



**AGENDA**  
**NEWTON TOWN COUNCIL**  
**AUGUST 25, 2014**  
**7:00 P.M.**

**I. PLEDGE OF ALLEGIANCE**

**II. ROLL CALL**

**III. OPEN PUBLIC MEETINGS ACT STATEMENT**

**IV. APPROVAL OF MINUTES**

- JULY 28, 2014 REGULAR MEETING
- JULY 28, 2014 SPECIAL MEETING(S)

**V. OPEN TO THE PUBLIC**

AT THIS POINT IN THE MEETING, THE TOWN COUNCIL WELCOMES COMMENTS FROM ANY MEMBER OF THE PUBLIC ON ANY TOPIC. TO HELP FACILITATE AN ORDERLY MEETING AND TO PERMIT THE OPPORTUNITY FOR ANYONE WHO WISHES TO BE HEARD, SPEAKERS ARE ASKED TO LIMIT THEIR COMMENTS TO 5 MINUTES. IF READING FROM A PREPARED STATEMENT, PLEASE PROVIDE A COPY AND EMAIL A COPY TO THE CLERK'S OFFICE AFTER MAKING YOUR COMMENTS SO IT MAY BE PROPERLY REFLECTED IN THE MINUTES.

**VI. COUNCIL & MANAGER REPORTS**

**VII. ORDINANCES**

**a. 2<sup>ND</sup> READING AND PUBLIC HEARING**

ORDINANCE 2014-14

AN ORDINANCE OF THE TOWN OF NEWTON AMENDING CHAPTER 307 TO PERMIT FREE PARKING ON SATURDAYS WITHIN FIVE MUNICIPAL PARKING LOTS

- i. OPEN HEARING TO PUBLIC
- ii. CLOSE HEARING TO PUBLIC
- iii. ACT ON ORDINANCE

ORDINANCE 2014-15

AN ORDINANCE REVISING CHAPTER 320-31.D(6) ZONING PERMITS

- i. OPEN HEARING TO PUBLIC
- ii. CLOSE HEARING TO PUBLIC
- iii. ACT ON ORDINANCE

ORDINANCE 2014-16

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF NEWTON, IN THE COUNTY OF SUSSEX, NEW JERSEY, ADOPTING AMENDMENTS TO THE HICKS AVENUE REDEVELOPMENT PLAN

- i. OPEN HEARING TO PUBLIC
- ii. CLOSE HEARING TO PUBLIC
- iii. ACT ON ORDINANCE

**b. INTRODUCTION**

ORDINANCE 2014-17

AN ORDINANCE AMENDING CHAPTER 3 "ADMINISTRATIVE CODE", ARTICLE VI "ADMINISTRATIVE ORGANIZATION" AND ARTICLE XXVIII "DEPARTMENT OF CODE ENFORCEMENT"

ORDINANCE 2014-18

AN ORDINANCE TO AMEND ORDINANCE 2013-30 ESTABLISHING MINIMUM AND MAXIMUM SALARIES AND WAGES FOR OFFICERS AND EMPLOYEES OF THE TOWN OF NEWTON FOR THE CALENDAR YEAR 2014

**VIII. OLD BUSINESS**

- a. SPECIAL IMPROVEMENT DISTRICT (SID)

**IX. CONSENT AGENDA**

ALL ITEMS LISTED WITH AN ASTERISK (\*) ARE CONSIDERED TO BE ROUTINE AND NON-CONTROVERSIAL BY THE TOWN COUNCIL AND WILL BE APPROVED BY ONE MOTION. THERE WILL BE NO SEPARATE DISCUSSION OF THESE ITEMS UNLESS A COUNCIL MEMBER SO REQUESTS, IN WHICH CASE THE ITEM WILL BE REMOVED FROM THE CONSENT AGENDA AND CONSIDERED IN ITS NORMAL SEQUENCE ON THE AGENDA.

- a. RESOLUTION #150-2014\*      INSERTION OF SPECIAL ITEMS OF REVENUE IN THE 2014 TOWN OF NEWTON BUDGET PURSUANT TO NJSA 40A:4-87 (C. 159, PL 1948)
- b. RESOLUTION #151-2014\*      INSERTION OF SPECIAL ITEMS OF REVENUE IN THE 2014 TOWN OF NEWTON BUDGET PURSUANT TO NJSA 40A:4-87 (C. 159, PL 1948)
- c. RESOLUTION #152-2014\*      TO AUTHORIZE A ONE-YEAR EXTENSION OF A BANKING SERVICES AGREEMENT WITH LAKELAND BANK
- d. RESOLUTION #153-2014\*      RATIFY AND AFFIRM THE ISSUANCE OF REFUNDING BONDS
- e. RESOLUTION #154-2014\*      AUTHORIZING EXECUTION OF A RIGHTS-OF-WAY USE AGREEMENT BETWEEN TOWN OF NEWTON AND PEG BANDWIDTH NJ, LLC
- f. RESOLUTION #155-2014\*      APPOINTMENT OF KENT HARDMEYER AS A REGULAR MEMBER OF THE NEWTON PLANNING BOARD
- g. RESOLUTION #156-2014\*      CONCUR WITH THE TOWN MANAGER'S APPOINTMENT OF SCHOOL CROSSING GUARDS
- h. RESOLUTION #157-2014\*      TO CANCEL OUTSTANDING CHECKS IN VARIOUS FUNDS
- i. RESOLUTION #158-2014\*      APPOINTMENT OF MR. WILLIAM NANNERY TO THE NEWTON HOUSING AUTHORITY

- j. RESOLUTION #159 -2014\*  
AUTHORIZE AND CONSENT TO THE ASSIGNMENT AND TRANSFER BY MMH BT, LLC TO RADIANT PROPERTY MANAGEMENT, LLC OF THE TAX ABATEMENT AGREEMENT BETWEEN THE TOWN OF NEWTON AND RWB ASSOCIATES
- k. RESOLUTION #160-2014\*  
TO CANCEL APPROPRIATION BALANCES IN THE WATER SEWER CAPITAL FUND
- l. RESOLUTION #161-2014\*  
AWARD BID FOR ROOF REPLACEMENT AT THE NEWTON FIRE MUSEUM
- m. RESOLUTION #162-2014\*  
AWARD BID FOR THE CISTERN FILL PROJECT AT THE NEWTON FIRE MUSEUM
- n. RESOLUTION #163-2014\*  
APPROVE BILLS AND VOUCHERS FOR PAYMENT
- o. RESOLUTION #164-2014\*  
APPROVAL OF THE EXECUTION OF A SHARED SERVICES AGREEMENT WITH BRYAM TOWNSHIP TO PROVIDE CERTIFIED TAX COLLECTION SERVICES
- p. APPLICATIONS\*  
AN APPLICATION FOR AN OFF-PREMISE RAFFLE (50/50 & RAFFLE) FROM THE PRIDE FOUNDATION (ON BEHALF OF NEWTON FIRST VARSITY ROBOTICS TEAM) TO BE HELD ON DECEMBER 15, 2014 AT 7:15PM AT NEWTON HIGH SCHOOL, RYERSON AVENUE  
  
AN APPLICATION FOR AN OFF-PREMISE RAFFLE (50/50 & RAFFLE) FROM THE NEWTON MEDICAL CENTER FOUNDATION TO BE HELD ON NOVEMBER 15, 2014 AT 6:30PM AT NEWTON MEDICAL CENTER, 175 HIGH STREET

**X. DISCUSSION**

- a) ART ALLEY

**XI. OPEN TO THE PUBLIC**

**XII. COUNCIL & MANAGER COMMENTS**

**XIII. ADJOURNMENT**

**TOWN OF NEWTON**

**AN ORDINANCE OF THE TOWN OF NEWTON AMENDING CHAPTER 307  
TO PERMIT FREE PARKING ON SATURDAYS WITHIN FIVE MUNICIPAL  
PARKING LOTS**

**ORDINANCE #2014- 14**

**WHEREAS**, a determination by the Town Council has been made to permit free parking in the five paid municipal parking lots on Saturdays to encourage the public to patronize the local commercial establishments within the Town of Newton; and

**WHEREAS**, the five paid municipal parking lots are specifically identified as Lot #1 Adams Street Plaza located on Adams Street; Lot #2 Main Street Lot located on Main Street; Lot #3 Western Plaza located on Trinity Street; Lot #4 Central Plaza located on Trinity Street; and Lot #5 Eastern Plaza North, located at the corner of Union Place and Spring Street;

**NOW, THEREFORE, BE IT ORDAINED** by the Town Council of the Town of Newton, as follows:

**Section 1.** The following new section shall be and is hereby added:

**§307-11. Free Parking on Saturdays in paid municipal parking lots.**

Free parking shall be permitted all day on Saturdays in the paid municipal parking lots identified as Lot #1 Adams Street Plaza located on Adams Street; Lot #2 Main Street Lot located on Main Street; Lot #3 Western Plaza located on Trinity Street; Lot #4 Central Plaza located on Trinity Street; and Lot #5 Eastern Plaza North, located at the corner of Union Place and Spring Street.

**Section 2. Severability.** If any provision of this Ordinance or the application of this Ordinance to any person or circumstances is held invalid, the remainder of this Ordinance shall not be affected and shall remain in full force and effect.

**Section 3. Repealer.** All ordinances or parts of ordinances or resolutions that are inconsistent or in opposition to the provisions of this Ordinance are hereby repealed in their entirety.

**Section 4. Effective Date.** This Ordinance will take effect after publication and passage according to law.

**TAKE NOTICE** that the above Ordinance was introduced at a regular meeting of the Town Council of the Town of Newton conducted on Monday, July 28, 2014. It was considered for adoption, after final reading and public hearing thereon, at a regular meeting of the Newton Governing Body conducted at 7:00pm on Monday, August 25, 2014 in the Council Chambers at the Newton Municipal Building, 39 Trinity Street, Newton, New Jersey, and shall take effect according to law.

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Lorraine A. Read, RMC  
Municipal Clerk

**TOWN OF NEWTON**

**ORDINANCE 2014-15**

**AN ORDINANCE REVISING CHAPTER 320-31.D(6) "ZONING PERMITS"**

**WHEREAS**, the Town of Newton has determined that Chapter 320-31.D of the Code of the Town of Newton, entitled "Zoning Permits" requires certain revisions;

**NOW THEREFORE, BE IT ORDAINED** by the Mayor and Town Council of the Town of Newton, County of Sussex, and State of New Jersey as follows:

**SECTION 1.** Section 320-31.D(6) of the Code of the Town of Newton shall be and is hereby revised to read as follows:

**§320-31.D**

**(6) Time for action on application.**

(a) The Zoning Officer shall act upon all such applications within 10 days after receipt of a fully filed application, or shall notify the applicant in writing of the refusal to issue such permit and the reasons therefor.

(b) Failure to notify the applicant in case of refusal to issue a permit within 10 days shall entitle the applicant for a zoning permit to file an appeal to the Planning Board, as in the case of denial.

**SECTION 2. Severability.** If any provision of this Ordinance or the application of this Ordinance to any person or circumstance is held invalid, the remainder of this Ordinance shall not be affected and shall remain in full force and effect.

**SECTION 3. Repealer.** All ordinances or parts of ordinances or resolutions that are inconsistent or in opposition to the provisions of this Ordinance are hereby repealed in their entirety.

**SECTION 4. Notice.** The Town Clerk is directed to give notice at least ten days prior to the hearing on the adoption of this ordinance to the Sussex County Planning Board and to all others entitled pursuant to the provisions of N.J.S.A. 40:55D-15. The Town Clerk is further directed to refer this Ordinance to the Town Land Use Board, pursuant to N.J.S.A. 40:55D-64. Upon the adoption of this ordinance, after public hearing, the Town Clerk is further directed to publish notice of the passage and to file a copy of this ordinance, as finally adopted, with the Sussex County Planning Board, as required by N.J.S.A. 40:55D-16.

**SECTION 5. Effective Date.** This Ordinance shall take effect after adoption and publication in accordance with law.

## NOTICE

**TAKE NOTICE** that the above Ordinance was introduced at a regular meeting of the Town Council of the Town of Newton conducted on Monday, July 28, 2014. It was considered for adoption, after final reading and public hearing thereon, at a regular meeting of the Newton Governing Body conducted at 7:00pm on Monday, August 25, 2014 in the Council Chambers at the Newton Municipal Building, 39 Trinity Street, Newton, New Jersey, and shall take effect according to law.

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Lorraine A. Read, RMC  
Municipal Clerk

TOWN OF NEWTON  
Ordinance 2014-16

**AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE  
TOWN OF NEWTON, IN THE COUNTY OF SUSSEX, NEW JERSEY,  
ADOPTING AMENDMENTS TO THE HICKS AVENUE  
REDEVELOPMENT PLAN**

**WHEREAS**, the *Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.*, (the “Redevelopment Law” or the “Act”) authorizes municipalities to determine whether certain parcels of land within the municipality constitute an area in need of redevelopment, and to prepare and adopt a redevelopment plan therefor; and

**WHEREAS**, after investigation of a delineated area and recommendation of the Planning Board in accordance with the Act, on December 10, 2007, the Town Council, acting by resolution, designated the area then identified on the official tax map of the Town as Block 1309, Lots 1, 1.01, 2, 6, 8, 9, 41 and 42, along with all public roadways and right of ways appurtenant thereto as an area in need of redevelopment (collectively, the “Redevelopment Area”); and

**WHEREAS**, on December 22, 2008, after review and comment by the Town’s Planning Board in accordance with the Act, the Town, acting by Ordinance, enacted a redevelopment plan for the Redevelopment Area (as thereafter amended, the “Initial Redevelopment Plan”); and

**WHEREAS**, due to changes in the national, regional and local economies occurring since the time of adoption of the Initial Redevelopment Plan, the Town wished to consider the addition of alternative uses and standards to the Redevelopment Plan in order to provide additional options for the revitalization of the Redevelopment Area; and

**WHEREAS**, in accordance with the Act, the Town prepared proposed amendments to the Initial Redevelopment Plan (the “Proposal”, attached hereto as Exhibit A); and

**WHEREAS**, on June 9, 2014, the Town Council, acting by Resolution 108-2014, referred the Proposal to the Planning Board for its review and comment in accordance with Section 7 of the Act; and

**WHEREAS**, at a duly noticed and constituted public meeting of the Planning Board held on June 18, 2014, Jessica Caldwell, P.P., A.I.C.P. of J. Caldwell & Associates, LLC (the “Planning Consultant”) presented the Proposal and further addressed any questions and comments presented by the Planning Board; and

**WHEREAS**, the members of the public were given the opportunity to provide their own testimony regarding the Proposal; and

**WHEREAS**, after due consideration of the Proposal, the testimony of the Planning Consultant, and the testimony of the public, the Planning Board by Resolution dated June 18, 2014 (the “Planning Board Resolution”, attached hereto as Exhibit B): (i) determined that the Proposal was consistent with the Town’s Master Plan; (ii) recommended to the Town Council that it adopt a modified version of the Proposal, with three changes summarized at Exhibit B to the Planning Board Resolution (the “Planning Board Recommendations”); and (iii) determined that the Proposal as amended by the Planning Board Recommendations was also consistent with the Town’s Master Plan; and

**WHEREAS**, the Planning Board Resolution included the following recommendation:

“3. There are a number of areas where the use of a potable water conservation program (a.k.a. “gray water system”) is discussed as a design option. As the Board is concerned with the Town’s past issues with water usage and availability, the Board recommends that a gray water system should be a mandatory design requirement. However, the Board is inclined to consider a waiver from this design requirement if a redeveloper can show the inclusion of, and effectiveness of other water conservation and/or water reuse measures, or a combination of measures, such as low flow fixtures, rainwater cisterns to be used for outside water usage, and private wells. This revision should be made in the Proposed Amendments and if other areas of the Initial Redevelopment Plan need to be amended to accomplish this revision they should also be included in the final Plan Amendment.” (“Recommendation 3”); and

**WHEREAS**, while the Town has a limited amount of water available in its water allocation, the Town has undertaken a leak detection program and has recovered more than twenty percent of water previously lost to leaks in the system. The Town currently has sufficient water available for prospective development. These facts, together with the significant cost of a gray water system, leads the Town to determine that water reuse measures should be optional rather than mandatory; and

**WHEREAS**, the Town wishes to adopt the Proposal, as modified by the Planning Board Recommendations, except for Recommendation 3 (the Proposal as so modified and attached hereto as Exhibit C, the “Plan Amendments”);

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF NEWTON, IN THE COUNTY OF SUSSEX, AS FOLLOWS, WITH NO LESS THAN THREE MEMBERS AFFIRMATIVELY CONCURRING:**

**Section 1.** The recitals hereto are hereby incorporated herein by reference as if set forth at length.

**Section 2.** The Plan Amendments, as filed in the Office of the Town Clerk, attached hereto as Exhibit C, are hereby approved. Any portion of the Initial Redevelopment Plan not modified by the Plan Amendments shall remain in full force and effect.

**Section 3.** The zoning map of the Town of Newton is hereby amended to incorporate the provisions of the Plan Amendments and delineate the boundaries of the Hicks Avenue Redevelopment Area.

**Section 4.** This ordinance shall take effect as provided in law.

**TAKE NOTICE** that the above Ordinance was introduced at a regular meeting of the Town Council of the Town of Newton conducted on Monday, July 28, 2014. It was considered for adoption, after final reading and public hearing thereon, at a regular meeting of the Newton Governing Body conducted at 7:00pm on Monday, August 25, 2014 in the Council Chambers at the Newton Municipal Building, 39 Trinity Street, Newton, New Jersey, and shall take effect according to law.

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LORRAINE A. READ, RMC  
MUNICIPAL CLERK

EXHIBIT A

PROPOSAL

**HICKS AVENUE  
REDEVELOPMENT PLAN  
AMENDMENT**

TOWN OF NEWTON  
SUSSEX COUNTY, NEW JERSEY



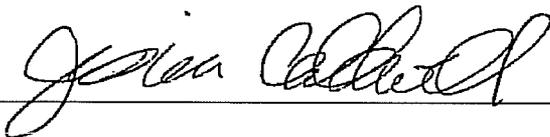
**JUNE 2014**

 **J Caldwell**  
& ASSOCIATES LLC  
PLANNING CONSULTING SERVICES

**HICKS AVENUE REDEVELOPMENT PLAN AMENDMENT  
TOWN OF NEWTON, SUSSEX COUNTY**

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Jessica Caldwell, P.P., A.I.C.P, Town Planner, P.P. # 5944

## **PLAN CONSISTENCY REVIEW**

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### **BACKGROUND**

The Hicks Avenue Redevelopment Plan (the “Plan”) governs the Town of Newton Redevelopment Area (the “Area”) located on the northeastern corner of Sparta Avenue and Hicks Avenue. Notice was sent to property owners within the Area on November 21, 2007, pursuant to *DeRose v. Town of Harrison*. The Area was recommended to be designated as an Area in Need of Redevelopment by the Town of Newton Planning Board on December 6, 2007, pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the “Redevelopment Law”). The Area was designated an Area in Need of Redevelopment by the Town Council on December 10, 2007. The Plan for the Area, which established superseding zoning, was adopted by the Town Council on December 22, 2008.

The Plan Area includes eight (8) tax lots in Block 24.02 (former Block 1309), including portions of the adjacent street rights-of-way of Sparta Avenue, Hicks Avenue and Smith Street. The Town of Newton has updated tax lot numbers since the adoption of the original Hicks Avenue Redevelopment Plan. The new lot and block numbers for the parcels located in the Plan Area are: Block 24.02, Lots 1, 2, 3, 4, 5, 6, 7 and 8 (former Block 1309, Lots 1.01, 1, 2, 41, 9, 6, 8 and 42, respectively). The Plan Area comprises approximately 13.65 acres.

The purpose of the plan amendment is to provide for an updated design concept for the Redevelopment Area. The original plan contemplated townhouses with rear access garages, a mixed-use building and an apartment building. This proposed plan amendment continues to propose townhouses; however with garage access in the front yard. The mixed-use/apartment building area along Sparta Avenue will be permitted to contain a free-standing commercial building. Additionally, this Plan Amendment will permit certain single family residential uses that exist in the area to remain as permitted uses. The mandatory stormwater recapture and use for irrigation or other non-potable uses are proposed to be revised to be optional as well. The prior development concepts will remain permitted, simply allowing for additional design options for potential redevelopers.

## AMENDMENTS TO THE REDEVELOPMENT PLAN

The Redevelopment Plan (the “Plan”) contemplates the potential for amendments to the Plan. At Section 9.1 of the Redevelopment Plan, it states, “As development occurs within the Area, development priorities and market demands may change. This Plan should have the ability to meet the changing needs of market demand, the Town of Newton and its citizens. Amendments may be required in order to accommodate these changes.” The amendments proposed are to provide for changing market demands and an increase in the amount of available water in the Town, reducing the need for grey water conservation methods.

It has been more than five years since the Redevelopment Plan was adopted. There is insufficient market demand for the types of units proposed in the original plan because the cost of providing rear entry garages is increased because of the need to provide a rear access lane as well as the neighborhood street. The rear entry garages also minimize the size of rear yards, where the development community has requested the ability to provide larger rear yards. Additionally, the area has sufficient residential proposed to not necessarily need the retail uses to be mixed-use, providing for the ability to allow a stand-alone commercial use or commercial building with multiple commercial uses. This Plan Amendment provides for a greater variety of building types, while maintaining the spirit of the original plan, both in terms of the layout and architectural design.

The requirement for mandatory re-use of stormwater on the site may also be cost prohibitive for potential redevelopers. The original need for this water recycling program was due to a limited amount of available water in the Town’s water allocation. The Town has undertaken a leak detection program and has recovered more than 20 percent of water previously lost to leaks in the system. This has lessened the need for mandatory water recycling, providing for the potential for this provision to be optional in the Plan.

