

Chapter 4. A Legal Framework for Retrofitting Centers: A Planned Center Ordinance

Introduction

The discussion about how to implement centers at the MSM Planning Institute articulated two points with great clarity. First, there must be a public/private partnership in the centers process, most notably to provide key infrastructure. Second, the municipal sector needs incentives to participate and to stay committed over the long term, with no drastic political shifts. Center plans which simply add growth to existing zoning will not get political support.

There was also a general agreement both at the Planning Institute and at a follow-up session with Herman Simonse, Executive Vice President of Bellemead Development Corp., one of the biggest office developers in New Jersey, and Jeff Horn, Executive Director of NAIOP formerly the New Jersey Chapter of the National Association of Industrial and Office Parks. All agreed we needed to re-invent zoning in New Jersey. We need a regulatory flexibility to interest the private sector in committing to centers over the long haul. Traditional, and even some non-traditional, tightly directed zoning strictures will fail to produce viable centers.

Achieving the three goals – partnership, municipal incentives, and flexibility – will require the discarding of much conventional zoning wisdom. The usual detailed prescriptions

of specific uses, with specific setbacks and yards, mandatory minimum lot sizes for particular uses, and prescribed floor area ratios for particular uses, *etc.* cannot possibly serve the needs of a center which is supposed to grow and develop in response to changing market needs over a 20 or more year period. Nor can a single design theme – such as that set forth in some of the New Urbanists’ ordinances – suffice, given the variety of potential settings for centers in New Jersey and throughout the country.

Thus, devising new zoning for centers will not be easy. We need to see whether old tools can be re-utilized in service of the centers concept and whether zoning can be recast to meet the triple goals of partnership, local support and flexibility.

The balance of this chapter attempts to respond to these challenges. It does not, however, present all the details that might be included in a full zoning ordinance or other approach. The proposals set forth below can serve as the framework on which full scale regulatory codes can be hung. Hopefully, this framework will be strong enough to support the development of centers as real “communities of place” in New Jersey in accordance with the underlying vision of the first New Jersey State Development and Redevelopment Plan.

The Redevelopment Agencies Law: Implementing Public/Private Partnerships

Unlike most land use proposals, implementation of a center scheme is more like running a project, than simply regulating land use. The discussion at the MSM Planning Institute strongly suggests that some form of active, unified management of the center's development created by a public/private partnership is critical to its success. The management of the center project requires a kind of flexibility that a private entity normally has, while it needs the oversight of the public sector to insure that the center develops in accordance with the public interest and the overall vision. Moreover, this management must involve the cooperation between both sectors, since infrastructure is normally provided by the public and actual buildings are built by the private sector.

Thus, it is clearly desirable to have some form of general control mechanism, which goes beyond zoning, to implement a center. Fortunately, New Jersey has just revised its redevelopment laws with a greater emphasis on carrying out state and regional planning goals, which now include centers as defined in the State Plan. The new Local Redevelopment and Housing Law, N.J.S.A. 40:12A-1, adopted in 1992, could thus provide an admirable vehicle for recasting inappropriate and deficient suburban designs into the new centers model.

Given the potential for redevelopment laws to be used non-traditionally in suburban as well as urban areas, it is

critically important to discuss just how the new statute could be used to provide the necessary coordination, management and leadership to implement a center, not only in New Jersey, but, as set forth further below, in other states as well.

In 1991 and 1992, the New Jersey Legislature thoroughly revamped the state's redevelopment laws. The revisions were undertaken in response to the 1987 report of a special commission, the County and Municipal Government Study Commission, whose recommendations formed the basis for the new statutory provisions.

This Commission recognized the need to link local redevelopment efforts to comprehensive state and regional planning processes:

Because of their potential regional impacts, the formulation and implementation of local redevelopment plans should also be linked to the comprehensive state and regional planning process.

County and Municipal
Government Study
Commission, *Local
Redevelopment in New
Jersey: Structuring a
New Partnership*, at 54
(1987).

