

**RESOLUTION OF MEMORIALIZATION GRANTING
AMENDED PRELIMINARY AND FINAL SITE PLAN APPROVAL FOR
CONSTRUCTION OF 637 RESIDENTIAL
DWELLING UNITS AND SUBMISSION WAIVERS FOR
THE COLUMBIA GROUP AT HAMILTON, LLC
BLOCK 1505, LOT 10.01
APPLICATION NO. 04-09-107A**

Approval Date: April 16, 2009

Memorialized on: June 11, 2009

WHEREAS, the Planning Board of the Township of Hamilton (the "**Board**") is empowered, pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1, et. seq. to hear and determine certain applications for development; and

WHEREAS, the Columbia Group at Hamilton, LLC (the "**Applicant**") is the owner of property designated on the Township's Tax Map as Block 1505, Lot 10.01 (the "**Property**"). The Property (a total of 47.17± acres, including 2.42± dedicated to the Township for right-of-way widening along Princeton Avenue, Bucknell Avenue and Basin Road) is located in an Industrial Zoning District with frontage on American Metro Boulevard, Princeton Avenue, Bucknell Avenue and Basin Road. The Property is also located in the Hamilton Train Station and Surrounding Properties Redevelopment Area for which a "Redevelopment Plan"/overlay zoning standards were adopted by Ordinance No. 04-04 on February 12, 2004; and

WHEREAS, on October 28, 2004, the Planning Board granted Preliminary and Final Site Plan approval, permitting the construction of **680** residential units on the Premises. The approved development consists of (a) five (5) **Apartment Buildings** containing **256** one (1) and two (2) bedroom rental apartment units, including **36 units** with dens, (b) four (4) **Condominium Buildings** containing **224** two bedroom units, and (c) twenty-nine (29) **Townhouse Buildings** containing 200 two (2) bedroom units, including 110 units with dens.

The Apartment Buildings and Condominium Buildings are **five (5) story buildings** and the Townhouses are three **(3) story buildings**. The total number of bedrooms was 1324. Also approved were two (2) Clubhouses, each of which includes an outdoor pool, pergola and patio areas, three (3) on-site detention basins, one (1) below grade water quality detention basin area, and 1,302 on-site surface parking spaces. The Board's approval was memorialized by a Resolution #2004-63 adopted on November 18, 2004 (the "**Approval Resolution**"); and

WHEREAS, the validity of the action taken by the Board on the 680 unit Plan and memorialized in the Approval Resolution was challenged by a group known as the Cornell Heights Association. Both the Law Division and the Appellate Division of the New Jersey Superior Court upheld the validity of the Board's approval of the 680 unit Plan; and

WHEREAS, the Applicant has partially developed the Property in accordance with, inter alia, the terms of the Approval Resolution and its April 5, 2005 Redevelopment Agreement with the Hamilton Township Redevelopment Agency (the "**Redevelopment Agreement**"). For example, the Property has been cleared and graded, certain utility infrastructure installed, construction of two (2) water quality detention basins is substantially complete and a third water quality basin is partially complete, American Metro Boulevard was extended to Basin Road, 2.42 acres of land/right-of-way was dedicated and the Applicant expended in excess of \$500,000 for various area-wide road improvements, including a contribution to the Township of ±\$400,000 for the construction of the new signalized intersection of Sloan Avenue/Sweet Briar Road and American Metro Boulevard. In addition, the Applicant has obtained a Construction Permit to start a building, and both the footings and foundation are complete; and

WHEREAS, the Redevelopment Plan, Approval Resolution and Redevelopment Agreement established the Applicant's obligation to make an Open Space Contribution. Section

4.21 of the Redevelopment Agreement uses the following language to describe the Applicant's open space obligation:

Pursuant to Article VI(f) of the Redevelopment Plan, Redeveloper shall contribute and deposit in to the Township's Open Space Fund an amount equal to \$5,000 per residential unit developed in the Redevelopment Area, except that any unit for which an affordable housing development fee is being paid shall not be included in calculating the open space contribution. The payment required herein is \$2,975,000.00, calculated against 595 units (which calculation excludes the 85 units for which a \$35,000 per unit affordable (low income) housing development fee shall be paid as provided for in section 4.22 below). The open space contribution shall be paid as follows: \$2,187.50 per unit at time of issuance of the construction permit for all units to be constructed on the Property and \$2,187.50 at the time of issuance of the Certificate of Occupancy for all units constructed on the Property.

WHEREAS, the Approval Resolution and Redevelopment Agreement established the Applicant's obligation to pay a Development Fee in lieu of constructing affordable housing units on the property. This obligation is set forth in Section 4.22 of the Redevelopment Agreement, which provides, in relevant part, as follows:

In lieu of building [affordable] housing units [on-site], Redeveloper agrees to contribute as an affordable housing development fee the sum of \$35,000 per unit for 85 units, totaling \$2,975,000, to the Township's housing trust fund for use in creating and preserving low-income housing. This contribution shall be in full satisfaction of any and all affordable housing development fee payments required pursuant to Section 160-166 of the Township Administrative Code. The affordable housing development fee contribution shall be paid as follows: \$2,187.50 per unit at time of issuance of the construction permit for the unit and \$2,187.50 at the time of issuance of the Certificate of Occupancy per unit; and

WHEREAS, on June 17, 2008, the Applicant filed an application (the "**Application**") with the Board in which it requests an Amended Preliminary and Final Site Plan approval and any variances and/or design waivers from the zoning, site plan and/or design standards

applicable to development in the Industrial Zoning District and/or the Hamilton Train Station and Surrounding Properties Redevelopment Area for the purpose of constructing on the Property **637** residential units (a reduction of 43 units) consisting of **(1) eight (8) Apartment Buildings** containing **256** one (1) and two (2) bedroom units, including 64 two (2) bedroom units with dens, which buildings will be reduced in height to **four (4) stories**, **(2) eight (8) Condominium Buildings** containing **224** two (2) bedroom units, which buildings will be reduced in height to **four (4) stories**, **(3) twenty (20) Townhouse Buildings** containing **157** two (2) bedroom units, including 110 two (2) bedroom units with dens, which buildings will be reduced in height to **two (2) stories**, and including one (1) garage per townhouse unit (reducing the total number of bedrooms to 1178), **(4) a 6,514 square foot Apartment Complex Clubhouse** and related recreational amenities, **(5) a 4,466 square foot Townhouse/Condominium Complex Clubhouse** and related recreational amenities, **(6) 1,129** on-site surface parking spaces, including **58** spaces adjacent to the Clubhouses, **(7) three (3) water quality detention basins** and one (1) below grade detention basin area, and **(8) various site improvements and utility infrastructure**, (the "**Project**"); and

WHEREAS, the Application was deemed complete on December 17, 2008 and during the course of the hearings the Applicant extended the time within which the Board was required to act on the Application from March 22, 2009, to and including April 17, 2009; and

WHEREAS, the Board takes judicial notice that, while the Application was pending but before the hearings began, the Township prepared an "Amended Third Round Housing Element and Fair Share Plan" dated December 11, 2008 (the "**FS Plan**"), submitted the FS Plan to COAH along with a request for Substantive Certification of the FS Plan on December 30, 2008

and on February 23, 2009 COAH deemed the FS Plan complete for review. The FS Plan does not designate the Property as an inclusionary housing site; and

WHEREAS, the Board takes judicial notice that, while the application was pending, the Appellate Division of the Superior Court decided a case that holds that a diminution in the overall scope and intensity of a project will not be considered a substantial revision to a previously approved site plan requiring a new site plan application, therefore, such applications are to be processed as an amended application (Berlin Cross-Keys Residents against Walmart, Inc. vs. Borough of Berlin Land Use Board, et. al., A-3713-07T1) (App. Div. February 3, 2009); and

WHEREAS, the subject of the Application is within the jurisdiction of the Board, the appropriate Affidavit of Proof of Service and Publication of Notice was submitted to the Board on February 11, 2009, and on February 12, 2009 the Board reviewed the Affidavit and found that it had jurisdiction to hear and decide the Application and publicly announced the continuation of the public hearing to March 5, 2009; and

WHEREAS, the Board held hearings on this Application on March 5, 2009, March 30, 2009, April 2, 2009 and April 16, 2009; and

WHEREAS, the Board and its Professionals/Consultants reviewed the following Plans, Reports and written materials submitted by the Applicant, which Plans, Reports and written materials were admitted into evidence and incorporated as part of the Record:

1. Development Application and accompanying documents, dated June 17, 2008.
2. Amended Preliminary and Final Site Plan, 46 sheets, prepared by Edgewood Properties, dated June 10, 2008 and revised February 18, 2009.