The proposed Plan Amendment is generally consistent with the stated goals of the Plan. For example, the first goal in the Plan is to “eliminate the incongruous land uses within the Area and between the designated Area and surrounding environs, eliminating blighting influences.” This Plan Amendment Continues this goal by providing for a greater likelihood of redevelopment occurring. This Plan Amendment is also generally consistent with the Master Plan of the Town of Newton. For example, one of the general goals from the Master Plan is “to promote a desirable visual environment through creative development techniques and good civic design and arrangement.” The proposed Plan Amendment encourages good design, building arrangement and provides for high quality residential and commercial uses in a currently abandoned industrial area. For these reasons, the proposed Plan Amendment is generally consistent with the stated goals of the Plan, the goals of the Town of Newton Master Plan and State Development and Redevelopment Plan. One goal from the Redevelopment Plan must be amended slightly to permit the option of a stormwater recapture system on the site, rather than a mandatory system.

Based upon the foregoing, it is recommended that the following amendments be made to the Hicks Avenue Redevelopment Plan. If there is a conflict between any of the amended provisions proposed below and existing provisions in the Plan, the amended provisions shall govern. With the exception of the foregoing, all other provisions of the Plan not specifically modified by this Plan Amendment shall remain unmodified.

## **HICKS AVENUE REDEVELOPMENT PLAN AMENDMENT**

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**At Section 1.2, Local Context Map, on page 7, the last paragraph shall include the following:**

The Redevelopment Plan also permits a neighborhood center concept that includes a combination of townhouses, single family residential on existing lots and free-standing commercial uses or a commercial building with multiple commercial spaces. Development layouts, site and circulation plans and building graphics within the Plan are conceptual in nature and subject to final engineering and architectural design by an applicant, subject to approval by the Planning Board.

**At Section 1.7, Goals of the Plan, on page 12, Goal 18 shall be replaced with the following:**

18. To encourage environmental sustainability through the optional creation of a Potable Water Conservation Program, by which stormwater is recaptured, stored and used for landscape irrigation, car washing, and non-potable use within the dwelling units, retail or commercial structures.

**At Section 1.7 Goals of the Plan, on page 12, Redevelopment Objectives, under Section 1, the following sentence shall be added:**

1. A Redeveloper is not required to assemble all parcels in the Area prior to undertaking a redevelopment project.

**At Section 1.9, Illustrative Site Plan, the second and third paragraphs on page 14 and first paragraph on page 15 shall be deleted and replaced with the following:**

The Illustrative Site Plan provides one option for redevelopment of the Area. This Redevelopment Plan permits a density of up to 20 residential units per buildable acre. The total number of units ultimately constructed will depend on the amount of land allocated for residential uses and the total acreage of land proposed to be redeveloped by an applicant. The Plan provides one alternative that shows townhouses with rear access drives, a mixed-use building and a multi-family residential building and an alternative plan permitted by this Redevelopment Plan is for townhouses with garage access in front of the buildings, single family residential remaining or constructed on individual lots and free-standing commercial buildings with one or more commercial uses.

**At Section 2.2 Environmental Conditions, page 19, the final paragraph under the heading "Site Contamination" shall be deleted and replaced with the following:**

Prior to any construction on the site, the Municipality must receive from the redeveloper any and all supporting data which the Municipality deems necessary to validate that any contamination on the site has been remediated, or will be remediated during construction pursuant to an NJDEP approved site remediation plan.

**At Section 2.4 Circulation & Utilities, page 21, the third to the last paragraph entitled “Stormwater” shall be deleted and replaced with the following:**

The stormwater management on this development site will be in accordance with the Residential Site Improvement Standards and Newton’s Stormwater Control Ordinance.

**At Section 3.0 Definitions, page 24 and 25, the definitions for Design Professional, Density and Potable Water Conservation Program should be deleted and replaced with the following:**

Design Professional – A practicing Licensed Professional Planner or Architect that has experience with redevelopment plans in general and form-based zoning.

Density – The number of dwelling units permitted per buildable acre within the Redevelopment Area. Buildable land is exclusive of constraints from wetlands and wetland buffers. Where a Redeveloper is able to obtain an NJDEP permit to build within regulated areas, those areas shall be deemed buildable for purposes of density.

Potable Water Conservation Program – An optional program prepared by the developer by which stormwater is recaptured, stored and used for non-potable use, such as landscape irrigation, car washing and flushing toilets.

**At Section 4.1 Land Use Regulations, Permitted Uses, Section 1, page 28, Residential Uses should be deleted and replaced with the following:**

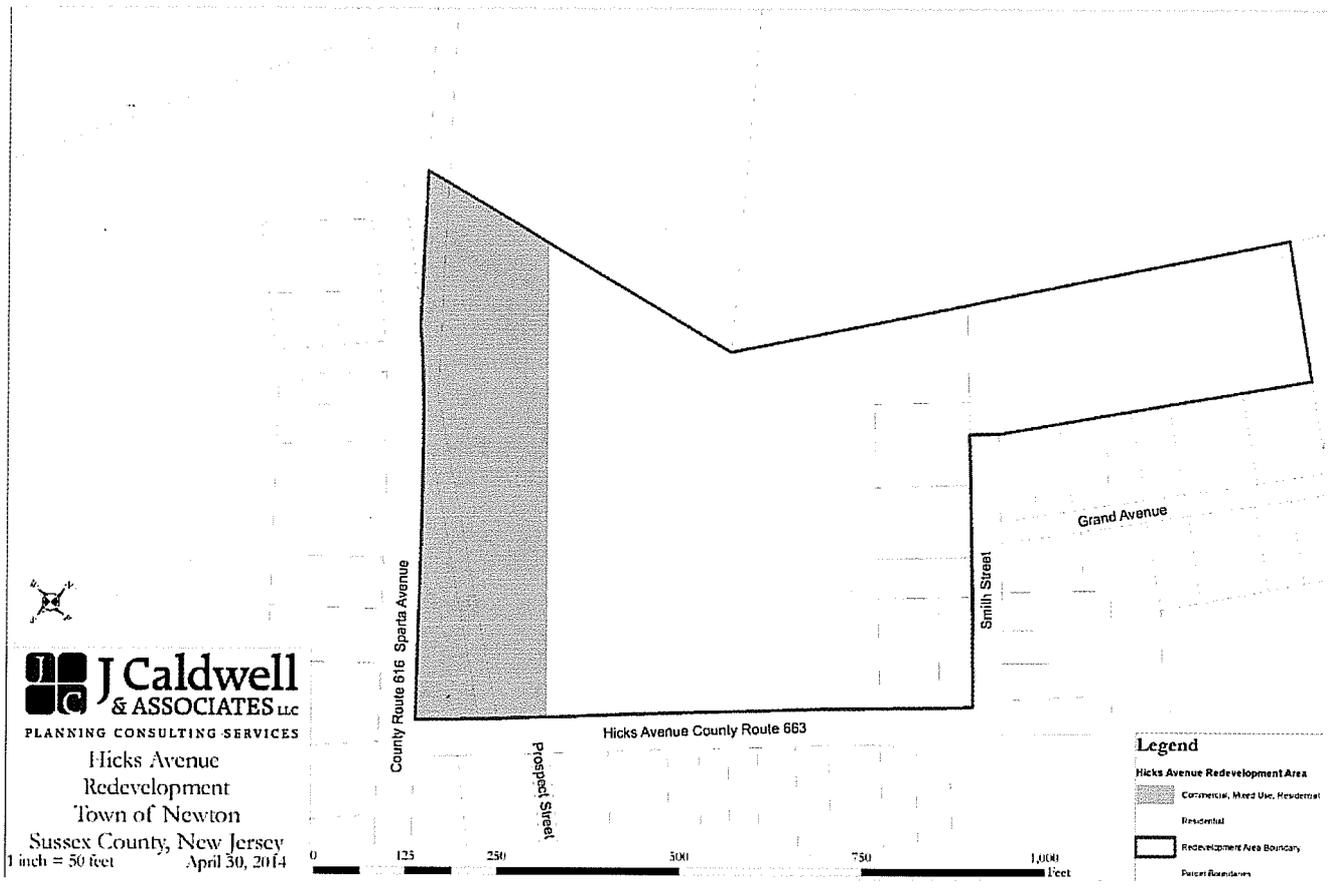
1. Residential: Includes premises available for long-term human habitation; excludes all boarding houses and rooming houses. Residential uses are limited to attached townhouses, paired villas (duplexes), multi-family flats, residential above mixed-use commercial and single-family dwellings.

**At Section 4.1 Land Use Regulations, Permitted Uses, page 28, delete and replace paragraph for as follows and add paragraph 5, Commercial Uses as follows:**

4. Open Spaces, Park and Playgrounds: Public or private open space and/or recreational areas that may include passive and/or active recreational facilities such as pedestrian walkways, bike paths, pedestrian-scaled lighting, benches, picnic areas, playground equipment and/or trash receptacles (wild-life proof).
5. Commercial: Free-standing commercial structures with one or more commercial uses. Permitted commercial uses include all Commercial Retail Service Uses and Business/Office/Professional Uses permitted in the T-4 Neighborhood Services Zone of the Newton Form-Based Code. The Accessory Uses in the T-4 Neighborhood Services Zone are also permitted within the Redevelopment Area as appropriate, with commercial accessory uses in the commercial area and residential accessory uses in the residential area.

At Section 4.1 Land Use Plan, page 29, delete the entire section and replace with the following:

The Land Use Plan for the area includes a 200-foot deep section along Sparta Avenue that permits commercial, mixed-use and residential uses. This area is shown in lavender below. The remainder of the Area, shown in yellow, is slated for residential development. Parking areas and access for the mixed-use/commercial zone of the Area may be located in the residential zone. The boundary between the two zones may be flexed 50 feet in either direction to facilitate a variety of layouts. (The areas flexed need not be the entire length of the boundary).



**At Section 5.2 Mobility Regulations, page 33, the first and second paragraphs shall be deleted and replaced with the following:**

This section provides a conceptual circulation and parking plan for the development. The development must meet New Jersey Site Residential Improvement Standards for the residential portion of the development and is subject to Planning Board approval for the commercial/mixed-use portion of the development.

**Section 5.4 Thoroughfare Overview, page 36, the following discussion shall be added at the end of the page:**

An alternate street layout may be designed to minimize pavement and impervious surfaces throughout the development. This layout would apply to the interior of the development. Streetscapes and sidewalks along Sparta Avenue, Hicks Avenue and Smith Street would remain as shown. The alternate street layout would permit a redeveloper to propose an internal residential street with a 24 foot-wide pavement width and four (4) foot sidewalk on one side of the street. All parking would be off-street parking including parking for both commercial and residential units. Residential units must have off-street guest parking provided along with the minimum parking required by New Jersey Residential Site Improvement Standards.

**At Section 5.7 Pedestrian Circulation Plan, page 45, the following shall be added to the end of the page:**

Examples of possible modifications to the pedestrian plan include: sidewalks on one side of the street within the development, six (6) foot sidewalks around the commercial building and a combined pedestrian walkway and rail trail bike path along Sparta Avenue in lieu of a sidewalk along Sparta Avenue.

**At Section 6.2 Bulk & Setback Regulations, page 49, the bulk standards shall be deleted and replaced with the following:**

**Density:** The density of the Area must not exceed 20 dwelling units per buildable acre of development area.

**Lot Sizes:** Lot sizes may vary depending on the building type and layout of the redevelopment. Lot sizes will be a function of building size plus required setbacks. Alternatively, the Area, or a portion thereof, may be redeveloped as one lot with multiple structures and uses. In this case, setbacks will be measured from exterior lot lines. Pre-existing residential uses on individual lots shall be deemed to be conforming as they exist at the time of the adoption of this Plan and may be reconstructed within the same footprint on the existing lot. Future additions or redevelopment of those lots shall follow the bulk standards set forth herein.

**Setbacks:** Setbacks are the distance between the property line and the outer edge of the building wall, expressed in feet.

**Front yard setback: (measured from the building wall to ROW or edge of pavement)**

- Residential: 12' min. (garage in rear/ off-street parking) / 26' min. (garage in front)
- Multi-family: 15' min.
- Mixed-use: 15' min.
- Commercial: 15' min.

**Side yard setback:**

- Residential: 6' min. to property line
- Residential: 22' min. between buildings
- Multi-family: 10' min.
- Mixed-use: 15' min.
- Commercial: 15' min.

**Rear yard setback:**

- Residential: 8' min.
- Residential: 22' min. between buildings
- Multi-family: 10' min.
- Mixed-use: 10' min.
- Commercial: 10' min.

**Encroachments:** Encroachment is the distance beyond the setback lines that certain building elements can protrude, expressed in feet. Building elements which may encroach include, but are not necessarily limited to: overhangs, steps, porches, balconies, bay and box windows, decks, etc.

- Front yard encroachment: 6 feet max.
- Rear yard encroachment: 6 feet max.
- Side yard encroachment: 4 feet max.

**Driveways/Aprons:** Residential driveways shall be constructed of concrete, pavers, or similar materials. Access drives to commercial and multi-family structures may be asphalt.

**At Section 6.3 Minimum and Maximum Height Regulations, page 50, this section shall be deleted and replaced with the following:**

Maximum and minimum height requirements are expressed as a combination of stories and height in feet as follows:

- Residential: 3 stories and 40 feet max.
- Multi-family: 3 stories and 40 feet max.
- Mixed-use: 3 stories and 40 feet max.; 2 story minimum
- Commercial: 3 stories and 40 feet max.

**At Section 6.4 Building Mass, page 51, the third paragraph shall be deleted and replaced with the following paragraph:**

The development must address the provision of affordable housing units to meet NJ Council on Affordable Housing (COAH) regulations at the time of site plan approval. All COAH units must meet all COAH regulations.

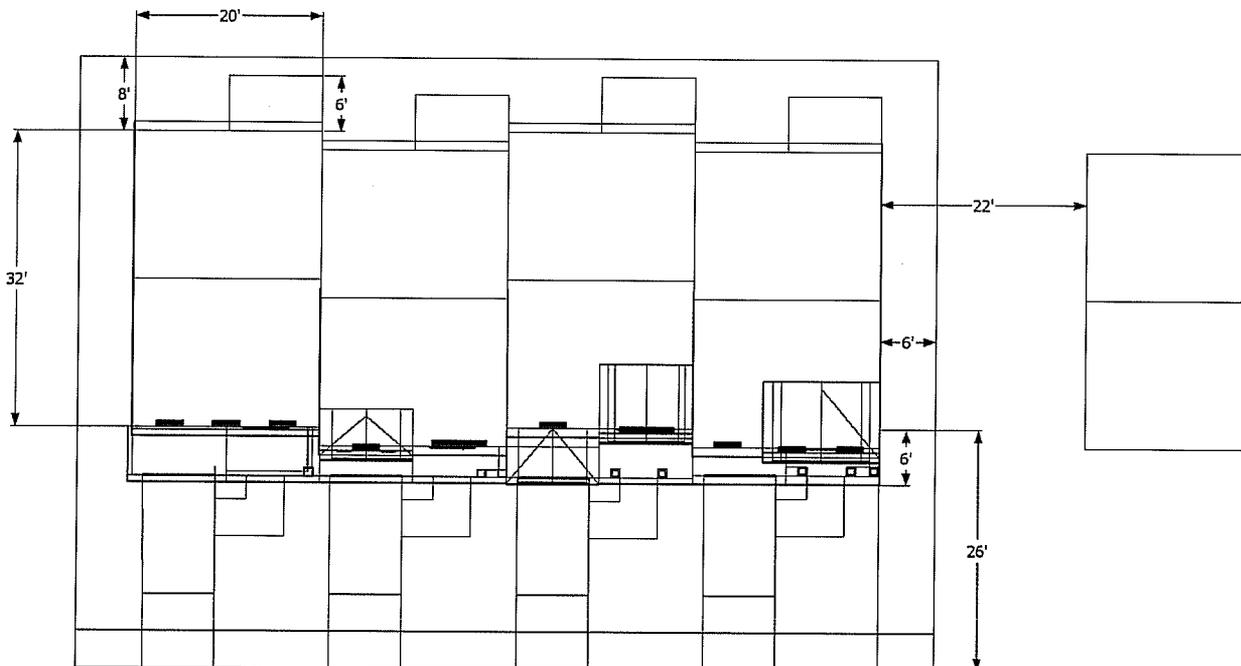
**At Section 6.6 Building Typologies, page 55, add the following:**

**Townhouse E: 20x32 (garage in front)**

Regulation	Feet
Front Yard Setback	26 min.
Side Yard Setback	6 min. / 22 between buildings
Rear Yard Setback	8 min. / 22 between buildings
Front & Rear Encroachment	6 min.
Side Encroachment	4 min.
Primary Building Footprint	20 x 32*
Accessory Structure Footprint	N/A
Lot Width	Varies
Lot Depth	Varies
Building Height	40 / 3 floors

\*Building footprint size may vary provided that other bulk standards can be met

**Townhouse E: 20 x 32**





Architectural Style and Colors are Illustrative and May Change Subject to Planning Board Approval

The Multi-Family and Mixed-Use building typologies shall also be changed to encompass commercial use buildings by changing the titles to Multi-Family/Commercial and Mixed-Use/Commercial

At Section 6.7.1 Architectural Style: Townhouse, page 57, the following photos shall be added:



**At Section 6.8 Façade Regulations, page 60, delete and replace Item 1 and delete Item 13 as shown below.**

1. To create individuality within a proposed residential development, there must be a minimum of three distinct façade designs for single family or townhouse building types, when multiple units are proposed. The three or more façade designs should be alternated within each building to provide for individuality of units and break-up long buildings. Façade colors, materials and accents should be alternated throughout the development.
- ~~13. Ground level retail/commercial facades fronting along Sparta Avenue and/or Hicks Avenue must be of at least 60% void area (windows and other openings).~~

**At Section 6.10 Building Entrance, Balcony, and Porch Regulations, page 62, delete Items 2 and 5 shown below:**

- ~~2. Every unit shall have a usable front porch and/or a second floor balcony. Porch steps must match the materials used in the porch.~~
- ~~5. The finished floor of the ground level of buildings shall be raised a minimum of 2 feet and a maximum of 3 feet above the grade of the front plain of each primary structure. Porches and stairs shall connect the building to walkway.~~

**At Section 6.11 Building Signage and Lighting Standards, page 64, delete the second paragraph and add the following:**

All proposed signs within the redevelopment area shall conform to the sign regulations of the Town's Form-Based Code for the T-4 Neighborhood Services Zone.

**At Section 6.12 Building Parking Standards, page 64, the second paragraph shall be replaced with the following:**

6. Garages: Garages may be built to accommodate one or two cars and may be built with a second floor or loft above.

**At Section 6.13 Green Building Standards, page 66, delete Item 4 and replace with the following:**

Stormwater Detention and Reuse: In order to mitigate the impact of stormwater on the existing infrastructure and limited potable water resources, new development is encouraged to create a Potable Water Conservation Program using stormwater detention, collection and re-use for non-potable uses such as irrigation, washing cars and flushing toilets, thereby reducing demands on potable water.

**At Section 7.2 General Requirements, page 71, delete Item 4 and Item 7 and replace with the following:**

4. All yard spaces shall be landscaped with trees, shrubs, perennials and ground cover.
7. All landscaped area must be well maintained, cleared, clipped and pruned to provide a positive healthy visual character.

**At Section 7.3 Streetscape Requirements, page 73, delete Item 4 and replace with the following:**

4. If a planter strip is provided between the sidewalk and the curb, it shall be a minimum of 1'6" wide and shall contain plantings or textured pavers. Alternatively, sidewalks may be installed flush with the curb and street trees planted on the yard side of the sidewalks.

**At Section 7.3 Streetscape Requirements, page 73, delete Item 5 shown below:**

- ~~5. The area between the curb and ROW edge together must equal a combined minimum width of eight (8) feet. The remaining width of two (2) feet will be between the sidewalk and ROW edge, in effect lengthening the front yards of properties. Street trees are to be planted within this area. Street trees may also be planted in bumpouts.~~

**At Section 7.3 Streetscape Requirements, page 73, add Item 11 as follows:**

11. Where rear residential yards abut an exterior street, an evergreen buffer shall be planted along the street side of the units, in a staggered pattern to provide year-round buffering for the residences. The buffer width, design and tree species shall be subject to Planning Board approval.

**At Section 7.4 Yard Landscape Requirements, page 74, Items 2 and 9 shall be deleted and replaced as follows:**

2. Every building shall have direct access from the access drive, driveway or sidewalk to the primary pedestrian ingress and egress of a building by way of a walkway. Materials of the walkway shall compliment the color and design of the building and the sidewalks.
9. Yards must have a minimum number of landscape features:
  - Two (2) canopy trees per building (in addition to street trees); and
  - Foundation shrubs: five (5) per building (or unit for townhouses) along the front façade.

**At Section 7.5 Signage Requirements, page 75, the section shall be deleted and replaced with the following:**

All proposed signs within the redevelopment area shall conform to the sign regulations of the Town's Form-Based Code for the T-4 Neighborhood Services Zone.

**At Section 8.2 General Utilities Requirements, page 83, delete Item 3 and Item 7 and replace with the following:**

3. Stormwater Management in accordance with Residential Site Improvement Standards, N.J.A.C. 5:21-6 and the Town of Newton Stormwater Control Ordinance, Chapter 258 of the Code of the Town of Newton.
7. Snow Removal: Adequate facilities shall be provided for the removal of snow from the common areas.

**Section 8.3 Stormwater Management, page 84, the following paragraph shall be deleted as shown below:**

~~A Potable Water Conservation Program must be developed as part of the Plan (see page 25). Sustainable techniques to address and utilize stormwater runoff must be included in the Plan (unless the developer receives a waiver from the Planning Board). These techniques would include the construction of green roofs, water cisterns and the use of stored water for irrigation and other non-potable uses. Such techniques would mitigate the effects of stormwater runoff and lessen the volume needed in stormwater detention facilities, but as significantly, would mitigate the demands on the allocation of limited potable water resources from the Town.~~

**At Section 9.2 Plan Consistency Review, page 88, the following shall be added to the final paragraph:**

The Plan Amendment is determined to not be in conflict with the Master Plans of Andover Township, Fredon Township or Hampton Township.