Based on this observation, the Commission recommended that:

All proposed local redevelopment plans be filed with the State Planning Commission and the county planning board for their review and comment with respect to the regional impacts of the plan and its relationship to the goals and provisions of the State Development and Redevelopment Plan and county plan respectively.

Ibid., at 58.

While this recommendation was not adopted exactly as proposed, the statute approved by the Legislature five years after the commission reported did include, among its preconditions for carrying out a redevelopment project, a new mandate that the municipality specify any significant relationship of a redevelopment plan to:

(a) the master plans of contiguous municipalities, (b) the master plan of the county in which the municipality is located, and (c) the State Development and Redevelopment Plan adapted pursuant to State Planning Act...

N.J.S.A. 40A:12A-7a(5); P.L. 1992, c.79, ¶7.

Thus, the 1992 Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 *et seq.*, for the first time explicitly recognized a link between local redevelopment plans and the state goals and objectives embodied in the State Plan which, of course, emphasizes “communities of place” as its centerpiece.

In this new regional planning context, some of the criteria for determining the boundaries of a redevelopment area (formerly called a blighted area) and planning for its redevelopment take on a new meaning outside urban areas or downtown sites which, in New Jersey and elsewhere, have traditionally been the focus for redevelopment efforts. In particular, three of the criteria for a designated redevelopment area could be applied to create centers that would replace less desirable, less efficient and less productive uses of land in the context of the partially vacant suburban land which will comprise a great deal of the land area in proposed centers.

Specifically, N.J.S.A. 40A:12A-5d targets for development those areas with buildings or improvements which by reason of, among other things, “faulty arrangement or design, deleterious land use or obsolete layout, or any combination of these or other factors detrimental to the safety, health, morals or welfare of the community.” Thus, a strip mall with associated vacant lots could well qualify as obsolete or faulty where a center as envisioned in the State Plan is to be located.

Another criterion provides for redevelopment where there is a growing or lack of proper utilization or areas caused

by “the condition of the title, diverse ownership of the real estate or other conditions resulting in a stagnant or not fully productive condition of land potentially useful and valuable for and contributing to and the serving the public health, safety and welfare.” N.J.S.A. 40A-12-5e. These are extremely broad expressions of legislative support for redevelopment. These criteria are clearly applicable to suburban candidates for centers, whether developed, partially built, or even mostly vacant.

Another redevelopment criterion is also relevant for the development of new centers. Land that is publicly owned, or which has been privately owned and vacant for 10 years, and is unlikely to be developed through the instrumentality of private capital, can also be placed in a redevelopment area. N.J.S.A. 40A:12-(5)c. This language provides another opportunity to designate a type of suburban place that could be transformed into a center through the redevelopment powers.

The relevance of these provisions to suburban centers is affirmed by existing New Jersey case law. They were applied by the New Jersey Supreme Court to authorize the exercise of municipal redevelopment powers for the Bridgewater Commons, which is now one of the archetypal examples of a regional center in the making. In *Levin v. Township Committee of Bridgewater Township*, 57 N.J. 506, 271 A.2d 1 (1971), appeal dismissed, 404 U.S. 803 (1972), the New Jersey Supreme Court determined that the diversity of land ownership, the presence of some dilapidated structures, and under-utilized vacant land, among other conditions, justified

the use of redevelopment powers by Bridgewater Township to develop this nascent center.

Such provisions have relevance for suburban design nationally as well as in New Jersey. That public purposes are furthered by an area-wide design for redevelopment was recognized forty years ago by the United State Supreme Court in a case involving the southwest urban renewal area in the District of Columbia, *Berman v. Parker*, 348 U.S. 26 (1954). The U.S. Supreme Court more recently cited *Berman* when it re-affirmed the broad right of states and local government to change patterns of land holding in order to serve the public interest in *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984). Thus, the redevelopment approach to suburban densification can potentially be used across the country.