3. Boundary Survey, 1 sheet, prepared by Maser Consulting, dated December 21, 2007.
4. Rendering of Apartments, Condominiums, Townhouses and Clubhouse, 29 sheets, prepared by Feinberg Associates, dated July 8, 2008.
5. Color Rendering of Apartment, Condominium and Townhouse Front Elevations, 3 sheets, prepared by Columbia Group, undated.
6. Site Aerial Photographs, 2 images, undated.
7. Site Photographs, 45 images, undated.
8. Current Site Photo Locations, 1 sheet, prepared by Edgewood Properties, dated September 23, 2008.
9. Amended Stormwater Management Report for Hamilton Station, prepared by Edgewood Properties, dated July 11, 2008, revised February 17, 2009. (LID Checklist attached).
10. Proposed Street Address Map, 1 sheet, prepared by Edgewood Properties, dated February 17, 2008.
11. Fire Department Plans, 4 sheets, prepared by Edgewood Properties, dated February 10, 2009.
12. Fiscal Impact Analysis for Hamilton Station, prepared by Richard B. Reading Associates, January 12, 2009.
13. Traffic Assessment, prepared by CMX, dated January 28, 2009.
14. Marathon Equipment Company Self Contained Compactor Brochure.
15. NJDEP/NFA issued on October 22, 2007.
16. Resolution of Approval for 680 unit plan memorialized by Hamilton Township Planning Board on November 18, 2004.
17. Redevelopment Plan for Hamilton Train Station and Surrounding Properties adopted by Township Council on January 20, 2004.

18. Redevelopment Agreement between the Applicant and Hamilton Township Redevelopment Agency dated as of April 5, 2005.
19. Mercer County Planning Board Preliminary & Final Approval granted on December 8, 2004, letters dated February 4, 2005 and April 19, 2005.
20. Mercer County Soil Conservation District Soil Erosion & Sediment Control Plan Certification issued on April 5, 2005.
21. Authorization to Discharge Stormwater issued by MCSCD on April 5, 2005.
22. Trenton Water Works/Water Approval issued on February 15, 2005.
23. NJDEP/BSDW/Water Extension Permit issued on May 24, 2005.
24. Township of Hamilton Department of Pollution Control/Final Approval granted on August 15, 2005.
25. NJDEP/TWA/Sewer Extension Permit issued on June 6, 2005.
26. NJDEP Wetlands Permit/GP #7 & 11 issued on May 19, 2004.
27. NJDEP Wetlands Permit/GP #6 issued on July 22, 2005.
28. Parking Easement Agreement dated June 7, 2004.
29. Deed of Dedication to Township dated November 7, 2007.
30. Roadway Easement & Maintenance Agreement dated June 7, 2004.
31. Detention Basin Easement & Maintenance Agreement dated June 7, 2004.
32. Affidavit of Proof of Service and Publication of Notice dated February 11, 2009.
33. Amended Overall Site Plan (Sheet 4 of 46) revised March 12, 2009 to address Planner's comments.
34. Supplemental Cost/Revenue Analyses prepared by Richard B. Reading dated March 5, 2009.
35. Excerpt from the "Who lives in New Jersey Housing" Handbook prepared by Rutgers University School of Planning and Public Policy and funded by NJDCA, Office of Smart Growth and dated November 2006.

36. Supplemental Stormwater Management Report for Hamilton Station prepared by Steve Cattani, P.E. dated March 9, 2009.
37. Stormwater Management Maintenance Plan for Hamilton Station dated July 11, 2008.
38. A Memorandum to Michael Guhanick from Thomas Dunn, Township Engineer dated October 26, 2004.
39. Letter dated March 12, 2009 from Applicant to Michael Guhanick transmitting, inter alia, Amended Site Plan (Item 33 above).
40. Letter dated March 13, 2009 from Frank J. Petrino, Esq. to R. William Potter, Esq. transmitting, inter alia, several Stormwater Management Reports and challenging his clients standing.
41. Supporting Calculations for Supplemental Stormwater Management Report for Hamilton Station prepared by Steve Cattani, P.E., dated March 9, 2009, revised March 31, 2009.
42. Letter dated March 31, 2009 from Frank J. Petrino, Esq. to Planning Board granting extension of time to act until April 3, 2009.
43. Letter dated April 3, 2009 from Frank J. Petrino, Esq. to Planning Board granting extension of time to act until April 17, 2009.

WHEREAS, the Board reviewed the following Exhibits which were presented by the Applicant and marked and admitted into evidence and incorporated as part of the Record:

- A-1 Power Point/Presentation/Slides (Marked and admitted into evidence on March 5, 2009.) (Disc and hard copy provided).
- A-2 Amended Overall Site Plan dated March 30, 2009 [same as Item 33 above except the basins are numbered]. (Marked and admitted into evidence on March 30, 2009.);

WHEREAS, at the hearing, the Board considered the following Reports presented by the Township's Professionals/Consultants and incorporated these Reports as part of the record:

1. Letter from Jon B. Holcombe, Fire Chief of the Hamilton Township Fire District #2 to Joseph N. Nuzzo, Fire Protection Inspector dated November 25, 2008.
2. Memorandum from Richard W. Watson, Director of Department of Water Pollution Control to Michael Guhanick dated December 4, 2008.

3. Memorandum from Joseph N. Nuzzo, Fire Protection Inspector to Michael Guhanick, Land Use Coordinator dated February 20, 2009.
4. Letter from Michael J. Citerone, PE, PP of Remington & Vernick Engineers to Robert S. Warney, Director of Community, Planning & Compliance, Township of Hamilton dated February 27, 2009.
5. Letter from Philip B. Caton, PP, FAICP and Elizabeth McManus, PP, AICP, LEED AP to Hamilton Township Planning Board dated January 8, 2009; revised February 10, 2009 and revised March 3, 2009.
6. Letter from Philip B. Caton, PP, FAICP and Elizabeth McManus, PP, AICP, LEED AP to Hamilton Township Planning Board dated January 8, 2009; revised February 10, 2009, revised March 3, 2009 and revised March 24, 2009.
7. Letter from Michael J. Citerone, PE, PP of Remington & Vernick Engineers to Robert S. Warney, Director of Community, Planning & Compliance, Township of Hamilton dated March 26, 2009.

WHEREAS, at the hearing the following Exhibits were presented by an objector (Save Hamilton Open Space, Inc.), which Exhibits were marked and admitted into evidence and incorporated as part of the Record:

SHOS-1 Photograph taken on April 16, 2007;

SHOS-2 Photograph taken on April 16, 2007;

SHOS-3 Photograph taken on April 16, 2007;

SHOS-4 Photograph taken on April 16, 2007;

SHOS-5 Photograph taken on April 16, 2007;

SHOS-6 Photograph taken on April 16, 2007;

SHOS-7 Photograph taken on April 16, 2007;

SHOS-8 Photograph taken on April 16, 2007;

SHOS-9 Letter dated April 16, 2009 prepared by Princeton Hydro, LLC;

SHOS-10 Plan entitled "FEMA Flood Plain Map" prepared by Save Hamilton Open Space (undated); and

WHEREAS, at the hearings, the Applicant was represented by Frank J. Petrino, Esq. of Sterns & Weinroth, Save Hamilton Open Space, Inc. (sometimes referred to as "**SHOS**") was represented by R. William Potter, Esq. of Potter & Dickson; and Paula Mindzak, the owner of property located at 41 Princeton Avenue was represented by Stuart Lieberman, Esq. of Lieberman & Blecher, PC; and

WHEREAS, at the hearing, the Applicant offered the testimony of five (5) expert witnesses. The witnesses were qualified and questioned by Mr. Petrino and cross-examined by members of the Board, the Township's Professionals/Consultants and the public or their legal representative. The names of the Applicant's expert witnesses and the disciplines for which they were they qualified to offer expert testimony are as follows:

Steve Cattani, P.E. - Engineering, Stormwater Management and Planning

William A. Feinberg, AIA of Feinberg & Associates, P.C. - Architecture

Karl A. Pehnke, P.E. of CMX Engineering - Traffic Engineering

Paul A. Phillips, P.P. of Phillips Preiss Shapiro Associates, Inc. - Planning and Redevelopment

