposits by the state, in an account bearing interest at the minimum rate currently paid by the institution or depository on time or savings deposits. The township shall notify the applicant in writing of the name and address of the institution or depository in which the deposit is made and the amount of the deposit. The township shall not be required to refund an amount of

interest paid on a deposit which does not exceed one hundred dollars (\$100.) for the year. If the amount of interest exceeds one hundred dollars (\$100.), that entire amount shall belong to the applicant and shall be refunded to him by the township annually or at the time the deposit is repaid or applied to the purposes for which it was deposited, as the case may be; except that the township may retain for administrative expenses a sum equivalent to no more than thirty-three and one-third percent (33 1/3%) of the entire amount which shall be in lieu of all other administrative and custodial expenses.

C. Escrow payments for professional services.

- (1) The Chief Financial Officer of the township shall make all of the payments to professionals for services rendered to the township or approving authority for review of applications for development, review and preparation of documents, inspection of improvements or other purposes under the provisions of the land use chapters. Such fees or charges shall be as provided in Schedule A.* The application review and inspection charges shall be limited only to professional charges for review of applications, review and preparation of documents and inspections of developments under construction and review by outside consultants when an application is of a nature beyond the scope of the expertise of the professionals normally utilized by the township. The only costs that shall be added to any such charges shall be actual out-of-pocket expenses of any such professionals or consultants including normal and typical expenses incurred in processing applications and inspecting improvements. The township or approving authority shall not bill the applicant, or charge any escrow account

*Editor's Note: Schedule A may be found at the end of this chapter.

or deposit authorized under Subsection B. of this section, for any municipal clerical or administrative functions, overhead expenses, meeting room charges, or any other municipal costs and expenses except as provided for in this section, nor shall a township professional add any such charges to his bill. If the salary, staff support and overhead for a township professional are provided by the township, the charge shall not exceed two hundred percent (200%) of the sum of the products resulting from multiplying (1) the hourly base salary, which shall be established annually by ordinance, of each of the professionals by (2) the number of hours spent by the respective professional upon review of the application for development or inspection of the developer's improvements, as the case may be. For any professionals, the charges shall be at the same rate as all other work of the same nature by the professional for the township when fees are not reimbursed or otherwise imposed on applicants or developments.

- (2) The township requires of the developer a deposit toward anticipated municipal expenses for these professional services. The deposit shall be placed in an escrow account pursuant to N.J.S.A. 40:55D-53.1. The amount of the deposit required shall be reasonable in regard to the scale and complexity of the development. The amount of the initial deposit required shall be as provided in Schedule A.* For review of applications for development proposing a site plan, the amount of the deposit shall be based on one or more of the following: the area of the site to be developed, the square footage of buildings to be constructed, or an additional factor for

*Editor's Note: Schedule A may be found at the end of this chapter.

circulation-intensive sites such as those containing drive-through facilities. Deposits for inspection fees are established in accordance with Subsection A.

- (3) Each payment charged to the deposit for review of applications, review and preparation of documents and inspection of improvements shall be pursuant to a voucher from the professional, which voucher shall identify the personnel performing the service, and for each date the services performed, the hours spent to one-quarter hour increments, the hourly rate and the expenses incurred. All professionals shall submit vouchers to the Chief Financial Officer on a monthly basis in accordance with schedules and procedures established by the Chief Financial Officer. If the services are provided by a township employee, the employee shall prepare and submit to the Chief Financial Officer a statement containing the same information as required on a voucher, on a monthly basis. The professional shall send an information copy of all vouchers or statements submitted to the Chief Financial Officer simultaneously to the applicant. The Chief Financial Officer shall prepare and send to the applicant a statement which shall include an accounting of funds listing all deposits, interest earnings, disbursements, and the cumulative balance of the escrow account. This information shall be provided on a quarterly basis, if monthly charges are one thousand dollars (\$1,000.) or less, or on a monthly basis if monthly charges exceed one thousand dollars (\$1,000.) If an escrow account or deposit contains insufficient funds to enable the township or approving authority to perform required application reviews or improvement inspections, the Chief Financial Officer shall provide the applicant with a notice of the insufficient escrow or deposit balance. In order for work to continue on the development or the

application, the applicant shall within a reasonable time period, post a deposit to the account in an amount to be agreed upon by the township or approving authority and the applicant. In the interim, any required health and safety inspections shall be made and charged back against the replenishment of funds.

- (4) The following close-out procedure shall apply to all deposits and escrow accounts and shall commence after the approving authority has granted final approval and signed the subdivision plan or site plan, in the case of application review escrows and deposits, or after the improvements have been approved as provided in N.J.S.A. 40:55D-53, in the case of improvement inspection escrows and deposits:
 - (a) The applicant shall send written notice by certified mail to the Chief Financial Officer and the approving authority, and to the relevant township professionals, that the application or improvements, as the case may be, are completed.
 - (b) After receipt of such notice, the professional shall render a final bill to the Chief Financial Officer within thirty (30) days, and shall send a copy simultaneously to the applicant.
 - (c) The Chief Financial Officer shall render a written final accounting to the applicant on the uses to which the deposit was put within forty-five (45) days of receipt of the final bill.
 - (d) Any balances remaining in the deposit or escrow account, including interest in accordance with N.J.S.A. 40:55D-53.1 shall be refunded to the developer along with the final accounting.

- (5) All professional charges for review of an application for development, review and preparation of documents or inspection of improvements shall be reasonable and necessary, given the status and progress of the application or construction. Review fees shall be charged only in connection with an application for development presently pending before the approving authority or upon review of compliance with conditions of approval, or review of requests for modification or amendment made by the applicant. A professional shall not review items which are subject to approval by any state government agency and not under municipal jurisdiction except to the extent consultation with a state agency is necessary due to the effect of state approvals in the subdivision or site plan. Inspection fees shall be charged only for actual work shown on a subdivision or site plan or required by an approving resolution. Professionals inspecting improvements under construction shall charge only for inspections that are reasonably necessary to check the progress and quality of the work and such inspections shall be reasonably based on the approved development plans and documents.
- (6) If the township retains a different professional or consultant in the place of the professional originally responsible for the development, application, review, or inspection of improvements, the township or approving authority shall be responsible for all time and expenses of the new professional to become familiar with the application or the project, and the township or approving authority shall not bill the applicant or charge the deposit or the escrow account for such services.

§ 10-31. Hearings.

- A. Rules. The Land Use Board/Planning Board may make rules governing the conduct of hearings before such bodies which rules shall not be inconsistent with the provisions of N.J.S.A. 40:55D-1 et seq. or of this chapter.
- B. Oaths. The officer presiding at the hearing or such person as he may designate shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, including witnesses and documents presented by the parties, and the provisions of the "County and Municipal Investigations Law, P.L. 1953, c. 1938 (N.J.S.A. 2A:67A-1 et seq.) shall apply.
- C. Testimony. The testimony of all witnesses relating to an application for development shall be taken under oath or affirmation by the presiding officer and the right of cross examination shall be permitted to all interested parties through their attorneys, if represented, or directly, if not represented, subject to the discretion of the presiding officer and to reasonable limitations as to time and number of witnesses.
- D. Evidence. Technical rules of evidence shall not be applicable to the hearing, but the Board may exclude irrelevant, immaterial or unduly repetitious evidence.
- E. Records. Each Board shall provide for the verbatim recording of the proceedings by either stenographer, mechanical or electronic means. The Board shall furnish a transcript or duplicate recording in lieu thereof, on request, to any interested party at his expense.
- F. Vote by absent members. A member of the Board who is absent for one (1) or more of the meetings at which a hearing was held shall be eligible to vote on the matter upon which the hearing was conducted notwithstanding his absence from one (1) or more of the meetings; provided, however, that such Board member has

available to him the transcript or recording of all the hearings from which he was absent and certifies in writing to the Board that he has read such transcript or listened to such recording.

§ 10-32. Notice requirements for hearings.

Whenever a hearing is required on an application for development pursuant to N.J.S.A. 40:55D-1 et seq., the applicant shall give notice thereof as follows:

- A. Public notice shall be given by publication in the official newspaper of the municipality at least ten (10) days prior to the date of the hearing.
- B. Adjoining property owners.
 - (1) Notice shall be given to the owners of all real property located in this state as shown on the current tax duplicate or duplicates located within two hundred (200) feet in all directions of the property which is the subject of such hearing and whether located within or without the township. Such notice shall be given by:
 - (a) Serving a copy thereof on the owners as shown on the current tax duplicates, or his agent in charge of the property; or
 - (b) Mailing a copy thereof by certified mail to the property owner at his address as shown on the current tax duplicate or duplicates.
 - (2) The above requirements shall be deemed satisfied where condominiums or horizontal property regimes are within two hundred (200) feet of applicant's property by making service in the following manner:
 - (a) If the applicant's property abuts a condominium and the owner of any unit is within two hundred (200) feet of the applicant's

property and said unit has a unit above or below it, by giving notice to the condominium association.

- (b) If the applicant's property abuts a horizontal property regime and an apartment of the co-owner is within two hundred (200) feet of the applicant's property and such apartment has an apartment above or below it by giving notice to the horizontal property regime.
 - (c) If the applicant is the owner of a condominium unit or co-owner of an apartment, notice shall be given to all other unit owners or apartment co-owners within two hundred (200) feet of the unit or apartment owner or co-owned by the applicant.
- (3) A return receipt is not required. Notice to a partnership owner may be made upon any partner. Notice to a corporate owner may be made by service upon its president, a vice president, secretary or other person authorized by appointment or by law to accept service on behalf of the corporation.
- C. Notice of all hearings on applications for development involving property located within two hundred (200) feet of an adjoining municipality shall be given by personal service or certified mail to the Clerk of such municipality, which notice shall be in addition to the notice required to be given pursuant to Subsection B of this section to the owners of lands in such adjoining municipality, which lands are located within two hundred (200) feet of the subject premises.
- D. Notice shall be given by personal service or certified mail to the County Planning Board of a hearing on an application for development of property adjacent to an existing county road or proposed road shown on the official county map or on the County Master Plan adjoining other county land or situate within two hundred (200) feet of a municipal boundary.

- E. Notice shall be given by personal service or certified mail to the Commissioner of Transportation of a hearing on an application for development of property adjacent to a state highway.
- F. Notice shall be given by personal service or certified mail to the Director of the Division of State and Regional Planning in the Department of Community Affairs of a hearing on an application for development of property which exceeds one hundred fifty (150) acres or five hundred (500) dwelling units. Such notice shall include a copy of any maps or documents required to be on file with the Municipal Clerk pursuant to Subsection b of Section 6 of Chapter 291 Laws of New Jersey 1975.
- G. All notices hereinabove specified in this section shall be given at least ten (10) days prior to the date fixed for hearing and the applicant shall file an affidavit of proof of service with the Board holding the hearing on the application for development.
- H. Any notice made by certified mail as hereinabove required shall be deemed to be complete upon mailing in accordance with the provisions of N.J.S.A. 40:55D-14.
- I. Form of notice. All notices required to be given pursuant to the terms of this chapter shall state the date, time and place of the hearing; the nature of the matters to be considered; identification of the property proposed for development by street address if any, or by reference to lot and block numbers as shown on the current tax duplicate in the Municipal Tax Assessor's office; and the location and times at which any maps and documents for which approval is sought are available as required by law.
- J. Notice pursuant to Subsections C, D, E, and F of this section shall not be required unless public notice pursuant to Subsection A and Subsection B of this section is required. Notice under Subsections A and B is

not required for conventional site plan review, minor subdivision approval or final approval pursuant to N.J.S.A. 40:55D-50.

§ 10-33. List of property owners.

Pursuant to the provisions of N.J.S.A. 40:55D-12c, the Tax Assessor of the Township of Montague shall, within seven (7) days after receipt of a request therefor and upon receipt of payment of the maximum fees provided for in said section of the statute, make and certify a list from the current tax duplicate of names and addresses of owners to whom the applicant is required to give notice pursuant to Subsection 10-32B of this chapter.

§ 10-34. Complete application: certification of completeness; decisions on applications.

A. [Amended 2-22-05 by Ord. No. 2005-2] The checklist of requirements for applications for development is as follows:

- (1) Schedule A – Application checklist, Montague Township, Sussex County, New Jersey.

The checklist referred to above is on file and available for public inspection at the office of the Municipal Clerk.

All applications must meet the requirements of the specific application for a development checklist. If both preliminary and final approval of an application for development are being applied for at the same time, the requirements applicable to preliminary and final checklist items must be met. The applicant may request a waiver from any of these provisions; if a waiver is requested, however, the applicant must state in narrative form the reason applicant feels entitled to such waiver.

- B. An application for development shall be complete for purposes of commencing the applicable time period for action by a municipal agency when so certified by the municipal agency, committee or designee. In the event that the agency, committee or designee does not certify the application to be complete within forty-five (45) days of the date of its submission, the application shall be deemed complete upon the expiration of the forty-five (45) day period for the purposes of commencing the applicable time period, unless (1) the application lacks information indicated on a checklist hereinafter specified, a copy of which shall have been provided to the applicant, and (2) the municipal agency or its authorized committee or designee has notified the applicant in writing within forty five (45) days of submission of the application. The applicant may request that one or more of the submissions be waived, in which event the agency shall grant or deny the request within forty-five (45) days. Nothing herein shall be construed as diminishing the applicant's obligation to prove in the application process that he is entitled to approval of the application. The municipal agency may subsequently require correction of any information found to be in error and submission of additional information not specified in the ordinance or any revisions in the accompanying documents as are reasonably necessary to make an informed decision as to whether the requirements necessary for approval of the application for development have been met. The application shall not be deemed incomplete for lack of any such additional information or any revisions in the accompanying documents so required by the agency.
- C. Decisions.
- (1) The municipal agency shall include findings of fact and conclusions based thereon upon each decision on any application for development and shall reduce the decision to writing. The municipal agency shall provide the findings and conclusions through:

- (a) A resolution adopted at a meeting held within the time period provided in the Act for action by the municipal agency on the application for development, or
- (b) A memorializing resolution adopted at a meeting held no later than forty-five (45) days after the date of the meeting at which the municipal agency voted to grant or deny approval. Only the members of the municipal agency who voted for action taken may vote on the memorializing resolution, and the vote of a majority of such members present at the meeting at which the resolution is presented for adoption shall be sufficient to adopt the resolution. An action pursuant to N.J.S.A. 40:55D-9 (resulting from the failure of a motion to approve an application) shall be memorialized by resolution as provided above, with those members eligible to vote on the memorializing resolution. The vote on any such resolution shall be deemed to be a memorialization of the action of the municipal agency and not to be an action of the municipal agency; however, the date of the adoption of the

resolution shall constitute the date of the decision for purpose of the mailings, filings and publications required under N.J.S.A. 40:55D-10. If the municipal agency fails to adopt a resolution or memorializing resolution as hereinabove specified, any interested party may apply to the Superior Court in a summary manner for an order compelling the municipal agency to reduce its findings and conclusions to writing within a stated time and the cost of the application, including attorney's fees, shall be assessed against the municipality.

- (2) A copy of the decision shall be mailed by the Board within ten (10) days of the date of decision to the applicant, or if represented, then to his attorney, without separate charge. A copy of the decision shall also be mailed to all persons who have requested it and who have paid the fee prescribed by the Board for such service. A copy of the decision shall also be filed in the office of the Township Clerk, who shall make a copy of the filed decision available to any interested party upon payment of a fee calculated in the same manner as those established for copies of other public documents in the township.

§ 10-35. Publication of decision.

A brief notice of every final decision shall be published in the official newspaper of the municipality. Such publication shall be arranged by the Land Use Administrator/Secretary, as the case may be, without separate charge to the applicant. Said notice shall be sent to the official newspaper for publication within ten (10) days of the date of any such decision.

§ 10-36. Payment of taxes.

Pursuant to the provisions of N.J.S.A. 40:55D-39 and N.J.S.A. 40:55D-65, every application for development submitted to the Land Use Board/Planning Board shall be accompanied by proof that no taxes or assessments for local improvements are due or delinquent on the property which is the subject of such application, as well as before final approval is granted; or if it is shown that taxes or assessments are delinquent on said property, any approvals or other relief granted by the Board shall be conditioned upon either the prompt payment of such taxes or assessments or the making of adequate provision for the payment thereof in such manner that the municipality will be adequately protected.

§ 10-37. Disclosure of ownership by corporation or partnership.

- A. A corporation or partnership applying to a municipal agency for permission to subdivide a parcel of land into six (6) or more lots, or applying for a variance to construct a multiple dwelling of twenty-five (25) or more family units, or for approval of a site to be used for commercial purposes, shall list the names and addresses of all stockholders or individual partners owning at least ten percent (10%) of its stock of any class, or at least ten percent (10%) of the interest in the partnership, as the case may be.
- B. If a corporation or partnership owns ten percent (10%) or more of a stock of a corporation or ten percent (10%) or greater interest in a partnership subject to disclosure pursuant to Subsection A of this section, that corporation or partnership shall list the names and addresses of its stockholders holding ten percent (10%) or more of its stock, or of ten percent (10%) or greater interest in the partnership, as the case may be, and this requirement shall be followed by every corporate stockholder or partner in a partnership until the names and addresses

of the noncorporate stockholders and individual partners exceeding the ten percent (10%) ownership criterion have been listed.

§10-38. Conditional approvals.

- A. Conditions precedent. Whenever any application for development is approved subject to specified conditions intended to be fulfilled before the approval becomes effective, said conditional approval shall lapse and become null and void unless all specified conditions are fulfilled within one hundred ninety (190) days of the date of conditional approval.
- B. The fulfillment of all conditions precedent shall be reported in writing to the municipal agency, which may cause such reports to be verified in an appropriate manner. Only upon fulfillment of all conditions shall any subdivision map or site plan be signed or any required building permit, occupancy permit or zoning permit be issued.
- C. Conditions subsequent. Whenever any application for development is approved subject to conditions, which by their terms are incapable of being fulfilled, or are not required to be fulfilled prior to the final approval of the application, the performance of which are not guaranteed by bonds or securities of any type, failure to fulfill any such condition within six (6) months from the date of the final approval of the application for development shall be grounds for the issuance of a stop work order by the Enforcing Official and the withholding of any zoning permit, certificate of occupancy or any approval until such condition or conditions are fulfilled.
- D. Nothing herein contained shall be construed as preventing the municipal agency from specifying a longer period of time within which any specific condition must

be fulfilled, or from granting, upon an ex parte application, an extension of time for fulfilling a condition for good cause shown.

- E. The fulfillment of all conditions shall be reported in writing to the municipal agency which may cause such reports to be verified in an appropriate manner. Only upon fulfillment of all conditions shall subdivision map or site plan be signed or any required building permit, occupancy permit, zoning permit or other required approval be issued.

§ 10-39. Appeals to Land Use Board.

An appeal to the Land Use Board may be taken by any interested party affected by any decision of the administrative officer of the township based on or made in the enforcement of the Zoning Chapter or Official Map. Such appeals shall be taken within twenty (20) days by filing a notice of appeal in the manner set forth in Subsection 10-19A of this chapter, and in accordance with the provisions of N.J.S.A. 40:55D-64 et seq. of the Municipal Land Use Law of 1975.

§ 10-40. Definitions.

Whenever a term is used in this chapter which is defined in Chapter 291 of the Laws of New Jersey 1975, such term is intended to have the meaning set forth in the definition of such term found in said statute, unless a contrary intention is clearly expressed from the context of this chapter.

§ 10-41. Repealer.

All sections of the Land Subdivision Ordinance, Zoning Ordinance, Site Plan Review Ordinance* or any other ordinance of the Township of Montague which contain provisions contrary to the provisions of this chapter shall be and are hereby, to the extent of such inconsistency, repealed. All references to the Montague Zoning Board and Planning Board contained in the Code of the Township of Montague not specifically amended by the within ordinance hereinafter shall refer to the Land Use Board.

§ 10-42. Ordinances continued.

Pursuant to the provisions of Chapter 291 of the Laws of New Jersey 1975, Section 81, the substantive provisions of the existing Land Subdivision Ordinance, Zoning Ordinance and Site Plan Review Ordinance of the Township of Montague and the development regulations set forth therein shall continue in full force and effect for a period of six (6) months from the effective date of this ordinance or until the Township exercises the authority delegated by Chapter 291 of Section 81 of the Laws of New Jersey, 1975 to regulate development, whichever comes first.

§ 10-43. Pending applications.

All applications for development filed prior to the effective date of this chapter may be continued, but any appeals arising out of decisions made on any such application shall be governed by Section 10-39 of this chapter.

*Editor's Note: See Ch. 60, Subdivision of Land, Ch. 76, Zoning and Ch. 55, Site Plan Review.

§ 10-44. Filing of copies.

Immediately upon adoption of this chapter, the Municipal Clerk shall file a copy of this chapter with the County Planning Board as required by law. The Clerk shall also file with said County Planning Board copies of all other ordinances of the municipality relating to land use, such as the Subdivision, Zoning and Site Plan Review Ordinances.*

*Editor's Note: See Ch. 60, Subdivision of Land, Ch. 76, Zoning and Ch. 55, Site Plan Review.

**SCHEDULE A
FEE SCHEDULE LAND USE BOARD
[Amended 10-19-01 by Ord. No. 2001-19]**

Minor Subdivision	\$100 for each created/resulting lot + \$100 for each additional created/resulting lot
Minor Subdivision involving only a boundary line change	\$100
Preliminary Major Subdivision	\$175 + Addit'l \$50 for each newly created/resulting lot
Final Major Subdivision	\$125 + Addit'l \$25 for each newly created/resulting lot
Minor Site Plan or Site Plan Waiver	\$100
Preliminary Site Plan and Final Site Plan	\$300 + \$25 per acre
Variance or Appeal	\$200-Residential \$300-Commercial \$400-"D" Variance
Telecommunication Towers:	
New tower construction	\$3000
No new tower construction (co-location)	\$1000

ESCROW FEES

Minor subdivision	\$500
Preliminary Major Subdivision Preliminary Site Plan	\$1600
Final Major Subdivision Final Site Plan	\$1000

Sch. A

MONTAGUE CODE

Sch. A

Fee Schedule Land Use Board—Continued

Variance \$500

Telecommunications

Towers:

New tower construction \$5000

No new tower construction
(co-location) \$2000

MISCELLANEOUS FEES

Status of Taxes (All
applications) \$2

Certified List of Adjacent
Property Owners \$10

Special Meeting Fee of Any
Professionals \$300 per applicant + cost

Informal Review \$100* (1 hour limit)

Extension of Time \$50
Approval

**NOTE: TWO SEPARATE CHECKS MUST BE SUB-
MITTED; ONE FOR FEES AND ONE FOR
ESCROW**

*If applicant does not proceed forward with an application, this
fee should be applied to the formal application fee.

AFFORDABLE HOUSING

Chapter 19A

AFFORDABLE HOUSING

**ARTICLE I
Fair Share Plan**

- § 19A-1. Statement of purposes.**
- § 19A-2. Definitions.**
- § 19A-3. General provisions.**
- § 19A-4. Administration.**
- § 19A-5. Procedures for making application, review and approval.**
- § 19A-6. Development controls – rehabilitation.**
- §§ 19A-7 through 19A-10. (Reserved)**

**ARTICLE II
Development Fees**

- § 19A-11. Purpose.**
- § 19A-12. Definitions.**
- § 19A-13. Residential development fees.**
- § 19A-14. Nonresidential development fees.**
- § 19A-15. Eligible exaction, ineligible exaction and exemption.**
- § 19A-16. Collection of fees.**
- § 19A-17. Housing trust fund.**

§ 19A-18. Use of funds.**§ 19A-19. Expiration of Article.**

[HISTORY: Adopted by the Township Committee of the Township of Montague: Art. I, 11-23-04 as Ord. No. 2004-15; Art. II, 11-23-04 by Ord. No. 2004-16. Amendments noted where applicable.]

ARTICLE I**Fair Share Plan****§ 19A-1. Statement of purposes.**

- A. This Article is intended to facilitate ways in which housing rehabilitation and new construction can be provided for low and moderate income households within the Township of Montague in order for the township to meet its housing obligations as determined by the New Jersey Council on Affordable Housing (COAH).
- B. It is intended to provide technical and financial assistance to eligible homeowners for rehabilitating homes occupied by low or moderate income households.
- C. It is intended to provide a vehicle for eligible homeowners to gain access to the loans and/or grants from the township's housing trust fund.
- D. Funding for rehabilitation shall be through grant programs sponsored by the State of New Jersey Department of Community Affairs and/or funding from the housing trust fund and/or other sources not yet determined.

§ 19A-2. Definitions.

- A. Words and phrases defined in the Fair Housing Act, the Municipal Land Use Law (40:55D-1 et seq.) and in the

Substantive Rules of the Council on Affordable Housing (COAH) (N.J.A.C. 5:93-1.3) shall be incorporated in this Article as if written herein.

- B. FAIR HOUSING PROGRAM — The program provided under the terms of this Article.
- C. GROSS INCOME — The total income of all members of an applicant's household including, but not limited to, wages, tips, interest, dividends, and retirement programs.
- D. HOUSING TRUST FUND — The fund established for the financing of low and moderate income housing rehabilitation and development.
- E. INCLUSIONARY DEVELOPMENT — A development which is a mix of dwelling units which sell or rent at market value and those which sell or rent at a reduced value based on allowable spending limits for low and moderate income families as determined by the Council on Affordable Housing.
- F. INDIGENOUS HOUSING NEED — Deficient housing units occupied by low and moderate income households within a municipality.
- G. MUNICIPAL SPONSOR — A municipality which has involved itself in actual production of new, low and/or moderate income housing.
- H. PROGRAM ADMINISTRATOR — Shall be that township official or consultant appointed by the Township Committee.
- I. REHABILITATION — The restoration of a deficient or substandard dwelling unit to a safe and sanitary condition as provided for under the terms of this Article.

§ 19A-3. General provisions.

A. Eligibility. Only owners of dwelling units within Montague Township shall be eligible for rehabilitation assistance offered by this Article.

- (1) The homeowner, as a member of either a low or moderate income household who lives in the dwelling unit to be rehabilitated, or an owner who rents the dwelling unit to be rehabilitated to either a low or moderate income household shall be eligible for the assistance offered under this Article provided the owner agrees to rent the rehabilitated dwelling unit to a low or moderate income household for the required minimum period of time and at a rate which follows COAH guidelines. Proof of income of the household occupying the rehabilitated unit shall be required by the Program Administrator.

Income limits for participating homeowners will depend on family size and will equal eighty percent (80%) of the median income for families as most recently published by the U.S. Department of Housing and Urban Development (HUD).

- (2) A dwelling unit proposed to be rehabilitated shall be located in Montague Township and shall be considered deficient or substandard as determined by the Program Administrator.

(a) To qualify as deficient, the unit must have a minimum of two (2) of the following characteristics:

- [1] Constructed prior to 1940;
- [2] Be occupied by more than one (1) person per room;
- [3] Not have a private entranceway to the dwelling unit;

- [4] Not have exclusive access to complete plumbing facilities meeting the health and sanitary codes of the township;
- [5] Not have adequate kitchen facilities such as piped water, a safe, operating stove or an operating refrigerator.
- (b) A unit shall be considered substandard if it has deficiencies that violate the U.S. Department of Housing and Urban Development (HUD) Section 8 Existing Housing Quality Standards.
- (3) The rehabilitation will, upon completion, result in a safe and sound dwelling unit meeting all health and safety code requirements as certified through the issuance of a certificate of occupancy.
- (4) The homeowner must agree, in writing, to comply with all requirements of this Article and the rules and regulations established by COAH, and other applicable ordinances of Montague Township at the time the agreement for the assistance offered by this Article is signed.
- B. Effect on homeowner. Owners who secure financial assistance under the terms of this Article shall be entitled to the following rights and shall undertake the following obligations:
 - (1) The right to apply for, and receive special property tax assessment treatment in accordance with applicable state law.
 - (2) The obligation to place a deed restriction on the property specifying that only low or moderate income households may occupy the designated dwelling unit. The deed restriction shall take effect on the date the application is approved and money has been made available for the rehabilitation project. The deed restriction shall be in effect for six (6) years for owner-occupied units and ten (10) years for renter-occupied as per N.J.A.C. 5:93-5.2(g). The

beginning of the restricted time period shall be from the date the certificate of occupancy is issued following completion of the rehabilitation work. Sale of the deed restricted property shall not affect the deed restriction.

- (3) The obligation to sell or rent the dwelling unit at prices within the range of affordability as set forth by COAH for the period of the deed restriction. Increases in the affordability controls may be granted by the Township Committee upon written application to and review by the Program Administrator assuring compliance with COAH's requirements for changes in the affordability controls.

C. Penalties for noncompliance. No financial assistance from the housing trust fund shall be disbursed to any applicant without full compliance with the requirements of this Article and other applicable regulations. Any person who violates or who fails to comply with this Article or the other applicable regulations shall be penalized no more than one thousand dollars (\$1,000.) and/or jailed no longer than one (1) year and, as part of the penalty, shall make restitution of any and all funds paid from the housing trust fund. Nothing herein shall prevent the township from taking such other lawful action as is necessary to prevent or remedy any violation.

§ 19A-4. Administration.

Under this section the township undertakes to actively market through advertising in the media, distributing flyers, etc. the availability of rent or sales price restricted units which are to be made available to low and moderate income households. The Program Administrator is responsible for these activities.

A. Staff.

- (1) The Program Administrator shall perform the following duties:
 - (a) Conducting an Affirmative Marketing Program:
 - [1] Mailing to all homeowners at least once a year, an announcement of the Fair Housing Program. This announcement shall include an explanation of the eligibility requirements as well as the procedures for making application for rehabilitation assistance under the program.
 - [2] Conducting at least one (1) well publicized public meeting to outline and answer questions about the Fair Housing Program.
 - [3] Issuing periodic press releases to inform the public of news related to the Fair Housing Program and to promote interest in the program.
 - [4] Preparation of information/application packets for distribution to interested homeowners.
 - (b) Preparation of the necessary applications, financial statements, a summary of the commitments to the rules and regulations of the program, and such other forms to be executed in administering the program. The final set of forms and documents prepared by the Program Administrator shall be approved by the Township Committee. The appropriate forms shall include, along with other data deemed appropriate, proof of ownership, income qualifications of the occupants of the rehabilitated unit, the deed restrictions and the time period for affordability controls applicable to the property, a description of the work to be performed, the total cost of the work, how much

will be a loan and how much a grant, as well as the method of repaying any loan.

- (c) Determining the eligibility of the applicant based on the requirements of this Article and the data provided on the forms required as part of the application procedure.
- (d) Maintenance of an updated file on available governmental and nongovernmental programs for financial assistance for low and moderate income households, including eligibility requirements, application forms, filing deadlines, and whether funding is currently available.
- (e) Providing technical assistance to eligible low or moderate income applicants to apply for financial assistance for housing rehabilitation from state and federal programs and from the township's housing trust fund.
- (f) Determining the deficiencies of an applicant's dwelling unit and submit the findings in writing to be kept on file as part of the application.
- (g) Maintaining a list of approved contractors based upon satisfactory references on past work performed and on satisfactory credit ratings.
- (h) Determining whether the proposed work to be performed meets the parameters of this Article and whether the cost to complete that work is reasonable. Said determination shall be in writing and kept on file as part of the application.
- (i) Conducting appropriate, periodic inspections of the work being done and, when satisfactorily completed, issue a certificate of compliance bearing the date the certificate was issued. A

copy of this certificate shall be kept as part of the file on the application.

- (j) Preparation and periodic presentation (at least once a year) to the Township Committee of a report on the number and type of rehabilitation applications received and the amount of technical assistance provided by the Program Administrator. The report shall contain, at a minimum:

- [1] The number of applications received;
- [2] Those approved;
- [3] The income levels of those approved;
- [4] The number of rehabilitated dwelling units completed;
- [5] The cost of each;
- [6] A summary of the type of work completed; and
- [7] How many applications are currently being processed.

- (k) Be available to meet with interested homeowners.

- (2) The Program Administrator can call upon the following municipal employees to aid in carrying out the Article:

- (a) The Township Treasurer
- (b) The Zoning Officer
- (c) The Health Officer
- (d) The Construction Official
- (e) The Township Engineer
- (f) The Township Attorney

- (3) The Program Administrator may obtain the services of professional consultants, if deemed necessary, upon approval of the Township Committee.

B. Funding.

- (1) The township shall include in its annual budget sufficient funds to pay for the costs of administering this Article. The money expended for preparing and implementing the Fair Housing Ordinance shall, in accordance with the Fair Housing Act, be considered a mandated expenditure exempt from the limitations on final appropriations imposed pursuant to P.L. 1976, c. 68 (C.40A:4-45.1 et seq.).
- (2) The source of funding to administer and implement this program may include:
 - (a) State and federal programs
 - (b) The township's housing trust fund
 - (c) Township budget appropriations
- (3) State and federal funds shall be disbursed according to the rules and regulations of the agency administering the funds.
- (4) Township housing trust funds shall be available for housing rehabilitation. The funds shall be disbursed as deferred payment loans bearing three percent (3%) simple interest for rehabilitating deficient dwelling units owned and occupied by income eligible households, or deficient dwelling units owned by an absentee landlord but occupied by an income eligible household.
- (5) The above loans may be disbursed to qualified resident homeowners who agree to a lien on the property for repayment of the loan plus accrued interest. In owner-occupied dwellings the loan amount and incurred interest shall be waived if the original applicant has continually lived in the dwelling for fifteen (15) years. Where the property is

sold or transferred prior to the end of the fifteen (15) year period, the entire loan plus accrued interest shall be paid at the time of transfer.