**At Section 9.3 Redevelopment Plan Implementation, page 90, Item 5 shall be deleted and replaced with the following:**

5. Once a property has been redeveloped in accordance with the Redevelopment Plan, it may not be converted to any use not expressly permitted in this Redevelopment Plan. Pre-existing residential uses on individual lots shall be deemed to be conforming as they exist at the time of the adoption of this Plan Amendment and be re-constructed within the same building footprint on the existing lot. Future additions or redevelopment of those lots must conform to the standards of this Redevelopment Plan. Except as previously noted, a use or structure not conforming to the requirements of this Redevelopment Plan may not be reconstructed in the event of its destruction. The Planning Board shall determine the issue of whether the non-conforming use or building has been “destroyed”.

**At Section 9.4 Schedule and Duration of the Plan, page 91, under the title “Phasing”, Items A and B shall be deleted and replaced with the following:**

Phasing Plan: Any applicant seeking to develop properties located within this Redevelopment Plan that is planning on phasing the development must submit a Phasing Plan for review and approval by the Newton Planning Board.

**At Section 9.4 Schedule and Duration of the Plan, page 91, under the title “Certificates of Completion and Compliance”, shall be deleted and replaced with the following:**

Upon the inspection of the verification the Redevelopment Entity that the redevelopment of a parcel has been completed pursuant to the Redevelopment Agreement, a Certificate of Completion and Compliance shall be issued to the Redeveloper as such parcel shall be deemed no longer in need of redevelopment.

The Redevelopment Plan, as it may be amended from time to time, shall be in full force and effect upon its adoption by ordinance by the Town Council of the Town of Newton.

**At Section 9.5 Affordable Housing, page 92, paragraph 2 titled Affordable Housing shall be deleted and replaced with the following:**

**Affordable Housing**

Any redeveloper constructing more than three (3) residential units shall provide 10 percent of the total residential units redeveloped on the site as affordable units pursuant to COAH regulations. Alternatively, the developer may construct, rehabilitate or otherwise create an equivalent number of affordable units off-site within the municipality. Finally, a developer may, at the discretion and determination of the Town Council, provide a payment in lieu of construction for each unit, or portion thereof, not constructed on the site. The fee shall be based on the projected cost to develop an equivalent number of affordable units elsewhere in the Town.

(Paragraphs 3, 4 and 5 under Affordable Housing shall remain).

EXHIBIT B

PLANNING BOARD RESOLUTION



*J. Caldwell*  
*J. Credidio*  
*D. Sopway*  
Memorandum

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**To:** Town Council  
Thomas S. Russo, Jr.

**Cc:** Planning Board

**FROM:** Kathy Citterbart, Planning Board Secretary

**DATE:** June 19,, 2014.

**RE: Resolution #108-2014  
Hicks Avenue Redevelopment Plan Amendment**

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At the June 18, 2014 Planning Board meeting the Board reviewed the proposed Hicks Avenue Redevelopment Plan Amendments. The Board found that the proposed Amendments are not inconsistent with the Master Plan and recommended that the Town Council adopt the proposed Amendments with certain recommended revisions which are attached to the Board's resolution.

**RECEIVED**  
JUL 1 1 2014  
BY: .....

**RESOLUTION OF THE PLANNING BOARD OF THE TOWN OF  
NEWTON, IN THE COUNTY OF SUSSEX, NEW JERSEY  
RECOMMENDING THE ADOPTION OF PROPOSED AMENDMENTS  
TO THE HICKS AVENUE REDEVELOPMENT PLAN**

**WHEREAS**, the *Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.* (the "Act"), authorizes municipalities to determine whether certain parcels of land in the municipality constitute areas in need of redevelopment; and

**WHEREAS**, after investigation of a delineated area and recommendation of the Planning Board in accordance with the Act, on December 10, 2007, the Town Council, acting by resolution, designated the area then identified on the official tax map of the Town as Block 1309, Lots 1, 1.01, 2, 6, 8, 9, 41 and 42, along with all public roadways and right of ways appurtenant thereto as an area in need of redevelopment (collectively, the "Redevelopment Area"); and

**WHEREAS**, on December 22, 2008, after review and comment by the Town's Planning Board in accordance with the Act, the Town, acting by Ordinance, enacted a redevelopment plan for the Redevelopment Area (the "Initial Redevelopment Plan"); and

**WHEREAS**, due to changes in the national, regional and local economies occurring since the time of adoption of the Initial Redevelopment Plan, the Town wishes to consider the addition of alternative uses and standards to the Redevelopment Plan in order to provide additional options for the revitalization of the Redevelopment Area; and

**WHEREAS**, in accordance with the Act, the Town has prepared a proposed amendment to the Redevelopment Plan, which is attached hereto as Exhibit A (the "Proposed Amendments"); and

**WHEREAS**, by Resolution 108-2014 adopted June 9, 2014, the Town requested that the Planning Board review and comment on the Proposed Amendments to the Redevelopment Plan; and

**WHEREAS**, at a duly noticed and constituted public meeting of the Planning Board held on June 18, 2014, the Planning Board considered the Proposed Amendments; and

**WHEREAS**, after due consideration of the Proposed Amendments, the Planning Board has determined that they are consistent with the Town's Master Plan, and wishes to recommend to the Town Council that adopt the Proposed Amendments with certain recommended revisions which are set forth at Exhibit B attached hereto (the "Revised Proposal").

**NOW THEREFORE, BE IT RESOLVED** by the Planning Board of the Town of Newton as follows:

**Section 1.** Recommendation – Adoption of Proposed Amendments. The Planning Board hereby recommends to the Town Council that the Revised Proposal, consisting of the

Proposed Amendments attached hereto as Exhibit A, and the recommended revisions enumerated in Exhibit B, be adopted as an amendment to the Initial Redevelopment Plan. The Planning Board hereby finds and determines that both the Proposed Amendments and the Revised Proposal are consistent with the Town's Master Plan.

**Section 2.** Transmission to the Town Council. The Planning Board Secretary is hereby directed to transmit a copy of this Resolution to the Town Council. This Resolution shall serve as the Report to the Town Council required by Section 7 of the Act.

**Section 3.** Effective Date. This Resolution shall take effect immediately.

The above is hereby certified to be a true and complete copy of a Resolution adopted by the Planning Board of the Town of Newton on the 18<sup>th</sup> day of June, 2014.

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Gregory LeFrois  
Planning Board Chair

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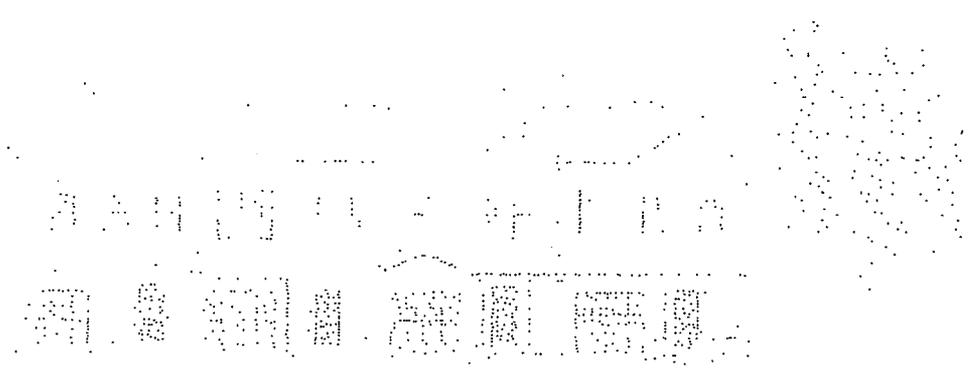
Kathy Citterbart  
Planning Board Secretary

**EXHIBIT A**

**PROPOSED AMENDMENTS**

**HICKS AVENUE  
REDEVELOPMENT PLAN  
AMENDMENT**

**TOWN OF NEWTON  
SUSSEX COUNTY, NEW JERSEY**



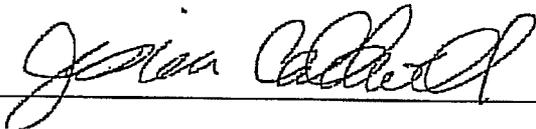
**JUNE 2014**

 **J Caldwell**  
& ASSOCIATES LLC  
PLANNING CONSULTING SERVICES

**HICKS AVENUE REDEVELOPMENT PLAN AMENDMENT  
TOWN OF NEWTON, SUSSEX COUNTY**

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Jessica Caldwell, P.P., A.I.C.P., Town Planner, P.P. # 5944

## **PLAN CONSISTENCY REVIEW**

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### **BACKGROUND**

The Hicks Avenue Redevelopment Plan (the "Plan") governs the Town of Newton Redevelopment Area (the "Area") located on the northeastern corner of Sparta Avenue and Hicks Avenue. Notice was sent to property owners within the Area on November 21, 2007, pursuant to *DeRose v. Town of Harrison*. The Area was recommended to be designated as an Area in Need of Redevelopment by the Town of Newton Planning Board on December 6, 2007, pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Redevelopment Law"). The Area was designated an Area in Need of Redevelopment by the Town Council on December 10, 2007. The Plan for the Area, which established superseding zoning, was adopted by the Town Council on December 22, 2008.

The Plan Area includes eight (8) tax lots in Block 24.02 (former Block 1309), including portions of the adjacent street rights-of-way of Sparta Avenue, Hicks Avenue and Smith Street. The Town of Newton has updated tax lot numbers since the adoption of the original Hicks Avenue Redevelopment Plan. The new lot and block numbers for the parcels located in the Plan Area are: Block 24.02, Lots 1, 2, 3, 4, 5, 6, 7 and 8 (former Block 1309, Lots 1.01, 1, 2, 41, 9, 6, 8 and 42, respectively). The Plan Area comprises approximately 13.65 acres.

The purpose of the plan amendment is to provide for an updated design concept for the Redevelopment Area. The original plan contemplated townhouses with rear access garages, a mixed-use building and an apartment building. This proposed plan amendment continues to propose townhouses; however with garage access in the front yard. The mixed-use/apartment building area along Sparta Avenue will be permitted to contain a free-standing commercial building. Additionally, this Plan Amendment will permit certain single family residential uses that exist in the area to remain as permitted uses. The mandatory stormwater recapture and use for irrigation or other non-potable uses are proposed to be revised to be optional as well. The prior development concepts will remain permitted, simply allowing for additional design options for potential redevelopers.

## AMENDMENTS TO THE REDEVELOPMENT PLAN

The Redevelopment Plan (the "Plan") contemplates the potential for amendments to the Plan. At Section 9.1 of the Redevelopment Plan, it states, "As development occurs within the Area, development priorities and market demands may change. This Plan should have the ability to meet the changing needs of market demand, the Town of Newton and its citizens. Amendments may be required in order to accommodate these changes." The amendments proposed are to provide for changing market demands and an increase in the amount of available water in the Town, reducing the need for grey water conservation methods.

It has been more than five years since the Redevelopment Plan was adopted. There is insufficient market demand for the types of units proposed in the original plan because the cost of providing rear entry garages is increased because of the need to provide a rear access lane as well as the neighborhood street. The rear entry garages also minimize the size of rear yards, where the development community has requested the ability to provide larger rear yards. Additionally, the area has sufficient residential proposed to not necessarily need the retail uses to be mixed-use, providing for the ability to allow a stand-alone commercial use or commercial building with multiple commercial uses. This Plan Amendment provides for a greater variety of building types, while maintaining the spirit of the original plan, both in terms of the layout and architectural design.

The requirement for mandatory re-use of stormwater on the site may also be cost prohibitive for potential redevelopers. The original need for this water recycling program was due to a limited amount of available water in the Town's water allocation. The Town has undertaken a leak detection program and has recovered more than 20 percent of water previously lost to leaks in the system. This has lessened the need for mandatory water recycling, providing for the potential for this provision to be optional in the Plan.

The proposed Plan Amendment is generally consistent with the stated goals of the Plan. For example, the first goal in the Plan is to "eliminate the incongruous land uses within the Area and between the designated Area and surrounding environs, eliminating blighting influences." This Plan Amendment continues this goal by providing for a greater likelihood of redevelopment occurring. This Plan Amendment is also generally consistent with the Master Plan of the Town of Newton. For example, one of the general goals from the Master Plan is "to promote a desirable visual environment through creative development techniques and good civic design and arrangement." The proposed Plan Amendment encourages good design, building arrangement and provides for high quality residential and commercial uses in a currently abandoned industrial area. For these reasons, the proposed Plan Amendment is generally consistent with the stated goals of the Plan, the goals of the Town of Newton Master Plan and State Development and Redevelopment Plan. One goal from the Redevelopment Plan must be amended slightly to permit the option of a stormwater recapture system on the site, rather than a mandatory system.

Based upon the foregoing, it is recommended that the following amendments be made to the Hicks Avenue Redevelopment Plan. If there is a conflict between any of the amended provisions proposed below and existing provisions in the Plan, the amended provisions shall govern. With the exception of the foregoing, all other provisions of the Plan not specifically modified by this Plan Amendment shall remain unmodified.

## **HICKS AVENUE REDEVELOPMENT PLAN AMENDMENT**

---

**At Section 1.2, Local Context Map, on page 7, the last paragraph shall include the following:**

The Redevelopment Plan also permits a neighborhood center concept that includes a combination of townhouses, single family residential on existing lots and free-standing commercial uses or a commercial building with multiple commercial spaces. Development layouts, site and circulation plans and building graphics within the Plan are conceptual in nature and subject to final engineering and architectural design by an applicant, subject to approval by the Planning Board.

**At Section 1.7, Goals of the Plan, on page 12, Goal 18 shall be replaced with the following:**

18. To encourage environmental sustainability through the optional creation of a Potable Water Conservation Program, by which stormwater is recaptured, stored and used for landscape irrigation, car washing, and non-potable use within the dwelling units, retail or commercial structures.

**At Section 1.7 Goals of the Plan, on page 12, Redevelopment Objectives, under Section 1, the following sentence shall be added:**

1. A Redeveloper is not required to assemble all parcels in the Area prior to undertaking a redevelopment project.

**At Section 1.9, Illustrative Site Plan, the second and third paragraphs on page 14 and first paragraph on page 15 shall be deleted and replaced with the following:**

The Illustrative Site Plan provides one option for redevelopment of the Area. This Redevelopment Plan permits a density of up to 20 residential units per buildable acre. The total number of units ultimately constructed will depend on the amount of land allocated for residential uses and the total acreage of land proposed to be redeveloped by an applicant. The Plan provides one alternative that shows townhouses with rear access drives, a mixed-use building and a multi-family residential building and an alternative plan permitted by this Redevelopment Plan is for townhouses with garage access in front of the buildings, single family residential remaining or constructed on individual lots and free-standing commercial buildings with one or more commercial uses.

**At Section 2.2 Environmental Conditions, page 19, the final paragraph under the heading "Site Contamination" shall be deleted and replaced with the following:**

Prior to any construction on the site, the Municipality must receive from the redeveloper any and all supporting data which the Municipality deems necessary to validate that any contamination on the site has been remediated, or will be remediated during construction pursuant to an NJDEP approved site remediation plan.

**At Section 2.4 Circulation & Utilities, page 21, the third to the last paragraph entitled "Stormwater" shall be deleted and replaced with the following:**

The stormwater management on this development site will be in accordance with the Residential Site Improvement Standards and Newton's Stormwater Control Ordinance.

**At Section 3.0 Definitions, page 24 and 25, the definitions for Design Professional, Density and Potable Water Conservation Program should be deleted and replaced with the following:**

**Design Professional** – A practicing Licensed Professional Planner or Architect that has experience with redevelopment plans in general and form-based zoning.

**Density** – The number of dwelling units permitted per buildable acre within the Redevelopment Area. Buildable land is exclusive of constraints from wetlands and wetland buffers. Where a Redeveloper is able to obtain an NJDEP permit to build within regulated areas, those areas shall be deemed buildable for purposes of density.

**Potable Water Conservation Program** – An optional program prepared by the developer by which stormwater is recaptured, stored and used for non-potable use, such as landscape irrigation, car washing and flushing toilets.

**At Section 4.1 Land Use Regulations, Permitted Uses, Section 1, page 28, Residential Uses should be deleted and replaced with the following:**

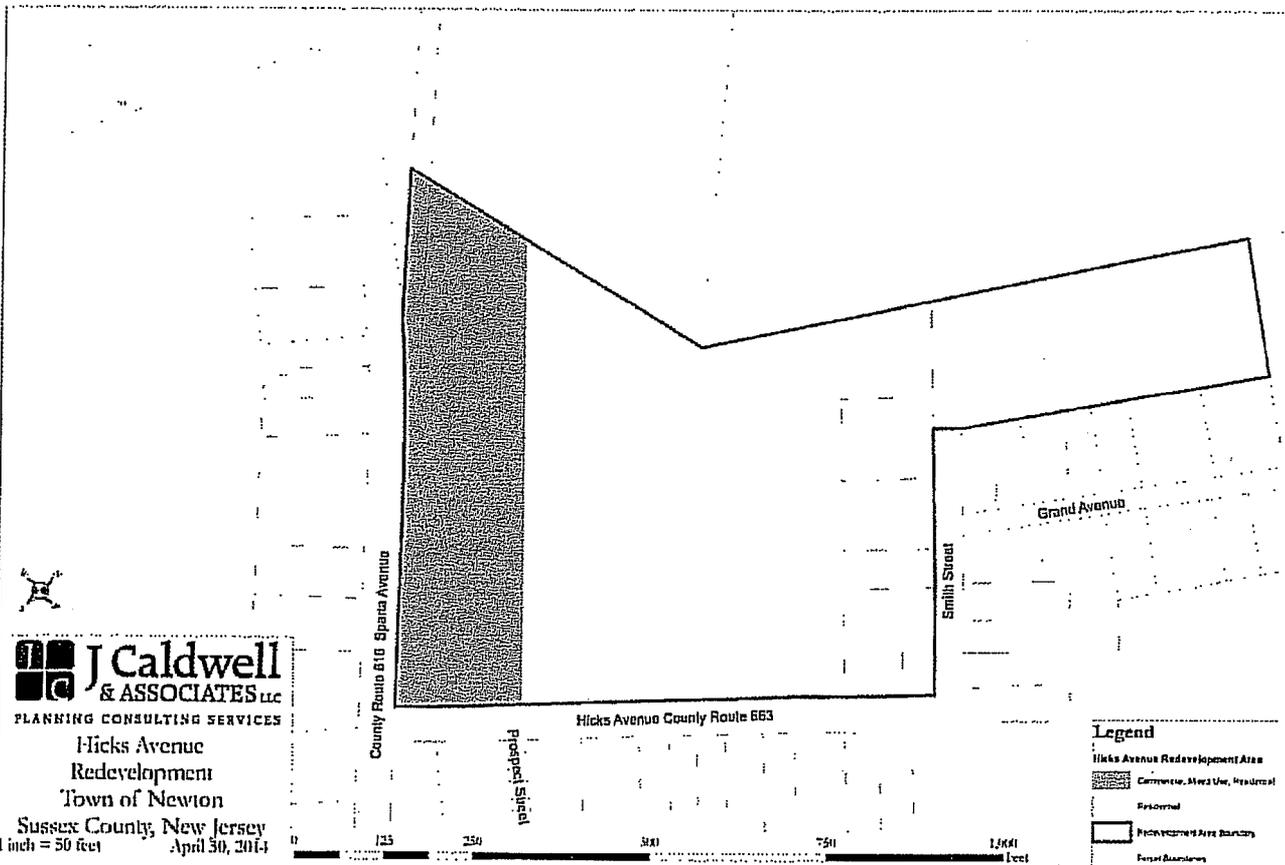
1. **Residential:** Includes premises available for long-term human habitation; excludes all boarding houses and rooming houses. Residential uses are limited to attached townhouses, paired villas (duplexes), multi-family flats, residential above mixed-use commercial and single-family dwellings.

**At Section 4.1 Land Use Regulations, Permitted Uses, page 28, delete and replace paragraph for as follows and add paragraph 5, Commercial Uses as follows:**

4. **Open Spaces, Park and Playgrounds:** Public or private open space and/or recreational areas that may include passive and/or active recreational facilities such as pedestrian walkways, bike paths, pedestrian-scaled lighting, benches, picnic areas, playground equipment and/or trash receptacles (wild-life proof).
5. **Commercial:** Free-standing commercial structures with one or more commercial uses. Permitted commercial uses include all Commercial Retail Service Uses and Business/Office/Professional Uses permitted in the T-4 Neighborhood Services Zone of the Newton Form-Based Code. The Accessory Uses in the T-4 Neighborhood Services Zone are also permitted within the Redevelopment Area as appropriate, with commercial accessory uses in the commercial area and residential accessory uses in the residential area.

At Section 4.1 Land Use Plan, page 29, delete the entire section and replace with the following:

The Land Use Plan for the area includes a 200-foot deep section along Sparta Avenue that permits commercial, mixed-use and residential uses. This area is shown in lavender below. The remainder of the Area, shown in yellow, is slated for residential development. Parking areas and access for the mixed-use/commercial zone of the Area may be located in the residential zone. The boundary between the two zones may be flexed 50 feet in either direction to facilitate a variety of layouts. (The areas flexed need not be the entire length of the boundary).



**At Section 5.2 Mobility Regulations, page 33, the first and second paragraphs shall be deleted and replaced with the following:**

This section provides a conceptual circulation and parking plan for the development. The development must meet New Jersey Site Residential Improvement Standards for the residential portion of the development and is subject to Planning Board approval for the commercial/mixed-use portion of the development.

**Section 5.4 Thoroughfare Overview, page 36, the following discussion shall be added at the end of the page:**

An alternate street layout may be designed to minimize pavement and impervious surfaces throughout the development. This layout would apply to the interior of the development. Streetscapes and sidewalks along Sparta Avenue, Hicks Avenue and Smith Street would remain as shown. The alternate street layout would permit a redeveloper to propose an internal residential street with a 24 foot-wide pavement width and four (4) foot sidewalk on one side of the street. All parking would be off-street parking including parking for both commercial and residential units. Residential units must have off-street guest parking provided along with the minimum parking required by New Jersey Residential Site Improvement Standards.