Ron Aulenbach, the Applicant's Director of Engineering; and

WHEREAS, at the hearing, Save Hamilton Open Space, Inc. offered the testimony of two (2) witnesses. The witnesses were qualified and questioned by Mr. Potter and cross-examined by members of the Board, the Township's Professionals/Consultants and the legal representative of the Applicant. The names of the objectors witnesses and their areas of expertise are as follows:

Dennis W. Hudascko, P.P. - Planning

John A. Miller, P.E. of Princeton Hydro - Flood Plain Management; and

WHEREAS, at the hearing, the following Township Professionals/Consultants offered testimony and advice to the Board and were questioned and/or cross-examined by the Board, the Applicant's legal representative and the public or their legal representatives:

Robert C. Poppert, P.P., A.I.C.P. - Township Planner

Richard S. Williams, P.E. - Township Engineer

Philip B. Caton, P.P. of Clark, Caton, & Hintz - Consulting Planner

Michael J. Citerone, P.E., P.P. of Remington, Vernick & Arango Engineers, Inc. - Consulting Engineer

Richard G. Arango, P.E., CME of Remington Vernick & Arango Engineers - Consulting Engineer; and

WHEREAS, the Applicant's witnesses testified as follows:

1. **Mr. Steve Cattani, a Professional Engineer, accepted as an expert engineer, stated in his Reports and/or testified on March 5, 2009, March 30, 2009 and April 16, 2009 that:**

(a) He prepared or supervised the preparations of Amended Preliminary and Final Site Plan, 46 sheets, dated June 10, 2008 and revised February 18, 2009 (Applicant's Item 2 above); Amended Stormwater Management Report for Hamilton Station, dated July 11, 2008, revised February 17, 2009 [LID Checklist attached] (Applicant's Item 9 above); Supplemental Stormwater Management Report for Hamilton Station dated March 9, 2009 (Applicant's Item 36 above); Stormwater Management Maintenance Plan for Hamilton Station dated July 11, 2008 (Applicant's Item 37 above); and Supporting Calculations for Supplemental Stormwater Management Report for Hamilton Station prepared by Steve Cattani, P.E., dated March 9, 2009, revised March 31, 2009 (Applicant's Item 41 above).

(b) The Amended Site Plan reduced the total number of units by 43, reduced the total number of bedrooms by 146, reduced the total number of buildings by 2, reduced the density to 13.5 density units per acre, reduced the height of the Condominium buildings and Apartment buildings from 5 stories to 4 stories, reduced the height of the Townhouse buildings from 3 stories to 2-2 ½ stories, reduced the amount of building coverage by 3.96%, reduced the amount of impervious coverage by approximately 4.5% reduced the number of parking spaces to 1129, and increased the amount of open space by approximately 8.19%.

(c) The Project was partially developed in accordance with the approved 680 unit Plan. This includes site clearing and grading, substantial or partial construction of three (3) on-site water quality basins, the installation of various components of the utility infrastructure and the completion of the footings and foundation for one (1) building.

(d) The mass of the Condominium Buildings was reduced and these buildings relocated from Basin Road and replaced by Townhouse buildings to increase the effectiveness of the buffer along Basin Road and Princeton Avenue and, as demonstrated by the Line of Sight Plans which are part of Exhibit A-1, reduce the visual impact of development of the Property on adjoining residential areas. Townhouse buildings were relocated from American Metro Boulevard and replaced by Condominium buildings. The mass of the Apartment Buildings was reduced and the orientation of some buildings modified. Parking is provided adjacent to each Condominium and Apartment building and the impact of large asphalt areas was minimized.

(e) Conventional Townhouse buildings/units are provided which create more green space in the rear yards and eliminated rear loading Townhouse units. The cartways and parking areas within the Project were designed to meet all applicable RSIS standards. A total of 1,116 parking spaces (later increased to 1,129) are provided, including 157 spaces within the

garages of the Townhouse units and 58 parking spaces at the two (2) on-site recreational complexes. The number of spaces provided (1,129) exceeds the required number of spaces (956), and the provided parking ratio of 1.7 exceeds the required minimum ratio of 1.5 parking spaces per unit. The Project shares the use of 354 parking spaces located along American Metro Boulevard and constructed on the adjacent office complex. These spaces are available to all residents of the Project between 5:00 p.m. and 8:00 a.m. on weekdays, and 24 hours on weekends. The parking ratio is approximately 2.3 spaces per unit when the number of on-site and shared parking spaces are combined.

(f) A network of sidewalks provides easy access through and around the Project. In addition, this network and the crosswalks along American Metro Building provide access to a 4 foot wide pathway system on the adjacent office complex that allows residents of the Project to walk to the Hamilton Train Station rather than drive on the local roadway system. As shown on the Pedestrian Access Plan Shared Parking Plan (which is part of Exhibit A-1), the maximum walking distance to the Station is 2,640 feet and the minimum walking distance 868 feet.

(g) He has designed a number of stormwater management systems that have been reviewed by NJDEP and found to be in compliance with the Department's 2004 Amended Stormwater Management Regulations. The design of the existing wet basin that is shared by the Project and the adjacent office complex, was reviewed by NJDEP in 2004 and found to be in compliance with the NJDEP Stormwater Regulations. The design of the partially completed water quality basins located within the Project, as modified in the manner set forth in the Applicant's Reports described in detail in Applicant Items 9 and 36 above and those proposed by the Township's Consulting Engineers (e.g., modifications to outlet structures and emergency

spillways) in their Reports referred to in Board Items 4 and 7 above, and plan for maintaining the system set forth in Applicant Item 37 above, will comply with NJDEP's Stormwater Regulations as to reduction in post development discharge rates for the 2 year, 10 year and 100 year storms, water quality treatment and maintenance of the system. The Project is located in a Metropolitan Planning Area (PA1) and is not obligated to comply with the Department's recharge requirements, however, some level of recharge will occur.

(h) As to reduction in discharge rates, the site discharges to four (4) study points. With the minor modifications to Basin #1 suggested by the Township Engineer, the proposed stormwater management system will limit the peak post-development rates of discharge from the four (4) study points to less than 50% of the peak pre-development rate for a 2 year storm, to less than 75% of the peak predevelopment rate for a 10 year storm, and to less than 80% of the peak predevelopment rate for a 100 year storm. The rainfall intensities used to estimate the allowable post-development discharge rates and the allowable rates are as follows:

Determination of Allowable Site Discharge Rate - Basin A

Storm (Year)	Existing On- Site Flows From Areas to be Disturbed (cfs)	NJDEP Reduction Factors for Disturbed Areas	Reduced Flow (cfs)	On-Site Bypass Flows to Property Line (cfs)	Total Allowable Flows From Site (cfs)	Amended Plan 637 Units (cfs)
2 yr	0.35	50%	0.18	0.32	0.50	0.50
10 yr	1.99	75%	1.49	1.28	2.77	1.71
100 yr	7.37	80%	5.90	3.89	9.79	9.52

Determination of Allowable Discharge Rates - Basin B

Storm (Year)	Existing On- Site Flows from Areas to be Disturbed (cfs)	NJDEP Reduction Factors for Disturbed Areas	Reduced Flow (cfs)	On-Site Bypass Flows to Property Line (cfs)	Total Allowable Flows from Site (cfs)	Amended Proposed (cfs)
2 yr	1.11	50%	0.56	0.87	1.43	0.98
10 yr	6.42	75%	4.82	2.48	7.30	3.41
100 yr	21.21	80%	16.97	6.63	23.60	19.57

Determination of Allowable Site Discharge Rates - Basin C

Storm (Year)	Existing On-Site Flows from Areas to be Disturbed (cfs)	NJDEP Reduction Factors for Disturbed Areas	Reduced Flow (cfs)	On-Site Bypass Flows to Property Line (cfs)	Total Allowable Flows from Site (cfs)	Amended Proposed (cfs)
2 yr	0.15	50%	0.08	0.40	0.48	0.48
10 yr	0.71	75%	0.53	1.57	2.10	1.64
100 yr	7.23	80%	5.78	4.77	10.55	9.61

(i) As to water quality treatment, 50% mechanical water quality treatment units will pre-treat stormwater runoff prior to entering the extended water quality detention basins. The extended detention basins will provide an additional 60% removal. This combination will provide the required 80% TSS removal rate.