The prospective application to suburban land types of redevelopment mechanisms is significant and exciting. We need a method to accomplish the kind of public/private cooperation that is essential to the development of centers but which really cannot be achieved solely through an essentially regulatory mechanism such as zoning. Designation of an area as a redevelopment site triggers a host of potential contact/partnership points between the municipality and private capital as well as a great deal of additional regulatory flexibility. Some of the more significant tools which become available in a redevelopment area under the New Jersey legislation are as follows:

- 1) The municipality can develop a specific plan for the redevelopment area which supersedes the general

zoning criteria otherwise available. There can thus be essentially a spot zone/master plan just covering the redevelopment area alone.

N.J.S.A. 40A:12A-7c.

- 2) The municipality can utilize revenue bonds to finance the development of infrastructure in cooperation with private enterprise in the redevelopment area (see example below).

N.J.S.A. 40A:12A-8, 22 and 29.

- 3) The municipality can arrange or contract with public agencies or private developers for the planning, installation or construction of any redevelopment project and negotiate or collect revenue from a redeveloper to defray the costs of the redevelopment entity, including the costs incurred in conjunction with revenue bonds or other means of financing the development of streets, facilities or other infrastructure in the redevelopment area.

N.J.S.A. 40A:12A-8d and f.

- 4) The municipality may lease or convey property and improvements to anyone without public bidding at reasonable prices so long as the conveyance is in accordance with a redevelopment plan.

N.J.S.A. 40A:12A-8g.

- 5) More broadly, the law continues to provide for municipal-developer agreements governing uses in the redevelopment area, (*i.e.*, contract zoning which is not

otherwise lawful) and for the timing of the building of improvements for those uses. It also authorizes municipal assistance, through the exercise of eminent domain powers, or incurring of indebtedness, to aid in the redevelopment project.

N.J.S.A. 40A:12A-8a,b and c; N.J.S.A. 40A:12A-37.

Thus, a municipality using its redevelopment powers can cooperate with private enterprise through an enormous selection of otherwise unavailable techniques. For example, intense forms of interaction such as direct financial aid and leasing of property to the redeveloper are permitted. (See, *e.g.* N.J.S.A. 40A:12A-8g.) However, a redevelopment approach can proceed without direct financial aid and even if the parcels are not in common ownership, although common ownership facilitates redevelopment.

Moreover, only part of a center need be implemented through redevelopment. Where some appropriate uses are already in place, only the vacant and poorly utilized portions of a center need be subject to redevelopment.

For example, assume a partly vacant suburban site largely in single ownership. If one entity holds a significant amount of land, it can be designated as a redeveloper. The municipality may then agree with the redeveloper that it will float tax-exempt bonds to support the construction of infrastructure provided that the redeveloper agrees to implement certain land uses in a given time frame, to repay some or all of the amount of the bonds out of revenues from

the development, or to grant a mortgage on its property to guarantee the bond re-payment. Such an approach, without condemnation or direct local financial contribution, would give a suburban center a discrete, ongoing financial structure that would provide strong organizational impetus for the whole center project.

In addition to all these techniques, municipalities may offer long term tax abatements for 30 years with the amount of tax abatement decreasing over time. N.J.S.A. 40A:20-12. The tax abatement would be administered through a financial agreement in the form of a contract. N.J.S.A. 40A:20a-9 and 10. Many suburban municipalities will not, of course, be interested in tax abatements as a general rule. However, they are an additional flexible tool that could be available to help make a center happen. Further, they could be accompanied by additional revenue sources, such as land leases, where municipally owned land is part of a center to give the municipality a greater income stream than would be possible through full taxation.

In sum, the redevelopment agency powers contained in the new statutes provide municipalities exercising them with a formidable array of tools for suburban centers. These powers provide a series of financial incentives and controls which can support an infrastructure and development partnership. As a result, the redevelopment approach offers municipalities a far greater opportunity to create centers than the negative tool of regulation through zoning. In fact, in contrast with zoning, the redevelopment approach may be seen as a way of bringing the parties together through mutual agreements and mutual

assistance as contrasted with having the governmental and private sectors glare at each other over the divide of regulation.