**At Section 5.7 Pedestrian Circulation Plan, page 45, the following shall be added to the end of the page:**

Examples of possible modifications to the pedestrian plan include: sidewalks on one side of the street within the development, six (6) foot sidewalks around the commercial building and a combined pedestrian walkway and rail trail bike path along Sparta Avenue in lieu of a sidewalk along Sparta Avenue.

**At Section 6.2 Bulk & Setback Regulations, page 49, the bulk standards shall be deleted and replaced with the following:**

**Density:** The density of the Area must not exceed 20 dwelling units per buildable acre of development area.

**Lot Sizes:** Lot sizes may vary depending on the building type and layout of the redevelopment. Lot sizes will be a function of building size plus required setbacks. Alternatively, the Area, or a portion thereof, may be redeveloped as one lot with multiple structures and uses. In this case, setbacks will be measured from exterior lot lines. Pre-existing residential uses on individual lots shall be deemed to be conforming as they exist at the time of the adoption of this Plan and may be reconstructed within the same footprint on the existing lot. Future additions or redevelopment of those lots shall follow the bulk standards set forth herein.

**Setbacks:** Setbacks are the distance between the property line and the outer edge of the building wall, expressed in feet.

**Front yard setback: (measured from the building wall to ROW or edge of pavement)**

- Residential: 12' min. (garage in rear/ off-street parking) / 26' min. (garage in front)
- Multi-family: 15' min.
- Mixed-use: 15' min.
- Commercial: 15' min.

**Side yard setback:**

- Residential: 6' min. to property line
- Residential: 22' min. between buildings
- Multi-family: 10' min.
- Mixed-use: 15' min.
- Commercial: 15' min.

**Rear yard setback:**

- Residential: 8' min.
- Residential: 22' min. between buildings
- Multi-family: 10' min.
- Mixed-use: 10' min.
- Commercial: 10' min.

**Encroachments:** Encroachment is the distance beyond the setback lines that certain building elements can protrude, expressed in feet. Building elements which may encroach include, but are not necessarily limited to: overhangs, steps, porches, balconies, bay and box windows, decks, etc.

- Front yard encroachment: 6 feet max.
- Rear yard encroachment: 6 feet max.
- Side yard encroachment: 4 feet max.

**Driveways/Aprons:** Residential driveways shall be constructed of concrete, pavers, or similar materials. Access drives to commercial and multi-family structures may be asphalt.

**At Section 6.3 Minimum and Maximum Height Regulations, page 50, this section shall be deleted and replaced with the following:**

Maximum and minimum height requirements are expressed as a combination of stories and height in feet as follows:

- Residential: 3 stories and 40 feet max.
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- Commercial: 3 stories and 40 feet max.

At Section 6.4 Building Mass, page 51, the third paragraph shall be deleted and replaced with the following paragraph:

The development must address the provision of affordable housing units to meet NJ Council on Affordable Housing (COAH) regulations at the time of site plan approval. All COAH units must meet all COAH regulations.

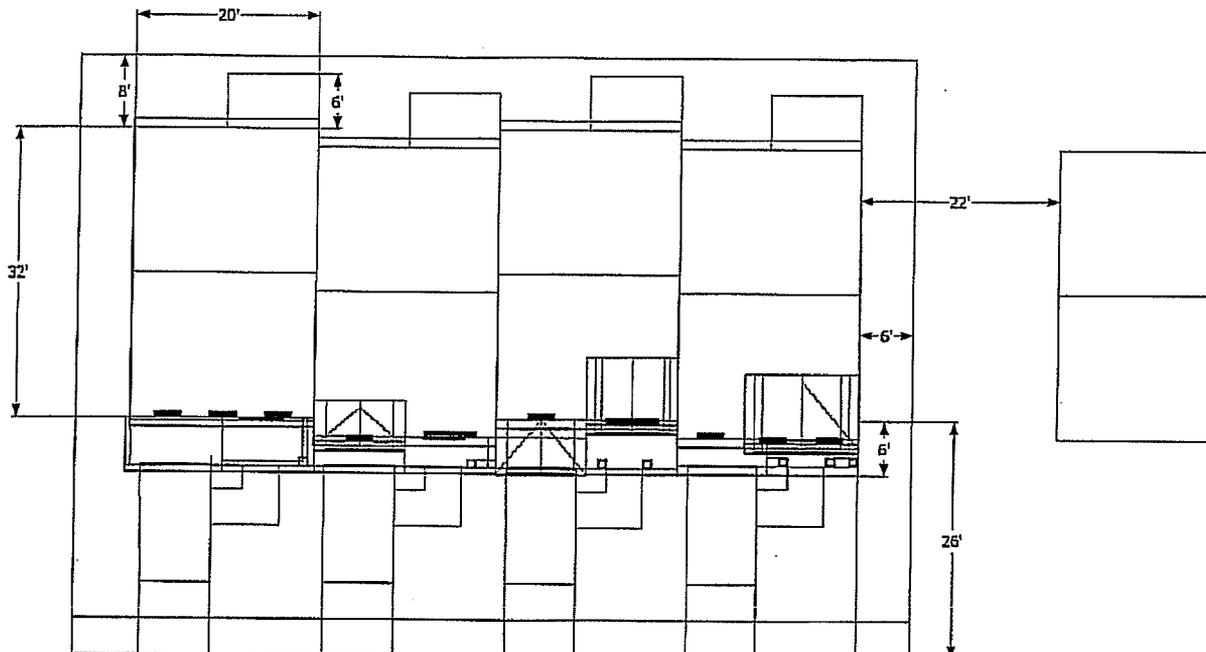
At Section 6.6 Building Typologies, page 55, add the following:

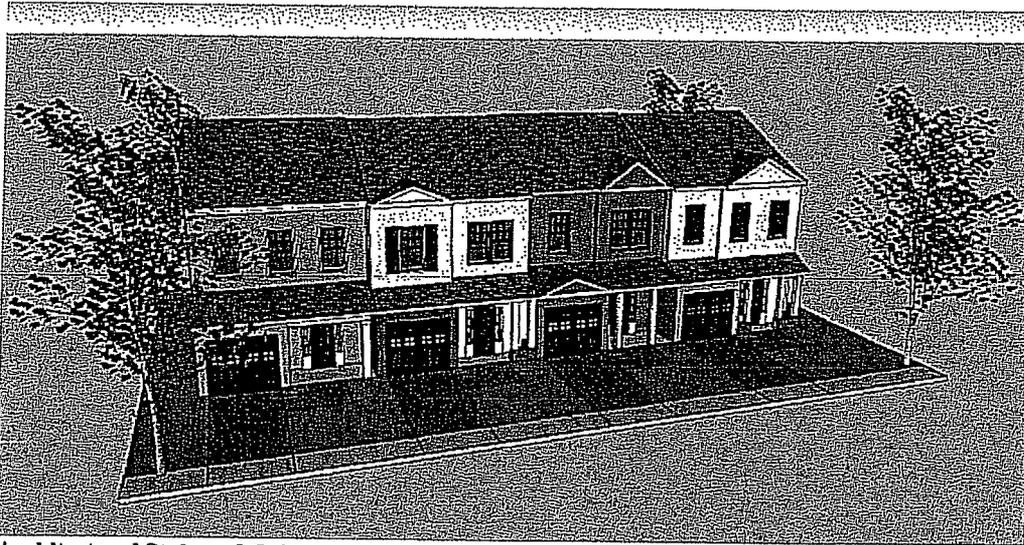
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The Multi-Family and Mixed-Use building typologies shall also be changed to encompass commercial use buildings by changing the titles to Multi-Family/Commercial and Mixed-Use/Commercial

At Section 6.7.1 Architectural Style: Townhouse, page 57, the following photos shall be added:



**At Section 6.8 Façade Regulations, page 60, delete and replace Item 1 and delete Item 13 as shown below.**

1. To create individuality within a proposed residential development, there must be a minimum of three distinct façade designs for single family or townhouse building types, when multiple units are proposed. The three or more façade designs should be alternated within each building to provide for individuality of units and break-up long buildings. Façade colors, materials and accents should be alternated throughout the development.

~~13. Ground level retail/commercial facades fronting along Sparta Avenue and/or Hicks Avenue must be of at least 60% void area (windows and other openings).~~

**At Section 6.10 Building Entrance, Balcony, and Porch Regulations, page 62, delete Items 2 and 5 shown below:**

~~2. Every unit shall have a usable front porch and/or a second floor balcony. Porch steps must match the materials used in the porch.~~

~~5. The finished floor of the ground level of buildings shall be raised a minimum of 2 feet and a maximum of 3 feet above the grade of the front plain of each primary structure. Porches and stairs shall connect the building to walkway.~~

**At Section 6.11 Building Signage and Lighting Standards, page 64, delete the second paragraph and add the following:**

All proposed signs within the redevelopment area shall conform to the sign regulations of the Town's Form-Based Code for the T-4 Neighborhood Services Zone.

**At Section 6.12 Building Parking Standards, page 64, the second paragraph shall be replaced with the following:**

6. Garages: Garages may be built to accommodate one or two cars and may be built with a second floor or loft above.

**At Section 6.13 Green Building Standards, page 66, delete Item 4 and replace with the following:**

Stormwater Detention and Reuse: In order to mitigate the impact of stormwater on the existing infrastructure and limited potable water resources, new development is encouraged to create a Potable Water Conservation Program using stormwater detention, collection and re-use for non-potable uses such as irrigation, washing cars and flushing toilets, thereby reducing demands on potable water.

At Section 7.2 General Requirements, page 71, delete Item 4 and Item 7 and replace with the following:

4. All yard spaces shall be landscaped with trees, shrubs, perennials and ground cover.
7. All landscaped area must be well maintained, cleared, clipped and pruned to provide a positive healthy visual character.

At Section 7.3 Streetscape Requirements, page 73, delete Item 4 and replace with the following:

4. If a planter strip is provided between the sidewalk and the curb, it shall be a minimum of 1'6" wide and shall contain plantings or textured pavers. Alternatively, sidewalks may be installed flush with the curb and street trees planted on the yard side of the sidewalks.

At Section 7.3 Streetscape Requirements, page 73, delete Item 5 shown below:

- ~~5. The area between the curb and ROW edge together must equal a combined minimum width of eight (8) feet. The remaining width of two (2) feet will be between the sidewalk and ROW edge, in effect lengthening the front yards of properties. Street trees are to be planted within this area. Street trees may also be planted in bumpouts.~~

At Section 7.3 Streetscape Requirements, page 73, add Item 11 as follows:

11. Where rear residential yards abut an exterior street, an evergreen buffer shall be planted along the street side of the units, in a staggered pattern to provide year-round buffering for the residences. The buffer width, design and tree species shall be subject to Planning Board approval.

At Section 7.4 Yard Landscape Requirements, page 74, Items 2 and 9 shall be deleted and replaced as follows:

2. Every building shall have direct access from the access drive, driveway or sidewalk to the primary pedestrian ingress and egress of a building by way of a walkway. Materials of the walkway shall compliment the color and design of the building and the sidewalks.
9. Yards must have a minimum number of landscape features:
  - Two (2) canopy trees per building (in addition to street trees); and
  - Foundation shrubs: five (5) per building (or unit for townhouses) along the front façade.

At Section 7.5 Signage Requirements, page 75, the section shall be deleted and replaced with the following:

All proposed signs within the redevelopment area shall conform to the sign regulations of the Town's Form-Based Code for the T-4 Neighborhood Services Zone.

**At Section 8.2 General Utilities Requirements, page 83, delete Item 3 and Item 7 and replace with the following:**

3. Stormwater Management in accordance with Residential Site Improvement Standards, N.J.A.C. 5:21-6 and the Town of Newton Stormwater Control Ordinance, Chapter 258 of the Code of the Town of Newton.
7. Snow Removal: Adequate facilities shall be provided for the removal of snow from the common areas.

**Section 8.3 Stormwater Management, page 84, the following paragraph shall be deleted as shown below:**

~~A Potable Water Conservation Program must be developed as part of the Plan (see page 25). Sustainable techniques to address and utilize stormwater runoff must be included in the Plan (unless the developer receives a waiver from the Planning Board). These techniques would include the construction of green roofs, water cisterns and the use of stored water for irrigation and other non-potable uses. Such techniques would mitigate the effects of stormwater runoff and lessen the volume needed in stormwater detention facilities, but as significantly, would mitigate the demands on the allocation of limited potable water resources from the Town.~~

**At Section 9.2 Plan Consistency Review, page 88, the following shall be added to the final paragraph:**

The Plan Amendment is determined to not be in conflict with the Master Plans of Andover Township, Fredon Township or Hampton Township.

**At Section 9.3 Redevelopment Plan Implementation, page 90, Item 5 shall be deleted and replaced with the following:**

5. Once a property has been redeveloped in accordance with the Redevelopment Plan, it may not be converted to any use not expressly permitted in this Redevelopment Plan. Pre-existing residential uses on individual lots shall be deemed to be conforming as they exist at the time of the adoption of this Plan Amendment and be re-constructed within the same building footprint on the existing lot. Future additions or redevelopment of those lots must conform to the standards of this Redevelopment Plan. Except as previously noted, a use or structure not conforming to the requirements of this Redevelopment Plan may not be reconstructed in the event of its destruction. The Planning Board shall determine the issue of whether the non-conforming use or building has been "destroyed".

**At Section 9.4 Schedule and Duration of the Plan, page 91, under the title "Phasing", Items A and B shall be deleted and replaced with the following:**

Phasing Plan: Any applicant seeking to develop properties located within this Redevelopment Plan that is planning on phasing the development must submit a Phasing Plan for review and approval by the Newton Planning Board.

**At Section 9.4 Schedule and Duration of the Plan, page 91, under the title “Certificates of Completion and Compliance”, shall be deleted and replaced with the following:**

Upon the inspection of the verification the Redevelopment Entity that the redevelopment of a parcel has been completed pursuant to the Redevelopment Agreement, a Certificate of Completion and Compliance shall be issued to the Redeveloper as such parcel shall be deemed no longer in need of redevelopment.

The Redevelopment Plan, as it may be amended from time to time, shall be in full force and effect upon its adoption by ordinance by the Town Council of the Town of Newton.

**At Section 9.5 Affordable Housing, page 92, paragraph 2 titled Affordable Housing shall be deleted and replaced with the following:**

**Affordable Housing**

Any redeveloper constructing more than three (3) residential units shall provide 10 percent of the total residential units redeveloped on the site as affordable units pursuant to COAH regulations. Alternatively, the developer may construct, rehabilitate or otherwise create an equivalent number of affordable units off-site within the municipality. Finally, a developer may, at the discretion and determination of the Town Council, provide a payment in lieu of construction for each unit, or portion thereof, not constructed on the site. The fee shall be based on the projected cost to develop an equivalent number of affordable units elsewhere in the Town.

(Paragraphs 3, 4 and 5 under Affordable Housing shall remain).

## EXHIBIT B

### **REVISED PROPOSAL – SUMMARY OF RECOMMENDED REVISIONS**

1. Revise Section 6.2 on page 7 to clarify that all driveway aprons in all projects be they residential, commercial or multi-family be constructed of concrete, and that driveways may be constructed of either concrete, pavers or asphalt, however whatever material is chosen by the redeveloper for driveways must be used uniformly through the project. This revision should be made in the Proposed Amendments and if other areas of the Initial Redevelopment Plan need to be amended to accomplish this revision they should also be included in the final Plan Amendment.
  
2. Revise the language regarding affordable housing (a.k.a. COAH) requirements in Section 6.4 on page 8 and Section 9.5 on page 13, by clarifying the language in Section 6.4 to designate the Hicks Avenue Redevelopment Area as an Inclusionary Development and then replace the existing Section 9.5 language with the revised Section 6.4 language. This revision should be made in the Proposed Amendments and if other areas of the Initial Redevelopment Plan need to be amended to accomplish this revision they should also be included in the final Plan Amendment.
  
3. There are a number of areas where the use of a potable water conservation program (a.k.a. “gray water system”) is discussed as a design option. As the Board is concerned with the Town’s past issues with water usage and availability, the Board recommends that a gray water system should be a mandatory design requirement. However, the Board is inclined to consider a waiver from this design requirement if a redeveloper can show the inclusion of, and effectiveness of other water conservation and/or water reuse measures, or a combination of measures, such as low flow fixtures, rainwater cisterns to be used for outside water usage, and private wells. This revision should be made in the Proposed Amendments and if other areas of the Initial Redevelopment Plan need to be amended to accomplish this revision they should also be included in the final Plan Amendment.

EXHIBIT C

PLAN AMENDMENTS

**HICKS AVENUE  
REDEVELOPMENT PLAN  
AMENDMENT  
TOWN OF NEWTON  
SUSSEX COUNTY, NEW JERSEY**



**JULY 2014**

 **J Caldwell**  
& ASSOCIATES LLC  
PLANNING CONSULTING SERVICES

**HICKS AVENUE REDEVELOPMENT PLAN AMENDMENT  
TOWN OF NEWTON, SUSSEX COUNTY**

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Jessica Caldwell, P.P., A.I.C.P, Town Planner, P.P. # 5944

## **PLAN CONSISTENCY REVIEW**

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### **BACKGROUND**

The Hicks Avenue Redevelopment Plan (the “Plan”) governs the Town of Newton Redevelopment Area (the “Area”) located on the northeastern corner of Sparta Avenue and Hicks Avenue. Notice was sent to property owners within the Area on November 21, 2007, pursuant to *DeRose v. Town of Harrison*. The Area was recommended to be designated as an Area in Need of Redevelopment by the Town of Newton Planning Board on December 6, 2007, pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the “Redevelopment Law”). The Area was designated an Area in Need of Redevelopment by the Town Council on December 10, 2007. The Plan for the Area, which established superseding zoning, was adopted by the Town Council on December 22, 2008.

The Plan Area includes eight (8) tax lots in Block 24.02 (former Block 1309), including portions of the adjacent street rights-of-way of Sparta Avenue, Hicks Avenue and Smith Street. The Town of Newton has updated tax lot numbers since the adoption of the original Hicks Avenue Redevelopment Plan. The new lot and block numbers for the parcels located in the Plan Area are: Block 24.02, Lots 1, 2, 3, 4, 5, 6, 7 and 8 (former Block 1309, Lots 1.01, 1, 2, 41, 9, 6, 8 and 42, respectively). The Plan Area comprises approximately 13.65 acres.

The purpose of the plan amendment is to provide for an updated design concept for the Redevelopment Area. The original plan contemplated townhouses with rear access garages, a mixed-use building and an apartment building. This plan amendment continues to propose townhouses; however with garage access in the front yard. The mixed-use/apartment building area along Sparta Avenue will be permitted to contain a free-standing commercial building. Additionally, this Plan Amendment will permit certain single family residential uses that exist in the area to remain as permitted uses. The mandatory stormwater recapture and use for irrigation or other non-potable uses are to be revised to be optional as well. The prior development concepts will remain permitted, simply allowing for additional design options for potential redevelopers.

## **AMENDMENTS TO THE REDEVELOPMENT PLAN**

The Redevelopment Plan (the “Plan”) contemplates the potential for amendments to the Plan. At Section 9.1 of the Redevelopment Plan, it states, “As development occurs within the Area, development priorities and market demands may change. This Plan should have the ability to meet the changing needs of market demand, the Town of Newton and its citizens. Amendments may be required in order to accommodate these changes.” The amendments are to provide for changing market demands and an increase in the amount of available water in the Town, reducing the need for grey water conservation methods.

It has been more than five years since the Redevelopment Plan was adopted. There is insufficient market demand for the types of units proposed in the original plan because the cost of providing rear entry garages is increased because of the need to provide a rear access lane as well as the neighborhood street. The rear entry garages also minimize the size of rear yards, where the development community has requested the ability to provide larger rear yards. Additionally, the area has sufficient residential proposed to not necessarily need the retail uses to be mixed-use, providing for the ability to allow a stand-alone commercial use or commercial building with multiple commercial uses. This Plan Amendment provides for a greater variety of building types, while maintaining the spirit of the original plan, both in terms of the layout and architectural design.

The requirement for mandatory re-use of stormwater on the site may also be cost prohibitive for potential redevelopers. The original need for this water recycling program was due to a limited amount of available water in the Town’s water allocation. The Town has undertaken a leak detection program and has recovered more than 20 percent of water previously lost to leaks in the system. This has lessened the need for mandatory water recycling, providing for the potential for this provision to be optional in the Plan.

The Plan Amendment is generally consistent with the stated goals of the Plan. For example, the first goal in the Plan is to “eliminate the incongruous land uses within the Area and between the designated Area and surrounding environs, eliminating blighting influences.” This Plan Amendment Continues this goal by providing for a greater likelihood of redevelopment occurring. This Plan Amendment is also generally consistent with the Master Plan of the Town of Newton. For example, one of the general goals from the Master Plan is “to promote a desirable visual environment through creative development techniques and good civic design and arrangement.” The Plan Amendment encourages good design, building arrangement and provides for high quality residential and commercial uses in a currently abandoned industrial area. For these reasons, the Plan Amendment is generally consistent with the stated goals of the Plan, the goals of the Town of Newton Master Plan and State Development and Redevelopment Plan. One goal from the Redevelopment Plan must be amended slightly to permit the option of a stormwater recapture system on the site, rather than a mandatory system.

Based upon the foregoing, the following amendments are made to the Hicks Avenue Redevelopment Plan. If there is a conflict between any of the amended provisions below and existing provisions in the Plan, the amended provisions shall govern. With the exception of the foregoing, all other provisions of the Plan not specifically modified by this Plan Amendment shall remain unmodified.

## **HICKS AVENUE REDEVELOPMENT PLAN AMENDMENT**

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**At Section 1.2, Local Context Map, on page 7, the last paragraph shall include the following:**

The Redevelopment Plan also permits a neighborhood center concept that includes a combination of townhouses, single family residential on existing lots and free-standing commercial uses or a commercial building with multiple commercial spaces. Development layouts, site and circulation plans and building graphics within the Plan are conceptual in nature and subject to final engineering and architectural design by an applicant, subject to approval by the Planning Board.