(j) Approximately 60% of the Property was cleared pursuant to a NJDEP Approved Remedial Action WorkPlan relating to the clean up of certain on-site contamination. As a result, the stormwater management system for the Project cannot achieve the recommended "points" under NJDEP's Non-Structural Strategies Points System (NSPS). However, NJDEP's Regulations state, in part, that "the failure to achieve the recommended NSPS points shall not be used to disapprove any application sought by a proposed major development. Instead the applicant for such permit will be required to demonstrate compliance through other and/or additional means. This includes the Low Impact Development (LID) checklist."

(k) The stormwater management system designed for the Project complies with the Department's design requirements through the use of the following Low Impact Development strategies incorporated into the Project's stormwater management system:

- Storm Conduit design utilizes a 100 year storm frequency which provides additional storage volume for storm events.
- 157 or 14% of parking spaces are covered to reduce pollutant loads to stormwater runoff.
- Time of concentration for 3 Ac wooded area uses the minimum value of 10 minutes rather than calculating the Tc with sheet flow and shallow concentrated flow to provide a conservative design.
- New NRCS rainfall values utilized for amended design.
- Detention basin bottoms counted as impervious in design to provide a conservative design and provide larger basins.
- Allowable impervious 75%;
Approved impervious 51%;
Amended impervious 47%
- Site calculations do not account for any onsite recharge when site obviously provides recharge.
- Site was a redevelopment project and cleanup necessitated +/- 25ac of clearing for remediation. Of the remaining +/-15ac nearly 50% was left undisturbed.
- Stabilization fabrics utilized on slopes to limit erosion.
- Vertical structural walls incorporated into basin designs lessening potential for erosion.

- Decreased impervious areas, reduced by 14.4 acres less than allowed (40.7% reduction). 21.0ac proposed where 35.4ac is allowed.
- Provided N-Eco inlet heads for source control of debris.
- Preservation of natural areas, the native ground cover maintained for 100 foot buffer.
- Although Project exceeds zoning requirements for minimum number of parking spaces, project is 13% below that required by residential site improvement standards (RSIS).
- Roof runoff discharges onto splashpads converting it to sheet flow over vegetated areas. Increases Tc and promotes recharge. Nearly 8% of the site impervious surface discharges to grade to provide disconnection of impervious surfaces.
- Grass swales added to design where practical to increase vegetated open channel flow
- Grass areas are designed with 2% typical slopes.
- Water quality units installed to aid in trash elimination and oil and sediment reductions. Installed as specified by NJDEP standards.
- Extended detention basins for all basins holds back 10% of water quality storm longer than 24 hours post peak discharge to maximize sediment and TSS removal.
- Wet Basin promotes water quality with impounded water volume in excess of that required for water quality storm.
- Proposed site discharges designed to as closely as possible mirror existing site discharges to stormwater collection system off site.
- Trash receptacles provided at appropriate locations to prevent the accumulation of trash and debris in drainage system; and

(l) The revised Amended Site Plan (Exhibit A-2) eliminates the need for setback variances related to Buildings T-6, T-8 and C-4. During the hearings the Applicant withdrew its request for a de minimis exception from RSIS permitting the elimination of sidewalks within the Townhouse portion of the Project. Therefore, no variances are required in connection with the Amended Site Plan with the exception of signage variances that were previously granted in conjunction with the Board's approval of the 680 unit plan as set forth in the Approval Resolution. No design waivers not approved as part of the 680 unit Plan are being requested in connection with the Application. Finally, the following submission waivers were approved administratively:

Checklist Item 1. Providing plans at a scale of 1" = 100' where the plans area provided at 1" = 50' and 1" = 90' as noted.

Checklist Item 2. Providing a key map at a scale of 1" = 800 ft. where the key maps provided are at a scale of 1" = 1000' and 1" = 1,500'.

Checklist Item 13. Location of existing on site tree masses and trees greater than 10" in caliper.

Checklist Item 37. Partial. No side elevations provided for the apartment or condominium buildings.

Checklist Item 42. Site investigation and soil sampling not provided.

Checklist Item 44. Bond estimate for on site improvements. Applicant will provide as a condition of approval; and

(m) The Applicant can and has agreed to comply with the design changes to the Amended Site Plan recommended by Mr. Philip Caton, the Board's planning consultant, in his Reports, referred to in Board Items 5 and 6 and the design changes recommended by the Township's Consulting Engineering in its Reports referred to in Board Items 4 and 7 above:

2. **William Feinberg, a professional architect (accepted as an expert) testified on March 5, 2009 that:**

(a) He prepared or supervised the preparation of Rendering of Apartments, Condominiums, Townhouses and Clubhouse, 29 sheets, dated July 8, 2008 (Applicant's Item 4 above) and Color Rendering of Apartment, Condominium and Townhouse Front Elevations, 3 sheets, prepared by Columbia Group, undated (Applicant's Item 5 above).

(b) The footprint of the Apartment Buildings has been reduced from 21,120 to 11,173 square feet. The number of units per building is reduced from 51 to 32. The Units will range in size from 950 square feet to 1550 square feet and will be a mix of one (1) bedroom, two (2) bedroom and two (2) bedroom with den units. Each Apartment Building will have four (4) entrances, elevators and as shown on the Apartments Rendering which is part of Exhibit A-1,

there are no roof top HVAC units and the exterior finishes include special trim work and ornamental detailing.

(c) The footprint of the Condominium Buildings has been reduced from 23,750 square feet to 12,170 or 5,903 square feet. The number of units per building was reduced from 56 to 32 units and/or 16. The Condominium Units will range in size from 1250 to 1350 square feet and all units will be two (2) bedroom. Each building will have four (4) entrances, elevators and as shown on the Condominium Rendering which is part of Exhibit A-1 flat roofs were eliminated and the exterior architectural elements include double hung windows, shutters and metal roofs.

(d) Each Townhouse Unit will have a one (1) car garage, the buildings will range in size from 5 to 8 units, and the Units will either be two (2) bedroom or two (2) bedroom with den units. All front facades will be masonry with box and angle bay windows with metal roofs, main roofs will be fiberglass shingles, all front-facing entrances will have covered porch roofs with decorative columns. Windows will be traditional single-hung windows with shutters.

(e) A Clubhouse will be provided for the occupants of the Apartment Units and a separate Clubhouse will be provided for the occupants of the Condominium Units and Townhouse Units. Both Clubhouses will have ±985 square foot "great rooms", which can accommodate approximately 40 people for various types of functions or meetings. The size and the amenities provided within each Clubhouse, and the recreational areas adjacent to each Clubhouse, is equivalent to what was proposed and approved in conjunction with the 680 unit plan.

3. **Paul Phillips, a professional planner (accepted as an expert) testified on March 30, 3009 that:**

(a) The Application seeks no additional variances and only sign variances were granted in conjunction with the 680 unit Plan. It is consistent with the Township's Redevelopment Plan which in addition to an office component, proposes a strong residential component which capitalizes upon and benefits from the assets of the rail line and the train station.

(b) The Application complies with all of the redevelopment standards set forth in the Redevelopment Plan, including such things as permitted uses on the Property, permitted density, permitted maximum height, minimum required setbacks, maximum lot and building coverage and required minimum number of parking spaces.

(c) The Redevelopment Plan permits a density of 16 dwelling units per acre whereas the density of the approved 680 unit plan was 14.4 dwelling units per acre. The Amended Site Plan reduces the intensity of development on the Property to a density to 13.5 dwelling units per acre, the building and lot coverage is reduced, the amount of open space is increased and the height and mass of the buildings has been reduced relative to what was previously approved.

(d) The Amended Site Plan provides for a more appropriate transition from the westerly portion of the Property to the adjacent single family residential neighborhood through changes in the types of units, height of buildings and their orientation. Instead of 5 story buildings adjacent to the existing single family residential neighborhood, a series of 2 or 2½ story Townhouse Buildings is proposed. The Applicant is also maintaining the 100 foot perimeter landscape buffer and the actual amount of open space has increased by utilizing traditional townhouse units which have back yards. As a result of the reduction in the density and height of the buildings, and moving the Townhouse Buildings to the western portion of the

Property, the Amended Site Plan will reduce any perceived visual impacts that development of the Property will have on the established single family neighborhood adjacent to the Property.