Where the redevelopment approach can be implemented, that is, where lands fall within the redevelopment area criteria mentioned above, use of this approach should be tried first, before consideration is given to what kind of zoning should be imposed upon development. If, as is agreed generally, the development of centers is a long term process, which requires good faith participation by all parties, then the redevelopment approach provides the framework for this process, a framework which promotes mutual agreement on shared solutions for the design, development and implementation of centers.

A Zoning Ordinance for Centers: Introduction

Before setting forth a text of a centers ordinance, some explanatory comments are appropriate.

There is a clear tension between the general and prohibitory nature of zoning regulation and the flexible, site specific treatment that will make a center work. There is also a tension between regulation responsive to present day expectations, and the need to accommodate alterations in market conditions or design preferences that may occur during the extended period in which the center will develop. For that reason, the intention for the ordinance whose text is set forth in the following section of this chapter, has been to leave as much flexibility as possible to the developer or redeveloper. In this

approach, the center essentially has been treated as an envelope in which land uses can be flexibly deployed so long as external impacts are controlled. That is the fundamental theory of the ordinance.

A few specifics also deserve comment. As Plainsboro Township's generally pro-planning Mayor Peter Cantu asserted at the MSM Planning Institute, there is an urgent political need to insure that the center does not become an addition to existing growth, but that it instead alleviates growth pressures elsewhere in the community. This result may happen naturally, in part due to the greater ease of development accorded to sites in centers should attract capital towards the center and away, presumably, from other, more restrictively regulated portions of a community.

However, incentives are suggested in the ordinance for center developers to obtain and set aside open space areas outside the center so that the additional development in the center really is offset by the elimination of development potential on lands outside of it (see G and J of the ordinance).

Further, flexible use of the Kit-of-Parts to produce good design (described in Chapter 5) will be a key feature of the proposed center ordinance. Good design is not easy to define. One person's landmark is another's eyesore. Through judicious development by the municipality of the various design components in the Kit-of-Parts, combined with the discretion given to the developer to deploy those components, the center will hopefully achieve its design expectations

without overly intensive regulatory mandates that not only can pose an economic burden, but also stifle creativity (see M).

There are requirements in the proposed ordinance for agreements on the provision of utilities and for alternate dispute resolution. While these requirements are only sketched in at this point, they are critical to a center's success (see I). Without guaranteed utility access, the center zoning will fail to produce the desired results.

Perhaps as critical to the success of the center as any portion of the proposed ordinance is its section on Alternate Dispute Resolution (see O). Without a responsive non-judicial mechanism for resolving disputes, developers, municipalities and citizens are likely to be embroiled in lengthy arguments that will thwart center implementation. Management and implementation of centers requires a certain predictability in the approval process. Presently, litigation, which will inevitably beset centers since they are large and likely to engender some local opposition, could completely obliterate any hope of achieving certainty in the development process, since zoning cases can take years to resolve through the courts. See for example, *Lake Shore Estates v. Township of Denville*, 127 N.J. 394, 605 A.2d. 1073 (1992), in which New Jersey Supreme Court Justice Daniel O'Hern, in dissent, criticized the development process for taking nineteen years to deal with one relatively straight forward project. Centers will die in the face of such litigation, and therefore alternative means of resolving legal challenges to the zoning and development of centers must be found.

Finally, section P, on external impacts, lays out performance goals that should be clear enough to be administered by a reviewing authority. These performance goals are backed up by numerical floor area ratio and height standards that are, of course, subject, as are all the density requirements specified herein, to local debate and amendment based on the character of the municipality considering a center, and the design goals and development objectives of a particular center.

Ordinance or Redevelopment Plan Provisions

The following provisions are recommended, as stressed in this chapter's introduction, as a framework to guide the development of centers. These standards are intended to provide generic guidance for suburban centers. The numerical standards in particular may be reviewed and altered to fit the character of different communities in which centers are proposed. The proposed ordinance is as follows:

Ordinance No. "1-1995" Township of "Falling Rock"

A. *Uses.*

The centers shall be divided into the following three types of use areas:

1. residential areas;
2. residential/commercial areas; and
3. non-residential areas.