**At Section 1.7, Goals of the Plan, on page 12, Goal 18 shall be replaced with the following:**

18. To encourage environmental sustainability through the optional creation of a Potable Water Conservation Program, by which stormwater is recaptured, stored and used for landscape irrigation, car washing, and non-potable use within the dwelling units, retail or commercial structures.

**At Section 1.7 Goals of the Plan, on page 12, Redevelopment Objectives, under Section 1, the following sentence shall be added:**

1. A Redeveloper is not required to assemble all parcels in the Area prior to undertaking a redevelopment project.

**At Section 1.9, Illustrative Site Plan, the second and third paragraphs on page 14 and first paragraph on page 15 shall be deleted and replaced with the following:**

The Illustrative Site Plan provides one option for redevelopment of the Area. This Redevelopment Plan permits a density of up to 20 residential units per buildable acre. The total number of units ultimately constructed will depend on the amount of land allocated for residential uses and the total acreage of land proposed to be redeveloped by an applicant. The Plan provides one alternative that shows townhouses with rear access drives, a mixed-use building and a multi-family residential building and an alternative plan permitted by this Redevelopment Plan is for townhouses with garage access in front of the buildings, single family residential remaining or constructed on individual lots and free-standing commercial buildings with one or more commercial uses.

**At Section 2.2 Environmental Conditions, page 19, the final paragraph under the heading "Site Contamination" shall be deleted and replaced with the following:**

Prior to any construction on the site, the Municipality must receive from the redeveloper any and all supporting data which the Municipality deems necessary to validate that any contamination on the site has been remediated, or will be remediated during construction pursuant to an NJDEP approved site remediation plan.

**At Section 2.4 Circulation & Utilities, page 21, the third to the last paragraph entitled “Stormwater” shall be deleted and replaced with the following:**

The stormwater management on this development site will be in accordance with the Residential Site Improvement Standards and Newton’s Stormwater Control Ordinance.

**At Section 3.0 Definitions, page 24 and 25, the definitions for Design Professional, Density and Potable Water Conservation Program should be deleted and replaced with the following:**

Design Professional – A practicing Licensed Professional Planner or Architect that has experience with redevelopment plans in general and form-based zoning.

Density – The number of dwelling units permitted per buildable acre within the Redevelopment Area. Buildable land is exclusive of constraints from wetlands and wetland buffers. Where a Redeveloper is able to obtain an NJDEP permit to build within regulated areas, those areas shall be deemed buildable for purposes of density.

Potable Water Conservation Program – An optional program prepared by the developer by which stormwater is recaptured, stored and used for non-potable use, such as landscape irrigation, car washing and flushing toilets.

**At Section 4.1 Land Use Regulations, Permitted Uses, Section 1, page 28, Residential Uses should be deleted and replaced with the following:**

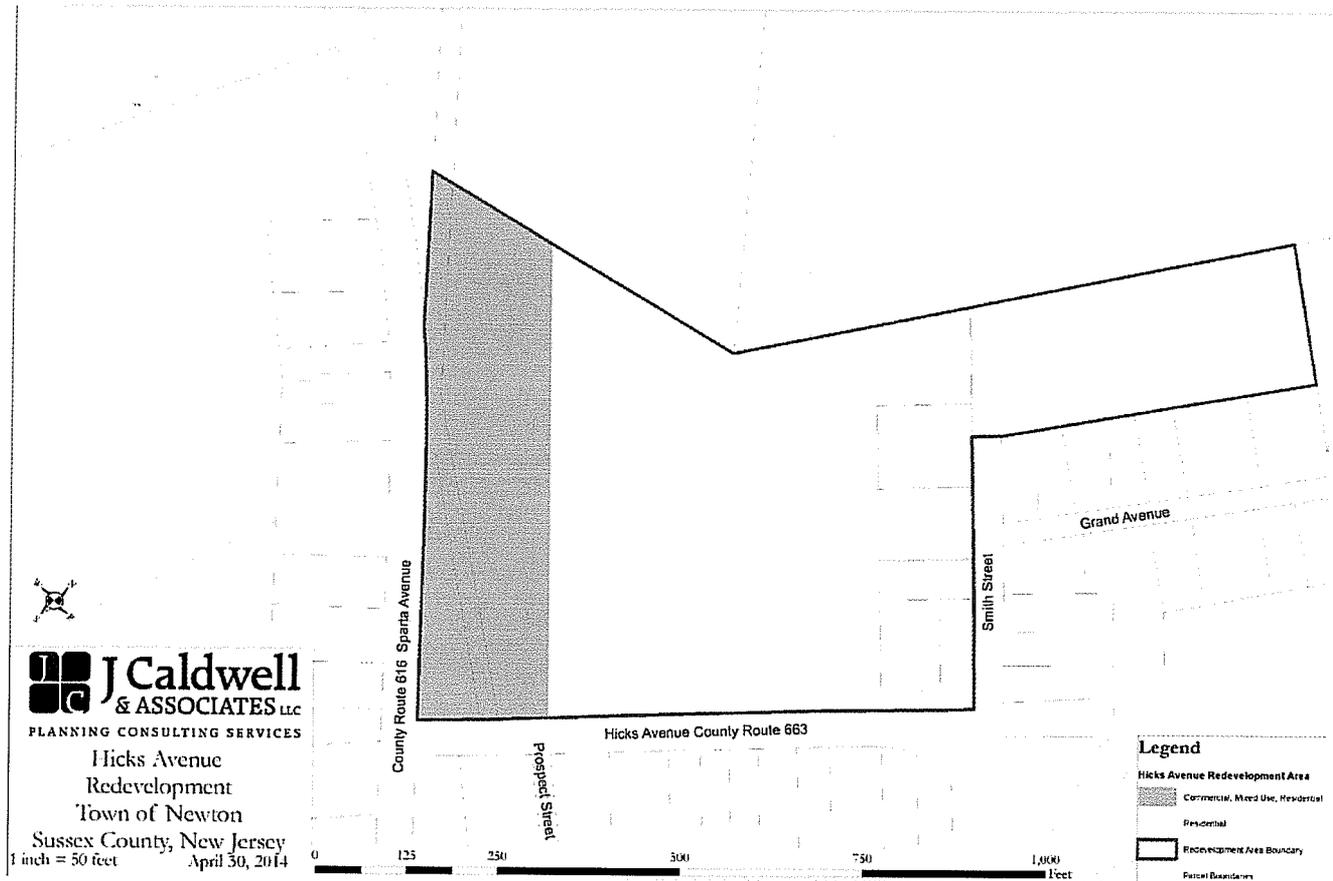
1. Residential: Includes premises available for long-term human habitation; excludes all boarding houses and rooming houses. Residential uses are limited to attached townhouses, paired villas (duplexes), multi-family flats, residential above mixed-use commercial and single-family dwellings.

**At Section 4.1 Land Use Regulations, Permitted Uses, page 28, delete and replace paragraph for as follows and add paragraph 5, Commercial Uses as follows:**

4. Open Spaces, Park and Playgrounds: Public or private open space and/or recreational areas that may include passive and/or active recreational facilities such as pedestrian walkways, bike paths, pedestrian-scaled lighting, benches, picnic areas, playground equipment and/or trash receptacles (wild-life proof).
5. Commercial: Free-standing commercial structures with one or more commercial uses. Permitted commercial uses include all Commercial Retail Service Uses and Business/Office/Professional Uses permitted in the T-4 Neighborhood Services Zone of the Newton Form-Based Code. The Accessory Uses in the T-4 Neighborhood Services Zone are also permitted within the Redevelopment Area as appropriate, with commercial accessory uses in the commercial area and residential accessory uses in the residential area.

At Section 4.1 Land Use Plan, page 29, delete the entire section and replace with the following:

The Land Use Plan for the area includes a 200-foot deep section along Sparta Avenue that permits commercial, mixed-use and residential uses. This area is shown in lavender below. The remainder of the Area, shown in yellow, is slated for residential development. Parking areas and access for the mixed-use/commercial zone of the Area may be located in the residential zone. The boundary between the two zones may be flexed 50 feet in either direction to facilitate a variety of layouts. (The areas flexed need not be the entire length of the boundary).



**At Section 5.2 Mobility Regulations, page 33, the first and second paragraphs shall be deleted and replaced with the following:**

This section provides a conceptual circulation and parking plan for the development. The development must meet New Jersey Site Residential Improvement Standards for the residential portion of the development and is subject to Planning Board approval for the commercial/mixed-use portion of the development.

**Section 5.4 Thoroughfare Overview, page 36, the following discussion shall be added at the end of the page:**

An alternate street layout may be designed to minimize pavement and impervious surfaces throughout the development. This layout would apply to the interior of the development. Streetscapes and sidewalks along Sparta Avenue, Hicks Avenue and Smith Street would remain as shown. The alternate street layout would permit a redeveloper to propose an internal residential street with a 24 foot-wide pavement width and four (4) foot sidewalk on one side of the street. All parking would be off-street parking including parking for both commercial and residential units. Residential units must have off-street guest parking provided along with the minimum parking required by New Jersey Residential Site Improvement Standards.

**At Section 5.7 Pedestrian Circulation Plan, page 45, the following shall be added to the end of the page:**

Examples of possible modifications to the pedestrian plan include: sidewalks on one side of the street within the development, six (6) foot sidewalks around the commercial building and a combined pedestrian walkway and rail trail bike path along Sparta Avenue in lieu of a sidewalk along Sparta Avenue.

**At Section 6.2 Bulk & Setback Regulations, page 49, the bulk standards shall be deleted and replaced with the following:**

**Density:** The density of the Area must not exceed 20 dwelling units per buildable acre of development area.

**Lot Sizes:** Lot sizes may vary depending on the building type and layout of the redevelopment. Lot sizes will be a function of building size plus required setbacks. Alternatively, the Area, or a portion thereof, may be redeveloped as one lot with multiple structures and uses. In this case, setbacks will be measured from exterior lot lines. Pre-existing residential uses on individual lots shall be deemed to be conforming as they exist at the time of the adoption of this Plan and may be reconstructed within the same footprint on the existing lot. Future additions or redevelopment of those lots shall follow the bulk standards set forth herein.

**Setbacks:** Setbacks are the distance between the property line and the outer edge of the building wall, expressed in feet.

**Front yard setback: (measured from the building wall to ROW or edge of pavement)**

- Residential: 12' min. (garage in rear/ off-street parking) / 26' min. (garage in front)
- Multi-family: 15' min.
- Mixed-use: 15' min.
- Commercial: 15' min.

**Side yard setback:**

- Residential: 6' min. to property line
- Residential: 22' min. between buildings
- Multi-family: 10' min.
- Mixed-use: 15' min.
- Commercial: 15' min.

**Rear yard setback:**

- Residential: 8' min.
- Residential: 22' min. between buildings
- Multi-family: 10' min.
- Mixed-use: 10' min.
- Commercial: 10' min.

**Encroachments:** Encroachment is the distance beyond the setback lines that certain building elements can protrude, expressed in feet. Building elements which may encroach include, but are not necessarily limited to: overhangs, steps, porches, balconies, bay and box windows, decks, etc.

- Front yard encroachment: 6 feet max.
- Rear yard encroachment: 6 feet max.
- Side yard encroachment: 4 feet max.

**Driveways/Aprons:** Driveways and Access Drives may be constructed of concrete, pavers, asphalt or similar materials, as approved by the Planning Board. All driveway aprons shall be constructed of concrete.

**At Section 6.3 Minimum and Maximum Height Regulations, page 50, this section shall be deleted and replaced with the following:**

Maximum and minimum height requirements are expressed as a combination of stories and height in feet as follows:

- Residential: 3 stories and 40 feet max.
- Multi-family: 3 stories and 40 feet max.
- Mixed-use: 3 stories and 40 feet max.; 2 story minimum
- Commercial: 3 stories and 40 feet max.

At Section 6.4 Building Mass, page 51, the third paragraph shall be deleted and replaced with the following paragraph:

The development is an inclusionary zone and affordable units must be provided to meet the applicable NJ Council on Affordable Housing (COAH) regulations regarding inclusionary zones at the time of site plan approval. All COAH units must meet all COAH regulations.

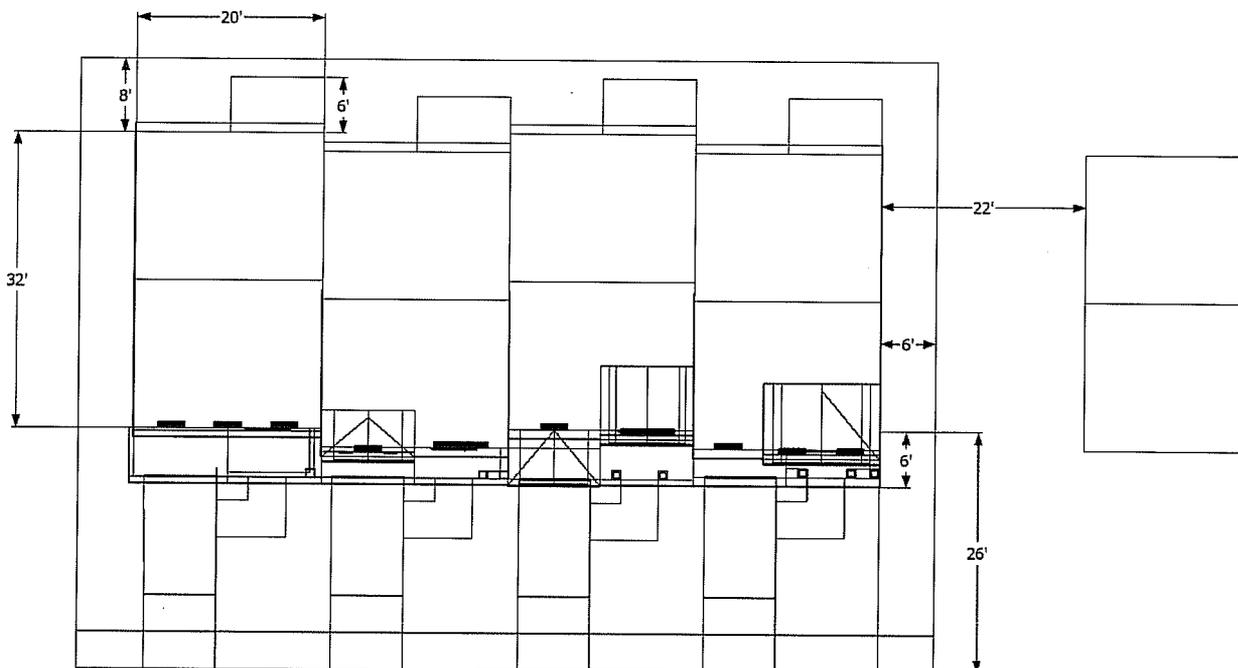
At Section 6.6 Building Typologies, page 55, add the following:

**Townhouse E: 20x32 (garage in front)**

Regulation	Feet
Front Yard Setback	26 min.
Side Yard Setback	6 min. / 22 between buildings
Rear Yard Setback	8 min. / 22 between buildings
Front & Rear Encroachment	6 min.
Side Encroachment	4 min.
Primary Building Footprint	20 x 32*
Accessory Structure Footprint	N/A
Lot Width	Varies
Lot Depth	Varies
Building Height	40 / 3 floors

\*Building footprint size may vary provided that other bulk standards can be met

**Townhouse E: 20 x 32**





Architectural Style and Colors are Illustrative and May Change Subject to Planning Board Approval

The Multi-Family and Mixed-Use building typologies shall also be changed to encompass commercial use buildings by changing the titles to Multi-Family/Commercial and Mixed-Use/Commercial

At Section 6.7.1 Architectural Style: Townhouse, page 57, the following photos shall be added:



**At Section 6.8 Façade Regulations, page 60, delete and replace Item 1 and delete Item 13 as shown below.**

1. To create individuality within a proposed residential development, there must be a minimum of three distinct façade designs for single family or townhouse building types, when multiple units are proposed. The three or more façade designs should be alternated within each building to provide for individuality of units and break-up long buildings. Façade colors, materials and accents should be alternated throughout the development.
- ~~13. Ground level retail/commercial facades fronting along Sparta Avenue and/or Hicks Avenue must be of at least 60% void area (windows and other openings).~~

**At Section 6.10 Building Entrance, Balcony, and Porch Regulations, page 62, delete Items 2 and 5 shown below:**

- ~~2. Every unit shall have a usable front porch and/or a second floor balcony. Porch steps must match the materials used in the porch.~~
- ~~5. The finished floor of the ground level of buildings shall be raised a minimum of 2 feet and a maximum of 3 feet above the grade of the front plain of each primary structure. Porches and stairs shall connect the building to walkway.~~

**At Section 6.11 Building Signage and Lighting Standards, page 64, delete the second paragraph and add the following:**

All proposed signs within the redevelopment area shall conform to the sign regulations of the Town's Form-Based Code for the T-4 Neighborhood Services Zone.

**At Section 6.12 Building Parking Standards, page 64, the second paragraph shall be replaced with the following:**

6. Garages: Garages may be built to accommodate one or two cars and may be built with a second floor or loft above.

**At Section 6.13 Green Building Standards, page 66, delete Item 4 and replace with the following:**

Stormwater Detention and Reuse: In order to mitigate the impact of stormwater on the existing infrastructure and limited potable water resources, new development is encouraged to create a Potable Water Conservation Program using stormwater detention, collection and re-use for non-potable uses such as irrigation, washing cars and flushing toilets, thereby reducing demands on potable water.

**At Section 7.2 General Requirements, page 71, delete Item 4 and Item 7 and replace with the following:**

4. All yard spaces shall be landscaped with trees, shrubs, perennials and ground cover.
7. All landscaped areas must be well maintained, cleared, clipped and pruned to provide a positive healthy visual character.

**At Section 7.3 Streetscape Requirements, page 73, delete Item 4 and replace with the following:**

4. If a planter strip is provided between the sidewalk and the curb, it shall be a minimum of 1'6" wide and shall contain plantings or textured pavers. Alternatively, sidewalks may be installed flush with the curb and street trees planted on the yard side of the sidewalks.

**At Section 7.3 Streetscape Requirements, page 73, delete Item 5 shown below:**

- ~~5. The area between the curb and ROW edge together must equal a combined minimum width of eight (8) feet. The remaining width of two (2) feet will be between the sidewalk and ROW edge, in effect lengthening the front yards of properties. Street trees are to be planted within this area. Street trees may also be planted in bumpouts.~~

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11. Where rear residential yards abut an exterior street, an evergreen buffer shall be planted along the street side of the units, in a staggered pattern to provide year-round buffering for the residences. The buffer width, design and tree species shall be subject to Planning Board approval.

**At Section 7.4 Yard Landscape Requirements, page 74, Items 2 and 9 shall be deleted and replaced as follows:**

2. Every building shall have direct access from the access drive, driveway or sidewalk to the primary pedestrian ingress and egress of a building by way of a walkway. Materials of the walkway shall compliment the color and design of the building and the sidewalks.
9. Yards must have a minimum number of landscape features:
  - Two (2) canopy trees per building (in addition to street trees); and
  - Foundation shrubs: five (5) per building (or unit for townhouses) along the front façade.

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**At Section 9.2 Plan Consistency Review, page 88, the following shall be added to the final paragraph:**

The Plan Amendment is determined to not be in conflict with the Master Plans of Andover Township, Fredon Township or Hampton Township.

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5. Once a property has been redeveloped in accordance with the Redevelopment Plan, it may not be converted to any use not expressly permitted in this Redevelopment Plan. Pre-existing residential uses on individual lots shall be deemed to be conforming as they exist at the time of the adoption of this Plan Amendment and be re-constructed within the same building footprint on the existing lot. Future additions or redevelopment of those lots must conform to the standards of this Redevelopment Plan. Except as previously noted, a use or structure not conforming to the requirements of this Redevelopment Plan may not be reconstructed in the event of its destruction. The Planning Board shall determine the issue of whether the non-conforming use or building has been “destroyed”.

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Phasing Plan: Any applicant seeking to develop properties located within this Redevelopment Plan that is planning on phasing the development must submit a Phasing Plan for review and approval by the Newton Planning Board.

**At Section 9.4 Schedule and Duration of the Plan, page 91, under the title “Certificates of Completion and Compliance”, shall be deleted and replaced with the following:**

Upon the inspection of the verification the Redevelopment Entity that the redevelopment of a parcel has been completed pursuant to the Redevelopment Agreement, a Certificate of Completion and Compliance shall be issued to the Redeveloper as such parcel shall be deemed no longer in need of redevelopment.

The Redevelopment Plan, as it may be amended from time to time, shall be in full force and effect upon its adoption by ordinance by the Town Council of the Town of Newton.

**At Section 9.5 Affordable Housing, page 92, paragraph 2 titled Affordable Housing shall be deleted and replaced with the following:**

**Affordable Housing**

The development is an inclusionary zone and affordable units must be provided to meet the applicable NJ Council on Affordable Housing (COAH) regulations regarding inclusionary zones at the time of site plan approval. All COAH units must meet all COAH regulations.

(Paragraphs 3, 4 and 5 under Affordable Housing shall remain).

**TOWN OF NEWTON**

**ORDINANCE 2014-17**

**AN ORDINANCE AMENDING CHAPTER 3 “ADMINISTRATIVE CODE”, ARTICLE VI “ADMINISTRATIVE ORGANIZATION” AND ARTICLE XXVIII “DEPARTMENT OF CODE ENFORCEMENT”**

**WHEREAS**, the Mayor and Town Council of the Town of Newton desire to amend the Town Code to revise the Department of Code Enforcement to eliminate the two divisions of said department and to establish an additional department entitled Uniform Construction Code Department; and

**WHEREAS**, said change will reflect the different responsibilities of the two departments; and change the title of the position responsible for the Department of Code Enforcement;

**NOW, THEREFORE BE IT ORDAINED**, by the Mayor and Town Council of the Town of Newton, County of Sussex, and State of New Jersey as follows:

**SECTION 1.** Section 3-26 shall be amended by the addition of Section 3-26.A(12) as follows:

(12) Uniform Construction Code Department.