(e) He agreed with Mr. Reading's projections regarding the number of school age children that development of the Property would generate (which Report is Applicant's Item 12) and that the Rutgers Study ("Who Lives in New Jersey Housing") is the most up-to-date and reliable information currently available. Also, Townhouse Units generate more school age children than multi-family units, so the elimination of 43 Townhouse Units will result in generating less school age children than would be generated by the approved 680 unit Plan if that Plan went forward.

4. **Karl Pehnke, a professional engineer (accepted as an expert in traffic engineering) stated in his Traffic Assessment and/or testified on March 30, 2009 that:**

(a) He prepared or supervised the preparation of the Traffic Impact Study dated September 14, 2004 (See Paragraph 9f of the Approval Resolution) and the Traffic Assessment dated January 28, 2009 (Applicant Item 13 above). He is also familiar with New Jersey Transit's "pink book" for transit friendly design entitled "Planning for Transit-Friendly Land Use A Handbook for New Jersey Communities" dated January 1994.

(b) The design of American Metro Boulevard and its new intersection with Sloan Avenue/Sweet Briar Road was prepared in conjunction with the development application involving the American Standard Complex, and was engineered to accommodate the traffic that would be generated if the Property was developed in accordance with the underlying non-residential zoning (i.e., 500,000 square feet of offices) as well as 450,000 square feet of offices in the renovated American Standard Complex. The amount of traffic projected to be generated by the development of 500,000 square feet of offices on the Property would be much greater than

the traffic that would be generated by residential development of the Property in accordance with the density and other development/design standards of the Redevelopment Plan.

(c) The 2004 Traffic Impact Study assessed the impact of the traffic generated by a 724 unit dwelling unit development on the Property, however, during the pendency of the prior development application, the number of units that were approved was reduced to 680 dwelling units. This Board found in 2004 that that level of development was able to be accommodated on the local roadways. The reduction of 43 townhouse units, further reducing the total number of dwelling units to 637, will result in a further reduction of traffic than anticipated in the 2004 Traffic Impact Study (e.g., reduced by 10 a.m. trips and 11 p.m. trips or, if offices were developed on the Property, by 26 a.m. trips and 29 p.m. trips), and it can be accommodated on the adjacent local roadway network.

(d) The Project fits New Jersey Transit's criteria for a "transit friendly" or Transit Oriented Development ("TOD"). The acceptable walking distance for a TOD is one-quarter to one-half mile. Also, for TOD's with pedestrian connectivity between the residential and employment components and the train station, New Jersey Transit recommends that the amount of required residential parking be reduced by 30%. A reduction in the amount of parking spaces encourages the use of transit and reduced parking translates to a reduction in the traffic generated by the Project.

(e) Our original Traffic Impact Study analyzed access to the Property. Consistent with an earlier Township traffic study, and recommended that a traffic signal be installed at the intersection of Sweetbriar Road/Sloan Avenue and American Metro Boulevard, that American Metro Boulevard be extended from the signalized intersection to Basin Road and

that Basin Road be open for through traffic. We estimated that 6% of the total traffic would be oriented to Basin Road. At the Board's request we also analyzed access to the Property assuming the Basin Road entrance was limited to emergency access only. Even with Basin Road closed, at full development of the American Metro Office Complex and 500,000 square feet of offices on the Property, the Sloan Avenue/Sweetbriar Road access to the Property will function at Level of Service "C" or better during the a.m. and p.m. peak commuter traffic hours (i.e., 7:45 a.m. to 8:45 a.m. and 4:15 p.m. to 5:15 p.m.).

(f) Because the intersection of Sloan Avenue and Quakerbridge Road is separated from the Sloan Avenue/American Metro Boulevard intersection by two (2) intervening major intersections, including the Route 295 interchange, it was not one of the intersections studied in 2004. It is expected that Project generated traffic will be dissipated and will not dramatically increase the amount of traffic at that intersection. Also, the intersection is under the jurisdiction of Mercer County, and in 2004 the Mercer County Planning Board approved the 680 unit plan and did not require the Applicant to contribute to any future improvements to that intersection.

WHEREAS, on March 30, 2009 Save Hamilton Open Space offered Mr. Dennis Hudasko as an expert in Planning and Zoning. Mr. Hudasko testified that:

(a) The Redevelopment Plan intended to create a transit village on the Property. The approved 680 unit Plan incorporated components of new urbanist design (e.g., rear entry townhouses) and met the definition of a transit development. This factor coupled with the proofs presented to the Board in 2004 resulted in the Board approving a plan with a proposed number of parking spaces that was less than required by RSIS (except for the shared parking).

(b) The 637 unit Plan incorporates a more conventional type of townhouse product therefore the Project does not fit the definition of a transit development. Moreover, the Applicant has not demonstrated that a reduction in the required amount of parking to as low as 1.5 parking spaces per dwelling unit is appropriate.

(c) During cross-examination, Mr. Hudasco admitted that (i) he did not attend the March 5, 2009 Planning Board hearing; (ii) he did not listen to the tape of that hearing in order to review the testimony of Messrs. Cattani and Feinberg, (iii) he was not familiar with the number or ratio of the proposed on-site parking spaces or with the specifics of the shared parking aspects of the Project, (iv) shared parking is "one of the attributes" of a TOD and is encouraged by New Jersey Transit, and (v) the Redevelopment Plan does not mandate any specific type of architectural design be utilized in connection with development of the Property, whether defined as new urbanist design or otherwise.

WHEREAS, the Board asked its planning consultant, namely Philip Caton, a New Jersey Licensed Professional Planner to respond to Mr. Hudasco's testimony, and on March 30, 2009, Mr. Philip Caton testified that:

(a) He reviewed and compared the 637 unit Plan to the approved 680 unit Plan and attempted to discern whether there were changes that would materially affect the assumptions and findings of the Board in 2004 with regard to on-site parking. He viewed the architectural changes as moving away from a new urbanist design to a more conventional design but noted that in both instances the units were the same distance from the train station.

(b) Although the design of the townhouse units has changed, and one may prefer one design over the other, the sidewalks and pedestrian access ways between the units and

the train station are the same as they were in the 680 unit Plan. Moreover, the design changes do not impact the Applicant's ability to meet the Redevelopment Plan's requirement of providing a minimum of 1.5 parking spaces per dwelling unit.

(c) There is no requirement in the Redevelopment Plan that the project be characterized as a transit oriented development or meet some standard for a transit village. The straightforward response to Mr. Hudasco's issues is that there is a Redevelopment Plan that was duly adopted to govern the permitted uses on the Property, and the required amount of on-site parking. The Planning Board found in 2004 that the parking standards had been met. The reduction of 43 townhouse units does not warrant a finding that there has been a sufficient change to the approved Plan that warrants a re-evaluation of the Board's prior finding regarding compliance with the parking requirements of the Redevelopment Plan.

WHEREAS, on April 16, 2009 Save Hamilton Open Space offered John Miller, an expert in stormwater design and accepted as such. Mr. Miller testified that:

(a) He is a water resource engineer and is a licensed professional engineer in the State of New Jersey. He has designed two (2) stormwater management systems, and one was for a low density 12 lot residential subdivision. Neither of the stormwater management systems he designed were reviewed by NJDEP for compliance with the Department's current stormwater management regulations. In his capacity as a Planning Board member and not a municipal review engineer, he has reviewed approximately 30 stormwater management plans and in each case he determined that the plans were not in compliance with the NJDEP stormwater regulations. He admitted that he never designed a stormwater management system for a large scale, high density residential development on a previously disturbed site, he never walked the

site either before or after it was cleared pursuant to an NJDEP approved Remedial Action Workplan ("RAW"), he never reviewed the RAW and he did not know how much of the site was cleared to implement the RAW. He was aware of only one (1) low impact strategy designed into the Project's stormwater management system. Finally, he acknowledged that the NJDEP stormwater regulations direct a designer to incorporate non-structural stormwater management strategies "to the maximum extent practicable", and if the designer cannot meet the quality and quantity standards utilizing non-structural techniques, "structural stormwater management measures" may be incorporated into the design of the storm water management system.

(b) As to the Plan marked as ESOS Exhibit 10, it shows that houses, roads and other improvements in the general vicinity of the Project were constructed in the 100 year and 500 year flood plains but that the Property and properties directly abutting the Property, including the residential neighborhood to the west of the Property, are not located in either the 100 year or 500 year flood plain.