§ 19A-5. Procedures for making application, review and approval.

- A. Application. Applications and other required forms shall be made available at the office of the Program Administrator or the Township Clerk's office. Technical assistance shall be available upon request to assist applicants in completing and submitting an application. There shall be no fee for filing an application.
- B. Review.
 - (1) The Program Administrator shall determine the completeness of the application.
 - (2) Upon a determination of completeness, the Program Administrator shall determine whether the applicant meets the eligibility criteria.
 - (3) Upon a determination that the applicant is eligible under the program, the Program Administrator shall inspect the property to determine whether it qualifies as deficient under this Article.
 - (4) Upon a determination that the dwelling unit is deficient, the Program Administrator shall cause a written description of the work required to be completed in order to meet the criteria of this Article and related health and safety codes and submit a copy to the applicant and retain one copy to be kept as part of the applicant's file. It shall be prepared by an individual qualified to make such written description.
 - (5) Upon receipt of this description of the work required to be completed, the applicant shall:

- (a) Indicate any discrepancies or omissions in writing to the Program Administrator. The Program Administrator shall review the applicant's comments and provide a written response, including any appropriate adjustments to the original report. A copy of this response shall be submitted to the applicant with a copy to be kept as part of the applicant's file.
- (6) Following the final determination of the work to be performed and acceptance by the homeowner, the Program Administrator shall seek written proposals, together with the cost to complete the work, from appropriate qualified contractors. A list of these contractors shall be kept in the office of the Program Administrator. The Program Administrator shall recommend a contractor based upon completeness of the proposal and the lowest overall cost submitted. This recommendation shall be submitted to the applicant for review and concurrency.

C. Action on the application.

- (1) Upon review of the contractor's written proposal and cost estimate, the Program Administrator shall either approve, disapprove, or modify the proposal as might be appropriate to meet the requirements of the applicable ordinances and requirements of this program and the judgment of both as to the reasonableness of the cost. If the proposal is modified or disapproved, the applicant and the contractor may meet with the Program Administrator to make appropriate modifications until the application is approved.
- (2) Upon approval of the work to be performed and the related cost, together with the eligibility of the applicant, all contracts shall be executed.

- (a) The contract between the applicant and the township and/or other governmental agencies covering the amount of the loan, the purpose of the loan, the deed restrictions and affordability controls, payback requirements for any loans, penalties for noncompliance, and such other requirements of the program as required by law.
- (b) The contract with the contractor and the applicant outlining the work to be performed, the cost, and the time of performance.
- (3) All payments which require expenditures from the township housing trust fund shall be made by the township to the contractor in accordance with the provisions of the contract outlined in subsection C(2)(a) above, subject to a guarantee that the money will go toward completion of the work included in the application and the contract. Any agreements with state and/or federal agencies will be conditioned upon the criteria of those agencies.
- (4) Following completion of the work, the Program Administrator shall inspect the dwelling unit and certify whether or not the work has been satisfactorily completed. If the work is sufficient, a certificate of compliance shall be issued. If the work is insufficient, the contractor shall be notified and given ninety (90) days to remedy the conditions cited. If the conditions are not corrected within ninety (90) days, the township shall be authorized to either use the proceeds of the guarantee filed by the contractor or such other remedies as appropriate.

§ 19A-6. Development controls - rehabilitation.

- A. Section 14(b) of the Fair Housing Act N.J.S.A. 52:27D-301 et seq. incorporates the need to eliminate unnecessary cost generating features from Montague

Township's land use ordinances. Accordingly, Montague Township will eliminate development standards that are not essential to protect the public welfare and to expedite or fast track municipal approvals/denials or inclusionary development applications. Montague Township will adhere to the components of N.J.A.C. 5:93-10.1 through 10.3. The Montague program will comply with monitoring and reporting requirements as per N.J.A.C. 5:93-11.6 and 12.1.

- B. Montague Township has undertaken a rehabilitation program which has rehabilitated thirty-five (35) substandard housing units occupied by low and moderate income households. Montague Township has designated the Program Administrator to administer the rehabilitation program. The Montague Housing Administrator has prepared a marketing plan for the rehabilitation program. The rehabilitation program will be consistent with N.J.A.C. 5:93-5.2(b) through 5.2(1).

§§ 19A-7 through 19A-10 (Reserved).

ARTICLE II Development Fees

§ 19A-11. Purpose.

In *Holmdel Builder's Ass'n v. Holmdel Township*, 121 NJ 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27d-301 et seq., and the State Constitution subject to the Council on Affordable Housing's (COAH) adoption of rules. The purpose of this Article is to establish standards for the collection, maintenance and expenditure of development fees pursuant to COAH's rules. Fees collected pursuant to this Article shall be used for the sole purpose of providing low and moderate-income housing. This

Article shall be interpreted within the framework of COAH's rules on development fees.

§ 19A-12. Definitions.

COAH — The New Jersey Council on Affordable Housing.

DEVELOPMENT FEES — Money paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted in COAH's rules.

EQUALIZED ASSESSED VALUE — The value of a property determined by the Municipal Tax Assessor through a process designed to ensure that all property in the municipality is assessed at the same assessment ratio or ratios required by law. Estimates at the time of issuance of a building permit may be obtained utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the Municipal Tax Assessor.

SUBSTANTIVE CERTIFICATION — A determination by COAH approving a municipality's housing element and fair share plan in accordance with the provisions of the Fair Housing Act and the rules and criteria as set forth herein. A grant of substantive certification shall be valid for a period of six (6) years in accordance with the terms and conditions therein.

§ 19A-13 Residential development fees.

- A. Within all residential zoned districts, developers shall pay a development fee of one-half of one percent (.5%) of the equalized assessed value for residential development/ or the coverage amount of the Home Owner Warranty document of a for-sale unit or the appraised value on the document utilized for construction financing for a rental unit provided no increased density is permitted.

- B. If a "d" variance is granted pursuant to N.J.S.A. 40:55d-70d(5), then the additional residential units realized (above what is permitted by right under the existing zoning) will incur a bonus development fee of one half of one percent (.5%). However, if the zoning on a site has changed during the two-year period preceding the filing of the "d" variance application, the density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the "d" variance application.

The fee may be realized on the coverage amount on the Home Owner's Warranty document for each additional for sale unit or on the appraised value on the document utilized for construction financing for each additional rental unit.

- C. Developers within the following zoning districts may pay a fee in lieu of constructing a low- or moderate-income housing unit.

§ 19A-14. Nonresidential development fees.

- A. Developers within all nonresidential zone districts shall pay a fee of one (1%) percent of either the equalized assessed value for nonresidential development or the appraised value utilized on the document for construction financing.
- B. If a "d" variance is granted pursuant to N.J.S.A. 40:55D-70d(4), then the additional floor area realized (above what is permitted by right under the existing zoning) will incur a bonus development fee of six (6%) percent rather than the development fee of one (1%) percent. However, if the zoning on a site has changed during the two-year period preceding the filing of the "d" variance application, the base floor area for the purposes of calculating the bonus development fee shall be the highest floor area permitted by right during the two year

period preceding the filing of the "d" variance application. The development fee may be based on either the equalized assessed value utilized or the document for construction financing.

§ 19A-15. Eligible exaction, ineligible exaction and exemption.

- A. Developers of low- and moderate-income units shall be exempt from paying development fees.
- B. Developers that have received preliminary or final approval prior to the effective date of this ordinance shall be exempt from paying a development fee unless the developer or seeks a substantial change in the approval.

§ 19A-16. Collection of fees.

- A. Developers shall pay up to fifty percent (50%) of the calculated development fee to the Township of Montague at the issuance of building permits. At the issuance of certificates of occupancy, the appropriate development fee shall be based on one of the options in N.J.A.C. 5:93-8-13. The developer shall be responsible for paying the difference between the fee calculated at building permit and paid at issuance of certificate of occupancy. The entire fee may also be paid at the issuance of the certificate of occupancy.

§ 19A-17. Housing trust fund.

- A. There is hereby created an interest bearing housing trust fund in Sussex Bank for the purpose of receiving development fees from residential and nonresidential developers. All development fees paid by developers pursuant to this Article shall be deposited in this fund. No money shall be expended from the housing trust fund

unless the expenditure conforms to a spending plan approved by COAH.

- B. If COAH determines that the Township of Montague is not in conformance with COAH's rules on development fees, COAH is authorized to direct the manner in which all development fees collected pursuant to this Article shall be expended. Such authorization from governing body to the Sussex Bank in which the housing trust fund is located.

§ 19A-18. Use of funds.

- A. Money deposited in a housing trust fund may be used for any activity approved by COAH for addressing the Township of Montague's low- and moderate-income housing obligation. Such activities may include, but are not necessarily limited to: housing rehabilitation, new construction, regional contribution agreements, the purchase of land for low- and moderate-income housing, extensions and/or improvements of roads and infrastructure to low- and moderate-income housing sites, assistance designed to render units more affordable to low- and moderate-income households and administrative costs necessary to implement the Montague Township's housing element. The expenditure of all money shall conform to a spending plan approved by COAH.
- B. At least thirty percent (30%) of the revenues collected shall be devoted to render units more affordable. Examples of such activities include, but are not limited to: downpayment and closing cost assistance, low interest loans and rental assistance.

No more than twenty percent (20%) of the revenues collected each year shall be expended on administrative costs necessary to develop, revise or implement the housing element. Examples of eligible administrative activities include: personnel, consultant services, space

costs, consumable supplies and rental or purchase of equipment directly associated with plan development or plan implementation.

- C. Development fee revenues shall not be expended to reimburse the Township of Montague for housing activities that preceded a first or second round substantive certification.

§ 19A-19. Expiration of Article.

This Article shall expire if:

- A. COAH dismisses or denies Montague Township's petition for substantive certification;
- B. COAH revokes substantive certification or this Article;
- C. The substantive certification/judgment of repose expires prior to Montague Township's filing an adopted housing element with COAH, petitioning for substantive certification or receiving COAH's approval of this Article.

SITE PLAN REVIEW

Chapter 55

SITE PLAN REVIEW

- § 55-1. Short title.**
- § 55-2. Definitions.**
- § 55-3. Submittal of site plan.**
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- § 55-4. Preliminary site plan.**
- § 55-5. Time for decision.**
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- § 55-7. Effect of preliminary approval.**
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- § 55-9. Preliminary site plan submission requirements.**
- § 55-10. Design standards and site improvements.**
- § 55-11. Preliminary site plan detail.**
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- § 55-13. Final site plan.**
- § 55-14. Time for decision.**
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- § 55-16. Final site plan details.**
- § 55-17. Off-street parking and signs.**
- § 55-18. Guaranties.**
- § 55-19. Administration.**
- § 55-20. Joint submission.**

§ 55-21. Deviation from final site plan.

§ 55-22. Filing.

§ 55-23. Fees.

§ 55-24. Failure to comply.

§ 55-25. Violations and penalties.

§ 55-26. Construal.

§ 55-27. Notice.

[HISTORY: Adopted by the Township Committee of the Township of Montague 10-14-80 as Ord. No. 80-18. Amendments noted where applicable.]

GENERAL REFERENCES

Land use procedures — See Ch. 10.
Subdivision of land — See Ch. 60.
Zoning — See Ch. 76.

§ 55-1. Short title.

This chapter shall be known as and may be cited as the "Site Plan Review Ordinance of the Township of Montague."

§ 55-2. Definitions.

As used in this chapter, the following terms shall have the following meanings, unless the context clearly indicates a different meaning:

APPLICANT — A developer submitting an application for site plan review.

COMPLETE APPLICATION — An application form completed, as specified by this chapter or any other applicable ordinance and the rules and regulations of the Planning Board, and all accompanying documents required

by ordinance for approval of the application for development, including, where applicable, but not limited to, a site plan or subdivision plat, provided that the Planning Board or other reviewing municipal agency may require such additional information not specified in the ordinance, or any revisions in the accompanying documents as are reasonably necessary to make an informed decision as to whether the requirements necessary for approval of the application for development have been met. The application shall not be deemed incomplete for lack of any such additional information or any revisions in the accompanying documents so required by the municipal agency. An application shall be certified as complete immediately upon the meeting of all requirements specified in this chapter and in the rules and regulations of the municipal agency and shall be deemed complete as of the day it is so certified by the administrative officer for purposes of the commencement of the time periods for action by the Planning Board or other municipal agency. [Added 5-13-80 by Ord. No. 80-7]

FINAL SITE PLAN APPROVAL – The approval required prior to issuance of a building permit or other permit authorizing the development of land.

MUNICIPAL AGENCY – The Planning Board or Zoning Board of Adjustment, as the case may be, and is synonymous with reviewing agency or reviewing board.

PRELIMINARY SITE PLAN APPROVAL – Indicates that the preliminary site plan as submitted meets all requirements of applicable municipal ordinances and confers upon the applicant all of the benefits provided for in N.J.S.A. 40:55D-49.

SITE PLAN – A development plan of one (1) or more lots on which is shown the items required by virtue of the provision of § 55-11 of this chapter, as a condition for the issuance of a permit for development.

SITE PLAN APPLICATION – An application to the reviewing agency requesting site plan review and approval accompanied by all of the information required by this chapter.

§ 55-3. Submittal of site plan. [Amended 8-24-99 by Ord. No. 99-07]

Prior to the issuance of a permit for any development, other than for detached one- or two-dwelling-unit buildings, and as a condition for the issuance of any such permit for development, a site plan shall be submitted to the Planning Board for its review and approval, except that the resolution of the Board of Adjustment shall substitute for that of the Planning Board whenever the Board of Adjustment has jurisdiction over a site plan pursuant to N.J.S.A. 40:55D-76b. This requirement shall be applicable for any permit required for any new structure or for any addition to or alteration of an existing structure or of parking facilities related to any structure; to any change in use of a structure other than those herein exempted; or to removal of vegetation or disturbance of soil in an area of over five thousand (5,000) square feet.

In the event that no variances are needed, the Planning Board will have jurisdiction to waive site plan review in the event that an addition to or alteration of an existing structure proposed by the applicant is less than five hundred (500) square feet and involves no change in the ingress and egress for the facility, no change in the parking demands for the facility and no change in the lighting demands for the facility.

An application may be made for determination of whether a site plan is required. Such application will require payment of a fee in the amount of one hundred dollars (\$100.).

**§ 55-3.1. Certification of completeness of application.
[Added 5-13-80 by Ord. No. 80-7]**

All applications for development, whether for preliminary or final approval (except submission of a concept plan), shall be reviewed by the Submissions Review Committee of the Board for the purpose of determining the completeness of the application. Said Committee shall either determine that said application is not complete and so notify the developer of the deficiencies therein or shall certify its completeness within forty-five (45) days from the date that said application was filed with the administrative official. If the Subdivision Committee fails to take action within said period of forty-five (45) days, any such application for development shall be deemed to be complete. The Planning Board may, at any time and from time to time, designate any official or group of officials of the municipality to review and certify the completeness of applications for development in lieu of the Subdivision Committee.

§ 55-4. Preliminary site plan.

The preliminary site plan and any engineering and architectural documents required shall be in tentative form for discussion purposes for preliminary approval. If the submission of the developer is found to be incomplete, the developer shall be notified thereof within forty-five (45) days of the submission of the application, or it shall be deemed to be properly submitted.

§ 55-5. Time for decision.

- A. Upon the submission to the Municipal Clerk of a complete application for a preliminary site plan for ten (10) acres of land or less, the municipal agency shall grant or deny preliminary approval within forty-five (45) days of the date of such submission or within such further time as may be consented to by the applicant.
- B. Upon the submission of a complete application for a preliminary site plan for more than ten (10) acres, the municipal agency shall grant or deny preliminary approval within ninety-five (95) days of the date of such submission or within such further time as may be consented to by the applicant.
- C. Otherwise, the municipal agency shall be deemed to have granted preliminary approval of the site plan.

§ 55-6. Preliminary site plan approval; denial; grant of exceptions.

- A. The municipal agency shall, if the proposed development complies with the requirements of this chapter, grant preliminary site plan approval.
- B. If the site plan is denied, the reasons for denial shall be stated upon the records of the municipal agency.
- C. The municipal agency, when acting upon applications for preliminary site plan approval, shall have the power to grant such exceptions from the requirements for site plan

approval as may be reasonable and within the general purpose and intent of the provisions for site plan review and approval in this chapter, if the literal enforcement of one (1) or more provisions of this chapter is impractical or will exact undue hardship because of peculiar conditions pertaining to the land in question or relating to the proposed use. In any such case, the municipal agency shall, in its resolution, set forth its findings of fact and conclusions of law.

- D. If the municipal agency acts favorably on the preliminary site plan, the Chairman and Secretary shall affix their signatures to the site plan.

§ 55-7. Effect of preliminary approval.

Preliminary approval of a site plan shall confer upon the applicant the following rights for a three-year period from the date of preliminary approval:

- A. That the general terms and conditions on which preliminary approval was granted shall not be changed, except as otherwise permitted by N.J.S.A. 40:55D-49a.
- B. That the applicant may submit for final approval on or before the expiration date of preliminary approval the whole or a section or sections of the preliminary site plan.
- C. That the municipal agency may grant extensions of such preliminary approval for additional periods of at least one (1) year, but not to exceed a total extension of two (2) years, provided that if the design standards have been revised by ordinance, such revised standards shall govern.
- D. The municipal agency may grant all of the above rights for a period of time longer than three (3) years for a site plan with an area of fifty (50) acres or more. Such length of time shall take into consideration the number of dwelling units, the economic conditions and the comprehensive development, among others. The municipal agency may grant an extension of preliminary approval for such additional

periods of time as shall be determined by the municipal agency and for the same reasons as stated above.

§ 55-8. Filing.

The Secretary of the municipal agency approving a preliminary site plan shall certify two (2) full sets, on each page, with an appropriate stamp showing date of approval, file number, Chairman's signature and Secretary's signature. One (1) set shall be given to the applicant, and one (1) set shall be retained in the official files of the municipal agency.

§ 55-9. Preliminary site plan submission requirements.

An application for site plan review shall be submitted on forms supplied by the Municipal Clerk for such purpose and shall be submitted in accordance with the requirements of the Land Use Procedures Ordinance of the Township of Montague.¹ An application for site plan review shall be made in conjunction with an application for a use variance and shall be filed simultaneously with the application to the Zoning Board of Adjustment.

§ 55-10. Design standards and site improvements.

Each site plan shall provide for the following:

- A. The layout of the land development shall be consistent with the Municipal Zoning Ordinance,² except in those cases where application is being made to the Zoning Board of Adjustment for a variance from the terms and provisions of said Zoning Ordinance.
- B. Safe and efficient vehicular and pedestrian circulation.
- C. Off-street parking and loading.
- D. Adequate screening, and landscaping and appropriate location of structures.

¹ Editor's Note: See Ch. 10, Land Use Procedures.

² Editor's Note: See Ch. 76, Zoning.

- E. Exterior lighting for safety reasons, in addition to adequate streetlighting.
- F. Streets within the land development shall be of sufficient width and suitable grade and suitably located to accommodate prospective traffic and to provide access for fire-fighting and emergency equipment to buildings and shall be coordinated so as to compose a convenient system consistent with the circulation element of the Master Plan. No street shall be required of a width greater than fifty (50) feet within the right-of-way line, unless said street constitutes an extension of an existing street of a greater width or already has been shown on the Master Plan at a greater width.
- G. Adequate water supply, drainage, shade trees, sewage facilities and other utilities necessary for essential service to residents and occupants.
- H. Any area reserved for public use shall be of suitable size, shape and location to serve its intended purposes.
- I. Any open space to be set aside as part of a residential cluster shall comply with those provisions and as provided for by N.J.S.A. 40:55D-1 et seq.
- J. No development shall take place in a delineated floodway area and shall be permitted in a delineated flood fringe area only where it is determined by the Municipal Engineer that the first floor elevation will be above the flood level and that construction and landfilling will not significantly increase flooding in other areas.
- K. Adequate protection and conservation of soils through the submission of an erosion and sedimentation control plan approved by the appropriate authority for all site plans that will result in disturbance of five thousand (5,000) square feet of land or more.
- L. Standards for the grading, improvement and construction of streets or driveways and for any required walkways, curbs, gutters, streetlights, fire hydrants and water, drainage, sewage facilities and other improvements found

necessary shall be as provided to the developer by the Municipal Engineer. Where certain utilities to be installed are under other governmental authority or jurisdictions, the standards shall be provided by those jurisdictions and shall be adhered to by the developer. A letter approving the proposed installations and a statement as to who will carry out the construction shall be required.

M. Any off-tract water, sewer, drainage or street improvements required as a result of land development shall be paid for by the developer on a pro rata basis as determined by the municipal agency. Said costs shall be determined by proportioning said benefit to the site in relation to the benefit of the entire area being served, as specified in the standards set forth in the Land Subdivision Ordinance.³

N. All taxes and assessments against the site shall be paid prior to any preliminary approval.

§ 55-11. Preliminary site plan detail.

A. Site plan details are primarily for the use of the municipal agency to establish criteria required to make decisions and recommendations. The following documents shall be provided for a preliminary site plan review. In some circumstances, additional information beyond these may be required of the applicant. If so, these should be carefully indicated by the municipal agency as early in the proceedings as possible for the orderly presentation of the application or approval. Surveys, the general plan, grading and utility plans, landscaping plans, architectural plans and elevations may be indicated on separate drawings and documents.

- (1) The title, key map location of development and the name and address of record owner and/or development applicant and site planner preparing the site development plan shall be given.

³ Editor's Note: See Ch. 60, Subdivision of Land.

- (2) The proposed use or uses of the land and buildings shall be indicated.
- (3) Site plans should be presented at a scale no smaller than one (1) inch equals fifty (50) feet nor larger than one (1) inch equals twenty (20) feet; size of sheets should not exceed thirty-six by twenty-four (36 x 24) inches.
- (4) A scale and graphic scale.
- (5) North arrow, in the same direction on all sheets.
- (6) A survey of the property prepared by a licensed surveyor or engineer of New Jersey, showing boundaries of properties, line of all existing streets and roads, easements, rights-of-way and areas dedicated to public use within two hundred (200) feet of the property shall be submitted.
- (7) Existing and proposed buildings shall be shown, with dimensions showing, with first floor elevation, present and finished grade elevations at all corners and entrances. Present buildings and structures to be removed are to be indicated.
- (8) A topographic map to delineate existing contours at two-foot intervals, up to ten (10) feet beyond property lines, as well as proposed grading and contours, wooded areas, trees [where six (6) inches or greater in diameter], floodplains, ponds, streams and drainage ditches, etc., shall be submitted.
- (9) The location of all existing and proposed structures, i.e., walls, fences, culverts, bridges, roadways, etc., with grade elevations for each structure, shall be indicated.
- (10) Existing zones of the development site and of any different zones within two hundred (200) feet of the property shall be indicated.

- (11) The distance of the property line, measured along the center line of existing streets abutting the property, to the nearest intersection.
- (12) The boundaries of the property, building and setback lines, lines of existing streets, lots, reservations, easements and areas dedicated to public use shall be shown.
- (13) The locations of all utility structures and lines, existing and proposed stormwater drainage on site and on tract and from buildings and structures, as well as telephone, power and light, water, hydrant locations, sewer, gas, etc., whether privately or publicly owned, with manholes, inlets, pipe sizes, grades, inverts and directions of flow shall be indicated.
- (14) The location, size and nature of the entire lot or lots in question and of contiguous lots owned by the applicant or owner of record or in which the applicant has a direct interest shall be shown, even though only a portion of the entire property is involved in site plan development, and provided on a key map, if necessary.
- (15) All proposed easements and public and community areas shall be shown.
- (16) All means of vehicular ingress and egress to and from the site onto public streets shall be indicated, showing the size and location of driveways, curb cuts and curbing, sight lines and radii.
- (17) The location and design of off-street parking areas, showing their size and the locations of internal circulation, traffic patterns, parking space, aisles, driveways, curbing, barriers and wearing surface finished and construction shall be shown, all of which shall conform to the requirements of § 55-16.
- (18) The location, arrangement and dimensions of truck loading and unloading platforms and docks shall be shown.

- (19) Provisions for refuse and garbage disposal shall be indicated. It shall be ensured that areas are not exposed to view, are unpolluting, are covered from weather and are secure from vandalism.
- (20) Provisions for screening storage of equipment, attached or separate from buildings, shall be shown.
- (21) All existing or proposed exterior lighting (freestanding and/or on the building) shall be indicated for size, nature of construction, lumens, heights, area and direction of illumination, and footcandles produced, as well as time controls proposed for outdoor lighting and display.
- (22) All existing and proposed signs and their sizes; nature of construction and location, height and orientation, including all identification signs, traffic directional signs and arrows, freestanding and facade signs and time control for sign lighting, if any, shall be noted.
- (23) Locations, dimensions and construction of off-site sidewalks, on-site exits, walks and sidewalks shall be indicated. Provision should be made for pedestrian safety, accessways and, where necessary, a bicycle system and racking.
- (24) Proposed screening, green areas, landscaping and fencing shall be shown, including a planting plan and schedule (sizes, types and number), prepared by a qualified landscape architect or landscape designer.
- (25) Improvements to adjoining streets and roads, and traffic control devices necessary in streets or highways shall be shown. Acceleration and deceleration lanes, paving, land dedication or acquisition for roads should be shown.
- (26) Copies of any covenants and deed restrictions intended to cover any of the development site should be submitted.
- (27) Elevations, sketches, renderings or pictures of any new buildings or structures shall be submitted.

- (28) Preliminary architectural floor plans and elevations should be submitted, with the name, address, professional number and seal of the architect.
- (29) Appropriate places for signatures and date of approval of the Chairman and Secretary of the municipal agency and the Municipal Engineer shall be supplied.
- (30) In fire prevention, consideration must be shown for service lines, hydrants, Siamese connections, automatic sprinkler systems, fire zones, no-parking fire zones and pavement and wall signs.
- (31) Dimensions of all of the above on the site plan shall be shown so that scaling will not be necessary.
- (32) Notwithstanding any other provision of this section to the contrary the township hereby adopts and incorporates herein by reference, the current Nonstructural Stormwater Management Strategies as the same may be amended and supplemented from time to time and as are set forth in N.J.A.C. 7:8-1, et seq. The applicant shall compare current nonstructural stormwater practices set forth in the aforesaid Regulation to the standard set forth in this section. In the event of any conflict between the provisions of this section and the current Nonstructural Stormwater Management Regulations, the Regulations shall be controlling. The approving Board shall only approve developments which comply with the provisions of N.J.A.C. 7:8-1, et seq. as amended to the extent feasible considering the constraints of the specific development project. Any township regulations in conflict with said Regulation shall be superceded by the provisions of N.J.A.C. 7:8-1, et seq., as amended.
[Added 4-26-05 by Ord. No. 2005-9]

§ 55-12. Environmental impact statement.

In order that the municipal agency may assess the impact of a proposed development upon the natural environment, particularly with respect to potable water, pollution of all kinds, flooding and waste disposal, the application for site plan review shall be accompanied by an environmental impact statement, which shall contain information and analysis covering the items hereinafter set forth. The municipal agency, as part of its plan review procedures, shall take into consideration the effect of the applicant's proposal upon all aspects of the environment, including but not limited to sewage disposal, water quality, water supply, soil erosion, preservation of trees and vegetation, protection of watercourses, protection of air resources and protection of aquifers, and the presence of any nuisance factors. The municipal agency shall not approve any submission hereunder unless it determines and finds that the proposed development will not result in appreciable harmful effects to the natural environment; has been designed and conceived with a view toward the protection of natural resources; and will not place a disproportionate or excessive demand upon the total resources available for such proposal and for any future proposals. The municipal agency may, upon application and for good cause, waive the requirement for an environmental impact statement or for any of the specific requirements relating thereto as set forth in this section. The environmental impact statement shall cover the following:

- A. Description of development. The contours, buildings, roads, paved areas, proposed grading or regrading, existence of natural streams and the relationship of the premises to surrounding properties and existing utility lines shall be described.
- B. Sewage facilities. It must be shown that either there will be no sewage runoff from the site of the proposed development or that sewage can be disposed of through facilities adequate to preclude water pollution.
 - (1) Compliance with the State and Municipal Board of Health regulations.

- (2) If disposal is on site:
 - (a) Data on underlying geology.
 - (b) Soils analysis.
 - (c) Percolation tests for every five (5) acres.
 - (d) Topography.
 - (e) Location of aquifers.
 - (f) Depth and capacity of all wells within five hundred (500) feet of the site.
 - (g) Any other pertinent data.
- (3) If disposal is off site:
 - (a) Plant design capacity.
 - (b) Monthly average flows for the past twelve (12) months.
 - (c) Enforcement action against the plant.
 - (d) Capacity of the plant to treat industrial or commercial wastes, if applicable.

- (e) Receiving water quality standards.
 - (f) Stream quality data from state, federal or private sources.
 - (g) Stream flow [minimum average seven (7) consecutive days' flow with a frequency of occurrence of ten (10) years].
 - (h) Plans for sewage treatment facility, local plans.
 - (i) State regional planning policy, including interim basis plan.
 - (j) Flows expected from other approved subdivisions which are dependent upon the sewage treatment facilities in question.
- C. Water supply. It must be shown that an adequate potable water supply is available and not threatened by nearby use of other land.
- (1) Compliance with state and local regulations.
 - (2) If supply is from public facilities off the site, including private water companies:
 - (a) The amount of diversion granted by the Division of Water Resources (maximum gallons of water pumped during any month).
 - (b) The present diversion [maximum gallons of water pumped during the past twenty-four (24) months].
 - (c) Diversions expected from other approved subdivisions which are dependent upon the present diversion granted by the Division of Water Resources.
 - (3) If supply is from on-site sources:
 - (a) Realty improvements, less than fifty (50) dwelling units:

[1] The location and depth of all private and public water supplies within five hundred (500) feet of the realty improvement.

[2] The location, depth and adequacy of proposed private or public water supplies to serve the proposed realty improvement.

[3] A geologic description of subsurface conditions, including expected groundwater yields, using published geologic reports or report by a geologist.

(b) Realty improvements, more than fifty (50) dwelling units. No preliminary subdivision approval until the Division of Water Resources has determined that the proposed water supply and sewage disposal facilities are adequate.

D. Drainage. It must be shown that stormwater runoff from the site is so controlled that on- and off-site erosion is neither caused nor worsened and that the potential of downstream flooding is not increased.

(1) The volume of stormwater runoff now existing from the site, and volume to be generated by new improvements.

(2) Data on landscaping, vegetation map, tree and ground cover, existing on site compared with that proposed.

(3) Changes of runoff to be caused by change of such landscape and all roofs and paved surfaces.

(4) Plans for disposition of stormwater, whether by retention on site or means of channeling so as to protect downstream property.

(5) Stream encroachments. In the case of streams having a drainage area exceeding one-half ($\frac{1}{2}$) square mile, an encroachment permit is required from the Division of Water Resources for fill or diversion of a water channel, alteration of a stream, repair or construction

of a bridge, culvert, reservoir, dam, wall, pipeline or cable crossing.

- (6) Floodplains. Description of potential flood damages, including a summary of flood stages from state and federal sources.
- (7) Submission of a sediment and erosion control plan, drawn in accordance with the guidelines and standards adopted, from time to time, by the County Soil Conservation District.
- (8) Notwithstanding any other provision of this section to the contrary the township hereby adopts and incorporates herein by reference, the current Nonstructural Stormwater Management Strategies as the same may be amended and supplemented from time to time and as are set forth in N.J.A.C. 7:8-1, et seq. The applicant shall compare current nonstructural stormwater practices set forth in the aforesaid Regulation to the standard set forth in this section. In the event of any conflict between the provisions of this section and the current Nonstructural Stormwater Management Regulations, the Regulations shall be controlling. The approving Board shall only approve developments which comply with the provisions of N.J.A.C. 7:8-1, et seq. as amended to the extent feasible considering the constraints of the specific development project. Any township regulations in conflict with said Regulation shall be superceded by the provisions of N.J.A.C. 7:8-1, et seq., as amended.
[Added 4-26-05 by Ord. No. 2005-9]

- E. Solid waste disposal. A plan for disposal by means of a facility operating in compliance with the State Sanitary Code.
- F. Air pollution. It must be shown that no visible smoke or deleterious chemical changes are produced in the atmosphere by heating or incinerating devices nor by any processing of materials.

G. Critical impact areas. Plans should include any area, condition or feature which is environmentally sensitive or which, if disturbed during construction, would adversely affect the environment.

- (1) Critical impact areas include, but are not limited to, stream corridors, streams, wetlands, estuaries, slopes greater than twenty percent (20%), highly acid or highly erodible soils, areas of high water table and mature stands of native vegetation and aquifer recharge and discharge areas.
- (2) A statement of impact upon critical areas and of adverse impacts which cannot be avoided.
- (3) Environmental protective measures, procedures and schedules to minimize damage to critical impact areas.
- (4) A list of all licenses, permits and other approvals required by municipal, county or state law and the status of each.
- (5) A listing of all adverse environmental impacts (especially irreversible damage) that cannot be avoided.
- (6) An assessment of the environmental impact of the project.
- (7) A listing of steps proposed to minimize environmental damage to the site and region during construction and operation.