B. *Proportion of use areas.*

Each area shall constitute no less than 25% of the total area of a zone and shall be located as set forth in the zoning map. One type of area shall be designated as *the center core*. [The core area will provide the center of gravity for the overall development. The center may have a residential, residential/commercial, or non-residential core area. For example, Forrestal Center would have a non-residential core; Princeton Borough, a residential/commercial core; and, Twin Rivers a residential core.]

C. *Residential Areas.*

Permitted uses shall be single-family detached dwellings and attached dwellings/townhouses and multiple dwellings.

1. Single-family detached dwellings shall constitute a minimum of 25% of the total number or residential units to be constructed.
2. Residential densities shall not exceed an average of ten dwelling units per acre. The minimum residential density in any development in a residential area shall be no less than five dwelling units per acre, on average.
3. Height limit shall be three living stories.

D. *Residential/Commercial Areas*

1. Residential uses shall be permitted as in residential areas, except that residential density may be up to twenty dwelling units per acre in those portions of a residential/commercial area devoted to residences or to mixed use structures containing residences. [The greater intensity of development and the mixed-use character of the residential/commercial area justifies a higher residential density.]
2. Permitted commercial uses shall include retail stores, banks, restaurants and similar neighborhood-type commercial uses to be located on the first floor of buildings. Offices may be permitted on any floor provided that they shall not exceed more than 60% of the square footage of any building.
3. Institutional uses, such as government offices and schools shall be encouraged.
4. A minimum of 25 % of the area of the zone shall be devoted to retail uses, and a minimum of 25% and a maximum of 75% of the floor area shall be devoted residential uses.
5. The maximum permissible floor area ratio for commercial uses in this area shall be 1.0. However, if commercial uses are combined with residential uses in a mixed-used building, a density bonus of 50% additional commercial space shall be given for each square foot of commercial space included in such a building, so that the maximum floor area ratio, if all

development takes place in mixed-use buildings, would be 1.5.

6. There shall be a five-story limit for all structures in residential/commercial areas.

E. Non-Residential Areas.

1. Non-residential areas shall consist of institutional, commercial, research and office uses; manufacturing uses are also permitted if they do not produce noise, dust, glare or similar disturbance external to the site beyond that which existed on the site prior to development. Nuisance uses such as explosives, quarrying, mining, and the like are excluded.
2. Uses in non-residential areas which serve regional needs shall be separated from residential areas and residential/commercial areas by streets, transit facilities and/or appropriate buffers which shall consist of natural cover left intact or, where needed, supplemented by appropriate plantings. Buffering will be counted toward the open space required in G.
3. Maximum permissible F.A.R. shall be 1.0.
4. Height shall be as specified in D.

F. Expansion of Areas.

1. If five years after adoption of this ordinance, 50% of any of the three development areas specified above has been committed for

development through a final development approval with posting of bonds or other security, lands in the other two areas may be converted to development for uses permitted in such committed area.

2. Notwithstanding 1, no more than 50% of the land in such other area may be so converted.

3. Further, there can be no such conversion of land allocated to the development area designated as the center core or conversion of lands dedicated as open space. [These provisions are intended to provide flexibility in uses to meet market needs over time. However, some of each area must remain and the core area cannot be altered without a re-zoning.]

G. Open Space.

1. One acre of land for each acre developed, that is 50% of all lands within the center, shall be left in permanent open space if lands outside the center are not acquired and dedicated as open space, as set forth below. This requirement shall apply to each tract of land within the center.

2. The 50% requirement in 1. is encouraged to be fulfilled by purchasing lands designated in the center plan, but located outside the center boundaries and dedicating them to a public entity with a deed restriction preventing any an all development except for agricultural, conservation or recreational uses. Lands so

dedicated outside center boundaries shall be credited toward the 50% requirement at 1.2 acres for each one acre of land so acquired and dedicated. [Example: Assuming a 600-acre center, 300 acres in the center must be dedicated as open and unavailable for development credit. However, the whole 600 acres may be developed if 500 acres are acquired outside the center and retired from development]

H. Affordable Housing.

A sufficient number of units shall be set aside for affordable housing in the center to meet the municipal new construction obligation as set forth in the regulations of the New Jersey Council on Affordable Housing, unless other centers have been zoned for this purpose.