(c) The proposed stormwater management system for the Project is alleged to be deficient in that (i) it does not incorporate non-structural stormwater management strategies into the Plan, (ii) it fails to minimize impervious surface and disconnect the flow of runoff, (iii) it fails to minimize the decrease in the "time of concentration" from pre-construction to post-construction, (iv) as a condition of any approval, a note should be added to the Plans requiring the site contractor to minimize soil compaction in pervious/open areas of the Property, (v) the conditions of approval regarding stormwater management set forth in the Approval Resolution were not complied with, (vi) as shown on a Chart on Page 5 of SHOS's Exhibit 9, certain discharges from all or some of the water quality basins will exceed the allowable discharge rates, (vii) no hydrographs were provided to support certain findings contained in the Applicant's

stormwater management reports, (viii) the designer has not demonstrated how the TSS removal rates were complied with, (ix) a CN of 58 was used which makes it easier to meet certain post-development discharge rates whereas a CN of 55 should have been used, (x) the shared wet basin does not have a safety ledge and the slopes of the walls of the dry basins exceed a slope of 3 to 1, and (xi) dam permits for the dry basins will be required.

WHEREAS, the Board asked its Engineering Consultant to respond to Mr. Miller's testimony, and on April 16, 2009, Richard G. Arango, P.E., C.M.E., accepted as an expert engineer, testified that:

(a) His office reviewed various Plans and Reports submitted by the Applicant including the stormwater management reports and other materials identified in Applicant Items 2, 9, 36, 37 and 41 above. As to the Project's proposed stormwater management system, the focus of his offices review was to determine whether the design complied with the requirements of NJDEP's current stormwater management regulations.

(b) Both he and Mr. Michael Citerone, P.E., P.P., also accepted as expert engineer and planner, concluded that, subject to the Applicant revising its stormwater management system to comply with its recommendations contained in Board Items 4 and 7 above, the Project's stormwater management system complied with NJDEP's current regulations.

(c) He reviewed Mr. Miller's letter of April 8, 2009, and the April 16, 2009 letter, which supplemented the April 8, 2009 letter, and he was present when Mr. Miller testified. Nothing that he read or heard caused him to question his prior determination that the Project's stormwater management plan complied with NJDEP's current regulations.

WHEREAS, the Applicant called Steve Cattani, P.E., to offer rebuttal testimony, and on April 16, 2009 Mr. Cattani testified that:

(a) Since the adoption in 2004 of NJDEP's current stormwater management regulations, he has designed a number of stormwater management systems for high density developments in municipalities such as South Plainfield and Toms River that have been reviewed by NJDEP and found to be in compliance with the Department's current stormwater management regulations. He has also prepared and processed applications for Wetlands Permits, Stream Encroachment Permits and CAFRA Permits, which applications were also reviewed by NJDEP for compliance with its current stormwater management regulations.

(b) The reference to a CN of 58 was a typographical error and a CN of 55 was utilized in the calculations, so amendments to the calculations will not be necessary.

(c) There were 22 Low Impact Design (LID's) strategies built into the stormwater management system for the Project (see above).

(d) The use of non-structural stormwater management system strategies is a goal of NJDEP's stormwater management regulations but not a requirement.

(e) The information provided in the Chart included on Page 5 of Mr. Miller's letter marked SHOS Exhibit 9 is inaccurate in that he incorrectly compared the wet pond outflows and the wet pond inflows from various reports. Mr. Miller incorrectly compared all of the columns in his table as wet pond outflows when they are in fact are as follows:

Column 1- Original February 4 NJDEP approved wet pond **outflows**;
Column 2 - Amended March 2005 wet pond **outflows**;
Column 3 - Amended March 2005 wet pond **inflows**; and
Column 4 - Proposed July 2008 wet pond **inflows**.

The correct comparison of wet pond (shared basin) inflows is as follows:

		NJDEP Approved Storm-water Report Dated Feb. 2004		Hamilton Township Approved Storm-Water Report Dated 9/15/04 Revised thru 3/18/05	Reduction from Original NJDEP Report	Hamilton Station Amended Storm-Water Report Dated 7/11/08 Revised thru 2/17/09	Reduction from Original NJDEP Report
		Inflows		Inflows		Inflows	
EVENT		cfs		cfs		cfs	
2 yr.		14.67		13.76	-6.20%	11.65	-20.59%
10 yr.		35.57		24.83	-30.19%	20.13	-43.41%
100 yr.		69.25		49.46	-28.58%	38.45	-44.48%

(f) No groundwater recharge is required because the Property is designated Metropolitan Planning Area (PA1) by the State Development and Redevelopment Plan (SDRP).

(g) He has walked the Property and the shared wet basin contains safety ledges.

(h) The Applicant is using concrete block retaining walls in connection with the dry basins. The 3 to 1 slope criteria only applies to basins that use soil to create an embankment.

(i) The 637 unit Plan has less impervious coverage than the approved 680 unit Plan, contains less than the maximum impervious coverage allowed by the Redevelopment Plan and has less parking than required by RSIS. Roof leaders were disconnected from the townhouse units to provide flow over pervious areas before being collected by the storm system. Existing areas were left intact instead of regrading and planting berms. As a result, the 637 unit Plan minimizes impervious surfaces and connects pervious surfaces to the maximum extent practicable, and along with multiple extended water quality detention basins, minimizes the decrease in the "time of concentration".

(j) A table provided in the Amended Stormwater Management Report revised February 17, 2009 (Applicant Item 9 above) demonstrates that all three (3) of the extended detention basins retain the required percentage of the water quality storm for in excess of 24 hours, therefore the TSS removal rate is 30% (60% of 50% of removal). This, coupled with a 50% removal unit on all pipes that enter into each individual basin, satisfies the post-construction TSS removal requirement of 80%.

(k) At the request of the Township Engineering Consultant, hydrographs will be provided to support the data provided in the stormwater reports previously submitted to the Board.

(l) A note will be added to the Plans regarding compaction.

WHEREAS, at the conclusion of the March 5, 2009. public hearing, the public was permitted to ask questions and/or cross examine both Mr. Cattani and Mr. Feinberg and several members of the public took the opportunity to do so. Similarly, at the conclusion of the April 2, 2009 public hearing, and after all of the Applicant's witnesses had testified and SHOS's Planner

had testified, the public was once again permitted to ask questions and/or cross-examine the witnesses, and 7 members of the public took the opportunity to do so; and

WHEREAS, at the conclusion of the April 16, 2009. public hearing, members of the public were given the opportunity to comment on the Application and 6 members of the public, namely, Karl Vetter, 70 Vincent Avenue; Susan Tierney, 49 Versailles Court; Janet Jarrett, 211 Evelyn Way; Paul Mindzak, 41 Princeton Avenue; Amos Hoyt, 29 Country Lane; Mike Bonotto, 117 Princeton Avenue; and Michael Furek, 117 Princeton Avenue made comments or asked questions to which the Applicant responded; and

WHEREAS, the issues or concerns raised by the public included the status of a clean-up on the adjacent lot; whether there would be notice to future residents of the clean-up and alleged potential hazards; whether there is a minimum distance required between a contaminated parcel and a residence; the status of American Metro Drive; who would be responsible for the maintenance of American Metro Drive; whether American Metro Drive would be left as an emergency access only, whether COAH requirements have been satisfied; storm drainage; questions relating to traffic, congestion and pollution; the maintenance of the existing tree line; maintenance of sidewalks along Princeton and Bucknell Avenue and Basin Road; repair of an existing fence; maintenance of the tree lines and berms that were part of the original approval; capacity of water lines to handle the development; concerns about flooding, deed restrictions and whether DEP would have personnel on the site during construction; and

WHEREAS, each of the concerns raised by the public were responded to by the Applicant or the Board and/or the Board's consultants; and

WHEREAS, the Board believes that the concerns expressed by the general public were adequately responded to by the Applicant and the Board's consultants, and that the conditions attached to this Resolution adequately address the concerns raised and protect the interests of the Township, the concerns of the citizens, and the general welfare of the community and the intent and purpose of the zone plan and zoning ordinance; and

WHEREAS, the Board makes the following findings of fact and conclusions of law with regard to the Amended Site Plan:

(a) We considered the direct and rebuttal testimony of the Applicant's witnesses (Messrs. Cattani, Feinberg, Phillips and Pehnke) in support of the Application and in response to various questions and objections raised regarding the Application that is set forth on pages 11 and 23 and 27 to 30 above, as well as the testimony of SHOS's witnesses (Messrs. Hudascsko and Miller) in opposition to the Application that is set forth on pages 23-27 above. The above-referenced testimony of the Applicant's witnesses is accepted as fact and incorporated herein as findings of fact that supplement and support (i) the more specific findings of fact and conclusions of law set forth below in subparagraphs (b)-(l) and (ii) the Board's approval of the Application. The Board also rejects the aspects of the testimony of SHOS's witnesses that are contrary to the testimony of the Applicant's witnesses.