§ 55-13. Final site plan.

A. Submission of final site plan.

- (1) A final site plan and supporting drawings and documentation constitute the complete development of the site plan proposal and become the basis for the construction of the plan and inspection by the township.

- (2) The final site plan shall be submitted in accordance with the requirements of the Land Use Procedures Ordinance of the Township of Montague.⁴
 - (3) The site plan and any engineering or architectural documents required shall be in final form and accurate for final approval and construction.
 - (4) The developer may, at his option, submit a final site plan in stages to include only a portion of the original preliminary site plan. Approval of the final site plan for a section shall not extend the time limit of preliminary approval for the remaining sections.
- B. The municipal agency shall ensure that any improvements required for the site plan as a whole, which might have an adverse effect on an approved section if the remaining sections were not completed, shall be installed as a condition of approval for any section. This shall include but

⁴Editor's Note: See Ch. 10, Land Use Procedures.

not be limited to open space, recreation, soil and erosion control and similar improvements.

§ 55-14. Time for decision.

- A. The municipal agency shall grant final approval of the detailed drawings, specifications and estimates if the application for final approval conforms to the standards established by this chapter for final approval and the conditions of preliminary approval.
- B. Final approval shall be granted or denied within forty-five (45) days after submission of a complete application to the Municipal Clerk or within such further time as may be consented to by the applicant. Failure of the municipal agency to act shall be issued on request of the applicant, and it shall be sufficient in lieu of the written endorsement or other evidence of approval.

§ 55-15. Effect of final approval.

Final approval of a site plan shall confer upon the applicant the following rights for a two-year period after the date of final approval:

- A. The zoning requirements applicable to the preliminary approval first granted.
- B. All other rights conferred upon the developer pursuant to preliminary approval, whether conditional or otherwise, shall not be changed.
- C. The municipal agency may extend such period of protection for good cause by extensions of one (1) year, but not to exceed three (3) extensions.
- D. Notwithstanding any other provisions of this chapter, the granting of final approval terminates the time period of preliminary approval for the section granted final approval.

- E. In the case of a site plan for one hundred fifty (150) acres or more, the municipal agency may grant extensions of time longer than two (2) years as shall be determined by the municipal agency to be reasonable, taking into consideration the number of dwelling units and nonresidential floor area permissible, economic conditions and the comprehensiveness of the development, among others.

§ 55-16. Final site plan details.

- A. Final site plan details are primarily a refinement of the preliminary details by providing final engineering and architectural information which will be classified as site plan construction details.
- B. Whereas preliminary site plan data may have been tentative, the final data shall be accurate. The following data shall be provided on the final site plan:
- (1) All the data required on the preliminary site plan with complete accuracy.
 - (2) If any changes from the preliminary site plan have been made, an approved preliminary site plan showing those changes marked in red shall be submitted.

§ 55-17. Off-street parking and signs.

(This section is reserved to be used for standards covering off-street parking and signs, if desired.)

§ 55-18. Guaranties.

Prior to final site plan approval and as a condition thereof, the developer shall:

- A. Furnish a performance guaranty in favor of the municipality in an amount not to exceed one hundred twenty percent (120%) of the cost of installation for improvements it may deem necessary or appropriate as

shown on the final site plan and as authorized by N.J.S.A. 40:55D-53.

- B. Provide for a maintenance guaranty to be posted with the governing body for a period not to exceed two (2) years after final acceptance of the improvement, in an amount not to exceed fifteen percent (15%) of the cost of the improvement. In the event that other governmental agencies or public utilities automatically will own the utilities to be installed or the improvements are covered by a performance or maintenance guaranty to another governmental agency, no performance or maintenance guaranty, as the case may be, shall be required by the municipality for such utilities or improvements.
- C. The amount of any performance guaranty may be reduced by the governing body, by resolution, when portions of the improvements have been certified by the Municipal Engineer to have been completed. The time allowed for installation of the improvements for which the performance guaranty has been provided may be extended by said body by resolution.
- D. If the required improvements are not completed or corrected in accordance with the performance guaranty, the obligor and surety, if any, shall be liable thereon to the municipality for the reasonable cost of the improvements not completed or corrected, and the municipality may, either prior to or after the receipt of the proceeds thereof, complete such improvements.
- E. When all of the required improvements have been completed, the obligor shall notify the governing body, in writing, by certified mail addressed in care of the Municipal Clerk, of the completion of said improvements and shall send a copy thereof to the Municipal Engineer. Thereupon, the Municipal Engineer shall inspect all of the improvements and shall file a detailed report, in writing, with the governing body, indicating either approval, partial approval or rejection of the improvements, with a statement of reasons for any rejection. If partial approval

is indicated, the cost of the improvements rejected shall be set forth.

- F. The governing body shall either approve, partially approve or reject the improvements on the basis of the report of the Municipal Engineer and shall notify the obligor in writing, by certified mail, of the contents of said report and the action of said approving authority with relation thereto not later than sixty-five (65) days after receipt of the notice from the obligor of the completion of the improvements. Where partial approval is granted, the obligor shall be released from all liability pursuant to its performance guaranty, except for that portion adequately sufficient to secure provision of the improvements not yet approved. Failure of the governing body to send or provide such notification to the obligor within sixty-five (65) days shall be deemed to constitute approval of the improvements, and the obligor and surety, if any, shall be released from all liability pursuant to such performance guaranty.
- G. If any portion of the required improvements is rejected, the approving authority may require the obligor to complete such improvements, and, upon completion, the same procedure of notification as set forth in this section shall be followed.
- H. The obligor shall reimburse the municipality for all reasonable inspection fees paid to the Municipal Engineer for the foregoing inspection of improvements.

§ 55-19. Administration.

The regulations and standards set forth in this chapter are for the protection of the public health, safety and welfare of the citizens of this municipality. However, if an applicant can demonstrate that, because of peculiar conditions relating to his application or to his land, it would be unreasonable or impossible to enforce one (1) or more of the regulations or requirements set forth herein or that it would exact undue hardship upon said applicant, the municipal agency may permit such variance or

variances as may be reasonable and within the general purpose and intent of the rules, regulations and standards herein established, in which event the municipal agency shall, in its resolution, set forth its findings of fact and legal conclusions supporting said action.

§ 55-20. Joint submission.

Nothing in this chapter precludes a developer from submitting his preliminary and final site plan as one (1) submission, provided that all requirements of the final site plan shall be adhered to.

§ 55-21. Deviation from final site plan.

The developer shall undertake construction in substantial conformance with the approved final site plan if caused by change of conditions beyond the control of the developer since the date of final approval and the deviation would not substantially alter the character of the development or substantially impair the intent and purpose of the Master Plan or Zoning Ordinance.⁵

§ 55-22. Filing.

The Secretary of the municipal agency approving a final site plan shall certify three (3) full sets, on each page, with an appropriate stamp showing date approved, file number, Chairman's signature and Secretary's signature. One (1) set shall be given to the applicant, one (1) to the Zoning Enforcement Officer for his use, and one (1) set shall be retained in the official files of the municipal agency.

§ 55-23. Fees.

- A. There shall be submitted with each site plan application in order to defray the cost of review of said site plan the following fees:

⁵ Editor's Note: See Ch. 76, Zoning.

- (1) Preliminary site plan: seventy-five dollars (\$75.).
- (2) Final site plan: seventy-five dollars (\$75.).

B. In addition to the filing fee, the applicant shall also deposit funds with the Municipal Clerk to cover the cost of review services provided by the Municipal Engineer, planning consultant and other municipal personnel. The amount of the deposit shall be determined as follows:

- (1) For nonresidential uses, ten dollars (\$10.) for each five thousand (5,000) square feet of lot area or part thereof, plus one dollar (\$1.) for each one hundred (100) square feet of proposed building floor area, but not less than two hundred fifty dollars (\$250.).
- (2) For residential uses, ten dollars (\$10.) per dwelling unit but not less than two hundred fifty dollars (\$250.).

C. Any unused portion of the deposit shall be returned to the applicant. If the cost of review services exceeds the amount of deposit, sufficient additional funds shall be deposited before approval of the site plan shall become effective.

D. For purposes of determining the amount of deposit, if only a portion of the property is to be developed and said property can be further subdivided under the requirements of the Land Subdivision Ordinance and Zoning Ordinance⁶ of the municipality, the lot area shall be construed to be an area which can be subdivided under the requirements of said ordinances wherein all proposed buildings and improvements would meet all required setback and yard requirements. When a site plan for a new building or structure or addition thereto does not involve off-street parking, traffic circulation or drainage facilities, the amount of the deposit as it pertains to lot area shall apply only to the ground floor area of the building or structure.

⁶ Editor's Note: See Ch. 60, Subdivision of Land, and Ch. 76, Zoning.

§ 55-24. Failure to comply.

Failure to comply with any of the conditions of site plan approval subsequent to the receipt of a building permit, zoning permit or certificate of occupancy, as the case may be, shall be grounds for the revocation of any building permit, zoning permit or certificate of occupancy, as the case may be. A written notice of revocation sent by certified mail by the Zoning Officer or Building Inspector, as the case may be, shall specify the conditions of site plan approval which have been violated, and such revocation shall effectively terminate the validity of any building permit, zoning permit or certificate of occupancy theretofore issued.

§ 55-25. Violations and penalties.

Any person, firm or corporation violating any provisions of this chapter shall, upon conviction thereof before a court of competent jurisdiction, be subject to a fine not exceeding five hundred dollars (\$500.) or imprisonment in the county jail for a period not exceeding ninety (90) days, or both.

§ 55-26. Construal.

This chapter shall be construed in pari materia with the Land Use Procedures Ordinance, the Land Subdivision Ordinance and the Zoning Ordinance of the Township of Montague,⁷ which ordinances together constitute the land use regulations of this municipality, and shall be liberally construed to effectuate the purposes thereof.

§ 55-27. Notice.

The Municipal Clerk is hereby directed to give notice at least ten (10) days prior to the hearing on the adoption of this chapter to the County Planning Board and to all others entitled thereto

⁷ Editor's Note: See Ch. 10, Land Use Procedures, Ch. 60, Subdivision of Land, and Ch. 76, Zoning.

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pursuant to the provisions of N.J.S.A. 40:55D-15. Upon the adoption of this chapter after public hearing thereon, the Municipal Clerk is further directed to publish notice of the passage thereof and to file a copy of this chapter as finally adopted with the Sussex County Planning Board as required by N.J.S.A. 40:55D-16.

SOIL EROSION & SEDIMENT CONTROL

Chapter 57

SOIL EROSION AND SEDIMENT CONTROL

- § 57-1. Title.
- § 57-2. Purpose.
- § 57-3. Word usage.
- § 57-4. Definitions.
- § 57-5. General restrictions.
- § 57-6. Procedure.
- § 57-7. General design principles.
- § 57-8. Performance and maintenance guaranties.
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- § 57-10. Fees.
- § 57-11. Exemptions.
- § 57-12. Appeals.
- § 57-13. Violations and penalties.
- § 57-14. When effective.

[HISTORY: Adopted by the Township Committee of the Township of Montague 5-9-78 as Ord. No. 78-9.¹ Amendments noted where applicable.]

GENERAL REFERENCES

Land use procedures — See Ch. 10.
Subdivision of land — See Ch. 60.

¹ Editor's Note: This ordinance also superseded former Ch. 57, Soil Erosion and Sediment Control, adopted 5-11-76 as Ord. No. 76-10.

§ 57-1. Title.

This chapter shall be known as the "Soil Erosion and Sediment Control Ordinance of the Township of Montague."

§ 57-2. Purpose.

The purpose of this chapter is to control soil erosion and sediment damages and related environmental damage by requiring adequate provisions for surface water retention and drainage and for the protection of exposed soil surfaces in order to promote the safety, public health, convenience and general welfare of the community.

§ 57-3. Word usage.

Rules applying to text. For the purpose of this chapter, certain rules of word usage apply to the text as follows:

- A. Words used in the present tense include the future tense; and the singular includes the plural, unless the context clearly indicates the contrary.
- B. The term "shall" is always mandatory and not discretionary; the word "may" is permissive.
- C. The word or term not interpreted or defined by this section and § 57-4 shall be used with a meaning of common or standard utilization.

§ 57-4. Definitions.

The following definitions shall apply in the interpretation and enforcement of this chapter, unless otherwise specifically stated:

APPLICANT — A person, partnership, corporation or public agency requesting permission to engage in land disturbance activity or seeking site plan or subdivision approval from the Planning Board.

CRITICAL AREA — A sediment-producing highly erodible or severely eroded area.

EROSION — Detachment and movement of soil or rock fragments by water, wind, ice and gravity.

EROSION AND SEDIMENT CONTROL PLAN — A plan which fully indicates necessary land treatment measures, including a schedule of the timing for their installation, which will effectively minimize soil erosion and sedimentation. Such measures shall be in accordance with standards as adopted by the State Soil Conservation Committee.

EXCAVATION or CUT — Any act by which soil or rock is cut into, dug, quarried, uncovered, removed, displaced or relocated.

FARM CONSERVATION PLAN — A plan which provides for the use of land, within its capabilities and treatment, within practical limits, according to chosen use to prevent further deterioration of soil and water resources.

LAND — Any ground, soil or earth, including marshes, swamps, drainageways and areas not permanently covered by water within the municipality.

LAND DISTURBANCE — Any activity involving the clearing, grading, transporting, filling and any other activity which causes land to be exposed to the danger of erosion.

MULCHING — The application of plant residue or other suitable materials to the land surface to conserve moisture, hold soil in place and aid in establishing plant cover.

PERMIT — A certificate issued to perform work under this chapter.

SEDIMENT — Solid material, both mineral and organic, that is in suspension, is being transported or has been moved from its site of origin by air, water or gravity as a product of erosion.

SEDIMENT BASIN — A barrier or dam built at a suitable location to retain rock, sand, gravel, silt or other material.

SITE — Any plot, parcel or parcels of land.

SOIL — All unconsolidated mineral and organic material of any origin.

STANDARDS — Standards for Soil Erosion and Sediment Control in New Jersey as promulgated by the State Soil Conservation Committee.

STATE SOIL CONSERVATION COMMITTEE — An agency of the state established in accordance with the provisions of Chapter 24 of Title 4 of the New Jersey Revised Statutes.

STRIPPING — Any activity which significantly disturbs vegetated or otherwise stabilized soil surface, including clearing and grubbing operations.

SUSSEX COUNTY SOIL CONSERVATION DISTRICT — A governmental subdivision of this state, which encompasses this municipality, organized in accordance with the provisions of Chapter 24 of Title 4 of the New Jersey Revised Statutes.

§ 57-5. General restrictions.

- A. No land area shall be disturbed by any person, partnership, corporation or public agency until such time as a plan for soil erosion and sediment control in accordance with the Standards for Soil Erosion and Sediment Control in New Jersey, adopted by the State Soil Conservation Committee, has been approved and a valid land disturbance permit or construction permit has been issued by the Soil Erosion and Sediment Control Officer. [Amended 6-8-82 by Ord. No. 82-6; 4-24-90 by Ord. No. 90-4]
- B. No subdivision, site plan or land development plan shall be approved unless it includes a soil erosion and sediment control plan in accordance with the provisions of this chapter.

§ 57-6. Procedure.

- A. On all site plans, preliminary subdivision plots or other applications requiring Planning Board approval and involving land disturbance, there shall be submitted to the Planning Board a soil erosion and sediment control plan. The Planning Board shall seek assistance from the Township Engineer or the Sussex County Soil Conservation District in the review of such plans. The soil erosion and sediment control plan shall be filed with and become a part of the preliminary subdivision, site plan or other application and shall be subject to the same procedure for approval, denial or appeal as the application of which it is a part. **[Amended 4-26-96 by Ord. No. 96-3]**
- B. Determination of requirement. **[Amended 6-8-82 by Ord. No. 82-6; 4-24-90 by Ord. No. 90-4; 4-23-96 by Ord. No. 96-3]**
- (1) Prior to the issuance of a construction permit for any construction not requiring Planning Board approval and prior to the issuance of a land disturbance permit for any other activity, the Soil Erosion and Sediment Control Officer shall determine whether or not a soil erosion and sediment control plan is required in accordance with the definition of "project" as defined in Chapter 251.² The applicant shall furnish such information as is required by the Soil Erosion and Sediment Control Officer to make this determination.
 - (2) If the Soil Erosion and Sediment Control Officer determines that a soil erosion and sediment control plan is required, such plan shall be submitted to and approved by the Soil Erosion and Sediment Control Officer prior to the issuance of a construction permit or land disturbance permit. The Soil Erosion and Sediment Control Officer shall seek

² Editor's Note: See N.J.S.A. 4:24-39 et seq.

assistance from the Township Engineer or the Sussex County Soil Conservation District in the review of such plans.

- (3) The Soil Erosion and Sediment Control Officer shall grant approval or denial of the plan within a period of thirty (30) days of submission of a complete application, unless this period is extended by mutual agreement, in writing, between the municipality and the applicant for an additional thirty (30) days. Failure of the municipality to make a decision within such period or such extension thereof shall constitute certification.
 - (4) The applicant shall be provided with written notice of such decision by the Soil Erosion and Sediment Control Officer or other authorized municipal agent. A copy of such decision, including the name of the applicant, site location by street address and block and lot number and proposed land use, shall be sent to the Sussex County Soil Conservation District. The municipality shall also make available such other information as shall be required by the district.
- C. The applicant shall submit a separate soil erosion and sediment control plan for each noncontiguous site. Such plan shall contain:
- (1) A map of the site, at an appropriate scale not less than one (1) inch equals one hundred (100) feet, showing existing contour lines at two-foot intervals. A map showing general topography may be substituted at the discretion of the Planning Board or Soil Erosion and Sediment Control Officer, as the case may be. **[Amended 6-8-82 by Ord. No. 82-6; 4-24-90 by Ord. No. 90-4]**
 - (2) The location and description of proposed changes to the site.

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- (3) The location and description of existing natural and man-made features on and surrounding the site, including soil characteristics. Applications encompassing an area greater than three (3) acres shall include a copy of the appropriate part of the USDA Soil Survey.

(Cont'd on page 5707)

- (4) Measures for soil erosion and sediment control, both temporary and permanent, which meet or exceed the Standards for Soil Erosion and Sediment Control adopted by the State Soil Conservation Committee. The Standards shall be on file at the offices of the Sussex County Soil Conservation District and the Township Clerk.
- (5) A schedule of the sequence of installation of planned erosion and sediment control measures as related to the progress of the project, including anticipated starting and completion dates for control measures and for each step in the land disturbance and development sequence.
- (6) All proposed revisions shall be submitted for approval.

§ 57-7. General design principles.

Control measures shall apply to all aspects of the proposed land disturbance and shall be in operation during all stages of the disturbance activity. The following principles shall apply to the soil erosion and sediment control plan:

- A. Stripping of vegetation, grading or other soil disturbance shall be done in a manner which will minimize soil erosion.
- B. Whenever feasible, natural vegetation shall be retained and protected.
- C. The extent of the disturbed area and the duration of its exposure shall be kept to a practical minimum.
- D. Either temporary seeding, mulching or other suitable stabilization measure shall be used to protect exposed critical areas during construction or other land disturbance.
- E. Drainage provisions shall accommodate increased runoff, resulting from modified soil and surface conditions, during and after development or disturbance.

- F. Water runoff shall be minimized and retained on site whenever possible to facilitate groundwater recharge.
- G. Sediment shall be retained on site to the maximum extent feasible.
- H. Diversions, sediment basins and similar required structures shall be installed prior to any on-site grading or disturbance.
- I. Permanent vegetative protection and erosion control measures shall be established as soon as practically possible.

§ 57-8. Performance and maintenance guaranties.

- A. Prior to the issuance of a permit, the applicant shall file with the Township Clerk a performance guaranty in form and amount as specified by the Township Committee. The guaranty shall be discharged after completion and approval of all work specified in the plan and may be discharged in part, based on partial completion and approval, at the discretion of the Township Committee.
- B. All necessary soil erosion and sediment control measures installed under this chapter shall be adequately maintained for one (1) year after final approval of such measures or until such measures are permanently stabilized as determined by the Soil Erosion and Sediment Control Officer. [Amended 6-8-82 by Ord. No. 82-6; 4-24-90 by Ord. No. 90-4]
- C. The Township Committee may require a maintenance guaranty for a period not to exceed one (1) year after final approval of the soil erosion and sediment control measures, in an amount not to exceed fifteen percent (15%) of the cost of the improvement or permanent installation.

§ 57-9. Inspection and enforcement.

- A. The requirements of this chapter shall be enforced by the Soil Erosion and Sediment Control Officer, who shall inspect or require adequate inspection of the work. The Soil Erosion and Sediment Control Officer may seek assistance from the Township Engineer or the Sussex County Soil Conservation District in carrying out any provisions of this chapter. [Amended 6-8-82 by Ord. No. 82-6; 4-24-90 by Ord. No. 90-4]
- B. The Soil Erosion and Sediment Control Officer shall be notified by the applicant at least twenty-four (24) hours prior to the start of any project. [Amended 6-8-82 by Ord. No. 82-6; 4-24-90 by Ord. No. 90-4]
- C. The Soil Erosion and Sediment Control Officer may require necessary measures to be promptly installed and may require modifications to the plan when, in his judgment, such are necessary to properly control erosion and sediment. [Amended 6-8-82 by Ord. No. 82-6; 4-24-90 by Ord. No. 90-4]
- D. In the event of failure to comply with the requirements of this chapter, the Soil Erosion and Sediment Control Officer may revoke construction permits, refuse to issue further building permits and issue stop-work orders. [Amended 6-8-82 by Ord. No. 82-6; 4-24-90 by Ord. No. 90-4]
- E. No certificate of occupancy for any construction permit or land disturbance permit shall be granted unless all needed soil erosion and sediment control measures have been completed or substantially provided for in accordance with this chapter. [Amended 6-8-82 by Ord. No. 82-6]
- F. The applicant shall bear the final responsibility for the installation and construction of all required soil erosion and sediment control measures.
- G. Inspections shall be provided for during construction, and the applicant shall be required to have the certified plan on the site during construction.

H. A certificate of occupancy shall be withheld unless there has been compliance with the provisions of the certified plan for permanent measures to control soil erosion and sedimentation. A formal report of such compliance must be filed with the municipal agent authorized to issue certificates of occupancy. A copy of this report shall be sent to the Sussex County Soil Conservation District.

§ 57-10. Fees. [Amended 1-9-90 by Ord. No. 89-20]

Upon applying for a permit pursuant to the provisions of this chapter, the applicant shall pay a fee to cover the cost of the initial review of the proposed land disturbance in the amount of one hundred dollars (\$100.), unless the application is part of an application for a major subdivision, or for site plan approval. If the application is part of an application for a major subdivision or site plan approval, no additional fee shall be charged unless the Township Engineer shall certify that a review of the land disturbance plan was sufficiently involved so that the fees paid in connection with the other applications are insufficient. In such case, the applicant shall be charged that additional fee charged by the Engineer of the township, but in no event in excess of one hundred dollars (\$100.).

- A. Inspection shall be provided for during construction and the applicant shall be required to have the certified plans on site during construction.
- B. Upon issuance of a permit, the applicant shall pay a fee not in excess of one hundred dollars (\$100.) to cover field checks by the Engineer.

§ 57-11. Exemptions. [Amended 1-9-90 by Ord. No. 89-20]

The following activities are specifically exempt from this chapter:

- A. Land disturbance of five thousand (5,000) square feet or less.

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- B. The construction of a single-family dwelling unit unless such unit is part of a proposed subdivision, site plan, conditional use, zoning variance, planned development or construction permit application involving two (2) or more such single-family dwelling units.
- C. Use of land for gardening primarily for home consumption.
- D. Agricultural use of lands when operated in accordance with a farm conservation plan approved by the Sussex County Conservation District or when it is determined by the District that such use will not cause excessive erosion and sedimentation.

§ 57-12. Appeals. [Amended 6-8-82 by Ord. No. 82-6; 4-24-90 by Ord. No. 90-4]

Any person aggrieved by any decision or action of the Soil Erosion and Sediment Control Officer or Planning Board under this chapter may appeal to the Township Committee. Such appeal shall be made in writing and filed with the Township Clerk within ten (10) days from the date of such decision or action. The appellant shall be entitled to a hearing before the Township Committee within thirty (30) days from the date of appeal.

§ 57-13. Violations and penalties.

If any person violates any of the provisions of this chapter, any standard promulgated pursuant to the provisions of this act or

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fails to comply with the provisions of a certified plan, the municipality or the district may institute a civil action in the Superior Court for injunctive relief to prohibit and prevent such violation or violations, and said court may proceed in a summary manner. Any person who violates any of the provisions of this chapter, any standard promulgated pursuant to this act or fails to comply with the provisions of a certified plan shall be liable to a penalty of not less than twenty-five dollars (\$25.) nor more than three thousand dollars (\$3,000.) to be collected in a summary proceeding pursuant to the Penalty Enforcement Law (N.J.S.A. 2A:58-1 et seq.). The Superior Court, County Court, County District Court and Municipal Court shall have jurisdiction to enforce said Penalty Enforcement Law. If the violation is of a continuing nature, each day during which it continues shall constitute an additional separate and distinct offense.

§ 57-14. When effective.

This chapter shall take effect following municipal adoption and publication according to law and upon subsequent and final approval by the State Soil Conservation Committee.

SUBDIVISION OF LAND

Chapter 60

SUBDIVISION OF LAND

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§ 60-46. Right-of-way.

§ 60-47. Conditions for creating flag lots.

§ 60-48. Preliminary major subdivision plat details and information.

§ 60-49. Standards for lot layout.

§ 60-50. Final major subdivision plat details and information.

[HISTORY: Adopted by the Township Committee of the Township of Montague 10-11-66. Section 60-39A amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I. Other amendments noted where applicable.]

GENERAL REFERENCES

Uniform construction codes — See Ch. 32.

Municipal improvement certificates — See Ch. 43.

Soil erosion and sediment control — See Ch. 57.

Zoning — See Ch. 76.

Individual sewage disposal systems — See Ch. 91.

ARTICLE I

General Provisions

[Amended 6-12-73; 6-10-75 by Ord. No. 75-6; 1-13-76
by Ord. No. 76-2; 2-8-77 by Ord. No. 77-3]

§ 60-1. Short title.

This chapter shall be known as and may be cited as the "Land Subdivision Ordinance of the Township of Montague."

§ 60-2. Administration.

The provisions of this chapter shall be administered by the Township of Montague Planning Board and, where permitted by statute, by the Zoning Board of Adjustment, in accordance with all applicable provisions of N.J.S.A. 40:55D-1 et seq.

§ 60-3. Purpose and intent.

The purpose of this chapter is to provide rules, regulations and standards to guide and govern land subdivision in the Township of Montague in order to assure and promote the general safety, health and welfare of the township and its residents. It shall be administered at all times so as to assure that the character of the township and its rural attractiveness will be preserved while allowing the greatest freedom of development, consistent with the purposes herein expressed, all in such a manner as to maintain and promote the safe and convenient circulation of vehicles and populace.

§ 60-4. Definitions.

As used in this chapter, the following words shall have the meanings hereinafter set forth.

APPLICANT — The developer submitting an application for development.

APPLICATION FOR DEVELOPMENT — The application form and all accompanying documents required by ordinance for approval of a subdivision plat.

(Cont'd on page 6005)

1. The first part of the document is a list of the names of the persons who were present at the meeting.

2. The second part of the document is a list of the names of the persons who were absent from the meeting.

3. The third part of the document is a list of the names of the persons who were present at the meeting.

4. The fourth part of the document is a list of the names of the persons who were present at the meeting.

5. The fifth part of the document is a list of the names of the persons who were present at the meeting.

6. The sixth part of the document is a list of the names of the persons who were present at the meeting.

7. The seventh part of the document is a list of the names of the persons who were present at the meeting.

8. The eighth part of the document is a list of the names of the persons who were present at the meeting.

CLUSTER-TYPE DEVELOPMENT — A subdivision whereby lot sizes are reduced because of the allocation of certain of the land area for park and recreational purposes. This is sometimes referred to as an "average density development."

COMPLETE APPLICATION — An application form completed as specified by this chapter or any other applicable ordinance and the rules and regulations of the Planning Board, and all accompanying documents required by ordinance for approval, of the application for development, including, where applicable, but not limited to a site plan or subdivision plat, provided that the Planning Board or other reviewing municipal agency may require such additional information not specified in the ordinance, or any revisions in the accompanying documents as are reasonably necessary to make an informed decision as to whether the requirements necessary for approval of the application for development have been met. The application shall not be deemed incomplete for lack of any such additional information or any revisions in the accompanying documents so required by the municipal agency. An application shall be certified as complete immediately upon the meeting of all requirements specified in the ordinance and in the rules and regulations of the municipal agency, and shall be deemed complete as of the day it is so certified by the administrative officer for purposes of the commencement of the time periods for action by the Planning Board or other municipal agency. [Added 5-13-80 by Ord. No. 80-8']

DEVELOPER — The legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

DEVELOPMENT — The process of subdividing or obtaining site plan review. It may also refer to the improvement of land and, in proper context, to a subdivision.

¹ Editor's Note: This ordinance provided that it shall take effect on February 1, 1980.

DRAINAGE RIGHT-OF-WAY — The lands required for the installation of stormwater sewers or drainage ditches or required along a natural stream of water for preserving the channel and providing for the flow of water therein to safeguard the public against flood damage in accordance with Chapter 1 of Title 58 of the New Jersey Revised Statutes.

EASEMENT — A specific purpose right-of-way given over specifically designated and described premises to facilitate the use of the same for a defined use or purpose, such as for right-of-way, drainage or transmission purposes.

FINAL APPROVAL — The official action of the Planning Board taken on an approved preliminary plat after all requirements, conditions, engineering plans, etc., have been completed and the required improvements installed or bonds properly posted for their completion. A plat that receives such final approval must have been prepared by a licensed professional engineer and a land surveyor in compliance with all the provisions of N.J.S.A. 46:23-9.9 et seq. and is the map which must be filed with the County Clerk in accordance with N.J.S.A. 40:55D-54 in order to make the approval binding.

FINAL PLAT — The final map of all or a portion of the subdivision which is presented to the Planning Board for final approval in accordance with these regulations and which, if approved, shall be filed with the proper county recording officer.

GENERAL TERMS AND CONDITIONS — Those as outlined under preliminary plat details, Article VI and the design standards as outlined under Article VII.

LARGE LOT SUBDIVISION — A subdivision specifically permitted by special provision of the Zoning Ordinance,¹ requiring that resulting lots have a minimum area of five (5) acres each, which cannot be resubdivided,

¹ Editor's Note: See Ch. 76, Zoning.

permitting flag lots, and road improvements pursuant to the standards established by this Code. **[Amended 9-13-83 by Ord. No. 83-13]**

LOT — A parcel or portion of land separated from other parcels or portions by description as on a subdivision or record of survey map or by metes and bounds for purchase or sale, lease or separate use.

MAJOR SUBDIVISION — All subdivisions not classified as minor subdivisions.

MASTER PLAN — A composite of the mapped and written proposals recommending the physical development of the municipality which shall have been duly adopted by the Planning Board.

MINOR SUBDIVISION — Any subdivision containing not more than three (3) lots, including the remainder, fronting on an existing, approved public street, not involving any new road or street or the extension or improvement of township facilities and not adversely affecting the future development of the remainder of the adjacent lands and premises, while conforming to all of the provisions of this chapter and all of the other ordinances of the township; provided, however, that a proposed subdivision, otherwise complying with the foregoing requirements, shall not be deemed a major subdivision, if only for the need that a variance be obtained pursuant to N.J.S.A. 40:55D-70(c); and provided further that no portion of land being subdivided as part of the same parent tract from which any lots, tracts or parcels of land have been subdivided at any time during the three (3) years preceding the date of the current application for development. **[Amended 6-10-80 by Ord. No. 80-10; 4-13-82 by Ord. No. 82-8; 9-13-83 by Ord. No. 83-13; 10-14-86 by Ord. No. 86-83; 4-22-03 by Ord. No. 2003-10]**

MINOR SUBDIVISION PLAT — The final map of a minor subdivision which is presented to the Planning Board for approval and which, if approved, shall be filed with the proper county recording officer.

OFFICIAL MAP — A map adopted in accordance with the provisions of N.J.S.A. 40:55D-32 et seq. Such map shall be deemed to be conclusive with respect to the location and width of the street, public parks and playgrounds and drainage right-of-way shown thereon.

OFF-SITE — Located outside the lot lines of the lot in question but within the property (of which the lot is a part) which is the subject of the development application or contiguous portion of a street or right-of-way.

OFF-TRACT — Not located on the property which is the subject of a development application nor on contiguous portions of a street or right-of-way.

OFF-TRACT IMPROVEMENTS — Water, sewer, drainage and street improvements not located on the property which is the subject of a development application nor on a contiguous portion of a street or right-of-way.

ON-SITE — Location on the lot in question.

ON-TRACT — Location on the property which is the subject of a development application or on a contiguous portion of a street or right-of-way.