**SECTION 2.** The Title of Article XXVIII is repealed and replaced as follows:

“Department of Code Enforcement and Uniform Construction Code Department”

**SECTION 3.** Section 3-85 and Section 3-87 are repealed and replaced by new Section 3-85 as follows:

**§3-85 Department of Code Enforcement.**

There shall be a Department of Code Enforcement, the head of which shall be the Code Enforcement Director appointed by the Town Manager. The Department shall be responsible for administering and/or coordinating and enforcing the Property Maintenance Code.

**SECTION 4.** The title and first paragraph of Section 3-86 is amended and replaced as follows:

**§3-86 Uniform Construction Code Department.**

There shall be a Uniform Construction Code Department which shall come under the direction of the Construction Official and shall include the following responsibilities:

**SECTION 5. Severability.** If any provision of this Ordinance or the application of this Ordinance to any person or circumstance is held invalid, the remainder of this Ordinance shall not be affected and shall remain in full force and effect.

**SECTION 6. Repealer.** All ordinances or parts of ordinances or resolutions that are inconsistent or in opposition to the provisions of this Ordinance are hereby repealed in their entirety.

**SECTION 7. Effective Date.** This Ordinance shall take effect immediately upon adoption and publication in accordance with law.

## NOTICE

**TAKE NOTICE** that the above Ordinance was introduced at a regular meeting of the Town Council of the Town of Newton conducted on Monday, August 25, 2014. It will be considered for adoption, after final reading and public hearing thereon, at a regular meeting of the Newton Governing Body to be conducted at 7:00pm on Wednesday, September 10, 2014 in the Council Chambers at the Newton Municipal Building, 39 Trinity Street, Newton, New Jersey, and shall take effect according to law.

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Lorraine A. Read, RMC  
Municipal Clerk

**TOWN OF NEWTON**

**ORDINANCE #2014-18**

**AN ORDINANCE TO AMEND ORDINANCE 2013-30 ESTABLISHING MINIMUM AND MAXIMUM SALARIES AND WAGES FOR OFFICERS AND EMPLOYEES OF THE TOWN OF NEWTON FOR THE CALENDAR YEAR 2014**

**WHEREAS**, the Newton Town Council adopted Ordinance 2013-30 to establish minimum and maximum salaries and wages for officers and employees of the Town of Newton for calendar year 2014 at their meeting on December 9, 2013; and

**WHEREAS**, there is a need to amend certain provisions of Ordinance 2013-30;

**NOW, THEREFORE BE IT ORDAINED**, by the Town Council of the Town of Newton:

**Schedule "A" shall be amended as follows:**

<u>LEVEL</u>	<u>HOURLY</u>		<u>35 HRS / WK</u>		<u>40 HRS / WK</u>		<u>IRREGULAR HOURS ANNUALIZED</u>
	<u>MIN</u>	<u>MAX</u>	<u>MIN</u>	<u>MAX</u>	<u>MIN</u>	<u>MAX</u>	
9	\$13.75	\$43.00	\$25,000	\$80,000	\$30,000	\$90,000	
10	\$16.50	\$46.00	\$30,000	\$85,000	\$35,000	\$95,000	

**Schedule "B" shall be amended to include the following:**

**Level 10**

The Title "Human Resources Manager" be changed to read "Human Resources Director".

The Title "Code Enforcement Director" be added.

The Title "Municipal Department Head" be added.

**NOTICE**

**TAKE NOTICE** that the above Ordinance was introduced at a regular meeting of the Town Council of the Town of Newton conducted on Monday, August 25, 2014. It will be considered for adoption, after final reading and public hearing thereon, at a regular meeting of the Newton Governing Body to be conducted at 7:00pm on Wednesday, September 10, 2014 in the Council Chambers at the Newton Municipal Building, 39 Trinity Street, Newton, New Jersey, and shall take effect according to law.

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Lorraine A. Read, RMC  
Municipal Clerk



**TOWN OF NEWTON  
RESOLUTION #150-2014**

**August 25, 2014**

**“Insertion of Special Items of Revenue in the 2014  
Town of Newton Budget Pursuant to NJSA 40A:4-  
87 (C. 159, PL 1948)”**

**WHEREAS**, NJSA 40A:4-87 provides that the Director of the Division of Local Government Services may approve the insertion of any special item of revenue and also approve the insertion of an item of appropriation of equal amount in the Budget of any Municipality, when such item shall have been made available by law, and the amount thereof was not determined at the time of the adoption of the Budget; and

**WHEREAS**, the Town of Newton received payment in the amount of \$1,763.91 from the State of New Jersey Division of Highway Traffic Safety for a Drunk Driving Enforcement Grant for the period July 2013 – June 2014;

**NOW, THEREFORE BE IT RESOLVED**, that the Town Council of the Town of Newton hereby requests the Director of the Division of Local Government Services approve the insertion of the following items in the 2014 Budget of the Town of Newton:

Miscellaneous Revenues:

Section F: Special Items of Revenue

Public and Private Revenues Off-set with Appropriations:

State of New Jersey DDEF Grant .....\$1,763.91

General Appropriations:

(A) Operations - Excluded from CAPS

Public and Private Programs Off-Set by Revenues:

State of NJ DDEF Grant

Police Salaries and Wages.....\$1,763.91

**BE IT FURTHER RESOLVED** that pursuant to Local Finance Notice 2014-11, issued August 1, 2014, an electronic form will be submitted to the Division of Local Government Services.

**CERTIFICATION**

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, August 25, 2014.

\_\_\_\_\_  
Lorraine A. Read, RMC  
Municipal Clerk



**TOWN OF NEWTON**

**RESOLUTION #151-2014**

**August 25, 2014**

**“Insertion of Special Items of Revenue in the 2014 Town of Newton Budget Pursuant to NJSA 40A:4-87 (C. 159, PL 1948)”**

**WHEREAS**, NJSA 40A:4-87 provides that the Director of the Division of Local Government Services may approve the insertion of any special item of revenue and also approve the insertion of an item of appropriation of equal amount in the Budget of any Municipality, when such item shall have been made available by law, and the amount thereof was not determined at the time of the adoption of the Budget; and

**WHEREAS**, the Town of Newton is the lead agency, (also including Green Township, Andover Township and Andover Borough) for a grant in the amount of \$18,772.00 from the State of New Jersey Governor's Council on Alcoholism and Drug Abuse through the County of Sussex for the Municipal Alliance Grant; and

**WHEREAS**, the State of New Jersey has changed the grant period to run from July 1, 2014 through June 30, 2015; and

**WHEREAS**, the Town of Newton authorized the submission of the 2014 Action Alliance Grant per Resolution #17-2014 adopted January 27, 2014;

**NOW, THEREFORE, BE IT RESOLVED** that the Town Council of the Town of Newton hereby requests the Director of the Division of Local Government Services approve the insertion of the following items in the 2014 Budget of the Town of Newton:

- Miscellaneous Revenues:
  - Section F: Special Items of Revenue
    - Public and Private Revenues Off-set with Appropriations:
      - NJ Municipal Alliance Grant .....\$18,772.00
- General Appropriations:
  - (A) Operations - Excluded from CAPS
    - Public and Private Programs Off-Set by Revenues:
      - NJ Municipal Alliance Grant..... \$18,772.00
- Local Match – Source:
  - 2015 Current: Celebration of Public Event ..... \$3,000.00
  - 2015 Current: Match Funds, Munic. Alliance – Andover Twp ..... \$500.00
  - 2015 Current: Match Funds, Munic. Alliance –Andover Borough ..... \$500.00
  - 2015 Current: Match Funds, Munic. Alliance – Green Twp .....\$500.00
  - 2014 Current: Recreation, Special Events \$193.00

**BE IT FURTHER RESOLVED**, that an electronic version of this Resolution be forwarded to the Director of the Division of Local Government Services.

**CERTIFICATION**

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, August 25, 2014.

\_\_\_\_\_  
Lorraine A. Read, RMC  
Municipal Clerk



## TOWN OF NEWTON

### RESOLUTION #152-2014

August 25, 2014

### **“To Authorize a One-Year Extension of a Banking Services Agreement with Lakeland Bank”**

**WHEREAS**, in 2012 the Town of Newton prepared a request for proposals for banking services and received several responses; and

**WHEREAS**, an agreement with Lakeland Bank was authorized per Resolution #189-2012 on September 12, 2012 which accepted a variable rate which is the Fed Funds Rate less .5% with a floor of .15% with payroll, for a two-year period, with an option to extend for a third year; and

**WHEREAS**, the Chief Financial Officer, the Qualified Purchasing Agent and the Town Manager recommend the Governing Body exercise the option to extend for a third year;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that it hereby authorizes and directs the Chief Financial Officer and Town Manager to extend the agreement with Lakeland Bank to secure a variable rate which is the Fed Funds Rate less .5% with a floor of .15% with payroll for a one-year period beginning October 1, 2014 continuing until September 30, 2015; and

**BE IT FURTHER RESOLVED**, that a certified copy of this resolution be forwarded to Lakeland Bank, and a copy of said agreement be kept on file in the Municipal Clerk's office for public viewing.

### **CERTIFICATION**

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, August 25, 2014.

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Lorraine A. Read, RMC  
Municipal Clerk



## TOWN OF NEWTON

### RESOLUTION #153-2014

August 25, 2014

### "Ratify and Affirm the Issuance of Refunding Bonds"

**WHEREAS**, in early 2014 the Town Auditor received a proposal from Phoenix Advisors to consider refinance two outstanding debt issues: 2004 Water Sewer Refunding Bonds \$1,445,000 and 2006 Improvement Bonds \$2,256,000 to obtain a lower interest rate and thereby effect a cost savings for the Town of Newton; and

**WHEREAS**, all the necessary resolutions and approvals were obtained; and

**WHEREAS**, the appropriate Town Officials executed said Bonds in the amount of \$3,590,000.00 dated August 7, 2014 split as follows:

\$1,405,000 Water/Sewer Utility 2004 Refunding Bonds NIC 3.011275% maturing 4/1/2030; and  
\$2,185,000 General Improvement 2006 Refunding Bonds NIC 2.666086% maturing 4/1/2026

**WHEREAS**, to comply with N.J.S.A. 40A:2-28 of the Local Bond Law, which requires the Chief Financial Officer report certain information in writing to the Mayor and Council at the next Council meeting, herewith attached is a copy of the *Certificate of Delivery and Payment with the attached Schedule A*. Also attached is the *Savings Analysis* prepared by Roosevelt & Cross, Inc. on July 17, 2014 showing an aggregate gross savings of \$245,551.29 for the refunding bonds;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that it does hereby ratify and affirm the issuance of said Bonds by the Chief Financial Officer and the execution of said bonds by the appropriate Town Officials.

#### CERTIFICATION

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, August 25, 2014.

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Lorraine Read, RMC  
Municipal Clerk

7/17/14

Final

**TOWN OF NEWTON, NEW JERSEY  
SUMMARY OF REFUNDING RESULTS  
AA- UNENHANCED; CALLABLE; BQ**

REFUNDING 02/01/04 GO REFUNDING BONDS (10/01/15-10/01/30)

REFUNDING 04/01/06 IMPROVEMENT BONDS (04/01/17-04/01/26)

**Dated/Delivery Date: 8/7/2014**

Refunding Par Amount 3,590,000

Bond Arbitrage Yield 2.524041%

Escrow Yield 0.271044%

Refunded Bonds Par Amount 3,701,000

Average Coupon of Refunded Bonds 4.255222%

Net PV Savings 191,542.75

Percentage of PV Savings 5.175432%

Aggregate Budgetary Savings 245,551.29

Annual Budgetary Savings (Dec 31)

Fiscal Year 2014 11,436.25

Fiscal Year 2015 9,622.50

Fiscal Year 2016 12,685.00

Fiscal Year 2017 16,419.38

Fiscal Year 2018 14,200.63

Fiscal Year 2019 16,069.38

Fiscal Year 2020 20,325.63

Fiscal Year 2021 19,256.88

Fiscal Year 2022 19,613.13

Fiscal Year 2023 16,769.38

Fiscal Year 2024 18,875.63

Fiscal Year 2025 14,366.25

Fiscal Year 2026 14,636.25

Fiscal Year 2027 12,350.00

Fiscal Year 2028 5,987.50

Fiscal Year 2029 9,675.00

Fiscal Year 2030 13,262.50

**ROOSEVELT & CROSS**

SAVINGS

Town of Newton in the County of Sussex, NJ  
 Refunding Bonds  
 REFUNDING 02/01/04 GO REFUNDING BONDS (10/01/15-10/01/30)  
 REFUNDING 04/01/06 IMPROVEMENT BONDS (04/01/17-04/01/26)  
 AA- UNENHANCED; CALLABLE; BQ

Date	Prior Debt Service	Prior Receipts	Prior Net Cash Flow	Refunding Debt Service	Savings	Annual Savings	Present Value to 08/07/2014 @ 2.5240411%
08/07/2014		45,000.00	-45,000.00		-45,000.00		-45,000.00
10/01/2014	77,736.25		77,736.25	21,300.00	56,436.25		56,224.31
12/31/2014						11,436.25	
04/01/2015	77,736.25		77,736.25	186,000.00	-108,263.75		-106,512.97
10/01/2015	187,736.25		187,736.25	69,850.00	117,886.25		114,534.41
12/31/2015						9,622.50	
04/01/2016	75,742.50		75,742.50	159,850.00	-84,107.50		-80,697.67
10/01/2016	165,742.50		165,742.50	68,950.00	96,792.50		91,710.99
12/31/2016						12,685.00	
04/01/2017	298,830.00		298,830.00	383,950.00	-85,120.00		-79,646.13
10/01/2017	164,189.38		164,189.38	62,650.00	101,539.38		93,825.52
12/31/2017						16,419.38	
04/01/2018	292,170.63		292,170.63	382,650.00	-90,479.37		-82,563.76
10/01/2018	162,530.00		162,530.00	57,850.00	104,680.00		94,331.56
12/31/2018						14,200.63	
04/01/2019	285,405.00		285,405.00	337,850.00	-52,445.00		-46,671.40
10/01/2019	120,764.38		120,764.38	52,250.00	68,514.38		60,211.84
12/31/2019						16,069.38	
04/01/2020	279,383.13		279,383.13	337,250.00	-57,866.87		-50,220.79
10/01/2020	124,742.50		124,742.50	46,550.00	78,192.50		67,015.01
12/31/2020						20,325.63	
04/01/2021	273,148.75		273,148.75	331,550.00	-58,401.25		-49,429.08
10/01/2021	118,508.13		118,508.13	40,850.00	77,658.13		64,908.37
12/31/2021						19,256.88	
04/01/2022	266,914.38		266,914.38	325,850.00	-58,935.62		-48,645.77
10/01/2022	112,273.75		112,273.75	33,725.00	78,548.75		64,026.52
12/31/2022						19,613.13	
04/01/2023	260,680.00		260,680.00	333,725.00	-73,045.00		-58,798.26
10/01/2023	116,039.38		116,039.38	26,225.00	89,814.38		71,395.90
12/31/2023						16,769.38	
04/01/2024	254,233.13		254,233.13	326,225.00	-71,991.87		-56,515.07
10/01/2024	109,592.50		109,592.50	18,725.00	90,867.50		70,443.81
12/31/2024						18,875.63	
04/01/2025	252,680.00		252,680.00	328,725.00	-76,045.00		-58,218.14
10/01/2025	102,936.25		102,936.25	12,525.00	90,411.25		68,353.94
12/31/2025						14,366.25	
04/01/2026	242,023.75		242,023.75	327,525.00	-85,501.25		-63,836.19
10/01/2026	106,362.50		106,362.50	6,225.00	100,137.50		73,832.00
12/31/2026						14,636.25	
04/01/2027	9,225.00		9,225.00	96,225.00	-87,000.00		-63,346.20
10/01/2027	104,225.00		104,225.00	4,875.00	99,350.00		71,436.90
12/31/2027						12,350.00	
04/01/2028	7,087.50		7,087.50	104,875.00	-97,787.50		-69,437.08
10/01/2028	107,087.50		107,087.50	3,312.50	103,775.00		72,770.32
12/31/2028						5,987.50	
04/01/2029	4,837.50		4,837.50	103,312.50	-98,475.00		-68,193.18
10/01/2029	109,837.50		109,837.50	1,687.50	108,150.00		73,959.66
12/31/2029						9,675.00	
04/01/2030	2,475.00		2,475.00	101,687.50	-99,212.50		-67,002.06
10/01/2030	112,475.00		112,475.00		112,475.00		75,012.07
12/31/2030						13,262.50	
	4,985,351.29	45,000.00	4,940,351.29	4,694,800.00	245,551.29	245,551.29	189,259.38

Savings Summary

PV of savings from cash flow 189,259.38  
 Plus: Refunding funds on hand 2,283.37

SUMMARY OF REFUNDING RESULTS

Town of Newton in the County of Sussex, NJ  
 Refunding Bonds  
 REFUNDING 02/01/04 GO REFUNDING BONDS (10/01/15-10/01/30)  
 REFUNDING 04/01/06 IMPROVEMENT BONDS (04/01/17-04/01/26)  
 AA- UNENHANCED; CALLABLE; BQ

	w/s Refunding GO Ref Bonds, 2004	COUT Refunding 2006 Improvement Bonds	Total
Dated Date	08/07/2014	08/07/2014	08/07/2014
Delivery Date	08/07/2014	08/07/2014	08/07/2014
Arbitrage Yield	2.524041%	2.524041%	2.524041%
Escrow Yield	0.010047%	0.285842%	0.271044%
Bond Par Amount	1,405,000.00	2,185,000.00	3,590,000.00
True Interest Cost	2.900023%	2.477239%	2.649503%
Net Interest Cost	3.011275%	2.666086%	2.812597%
All-In TIC	3.151987%	2.740664%	2.907724%
Average Coupon	3.721018%	4.310835%	4.060496%
Average Life	8.219	7.167	7.579
Par amount of refunded bonds	1,445,000.00	2,256,000.00	3,701,000.00
Average coupon of refunded bonds	4.420173%	4.125000%	4.255222%
Average life of refunded bonds	8.825	7.160	7.810
PV of prior debt	1,675,313.08	2,520,620.80	4,195,933.88
Net PV Savings	134,449.22	57,093.53	191,542.75
Percentage savings of refunded bonds	9.304444%	2.530742%	5.175432%



## TOWN OF NEWTON

### RESOLUTION #154-2014

August 25, 2014

### “Authorizing Execution of a Rights-of-Way Use Agreement between Town of Newton and PEG Bandwidth NJ, LLC”

**WHEREAS**, PEG Bandwidth NJ, LLC (“PEG”) has been authorized by the New Jersey Board of Public Utilities to provide local exchange and interexchange telecommunications services in New Jersey; and

**WHEREAS**, PEG intends to install its fiber optic cabling on or in existing telephone, electric or cable conduit and poles in the public Rights-of-Way through agreement with other utility companies, some of which are located in the Town of Newton; and

**WHEREAS**, the Town of Newton is empowered to enter into a Rights-of-Way Use Agreement pursuant to N.J.S.A. 48:17-10 through 48:17-12; and

**WHEREAS**, a Rights-of-Way Use Agreement has been prepared and mutually agreed upon by all parties with terms and conditions set forth therein, a copy of which is attached and made a part of this Resolution;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that the Mayor and Municipal Clerk are hereby authorized to execute the attached Rights-of-Way Use Agreement; and

**BE IT FURTHER RESOLVED** that a copy of the Rights-of-Way Use Agreement shall be recorded in the Sussex County Clerk's Office.

### CERTIFICATION

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, August 25, 2014.

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Lorraine A. Read, RMC  
Municipal Clerk

# Newton, New Jersey

## Rights-of-Way Use Agreement

This Rights-of-Way Use Agreement (this "Use Agreement") is dated as of July 28, 2014, and entered into by and between the **Town of Newton, Sussex County, New Jersey**, a New Jersey Municipal Corporation (the "Municipality"), party of the first part, and **PEG Bandwidth NJ, LLC**, a Delaware limited liability Company ("PEG Bandwidth").

### Recitals

**Whereas**, PEG Bandwidth has been authorized by the New Jersey Board of Public Utilities to provide local exchange and interexchange telecommunications services in New Jersey; and

**Whereas**, PEG Bandwidth intends to install its fiber optic cabling on or in existing telephone, electric or cable conduit and poles in the public Rights-of-Way through agreement with other utility companies; and

**Whereas**, the Municipality is empowered to enter into this Use Agreement pursuant to N.J.S.A. 48:17-10 through 48:17-12.

### Agreement

**Now, therefore**, in consideration of mutual benefits and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows as to the terms of use, occupancy and manner by which PEG Bandwidth may maintain the PEG Bandwidth Facilities (as defined below) within the Municipal Rights-of-Way.

#### **1. Definitions**

The following definitions shall apply generally to the provisions of this Use Agreement:

##### **1.1. Agency**

"Agency" means any governmental or quasi-governmental agency other than the Municipality, including the Federal Communications Commission and/or the New Jersey Board of Public Utilities.

##### **1.2. Installation Date**

"Installation Date" shall mean the date PEG Bandwidth begins installation pursuant to this Use Agreement.

### 1.3. Laws

“Laws” means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the Municipality or other governmental agency having joint or several jurisdiction over the parties to this Use Agreement, in effect either as of the Effective Date or at any time during the presence of PEG Bandwidth in the Municipal Rights-of-Way.

### 1.4. Municipal Facilities

“Municipal Facilities” means Municipality-owned street light poles, lighting fixtures, electroliers, or other Municipality-owned structures located within the Municipal Rights-of-Way and may refer to such facilities in the singular or individually, as appropriate to the context in which used.

### 1.5. Municipal Rights-of-Way

“Municipal Rights-of-Way” means the space in, upon, above, along, across, and over the public streets, roads, lanes, courts, ways, alleys, boulevards, and places, including all public utility easements and public service easements as the same now or hereafter may exist, that are under the jurisdiction of the Municipality. This term shall not include county, state, or federal rights-of-way or any property owned by any person or agency other than the Municipality, except as provided by applicable Laws or pursuant to an agreement between the Municipality and any such person or agency.