(b) The approved Final Site Plans for the 680 unit Plan were signed by the Township Engineer and Township Planner, which is prima facie proof of the fact that the Final Site Plans were revised to satisfy all of the conditions of approval set forth the Approved Resolution.

(c) The Property has been partially developed in accordance with the approved 680 unit Plan.

(d) The Approval Resolution (at pages 5, 6, 13, 14, 29 and 30) demonstrates that in 2004 (i) the Township Engineer reviewed the proposed stormwater management system for the 680 unit Plan and found that it complied with NJDEP's 2004 stormwater regulations, (ii) SHOS and other members of the public disagreed with the Applicant's Engineer and the Township's Engineering Consultant's testimony and opinions regarding the stormwater management plan's compliance with all applicable requirements of the Department's 2004 stormwater regulations, and (iii) that SHOS and the other objectors who raised concerns about the stormwater management system and flooding had the opportunity but failed to intervene in litigation brought in 2005 challenging the validity of the Board's approval of the 680 unit Plan, therefore, the failure to raise their objections regarding stormwater management or flooding issues within 45 days of the publication of the Board's Notice of Decision regarding its approval of the 680 unit Plan and its adoption of the Approval Resolution precludes all objectors, including SHOS and Ms. Mindzak, from challenging in this proceeding either (i) the sufficiency or accuracy of the information contained in the engineering/stormwater reports submitted by the Applicant in 2004 and considered by the Board and its engineering professionals or (ii) the findings of the Board's engineering professionals that the stormwater management plan for the 680 unit Plan, memorialized in the Approval Resolution, complied with all applicable requirements of NJDEP's 2004 Stormwater Management Regulations, which findings were accepted by the Board. With respect to Stormwater Management Regulations, the Board takes judicial notice of Paragraph 14 of the Approval Resolution that a representative of Save

Hamilton Open Space appeared and commented on the same issue at the October 28, 2004, public hearing, which comments were memorialized as follows:

“Rocky Swingle, 102 Armour Avenue, Hamilton, NJ. Mr. Swingle said that he was representing Save Hamilton Open Space and was concerned with compliance with stormwater regulations. Mr. Swingle was also concerned with whether or not the site recharged the surrounding groundwater and complies with Best Management Practices. Mr. Swingle asserted that this is not a transit village, just high-density housing, and that it did not offer good pedestrian circulation. He wondered how the Columbia Group could clean up land it did not own. All questions were responded to by the applicant, confirming that the application did comply with all local, county, state and federal laws;” and

(e) The Amended Site Plan reduces the size and intensity of the Project by reducing the density, heights of the apartment and condominium buildings and impervious coverage and increasing the amount of open space, which also reduces the impact of the Project on the area in which it is located, therefore, a de novo review of the Amended Site Plan is neither appropriate nor warranted. The Board takes judicial notice that, while the instant application was pending, the Appellate Division of the Superior Court decided a case that holds that a diminution in the overall scope and intensity of the project will not be considered a substantial revision to a previously-approved site plan requiring a new site plan application, therefore, such applications are to be processed as an amended application. See Berlin Cross-Keys Residents against Walmart, Inc. vs. Borough of Berlin Land Use Board, et. al., A-3713-07T1) (App. Div. February 3, 2009).

(f) The Board takes judicial notice that, while the instant application was pending, but before the hearings began, the Township prepared an “Amended Third Round Housing Element and Fair Share Plan” dated December 11, 2008 (the “FS Plan”), submitted the

FS Plan to COAH along with a request for substantive certification of the FS Plan on December 30, 2008, and, on February 23, 2009, COAH deemed the FS Plan complete for review. The FS Plan does not designate the Property as an inclusionary housing site.

(g) The testimony of Mr. Miller is given little weight because of his lack of experience in (i) designing stormwater management plans that must meet NJDEP's current stormwater regulations and (ii) processing and obtaining approval of such plans from NJDEP. See Klug v. Bridgewater Township Planning Board, A-5176-06T, Appellate Division, decided May 1, 2009.

(h) Specifically, the Board rejects the contention that the Applicant does not comply with and satisfy all prior and present NJDEP Stormwater Regulations. Further, the Board finds that, with regard to the stormwater management system for the Project: (i) the design incorporates several non-structural strategies such as protecting natural drainage features and vegetation and minimizing impervious coverage, to the maximum extent practicable, and therefore is in compliance with NJDEP's non-structural requirements, (ii) when the minor modifications to the stormwater system requested by the Township Engineer are incorporated into the Applicant's design, the Project's stormwater management system will meet the Department's requirements regarding reductions in peak rate discharges for the 2 year, 10 year, and 100 year storm events, (iii) the Project's stormwater management plan will utilize a combination of manufactured treatment devices and extended detention basins in order to meet the Department's standards with regard to water quality, and (iv) the Project is located within a redevelopment area is designated as Planning Area 1 by the SDRP, therefore, it is exempt from the Department's requirements with regard to groundwater recharge.

(i) The 637 unit Plan complies with all of the applicable redevelopment standards set forth in the Redevelopment Plan, including such things as permitted uses on the Property, permitted density, permitted maximum height, minimum required set backs, maximum lot and building coverage and required minimum number of parking spaces.

(j) The 637 unit Plan provides for a more appropriate transition from the development proposed on the westerly portion of the Property to the adjacent single family residential neighborhood through changes in the types of units, types and height of buildings and their orientation, and those changes will reduce any perceived impacts that development of the Property will have on the established single family neighborhood adjacent to the property.

(k) The testimony of Mr. Hudascko is given little weight given his acknowledged lack of knowledge of the details of the Application. See Klug v. Bridgewater Township Planning Board, A-5176-06T, Appellate Division, decided May 1, 2009

(l) The Board agrees with and adopts Mr. Caton's testimony regarding the Project's consistency with the development standards set forth in the Redevelopment Plan, that the pedestrian connectivity between the Project and the train station was not modified and that a reduction of 43 townhouse units does not warrant a finding that there has been a sufficient change to the approved Plan which would necessitate a reevaluation of the Board's prior finding regarding the Project's compliance with the parking requirements of the Redevelopment Plan.

NOW, THEREFORE, the Board ratifies and affirms the submission waivers granted administratively and does hereby grant Applicant's request for Amended Preliminary and Final Site Plan approval subject to the following conditions:

1. The testimony of all witnesses called on behalf of the Applicant being true and accurate.

2. All exhibits offered by the Applicant and the Application being accurate depictions of that which they purport to represent;

3. The Applicant shall obtain and comply with the approval of any other reviewing agencies having jurisdiction over the Property, if any, or otherwise obtain letters of no interest. Specifically, without limiting the foregoing, the Applicant shall obtain the approval of the Mercer County Planning Board and the Mercer County Soil Conservation District

4. The Applicant shall pay all engineering, planning, consulting fees and other fees required by the Board and shall keep all escrow accounts current.

5. No clearing, site preparation work and/or improvements shall be performed by the Applicant or any of its agents or employees until all conditions of the Application are met (except conditions 20, 21, 22, 32, 33, 35, 36, 37, 38 and 39 set forth below), all necessary permits have been obtained, and all taxes due and owing have been paid.

6. The action of the Board in approving the Application shall not relieve the Applicant of responsibility for any damage caused by the Applicant or by the project nor does the Board accept any responsibility for the design or installation of the project.

7. Except as otherwise required by law, all fees and costs due to the Township shall be paid before any permits are issued.

8. The Applicant shall comply with the terms of any conditions established by any other reviewing agency having jurisdiction over the property.

9. To the extent, not already provided, the Applicant shall provide a copy of all plans, reports and estimates in electronic format on a CD disk before Mylars are signed. The plans are to be in AutoCAD version not later than 2005, correspondence in Word format and estimates in Excel version not later than 2003.

10. The Applicant shall revise and/or resubmit plans, drawings, specifications and details to the Township Engineer with respect to the required changes, amendments and omissions, which submissions shall be reviewed and approved by the Township Engineer. In the event that such revisions require further revisions to other aspects of the plans, drawings, specifications and details, those additional submissions shall, likewise, be submitted to the Office of the Township Engineer for review and approval.