OWNER — Any individual, firm, association, Syndicate, copartnership or corporation having sufficient proprietary interest in the land sought to be subdivided to commence and maintain proceedings to subdivide the same under this chapter and, for the purpose of this chapter, shall include developer, applicant, agent, engineer or other person authorized to present the owner as defined herein.

PERFORMANCE GUARANTY — Any security which may be accepted in lieu of a requirement that certain improvements be made before the Planning Board or other approving body approves a plat, including performance bonds, escrow agreements and other similar collateral or surety agreements.

PLAT — The map of a subdivision.

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PRELIMINARY APPROVAL — The official action taken on a preliminary plat by the Planning Board, meeting in regular session, which determines whether or not the maps submitted is in proper form and meets the established standards adopted for design, layout and development of the subdivision. Such "preliminary approval" confers upon

1. The first part of the document is a list of names and addresses of the members of the committee. The names are listed in alphabetical order, and the addresses are listed below each name. The list is as follows:

2. The second part of the document is a list of the names and addresses of the members of the committee. The names are listed in alphabetical order, and the addresses are listed below each name. The list is as follows:

3. The third part of the document is a list of the names and addresses of the members of the committee. The names are listed in alphabetical order, and the addresses are listed below each name. The list is as follows:

4. The fourth part of the document is a list of the names and addresses of the members of the committee. The names are listed in alphabetical order, and the addresses are listed below each name. The list is as follows:

a subdivider all rights provided for by virtue of the provisions of N.J.S.A. 40:55D-49.

PRELIMINARY PLAT — The preliminary map indicating the proposed layout of the subdivision which is submitted to the Secretary of the Planning Board for Planning Board consideration and tentative approval and meeting requirements of Article VI of this chapter.

PUBLIC DRAINAGEWAY — The land reserved or dedicated for the installation of stormwater sewers or drainage ditches or required along a natural stream or watercourse for preserving the channel and providing for the flow of water to safeguard the public against flood damage, sedimentation and erosion.

RESUBDIVISION — The further division or relocation of lot lines of any lot or lots within a subdivision previously made and approved or recorded according to law; or the alteration of any streets or the establishment of any new streets within any subdivision previously made and approved or recorded according to law, but does not include conveyances so as to combine existing lots by deed or other instrument.

SPECIAL PURPOSE ROAD — Any road or street not owned or maintained by the Township of Montague which is not open to public access and which is not used in the ordinary manner contemplated by this subdivision chapter, particularly where the same does not constitute an improvement to a major subdivision as herein defined. The Planning Board shall make the determination as to whether a proposed road is to be a "special purpose road."

STREET [Amended 9-13-83 by Ord. No. 83-13]:

- A. Any street, avenue, road, lane, drive or other traveled way which:
- (1) Is an existing federal, state, county or municipal road or highway;
 - (2) Is shown on a plat heretofore approved pursuant to law;

- (3) Is shown on a plat duly filed in the office of the Sussex County Clerk prior to the appointment of the first Township Planning Board and prior to the grant to such Board of the power to review plats; or
- (4) Has been certified by the Township Committee as having been:
 - (a) Suitably improved and is adequately serviceable to promote the public health, safety and general welfare;
 - (b) Concerning special circumstances of a particular street, as having been improved at least sufficiently to provide adequate and safe access for conventional passenger vehicles and all emergency vehicles necessary for the protection of the public health, safety and general welfare; or
 - (c) Adequately secured that there exists sufficient performance guaranties to assure the improvement of such street or road in compliance with the standards required by this Code.

B. The term "street" shall include all of the land lying between the right-of-way lines, whether improved or unimproved, and may comprise pavement, shoulders, gutters, curbs, sidewalks, parking areas or the like.

SUBDIVIDER — An applicant for development.

SUBDIVISION [Amended 5-13-80 by Ord. No. 80-8'] — The division of a lot, tract or parcel of land into two (2) or more lots, tracts, parcels or other divisions of land for sale or development. The following shall not be considered subdivisions with the meaning of this chapter if no new streets are created:

¹ Editor's Note: This ordinance also provided that it shall take effect February 1, 1980.

- A. Divisions of land if found by the Planning Board or Subdivision Committee thereof appointed by the Chairman to be for agricultural purposes where all resulting parcels are five (5) acres or larger in size.
- B. Divisions of property by testamentary or intestate provisions.
- C. Divisions of property upon court order, including but not limited to judgments of foreclosure.
- D. Consolidation of existing lots by deed or other recorded instrument.
- E. The conveyance of one (1) or more adjoining lots, tracts or parcels of land, owned by the same person or persons and all of which are found and certified by the administrative officer to conform to the requirements of the municipal development regulations and are shown and designated as separate lots, tracts or parcels on the Tax Map or Atlas of the municipality. The term "subdivision" shall also include the term "resubdivision."

SUBDIVISION COMMITTEE — A Committee of at least three (3) Planning Board members appointed by the Chairman of the Board for the purpose of reviewing applications for subdivisions and site plans in accordance with the provisions of this chapter for the purpose of determining whether the applications are complete.

SURVEYOR — A person duly licensed as land surveyor in the State of New Jersey.

ARTICLE II

Minor Subdivision Application Procedure

§ 60-5. Submittal of minor subdivision plat. [Amended 6-12-73; 2-8-77 by Ord. No. 77-3]

Any owner of land within the Township of Montague may, prior to subdividing or resubdividing land where such subdivision is

desired to qualify as a minor subdivision, submit an application for minor subdivision approval to the Secretary of the Planning Board in accordance with the Land Use Procedures Ordinance of Montague Township,¹ accompanied by fees and deposits in appropriate amounts as required by this chapter.

§ 60-6. Approval of plats. [Amended 6-10-75 by Ord. No. 75-6; 2-8-77 by Ord. No. 77-3]

If approved as a complete application for a minor subdivision by unanimous action of the Subdivision Committee, a notation to that effect will be made on the minor subdivision map, and the Subdivision Committee shall report its action at the next meeting of the Planning Board. The final minor subdivision plat will be forwarded by the subdivider to the Sussex County Planning Board for its consideration. If within thirty (30) days after receiving said plat, the Sussex County Planning Board does not respond to the Secretary of the Montague Township Planning Board, said plat shall be deemed to have been approved by said County Planning Board. Ten (10) copies of a final minor subdivision plat will then be forwarded by the applicant to the Chairman and the Secretary of the Planning Board for their signatures, and three (3) signed copies shall be returned to the applicant within one (1) week following the next regular meeting of the Planning Board. The plat shall also be signed by the Township Engineer which shall evidence compliance with all approved design and improvement standards. No further Planning Board approval shall be required.

§ 60-7. Distribution of copies.

Before the Municipal Clerk returns any approved sketch plat to the subdivider, the Clerk shall furnish one (1) copy to each of the following:

A. Municipal Clerk.

B. Secretary of Planning Board.

¹ Editor's Note: See Ch. 10, Land Use Procedures.

- C. Municipal Engineer.
- D. Building Inspector.
- E. Tax Assessor.

§ 60-8. Filing with county recording officer. [Amended 2-8-77 by Ord. No. 77-3]

Either a deed or plat shall be filed with the county recording officer in accordance with the provisions of Article I, § 10-8A, of the Land Use Procedures Ordinance of the Township of Montague.¹

§ 60-9. Map details.

The minor subdivision map as submitted shall include the following:

- A. Show the entire subdivision and its relation to surrounding areas within two hundred (200) feet.
- B. Tax Map lot and block number and a key map with Tax Map information at a scale of four hundred (400) feet to the inch. The lot or lots to be subdivided shall be at a scale of one hundred (100) feet to the inch. All maps shall be a minimum size of fifteen by twenty-one (15 x 21) inches. **[Amended 6-12-73]**
- C. Date, scale and reference meridian.
- D. Name and address of the owner and subdivider; if the owner is not the subdivider, a letter of authorization must accompany the application.
- E. Location of proposed and existing property lines and location of existing street.
- F. Name and address of the person who prepared the maps.

¹Editor's Note: See Ch. 10, Land Use Procedures.

- G. Notwithstanding any other provision of this section to the contrary the township hereby adopts and incorporates herein by reference, the current Nonstructural Stormwater Management Strategies as the same may be amended and supplemented from time to time and as are set forth in N.J.A.C. 7:8-1, et seq. The applicant shall compare current nonstructural stormwater practices set forth in the aforesaid Regulation to the standard set forth in this section. In the event of any conflict between the provisions of this section and the current Nonstructural Stormwater Management Regulations, the Regulations shall be controlling. The approving Board shall only approve developments which comply with the provisions of N.J.A.C. 7:8-1, et seq. as amended to the extent feasible considering the constraints of the specific development project. Any township regulations in conflict with said Regulation shall be superceded by the provisions of N.J.A.C. 7:8-1, et seq., as amended. **[Added 4-26-05 by Ord. No. 2005-11]**

§ 60-10. Cluster-type development consideration.

Minor subdivisions shall also be entitled to cluster-type development consideration in the event that there is park and recreational land set aside in accordance with Article VII.

§ 60-11. Dedication of road width.

The Planning Board and Township Committee may require the dedication of additional road width along the subdivided property if, in their opinion, it is necessary for future widening of the road. In no event shall a landowner be required to dedicate any land that is more than twenty-five (25) feet from the center line of the existing road.

§ 60-12. Application fee. [Added 4-13-71; amended 9-8-80 by Ord. No. 80-13; 5-10-83 by Ord. No. 83-7]

- A. Each application for minor subdivision shall be accompanied by an application fee of fifty dollars (\$50.) for each newly created or resulting lot.
- B. Each application for minor subdivision involving only a change in a boundary line with an adjoining lot shall be accompanied by an application fee of twenty-five dollars (\$25.).

§ 60-13. Taxes or assessments due on property. [Added 3-9-76 by Ord. No. 76-5]

The applicant must submit proof that no taxes or assessments for local improvements are due or delinquent on the property for which subdivision application is made, and no local municipal approval will be granted until said proof is submitted.

§ 60-13.1. Disapproval of plat. [Added 2-8-77 by Ord. No. 77-3]

If a plat is not approved as a minor subdivision, a notation to that effect shall be made on the plat which will be returned to the subdivider for compliance with the procedures for major subdivision as set forth in this chapter.

**ARTICLE III
Major Subdivision Application Procedure**

§ 60-14. Certification of completeness of application. [Amended 5-13-80 by Ord. No. 80-8¹]

All applications for development, whether for preliminary or final approval, except submission of a concept plan, shall be reviewed by the Submissions Review Committee of the Board for the purpose of determining the completeness of the application. Said Committee shall either determine that said application is not complete and so notify the developer of the deficiencies therein or shall certify its completeness within forty-five (45) days from the date that said application was filed with the administrative official. If the Subdivision Committee fails to take action within said period of forty-five (45) days, any such application for development shall be deemed to be complete. The Planning Board may, at any time, and from time to time, designate any official or group of officials of the municipality to review and certify the completeness of applications for development in lieu of the Subdivision Committee.

§ 60-15. Submittal of preliminary plat for tentative approval. [Amended 6-12-73; 6-10-75 by Ord. No. 75-6; 2-8-77 by Ord. No. 77-3]

- A. Preliminary plats and the supporting documents for a proposed major subdivision constitute the material to be officially submitted to the Planning Board. They show the general design of the subdivision and its public improvements so that the Planning Board can indicate its approval or disapproval of the subdivision prior to the time that the final plat, including design and detailing of the public improvements and utilities, is completed.
- B. Prior to submission of an application for preliminary major subdivision approval, the developer may submit to the Planning Board a concept plan and such site data as may be available. The submission of a concept plan will not be

¹ Editor's Note: This ordinance also provided that it shall take effect February 1, 1980.

considered as a formal application, but rather will serve as a basis for discussion so that the Planning Board may provide informal guidance to the developer in the preparation of his application for preliminary approval. Neither the developer nor the Planning Board shall be bound by the review of any concept plan, nor shall any fee or charge be made to the developer in connection with any such submission or review. [Amended 5-13-80 by Ord. No. 80-8']

C. Any owner of land who desires major subdivision approval shall submit his application and maps and other required information in accordance with the requirements of this chapter and the Land Use Procedures Ordinance of the municipality, together with the required fees. Said applications and plats shall be forwarded to the Subdivision Committee and the Township Engineer for review. If the Subdivision Committee finds that the application for development is incomplete, the developer shall be notified thereof within forty-five (45) days of submission of such application, or it shall be deemed to be properly submitted. If the applicant is not the record owner of the title to the property being subdivided, he shall file a written consent signed by the owner consenting to the making of the application. The Secretary of the Planning Board shall forward one (1) copy thereof to the Municipal Clerk. The developer shall file three (3) copies with the County Planning Board. The County Planning Board shall have thirty (30) days to review and respond. In the absence of a response within thirty (30) days, the County Planning Board shall be deemed to have approved the plat.

D. The applicant shall notify all persons entitled to notice of the hearing on the application in accordance with the provision of the Land Use Procedures Ordinance of Montague Township and C. 40:55D-12. If the Planning Board requires any substantial amendment in the layout of improvements proposed by the developer that have already been the subject of a hearing, an amended application shall

¹ Editor's Note: This ordinance also provided that it shall take effect February 1, 1980.

be submitted and proceeded upon as in the case of the original application for development, including the giving of notice in accordance with the provisions of N.J.S.A. 40:55D-12.

E. Copies to be forwarded.

- (1) Copies of the preliminary plat shall be forwarded by the Secretary of the Planning Board prior to the hearing to the following persons:
 - (a) Secretary of County Planning Board.
 - (b) Municipal Engineer.
 - (c) Secretary of the Board of Health.
 - (d) Municipal Planning Consultant.
 - (e) Such other municipal, county or state officials as directed by the Planning Board.
- (2) If the preliminary plat lies within two hundred (200) feet of another municipal boundary, a copy of the plat shall be sent by the Planning Board Secretary to the Secretary of the Planning Board of the adjoining community. A written statement shall be requested from the adjoining community indicating whether the proposed subdivision of the Township of Montague is in reasonable harmony with its plans for development. The Secretary of the Planning Board of the adjoining community should be informed of the date of the public hearing, and any communications received prior to this date will be considered in relation to the approval or disapproval of the plat.

- F. After the public hearing, the Planning Board shall take formal action either approving or disapproving the preliminary plat within the time required by N.J.S.A. 40:55D-48, namely, for a subdivision of ten (10) or fewer lots, the Planning Board shall grant or deny preliminary approval within forty-five (45) days of the date of the submission, and, in the case of a subdivision of more than ten (10) lots, it shall grant or deny preliminary approval

within ninety-five (95) days of the date of such submission or within such further time as may be consented to by the developer. Otherwise, the Planning Board shall be deemed to have granted preliminary approval to the subdivision. If the plat is disapproved, the reasons for disapproval shall be given to the subdivider.

- G. Approval of any application shall be conditioned on certification by the Sussex County Soil Conservation District of a plan for soil erosion and sediment control pursuant to the provisions of Chapter 251 of the Laws of 1975.¹
- H. If the Planning Board acts favorably on a preliminary plat, the Chairman of the Planning Board shall affix his signature to the plat with a notation that it has received tentative approval and returned to the subdivider for compliance with final approval requirements.
- I. A copy of the action taken by the Planning Board shall be forwarded to the Municipal Clerk.
- J. Rights of applicant.
 - (1) Preliminary approval shall, except as hereinafter set forth, confer upon the applicant the following rights for a three-year period from the date of such approval:
 - (a) That the general terms and conditions on which preliminary approval was granted shall not be changed, including but not limited to use requirements; layout and design standards for streets, curbs and sidewalks; lot size; yard dimensions and off-tract improvements, except that nothing herein shall be construed to prevent the municipality from modifying by ordinance such general terms and conditions of preliminary approval as relate to public health and safety.
 - (b) That the applicant may submit for final approval on or before the expiration date of preliminary approval the whole or a section or sections of the preliminary subdivision plat.

¹ Editor's Note: See N.J.S.A. 4:24-39 et seq.

- (c) That the applicant may apply for and the Planning Board may grant extensions on such preliminary approval for additional periods of at least one (1) year, but not to exceed a total extension of two (2) years, provided that, if the design standards have been revised by ordinance, such revised standards shall govern.
- (2) In the case of a subdivision for an area of fifty (50) acres or more, the Planning Board may grant the rights referred to in Subsection J(1)(a), (b) and (c) above for such period of time, longer than three (3) years, as shall be determined by the Planning Board to be reasonable, taking into consideration the number of dwelling units and nonresidential floor area permissible under preliminary approval, economic conditions and the comprehensiveness of the development. The applicant may apply for thereafter and the Planning Board may thereafter grant an extension of preliminary approval for such additional period of time as shall be determined by the Planning Board to be reasonable, taking into consideration the number of dwelling units and nonresidential floor area permissible under preliminary approval and the potential number of dwelling units and nonresidential floor area of the section or sections awaiting final approval, economic conditions and the comprehensiveness of the development, provided that, if the design standards have been revised, such revised standards shall govern.
- K. Each preliminary plat submitted for tentative approval of a major subdivision shall be accompanied by a preliminary application fee, payable to the Township of Montague, consisting of a base charge of one hundred seventy-five dollars (\$175.), plus an additional charge of fifty dollars (\$50.) for each newly created or resulting lot. [Added 5-10-83 by Ord. No. 83-6]

§ 60-16. Submittal of final plat. [Amended 4-13-71; 6-10-75 by Ord. No. 75-6; 2-8-77 by Ord. No. 77-3]

- A. The final plat shall be submitted to the Secretary of the Planning Board for final approval within the time specified in § 60-15C of this chapter and in accordance with the provisions of the Land Use Procedures Ordinance of Montague Township.¹
- B. The original tracing, one (1) translucent tracing, two (2) cloth prints, fourteen (14) black- or blue-on-white prints and fourteen (14) copies of the completed application shall be submitted to the Secretary.
- C. The application shall be accompanied by fees and deposits in appropriate amounts as specified in this chapter.
- D. Distribution of copies. Copies of the final plat shall be forwarded by the Secretary of the Planning Board to the following:
 - (1) Subdivision Committee.
 - (2) County Planning Board.
 - (3) Township Engineer.
 - (4) Such other officials or agencies as directed by the Planning Board.
- E. Letters required prior to the final approval. Prior to final approval, the Planning Board shall have received the following:
 - (1) A letter containing a list of all items to be covered by a performance guaranty (cash or certified check), the quantities of each item, the cost of each of them and the total amount of all items.
 - (2) A letter from the Township Engineer stating that the required improvements have been installed to his satisfaction and in accordance with applicable township specifications and that the performance guaranty is adequate to cover the cost of remaining improvements.

¹ Editor's Note: See Ch. 10, Land Use Procedures.

- (3) A letter from the applicant's engineer stating that the final plat conforms to the preliminary plat as submitted and approved.

F. Time limitation.

- (1) Final approval shall be granted or denied within the time specified in Article I, § 10-8, of the Land Use Procedures Ordinance of Montague Township. Failure of the Planning Board to act within the period prescribed shall constitute final approval, and a certificate of the Secretary of the Board as to the failure of the Planning Board to act shall be issued on request of the applicant, and it shall be sufficient in lieu of the written endorsement or other evidence of

(Cont'd on page 6021)

approval herein required and shall be so accepted by the county recording officer for purposes of filing final subdivision plat.

- (2) Whenever review or approval of the application by the County Planning Board is required, the Municipal Planning Board shall condition any approval that it grants upon timely receipt of a favorable report on the application by the County Planning Board or approval by the County Planning Board by its failure to report thereon within the required time period.

G. Distribution of copies. After final approval, one (1) translucent tracing and one (1) cloth print shall be filed with the Municipal Clerk. The original tracing and one (1) cloth print shall be returned to the applicant. Copies of the final plat shall also be filed with the Planning Board and with the following:

- (1) Municipal Clerk.
- (2) Municipal Engineer.
- (3) The Board of Education of the local district.
- (4) Building Inspector.
- (5) Tax Assessor.
- (6) County Planning Board.
- (7) Official issuing certificates for approved lots.

H. Filing. Within ninety-five (95) days of final approval, the final plat shall be filed by the subdivider with the county recording officer in accordance with the provisions of N.J.S.A. 40:55D-54. For good and sufficient reasons, the Planning Board may extend the time for filing for an additional period not to exceed one hundred ninety (190) days from the date of signing of the plat.

I. No plat shall be offered for filing to the County Recording Officer unless it has been duly approved by the Township Planning Board and signed by the Chairman, Secretary and Township Engineer.

- J. Each final plat submitted for final approval of a major subdivision shall be accompanied by a final application fee, payable to the Township of Montague, consisting of a base charge of one hundred twenty-five dollars (\$125.) plus an additional charge of twenty-five dollars (\$25.) for each newly created or resulting lot. [Added 5-10-83 by Ord. No. 83-6]

§ 60-17. Taxes or assessments due on property. [Added 3-9-76 by Ord. No. 76-5; amended 2-8-77 by Ord. No. 77-3]

Pursuant to the provisions of N.J.S.A. 40:55D-39 and 40:55D-65, every application for development submitted to the Planning Board shall be accompanied by proof that no taxes or assessments for local improvements are due or delinquent on the property which is the subject of such application; or, if it is shown that taxes or assessments are delinquent on said property, any approvals or other relief granted by said Board shall be conditioned upon either the prompt payment of such taxes or assessments or the making of adequate provision for the payment thereof in such manner that the municipality will be adequately protected.

ARTICLE IV

Plat Details of Minor Subdivision

[Added 2-8-77 by Ord. No. 77-3]

§ 60-18. Information to be included.

A plat of a minor subdivision shall be based on Tax Map information or some other similarly accurate base at a scale not less than two hundred (200) feet to the inch and shall show or include the following information:

- A. The location of that portion which is to be subdivided in relation to the entire tract.
- B. All existing structures and wooded areas within the portion to be subdivided and within two hundred (200) feet thereof.

¹ Editor's Note: This ordinance also repealed former Art. IV, Appeals, which consisted of §§ 60-18, as amended, 60-19 and 60-20.

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- C. The name of the owner and of all adjoining property owners as disclosed by the most recent municipal tax records.
- D. Certification from the Tax Collector that all taxes and assessments on the property have been paid to date.

§ 60-19. (Reserved)

§ 60-20. (Reserved)

ARTICLE V
Plat Details of Major Subdivision

§ 60-21. Preliminary plat. [Amended 6-12-73]

The preliminary plat shall be clearly and legibly drawn or reproduced at a scale of not less than one (1) inch equals one hundred (100) feet and shall be prepared by both a licensed New Jersey land surveyor and professional engineer and shall be designed in compliance with Article VII of this chapter and shall show or be accompanied by the following information:

- A. A key map showing the entire subdivision and its relation to surrounding areas.
- B. The subdivision name, Tax Map sheet, lot and block number, date, scale, reference meridian and the names and addresses of the following:
 - (1) The record owner or owners.
 - (2) The subdivider.
 - (3) The person who prepared the map with his verifying signature and seal properly affixed to the map.
- C. Total acreage of the tract to be subdivided to the nearest tenth of an acre.
- D. Sufficient elevations or contours to determine the general slope and natural drainage of the land and the high and low

points and tentative cross sections and center line profiles for all proposed new roads.

- E. The location of proposed and existing property lines, roads, buildings, watercourses, existing and proposed drainage courses, proposed improvements, easements and natural features, such as wooded areas and rock formations. All street names shall be approved by the Planning Board.
- F. Fairly representative data of surface and subsurface conditions.
- G. Preliminary plans of proposed utility layouts, such as but not limited to sewers, sewage disposal systems, storm drains, water, gas and electricity showing feasible connections to existing or any proposed utility system. When a public sewage disposal system is not available, the developer shall have percolation tests made and submit the results with the preliminary plat. A soil log test or tests may be required by the Planning Board.
- H. A copy of any protective covenants or deed restrictions applying to the land to be subdivided.

§ 60-22. Final plat.

The final plat shall be drawn in ink on tracing cloth at a scale of not less than one (1) inch equals one hundred (100) feet and in compliance with all of the provisions of Chapter 23 of Title 46 of the New Jersey Revised Statutes, as amended. The final plat shall show or be accompanied by the following:

- A. Date, name and location of the subdivision, name of the owner, graphic scale and reference meridian.
- B. Tract boundary lines; right-of-way lines of streets; street names; easements and other rights-of-way; land to be reserved or dedicated to public use; all lot lines and other site lines with accurate dimensions, bearings or deflection angles and radii, arcs and central angles of all curves.
- C. The purpose of any easements or land reserved or dedicated to public use shall be designated, and the proposed use of sites other than residential shall be noted.

- D. Each block and lot shall be numbered in accordance with lot and block numbers assigned by the Tax Assessor of the township.
- E. Minimum building front, back and side line setbacks on all lots.
- F. Location and description of all monuments.
- G. Names of the owners of adjoining unsubdivided land.
- H. Certification by an engineer or surveyor as to the accuracy of the details of the plat, together with an engineer's estimate of all improvement costs within the subdivision.
- I. Proof of ownership.
- J. Certified approvals of the county or state, where and if the same are required.
- K. Contours at five-foot intervals or at such intervals as may be required by the Planning Board.
- L. Cross sections and/or profiles of roads, depicting the same as they are to be built, may be required to accompany the final plat (requirement determination to be made by the Planning Board at the time of the preliminary subdivision approval).
- M. Typical plans of water system and sanitary facilities to be employed, together with a certification from the subdivider's engineer, stipulating that, according to his knowledge and opinion, the facilities as designed should prove adequate to meet the demands of the subdivision.
- N. All street names must be set forth on the final plat.

ARTICLE VI

Improvements, Installations and Inspections

§ 60-23. Requirements. [Amended 3-14-78 by Ord. No. 78-4]

Prior to the granting of final approval, the subdivider shall have installed the following: roads, monuments and all required drainage facilities, in addition to such other installations as required.

§ 60-24. Certificate of completion. [Amended 3-14-78 by Ord. No. 78-4]

No final plat shall be signed or filed for the subdivision until all of the required improvements have been completed in a good and workmanlike manner and such completions have been certified to in accordance with the inspection provision of this Article of this chapter.

§ 60-24.1. Off-tract improvements. [Added 2-8-77 by Ord. No. 77-3; amended 12-18-90 by Ord. No. 90-22]

A. Improvements to be constructed at the sole expense of the developer. In cases where the need for an off-tract improvement is created by the proposed subdivision or site plan, and where no other property owners receive a special benefit thereby, the Planning Board may recommend to the Township Committee that it require the subdivider or developer, as a condition for subdivision or site plan approval, at the subdivider's or developer's expense, to acquire lands outside of the subdivision or tract and improve and dedicate such lands to the township or the county, or, in lieu thereof, require the subdivider or developer to deposit with the township a sum of money sufficient to allow the Township to acquire and to improve such lands.

B. Other improvements.

- (1) In cases where the need for any off-tract improvement is created by the proposed subdivision or site plan and where the Planning Board determines that properties outside of the subdivision or tract will also be benefited by the improvement, the Planning Board shall forthwith forward to the Township Committee a list and description of all such improvements, together with its request that the Township Committee determine and advise the Board of the procedure to be followed in the construction or installation thereof. The Planning

Board shall withhold action upon the subdivision or site plan until receipt of the Township Committee's determination or until the expiration of ninety (90) days after the forwarding of such list and description to the Township Committee without such determination having been made, whichever occurs sooner.

- (2) The Township Committee, within ninety (90) days after the receipt of such list and description, shall determine and advise the Planning Board whether:
 - (a) The improvement or improvements are to be constructed or installed by the township.
 - [1] As a general improvement, the cost of which shall be borne at general expense, except as hereinafter otherwise provided as a contribution thereto by the subdivider or developer, or
 - [2] As a local improvement, all or part of the cost of which shall be especially assessed against properties benefited thereby in proportion to benefits conferred by the improvements in accordance with R.S. 40:56-1 et seq., except as hereinafter otherwise provided as a contribution thereto by the subdivider or developer; or
 - (b) The improvement or improvements are to be constructed or installed by the subdivider or developer under a formula for partial reimbursement as hereinafter set forth.
- (3) If the Township Committee determines that the improvement or improvements shall be constructed or installed under paragraph B(2)(a) above, the Planning Board shall estimate, with the aid of the Municipal Engineer or such other persons as have pertinent information or expertise, the amount, if

any, by which the total cost thereof will exceed the total amount by which all properties, including the subdivision or tract, will be especially benefited thereby, and the subdivider or developer shall be liable to the Township for such excess. Further, the Township Committee shall adopt an ordinance authorizing and providing for the financing of the improvement or improvements in a manner consistent with the obligation of the subdivider or developer for any excess of total cost over total benefits conferred, as set forth above.

- (4) If the Township Committee determines that the improvement or improvements shall be constructed or installed under paragraph B(2)(a)[2] above, the Planning Board shall, as provided in Subsection D. of this section, estimate the difference between the total costs to be incurred and the total amount by which all properties to be benefited thereby, including the subdivision property or tract, will be especially benefited by the improvement, and the subdivider or developer shall be liable to the township therefor, as well as for the amount of any special assessments against the subdivision property or tract for benefits conferred by the improvement or improvements. Further, the Township Committee shall adopt an ordinance authorizing and providing for the financing of the improvement or improvements and the assessment of benefits arising therefor in a manner consistent with the obligation of the subdivider or developer with respect thereto, and proceedings under such ordinance shall be in accordance with R.S. 40:56-1 et seq., except to the extent modified by the obligation of the subdivider or developer for any excess of total costs over total benefits conferred, as set forth above.
- (5) If the Township Committee determines that the improvement or improvements are to be constructed or installed by the subdivider or developer under

paragraph B(2)(b), above, the Planning Board shall in like manner estimate the amount of such excess and the subdivider or developer shall be liable to the township therefor, as well as for the amount of any special assessments against the subdivision property or tract for benefits conferred by the improvement or improvements. However, the subdivider or developer shall be entitled to be reimbursed by the township for the amount of any special assessments against property other than the subdivision property or tract for benefits conferred by the improvement or improvements, and proceedings under such ordinance shall be in accordance with R.S. 40:56-1 et seq. However, any such assessment against the subdivision property or tract shall be marked paid and satisfied in consideration of the construction or installation of the improvement or improvements by the subdivider or developer.

- (6) If the Township Committee shall not adopt such an ordinance or resolution within such time, the final subdivision layout or site plan shall be designed accordingly, and the Planning Board shall thereupon grant or deny final approval.
- C. Performance guarantee. The subdivider or developer shall be required to provide, as a condition for final approval of his subdivision or site plan application, a performance guarantee running to the township as follows:
 - (1) If the improvement is to be constructed by the subdivider or developer under Subsection A. or paragraph B(2)(b), a performance bond with surety in an amount equal to the estimated cost of the improvement, or any part of the improvement that is to be acquired or installed by the township under Subsection 60-24.1A a cash deposit equal to the estimated cost of such acquisition or installation by the township.

- (2) If the improvement is to be constructed by the township as a general improvement under paragraph B(2)(a)[1], a cash deposit equal to the amount of the excess of the estimated cost of the improvement over the estimated total amount by which all properties, including the subdivision property or tract, will be specially benefited thereby; and
 - (3) If the improvement is to be constructed by the township as a local improvement under paragraph B(2)(a)[2], a cash deposit equal to the amount referred to in the preceding paragraph plus the estimated amount by which the subdivision property or tract will be especially benefited by the improvement.
- D. Refund of deposit where improvements are not authorized within five (5) years. In any case in which a subdivider or developer shall deposit money with the township for the completion of an improvement that is to be constructed pursuant to this chapter by the township, the subdivider or developer shall be entitled to a full refund of such deposit if the Township Committee has not enacted an ordinance authorizing the improvement within five (5) years after the date all other improvements are completed.
- E. Deposit of funds. All monies paid a subdivider or developer pursuant to this chapter shall be paid over to the Township Treasurer who shall provide a suitable depository therefor. Such funds shall be used only for the improvements for which they are deposited or improvements serving the same purpose.
- F. Redetermination of assessment upon completion of improvement. Upon completion of off-tract improvements required pursuant to this section, the subdivider's or developer's liability hereunder shall be recalculated in accordance with the actual, as compared with the estimated cost of improvements. To the extent that it shall

decrease the amount thereof, the township shall forthwith refund the amount of such decrease to the subdivider or developer. In cases where the improvements are specially assessed against all benefited properties, recalculation shall be made by the municipal assessing authority in the course of the special assessment proceedings. In other cases, it shall be made by the Township Engineer.

- G. Committee approval required. All estimates required to be made by the Planning Board herein shall be reviewed and approved by the Township Committee prior to final action thereon.

§ 60-25. Progress report; notification for inspection.

The properly licensed engineer for the subdivider shall, at any time upon request of the Board during the progress of construction, deliver to the Board a progress report complete with completion projections and shall, in addition, prior to the installation of any street improvements or drainage improvements facilities, notify the Planning Board and Building Inspector at least forty-eight (48) hours prior to the said installation, to afford the Board an opportunity, if the Board deems so necessary, to have a representative of the Board inspect and approve the existing ground conditions, such as subbase or trenchings, prior to the installation of the final improvements.

§ 60-26. Engineer's certification; endorsement.