### 1.6. Person

“Person” means an individual, a corporation, a limited liability company, a general or limited partnership, a joint venture, a business trust, or any other form of business entity or association.

### 1.7. Provision

“Provision” means any agreement, clause, condition, covenant, qualification, restriction, reservation, term, or other stipulation in this Use Agreement that defines or otherwise controls, establishes, or limits the performance required or permitted by any party to this Use Agreement. All Provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.

### 1.8. Municipality

“Municipality” shall have the meaning set forth in the first paragraph of this Use Agreement and any successors or assigns

### 1.9 PEG Bandwidth

“PEG Bandwidth” shall have the meaning set forth in the first paragraph of this Use Agreement and any successors or assigns.

### 1.10 Use Agreement

“Use Agreement” means this non-exclusive Rights-of-Way Use Agreement and may also refer to the associated right to use and encroach upon the Municipal Rights-of-Way conferred hereunder.

### 1.11 Effective Date

“Effective Date” means the date the Use Agreement is signed by a duly authorized agent of the Municipality.

### 1.12 PEG Bandwidth Facilities

“PEG Bandwidth Facilities” means PEG Bandwidth’s manholes, handholds, cables, ducts, PVC pipe, conduits, fiber optic warning tape, markers, locate wires and equipment placed in the Municipality’s Right-of-Way.

## 2. Term

2.1. This Use Agreement shall be effective as of the Effective Date and shall extend for an initial term of twenty (20) years commencing on the Effective Date, unless it is earlier terminated by either party in accordance with the provisions herein. Upon the expiration of the initial term or a prior extension term, this Use Agreement shall automatically be extended for up to three (3) additional terms of ten (10) years each upon the terms and conditions set forth herein, unless either party hereto shall give written notice to the other party of its intent not to renew this Use Agreement at least twelve (12) months prior to the expiration of the initial term or then effective extension term and unless the Use Agreement is earlier terminated for default pursuant to Section 12 of this Use Agreement.

## 3. Scope of Use Agreement

3.1 Any and all rights expressly granted to PEG Bandwidth under this Use Agreement, which shall be exercised at PEG Bandwidth’ sole cost and expense, shall be subject to the prior and continuing right of the Municipality to use any and all parts of the Municipal Rights-of-Way concurrently with any other Person or Persons and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the Municipal Rights-of-Way. Nothing in this Use Agreement shall be deemed to grant, convey, create, or vest in PEG Bandwidth a real property interest in land, including any fee, leasehold interest, or easement. Any

work performed pursuant to the rights granted under this Use Agreement must be subject to prior review and approval by the Municipality.

### 3.2 Attachment to Third Party Property

Subject to PEG Bandwidth obtaining at its sole cost and expense the permission of the owner(s) of the affected property, on notice to the Municipality, the Municipality hereby authorizes and permits PEG Bandwidth to enter upon the Municipal Rights-of-Way and to attach, install, operate, remove, relocate, repair, and/or maintain the PEG Bandwidth facilities as long as such facilities do not unreasonably impair any existing or future improvements or interfere with the intended use of the Municipal Rights-of-Way.

### 3.3 No Interference

PEG Bandwidth, in the performance and exercise of its rights and obligations under this Use Agreement shall not interfere in any manner with the existence and operation of any and all public and private Rights-of-Way, sanitary sewers, internet cables, water utility facilities and equipment, including but not limited to water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties.

### 3.4 Compliance with Laws

PEG Bandwidth agrees to comply with all applicable Laws and regulations in the exercise and performance of its rights and obligations under this Use Agreement.

### 3.5 Obtaining Required Permits

If the attachment, installation, operation, maintenance, or location of PEG Bandwidth's Facilities in the Municipal Rights-of-Way shall require any permits or approvals, PEG Bandwidth shall, if required under applicable Municipal ordinances, apply the appropriate permits and pay any permit fees. In the event that PEG Bandwidth applies for a municipal permit, the Municipality shall, to the extent reasonably possible, and to the extent it has appropriate jurisdiction, promptly respond to PEG Bandwidth' request for permits and otherwise cooperate with PEG Bandwidth in obtaining permits in a reasonable and timely manner in accordance with existing laws.

### 3.6 Notice of Location

"As-Built Drawings" shall be furnished by PEG Bandwidth upon completion of installation, showing exact locations of PEG Bandwidth' Facilities in the Municipal Rights-of-Way.

#### 4. Payment for Services

In payment for the estimated time, review analysis, and other cost and services rendered by the Municipality in connection with its management of the public rights-of-way, as authorized by N.J.S.A.54:30A-124, PEG Bandwidth agrees to pay the following:

4.1 \$1,000.00 for submission of initial occupancy application as required by the Municipality's Engineer.

4.2 \$500.00 for submission of any subsequent modified or expanded occupancy application as required by the Municipality's Engineer.

#### 5. Relocation

PEG Bandwidth, by execution of this Use Agreement, certifies its willingness to cooperate with the Municipality and its agents for the proper coordination of all work in connection with any planned or future Municipal improvements. PEG Bandwidth's Facilities shall be relocated, adjusted, or supported as required for any future improvements constructed on behalf of the Municipality in the Municipal Rights-of-Way by PEG Bandwidth as no cost to the Municipality. If PEG Bandwidth fails to relocate its facilities requested by the Municipality in a reasonable time, but not to exceed fifteen (15) days, the Municipality shall be entitled to relocate PEG Bandwidth Facilities at PEG Bandwidth's sole cost and expense, upon three (3) days' written notice to PEG Bandwidth. PEG Bandwidth twenty-four (24) hour emergency telephone number is 1-800-123-1234. Upon the receipt of the demand for payment, after the aforementioned procedure, PEG Bandwidth shall promptly reimburse the Municipality for such cost within ten (10) days of receipt of an invoice.

#### 6. Damage to Municipal Rights-of-Way

Whenever the installation, removal, repair, replacement, or relocation of PEG Bandwidth Facilities is required or permitted under this Use Agreement, and such installation, removal, repair, replacement, or relocation shall cause the Municipal Rights-of-Way or any Municipal property or equipment to be damaged, PEG Bandwidth, at its sole cost and expense, shall promptly repair and return the Municipal Rights-of-Way to a condition as good or better than prior to the work. If PEG Bandwidth does not repair the site as described, the Municipality shall have the option, upon three (3) days written notice to PEG Bandwidth, to perform or cause to be performed such reasonable and necessary work on behalf of PEG Bandwidth and to charge PEG Bandwidth for the actual costs incurred by the Municipality. Upon the receipt of the demand for payment, after the aforementioned procedure, PEG Bandwidth shall promptly reimburse the Municipality for such cost within ten (10) days of receipt of an invoice.

## 7. Indemnification and Waiver

7.1 PEG Bandwidth, its officers, agents, employees, managers, members, partners, contractors, subcontractors and each of their heirs, successors and/or assigns (collectively referred to as "PEG Bandwidth") shall indemnify, defend and hold harmless Municipality, its Manager, officers, agents, council members, employees, and each of their heirs, successors and/or assigns (collectively "Municipality") from and against any and all claims, demands, suits, actions, causes of action, injuries, orders, losses, liabilities (statutory or otherwise), obligations, damages, fines, penalties, costs and expenses (collectively referred to as "claims") including attorneys' fees, costs and disbursements at all trial and appellate levels incurred by Municipality, arising out of, based upon, resulting from, by reason of, or in connection with PEG Bandwidth's acts or omissions, including but not limited to breach of any of its representations, covenants and/or other agreements contained in this Use Agreement as well as any claim of any nature. PEG Bandwidth's obligations shall survive the termination or expiration of this Use Agreement.

Each party shall indemnify, defend and hold harmless the other party, its officers, directors, employees and agents, and its successors and assigns from and against any claims, liabilities, losses, damages, fines, penalties, and costs (including reasonable attorneys fees), whether foreseen or unforeseen, which the indemnified parties suffer or incur because of: (i) any Hazardous Discharge resulting from acts or omissions of the indemnifying party or its predecessor in interest; (ii) acts or omissions of the indemnifying party, its agents or representatives in connection with any cleanup required by law or (iii) failure of indemnifying party to comply with environmental, safety and health laws. The indemnifying party shall also be responsible for any reasonable attorneys' fees and costs incurred by the indemnified party, including such fees and costs incurred in enforcing this indemnification provision. Notwithstanding anything in this section to the contrary, an indemnifying party shall have no duty under this section to the extent that the party seeking indemnification is responsible in whole or in part for the claim giving rise to the request for indemnification. This section shall survive expiration or termination of this Use Agreement.

### 7.2 Waiver of Claims

Except for death or bodily harm to any person and tangible property damage, in no event shall either party be liable to the other party for any special, consequential or indirect damages (including by way of illustration, lost revenues and lost profits) arising out of this Use Agreement or any obligation arising there under, whether in action for or arising out of breach of contract, tort or otherwise.

### 7.3 Limitation of Municipality's Liability

Except for death or bodily harm to any person and tangible property damage, the Municipality's liability, if any, shall not exceed the actual cost of repairs of damages to PEG Bandwidth's Facilities.

## 8. Compliance with Laws

Notwithstanding anything to the contrary in this Use Agreement, each party shall ensure that any and all activities it performs pursuant to this Use Agreement shall comply with all applicable federal, state, and local laws and regulations. Without limiting the generality of the foregoing, each party shall comply with all applicable provisions of i) workmen's compensation laws, ii) unemployment compensation laws, iii) the Federal Social Security Law, iv) the Fair Labor Standards Act, and v) all laws, regulations, rules, guidelines, policies, orders, permits, and approvals of any governmental authority relating to environmental matters and/or occupational safety.

## 9. Insurance

### 9.1 Insurance Coverage

The Parties shall both obtain and maintain insurance issued by one or more reputable insurance carriers licensed to insure property in New Jersey and shall be rated at least A:X in A.M. Best and Company's Insurance Guide, which protects the Parties and each of them from and against all claims, demands, causes of action, judgments, costs, including attorneys' fees, expenses and liabilities of insurable kind and nature which may arise or result directly or indirectly from or by reason of such loss, injury or damage that in any way arises from or is related to this Use Agreement or activities undertaken pursuant to this Use Agreement. PEG Bandwidth must maintain general liability insurance in the minimum amount of \$2,000,000.00 per occurrence for any and all claims. Further, PEG Bandwidth shall name the Municipality as an additional insured on its liability insurance, proof of which shall be submitted to the Municipality.

#### 9.1.2 Primary & Non-Contributory

#### 9.1.3 Completed Operations for Continuing Operations

#### 9.1.4 Waiver of Subrogation

The Municipality is named as an additional insured on the General Liability policy for both ongoing and completed operations (CG2037 07/04 & CG7202 12/11 or its equivalents). Coverage afforded to the additional insured will be primary and non-contributory (CG7202 12/11 and CA7735 02/10 or its equivalents). A waiver of subrogation applies on the General Liability policy (CG7202 12/11 and CA7735 02/10 or its equivalents).

### 9.2 Filing of Certificates and Endorsements

Prior to commencement of any work pursuant to this Use Agreement, PEG Bandwidth shall file with the Municipality the required original certificates of insurance with endorsements. The insurance certificate shall clearly state all of the following:

9.2.1 The policy number; name of insurance company; name and address of agent or authorized representative; name, address, and telephone number of insured; project name and address; policy expiration date; and specific coverage amounts.

9.2.2 The Municipality shall receive thirty (30) days notice prior to cancellation.

9.2.3 That PEG Bandwidth insurance is primary as respects any other valid or collectible insurance that the Municipality may possess, including any self-insured retentions the Municipality may have; and any other insurance the Municipality does possess shall be considered excess insurance only and shall not be required to contribute with this insurance.

### 9.3 Worker's Compensation Insurance

PEG Bandwidth shall obtain and maintain at all times during the term of this Use Agreement statutory workers' compensation and employer's liability insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) and shall furnish the Municipality with a certificate showing proof of such coverage.

### 9.4 Severability of Interest

Any deductibles or self-insured retentions must be stated on the certificate(s) of insurance, which shall be sent to and approved by the Municipality. "Cross Liability", "severability of interest", or "separation of insured" clauses shall be made a part of the commercial general liability and commercial automobile liability policies.

9.5 Business Auto Policy of \$1,000,000 CSL per occurrence.

## 10. Force Majeure

Except for payment of the license fee and other amounts, neither party shall have any liability for its delays or its failure of performance due to: fire, explosion, pest damage, power failures, strikes or labor disputes, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages, or other causes beyond its control, whether or not similar to the foregoing.

## 11. Notices

11.1 All notices which shall be given pursuant to this Use Agreement shall be in writing and delivered personally or transmitted by means of pre-paid overnight delivery service; or by facsimile or e-mail transmission, if a hard copy of the same is followed by delivery of same by means specified above. All notices shall be sent to the Municipal Clerk and one (1) copy to the Municipality's Engineer, and Municipality's Solicitor at time of execution of documents and to PEG Bandwidth at the following addresses:

If to the Municipality:  
Town Manager  
Town of Newton  
39 Trinity Street  
Newton, NJ 07860  
(973) 383-3521

With a copy (which shall not constitute notice) to:  
Ursula H. Leo, Esq.  
Laddey, Clark & Ryan, LLP  
60 Blue Heron Road, Suite 300  
Sparta, NJ 07871  
(973) 729-1880  
uleo@lcrllaw.com

If to PEG Bandwidth: Controller  
PEG Bandwidth NJ, LLC  
Three Bala Plaza East, Suite 502  
Bala Cynwyd PA 19004  
484-278-2681

With a copy (which shall not constitute notice) to:  
Jay Birnbaum  
E-mail: jbirnbaum@agrp.com

#### 11.2 Date of Notices; Changing Notice Address

Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the next day in the case of overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the same manner set forth above.

#### 12. Termination

Either party may terminate this Use Agreement upon forty-five (45) days prior written notice to the other party upon a default of any material covenant or term hereof by the other party, which default is not cured within the forty-five (45) days following receipt of written notice of default except as expressly provided herein, the rights granted under this Use Agreement are irrevocable during the term of this Use Agreement.

#### 13. Assignment

This Use Agreement shall not be assigned by PEG Bandwidth without the express written consent of the Municipality, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the forgoing, the transfer of the

rights and obligations of PEG Bandwidth hereunder to a parent, subsidiary, successor, or financially viable affiliate shall not be deemed as an assignment for the purposes of this Use Agreement.

**14. Nonexclusive Use**

PEG Bandwidth understands that this Use Agreement does not provide PEG Bandwidth the exclusive use of the Municipal Rights-of-Way and that the Municipality has the right to permit other telecommunication service providers to install equipment or devices in Municipal Rights-of-Way.

**15. Headings**

All headings contained in this Use Agreement are inserted for convenience only and are not intended to affect the meaning or interpretation of this Use Agreement or any clause.

**16. Amendment of Use Agreement**

This Use Agreement may not be amended except pursuant to a written instrument signed by both parties.

**17. Severability of Provisions**

If any one or more of these Provisions of this Use Agreement shall be held by court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such Provision(s) shall be deemed severable from the remaining Provisions of this Use Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Use Agreement. Each party hereby declares that it would have entered into this Use Agreement and each Provision hereof irrespective of the fact that any one or more provision(s) be declared illegal, invalid, or unconstitutional.

**18. Governing Law; Jurisdiction**

This Use Agreement shall be governed and construed by and in accordance with the laws of the State of New Jersey, without reference to its conflict of law principles. If suit is brought by a party to this Use Agreement, the parties agree that trial of such shall be vested exclusively in the state courts of New Jersey in the county in which the Municipality is located, or the United States District Court for the District of New Jersey.

**19. Attorneys' Fees**

Should any dispute arising out of this Use Agreement lead to litigation, the prevailing party shall be entitled to recover its cost of suit, including reasonable attorneys' fees.

**20. Exhibits**

All exhibits referred to in this Use Agreement and any addenda, attachments, and schedules which may from time to time be referred to in any duly executed amendment to this Use Agreement are by such reference incorporated in this Use Agreement and shall be deemed a part of this Use Agreement.

**21. Successors and Assigns**

This Use Agreement is binding upon the successors and assigns of the parties hereto.

**22. Advise of Displacement**

To the extent that the Municipality has actual knowledge thereof, the Municipality will attempt to inform PEG Bandwidth of any displacement of PEG Bandwidth' Facilities.

**23. Consent Criteria**

In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Use Agreement, such party shall not unreasonably delay, condition, or withhold its approval or consent.

**24. Waiver of Breach**

The waiver by either party of any breach or violation of any provision of this Use Agreement shall not be deemed to be a waiver or continuing waiver of any subsequent breach or violation of the same or any other Provision of this Use Agreement.

**25. Representations and Warranties**

Each of the parties to this Use Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party.

**26. Entire Agreement**

This Use Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings, whether oral or written, between or among the parties relating to the subject matter of this use Agreement which are not fully expressed herein.

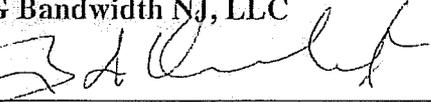
In witness whereof, and in order to bind themselves legally to the terms and conditions of this Use Agreement, the duly authorized representatives of the parties have executed this Use Agreement as of the effective date.

Town of Newton, NJ

By: 

Title: \_\_\_\_\_

PEG Bandwidth NJ, LLC

By: 

Larry Duvall

Title: Vice President, Construction

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07/29/14



## TOWN OF NEWTON

### RESOLUTION #155-2014

August 25, 2014

**“Appointment of Kent Hardmeyer as a Regular Member of the Newton Planning Board”**

**WHEREAS**, there is currently a vacancy on the Town of Newton Planning Board due to the resignation of Barbara Mattingly; and

**WHEREAS**, Kent Hardmeyer, currently an Alternate on the Planning Board, has expressed interest in serving as a Regular Member of the Planning Board;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that Kent Hardmeyer is hereby appointed to an unexpired four-year term as a Regular Member of the Newton Planning Board, effective immediately with said term continuing to December 31, 2014.

### CERTIFICATION

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, August 25, 2014.

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Lorraine A. Read, RMC  
Municipal Clerk



## TOWN OF NEWTON

### RESOLUTION #156-2014

August 25, 2014

### "Concur with the Town Manager's Appointment of School Crossing Guards"

**WHEREAS**, New Jersey Statute 40A:9-154.1 states "*The governing body, or the chief executive, or the chief administrative officer, as appropriate to the form of government of any municipality, may appoint adult school crossing guards for terms not exceeding one year...*";

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that this Governing Body concurs with the Town Manager's appointment of the following individuals as School Crossing Guards for the 2014-2015 school year:

Deborah A. Alger

Peter J. Kays

Lisa Banta

Gleanord I. Kinney

Diane Bell

Debra McCarthy

Carol E. Blanchard

Karen Mokrzycki

June Bowne

Janet Simpson

Louise Cort

Wallace Smith

Carolyn Dippel

Steven A. Stoll

Betty Francis

Karen VanDuzer

Christine Howard

### CERTIFICATION

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, August 25, 2014.

---

Lorraine A. Read, RMC  
Municipal Clerk



## TOWN OF NEWTON

### RESOLUTION #157-2014

August 25, 2014

**“To Cancel Outstanding Checks in Various Funds”**

**WHEREAS**, there are checks which have not been cashed in the following Town of Newton funds; and

**WHEREAS**, those checks have been reviewed to determine if they should be canceled to fund balance so as not to be required to escheat them to the State of New Jersey;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton, that the following outstanding checks are hereby canceled:

#### **Current Fund**

#32512	9/12/13	Brian Fox	\$333.00
#32687	11/7/13	NJLM	\$ 65.00

#### **Water Fund**

#13805	9/23/13	NUI	\$ 289.09
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#### **Payroll Fund**

#6134	1/16/14	Gina Inga	\$ 1.81
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#### **CERTIFICATION**

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, August 25, 2014.

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Lorraine A. Read, RMC  
Municipal Clerk



## TOWN OF NEWTON

### RESOLUTION #158-2014

August 25, 2014

### "Appointment of Mr. William Nannery to the Newton Housing Authority"

**WHEREAS**, Mr. George Kaiser has resigned from his term as a Regular Member of the Newton Housing Authority; and

**WHEREAS**, Mr. William Nannery has expressed interest in serving as a Regular Member; and

**WHEREAS**, Dr. Kimberly Iozzi, Executive Director of the Newton Housing Authority, recommends appointing Mr. Nannery;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that Mr. William Nannery is hereby appointed to an unexpired five-year term on the Newton Housing Authority, effective immediately with said term continuing to April 30, 2019.

#### CERTIFICATION

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, August 25, 2014.

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Lorraine A. Read, RMC  
Municipal Clerk



## TOWN OF NEWTON

### RESOLUTION #159-2014

August 25, 2014

### **“Authorize and Consent to the Assignment and Transfer by MMH BT, LLC to Radiant Property Management, LLC of the Tax Abatement Agreement Between the Town of Newton and RWB Associates”**

**WHEREAS**, MMH BT, LLC is the owner of property located at Block 505, Lot 23, also known as 33 Mill Street and the Brookside Apartments ("Property") in the Town of Newton; and

**WHEREAS**, Radiant Property Management, LLC ("Radiant Property") has entered into a real estate purchase agreement with MMH BT, LLC; and

**WHEREAS**, Radiant Property will acquire the Property either in its name or in the name of an entity created by it for the purpose of acquiring the Property and financing the purchase, subject to required government approvals and consents; and

**WHEREAS**, on March 18, 1974, the Town of Newton entered into an Agreement with R.W.B. Associates, which permitted R.W.B. Associates to make annual payments to the Town of Newton in lieu of taxes with respect to the subject Property, pursuant to a Tax Abatement Agreement; and

**WHEREAS**, on November 12, 2001, the Town of Newton adopted a Resolution, #136-2001, authorizing and consenting to the assignment and transfer of the Tax Abatement Agreement between the Town of Newton and RWB Associates to MMH II, LLC; and

**WHEREAS**, on March 25, 2002, the Town of Newton adopted Resolution #45-2002, amending Resolution #136-2001, whereby the name of the purchaser was incorrectly stated as MMH II, LLC and therefore, changed to the correct purchaser being MMH BT, LLC; and

**WHEREAS**, the Property is occupied by tenants of low and/or moderate income and the owners of the Property are required to maintain the low/moderate income status of the Property for the term of the mortgage as provided by and required by the New Jersey Housing & Mortgage Finance Agency; and

**WHEREAS**, the transfer of the Property is subject to the approval of the New Jersey Housing & Mortgage Finance Agency, pursuant to N.J.A.C. 5:80-5.2; and

**WHEREAS**, upon the transfer, Radiant Property shall own and operate the Property and be bound by the requirements of New Jersey Law, including the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq.; and

**WHEREAS**, all terms and conditions set forth in the Tax Abatement Agreement with the Town of Newton for the Property shall remain in full force and effect;

**NOW, THEREFORE BE IT RESOLVED**, that the Town Council of the Town of Newton hereby authorizes and consents to the assignment and transfer by MMH BT, LLC to Radiant Property Management, LLC of the Tax Abatement Agreement between the Town of Newton and RWB Associates, dated March 18, 1974; and

**BE IT FURTHER RESOLVED** that the Mayor and Town Manager are hereby authorized to execute any additional documents necessary or appropriate to reflect the assignment of the Tax Abatement Agreement.