I. Infrastructure.

Through a redevelopment plan, or by agreement, all rights to develop obtained pursuant to this Ordinance shall include with them the right to sufficient sewerage capacity and water service to meet the needs of the proposed development. All infrastructure shall be in accordance with the circulation and utility plan shown in the master plan/redevelopment plan.

J. Incentives.

1. A developer may acquire title to or the development rights on lands outside the center in excess of the open space requirements set forth in G, and dedicate such lands or rights or permanent open space, conservation or agriculture. In such cases a development credit equal to each unit of housing and each square foot of non-residential floor area which could have been built on lands outside the center in excess of those required to be set aside pursuant to G, shall be allowed as a density bonus, to be utilized in the center development.

2. Each dollar committed by a developer toward the provision of mass transit facilities which are viable and approved by the municipal approving authority shall result in a deduction of \$1.25 from the cost of those road or bridge improvements which otherwise would have to be provided by the developer pursuant to the Municipal Land Use Law.

3. To the extent that any developer provides infrastructure improvements for roads, bridges, water facilities, sewerage, drainage or otherwise beyond that which could be imposed pursuant to the Municipal Land Use Law, the developer may request, and a municipal approving authority shall consider, an appropriate and reasonable offset from other costs which the municipality might otherwise be entitled to impose pursuant to law. [Example: If a developer builds a master plan road which is

not necessitate by the development, and thus is not subject to the mandatory exaction under N.J.S.A. 40:55D-42 and the recent U.S. Supreme Court decision in *Dolan v. Tigard*, _U.S._ (1994), a developer should be entitled to receive an offset from infrastructure costs which could be imposed on it under the Municipal Land Use Law.] Similarly, where a developer provides basic sewerage and water improvements to help make the center viable, utility hookup fees could be waived.

K. Minimum Development Size.

Except for infill development on isolated smaller lots, minimum development size shall be five acres, provided that the location of any infrastructure proposed in connection with such development shall be consistent with the overall Center Plan.

L. Off-street parking.

Off-street parking for residential uses shall be provided as required by the Uniform Site Standards Act, specifically N.J.S.A. 40:55D-40.4, through the adoption of the off-street parking standards as set forth in the NJ Model Subdivision and Site Plan Ordinance, page 312. For non-residential uses, the most recent handbook or information from the Institute of Transportation Engineers, U.L.I. shared parking guidelines or other authoritative

sources shall be utilized, modified to obtain compliance with such demand management and employee trip reduction strategies as are needed to meet state and federal employee trip reduction mandates.

M. Design Kit-of-Parts. (See Chapter 5.)

1. Development of the center shall carry out a unified relationship among the three areas described in A, through road circulation patterns, pedestrian and bicycle paths, open space corridors, transit facilities, and other amenities that serve the centers' residents, employers and customers. The development of the center shall produce a more harmonious and efficient pattern of land use than conventional zoning.

2. Within each of the three center development areas, specified in A, there shall also be a unified relationship between individual developments and the area as a whole based on the factors set forth in 1. [1 and 2 are statements of intent which would be hard to enforce, but they do provide some direction to the municipal approving authorities in reviewing deployment of the Design Kit-of-Parts.]

3. The development must make use of design elements specified in advance for each type of area in the Kit-of-Parts. The contents of the Kit-of-Parts shall be specified in the design elements of the center plan. [The contents of the Kit-of-Parts, that is the design elements to

be used, will be tailored for each center (see Chapter 5).]

4. Deployment of these design elements shall be at the discretion of the developer, subject to the supervision of the redeveloper, if any; or, if none, to reasonable review by the planning board for general compliance with the guidelines set forth in 1 and 2.

5. The municipality shall maintain on file a computer simulations/projections or other representation of each of the Kit-of-Parts elements specified in 3, above. These three-dimensional representations shall be used in interpreting the dimensional standards in the Kit-of-Parts.