In any event, in addition to the foregoing, the licensed engineer for the subdivider shall certify to the Planning Board, prior to the installation of these final improvements, that the ground and subbase conditions are of such a condition and nature and of proper consistency and compaction so as to assure a stable base for the final improvements. He shall, in addition, upon completion of all of the improvements, certify to the Planning Board that all

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of the required improvements have been completed in a satisfactory manner. This final certification shall be accompanied by an endorsement by an authorized representative of the Planning Board, which endorsement shall state that all of the improvements as listed and required are completed and in place.

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§ 60-27

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§ 60-27. Deeds for required easements. [Amended 3-14-78 by Ord. No. 78-4]

No map shall be signed or filed until all deeds of dedication required, together with all easement grants required, have been tendered by the owner or subdivider to the township and properly approved by the Township Attorney. These easements may be required wherever a subdivision is traversed by a watercourse, drainageway channel or road, in which event there shall be provided a stormwater easement or drainage right-of-way conforming substantially with the lines of such watercourse, and such further width or construction, or both, as will be adequate for the purpose and, further, adequate for the purpose of future repair or cleanout.

§ 60-28. (Reserved)¹

§ 60-29. (Reserved)¹

ARTICLE VII
Design Standards

§ 60-30. Principles to be observed.

The subdivider shall observe the following requirements and principles of land subdivision in the design of each subdivision.

§ 60-31. Conformance to township plans and ordinances.

The subdivision plat shall conform to design standards that will encourage good development patterns within the township. When either or both an Official Map or Master Plan has or have been adopted, the subdivision shall conform to the proposals and conditions shown thereon. Further, all road or drainage designs shall conform to the road and drainage portion of this Subdivision

¹ Editor's Note: Former § 60-28, Liability for noncompliance; installation by township, and § 60-29, Applicability; compliance prior to filing, were repealed 3-14-78 by Ord. No. 78-4.

Chapter and to the Zoning Ordinance² of the Township of Montague, if and when adopted, and to any other ordinances subsequently passed which shall pertain to subdivision or any improvements in connection therewith.

§ 60-32. General layout and street patterns.

- A. All layouts shall be such as to lend themselves to the harmonious development of the township, so as to enhance the public health and welfare thereby and so as to preserve, wherever possible, the natural beauty and rural attractiveness of the community.
- B. The design of road pattern layouts shall be such as to follow, as much as possible, the natural existing ground contours, while prohibiting curves and grades of such severity or steepness as to impose a traffic hazard to vehicles or pedestrians utilizing the same.

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² Editor's Note: See Ch. 78, Zoning.

- C. Wherever a subdivision is traversed by a natural watercourse, the banks and surrounds of that watercourse shall, wherever possible, be preserved and shall be adequately guarded and protected by approved ground cover or construction retainer against overflowing, washout, erosion and change of course.
- D. Road widths and road drainage specifications shall be in accordance with the requirements of Article VIII of this chapter.
- E. Wherever possible, neighborhood roads within a subdivision shall be designed so as to discourage through traffic, while providing for good serviceable egress and ingress to arterial roads.
- F. All reserve strips controlling access to roads or providing for continuance of dead-end streets shall be dedicated to the Township of Montague and shall be left to the control and disposition of the Township Committee and the Planning Board.
- G. All entrances to roads or intersections therefrom shall have provided sufficient sight distance so as not to constitute a traffic hazard by reason of obscured visibility.
- H. All block lengths and widths shall be such as to provide for convenient access, circulation, control and safety of road traffic, determined by the Planning Board on an individual basis, depending upon the exact location, type and characteristics of the subdivision and the ground and surface conditions existent and present thereon.
- I. Dimensions and areas. [Amended 9-13-84 by Ord. No. 83-13]
 - (1) All dimensions and areas of lots to be subdivided shall conform to the bulk requirements of the respective zone in which the lots are located.
 - (2) The boundary lines of each lot shall be, wherever possible, regular and unbroken, with substantially parallel side lines.

- (3) Each building lot shall show a minimum front building setback line, as well as side and rear setback lines, all of which shall not be a lesser distance than that recited in the bulk requirements for each applicable zone. Corner lots shall maintain the same front setback line along each street.

§ 60-33. Cluster-type developments.

- A. Cluster-type developments averaging out, as herein provided, to minimum area requirements may be permitted where, in the judgment of the Planning Board and Township Committee, such cluster-type construction will be beneficial to the area being developed, to the future occupants of said area and to the community. Any such request for cluster-type development shall be by special application, and consideration will be given to the characteristics of the subject property and the construction planning. Any such application will be considered by the Planning Board and Township Committee only when accompanied by a detailed planning layout which must include typical house construction plans. The Planning Board and Township Committee may require any additional information which they deem necessary for a final determination.

(Cont'd on page 6027)

- B. In order to qualify as a cluster-type development, the subdivision shall set aside and reserve for park and recreational purposes a portion of the premises being subdivided, with said portion restricted against future dwelling house construction. In the event of and upon approval by the Planning Board and Township Committee, the subdivider shall be entitled to relief from the minimum lot sizes set forth in the Zoning Ordinance,³ upon the following formula and basis: The total acreage area in square footage of the premises being subdivided shall be divided by the normal minimum square footage area in the applicable zone for the lots, plus five thousand (5,000) square feet for average road area. The maximum number of lots permitted in the subdivision shall be the number obtained without decimal consideration. The size of the lots permitted shall be in direct ratio to the percentage of park or recreational area in the subdivision. No cluster lots in an RRC Zone shall be less than fifteen thousand (15,000) square feet in area, nor shall they have less frontage than one hundred (100) feet or less depth than one hundred fifty (150) feet. No cluster lots in an R Zone shall be less than twenty-two thousand five hundred (22,500) square feet in area, with no change in minimum frontage or depth from the normal Zoning Ordinance minimum requirements. [Amended 2-8-72; 6-11-74]
- C. The side line and rear line setback requirements may be reduced in direct proportion to the frontage reduced, but in no event shall the side line and rear line setbacks be less than sixteen (16) feet. Front line setbacks shall not be reduced.⁴
- D. Any lots which front on an existing county or township road shall not be less than thirty thousand (30,000) square feet in area and shall have a minimum of one hundred twenty-five (125) feet of frontage on said road or roads. [Added 10-10-72]

³ Editor's Note: See Ch. 78, Zoning.

⁴ Editor's Note: Former Subsection D, which immediately followed this subsection and gave an example of a cluster-type development was deleted by an ordinance adopted 6-11-74.

ARTICLE VIII
Streets, Roads and Accompanying Drainage
[Amended 6-12-73]

§ 60-34. Regulatory authorization.

The Planning Board and Township Committee shall have the right, in the general exercise of their enforcement duties relative to this chapter, to require, wherever they deem necessary, all or part of the following:

- A. Grade contour and plan and profile plans of all improvements.
- B. That the arrangements of streets to be installed in any subdivision may be required to provide for the continuation of any principal street up to the boundary line of any adjacent property.
- C. The creation of such dead-end or loop secondary streets where the encouragement of the same would not interfere with traffic conditions.
- D. The granting of easements to the township for the continuance of future connecting streets, pedestrian walkways or utility company easements; wherever the same may be necessary.
- E. A connecting street wherever a block may be too excessively long.
- F. The widening of any existing street where approval of a proposed subdivision may create a traffic hazard by reason of increased traffic.
- G. The spacing out of minor street openings into major roads.
- H. The installation of any and all drainage deemed necessary to the preservation of the road installation or the protection of the properties adjacent or surrounding, as well as satisfactory diversion of surface or subsurface existent water.
- I. The preservation of sufficient and clear visibility at any and all intersections.

- J. The placing of street name signs.
- K. Such gutters as may be necessary to adequately protect the road basin surface against damage from washout or erosion and to assure the elimination of any standing surface water.
- L. Extra width parking surfaces adjacent to the pavement area and walkways in any commercial district where there may be extra-heavy traffic flow.
- M. A deed of dedication for the roadbed area lying beneath any of the public streets or roads to be constructed, in a form acceptable to the Township Attorney.
- N. Inspection at any time during the construction of all roads, improvements, drainage or accompanying facilities by the township's duly authorized representative, but in any event, the inspection and approval of the subgrade prior to the installation of any paved surface, and inspection and approval of any and all drainage or subdrainage prior to coverup backfilling, and the final inspection and subsequent necessary certifying approval of all of the completed required improvements.
- O. Sidewalks constructed in accordance with recommendations of the Township Engineer.
- P. Certification by the Engineer for the subdivider that all of the improvements as completed have been installed and completed within the confines of the created rights-of-way and that none of them encroach upon the adjacent or surrounding properties.
- Q. Monuments shall be required in accordance with the New Jersey Revised Statutes, and the installation of the same shall be bonded to the township at the rate of fifty dollars (\$50.) per monument for the first twenty-five (25) monuments required and thirty-five dollars (\$35.) per additional monument required.

**§ 60-35. Construction requirements and specifications.
[Amended 6-8-71; 6-12-73; 7-9-74]**

- A. Clearing and excavation. All areas upon which pavement is to be located shall be completely stripped of vegetation and topsoil and shall be excavated to a solid and unyielding subsurface base and shall be filled to final subgrade with clean material of a quality necessary to guarantee base stability for the finished surface to be placed thereon.
- B. Drainage.
- (1) Drainage inlets shall be spaced as required by the Planning Board and the Township Committee. Storm drain pipe shall be reinforced concrete culvert pipe or corrugated metal pipe. Headwalls shall be constructed at the inlet end of storm drain pipes and shall be constructed of concrete or stone laid up in mortar. Flared end sections will be acceptable at the outlet end of the pipe. The minimum pipe size to be used is fifteen (15) inches in diameter and the minimum slope the pipe shall be constructed on is five-tenths percent (0.5%).
 - (2) Any open collector ditches or drainageways shall be properly protected either by plantings or other approved materials on their banks so as to prevent washouts or erosions.
 - (3) Notwithstanding any other provision of this subsection to the contrary the township hereby adopts and incorporates herein by reference, the current Nonstructural Stormwater Management Strategies as the same may be amended and supplemented from time to time and as are set forth in N.J.A.C. 7:8-1, et seq. The applicant shall compare current nonstructural stormwater practices set forth in the aforesaid Regulation to the standard set forth in this subsection. In the event of any conflict between the provisions of this subsection and the current

Nonstructural Stormwater Management Regulations, the Regulations shall be controlling. The approving Board shall only approve developments which comply with the provisions of N.J.A.C. 7:8-1, et seq. as amended to the extent feasible considering the constraints of the specific development project. Any township regulations in conflict with said Regulation shall be superceded by the provisions of N.J.A.C. 7:8-1, et seq., as amended. **[Added 4-26-05 by Ord. No. 2005-11]**

C. Streets. **[Amended 11-9-76 by Ord. No. 76-17; 9-13-83 by Ord. No. 83-13; 12-15-83 by Ord. No. 83-15; 12-11-90 by Ord. No. 90-21]**

- (1) Classification of streets. For the purpose of this Article streets shall be classified as follows:
 - (a) Arterial streets. Highways which are used primarily for fast or heavy traffic between municipalities or urban centers, designed to handle greater volumes of traffic than collector or minor streets.

- (b) Collector streets. Those which carry traffic from minor streets to the major system of arterial streets and highways, including principal entrance streets of a residential development and streets for circulation within such a development.
 - (c) Minor streets. Those which are used primarily for access to the abutting properties and which need not be used for general circulation or through traffic.
- (2) Minimum design standards. The design standards for any street in a subdivision or site plan shall meet the standards for road acceptance as shown on Appendix "A" entitled Minimum Road Design Standards for Road Acceptance, Montague Township, Sussex County, New Jersey, which is an appendix hereto and hereby declared to be a part of this chapter.*
- D. Curb. Curb or paved gutter shall be constructed along the sides of the pavement on all streets where the grade is six percent (6%) or greater. Curbs shall be concrete or granite block.
- E. Slopes. All fill slopes and cut slopes in earth and shale shall be constructed on a slope of two to one (2:1). Cut slopes in rock shall be constructed on a slope of one to four (1:4). These slopes pertain to all streets.
- F. Topsoiling, fertilizing, seeding and mulching. All fill slopes, cut slopes in earth and shale and berms shall be topsoiled, four (4) inches thick, fertilized, seeded and mulched. In the alternative, another acceptable method of protection from erosion may be accepted if approved by the Planning Board and Township Committee.¹
- G. All road and related construction shall be in accordance with the generally prevailing industry construction standards as a minimum requirement.

* Editor's Note: Appendix A, "Minimum Road Design Standards for Road Acceptance," referred to herein, may be found at the end of this chapter.

¹ Editor's Note: See Ch. 57, Soil Erosion and Sediment Control.

1. The first part of the document is a list of the names of the persons who were present at the meeting.

2. The second part of the document is a list of the names of the persons who were absent from the meeting.

3. The third part of the document is a list of the names of the persons who were present at the meeting.

4. The fourth part of the document is a list of the names of the persons who were absent from the meeting.

5. The fifth part of the document is a list of the names of the persons who were present at the meeting.

6. The sixth part of the document is a list of the names of the persons who were absent from the meeting.

7. The seventh part of the document is a list of the names of the persons who were present at the meeting.

8. The eighth part of the document is a list of the names of the persons who were absent from the meeting.

ARTICLE IX
Administration and Enforcement

§ 60-36. Certification.

- A. A prospective purchaser or mortgagee or any other person interested in any land which forms part of a subdivision may apply, in writing, to the Township Clerk for a certificate certifying whether or not such subdivision has been approved by the Planning Board. Such application shall contain a diagram showing the location and dimension of the land to be covered by the certificate and the name of the owner thereof. [Amended 2-8-77 by Ord. No. 77-3]
- B. Each certificate shall be designated a "certificate as to approval of subdivision of land," and shall certify:
 - (1) That there is within the municipality a Planning Board which meets regularly and an ordinance regulating the subdivision of land.
 - (2) Whether the subdivision as it relates to the land shown in said application has been approved by the governing body and, if so, the date of such approval.
 - (3) Whether such subdivision, if the same has not been approved, is exempt from the requirement of approval as provided in this chapter.
- C. The Township Clerk shall be entitled to demand and receive for each certificate issued by him a reasonable fee not in excess of those provided in N.J.S.A. 54:5-14 and N.J.S.A. 54:5-15. The fees collected by the Township Clerk shall be paid by him to the municipality.

§ 60-37. Variance permitted. [Amended 2-8-77 by Ord. No. 77-3]

These rules, regulations and standards shall be considered the minimum requirements for the protection of the public health, safety and welfare of the citizens of the Township of Montague. Any action taken by the Planning Board under the terms of this chapter shall give primary consideration to the above-mentioned

matters and to the welfare of the entire community. However, if the subdivider can clearly demonstrate that, because of peculiar conditions relating to his land, the literal enforcement of one (1) or more of these regulations is impracticable or will exact undue hardship, the Planning Board may permit such variance or variances as may be reasonable and within the general purpose and intent of the rules, regulations and standards established by this chapter.

§ 60-38.¹ Inspection fee; escrow deposit. [Added 5-10-83 by Ord. No. 83-8; amended 8-14-84 by Ord. No. 84-11]

A. Escrow fees shall be required for:

- (1) Minor subdivision approval.
 - (a) Attorney and engineer: three hundred twenty-five dollars (\$325.).
 - (b) Planner: one hundred dollars (\$100.) per exception in Subsection B(2).
- (2) Preliminary subdivision approval.
- (3) Final subdivision approval.
- (4) Any subdivision requiring a conditional use approval.
- (5) Any subdivision requiring a site plan approval.
- (6) Any subdivision requiring a planned development approval.
- (7) Any subdivision requiring any type of variance approval.

B. Upon receipt of an application for any of the foregoing approvals, the Land Use Administrator (or the Municipal Clerk, if serving in this capacity) shall send a copy of the application and one (1) set of all maps and reports to:

- (1) The Township Engineer.
- (2) The Planning Board Consultant (minor subdivision applications will be sent at the discretion of the Land Use Administrator if specific circumstances warrant it).

¹ Editor's Note: Former § 60-38, Fees for special meetings of Planning Board, added 2-11-75 by Ord. No. 75-2, was repealed 4-13-82 by Ord. No. 82-5.

- (3) The attorney of the approving authority.
 - (4) Any other persons whose professional services are deemed necessary and proper to adequately and fully process the application.
- C. Within ten (10) business days thereafter, the persons named in Subsection B hereof shall submit to the Land Use Administrator an estimate of funds sufficient in amount to perform the technical or professional services required by the application, except in the case of a minor subdivision, where the escrow fees are predetermined in Subsection A(1).
- D. Such estimated funds shall be reviewed and approved by the Land Use Administrator.
- E. The applicant shall deposit with the Township of Montague sufficient funds to satisfy the aggregate of the estimated costs, which sum shall be placed by the Township Treasurer in an escrow account and disbursed with the approval of the Land Use Administrator for the following purposes:
- (1) The Township Engineer, Planning Consultant, attorney of the approving agency, and any other person whose professional services are necessary and proper to process the application shall submit vouchers for all appropriate fees incurred in examining and reviewing the subject matter of the application and submitting an appropriate report.
 - (2) Any funds remaining in the escrow account upon completion of the project or phase of the application procedure shall, as soon as practical, be returned to the applicant.
 - (3) Any additional funds required after the initial deposit is fully disbursed shall be paid by the applicant in the same amount and for the same purposes as was the original deposit.
 - (4) Only upon receipt of sufficient funds from the applicant as required herein shall the Land Use Adminis-

trative Officer notify the Township Engineer, Planning Consultant, attorney of the approving agency, and any other persons whose professional services are required, to then undertake appropriate examinations and reviews and prepare necessary reports.

- (5) The approving authority shall take no formal action upon the application until all fees and escrow funds have been paid to or are on deposit with the Township of Montague.

§ 60-39. Violations and penalties. [Amended 9-14-76 by Ord. No. 76-15; 2-8-77 by Ord. No. 77-3]

- A. If, before favorable referral and final approval has been obtained, any person transfers or sells or agrees to sell, as owner or agent, any land which forms part of a subdivision on which, by ordinance, the Planning Board is required to act, such person shall be subject to a fine not to exceed one thousand dollars (\$1,000.), and each parcel, plot or lot so disposed of shall be deemed a separate violation in accordance with the provisions of N.J.S.A. 40:55D-55.
- B. In addition to the foregoing, the township may institute and maintain a civil action:
 - (1) For injunctive relief.
 - (2) To set aside and invalidate any conveyance made pursuant to such contract of sale, if a certificate of compliance has not been issued in accordance with the provisions of N.J.S.A. 40:55D-56.
- C. In any such action, the transferee, purchaser or grantee shall be entitled to a lien upon the portion of the land from which the subdivision was made that remains in the possession of the subdivider or his assignees or successors, to secure the return of any deposit made or purchase price paid and also a reasonable search fee, survey expense and title closing expense, if any.
- D. Any such action must be brought within two (2) years after the date of the recording of the instrument of transfer, sale

or conveyance of said land or within six (6) years if unrecorded.

§ 60-40. Construal. [Added 2-8-77 by Ord. No. 77-3]

This chapter shall be construed in pari materia with the Land Use Procedures Ordinance of Montague Township, which it complements, and shall be liberally construed to effectuate the purposes thereof.

ARTICLE X

Flag Lots

[Added 8-14-84 by Ord. No. 84-8]

§ 60-41. Short title.

This Article shall be known as and may be cited as the "Flag Lot Ordinance of the Township of Montague."

§ 60-42. Definitions.

As used in this Article, the following terms shall have the meanings hereinafter set forth:

FLAG LOT — A lot the building area of which fronts upon a flag lot right-of-way rather than on or abutting a public street or road, and having access thereto over, upon and across a private flag lot right-of-way.

FLAG LOT BUILDING AREA — The area of a flag lot consisting of at least twice the minimum lot area required for a conventional lot in the zone district in which the flag lot is to be located, and excluding therefrom all lands lying within the flag lot right-of-way, but including the lands lying within the fifty (50) foot front yard, fifty (50) foot side yards and fifty (50) foot rear yard of such lot. The term "flag lot building area" shall be deemed to constitute the portion of flag lot intended for the construction of the dwelling house or other principal building, and other acces-

sory buildings or permitted structures, provided that the foregoing shall not be deemed to permit any accessory building or other structure in the front yard of such flag lot building area or flag lot right-of-way giving access thereto.

FLAG LOT BUILDING LINE — A line projected across a flag lot building area between the side lot lines substantially parallel to the edge of the flag lot right-of-way at the minimum setback distance from the edge of such flag lot right-of-way as would be required for setback from a public street in the event of conventional subdivision in the applicable zone.

FLAG LOT DEPTH — The distance between the edge of the flag lot right-of-way and the rear line of the flag lot building area. The "flag lot depth" shall be not less than the minimum lot width required for a conventional lot in the applicable zone district.

FLAG LOT FRONTAGE — The distance between the side lot lines of the flag lot building area measured along the edge of the flag lot right-of-way.

FLAG LOT RIGHT-OF-WAY — The portion of a flag lot between the right-of-way of the public street, and the flag lot side line most remote from the public street, having a minimum width of fifty (50) feet along the entire length thereof, giving access to the building area of such flag lot. No accessory buildings or other structure (other than driveways, fences and perimeter walls) shall be permitted within the "flag lot right-of-way."

FLAG LOT RIGHT-OF-WAY FRONTAGE — The distance between the side lot lines of the flag lot right-of-way measured along the edge of the public street.

FLAG LOT WIDTH — The distance between the side lot lines of the building area measured along the minimum building setback line applicable in the zone.

REAR LINE OF FLAG LOT — The line of the flag lot building area opposite from the flag lot right-of-way.

YARD, FRONT — An open space extending across the full width of the flag lot building area, the depth of which shall be not less than fifty (50) feet measured horizontally between the nearest point of the flag lot right-of-way line and the nearest part of the principal building. No accessory buildings shall be permitted in a flag lot front yard, unless expressly permitted by the Planning Board at the time of conditional use review and subdivision, or thereafter upon appropriate application to the Board of Adjustment. The flag lot front yard shall be deemed to be the yard abutting the flag lot right-of-way, unless otherwise determined by the Planning Board in conjunction with its conditional use review at the time of subdivision.

YARD, REAR — An open space extending across the full width of the flag lot building area, the depth of which shall be not less than fifty (50) feet measured horizontally between the nearest part of the principal building and the nearest point of the rear line of the flag lot. Accessory structures may be located in the rear yard of a flag lot in accordance with the provisions of this chapter only if so permitted by the Planning Board at the time of its conditional use review and subdivision, or thereafter upon appropriate application to the Board of Adjustment.

YARD, SIDE — An open space extending from the front yard to the rear yard between the principal building and the side lot lines. The width of the required side yard shall be not less than fifty (50) feet measured horizontally from the nearest part of the principal building and the nearest point of the side line of the flag lot building area. Accessory structures in accordance with the provisions of this chapter shall be permitted in the "side yard" of the flag lot building area more remote from the public street, but such accessory buildings and structures shall not be permitted in the "side yard" of the flag lot building area more proximate to the public street unless so permitted by the Planning Board at the time of its conditional use review and subdivision, or thereafter upon appropriate application to the Board of Adjustment.

§ 60-43. Flag lots as conditional use.

Flag lots shall be permitted as a conditional use in the R-1, R-2 and R-3 Zone Districts upon the applicant's showing that such use in the specified location will comply with the conditions, standards and definitional requirements for flag lots contained in this Article and all other applicable ordinances of the Township of Montague, and upon the issuance of an authorization therefor by the Planning Board.

§ 60-44. Certain flag lot applications deemed major subdivisions.

All applications for the subdivision of lands into one (1) or more flag lots shall be deemed applications for major subdivisions, and the preliminary subdivision plat and the final subdivision plat therefor shall conform to the requirements for plot plan details in the case of major subdivisions, other than with respect to such plot plan details as may be expressly waived by the Planning Board in individual cases for good cause shown.

§ 60-45. Building area.

The flag lot building area of each flag lot created shall be at least twice the minimum lot area required for a conventional lot in the zone district in which the flag lot is to be located, exclusive of land lying within the flag lot right-of-way.

§ 60-46. Right-of-way.

Each flag lot shall have access to an existing public street by way of a private flag lot right-of-way which shall constitute a portion of the flag lot. Such flag lot right-of-way shall have a width of not less than fifty (50) feet fronting on such public street and shall be not less than fifty (50) feet in width from its point of intersection with the street to its point of intersection with the rear line of the flag lot right-of-way so created. No structures other than driveways, fences or lot perimeter walls shall be constructed on such flag lot right-of-way.

§ 60-47. Conditions for creating flag lots.

Flag lots may be created only upon the express finding by the Planning Board that subdivision of a portion of the lands into flag lots is in conjunction with an overall development plan for the entire tract of which the flag lot is a part, and no remaining portion of the subject tract shall, as a result of flag lot subdivision, become landlocked or not practically feasible of development. The developer shall demonstrate a need, consistent with good planning principles, for the creation of flag lots and shall further demonstrate that normal subdivision techniques in accordance with the requirements of the zone are not practical or feasible because of topography, unusual shape or land configurations or other physical characteristics of the land related to the proposed development concept. The developer shall additionally demonstrate that the proposed location, topography and physical conditions of the land lying within the confines of the flag lot right-of-way are sufficient to permit the installation and maintenance of any access driveway within the confines of the flag lot right-of-way suitable for uninterrupted access to the proposed location for the construction of the principal structure within the flag lot building area by conventional and emergency vehicles at all times of the year.

§ 60-48. Preliminary major subdivision plat details and information.

A. The preliminary major subdivision plat depicting the proposed subdivision of any flag lot shall include the following plot plan details and information:

- (1) Existing and proposed topography at two-foot contour intervals within the fifty-foot wide flag lot right-of-way;
- (2) The proposed location and width of the proposed driveway within the flag lot right-of-way, together with a center-line profile of the entire length of the driveway, from its point of intersection with the public street traversing the flag lot right-of-way and into the

flag lot building area to the flag lot building line or the proposed location for the construction of the principal structure within the flag lot building area, whichever is greater.

- (3) A center-line profile of the entire length of the proposed driveway showing the existing and proposed profile plotted at five-foot vertical and fifty-foot horizontal intervals.
- (4) Drainage improvements needed based upon the proposed driveway profile at the intersection of the public street and along such proposed driveway or, alternatively, an affirmative certification by the developer's engineer that no such drainage improvements are needed.
- (5) Slight triangle profiles form a point in the center line of the proposed driveway fifteen (15) feet from the edge of the traveled way of the public street, provided that, in the event that the width of the traveled way shall be less than thirty (30) feet, such sight triangle profile shall be from a point in the center line of the proposed driveway located thirty (30) feet from the center line of the existing traveled way of such public street.
- (6) The proposed base course and wearing surface of the proposed driveway, the same to be in accordance with the standards for flag lot driveways prescribed in § 60-47 of this Article.
- (7) Proposed erosion control measures for any side slopes along the proposed driveway, or alternatively, an affirmative certification by the developer's engineer that no erosion control measures are required.
- (8) Setback dimensions to all existing dwellings and structures on all adjacent lots located on the same side of the public street as the proposed development and within a four-hundred-foot perimeter of any proposed flag lot.

- B. The Planning Board shall be empowered to grant a planning waiver with respect to any of the aforesaid plot plan details [except the detail required by Subsection A(8) of this section] upon the affirmative finding that, based upon testimonial evidence, engineering certifications or field inspections, the location, topography and physical conditions of the land lying within the flag lot right-of-way area obviously sufficient to permit the installation and maintenance of an access driveway in the proposed location in accordance with the standards of § 60-47 of this Article.

§ 60-49. Standards for lot layout.

All flag lots to be created shall conform to the following:

- A. The flag lot building area shall be deemed to "front" on such flag lot right-of-way, and the required "lot width" of the flag lot building area abutting such flag lot right-of-way shall be measured along the edge of such flag lot right-of-way, which "lot width" shall be the lot width required at the street line in such zone or, if none is required, the minimum lot width required at the building setback line in such zone. Except as required in Subsection G of this section, all other bulk requirements of the appropriate zone district in which the lands are situated shall relate to such flag lot right-of-way as though the same were a public street, provided that improvements constructed on such flag lot building area need not be oriented to such flag lot right-of-way as though the same were a public street.
- B. The flag lot building area shall be entirely on one (1) side of the flag lot right-of-way.
- C. Such flag lot shall not be further subdivided, nor may the flag lot right-of-way be used as access to any other lot or tract of land, unless all improvements required by the Land Subdivision Ordinances for the installation of a public street have been installed, including the construction of a street or road leading from the public street to all lots proposed to be served, which street shall meet all of the design and construction standards for a Class B Road set forth in

the Land Subdivision Ordinance. The prohibition against further subdivision of any such flag lot shall be assured by appropriate notations of the final major subdivision plat, by a duly recorded deed of restrictive covenants, or by such other means as may be reasonably required by the Planning Board.

- D. The lot depth (measured from the edge of the flag lot right-of-way to the opposite lot line) shall be not less than the requirement for the minimum lot width at the building setback line applicable to a conventional lot in such zone district.
- E. Not more than one (1) flag lot shall be permitted for each adjacent or abutting standard lot having a minimum lot width at the street right-of-way line applicable in such zone or, if not applicable, having a minimum lot width at the building setback line applicable in such zone.
- F. No two (2) flag lot rights-of-way shall abut except in the case of circumstances which require abutting flag lot rights-of-way by reason of the topographical or other physical constraints of the land.
- G. The minimum distance from any structure to any lot line (exclusive of permitted accessory buildings, driveways, fences or perimeter walls) shall be fifty (50) feet, except in the case of structures or improvements adjacent to the flag lot right-of-way not less than the minimum distance required for front yard setback applicable in the zone.

§ 60-50. Final major subdivision plat details and information.

The final major subdivision plat depicting the subdivision of lands which include the subdivision of any flag lot shall include the following plot plan details and information:

- A. Final topography at two-foot contour intervals within the fifty-foot wide flag lot right-of-way.
- B. The final width of the proposed or completed driveway within the flag lot right-of-way, together with a center-line

profile of the entire length of the driveway, from its point of intersection with the public street traversing the flag lot right-of-way and into the flag lot building area to the flag lot building line or the proposed location for the construction of the principal structure within the flag lot building area, whichever is greater.

- C. A center-line profile of the entire length of the proposed driveway showing the final proposed or completed profile plotted at five (5) foot vertical and fifty (50) foot horizontal intervals.
- D. Final drainage improvements, together with any easements relating thereto.
- E. Final sight triangle profiles, together with appropriate restrictions against the obstruction of such sight triangles, by notation on the final major subdivision plat or duly recorded restrictive covenants, as may be reasonably required by the Planning Board.
- F. The final proposed or installed base course and wearing surface of the proposed driveway.
- G. The final approved erosion control measures and the final side slopes along the proposed or completed finally approved driveway.
- H. Any limitations imposed by the Planning Board with regard to the future installation or principal or accessory structures, together with appropriate means for enforcement of such limitations, by notations on the final major subdivision plat or in a duly recorded deed of restrictive covenants, as may be reasonably required by the Planning Board.
- I. Such additional and further final major subdivision plat details as may be required by the Planning Board or the Township Engineer.