**CERTIFICATION**

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, August 25, 2014.

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Lorraine A. Read, RMC  
Municipal Clerk



**TOWN OF NEWTON**

**RESOLUTION #160-2014**

**August 25, 2014**

**"To Cancel Capital Appropriation Balances in the Water Sewer Capital Fund**

**WHEREAS**, certain Water Sewer Capital Improvement appropriation balances remain dedicated to projects now completed; and

**WHEREAS**, the Town Manager and other Town Officials have reviewed and determined that there are no additional costs for these projects; and

**WHEREAS**, it is necessary to formally cancel said balances so that the unexpended balances may be returned to each respective Capital Improvement Fund or credited to Fund Balance, and unused debt authorizations may be cancelled;

**NOW, THEREFORE BE IT RESOLVED**, by a majority of the full membership of the Town Council of the Town of Newton, that the following unexpended and dedicated balances of the Water Sewer Capital appropriations totaling \$210,658.37 be cancelled:

<u>Ordinance Number</u>	<u>Date Auth.</u>	<u>Project Description</u>	<u>Amount/Cancelled</u>	
			<u>Funded</u>	<u>Unfunded</u>
2007-3	3/23/07	Trinity/Mill St. Waterline Improvements (Debt Authorization cancelled)		\$210,658.37

**CERTIFICATION**

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, August 25, 2014.

\_\_\_\_\_  
Lorraine A. Read, RMC  
Municipal Clerk

Town of Newton, N.J.

Schedule of Bonds and Notes Authorized But Not Issued

Water/Sewer Utility Capital Fund

Year Ended December 31, 2013

Ord. No.	Improvement Description	Balance, Dec. 31, 2012	Improvements Authorized	Budget Appropriation	Balance, Dec. 31, 2013
08-06	Trinity/Mill St. Waterline	229,546.00	900,000.00	18,887.63	210,658.37
13-19	Fox Hollow Lake Watermain	229,546.00	900,000.00	18,887.63	1,110,658.37
		Footnote D	D-23	D-27	Footnote D



**ANALYSIS OF TRINITY / MILL STREET WATERLINE PROJECT**

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>TOTAL</u>	<u>%</u>
NJ Herald	420.12						69.30	489.42	0.000
NJ DOT		3,745.00		-1,299.02				2,445.98	0.001
Sussex County Soil		556.00						556.00	0.000
McManimon & Scotland	528.65	3,071.50	4,903.80	4,748.09		1,777.83	5,697.58	20,727.45	0.011
Hollander		2,673.00	1,802.50	52.50			756.00	5,284.00	0.003
Harold Pellow	29,511.17	137,856.77	91,101.16		16,044.38	7,023.00	1,020.00	282,556.48	0.155
Underground Utilities		550,465.22	736,652.97		209,577.33			1,496,695.52	0.820
Key Tech		3,337.00						3,337.00	0.002
Sussex Cty Plumbing			1,275.49					1,275.49	0.001
Ennis Paint			1,734.21					1,734.21	0.001
Frank Semeraro Constr.				1,250.00				1,250.00	0.001
Water/Sewer Oper				36.00				36.00	0.000
Owl contracting			2,086.08					2,086.08	0.001
Keller Welding			125.00					125.00	0.000
Power with Prestige			243.00					243.00	0.000
Ferraioli,Cerulla & Cuva							500.00	500.00	0.000
Holzhauser & Hostenstein						5,000.00		5,000.00	0.003
Budget Reim from PSS		0.00						0.00	0.000
	<u>30,459.94</u>	<u>701,704.49</u>	<u>839,924.21</u>	<u>4,787.57</u>	<u>225,621.71</u>	<u>13,800.83</u>	<u>8,042.88</u>	<u>1,824,341.63</u>	<u>1.000</u>

1,824,341.63

**Charged to:**

#2006-5 Prelim #6190605	30,459.94	4,540.06						35,000.00
#2007-3 A/C#6190703		697,164.43	839,924.21	4,787.57	225,621.71	13,800.83	8,042.88	1,789,341.63
		<u>701,704.49</u>						<u>1,824,341.63</u>

Bid A PSS								150,000.00
Bid B SCCC								35,704.00
BAN interest								17,853.33
								<u>2,027,898.96</u>

#2007-3 Ord. appropriation								2,000,000.00
5/11/07 PSS reimb Ord.								9,091.38
5/11/07 PSS reimb Ord.								29.90
1/2/08 Audit adj 12/31/07								-9,091.38
1/2/08 Audit adj 12/31/07								-29.90
Expended 3/23/07-12/31/12								<u>-1,789,341.63</u>
Balance 8/18/2014								210,658.37

**FUNDING ANALYSIS**

Ordinance #2007-3 Appropriation	3/23/2007	2,000,000.00
Debt not authorized -expect Small cities Grant	3/23/2007	-400,000.00
Unfunded debt		<u>1,600,000.00</u>
JSDA Loan @4.25%	10/27/2008	-1,000,000.00
Unfunded debt		<u>600,000.00</u>
JSDA check (add'l funding received)	8/25/2010	-370,454.00
Unfunded debt		<u>229,546.00</u>
Funded thru 2013 W/S Budget-Def.Chg. #6092295	2013	<u>-18,887.63</u>
Cancel debt per Resolution # -2014	8/25/2014	210,658.37



## TOWN OF NEWTON

### RESOLUTION #161-2014

August 25, 2014

“Award Bid for Roof Replacement at the Newton Fire Museum”

**WHEREAS**, the Town of Newton publicly accepted and opened bids for the Roof Replacement at the Newton Fire Museum on Wednesday, August 13, 2014 at 11:00 a.m. as follows:

<u>Name and Address of Bidder</u>	<u>Base Bid</u>
<b>VMG Group 288 Cox Street Roselle, NJ 07203</b>	<b>\$28,900.00</b>
P. Cipollini, Inc. 203 E. Blackwell Street Dover, NJ 07801	\$29,000.00
Arch Concept Construction Inc. 351 West Clinton Street Haledon, NJ 07508	\$41,000.00
Build Rite, LLC 16 Darlington Drive Wayne, NJ 07470	\$64,250.00

**WHEREAS**, based on review of the bid documents, the Town's Consulting Architect Thomas Kosten, recommends awarding of the Roof Replacement at the Newton Fire Museum based in his letter of recommendation dated August 14, 2014, to VMG Group, in the amount of \$28,900.00; and

**WHEREAS**, Chief Financial Officer has certified funds are available based on the attached certification;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that the contract for Roof Replacement at the Newton Fire Museum is hereby awarded to VMG Group, Roselle, NJ in the amount of \$28,900.00. A copy of this resolution and the proposed Contract is to be forwarded to VMG Group, for execution.

#### CERTIFICATION

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, August 25, 2014.

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Lorraine A. Read, RMC  
Municipal Clerk



TOWN OF NEWTON

CERTIFICATION OF THE AVAILABILITY OF FUNDS  
(AS REQUIRED BY N.J.S.A. 40A:4-57, N.J.A.C. 5:34-5.1 et seq)

THIS IS TO CERTIFY THAT FUNDS ARE AVAILABLE AS FOLLOWS:

RESOLUTION #: 161 -2014

APPROVING: VMG GROUP

FOR THE PURPOSE OF: FIRE MUSEUM ROOF

IN THE AMOUNT OF: \$28,900.00

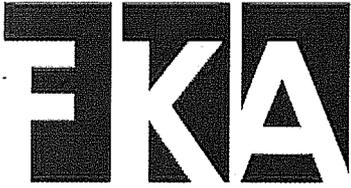
APPROPRIATED BY: CAPITAL FUND

#2014-6	FIRE MUSEUM ROOF	#30914065	\$ 28,346.71
#2014-6	IMPROVE MUNICIPAL BUILDINGS	#309140684	\$ 553.29

DATED THIS 25<sup>TH</sup> DAY OF AUGUST, 2014

BY *Dawn L. Babcock*

DAWN L. BABCOCK  
CHIEF FINANCIAL OFFICER



ARCHITECTS

A PROFESSIONAL ASSOCIATION

Architecture • Interior Design  
Planning • Project Management

Thomas J. Kosten, A.I.A.  
Michael R. Bieri, A.I.A.

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August 14, 2014

**Mr. Thomas S. Russo, Jr.**

*Town Manager*  
Town of Newton  
39 Trinity Street  
Newton, NJ 07860

Project: **Roof Replacement Project @ the Newton Fire Museum**  
Project #1422

RE: **Bid Results and Recommendation**

Dear Mr. Russo:

On August 13, 2014, the bids were opened for the Roof replacement Project @ The Newton Fire Museum.

Four bidders submitted bids on this project with amounts ranging from \$28,900 to \$64,250.

**VMG Group** was the apparent low bidder for this project with a base bid of \$28,900. We have reviewed their bid, and their paperwork appears to be in order.

The estimate for this project was \$35,000, therefore, we would have no objection to the Town Council awarding the contract to the lowest bidder, **VMG Group** in the amount of **\$28,900**.

If you have any questions, or need any additional information, please do not hesitate to call.

Sincerely,

**Feilowitz & Kosten Architects**

A handwritten signature in black ink, appearing to read 'Thomas Kosten', written over a horizontal line.

**Thomas Kosten, AIA, FMP, LEED AP**  
*President*

Harold E. Pellow and Associates, Inc.  
 Consulting Engineers, Planners and Land Surveyors  
 17 Plains Road  
 Augusta, NJ 07822-2009  
 Ph: (973) 948-6463; Fax: (973) 948-2916

**SUMMARY OF BIDS**

<b>Project:</b> Roof Replacement at the Newton Fire Museum				<b>VMG Group</b>		<b>P. Cipollini, Inc.</b>		<b>Arch Concept Construction, Inc.</b>		<b>Build Rise, LLC</b>	
<b>Municipality:</b> Town of Newton				<b>Contractor Name</b> 288 Cox Street		<b>Contractor Name</b> 203 E. Blackwell Street		<b>Contractor Name</b> 351 West Clinton Street		<b>Contractor Name</b> 16 Darlington Drive	
<b>County:</b> Sussex				<b>Street Address</b> Roselle, NJ 07203		<b>Street Address</b> Dover, NJ 07801		<b>Street Address</b> Haledon, NJ 07508		<b>Street Address</b> Wayne, NJ 07470	
<b>Item #</b>	<b>Description</b>	<b>Quantity</b>	<b>Unit</b>	<b>ENGINEER'S ESTIMATE</b>		<b>City</b>	<b>State/Zip</b>	<b>City</b>	<b>State/Zip</b>	<b>City</b>	<b>State/Zip</b>
1	Roof Replacement Project at the Newton Fire Museum	100%	L.S.	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>
				\$33,000.00	\$35,000.00	\$28,900.00	\$28,900.00	\$29,000.00	\$29,000.00	\$41,000.00	\$41,000.00
<b>TOTAL ESTIMATED COST OF CONSTRUCTION</b>					<b>\$35,000.00</b>		<b>\$28,900.00</b>		<b>\$29,000.00</b>		<b>\$41,000.00</b>
											<b>\$64,250.00</b>

I hereby certify that this is a true copy of the bids received on August 13, 2014 at 11:00 AM.

\_\_\_\_\_  
 (Engineer)



## TOWN OF NEWTON

### RESOLUTION #162-2014

August 25, 2014

“Award Bid for the Cistern Fill Project at the  
Newton Fire Museum”

**WHEREAS**, the Town of Newton publicly accepted and opened bids for the Cistern Fill Project at the Newton Fire Museum on Wednesday, August 13, 2014 at 10:30 a.m. as follows:

**Name and Address of Bidder**

**Base Bid**

**Tony's Concrete Co., Inc.  
316 E. Kinney Street  
Newark, NJ 07105**

**\$45,000.00**

Edge Property Maintenance, Inc.  
10 W. Thomas Street  
Wharton, NJ 07885

**\$88,800.00**

**WHEREAS**, based on review of the bid documents, the Town's Consulting Architect Thomas Kosten, recommends awarding of the Cistern Fill Project at the Newton Fire Museum based in his letter of recommendation dated August 14, 2014, to Tony's Concrete Co., Inc., in the amount of \$45,000.00; and

**WHEREAS**, Chief Financial Officer has certified funds are available based on the attached certification;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that the contract for Cistern Fill Project at the Newton Fire Museum is hereby awarded to Tony's Concrete Co., Inc., Newark, NJ in the amount of \$45,000.00. A copy of this resolution and the proposed Contract is to be forwarded to Tony's Concrete Co., Inc., for execution.

### **CERTIFICATION**

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, August 25, 2014.

\_\_\_\_\_  
Lorraine A. Read, RMC  
Municipal Clerk



TOWN OF NEWTON

CERTIFICATION OF THE AVAILABILITY OF FUNDS  
(AS REQUIRED BY N.J.S.A. 40A:4-57, N.J.A.C. 5:34-5.1 et seq)

THIS IS TO CERTIFY THAT FUNDS ARE AVAILABLE AS FOLLOWS:

RESOLUTION #: 162 -2014

APPROVING: TONY'S CONCRETE CO., INC.

FOR THE PURPOSE OF: FIRE MUSEUM CISTERN FILL

IN THE AMOUNT OF: \$45,000.00

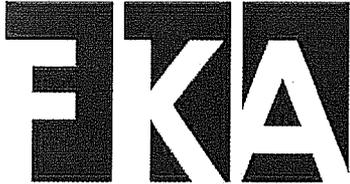
APPROPRIATED BY: CAPITAL FUND

#2013-11	RENOVATE FIRE MUSEUM	#30913114	\$40,335.14
#2014-6	IMPROVE MUNICIPAL BUILDINGS	#309140684	\$ 4,664.86

DATED THIS 25<sup>TH</sup> DAY OF AUGUST, 2014

BY

DAWN L. BABCOCK  
CHIEF FINANCIAL OFFICER



ARCHITECTS

A PROFESSIONAL ASSOCIATION

Architecture • Interior Design  
Planning • Project Management

Thomas J. Kosten, A.I.A.  
Michael R. Bieri, A.I.A.

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August 14, 2014

**Mr. Thomas S. Russo, Jr.**

Town Manager  
Town of Newton  
39 Trinity Street  
Newton, NJ 07860

Project: **Cistern Fill Project @ The Newton Fire Museum**  
Project #1421

RE: **Bid Results and Recommendation**

Dear Mr. Russo:

On August 13, 2014, the bids were opened for the Cistern Fill Project @ The Newton Fire Museum.

Two bidders submitted bids on this project with amounts ranging from \$45,000 to \$88,880.

**Tony's Concrete Construction Co., Inc.** was the apparent low bidder for this project with a base bid of \$45,000. We have reviewed their bid, and their paperwork appears to be in order.

The estimate for this project was \$51,970, therefore, we would have no objection to the Town Council awarding the contract to the lowest bidder, **Tony's Concrete Construction Co., Inc.** in the amount of **\$45,000.**

If you have any questions, or need any additional information, please do not hesitate to call.

Sincerely,  
**Feitlowitz & Kosten Architects**

A handwritten signature in black ink, appearing to read 'Thomas Kosten'.

**Thomas Kosten, AIA, FMP, LEED AP**  
President

Harold E. Pellow and Associates, Inc.  
 Consulting Engineers, Planners and Land Surveyors  
 17 Plains Road  
 Augusta, NJ 07822-2009  
 Ph: (973) 948-6463; Fax: (973) 948-2916

**SUMMARY OF BIDS**

<b>Project:</b> Cistern Fill Project at the Newton Fire Museum <b>Municipality:</b> Town of Newton <b>County:</b> Sussex				<b>Tony's Concrete Construction Co., Inc.</b> Contractor Name 316 E. Kinney Street Newark, NJ 07105 Street Address City State/Zip		<b>Edge Property Maintenance, Inc.</b> Contractor Name 10 W. Thomas Street Wharton, NJ 07885 Street Address City State/Zip	
Item #	Description	Quantity	Unit	ENGINEER'S ESTIMATE Unit Price	Amount	ENGINEER'S ESTIMATE Unit Price	Amount
1	Cistern Fill Project at the Newton Fire Museum	100%	L.S.	\$50,000.00	\$50,000.00	\$45,000.00	\$45,000.00
<b>TOTAL ESTIMATED COST OF CONSTRUCTION</b>					<b>\$50,000.00</b>		<b>\$88,880.00</b>

I hereby certify that this is a true copy of the bids received on August 13, 2014 at 10:30 AM.

\_\_\_\_\_  
 (Engineer)



## TOWN OF NEWTON

### RESOLUTION #163-2014

August 25, 2014

“Approve Bills and Vouchers for Payment”

**BE IT RESOLVED** by the Town Council of the Town of Newton that payment is hereby approved for all vouchers that have been properly authenticated and presented for payment, representing expenditures for which appropriations were duly made in the 2013 and 2014 Budgets adopted by this local Governing Body, including any emergency appropriations, and where unexpended balances exist in said appropriation accounts for the payment of such vouchers.

### CERTIFICATION

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, August 25, 2014.

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Lorraine A. Read, RMC  
Municipal Clerk



## TOWN OF NEWTON

### RESOLUTION #164-2014

August 25, 2014

### “Approval of the Execution of a Shared Services Agreement with Byram Township to Provide Certified Tax Collection Services”

**WHEREAS**, the Township of Byram requires the services of a Certified Tax Collector on an occasional and part-time basis; and

**WHEREAS**; the Town of Newton is able to provide the services of a Certified Tax Collector on the terms required by the Township of Byram as outlined in an Agreement attached hereto, dated August 25, 2014; and

**WHEREAS**, the State of New Jersey encourages municipalities to enter into Shared Services Agreements;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that this Governing Body hereby approves and authorizes the execution of a Shared Services Agreement with the Township of Byram for the provision of a Certified Tax Collector.

### CERTIFICATION

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, August 25, 2014.

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Lorraine A. Read, RMC  
Municipal Clerk

**Agreement between Byram Township and the Town of Newton**  
**Regarding Tax Collection Services**

This Agreement, made this 25<sup>th</sup> day of August, 2014, by and between:

The Town of Newton (Newton), a Municipal Corporation, Incorporated in the State of New Jersey, and located at 39 Trinity Street, New Jersey, 07860; and

The Township of Byram (Byram), a Municipal Corporation, Incorporated in the State of New Jersey, and located at 10 Mansfield Drive, Stanhope, New Jersey, 07874.

**WITNESSETH:**

**WHEREAS**, Byram is in need of a Certified Tax Collector to provide Tax Collection Services; and

**WHEREAS**, Newton has the ability to provide said services to Byram; and

**WHEREAS**, Byram and Newton desire to enter into an agreement in which Byram shall utilize Newton's Certified Tax Collector to provide Byram with Tax Collection Services for a limited period;

**NOW, THEREFORE, IN CONSIDERATION OF** the mutual covenants, promises and consideration recited herein, the parties hereto agree as follows:

1. Newton will allow Newton's Certified Tax Collector to be appointed by Byram as Byram's interim Tax Collector pursuant to N.J.S.A. 40A:9-141, while Byram hires and trains an individual to become its permanent Tax Collector.
2. Newton's Certified Tax Collector shall serve as Interim Tax Collector for Byram from September 11, 2014 through April 30, 2015 (an eight (8) month period).
3. Byram shall pay Newton a total of \$24,000 for providing Certified Tax Collection Services to Byram. Such sum shall be paid in equal installments of \$3,000 per month for the duration of the Agreement.
4. Newton shall be responsible for compensating the Tax Collector for the services the Tax Collector provides to Byram by way of Newton's regular payroll.
5. Newton's Certified Tax Collector's regular available hours to Byram shall be:
  - Tuesday and Thursday (8:30 AM – 12:30 PM).
  - These regular hours can be adjusted with input from the Newton Certified Tax Collector and the approval of the Managers from both towns and such approval will not be unreasonably withheld.
6. Byram will receive on average eight (8) hours of service each week. Weeks containing a holiday may require an adjustment to the aforementioned schedule.

7. Should Newton's Certified Tax Collector provide services to Byram in excess of the two hundred and eighty (280) hours contemplated by this Agreement, Byram will compensate Newton at a rate of eighty-five dollars (\$85.00) per hour for every hour, or partial hour thereof, in excess of the 280 contracted for. Byram shall be responsible for maintaining complete and accurate records of the hours the Newton Certified Tax Collector performs services for Byram and reporting such hours to Newton.
8. Both parties shall have the right to terminate this Agreement by giving to the other party thirty (30) days written notice of their election to do so for any reason or no reason during the term of the Agreement. Written notice shall be delivered to the respective managers for each municipality, via hand delivery, email, facsimile or regular mail.

**IN WITNESS WHEREOF**, the parties hereto have caused these presents to be signed by their proper officers and caused their proper seals to be affixed hereto the day and year first above written.

**Town of Newton**

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Thomas S. Russo, Jr.  
Town Manager

**ATTEST:**

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**Township of Byram**

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Joseph Sabatini  
Township Manager

**ATTEST:**

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