N. Vesting.

The center shall be developed pursuant to general development plans approved in accordance with the Municipal Land Use Law. Vesting of rights to develop shall be for a period of twenty years, pursuant to N.J.S.A. 40:55D-45.1b. except where a redevelopment plan is involved along with tax exemptions, in which case the vesting period shall be for thirty years or for any other duration as specified in N.J.S.A. 40A:20-9 or 40A:20-12a.

O. Alternate Dispute Resolution.

1. Any disputes which arise in the interpretation or enforcement of this ordinance

shall first be submitted to mediation or other forms of non-binding alternate dispute resolution for resolution within 90 days. Except as required by law, no decision made in the interpretation or enforcement of this ordinance shall be considered final for purposes of triggering a right to file in court, or for commencing the time period in which a case must be filed in court, for ninety (90) days following the initial submission of such matter to alternate dispute resolution.

2. The municipality shall maintain a list of at least ten (10) mediators/fact finders who may be called upon to resolve disputes. Any party requesting alternate resolution shall select one among that list. Fees of the mediator/fact finder shall be paid by the party requesting the alternate dispute resolution, unless otherwise ordered by the mediator/fact finder at the conclusion of mediation.

3. The requirement to submit disputes to alternate dispute resolution shall not be construed to deprive any person of the right to seek immediate or emergency injunctive or similar relief from a court or agency with appropriate jurisdiction.

P. External Impacts/Height/Floor Area Ratio.

1. Contributions for on-site improvements shall be imposed as permitted by N.J.S.A.

40:55D-42 except where they incentives are utilized as set forth in J above.

2. The center shall be laid out and designed to protect any residential uses surrounding the center.

3. Heights of all structures shall be so arranged as to minimize the visual impact of structures on residential uses outside the center or, in the event such visual impacts cannot be avoided, to minimize impact on surrounding uses.

4. No structure shall have a height of greater than one hundred (100) feet, excluding mechanical spaces and steeples or other ornamental features.

5. To limit the off-site impact of non-residential development, the non-residential gross floor area ratio for the center as a whole shall not exceed an average of .50.

Q. Miscellaneous

1. The above provisions shall constitute the sole requirements applicable to development in the center. All other ordinances inconsistent with the above are hereby repealed.

2. This ordinance shall take effect upon final passage and publication and filing with the county planning board as required by law.

Obstacles to Centers: Conclusion

Before concluding this chapter, it would be useful to summarize some of the obstacles to implementation of centers identified during the MSM Planning Institute. These included the following:

- 1) Bankers have not yet seen or financed centers. They must be persuaded to finance them through public commitments to infrastructure and eliminating development elsewhere, thereby enhancing the marketability of centers.
- 2) There is a severe resistance to increased housing densities which are not balanced by density decreases elsewhere.
- 3) There are a number of current market issues that will effect the initial phases of a center. The high-density residential market is down and the market for office buildings is all but dead. Therefore, a center developer would probably concentrate initially on small-lot, single family homes, senior/retirement housing and some rental apartments on the residential side. For non-residential, the initial phases of the center would involve retail. Office, research, and manufacturing uses would be a long-term expectation that should be provided for in a center plan, but which will probably not develop soon.
- 4) There has to be a change in regulatory philosophy away from very detailed zoning ordinances towards the type of center ordinance provided above, namely setting forth general standards and letting the private sector work within those general standards.
- 5) Different kinds of developers specialize in different products. One developer is unlikely to do the office, residential, and retail phases of the center; rather different developers normally would carry out each of these specialties. Therefore, the center plan must be capable of being implemented by different developers. [The five acre minimum development size proposed in the ordinance is intended to achieve this objective.]

These obstacles are all real. However, the tools such as the Local Housing and Redevelopment Law described above, and a flexible approach towards regulation, combined with sufficient open space incentives and controls against external impacts, will make centers more attractive. A key point will be beyond local control, however. Guarantees of utility access and of state permits are essential to supplement the redevelopment and zoning tools described in this chapter. If these issues are resolved, centers can and should be built in New Jersey and elsewhere. □