**MINIMUM ROAD DESIGN STANDARDS
FOR ROAD ACCEPTANCE
MONTAGUE TOWNSHIP
SUSSEX COUNTY, NEW JERSEY**

APPENDIX A (§ 60-35)

		ARTERIAL STREET	COLLECTOR STREET	MINOR STREET	SITE PLAN PAVEMENT SPECIFICATIONS
RIGHT OF WAY WIDTH		66'	50'	50'	50'
CONVENTIONAL SUBDIVISION					
PAVEMENT WIDTH BETWEEN CURBS		46' (Includes 12' 10" Shoulders)	26	24	24
RIDING LANE WIDTH		13'	10	10	10
SLOPE OF PAVEMENT		2% FROM CENTERLINE	2% FROM CENTERLINE	2% FROM CENTERLINE	2% FROM CENTERLINE
PAVED SHOULDER WIDTH		10'	NONE	NONE	NONE
SHOULDER SLOPE		4%	NONE	NONE	NONE
CURBING: CONVENTIONAL SUBDIVISION		9" x 18" CONCRETE CURB, CLASS "B" CONCRETE OR GRANITE BLOCK CURB	9" x 18" CONCRETE CURB, CLASS "B" CONCRETE OR GRANITE BLOCK CURB	9" x 18" CONCRETE CURB, CLASS "B" CONCRETE OR GRANITE BLOCK CURB	9" x 18" CONCRETE CURB, CLASS "B" CONCRETE OR GRANITE BLOCK CURB
TYPE AND DEPTH OF ROAD CONSTRUCTION	PAVEMENT	BITUMINOUS CONCRETE SURFACE COURSE 2" TOP COURSE	BITUMINOUS CONCRETE SURFACE COURSE 2" THICK	BITUMINOUS CONCRETE SURFACE COURSE 1 1/2" THICK	BITUMINOUS CONCRETE SURFACE COURSE 1 1/2" THICK
	BASE COURSE	4" BITUMINOUS STABILIZED BASE	3" BITUMINOUS STABILIZED BASE	2 1/2" BITUMINOUS STABILIZED BASE	2 1/2" BITUMINOUS STABILIZED BASE
	SUBBASE	6" DENSE GRADED AGGREGATE BASE	6" DENSE GRADED AGGREGATE BASE	6" DENSE GRADED AGGREGATE BASE	6" DENSE GRADED AGGREGATE BASE
ALTERNATE No. TYPE AND DEPTH OF ROAD CONSTRUCTION	PAVEMENT	BITUMINOUS CONCRETE SURFACE COURSE 2" TOP COURSE	BITUMINOUS CONCRETE SURFACE COURSE 2" TOP COURSE	BITUMINOUS CONCRETE SURFACE COURSE 1 1/2" TOP COURSE	BITUMINOUS CONCRETE SURFACE COURSE 1 1/2" TOP COURSE
	BASE COURSE	4" LIME-FLY ASH STABILIZED BASE	3" LIME-FLY ASH STABILIZED BASE	3" LIME-FLY ASH STABILIZED BASE	3" LIME-FLY ASH STABILIZED BASE
	SUBBASE	4" DENSE GRADED AGGREGATE BASE	4" DENSE GRADED AGGREGATE BASE	4" DENSE GRADED AGGREGATE BASE	4" DENSE GRADED AGGREGATE BASE
SHOULDER CONSTRUCTION		SAME AS FOR RIDING LANE	NONE	NONE	NONE
EARTH BERM WIDTH BEHIND CURB		7'	7'	7'	5'
SLOPE OF BERM		2% TOWARD CURB	2% TOWARD CURB	2% TOWARD CURB	2% TOWARD CURB
CUT SLOPE IN EARTH		2:1	4:1	4:1	4:1
CUT SLOPE IN ROCK		1:4	1:4	1:4	1:4
FILL SLOPE 0' - 5'		4:1	4:1	4:1	4:1
FILL SLOPE 5' AND OVER WITH GUIDE RAIL		2:1	2:1	2:1	2:1
TOPSOILING DEPTH ON BERMS AND EARTH SLOPES		4"	4"	4"	4"
SEEDING TYPE ON BERMS AND SLOPES UNDER 5'		TYPE "A"	TYPE "A"	TYPE "A"	TYPE "A"
DESIGN SPEED		50 MPH	40 MPH	30 MPH	30 MPH
MAXIMUM GRADE		8.0%	10.0%	12.0%	12 %
MINIMUM GRADE		0.5%	0.5%	0.5%	0.5%
MINIMUM CENTERLINE RADIUS		1000.0'	510.0'	275.0'	150.0'
CONVENTIONAL R.O.W. RADIUS AT CUL-DE-SAC				50'	
PAVEMENT RADIUS				40'	
SNOW REMOVAL EASEMENT ON CUL-DE-SACS		10'	10'	10'	10'
SEWER DESIGN	MAXIMUM DISTANCE BETWEEN WELLS	400.0'	400.0'	400.0'	400.0'
	STORM FREQUENCY WITH LAND USE FULLY DEVELOPED	AS NEEDED	AS NEEDED	AS NEEDED	AS NEEDED
	MINIMUM PIPE SIZE	15"	15"	15"	15"
	TYPE OF PIPE	R.C.C.P. OR C.M.P. BIT CTD.	R.C.C.P. OR C.M.P. BIT CTD.	R.C.C.P. OR C.M.P. BIT CTD.	R.C.C.P. OR C.M.P. BIT CTD.
STORM DESIGN	TYPE OF HEADWALL	CLASS "C" CONCRETE OR FLARED END SECTIONS	CLASS "C" CONCRETE OR FLARED END SECTIONS	CLASS "C" CONCRETE OR FLARED END SECTIONS	CLASS "C" CONCRETE OR FLARED END SECTIONS
SPECIFICATIONS TO GOVERN CONSTRUCTION		LATEST EDITION OF NEW JERSEY STATE DEPARTMENT OF TRANSPORTATION STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION AND AMENDMENTS THERETO.			
ENGINEERING DESIGN STANDARDS		LATEST EDITION OF THE NEW JERSEY DEPARTMENT OF TRANSPORTATION			

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12/18/90

ZONING

Chapter 76

ZONING

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[HISTORY: Adopted by the Township Committee of the Township of Montague 5-31-79.¹ Amendments noted where applicable.]

GENERAL REFERENCES

**Land use procedures — See Ch. 10.
Site plan review — See Ch. 55.
Soil erosion and sediment control — See Ch. 57.
Subdivision of land — See Ch. 60.**

¹Editor's Note: The ordinance adopted on this date also superseded former Ch. 76, Zoning, adopted 11-10-70, as amended.

ARTICLE I
Title and Purpose

§ 76-1. Short title.

This chapter shall be known as and referred to as the "Zoning Ordinance of the Township of Montague, Sussex County, New Jersey."

§ 76-2. Purpose.

- A. The purposes of this chapter are to guide the appropriate use of development of all lands in the township in a manner which will promote the public health, safety, morals and general welfare; to secure safety from fire, flood, panic and other natural and manmade disasters; to provide adequate light, air and open space; to promote the establishment of appropriate population densities and concentration that will contribute to the well-being of persons, neighborhood, communities and preservation of the environment; to provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all township residents; to encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which will result in congestion or blight; to promote a desirable visual environment through creative development techniques and good civic design and arrangements; to promote the conservation of open space and valuable natural resources; and to prevent urban sprawl and degradation of the environment through improper use of land.
- B. It is also the purpose of this chapter to state as clearly and simply as possible the intended requirements to encourage wide understanding of its meaning and to avoid costly technical and legal problems. For the

purposes hereinabove mentioned, this chapter designates, regulates and restricts the location and use of buildings and structures and land for residents, commerce, trade, industry and other purposes, the height and number of stories and size of buildings and other structures hereafter erected or altered, regulates and determines the sizes of yards and other open spaces; and regulates and limits the density of population. In order to effect its purpose, this chapter divides the

(Cont'd on page 7609)

township into zoning districts of such number, shape and area as may be deemed the best to carry out the purposes of this chapter.

ARTICLE II Zoning Districts and Map

§ 76-3. Establishment of districts. [Amended 12-13-88 by Ord. No. 88-20; 5-26-98 by Ord. No. 98-8; 7-27-99 by Ord. No. 99-04]

The township shall be divided into the following types of zoning districts: R-2 and R-3 Low Density Residential; R-4 High Density Residential; R-5 Medium Density Residential; C-1 Neighborhood Commercial; C-2 Highway Commercial; and CD Conservation District.

§ 76-4. Zoning map. [Amended 5-10-83 by Ord. No. 83-10; 2-13-88 by Ord. No. 88-20; 5-26-98 by Ord. No. 98-8; 7-27-99 by Ord. No. 99-04]

The boundaries of the districts are hereby established as shown on the map entitled "Zoning," prepared by Heyer, Gruel and Associates dated May, 1999, the same to become effective at such time as it shall have been adopted.

§ 76-5. Boundaries.

District boundary lines are intended to follow street center lines and lot or property lines as they existed as of the date of enactment of this chapter unless otherwise indicated by dimensions on the Zoning Map. The exact location of any disputed district boundary line shall be determined by the Zoning Board of Adjustment upon proper application made by any interested party.

**ARTICLE III
Definitions**

§ 76-6. Word usage.

Except where it is specifically defined herein, all words and terms used in this chapter shall carry their customarily accepted meanings: "lot" includes the words "plots" or "parcels"; "buildings" include the word "structure"; "occupied" or "used" shall be considered as though followed by the words "or intended, arranged or designed to be used or occupied"; "dwelling" includes the word "resident." It is not the intent of this chapter that any prohibited use or occupation shall be allowed because of a technical distinction in the meaning of any word.

§ 76-7. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ACCESSORY BUILDING OR USE — A use of structure customarily incidental and subordinate to the principal use of land or buildings and located on the same lot with such principal use or building.

AGRICULTURE — The use of land for farming or horticultural use or for raising poultry or livestock or otherwise devoted to any use contemplated by N.J.S.A. 54:4-23.3, provided that the tract is at least five (5) acres in area.

ALTER — As applied to a building, a change or rearrangement of supporting members or exit facilities, or an enlargement, whether by extending on a side or by increasing in height, or moving from one location or position to another.

ANTENNA — Any exterior transmitting or receiving device mounted on a tower, building or structure, to use the communications that radiate or capture electro-

magnetic waves, digital signals, analogue signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals. **[Added 2-13-01 by Ord. No. 2001-11]**

AUTOMOBILE REPAIR SHOP — See definition of "repair garage."

BASEMENT — A portion of the building partly underground, but having less than one-half (1/2) of its clear height below the average finished grade of the adjoining ground.

BUILDING AREAS, FLAG LOT — The main contiguous area of a flag lot, consisting of not less than five (5) acres, including the space reserved for the front, side and rear yards, but excluding all land lying within the access right-of-way. The term "flag lot building area" shall be construed to mean that portion of the flag lot intended for the construction of a dwelling house or other principal structure, together with accessory buildings or other permitted structures; provided, however, that the foregoing shall not be deemed to permit any accessory building or other structure to be located in the front yard of the building area or in the access right-of-way. **[Added 9-13-83 by Ord. No. 83-12]**

BUILDING HEIGHT — The vertical distance measured from the average finished grade at the front of the building to the highest point of the roof for flat roofs, to the deck line of mansard roofs and to a point halfway between eaves and ridge for gable, hip and gambrel roofs.

BUILDING LINE — A line projected across a lot between lot side lines, parallel to the front lot line at the minimum setback distance, measured at right angles from the nearest edge of the street right-of-way line; provided, however, that this definition shall not apply to a flag lot permitted in a large lot subdivision. **[Amended 9-13-83 by Ord. No. 83-12]**

BUILDING LINE, FLAG LOT — A line projected across the building area of a flag lot between the side lines thereof, parallel to the front line at the minimum setback distance measured at right angles from the nearest front line of the building area. [Added 9-13-83 by Ord. No. 83-12]

BUILDING, MAIN OR PRINCIPAL — A building in which is conducted the main or principal use of the lot on which the building is located.

BUILDING PERMIT — A permit stating that the purpose for which a building or land is to be used is in conformity with the uses permitted and all other requirements under this chapter, and other applicable ordinances, for the zone in which it is located or is to be located.

CAMPER — Any vehicle or similar portable structure mounted or designed for mounting on wheels used or intended to be used for camping and related activities and not used for dwelling purposes except at a camping area or campground.

CELLAR — A portion of the building partly underground having one-half (1/2) or more than one-half (1/2) of its clear height below the average finished grade of the adjoining ground.

CHURCH — Lands and buildings devoted to and used exclusively for religious worship and customary related activities, entitled to exemption from taxation pursuant to the provisions of N.J.S.A. 55:4-3.6.

CIVIL BUILDINGS — Buildings and facilities owned and maintained by the Township of Montague.

COLOCATION — The use of a common wireless telecommunications tower or a common structure, by two (2) or more wireless license holders or unlicensed holders nevertheless regulated by the Federal Communications Commission or by one (1) wireless license holder for more than one (1) type of communications technology

and/or the placement of a wireless telecommunication tower on a structure owned or operated by a utility or other public entity. [Added 2-13-01 by Ord. No. 2001-11]

COMMERCIAL VEHICLE — Trucks, buses, sedan delivery vehicles, station wagons with advertising matter on the sides or any other commercially used vehicles, except a passenger car with no advertising matter exposed to view.

COMMON OWNERSHIP — Ownership of two (2) or more contiguous parcels of real property by one (1) person or by two (2) or more persons owning such property jointly or as tenants by the entirety or as tenants in common.

CONDITIONAL USE — A use permitted only after review pursuant to the provisions of Article XIV of this chapter.

COVERAGE — The ground area of all buildings on the lot, divided by the lot area and expressed as a percent.

CURB LEVEL — The elevation of the street curb as established in accordance with law.

DISPLAY SIGN — A sign, including the type commonly known as a "billboard," which directs attention to a business, commodity, service, entertainment or attraction sold, offered or existing elsewhere than upon the same lot or development where such sign is displayed.

DISTRICT — Synonymous with the term "zone;" part of the lands in the township to which certain uniform regulations of this chapter apply.

DOMESTIC ANIMAL — Small tame animals normally kept or maintained in or about a dwelling as a pet, such as dogs, cats and other similar household pets.

DWELLING:

- A. **DUPLEX** — A building occupying a single lot consisting of two (2) separate dwelling units, with a closed partition between each, with independent means of ingress and egress in front and rear.
- B. **SINGLE-FAMILY ATTACHED** — Three (3) or more single-family dwelling units so constructed that each unit is separated from every other unit and attached by a common wall.
- C. **SINGLE-FAMILY DETACHED** — A building occupying a single lot occupied or intended to be occupied exclusively for residence purposes by one (1) family or one (1) housekeeping unit.
- D. **SINGLE-FAMILY SEMIDETACHED** — Three (3) or more single-family dwelling units so constructed that each unit is separated from every other unit and attached at some point by a common wall.

FAMILY — Any number of individuals living together as a single housekeeping unit and using certain rooms and housekeeping facilities in common, but not including those individuals living in a hospital, nursing home, sanatorium, hotel, motel, boardinghouse, fraternity house or similar building or institution, provided that not more than two (2) people not related by blood, adoption or marriage shall be family.

FIRST FLOOR — First floor area shall be measured by using the outside dimensions of the occupied residential

portion of a building, excluding the area of an attached garage. For a split-level or trilevel, the area shall be considered to be the sum of the areas of the two (2) lowest adjoining occupied residential levels, excluding an attached garage.

FLAG LOT — A lot whose building area does not front on or abut a public street, except for, and having access only from and along, a flag lot right-of-way or entryway. [Added 9-13-83 by Ord. No. 83-12]

FLOOR AREA, LIVABLE — The total floor area of a dwelling, but not including rooms with more than one-half ($\frac{1}{2}$) of their cubic area below finished grade, rooms for heating equipment, garages, unenclosed porches, breezeways or other unheated areas. For the purpose of this chapter, floor area covered, in whole or in part, by a sloping ceiling shall be counted toward minimum "livable floor area" only for that portion having headroom of at least five (5) feet, six (6) inches, provided further that at least seventy-five percent (75%) of such floor area has a ceiling height of at least seven (7) feet, six (6) inches, and provided further that, if such floor is situated above another floor, it shall be accessible from other "livable floor areas" in the dwelling by means of a permanent built-in stairway.

GARDEN APARTMENT — A building not exceeding three (3) stories in height, containing a group of separate dwelling units and which is so designed that not more than two (2) apartments are served by a common entry.

HOME OCCUPATION — Any occupation for gain or support conducted by members of the family residing in a dwelling unit and conducted solely within the dwelling or accessory building, such as dressmaking, millinery, home baking and the like, provided that there shall be no display of products or advertising visible from the street, and further provided that no machinery or equipment is used which will cause electrical or other interference with radio or television reception in adjacent residences. No more

than one-half ($\frac{1}{2}$) of the dwelling unit can be used for the "home occupation," and there can be no more than one (1) nonfamily employee.

HOSPITAL — Unless otherwise specified, includes clinic, rest homes, nursing homes, convalescent home or any other like unit containing beds for four (4) or more patients and used for the diagnosis, treatment or other care of ailments. A "hospital" shall be deemed to be limited to places for the diagnosis, treatment or other care of human ailments.

HOTEL — A building which contains furnished living units for its occupants and in which no living unit contains more than two (2) rooms, exclusive of bathroom, foyer, closet or dressing area, terraces or balconies, and providing, among other things, such services and features as lobby, mail and valet services, linens, central dining room, lounges, concessions, room service, dispensary, game and hobby rooms, public assembly area and other services and features customarily provided in a "hotel," including twenty-four-hour office service.

LARGE LOT SUBDIVISION — A subdivision, specifically permitted by provisions in this Zoning Ordinance of the township, which is subject to less stringent regulations than otherwise required.

LIGHT INDUSTRIAL — The manufacture, compounding or assembly of articles from previously prepared materials (as opposed to the processing of raw materials), using processes which create no significant nuisances as defined in this chapter.

LIVESTOCK — Animals which are raised, kept or maintained on a farm and include, among others, cattle, horses, sheep, goats, chickens, fur-bearing animals, such as mink or chinchilla, and not more than two (2) pigs.

LOT — A piece or parcel of land abutting on a street, the area of which, in addition to the parts thereof occupied or which may hereafter be occupied by a principal building

and its accessory buildings, is sufficient to provide the yard spaces required by this chapter and which conforms to minimum area requirements of this chapter. In the event that more than one (1) plot or "lot" as set forth on any map filed in the Sussex County Clerk's office or a "lot" as set forth on the present or future Tax Maps of the township is used in part or in full with one (1) or more other such plots or "lots" for the creation of a building and its accessories, including yards required by this chapter, the aggregate of all such plots or "lots" shall, for the purpose of this chapter be deemed to be one (1) "lot."

LOT DEPTH — The average horizontal distance between the front line and the line of the lot opposite thereto.

LOT FRONTAGE — The distance between the lot side lines, measured along the nearest edge of the street right-of-way. [Added 9-13-83 by Ord. No. 83-12]

LOT LINE, FRONT — The street line of a lot. For a corner lot, the "front lot line" shall be considered to be the shortest street line. A lot which extends through a block from street to street shall be considered to have two (2) "front lot lines" and no rear lot line.

LOT LINE, REAR — The property line of a lot which is most distant from and most nearly parallel to the front lot line.

LOT LINE, SIDE — Any property line of a lot which is not a front or rear lot line.

LOT WIDTH — The distance between the lot side lines, measured along the minimum setback building line. [Amended 9-13-83 by Ord. No. 83-12]

MOBILE HOME — Any vehicle or similar portable structure mounted or designed for mounting on wheels, used or intended for use for dwelling purposes, including structural additions, except parked and unoccupied camping-type trailers. Any such vehicle or structure shall not be deemed to be a "mobile home," whether or not the wheels have been removed therefrom and whether or not resting upon a temporary or permanent foundation.

MUNICIPAL USE — Any activity which is solely limited to municipal purposes, and includes municipal building, municipal garage, municipal storage area, municipal library and like activities.

NONCONFORMING BUILDING — A building or structure or portion thereof lawfully existing as of the date of the adoption of this chapter, or a prior Zoning Ordinance, which does not conform to the regulations of the district in which it is located.

NONCONFORMING LOT — A lot or a parcel which does not have a minimum width or does not contain the minimum area for the zone in which it is located or the use to which it is being put.

NONCONFORMING USE — A use which lawfully occupies a building or lands as of the date of the adoption of this chapter and which does not conform with the use regulations of the district in which it is located.

NUISANCE — An offensive, annoying, unpleasant or obnoxious thing or practice; a cause or source of annoyance, especially a continuing or repeating invasion or disturbance of another's rights, including the actual or potential emanation of any physical characteristics or activity or use across a property line which can be perceived by or affect a human being of ordinary sensibility; or the generation of an excessive or concentrated movement of people or things, such as but not limited to: noise, dust, smoke, fumes, odor, glare, flashes, vibrations, shock waves, heat, electronic or atomic radiation, objectionable effluent, noise or congregation of people, especially at night, passenger traffic, transportation of things by truck, rail or other means, invasion of nonabutting frontage by parking.

OFFICE — Office uses shall include professional, service, business office and corporate headquarters office uses.

PARKING SPACE — An area of not less than two hundred (200) square feet [ten (10) feet wide and twenty

(20) feet long] for the parking of a motor vehicle, either within a structure or garage or in the open, which, except in the case of residential properties, shall be exclusive of driveways or access drives.

PRINCIPAL BUILDING OR USE — The primary purpose for which a lot or a main building is used.

PRIVATE GARAGE — An accessory building for the housing of motor vehicles operated by the occupant of the principal building or use of the lot.

PROFESSIONAL OFFICE BUILDINGS — Shall normally be deemed to include offices or suites used by a physician, surgeon, dentist, lawyer, architect, engineer, professional artist, landscape architect, accountant, real estate agent, insurance broker or similar professional person; also, the office of a tradesman whose field of activity is entirely away from home, including building contractors and the like.

REPAIR GARAGE — A building or portion thereof designated or used for storage of motor-driven vehicles and at which motor fuels and oils may be sold and in which major and minor automobile repairs and body work are done.

RIGHT-OF-WAY, FLAG LOT — That portion of a flag lot extending between and connecting the right-of-way of the public or approved private street and the flag lot building area, having a minimum width of fifty (50) feet throughout its entire length and affording access to the building area from the street. This is also referred to as the "access right-of-way" or "entryway." **[Added 9-13-83 by Ord. No. 83-12]**

SERVICE STATION — Any building or plot of land used or designed to be used for the storage and retail sale of automotive fuels and lubricants, and which may include facilities for washing, polishing, greasing, waxing or tire repairing and replacing. No vulcanizing or tire recapping or major mechanical repairs shall be included in the

operation of a "service station." Minor repairs of motor vehicles may be conducted.

SIGN and/or ADVERTISING STRUCTURE:

- A. Includes every sign, billboard, ground sign, roof sign, sign painted or printed on the exterior surface of a building or structure, illuminated sign, temporary sign, awning, banner and canopy; and shall include the announcement, declaration, demonstration, display, illustration or insignia used to advertise or promote the interest of any person or product when the same is placed out of doors in view of the general public.
- B. The word "sign" when used alone in this chapter shall mean a nonilluminated sign. A "lighted sign" shall mean a sign which is lighted by external illumination only, by a light directed upon and reflected back from such sign, which shall be constructed in such manner that the source of the light is not visible from the street. A "sign with internal illumination" shall mean either a single- or double-faced sign made of glass, plastic or other material behind or between which are enclosed incandescent or fluorescent lamps used for the purpose of illuminating the sign. A "neon sign" means a sign consisting of tubes in which neon is used as one (1) of the ingredients to provide illumination. A "flashing sign" means any sign lighted by any means either internally or externally, by an intermittent source of illumination which blinks or flashes on and off. A "revolving or moving sign" means any sign, however illuminated, which is so designed as to revolve or move in any way or manner.
- C. When "signs" of a certain type are stated to be permitted in any zone or district, such provision shall be construed as prohibiting any other type of sign.

STEALTH TOWER STRUCTURE — Man-made trees, clock tower bell steeples, light poles and similar alternative design mounting structures that camouflage or conceal the presence of antennas or towers. **[Added 2-13-01 by Ord. No. 2001-11]**

STORY — That part of a building comprised between a floor and the floor or roof next above. The heights of a "story" shall be the vertical distance from top to top of two (2) successive tiers of beams or finished floor surfaces; and for the topmost "story," from the top of the floor finished to the top of the ceiling joists or, where there is no ceiling, to the top of the roof rafters.

STORY AND A HALF — Any space partially within the roof framing, where the clear height of not more than fifty percent (50%) of such space between the top of the floor beams and the structural ceiling level is seven (7) feet six (6) inches or more.

STREET LINE — The line which separates the publicly owned or controlled street right-of-way from the private property which abuts upon the street, as distinct from a sidewalk line, curblineline or edge-of-pavement line. In cases where title runs to the center of the street subject to the public easement, the curblineline, if any, shall be considered the "street line." On a street shown on the adopted Master Plan of the township, the "street line" shall be considered to be the proposed right-of-way line for the street.

STREET, PRIVATE — A road which is not open to the public and not maintained by a governmental unit.

STREET, PUBLIC — A road which is open to the public and maintained by a public body.

STRUCTURAL ALTERATION — Any change in the supporting members of a building, such as beams, columns or girders.

STRUCTURE — Anything constructed or erected which has or requires permanent location on the ground or attachment to something having such location.

TOWER SITE — The enclosed area in which the tower and its appurtenances are located. **[Added 2-13-01 by Ord. No. 2001-11]**

TRAILER — A vehicle which is or may be used for living or sleeping purposes, so designed that it is or may be mounted on wheels and used as a conveyance either through its own or other motive power. The term "trailer" shall include vehicles if mounted on temporary foundations with the wheels removed.

WIRELESS TELECOMMUNICATIONS ANTENNAS — An antenna that transmits or receives radio frequency signals for wireless telecommunications towers and the users of towers or other structures. **[Added 2-13-01 by Ord. No. 2001-11]**

WIRELESS TELECOMMUNICATIONS FACILITY — The accessory structures or uses serving the tower site such as equipment sheds, telecommunications antennas and fences. **[Added 2-13-01 by Ord. No. 2001-11]**

WIRELESS TELECOMMUNICATIONS TOWER — A freestanding, vertical structure designed to support one (1) or more wireless telecommunications antennas. The height of the tower shall not include a lightning rod. **[Added 2-13-01 by Ord. No. 2001-11]**

YARD, FRONT — An open space extending across the full width of a lot, the depth of which is the minimum allowable horizontal distance between the nearest point in the street right-of-way line and the nearest permissible part of the main or accessory building. **[Amended 9-13-83 by Ord. No. 83-12]**

YARD, REAR — An open space extending the full width of a lot between the main building and the rear lot line. The depth of the "rear yard" shall be measured horizontally from the nearest permissible part of the

main building toward the nearest point of the rear lot line. Only accessory structures may be located within the "rear yard." [Amended 9-13-83 by Ord. No. 83-12]

YARD, SIDE — An open space extending from the front yard to the rear yard between a building line and the lot side line. The width of the "side yard" shall be measured horizontally from the nearest point of the lot side line toward the nearest permissible part of the main building. [Amended 9-13-83 by Ord. No. 83-12]

ZONING PERMIT — A document signed by the Zoning Officer which is required as a condition precedent to the commencement of a use or the erection, construction, reconstruction, alteration, conversion or installation of a structure or building and which acknowledges that such use, structure or building complies with all provisions of this chapter or a variance therefrom duly authorized according to law.

ARTICLE IV General Regulations

§ 76-8. Conformance with area regulations.

Except as previously or hereinafter provided, it shall be unlawful to locate, relocate, erect, construct, reconstruct, enlarge or structurally alter any building or structure except in conformity with the regulations of the district in which such building or structure is located.

§ 76-9. Conformance with use.

Except as previously or hereinafter provided, it shall be unlawful to use any land or building for any purpose other than is permitted in the district in which such land or building is located.

§ 76-10. Permits granted prior to enactment.

Nothing in this chapter shall require any change in the plans, construction, size or designated use of any building, structure or part thereof for which any building permit has been granted before the enactment of this chapter, provided that construction from such plan shall be or shall have been started within ninety (90) days from the date of issuance thereof and shall be diligently pursued to completion.

§ 76-11. Open Space.

- A. No space contiguous to any building shall be encroached upon or reduced in any manner except in conformity with the yard, lot, lot area, building location, percentage of lot coverage, off-street parking space and such other regulations designated elsewhere in this chapter for the zone for which the building or space is located. In the event of such unlawful encroachment or reduction, such building shall be deemed to be in violation of the provisions of this chapter.
- B. No open space provided around any building for the purpose of complying with the provisions of this chapter shall be considered as providing open space for any other building.

§ 76-12. Exterior design, orientation and appearance of dwellings in residential neighborhoods. [Amended 4-25-95 by Ord. No. 95-6; 7-11-06 by Ord. No. 2006-010]

- A. Limitation on issuance of building permits; distance between similar houses and orientation of homes. Except as provided in this section, not more than one (1) building permit shall hereafter be issued for any dwelling to be erected in a housing development consisting of two (2) or more houses if it is substantially alike in exterior design and appearance with any neighboring dwellings situated on the same or opposite side of the street when one (1) of its property lines is within three hundred (300) feet of the property line of a dwelling then in existence or for which a building permit has been issued or is pending. The distance herein specified shall be construed to mean the distance between the street property lines of the respective properties and shall not include the width of the street. Dwelling houses will be constructed with the front of the dwelling house parallel to the street upon which the dwelling house has frontage, except when the dwelling house is not visible from the road or roads upon which it is situate due to the topography of the lot. **[Amended 7-11-06 by Ord. No. 2006-010]**
- B. Characteristics determining housing uniformity. Houses within such specified distance from each other shall be considered uniform in exterior design and appearance if they have any one of the following characteristics:
- (1) The same basic dimensions and floor plans are used without substantial differentiation between the exterior elevations;
 - (2) The same basic dimensions and floor plans are used without substantial change in orientation of the houses on the lots;

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- (3) The height and design of the roofs are without substantial change in design and appearance, and/or
- (4) The size, type and location of windows and doors in the front elevation are without substantial differentiation.

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- C. Minimum number of basic house designs. In addition to the requirements specified hereinabove, there shall be not less than four (4) separate basic house designs in every housing development consisting of eight (8) or more houses.
- D. Engineering survey or architectural drawing required prior to issuance of permit; contents. No building permit shall be issued for more than one (1) dwelling in any housing development, except as provided hereinbelow until an engineer's survey or architect's drawing of the entire tract or part to be developed has been submitted to the Building Inspector, showing thereon or on a schedule attached thereto the model number, type and design of each house, with the proper street and lot numbers for each house. The survey or drawing shall show the dimensions of each house, its exact location on the lot with setbacks and width or depth of all yard spaces. In the event of a subsequent desired change in basic design, size or location of a house in such tract, a revised plan and application therefor shall be filed and approved before such work is started.
- E. Submission of affidavit or performance guaranty. In respect to new subdivisions for the purpose of a housing development, the Planning Board may, at its discretion, require an affidavit or a performance guaranty, approved as to form by the Township Attorney, that the subdivision will be developed as a whole so that the intent and purpose of this section is satisfied. The Building Inspector is also hereby authorized to require a similar affidavit or performance bond before issuance of more than one (1) building permit in any housing development or part thereof for any subdivision heretofore approved by the Planning Board prior to the date of the adoption of this section or to any land area not required to be subdivided.
- F. Appeals for relief from provisions. Appeals for relief from the provisions of this section may be taken to the

Township Committee. Relief may be granted by the Township Committee when, in its opinion, such relief is not detrimental to the public interest.

- G. Violations and penalties. Any person who shall violate or who shall permit, take part or assist in any violation of this section shall, upon conviction thereof, for each and every violation thereof and for each and every day that such violation thereof continues, be punished by a fine not exceeding five hundred dollars (\$500.) or by imprisonment in the county or township jail for a term not exceeding ninety (90) days, or both.

§ 76-13. Restrictions.

- A. No store, shop or office in any building shall use any noisemaking instruments, such as phonographs, loudspeakers, amplifiers, radios, televisions or similar devices which are so situated as to be heard outside the building provided, however, that nothing herein shall be deemed to prohibit the playing of holiday music in commercial districts in connection with holiday displays and decorations sponsored by any civic or business group and approved by the Township Committee.
- B. No smoke, fumes or objectionable odor shall be emitted from any building in any zone, nor shall any accumulation of trash, garbage, offal, junk or the like to be permitted.
- C. The storage or display of merchandise on the exterior of any building or on any public street or sidewalk is prohibited, except as otherwise specifically permitted and regulated in this chapter; but this section shall not be construed to prohibit the maintenance of garden shops, restaurant terraces and similar areas maintained in connection with a store or other business establishment, provided that such areas are enclosed by a wall, trellis or screened planting at least four (4) feet in height.

- D. There shall be no outdoor storage in any front yard in all zone districts.

§ 76-14. Buildings and lots.

- A. No lot shall have erected upon it more than one (1) residential building, except as otherwise specifically authorized in this chapter.
- B. The height limitations of this chapter shall not apply to chimneys, church spires, standpipes, gables, cupolas, flagpoles, monuments, television antennas or towers, cables, scenery, lofts or water tanks, elevator housings and similar structures and necessary mechanical appurtenances for the zone in which the building is located, provided that no such exception shall cover at any level more than ten percent (10%) of the area of the roof on which it is located.
- C. An accessory building attached to the main building shall comply in all respects with the requirements of this chapter applicable to the main building.
- D. An accessory building in a residence district shall not be located in any required front yard space.
- E. Accessory buildings in residential districts shall not exceed the height of the principal structure or fifteen (15) feet, whichever is greater, but not to exceed thirty-five (35) feet. Any and all measurements that are to be taken in order to comply with this provision shall be taken in accordance with the Building Officials and Code Administration National Building Code/1993 (hereinafter referred to as the "BOCA Code"), more particularly Chapter 5, Section 501.0, et seq. [Amended 7-12-94 by Ord. No. 94-7]
- F. In residence districts, the minimum distance of any accessory building from an adjacent building shall be five (5) feet.

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- G. All accessory buildings shall have a minimum distance of ten (10) feet from side and rear lot lines. **[Added 2-11-86 by Ord. No. 82-2]**
- H. The total of the floor or ground areas of all accessory buildings, if more than one (1), shall not exceed the floor or ground area, whichever is smaller, of the principal building on the same lot. **[Added 7-11-06 by Ord. No. 2006-009]**
- I. In the event of a partial or total destruction of a single-family dwelling, to the extent that the dwelling is uninhabitable, by resolution of the Township Committee, the Zoning Officer may issue a zoning permit allowing the temporary use of a mobile home on the affected lot for a period not to exceed eight (8) months. Placement of the mobile home will be subject to inspection and approval by the Construction Officer. The Township Committee, by separate resolution, may extend such temporary use for one (1) additional six (6) month period. **[Added 11-25-90 by Ord. No. 90-19]**
- J. The minimum lot size in all residential districts throughout the municipality is one hundred thirty thousand six hundred eighty (130,680) square feet or three (3) acres except for the R-4 High Density Residential Zone District. **[Added 2-25-03 by Ord. No. 2003-08; amended 10-28-03 by Ord. No. 2003-22]**

§ 76-15. Commercial vehicles in residential districts.