11. The Applicant shall include the Application number within the subject line of all correspondence relating to this approval or the Application, and the Application number shall be shown adjacent to the title block on all plans.

12. All resubmission of plans, reports and other documents shall be accompanied by a cover letter which describes the purpose of the resubmissions, includes appropriate references and lists the specific changes and additions included with the resubmission. Along with the listing, there shall be a reference to the related page number where the change/addition was incorporated. The change/addition shall be highlighted. Also, the transmittal letter shall specifically state that there are no other changes, modifications or additions to the plan or report, and so on.

13. All of the conditions set forth in the Reports filed by the Township Engineer and consultants, Remington Vernick Engineer dated 2/27/09, 3/6/09 and 3/17/09. It is noted that the Applicant has agreed to each of the conditions set forth therein during the hearing.

14. All of the conditions set forth in the Report filed by Philip B. Caton, dated 3/24/09. It is noted that the Applicant has agreed to each of the conditions set forth therein during the hearing.

15. Compliance with the recommendations of the Township's Engineer, Planner and consultants to the extent that the Applicant has not yet complied or to the extent that the recommendations were not modified during the hearings.

16. It is noted that the Applicant has agreed to the conditions set forth in each of the aforementioned reports and any reports that are cited to by those reports.

17. In order to preserve the terms and conditions of the prior approval, all of the terms, conditions and representations set forth in the previously-adopted Resolution of Memorialization No. 2004-63 to the extent that those terms and conditions have not been satisfied or modified as a result of the reduction of units from 680 to 637 are incorporated herein as if set forth at length.

18. All of the representations, affirmations and confirmations made by the Applicant or its representatives throughout the course of these proceedings are incorporated herein.

19. Subject to approval of any outside agencies having jurisdiction and compliance with any conditions attached to those approvals, or letters of no interest.

20. Subject to the Redevelopment Plans requirement (Section VI[f]) of an open space contribution of \$5,000 per market unit.

21. Applicant will cooperate with the Township's planning consultant to identify any parking areas which have insufficient trees (Section 160-130[a][15] and Section 160-119[a][3]) and will provide supplemental plantings to conform with the standards to the reasonable satisfaction of the Township's planning consultant. Further, Applicant will provide supplemental plantings from the landscape bank to screen headlights from vehicles directed west, particularly from the surface parking lots along Railroad Avenue.

22. The Applicant is subject to a tree replacement fee in the amount of \$203,645.00. The fee is based on the area of total tree clearing of 31.33 acres (30.80 acres of prior clearing and 0.53 acres of clearing for future road widening. Accordingly, the following formula is applicable: $31.33 \text{ acres} \times 20 \text{ trees} = 626.6 \text{ trees} \times 1.3 \text{ (130\%)} = 814.58 \times \$250/\text{tree} = \$203,645.00$. The

Applicant has paid one-half of the fee, and the remaining one-half of the fee shall be paid prior to any Mylars being signed.

23. Within thirty (30) days from the adoption of this Resolution of Memorialization, Applicant is to conduct a comprehensive clean up of the site including the removal of all debris and dead vegetation, fixing a fallen silt fence, replacing mixing fence sections along Princeton Avenue, replacing or adding topsoil where needed, making sure that the two completed basins are clean and functioning properly, all of which is to be performed to the satisfaction of the Township's engineer who will certify compliance to the Board. The Applicant will clean up the buffer and fence along Princeton Avenue when construction resumes.

24. Applicant will provide a gate across American Metro Boulevard at the intersection with Basin Road as shown on the plans.

25. Applicant will provide concrete patios, minimally eight (8) feet square, in each rear yard (larger patios, 10' or 12' may be offered as options) and will provide a board on board fence, six feet in height, extending eight (8) feet (or longer to match the length of the larger patio) from the rear wall of each townhouse.

26. Crosswalks should be provided to connect a sidewalk which ends with a continuing sidewalk nearby. Stamped concrete sidewalks will be provided at the following intersections: Railroad Avenue and Pennsylvania Avenue (all four [4] walks); Pullman Drive and Pennsylvania Avenue (all four [4] walks); Lackawanna Drive and Pennsylvania Avenue (all four [4] walks); Grand Central Boulevard and Pennsylvania Avenue (all four [4] walks); and Locomotive Drive and Pennsylvania Avenue (two [2] walks). All sidewalks shall comply with RSIS requirements.

27. Applicant will provide bike racks at each clubhouse building.

28. Applicant will remove the diagonal parking along Railroad Avenue near the entrance.

29. Applicant will move the compactor north toward the out-parcel so that the landscape screening can be introduced along Railroad Avenue; or the compactor is to be moved around the corner with access from Pennsylvania Avenue, rather than Railroad Avenue, subject to the reasonable satisfaction of the Township's planning consultant.

30. The three (3) parking spaces at the intersection of Railroad Avenue and Sierra Drive shall be removed. This parking row should be screened with landscape material from the rear yards of the townhouses facing Flagler Place.

31. While the Applicant has indicated that the apartment and condominium buildings will have brick elements on all four (4) sides of both building types, the Applicant shall vary the design of the townhouses by modifying the color of the siding, shutters and bricks, all to the reasonable satisfaction of the Township's planning consultant.

32. Applicant ratified and reaffirmed its commitment to pay \$2,975,000.00 for its Affordable Housing commitment under Section 4.22 of the Redevelopment Agreement and as set forth in the prior approval. Notwithstanding the Applicant's contention that a sliding scale should be applied as a condition of approval, the figure of \$2,975,000 is the minimum amount for which the Applicant shall be responsible because that amount was based upon the obligation of the Applicant to make a contribution of \$35,000 for each 85 affordable housing units which would have been generated by approximately 680 units under the previous 1/8 growth share ratio. The number of units in Hamilton Station has been reduced to 637 by virtue of the amended application, however, COAH's growth share ratio has been increased to 1/4. Accordingly, the sliding scale should only be applied in an upward direction. For a determination only as to the amount of any upward adjustment, this matter is referred to the Township's Redevelopment Agency. This condition must be satisfied prior to the issuance of any occupancy permits.

33. All future residents (renters, purchasers and others) will be given notification of the presence of any landfill adjacent to the site or any other off-site condition that might materially adversely affect the value of the property or the health and/or general welfare of a resident. A copy of the notice shall be filed with the Township Clerk.

34. Applicant will move the buildings to the setback line of Railroad Avenue to increase the buffer between the closed landfill on the adjacent site and the Applicant's property and provide buffering, including a six (6) foot board-on-board fence, reasonably satisfactory to the Township's planning consultant.

35. The Applicant will file a Declaration (as distinct from a deed restriction) declaring that American Metro Boulevard will remain closed in perpetuity, subject only to the Township's right to open the road.

36. Applicant will provide an internal shuttle to and from the Hamilton Train Station for the residents of the 637 unit project so that the residents have transportation at the AM and PM peak hours. This condition must be satisfied prior to the issuance of the 160th occupancy permit.

37. To the extent applicable, Applicant shall pay a T.I.D. fee, subject only to credits for appropriate improvements already completed.

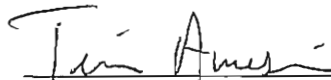
38. Applicant will provide, for review and approval by the Planning Board's Attorney, any easements required by the approval and proof of filing; the POS, Leases and Sales Agreements; Declaration Re: American Metro Boulevard; notices to be provided to all future residents of the project; and any other document required by these approvals. This condition must be satisfied prior to the issuance of any occupancy permits.

39. Such other and further conditions as were required by the Board (even if overlooked and not specifically set forth in this Resolution) as part of its approval.

The date of the decision shall be April 16, 2009, except the date of decision for purposes of: 1) mailing a copy of the decision to the Applicant within ten (10) days of the date of the decision; 2) filing a copy of the decision with the Administrative Officer; and 3) publication of notice of the decision. The date of publication of the notice of the decision shall be the date for commencement of the vesting protection.

CERTIFICATION

I, Tim Amison, the Secretary of the Planning Board of the Township of Hamilton, do certify that the foregoing is a true and correct copy of the Resolution duly adopted by the Planning Board of the Township of Hamilton at its regular meeting held on Thursday, June 11, 2009.

A handwritten signature in dark ink, appearing to read "Tim Amison", is written over a horizontal line.

Tim Amison, Secretary
Hamilton Township Planning Board