No commercial vehicle exceeding a two-ton rated capacity shall be parked or maintained on any premises in any residential district, except on operating farms or stables. No tractor trailer shall be kept or maintained on any premises in a residential zone or district except on an operating farm and then may not be kept within three hundred (300) feet of any residence on adjoining property.

§ 76-16. Undersized lots. [Amended 10-25-88 by Ord. No. 88-18; 5-23-89 by Ord. No. 89-7; 5-26-98 by Ord. No. 98-8; 7-27-99 by Ord. No. 99-04]

Any existing lot of land with a gross lot area, lot width, lot frontage or lot depth less than that prescribed for a lot in the zone in which such lot is located may be used as a lot for any purpose permitted in the zone, provided that all regulations prescribed for the zone by this chapter are complied with, and further provided that the lot was subdivided after Planning Board approval pursuant to the provisions of the then-existing Montague Township subdivision ordinance.

§ 76-17. Prohibited uses.

Unless a certain use is specifically referred to as a permitted use, an accessory use or a conditional use, it shall be deemed to be a prohibited use.

§ 76-18. Enumeration of prohibited uses.

The following uses are specifically prohibited in all residential zones.

- A. Operations involving stockyards and slaughterhouses.
- B. Bulk storage of gasoline above ground.
- C. Junkyards, automobile dismantling plants or storage of used parts of automobiles or other machines or vehicles or of dismantled or junked automobiles, automobile repair shop or service.
- D. Flea markets.
- E. Storage of explosives.
- F. Mobile home parks.
- G. Dog kennels with more than five (5) dogs over six (6) months of age.
- H. Veterinarian.

§ 76-19. Minimum livable floor area.

The minimum livable first floor area for a ranch-type house with no more than two (2) bedrooms shall be eight hundred fifty (850) square feet. The minimum livable first floor area for each additional bedroom in a ranch-type house shall be one hundred twenty (120) square feet additional. The minimum

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livable floor area for split-level house, exclusive of basement, shall be one thousand two hundred (1,200) square feet.

§ 76-20. Uses not expressly permitted.

In the event that any use is not expressly permitted in a zone district, it shall be considered a prohibited use.

§ 76-21. Fences for repair garages and service stations.

In repair garages and service stations, all vehicles that are on the property for more than twenty-four (24) hours must be kept in an enclosed area with a fence at least five (5) feet high built of such material that the vehicles are not visible through the fence.

§ 76-21.1. Building or land disturbance near pipeline prohibited. [Added 7-12-94 by Ord. No. 94-8]

No building or land disturbance shall be permitted within fifty (50) feet of the easement of any pipeline. For the purpose of this section, "pipeline" shall mean any conduit through which natural gas, petroleum, or any of their products is conveyed or intended to be conveyed. The definition of pipeline shall include compressor plants and other facilities integrated with pipeline operations but shall not include a pipeline whose purpose is to serve exclusively the subject property.

§ 76-21.2. Expiration of variance. [Added 12-13-05 by Ord. No. 2005-26]

- A. Any variance granted pursuant to an application for development for only variance relief which is granted by the Land Use Board shall expire three (3) years from the date of publication of the Resolution of Approval if the applicant has failed prior to that date to secure a building permit from the Construction Official, except as

otherwise provided by law and except as hereinafter provided. In the event that the applicable building permit is revoked in accordance with N.J.A.C. 5:23-2.16(f), then the zoning variance will expire at the time the building permit is revoked.

- B. Any variances granted as part of an application for development where other development approvals are granted will expire upon the expiration of the other development approvals statutory period of protected status including any extensions granted.

§ 76-21.3. Expiration of zoning permits. [Added 11-9-05 by Ord. No. 2005-25]

Any zoning permit issued shall become invalid two (2) years from the date of issuance unless a building permit is issued within that time period. If the applicable building permit is revoked pursuant to New Jersey Administrative Code 5:23-2.16(f) for the reasons set forth therein, then the zoning permit will expire at the time the building permit is revoked.

ARTICLE V

Nonconforming Uses and Lots

§ 76-22. Existing uses.

Any nonconforming uses or structures existing as of the date of adoption of this chapter may be continued upon the lot or in the building so occupied, and any structure may be restored or repaired in the event of partial destruction thereof.

§ 76-23. Enlargement or expansion.

No nonconforming building may be enlarged or expanded to cover a larger area than it occupied at the date of adoption of this chapter. No nonconforming use may be extended or

expanded over a larger area than it occupies at the time of enactment of this chapter.

§ 76-24. Conversion to permitted use.

After a nonconforming building or use has been converted to a permitted use, it shall not be changed back again to a nonconforming use.

§ 76-25. Abandonment of nonconforming use.

If a nonconforming use has been abandoned, such use shall not be recommenced. Cessation of a nonconforming use for a continuous period of one (1) year may be taken as prima facie evidence of an intent to abandon such use.

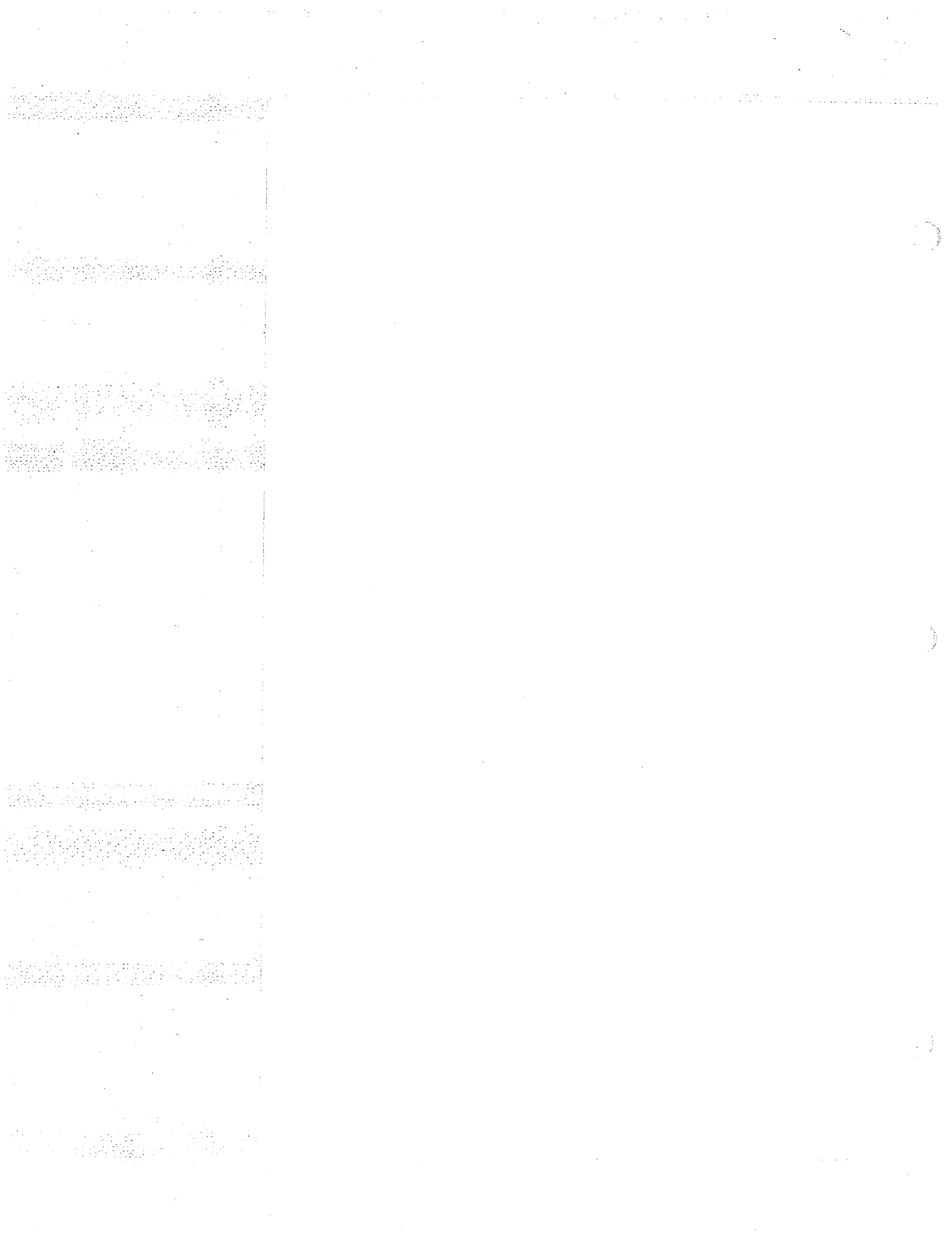
ARTICLE VI

**R-3 Low Density Residential Zone District
[Amended in entirety 5-10-88 by Ord. No. 88-6;
5-26-98 by Ord. No. 98-8; Amended 7-27-99 by
Ord. No. 99-04; 2-22-05 by Ord. No. R2005-1]**

§ 76-26. Principal uses and buildings.

Within the R-3 Residential District, the following uses shall be permitted: **[Amended 2-22-05 by Ord. No. R2005-1]**

- A. Single family detached dwellings.
- B. Buildings and land uses for agricultural purposes.



§ 76-27. Permitted accessory uses.

The following accessory uses shall be permitted:

- A. Private garages.
- B. Any other similar use which the Planning Board determines to be one customarily incidental to the principal permitted use on the premises, provided that the principal permitted use is not a nonconforming use.
- C. The following are prohibited as accessory uses: real estate sales office, barber shop, beauty parlor and dance studio, and any similar uses which the Planning Board may deem to be of a sufficiently high intensity with respect to vehicular traffic, pedestrian traffic or otherwise, and which may be deemed inconsistent with existing or future abutting residential uses.

§ 76-28. Conditional uses.

The following uses shall be permitted only after review and approval by the Planning Board in accordance with the regulations governing the approval of conditional uses as set forth in this chapter and subject to the grant of site plan approval by the Planning Board in accordance with the applicable standards and requirements for the grant of site plan approval for such use in the same manner as if such use were located in a commercial zone district:

- A. Churches, including parish houses and Sunday school buildings.
- B. Hospitals and nursing homes.
- C. The office of a medical doctor, psychiatrist, chiropractor, dentist, architect, engineer, surveyor, attorney, optometrist or accountant, or any such substantially similar professional occupation when located within the dwelling of such practicing professional, subject to the following conditions and limitations:

- (1) Not more than one (1) nameplate or professional sign not over four (4) square feet in area, which may be illuminated only with the express permission of the Planning Board during such hours and subject to such limitations as the Board may impose.
 - (2) Provision shall be made for adequate off-street parking to accommodate the resident professional and any employees, clients or business invitees thereof, provided that in no event shall fewer than five (5) off-street parking spaces be so provided. Such off-street parking areas shall be adequately screened and buffered in accordance with the requirements imposed by the Board.
 - (3) Not more than two (2) persons who are not bona fide residents of such dwelling may be employed in such office.
 - (4) The structure in which such office is situated shall be the bona fide principal residence of such professional practitioner.
 - (5) The portion of such residential dwelling house dedicated or devoted to such office use shall not exceed twenty-five percent (25%) of the gross living area of such building.
- D. Home occupations as defined in Section 76-7 shall be guided by the following considerations:
- (1) The proposed use must be entirely consistent with the principal use of the premises for residential purposes.
 - (2) The proposed use shall not result in any undue increase in traffic, parking, noise, odor or any other factor detrimental to adjoining residences.
 - (3) The proposed use shall not be a use permitted in any business district unless such use is one which the Planning Board expressly finds to be

customarily conducted in the home and usually considered to be a home occupation.

§ 76-29. Bulk requirements.

A. General single family residential requirements.

- (1) Maximum coverage. The coverage of all buildings on the lot shall not exceed ten percent (10%).
- (2) Building height. No building shall exceed thirty-five (35) feet in height measured from the lowest point of the finished grade to the highest point of the structure.
- (3) Minimum area, bulk and yard requirements shall be as follows:
 - (a) Minimum lot size: one hundred thirty thousand six hundred eighty (130,680) square feet or three (3) acres in the R-3 zone districts. **[Amended 7-27-99 by Ord. No. 99-04; 2-25-03 by Ord. No. 2003-08¹; 2-22-05 by Ord. No. R2005-1]**
 - (b) Minimum lot width as measured at the minimum building setback line: one hundred fifty (150) feet.
 - (c) Minimum lot frontage as measured at the edge of the right-of-way: one hundred fifty (150) feet.
 - (d) Minimum lot depth: two hundred (200) feet.
 - (e) Minimum front yard setback; fifty (50) feet from the edge of the street right-of-way provided that such right-of-way shall be not less than fifty (50)-feet in width. In the event

¹Editor's Note: No new requirement contained in this Ordinance shall apply to any existing lot with a gross area less than that prescribed for a lot in the respective zone, provided that all regulations prescribed for the zone are complied with and further provided that the lot was properly subdivided after Planning Board approval and pursuant to the provisions of the then-existing subdivision ordinance.

that such right-of-way shall be less than fifty (50) feet in width, such minimum front yard setback shall be increased by one-half (1/2) the difference between fifty (50) feet and the actual width of the dedicated right-of-way.

- (f) Minimum distance from the principal structure to any lot line other than the street line: thirty-five (35) feet.
 - (g) Minimum distance from any accessory structure to any lot line other than the street line: ten (10) feet.
 - (h) Minimum road frontage on a cul-de-sac street: seventy-five (75) feet.
- B. Minimum lot area for any conditional use permitted pursuant to Section 76-28, Subsections A. and B. shall be five (5) acres, and the bulk dimensions of the lot supporting such conditional use shall be twice the minimum lot dimensions required for a conventional single family residential lot as required by Section 76-29, Subsection A.
- C. Flag lots shall be permitted in accordance with all applicable requirements of the Flag Lot Ordinance, as amended.

**76-30. Minimum impact development option.
[Amended 7-27-99 by Ord. No. 99-04]**

- A. Density. The maximum density shall be one (1) unit per five (5) acres (.2 units per acre). Rounding shall not apply.
- B. Minimum area bulk and yard requirements shall be as follows:
- (1) Minimum lot size: forty thousand (40,000) square feet.

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- (2) Minimum lot width as measured at the minimum building setback line: one hundred (100) feet.
- (3) Minimum lot frontage as measured at the edge of the right-of-way: one hundred (100) feet.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the integrity of the financial system and for the ability to detect and prevent fraud.

2. The second part of the document outlines the specific requirements for record-keeping. It states that all transactions must be recorded in a timely and accurate manner, and that the records must be maintained for a minimum of five years.

3. The third part of the document discusses the role of the auditor in verifying the accuracy of the records. It states that the auditor must perform a thorough review of the records and must report any discrepancies to the appropriate authorities.

4. The fourth part of the document discusses the consequences of failing to comply with the record-keeping requirements. It states that any individual or entity that fails to maintain accurate records may be subject to fines and penalties, and may also be subject to criminal prosecution.

5. The fifth part of the document discusses the importance of training and education for individuals involved in record-keeping. It states that all individuals must receive appropriate training and education to ensure that they are able to maintain accurate records.

6. The sixth part of the document discusses the importance of internal controls in preventing fraud. It states that individuals must implement and maintain effective internal controls to ensure that all transactions are properly recorded and that the risk of fraud is minimized.

7. The seventh part of the document discusses the importance of transparency and accountability in the financial system. It states that all transactions must be transparent and that individuals must be held accountable for their actions.

- (4) Minimum lot depth: two hundred (200) feet.
- (5) Minimum front yard setback: fifty (50) feet.
- (6) Minimum distance from the principal structure to any other lot line: thirty-five (35) feet.
- (7) Minimum distance from any accessory structure to any lot line other than the street line: ten (10) feet.
- (8) Minimum road frontage on a cul-de-sac or curved street: fifty (50) feet.

C. Common driveways.

- (1) Common driveways may be permitted for good cause shown to the Planning Board, but in no event shall a common driveway serve more than four (4) lots.
- (2) Lots with access provided by a common driveway shall not be required to abut an improved public street. Any approval involving one (1) or more lots not abutting a street but having an approved common driveway shall be deemed to have effectively directed the issuance of a permit for the erection of a building or structure on such lot(s) if and when such construction shall be otherwise authorized, provided that the applicant shall have given notice for and shall have received a variance pursuant to N.J.S.A. 40:55D-36.
- (3) The maximum length of a common driveway shall be one thousand (1,000) feet.
- (4) The minimum width of a common driveway shall be sixteen (16) feet with 2-foot graded-and-stoned shoulders within an easement having a minimum width of twenty-five (25) feet.

- (5) Provisions for the long term maintenance of the common driveway shall be established and approved at the time of subdivision approval. Appropriate covenants shall be included in any deed to perfect and/or convey title to any approved lot or lots.
- D. Exercise of this development option shall preclude further subdivision, which shall be enforced by approved deed restriction(s).

ARTICLE VII
R-5 Medium Density Residential District
 [Added 2-14-89 by Ord. No. 89-1]

§ 76-31. Principal permitted uses.

Single-family detached dwellings are the only principal permitted uses.

§ 76-32. Permitted accessory uses.

Permitted accessory uses shall be permitted as regulated in Section 76-27.

§ 76-33. Conditional uses.

The following uses shall be permitted only after review and approval by the Planning Board in accordance with the regulations governing the approval of conditional uses as set forth in this chapter and subject to the grant of Site Plan Approval by the Planning Board in accordance with the applicable standards and requirements for the grant of Site Plan Approval for such use in the same manner as if such use were located in a commercial zone district.

- A. All uses specified in Section 76-28 and as regulated therein.

- B. Municipal buildings and uses of every kind and nature.

§ 76-34. Bulk requirements.

- A. Minimum residential lot area and dimensions shall be one hundred thirty thousand six hundred eighty (130,680) square feet or three (3) acres with a minimum lot width of one hundred fifty (150) feet; a minimum lot depth of two hundred fifty (250) feet; a minimum front yard of thirty (30) feet; a minimum side yard of twenty (20) feet; a minimum rear yard of twenty-five (25) feet; minimum road frontage on cul-de-sac lots of seventy-five (75) feet. **[Amended 2-25-03 by Ord. No. 2003-08¹]**
- B. Maximum lot coverage of all buildings on the lot shall not exceed ten percent (10%). Building height shall not exceed thirty-five (35) feet.
- C. Minimum residential lot area set forth in Section 76-34A. above shall not apply to any existing lot of land with an area greater than forty thousand (40,000) square feet net of all applicable constraints set forth in Section 76-30. **[Added 5-23-89 by Ord. No. 89-6]**
- D. Minimum residential lot area for any existing lot of land greater than forty thousand (40,000) square feet net of all applicable constraints shall be calculated in accordance with the provisions of Section 76-30. **[Added 5-23-89 by Ord. No. 89-6]**

¹Editor's Note: No new requirement contained in this Ordinance shall apply to any existing lot with a gross area less than that prescribed for a lot in the respective zone, provided that all regulations prescribed for the zone are complied with and further provided that the lot was properly subdivided after Planning Board approval and pursuant to the provisions of the then-existing subdivision ordinance.

§ 76-35. Central water. [Amended 5-23-89 by Ord. No. 89-6]

Central water shall be required for any dwelling constructed in this zone which does not meet the minimum residential lot area requirements net of all applicable constraints set forth in Section 76-30.

**ARTICLE VIII
Reserved**

**§§ 76-36. through 76-37. (Reserved)
[Repealed 5-10-88 by Ord. No. 88-6]**

**ARTICLE VIIIA¹
Reserved**

[Adopted 9-13-83 by Ord. No. 83-12; amended 2-11-86 by Ord. No. 86-2; repealed in its entirety 5-26-98 by Ord. No. 98-8; 7-27-99 by Ord. No. 99-04]

§§ 76-38. through 76-51. (Reserved)

**ARTICLE IX
R-4 High Density Residential District**

§ 76-52. Purposes.

The purpose and intent of this Article is to permit and encourage the continued development of an already established recreation-oriented high density complex formerly known as "Holiday Lakes," which will stabilize and enhance the character of the district of which it is a part, promote the conservation of

¹Editor's Note: Former Art. VIIIA, Large Lot Subdivisions, added 6-9-81 by Ord. No. 81-10, as amended, was repealed 8-9-83 by Ord. No. 83-2. Said Art. VIIIA was again repealed 9-13-83 by Ord. No. 83-12, which also provided an amendment thereto.

natural features, provide a mix of housing types as a part of an overall plan for this large tract of land, and to preserve the health, welfare and safety of the entire community. Lot sizes and density have been established as a means of allowing the developer to provide, where feasible, public sewer and water, creating attractive and usable open space, preserving desirable natural features and tree cover and providing designs of lot layout, street alignment and building orientation which are both attractive and practicable.

§ 76-53. Tract requirements.

- A. A tract under single ownership of an area not less than one hundred (100) acres shall be required for this zone. If there are less than one hundred (100) acres, the controls of an R-3 Zone must apply. The tract may be divided by an existing

(Cont'd on page 7643)

public street which may be retained as part of the plan for the development or relocation in accordance with an approved site plan.

- B. Central water and central sewer service shall be required except in cases where the Board of Health makes a specific finding that an alternate system is completely satisfactory considering all circumstances. Any central water and central sewer shall be approved by the Montague Township Board of Health, the Sussex County Health Department and the New Jersey Department of Environmental Protection.
- C. All improvements shall be installed in accordance with an approved site plan.

§ 76-54. Procedure.

In the R-4 Zone, a master site plan must be provided so that individual applications can be judged by the Planning Board in relation to the overall plan.

§ 76-55. Permitted uses. [Amended 12-11-90 by Ord. No. 90-14]

The permitted uses within this zone are as follows:

- A. Single-family detached, single-family semidetached and single-family attached residences.
- B. Two-family detached, two-family semiattached residences.
- C. Multiple dwellings containing not more than six (6) dwelling units.
- D. Golf courses.

§ 76-56. Accessory uses.

A The following are accessory uses:

- (1) Private garages accessory to a dwelling.
- (2) Recreation-oriented facilities, such as lakes, docks, beaches, boathouses, swimming pools, tennis courts, stables and like accessory buildings. Directional and identification signs shall be no larger than twelve (12) square feet.
- (3) Customary buildings accessory to golf courses including lockers, professional shops, repair shops, maintenance buildings, storage areas and garages provided that said uses do not interfere with the community scheme of the R-4 Zone District or the community scheme of any abutting properties; specifically excluded from the aforementioned accessory buildings are restaurants, taverns and bars. [Amended 12-11-90 by Ord. No. 90-14]

§ 76-57. Buffer zones and off-street parking.

- A There shall be a minimum seventy-five (75)-foot buffer zone between any nonresidential use in the R-4 Zone and any adjoining residential zone. The buffer zone shall have at least two (2) staggered rows of evergreens on fifteen (15)-foot centers, with trees not less than four (4) feet in height.
- B There shall be adequate off-street parking provided for all residential units. No parking area shall be closer than eight (8) feet from the main building.

§ 76-58. Lot area, dimension and density. [Amended 3-8-05 by Ord. No. 2005-05]

A. Lot area and dimension shall be as follows:

- (1) Minimum lot area: seventeen thousand (17,000) square feet. **[Amended 2-25-03 by Ord. No. 2003-08¹; 10-28-03 by Ord. No. 2003-32]**
- (2) Construction on lots with an area of twenty-two thousand (22,000) square feet or less shall be limited to one (1) residential unit. **[Amended 10-28-03 by Ord. No. 2003-32]**
- (3) Minimum lot width: one hundred (100) feet. **[Amended 10-28-03 by Ord. No. 2003-32]**
- (4) Minimum lot depth: one hundred fifty (150) feet. **[Amended 10-28-03 by Ord. No. 2003-32]**
- (5) Minimum front yard: thirty (30) feet. **[Amended 10-28-03 by Ord. No. 2003-32]**
- (6) Minimum side yard: twenty (20) feet. **[Amended 10-28-03 by Ord. No. 2003-32]**
- (7) Minimum rear yard: twenty-five (25) feet. **[Amended 10-28-03 by Ord. No. 2003-32]**
- (8) Minimum livable floor area per apartment dwelling unit: one thousand (1,000) square feet.
- (9) Minimum livable floor area per single family home: one thousand two hundred (1,200) square feet.
- (10) Off-street parking per dwelling unit: two (2).
- (11) Maximum building height: thirty-five (35) feet.
- (12) Maximum lot coverage: twenty-five percent (25%).

¹Editor's Note: No new requirement contained in this Ordinance shall apply to any existing lot with a gross area less than that prescribed for a lot in the respective zone, provided that all regulations prescribed for the zone are complied with and further provided that the lot was properly subdivided after Planning Board approval and pursuant to the provisions of the then-existing subdivision ordinance.

- (13) Maximum dwelling units per building: six (6).
- (14) Maximum dwelling units per acre: two (2).
- (15) Minimum road frontage on cul-de-sac lots: seventy-five (75) feet.
- B. The average residential gross density of the project shall not exceed 2.74 dwelling units per acre.
- C. No structure shall be closer to a zone boundary than fifty (50) feet, except for lots approved by the Planning Board prior to the passage of this chapter.

§ 76-59. Open space.

A. Recreation use.

- (1) At least twenty-five percent (25%) of the gross land area of a development in a R-4 Zone shall be reserved for recreational use by:
 - (a) Conveying same to the Township of Montague if acceptable to the township;
 - (b) Conveying same to an organization established expressly for the ownership and maintenance of such open space; or
 - (c) Establishing said open space for recreational use by maps filed showing the dedication.
- (2) Regardless of the method used, such land shall be set aside in perpetuity for the use of the residents of the development and such other persons or classes of persons as may be permitted.
- (3) Any proposed conveyance, master deed under the Condominium Act⁷ or certificate of incorporation and bylaws of a homeowners' association shall be submitted to the Planning Board for approval.

⁷Editor's Note: See N.J.S.A. 46:8B-1 et seq.

- B. The area to be reserved or dedicated for open space shall be so located and of such a shape as to be acceptable to the Planning Board.
- C. All open space area shall be left in its natural state by the developer unless the Planning Board approves or directs the grading, seeding and maintaining of all or a portion of such open space or approves or directs the making of specified improvements, in which case the land will be disturbed only as necessary to make the specified improvements.
- D. Open space areas may be used as park, playground or recreation areas, including golf courses, swimming pools, equestrian trails and centers, tennis courts, shuffleboard courts, basketball courts and similar facilities; woodland or stream conservation areas; pedestrian walkways, stream-course or drainage control areas; or children's playground.
- E. In the event that the organization established to own and maintain common open space, or any successors' organization, shall at any time fail to maintain the open space in reasonable order and condition in accordance with the plan approved by the Planning Board, the township may serve written notice upon such organization or upon the residence and owners, setting forth the manner in which the organization has failed to maintain the open space in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be cured within thirty (30) days thereof and shall state the date and place of a hearing thereon which shall be held within fourteen (14) days of the notice. At such hearing the township may modify the terms of the original notice as to the deficiencies and may give an

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extension of time within which they shall be cured.
If the deficiencies set forth in the original notice or
intent the modification thereof shall not

be cured within thirty (30) days or any extension thereof, the township, in order to preserve the taxable values of the properties and to prevent the common open space from becoming a public nuisance, may enter upon said common open space and maintain the same for a period of one (1) year. Said entry and maintenance shall not vest in the public any rights to use the open space, except when the same is voluntarily dedicated to the public by the residents and owners. Before the expiration of said year, the township shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the common open space, call a public hearing upon notice to such organization or to the residents and owners to be held by the Township Committee, at which hearing such organization or the residents and owners shall show cause why such maintenance by the township shall not, at the election of the township, continue for a succeeding year. If the governing body shall determine that such organization is ready and able to maintain such common open space in reasonable condition, the township shall cease to maintain said common open space at the end of said year. If the township shall determine such organization is not ready and able to maintain said common open space in a reasonable condition, the township may, in its discretion, continue to maintain said common open space during the succeeding year and subject to a similar hearing and determination in each year thereafter.

- F. The cost of such maintenance by the township shall be assessed ratably against the properties that have a right or enjoyment of the open space and shall become a tax lien on said properties. The township, at the time of entering upon said common open space for the purpose of maintenance, shall file a notice of such lien in the office of the County Clerk upon the properties affected by such lien.
- G. Each deed shall provide that the property shall be subject to assessment in the event that common open space, common structures or common areas for which the grantee has received right to enjoyment are not properly maintained.

§ 76-60. Streets and off-street parking areas.

- A. The Planning Board may require all streets within the tract which do not directly implement the proposals of the Master Plan or Official Map and do not provide a direct connection between existing streets outside the tract to be transferred to the ownership of a homeowners' association which has been or is to be established for maintenance and repairs.
- B. All off-street parking areas may be transferred to the ownership of an existing or proposed homeowners' association for maintenance and repairs. Wherever planting strips, medial grass strips or other landscaped areas are proposed which will be visible to the general public within the development, covenants and/or agreements shall provide for the maintenance of such areas by the homeowner's association even though they may be upon land subdivided into lots.
- C. Streets.
 - (1) All streets and rights-of-way in the R-4 Zone shall be fifty (50) feet in width.
 - (2) Entrances and exits shall be flared to meet the existing paving and shall be constructed according to the township specification.
 - (3) The surfacing of interior streets shall be in accordance with the Montague Township Subdivision Regulations.⁹
- D. Off-street parking.
 - (1) Two (2) off-street parking spaces per dwelling unit, plus one (1) space per ten (10) units for visitors.
 - (2) No parking area shall provide for more than fifty (50) vehicle spaces. Parking areas shall be separated from each other by planting strips at least ten (10) feet in width.

⁹ Editor's Note: See Ch. 60, Subdivision of Land.

- (3) Minimum width of access aisles to parking stalls shall be twenty-five (25) feet.
- (4) All internal parking areas and access aisles shall be constructed to either of the following minimums:
 - (a) Crushed aggregate base course, Type A, or other material approved by the Township Engineer, of six (6) inches' minimum depth and a surface course of CP-2, two and one-half (2 1/2) inches in thickness; or
 - (b) Crushed aggregate base course as described above and a bituminous-concrete surface course of two (2) inches' minimum depth.
- E. The site plan shall show existing contours and finished grade elevations related to storm sewers.
- F. The site plan shall indicate the internal lighting system proposed, either with building-mounted or post-mounted fixtures. Lights shall be shielded to protect adjacent residential areas from glare.

§ 76-61. Site plan approval and approval of High Point Community Corporation required. [Amended 3-8-05 by Ord. No. 2005-05]

- A. Site plan approval pursuant to the provisions of the Site Plan Review Ordinance⁹ shall be submitted.
- B. Prior to the issuance of a zoning permit for construction in the R-4 Zone, the Zoning Officer must receive a letter from High Point Community Corporation indicating that it has received the construction plans and consents to the issuance of such zoning permit.

⁹Editor's Note: See Ch. 55, Site Plan Review.

ARTICLE IX-A

**R-4SC Planned Adult Residential Community Zone
[Adopted 10-14-03 as Ord. No. 2003-21]****§ 76-61.1. Purpose.**

It is the intent of the Article to create an age restricted housing zone.

§ 76-61.2. Permitted uses.

No land shall be used and no structure shall be erected, altered or occupied for any purpose except the following:

- A. Single-family detached houses occupied by permanent residents fifty-five (55) years and over, except for the spouse and a resident caretaker or an occupant needing services of a resident caretaker and children of the occupant, provided such children are eighteen (18) years of age or older.

§ 76-61.3. Area and bulk requirements.

- A. Single-family homes shall meet the bulk requirements for the R-4 Zone as to building setbacks and other regulations as specified therein, in addition to the restriction as to occupancy as specified herein.
- B. Accessory buildings, such as storage sheds are permitted in accordance with the setback requirements specified in the R-4 Zone and in accordance with the restrictions of the R-4 Zone, provided that such accessory buildings conform with the architectural style and appearance of the dwelling house.

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§ 76-61.4. Requirement that lots connect into public water system.

All lots within this zone must connect into the public water system servicing the area. No development will be permitted on lots not serviced by public water.

§ 76-61.5. Age restrictions.

The age restriction for occupancy of the single-family homes and occupancy restriction of the single-family home shall be memorialized in a deed containing the following language

which said deed shall be provided to the Construction Department for Montague Township prior to the issuance of any construction permit.

"The dwelling house for this property may only be occupied by permanent residents 55 years and over, except for the spouse and a resident caretaker or an occupant needing services of a resident caretaker and children of the occupant, provided such children are 18 years of age or older."

§ 76-61.6. Permitted accessory uses.

Permitted accessory uses shall be restricted to storage sheds in compliance with the R-4 Zone. Swimming pools, swing sets, sliding boards in ponds, playhouses, or recreation items commonly associated with children are not considered to be permitted accessory uses in the R-4SC Zone.

§ 76-61.7. Restriction of vehicles.

Every dwelling house in the R-4SC Zone shall have a two-car garage and a driveway with a sufficient area to accommodate the parking of two (2) additional cars. No commercial vehicles may be parked in the R-4SC Zone. All vehicles shall be parked either in the garage or in the driveway for the residence.

ARTICLE X

Flag Lots

§ 76-62. Flag lots. [Added 5-26-98 by Ord. No. 98-8; amended 7-27-99 by Ord. No. 99-04]

- A. Flag lots may be approved by the Planning Board when and where it is determined that such lots would be comparatively superior to conventional lots. Circum-

stances wherein the Board may consider and approve the creation of one (1) or more flag lots shall include but not be limited to circumstances involving areas of constrained land, situations where the use of flag lots would reduce the length of public roads or extension of other public improvements, and other situations where flag lots would enable preservation of the township's rural character and natural features.

B. The following standards shall apply:

Minimum lot size: five (5) acres, excluding area in access right-of-way and excluding the area lying within the bed of any adjacent public and approved private street.

Minimum frontage on an improved public street: fifty (50) feet.

Minimum building envelope setback from any lot line: fifty (50) feet.

Minimum lot width at the building line: three hundred (300) feet.

Minimum lot depth: two hundred fifty (250) feet.

§§ 76-63 through 76-64. (Reserved)

ARTICLE XI

C-1 Neighborhood Commercial District

§ 76-65. Purpose.

The Neighborhood Commercial District is intended to provide development of small retail and service establishments to serve the neighborhood.

§ 76-66. Permitted principal buildings and uses.

The following principal buildings and uses are permitted:

- A. General business and professional offices.
- B. Retail sales and services establishments designed to meet the needs of the nearby community, such as grocery store, delicatessen, meat market, drugstore, bakery, luncheonette, barbershop, beauty parlor, laundry, tavern, package goods store, restaurant, storage warehouses, bank, savings and loan, pharmacy, cleaners, service station for sale of gas and oil and minor repairs, office building and the like.
- C. Municipal buildings and municipal garages.
- D. Any other use determined by the Zoning Board of Adjustment to be similar to and of the same general character as the above specified uses.

§ 76-67. Permitted accessory uses and buildings.

The following accessory uses and buildings are permitted:

- A. Garages to house commercial vehicles normally associated with the permitted uses in the district.

§ 76-68. Area and yard.

- A. The minimum area shall be forty thousand (40,000) square feet.
- B. Front yards shall have a minimum of forty (40) feet in depth from the right-of-way line or sixty (60) feet from the center line, whichever is larger. The minimum lot depth shall be two hundred fifty (250') feet. [Amended 2-11-86 by Ord. No. 86-2]
- C. Side yards shall have a minimum width of twenty-five (25) feet.
- D. Rear yards shall have a minimum of fifty (50) feet if it adjoins a residential zone, otherwise twenty-five (25) feet.

E. The minimum lot width shall be one hundred fifty (150) feet at the building line.

F. Reserved. [5-8-90 by Ord. No. 90-8]

§ 76-69. Off-street loading.

Each business shall provide off-street loading space at the side or rear of the building at the rate of one (1) space [ten by twenty-five (10 x 25) feet with adequate ingress and egress] for each five thousand (5,000) square feet of floor area or a fraction thereof in each building.

§ 76-70. Buffer strip.

A planted buffer strip of at least four (4) feet in width and initially four (4) feet in height shall be created along any side or rear property which is adjacent to any residential district.

ARTICLE XII

C-2 Highway Commercial District

§ 76-71. Purpose. [Amended 5-8-90 by Ord. No. 90-8]

The Highway Commercial District is established to encourage shopping centers with appropriate parking and landscaping facilities and to discourage strip commercial developments to the end that commercial establishments may be clustered in compact centers with unified architectural appearance, common parking and commonly shared landscaped facilities.

§ 76-72. Permitted uses.

The following are permitted uses:

- A. Retail stores, service stores, service establishments, banks, business and professional offices, research, design and development laboratories, motels, funeral homes and restaurants. [Amended 5-8-90 by Ord. No. 90-8]

- B. Theaters and bowling alleys.
- C. Manufacturing, assembling, converting, altering, finishing, cleaning or any other processing of products. [Amended 5-8-90 by Ord. No. 90-8]
- D. General commercial uses, such as but not limited to building supply and lumberyards, contractor's yards and shops, wholesaling, storage and warehousing facilities.
- E. Motor vehicles, trailer, boat or farm equipment sales and service, gasoline service stations and repair garages, subject to approval of plans by Planning Board and to the following special conditions:
 - (1) Entrance and exit driveways shall have an unrestricted width of not less than twelve (12) feet and not more than twenty-four (24) feet, shall be located not nearer than ten (10) feet from any property line and shall be laid out as to avoid the necessity of any vehicle backing out across any public street.
 - (2) Vehicle lifts or pits, dismantled automobiles and all parts or supplies shall be located within a building.
 - (3) All service or repair of motor vehicles, other than such minor servicing as change of tires or sale of gasoline or oil, shall be conducted in a building.
 - (4) The storage of gasoline or flammable oils in bulk shall conform to New Jersey State, Sussex County and Federal regulations. [Amended 5-8-90 by Ord. No. 90-8]
 - (5) No building permit for any such establishment shall be issued within a distance of two hundred (200) feet of any school, church, hospital or other place of assembly designed for occupancy by more than fifty (50) persons; said distance to be measured in a straight line between the nearest points of each of the lots or premises, regardless of the district where either premises is located. No

new service stations are to be allowed within two thousand (2,000) feet of an existing one. [Amended 5-8-90 by Ord. No. 90-8]

F. Newspaper printing, including incidental job printing.

G. Reserved. [5-8-90 by Ord. No. 90-8]

H. Reserved. [5-8-90 by Ord. No. 90-8]

§ 76-73. Conditional uses.

The following conditional uses are permitted, subject to the approval in accordance with Article XIV hereof. These uses are subject to the regulations specified below and elsewhere in this chapter, including site plan approval.

- A. Light manufacturing, assembling, converting, altering, finishings, cleaning or any other processing, handling or storage of products or materials involving the use of only oil, gas or electricity for fuel.

§ 76-74. Permitted accessory uses.

The following are permitted accessory uses:

- A. Parking facilities as regulated herein.
- B. Offices, incidental storage facilities and other uses normally accessory to the permitted and conditionally approved uses.
- C. Signs, subject to the provisions of Article XVI.
- D. Garages to house commercial vehicles normally associated with the permitted uses in the district.

§ 76-75. Prohibited uses.

The following uses are specifically prohibited:

- A. Heavy manufacturing.

- B. Manufacturing uses involving primary production of the following products from raw materials:
- (1) Asphalt, cement, charcoal and fuel briquettes.
 - (2) Chemicals: anything of an explosive nature, plastic materials and synthetic resins, pyroxylin, rayon yarn and hydrochloric nitrix, phosphoric, picric and sulphuric acids.
 - (3) Coal, coke and tar products, including gas manufacturing, explosives, fertilizers, gelatin blue and size (animal), linoleum and oil cloth, matches, paint, varnishes and turpentine, rubber (natural or synthetic), soaps, including fat rendering, and starch.
- C. The following processes: nitrating of cotton or other materials; milling or processing of flour, feed or grain; magnesium foundry reduction, refining, smelting and alloying of metal or metal ores; refining secondary aluminum; refining petroleum products, such as gasoline, kerosene, naphtha, lubricating oil, distillation of wood or bones; reduction and processing of wood pulp and fiber; including paper-mill operations.
- D. Operations involving stockyards and slaughterhouses.
- E. Storage of explosives.
- F. Bulk storage of gasoline or fuel above ground. [Amended 5-8-90 by Ord. No. 90-8]
- G. Junkyards, automobile dismantling plants or storage of used parts of automobiles or other machines or vehicles or of dismantled or junked automobiles.
- H. Outdoor shows, concerts, festivals, dances, performances, exhibitions and other gatherings for purposes of amusement wherein more than one thousand (1,000) persons are in attendance or where attendance by more than one thousand (1,000) persons is contemplated.

§ 76-76. Area and yard. [Amended 5-8-90 by Ord. No. 90-8]

- A. Every lot shall comply with all applicable provisions of Article XI.
- B. No building shall be located within twenty-five (25) feet of any marginal access road or within sixty (60) feet of any public street right-of-way line other than a state highway or within sixty (60) feet of any state highway, right-of-way line or within forty (40) feet of any boundary line that adjoins a residential district or within twenty-five (25) feet of any boundary line that adjoins a commercial district.

§ 76-77. Buffer strip.

A planted buffer strip of a least four (4) feet in width and initially four (4) feet in height shall be created along any side or rear property line which is adjacent to any residential district.

§ 76-78. Reserved. [Repealed 5-8-90 by Ord. No. 90-8]**§ 76-79. Off-street loading.**

Same as set forth in Article XI.

ARTICLE XIII
CD Conservation District

§ 76-80. Purpose.

It is the purpose of this Article to assure that the almost twenty-four thousand (24,000) acres of land presently owned by the State of New Jersey and the United States of America remain permanently protected by zoning for open space and conservation needs.

§ 76-81. Permitted principal uses and structures.

The following are permitted principal uses and structures:

- A. Agricultural uses.
- B. Recreational uses and structures.
- C. Seasonal campsites.
- D. Parks and playgrounds.
- E. Sod farms.
- F. Other uses found by the Zoning Board of Adjustment to be similar to or of the same general character as the above specified uses.

§ 76-82. Prohibited uses.

Any building or structure designed or used for human occupancy, except for forest rangers and related personnel, but this shall not be construed as prohibiting structures accessory to campgrounds, such as sanitary facilities, washhouses and the like.

ARTICLE XIV
Conditional Uses

§ 76-83. Purpose.

It is the purpose in this Article to provide specific regulations applicable to all conditional uses provided for in this chapter.

§ 76-84. Churches, parish houses and Sunday school buildings.

- A. A church, parish house or Sunday school building, day school, library, art gallery and museum shall be located on a lot having not less than five (5) acres.
- B. Off-street parking shall be provided on the basis of one (1) space for each three (3) seats or one (1) space for each seventy-two (72) inches of seating space when benches rather than seats are used.

§ 76-85. Hospitals and nursing homes.

- A. Hospitals shall be located on tracts having not less than ten (10) acres.
- B. Nursing homes shall be located on lots having not less than ten (10) acres.
- C. One (1) off-street loading space shall be provided for each thirty thousand (30,000) square feet of gross floor area, and an ambulance space shall also be provided.
- D. No hospital or nursing home shall exceed fifty (50) feet in height.

§ 76-86. Municipal buildings.

- A. Municipal buildings shall be located on lots having not less than two (2) acres.
- B. No such building shall exceed fifty (50) feet in height.

§ 76-87. Day schools.

- A. Day schools shall be located on lots having not less than five (5) acres or one (1) acre per one hundred (100) children, whichever is greater.
- B. The minimum height of buildings is thirty-five (35) feet.
- C. Off-street parking shall be provided on the basis of one (1) for each teacher and staff member, plus ten (10) spaces for visitors.

§ 76-88. Public libraries, museums and art galleries.

- A. Public libraries, museums and art galleries shall be located on lots having not less than two (2) acres.
- B. Off-street parking shall be provided at the rate of one (1) space for every three (3) seats, except where a specific amount of seating is undetermined, in which event one (1) parking space shall be required for each seventy-five (75) square feet of assembly area.
- C. No such building shall exceed fifty (50) feet in height.

**76-88.1. Wireless telecommunications towers, equipment and facilities and conditional use requirements.
[Added 2-13-01 by Ord. No. 2001-11]**

The Township of Montague has recognized the need to permit cellular/wireless telecommunications equipment and facilities in appropriate locations in the township.

The intent of this section is to allow these facilities and towers as conditional uses in all highway commercial zones. The conditions applicable to telecommunications providers are designed to encourage colocation or the placement of antennas on existing municipally-owned utility structures, existing commercial or industrial sites, at new locations or lastly, multiple towers at lower heights provided stealth technology is employed. Telecommunications providers are specifically prohibited from constructing towers or placing telecommunications antennas within residential areas except on existing municipal utility tower locations with municipal permission and from constructing isolated, multiple-user, taller towers, in random locations throughout the township, which will thereby create a negative visual impact. All of the following subsections are conditions of this conditional use:

A. Location criteria.

- (1) Location priorities. Locations are enumerated below in the order of the location priority:

- (a) On lands and structures owned by the Township of Montague.
 - (b) In or upon existing utility structures in highway-commercial zones.
 - (c) Within or upon existing structures in the highway-commercial zones.
- (2) Stealth technology and monopoles are encouraged in all installations to reduce visual impact.
- (3) To minimize the height and visual negative impact of towers throughout the community, owners and users of towers, antennas and related facilities are required to construct and configure these structures in such a way as to minimize the perceived adverse visual impact of towers and antennas through careful design, siting, and landscape screening.
- B. Telecommunications towers, equipment and facilities are permitted conditional uses, subject to the following conditions.
- (1) Site location analysis. Every application for a telecommunications tower or antenna shall include a site location alternative analysis, including an analysis of the location priorities set forth in Subsection A. of this section, describing the locations of other sites considered, the availability of those sites, the extent to which other sites do or do not meet the provider's service or engineering needs and the reason why the subject site was chosen. The analysis shall address the following issues:
- (a) How the proposed location of the wireless telecommunication tower or antenna relates to the objective of providing full wireless communication services within the Montague area at the time full service is provided by the applicant and by other providers of wireless telecommunications services within the Montague area.

- (b) How the proposed location of the wireless telecommunications tower/facility relates to the location of any existing antennas or towers within or near the Montague area.
 - (c) How the proposed location of the wireless telecommunications tower/facility relates to the anticipated need for additional antennas or towers within and near the Montague area by the applicant, and by other providers of wireless telecommunications services within the Montague area.
 - (d) How the proposed location of the wireless telecommunications tower/facility relates to the objective and goal of maintaining concealed or reduced tower height with groups of towers within close proximity to one another rather than isolated, taller towers with many users at greater tower heights at random locations throughout the township.
- (2) Existing structures.
- (a) Nonmunicipal structures. Towers or antennas meeting the zone requirements are permitted in all highway commercial zones provided they are concealed in existing lawful structures.
 - (b) Towers or antennas may also be located on power transmission line systems such as pylons provided they satisfy the stealth requirements.
- (3) New wireless freestanding telecommunications towers, equipment and facilities. For towers which do not satisfy criteria of subsections B(2)(a) and (b) above:
- (a) Lot size. The minimum lot size is to be calculated based upon the lot having sufficient dimensions such that in the event that the proposed tower should fall, the tower would lay entirely within the applicant's lot.

- (b) Maximum height. No tower shall exceed a height of two hundred (200) feet, including any antennas.
 - (c) Setback distances. For safety reasons concerning tower fall zones and further to insure that appropriate setbacks exist, a telecommunications tower and related facilities must be set back a sufficient distance from all lot lines so that if the tower falls it would fall entirely within the property.
 - (d) Buffers. Tower locations shall comply with any buffering required for lots adjacent to residential zones or uses.
 - (e) Visual compatibility requirements and construction details. Monopole tower construction shall be preferred in all new tower construction. Additionally, applicants are encouraged to use the latest stealth or camouflaging techniques to make the tower appear to be a tree of native species and to blend in with surrounding trees. All towers shall be fitted with the anti-climbing devices.
- (4) Telecommunications tower permitted accessory structures or uses.
- (a) Accessory equipment sheds. All equipment sheds shall be located immediately adjacent to the tower serviced by that equipment shed. All equipment sheds and tower bases shall be enclosed with a screening fence of at least seven (7) feet in height, but no higher than eight (8) feet unless otherwise approved by the Township Engineer. All fences shall include a locking security gate and a copy of the key to this gate shall be supplied to the township.

- (5) General conditions applying to all towers and antennas.
 - (a) Noise Levels. All noise generated by a tower and/or the equipment shed shall meet the minimum standards contained in all State, Federal or local noise regulations.
 - (b) Provision of access for Municipal Rescue Squad and Fire Department Antennas. Where possible, the applicant will provide access on its tower for antennas for use by the municipality, a rescue squad, the Fire Department and the like.
 - (c) Colocation; conditions and limitations. Any new tower or reconstructed tower approvals shall allow the future colocation as set forth in this section. Colocation by two (2) or more telecommunications providers shall be permitted on one (1) tower provided that by collocating, all conditions of this section are satisfied.
 - [1] In the event that there is to be a colocation, the owner or company proposing a colocation must obtain an approval from the appropriate land use board pursuant to this section.
 - [2] In the event any colocation is proposed, a letter of commitment shall be filed by the applicant to lease excess space on the tower to other potential users at prevailing market rates and conditions. The letter of commitment shall be recorded prior to the issuance of a building permit and shall be binding upon the tower owner, property owner and successors in interest.
 - (d) Annual report. Upon the issuance of a building permit for a wireless telecommunication tower

site, the owner or operator of the site shall provide to the Township Engineer, Township Planner, and Township Zoning Officer, an initial report signed and sealed by a licensed professional engineer, certifying the estimated use and structural life of the tower, as well as providing an initial inventory of all equipment and antennas on the site. After fifty percent (50%) of the structural life is elapsed, annual recertification reports as to the structural integrity of the tower shall be required. An updated report shall also be provided whenever antennas are raised or modified and shall include a detailed listing of all antennas and equipment. All vendors and lessees shall also be required to notify the above Montague Township officials when the use of such antennas or equipment is discontinued. If any of the reports disclose that a condition of the tower presents an imminent hazard to the public health, safety or welfare, or that the tower, antennas or equipment are no longer in use, the owner shall, and the Township Engineer or Zoning Officer may order, in their discretion, the removal of the tower to protect the public health, safety and welfare. Wireless telecommunications towers and sites shall be maintained to ensure continued structural integrity. The owner of the tower shall also perform such other maintenance of the structure and of the site so as to ensure that it does not create a visual nuisance.

- (e) Additional municipal experts. The Reviewing Board reserves the right to retain, at the applicant's expense, any technical consultants as it deems necessary to provide assistance in the review of site location alternatives, analysis and specifications. By submitting an application for a wireless telecommunications

tower or facility, the applicant is deemed to have consented to this procedure.

- (f) Abandonment and removal. Any antenna or tower that is not operated for a continuous period of six (6) months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within ninety (90) days of receipt of notice from the Township of Montague notifying the owner of such abandonment. Towers that are rendered obsolete or outdated by advances in technology shall be removed or modified. Failure to remove an obsolete, outdated or abandoned antenna or tower within said ninety (90) days shall be grounds for the township to require removal of the tower or antenna at the owner's expense. If there are two (2) or more users of a single tower, then this provision shall not become effective until all users cease using the tower or same is deemed obsolete or outdated by the township. The township shall condition the issuance of any permit to construct a tower or antenna on the posting of an appropriate performance bond or other suitable guarantee in a face amount of not less than one hundred twenty percent (120%) of the cost to remove the tower and restore the property as determined by the Township Engineer for such construction as required under all applicable township ordinances.
- (g) Signs prohibited. No signs shall be permitted on either the tower or equipment building, except for those signs required by law or containing such information as owner contact information, warnings. These signs shall not exceed two (2) square feet in total area. Absolutely no commercial advertising shall be

permitted on any wireless telecommunications tower or equipment building.

- (h) Lighting. No lighting is permitted except as follows:
 - (1) The equipment building and compound may have security and safety lighting at the entrance, provided the lighting is attached to the facility, is focused downward and is wired with a timing device and/or sensor so that the light is turned off when not needed for safety or security purposes.
 - (2) Lighting may be installed on the tower provided that such lighting complies with F.A.A. requirements.
- (i) Multiple towers and uses. Any prohibition contained in any ordinance restricting the number of principal uses per lot shall not apply to the construction of wireless telecommunications towers and facilities when the conditions contained in this section are met. The minimum setback distance between structures shall not apply to PCS ("Personal Communications Systems") providers and those providers who are licensed to transmit within the 800 MHz frequency band.
- (j) Site plan approval. Site plan approval shall be required for any wireless telecommunications tower, equipment or facilities.
- (k) Additional municipal experts. The Planning or Zoning Board, as the case may be, reserves the right to retain, at the applicant's expense, any technical consultants as it deems necessary to provide assistance in the review of site location alternatives analysis and specifications. By submitting an application for a telecommunica-

tions tower or facility, the applicant is deemed to have consented to this procedure.

C. Fee schedule.

(1) Application fees.

(a) If no new tower is proposed:

Application fee - \$1,000.

Review fee - \$2,000.

(b) For new tower construction:

Application fee - \$3,000.

Review fee - \$5,000.

It is the intent of the fee ordinance that the fee provided herein is comprehensive and there will be no separate fee charged for site plan review.

ARTICLE XV
Off-Street Parking

§ 76-89. Construction.

All off-street parking areas other than residential parking areas shall be surfaced with an asphalt, bituminous or cement binder pavement which shall be graded and drained to dispose of all surface water as approved by the Township Engineer. In residential zones, parking areas may be either paved or covered with shale, gravel, stone or other like material to a minimum depth of two (2) inches.

§ 76-90. General provisions.

- A. All uses permitted or conditionally permitted in any of the districts herein established shall provide minimum off-street parking as follows:

- (1) For each dwelling unit, two (2) spaces.
 - (2) For a roadside eating establishment, one (1) space for each two hundred (200) square feet of gross floor area, but not less than seven (7) spaces.
 - (3) For a church, theater or other use involving the assembly of persons, one (1) space for every three (3) seats or seating accommodations.
 - (4) For a hospital, clinic, nursing home, motel, hotel or similar use, two (2) spaces for each bed.
 - (5) For a school, municipal or governmental building or a similar use, one and one-half (1 1/2) spaces for each employee.
 - (6) For a restaurant or similar use, one (1) space for every four (4) seats, plus one (1) for every employee.
 - (7) For a professional office or studio, one (1) space for each two hundred (200) square feet of gross floor area so used or one and one-half (1 1/2) spaces for each employee, whichever is greater.
 - (8) For commercial uses as follows:
 - (a) Shopping centers, five and five-tenths (5.5) off-street parking spaces per one thousand (1,000) square feet gross leasable area.
 - (b) Other offices, one (1) off-street parking space per one hundred eighty (180) square feet rentable floor space.
- B. All off-street parking areas shall be used solely for the parking of motor vehicles, and no commercial repair work or service of any kind shall be conducted on such parking lot.
- C. Off-street parking facilities shall be provided on the same lot with the permitted principal building, except that owners of two (2) or more business buildings may jointly sponsor off-street parking facilities, provided that the area of the parking facilities equals the total parking

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area requirements of each owner participating therein and complies in all respects with the requirements of this section.

§ 76-91. Illumination.

Illumination for all parking facilities other than those required for residential use shall be provided during nighttime operating

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hours. Illumination shall be shielded from roads and adjoining property.

ARTICLE XVI
Signs

§ 76-92. Permitted signs.

The following signs shall be permitted:

- A. Signs required by law to be exhibited by the use or occupant of the premises.
- B. Official signs erected by any governmental agency.
- C. Nameplate signs showing the name and address of house or family on the premises, not larger than one (1) square foot in area.
- D. A temporary sign advertising the prospective sale or rental of the premises upon which it is located, not exceeding six (6) square feet in area, and provided that it shall be maintained and removed within seven (7) days after consummation of a lease or sale transaction.
- E. Nonilluminated temporary signs on new construction sites, not exceeding sixty-four (64) square feet in area, provided that they shall be maintained and removed within seven (7) days after completion of the construction work.
- F. Temporary signs announcing or advertising any political, educational, charitable, civil, professional, religious or like campaign or event for a consecutive period not to exceed twenty-one (21) days in any calendar year, said signs not to exceed ten (10) in number.
- G. Identification signs for churches, hospitals, clinics, schools, parks and playgrounds, commercial recreation areas, public utility installations and

similar uses shall be nonflashing and shall not exceed forty (40) square feet in area. [Amended 3-10-92 by Ord. No. 92-1]

- H. Nonilluminated signs advertising home occupations not exceeding two (2) square feet.
- I. Customary warning or "no-trespassing" signs not more than one (1) square foot in area may be displayed.
- J. Each commercial use may display one (1) nonflashing identification sign located on or attached to but does not extend beyond the principal facade of the building or a freestanding sign in a front or side yard. Said sign shall not exceed twenty percent (20%) of the front facade of the building. If not attached to the building, it shall not be located within twenty-five (25) feet of any street line and shall not exceed forty (40) square feet in area. [Amended 3-10-92 by Ord. No. 92-1]
- K. Any commercial use may also display one (1) or more signs, including lighted signs with internal illumination (nonflashing) relating to its business, in addition to other signs permitted by this Article, provided that the total area for all signs permitted on the face of any wall of a building shall not exceed twenty percent (20%) of the area of the face of such wall, and provided further that any such signs not attached to the face or wall of a building do not exceed forty (40) square feet in area and are maintained within the property line. [Amended 3-10-92 by Ord. No. 92-1]
- L. No sign or advertising structure may be erected which directs attention to a business, commodity, service or entertainment conducted, sold or offered elsewhere than upon the premises.
- M. Small entrance and exit signs.

§ 76-93. Permit required; fee.

- A. No sign, advertising display or poster of any kind (except those permitted under § 76-92A, B, C, D, I and M above) may be moved, erected, placed or built upon any property without first obtaining a sign permit from the Building Inspector.
- B. Upon application and upon payment of sign fee in the amount of ten dollars (\$10.), the Building Inspector will issue a sign permit for signs permitted under this chapter. The sign permit fee will be waived by the Building In-

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spector for temporary signs for charitable, religious and educational purposes.

ARTICLE XVII

Grades, Drainage, Site Distances

§ 76-94. Grades and drainage. [Added 4-25-00 by Ord. No. 2000-10]^{1,2}

All driveways shall be constructed in accordance with the following specifications:

- A. Prior to the issuance of a certificate of occupancy, the applicant must submit to the Township Zoning Official for approval a plot plan confirming that the driveway conforms to the requirements of this Article. The plot plan shall include the following:
 - (1) A centerline profile of the entire driveway;
 - (2) Driveway grades;
 - (3) Type of wearing surface and base material;
 - (4) Drainage at the intersection with the township road and along the township road and along the driveway, if any.
- B. The first twenty-five (25) feet of the driveway, as measured from the edge of the pavement of the existing roadway, shall be constructed with a minimum thickness of four (4) inches of dense graded aggregate base material and a wearing surface of asphalt pavement (MABC), having a minimum thickness of one and one-

¹Editor's Note: Pursuant to Ordinance No. 2000-10, all provisions of Section 76-94 shall be enforced by the Zoning Officer who may, when necessary, call upon the Township Engineer for assistance.

²Editor's Note: Pursuant to Section 4 of Ordinance No. 2000-10, no new requirement contained in this Section 76-94 shall apply to any driveway existing as of the effective date hereof or to any parcel which has been approved for development before the effective date hereof. (Ordinance No. 2000-10 was adopted April 25, 2000.)

half (1-1/2) inches or a thickness of four (4) inches of lime fly ash stabilized base or a thickness of six (6) inches of concrete, using reinforcing wire.

- C. Driveway grades shall not exceed fifteen percent (15%) at any point along its entire length. In addition, the driveway grade shall not exceed four percent (4%) for a distance of ten (10) feet from the curbline and a vertical curve provided between said four percent (4%) grade and any increase in grade.
- D. The side slopes of driveways shall be top soiled, seeded, fertilized and mulched to prevent erosion. If banks reach or exceed a two (2) to one (1) slope, crown vetch or some other stabilizing material shall be planted or retaining walls constructed based on recommendations of the Soil Erosion Control Officer.
- E. In making the connection with all public streets, the proposed driveway shall incorporate pipes, tiles or reinforced culverts of appropriate dimensions so as to permit the flow of stormwaters along street rights-of-way or drainage ditches. The size, type and grade setting of the proposed drainage structure shall be reviewed and approved by the Department of Public Works. In the alternative, in order to assure the continued flow of storm water across the base of a new driveway, a swale may be established in the driveway, parallel to the edge of the pavement of the existing road. The swale shall be designed so that the first five (5) feet has a downward grade of two percent (2%) and the second five (5) feet shall have an incline grade of two percent (2%). This alternative design shall also be reviewed and approved by the Department of Public Works.

§ 76-95. Site distances. [Added 4-25-00 by Ord. No. 2000-10]^{1,2}

All new roads or streets connecting to a township road shall be so designed in profile and grading and shall be so located as to permit the following minimum site distance measured in each direction along the township road. The measurement shall be from the driver's seat of a vehicle standing on that portion of the intersecting street with the front of the vehicle a minimum of ten (10) feet behind the curbline of the township road, with the height of eye of 3.75 feet to top of object 4.5 feet above pavement.

¹Editor's Note: Pursuant to Ordinance No. 2000-10, all provisions of Section 76-95 shall be enforced by the Zoning Officer who may, when necessary, call upon the Township Engineer for assistance.

²Editor's Note: Pursuant to Section 4 of Ordinance No. 2000-10, no new requirement contained in this Section 76-95 shall apply to any driveway existing as of the effective date hereof or to any parcel which has been approved for development before the effective date hereof. (Ordinance No. 2000-10 was adopted April 25, 2000.)

The minimum permissible sight distance from any driveway shall be two hundred (200) feet.

ARTICLE XVIII

Violations and Penalties; Construal; Notice

§ 76-96. Violations and penalties.

For any and every violation of the provisions of this chapter, the owner, contractor or other persons interested as general agent, architect, building contractor, owner, tenant or any other person who commits, takes part in or assists in any way in any violation of this chapter or who maintains any building or premises in which any violation of this chapter shall exist and who shall have refused to abate said violation within five (5) days after written notice shall have been served upon him, either by registered mail or personal service, shall for each and every violation be subject to a fine of not more than five hundred dollars (\$500.) or imprisonment in the county jail for a period not exceeding thirty (30) days, or both, at the discretion of the court or judicial officer from whom a conviction may be had, and each and every day that such violation continues after such notice shall be considered a separate and specific violation of this chapter.

§ 76-97. Construal.

This chapter shall be read in pari materia with the Land Use Procedures Ordinance of the Township of Montague and, where appropriate, with the Land Subdivision Ordinance of the Township of Montague.¹¹

¹¹ Editor's Note: See Ch. 10, Land Use Procedures, and Ch. 60, Subdivision of Land.

§ 76-98. Notice.

The Municipal Clerk is hereby directed to give notice at least ten (10) days prior to the hearing on the adoption of this chapter to the County Planning Board and to all others entitled thereto pursuant to the provisions of N.J.S.A. 40:55D-15. Upon the adoption of this chapter after public hearing thereon, the Municipal Clerk is further directed to publish notice of the passage thereof and to file a copy of this chapter as finally adopted with the Sussex County Planning Board as required by N.J.S.A. 40:55D-16.

§ 76-99. Reserved.**ARTICLE XIX****Standards for the Construction and
Installation of Fences
[Adopted 8-27-02 by Ord. No. 2002-01]****§ 76-100. Definitions.**

As used in this chapter, the following terms shall have the following meanings:

FENCE — An artificial barrier constructed of wood, masonry, stone, wire, metal or other manufactured or natural material, excluding shrubbery and hedges or combination of materials erected for the enclosure of land and/or dividing one piece of land from another.

§ 76-101. Fences. [Amended 9-12-06 by Ord. No. 2006-15]

- A. General regulations. Fences shall be permitted in the front, side and rear yards, subject to the following regulations:
 - (1) The height of a fence shall be no greater than four (4) feet in the front yard. For purposes of this section, front yard is defined as that area of a parcel

located between the road right-of-way and the front of a structure from the right-of-way to the closest point of the principal structure to the road right-of-way.

- (2) The height of the fence on any other portion of the parcel other than the front yard of the parcel as defined in paragraph (1) above shall be no greater than six (6) feet.
 - (3) All fences shall be constructed with the "good side facing out."
 - (4) All fencing, except fencing for agricultural purposes, will be set back a minimum of three (3) feet from the property line. The property owner is responsible to maintain the area on the far side of the fence by mowing or otherwise maintaining such area as may be appropriate.
 - (5) All fences must comply with all Department of Environmental Protection Regulations and current BOCA Construction Codes.
 - (6) No fence, hedge, shrubbery or planting shall be permitted on any lot or adjacent thereto on any zone within the street right-of-way. All trees adjoining street sidelines in all zones shall have their branches trimmed to insure unobstructed sight lines. On any lot in any zone, no shrubbery, planting, fence or other obstruction to vision shall be permitted adjacent to the street right-of-way line. It is the intention of this provision to prohibit any fence from being constructed which would create a visual obstruction for traffic exiting or entering the premises upon which the fence is located.
- B. Height determination. Height is to be measured from the average grade. If a fence is built upon a berm, then a height calculation will include the height of the berm so that the total height of the fence and berm does not exceed the maximum height provision.

- C. Maintenance standards. Every fence shall be maintained in a safe, sound, upright condition in accordance with the approved plan on file with the Building Inspector. Failure to maintain the fence and/or planting, after notice of such failure to maintain the fence has been given from the Building Inspector, may cause the Building Inspector to order fining in accordance with Township Ordinances, and removal of the fence, wall or planting at the owner's expense.

§ 76-102. Savings clause. [Added 9-12-06 by Ord. No. 2006-15]

The remaining sections of Chapter 76 shall remain in full force and effect.

§ 76-103. Inconsistency. [Added 9-12-06 by Ord. No. 2006-15]

All ordinances or parts of ordinances inconsistent with or in conflict with this Article are hereby repealed to the extent of such inconsistency.

§ 76-104. Partial invalidity. [Added 9-12-06 by Ord. No. 2006-15]

If any section, paragraph, clause or provision of this Article shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, clause or provisions of adjudged and the remainder of the Article shall be deemed valid and effective.

§ 76-105. Effective date. [Added 9-12-06 by Ord. No. 2006-15]

This Article shall take effect after publication and passage according to law pursuant to N.J.S. 40:49-2.1

