

Gail Ullman  
Vice-Chair, Princeton Regional Planning Board  
400 Witherspoon Street  
Princeton, NJ 08540

July 18, 2011

Re: Consistency of Proposed E5 and AET Zoning Ordinances with Regional  
Master Plan

Dear Ms Ullman:

This letter will elaborate upon my oral comments to the Regional Planning Board (RPB) at its July 7, 2011 hearing on this issue.

### **Background**

The RPB has been requested by Borough Council and Township Committee to provide input, pursuant to the Municipal Land Use Law into two ordinances which would change the zoning district boundaries, permitted uses and other development regulations in adjacent areas of the Borough (the E5 district) and Township (the AET district).

The zoning changes have been requested by Princeton University, a private not-for-profit educational institution, which owns considerable property in the area potentially affected by the zoning changes. The proposed zoning changes were written by professionals employed by Princeton University. Other landowners in the two proposed districts, who would also be affected by the proposed zoning changes, have not to our knowledge expressed an opinion regarding these proposed changes. There is no evidence that these other landowners have even been notified of the proposed changes, or consulted with respect to them.

The proposed zoning changes would do the following:

- Create, in the Borough, an E-5 (Educational) district along University Place. This new district would entirely subsume an existing NB (Neighborhood Business) district, as well as portions of existing E-2, E-4 and R-3 districts.
- Create, in the Township, an AET (Arts-Education-Transit) district along a portion of Alexander Street. This new district would replace a portion of an existing S-1 (Service 1) district.

The proposed zoning amendments have not been requested by the RPB. They are not grounded in a community planning process. They have not been proposed by any civic or community groups, or by any agency, public or private, with community planning as its mission. Instead, the proposed zoning amendments have been requested by a large landowner, which undertook a private planning process that did not involve the community or the RPB – the Princeton community’s official planning agency -- in any significant or meaningful way.

It is important to underline that real property ownership does not, by itself grant the landowner any inherent rights of development. The University can continue to acquire real estate through private transactions, but ownership does not give it the right to use that real estate for purposes not contemplated in the zoning and presumably based in the master plan. There is no substantive basis to justify any expectations on the part of the University or any landowner that it may use its properties in the areas subject to the proposed rezoning in ways or for uses other than those contemplated in the community’s planning and regulatory documents.

The RPB’s immediate mandate, as discussed in greater detail below, is to assess consistency between the master plan and the proposed ordinances. A narrow interpretation of this mandate involves a comparison between the actual language of the master plan and the substance of the proposed ordinances. A more expansive interpretation would involve an analysis of whether the actions contemplated under the proposed ordinances fit in with the “big picture” planning framework outlined in the master plan for the community, that is the master plan’s vision for the community. The statute and case law support planning boards taking on both interpretations.

Princeton University has submitted a memo to the RPB entitled “Ordinance Consistency with Princeton Community Master Plan” in which it seeks to convince the RPB that the proposed ordinances are consistent with the master plan. This memo outlines all the reasons why the proposed ordinance amendments are advantageous to the University and seeks to demonstrate that they would also be advantageous to the community.

This memo, however, reveals a fundamental misunderstanding on the part of the University of how the ordinance evaluation and master plan consistency process actually work in New Jersey. The memo never refers to actual language in the master plan. Instead, it refers to an inferred wish list of things that it claims the community master plan calls upon educational institutions to provide or achieve, such as “improve traffic flow”, “address back-ups at key intersections”, “create safe and pleasant pedestrian environments” or “enhance public areas with art”. These objectives may all have merit, but they are hardly unique to educational institutions and addressing them does not make a proposed ordinance consistent with the master plan. Consequently, they are totally irrelevant for the RPB’s task at hand.

## **Assessing Consistency Between the Master Plan and a Proposed Ordinance**

The Municipal Land Use Law (NJS 40-55D) stipulates under “referral to planning board” (40:55D-64) that:

*Prior to the hearing on adoption of a zoning ordinance, or any amendments thereto, the governing body shall refer any such proposed ordinance or amendment thereto to the planning board pursuant to section 17a. of this act [40:55D-26].*

Section 40:55D-26 (Referral Powers) stipulates that:

- a. *Prior to the adoption of a development regulation, revision or amendment thereto, the planning board shall make and transmit to the governing body, within 35 days after referral, a report including identification of any provisions in the proposed development regulation, revision or amendment which are inconsistent with the master plan and recommendations concerning these inconsistencies and any other matters as the board deems appropriate.*

As I mentioned in my oral testimony, in comparing the proposed ordinance amendments against the master plan, the planning board may reach one of three possible conclusions:

- The proposed ordinance is substantially consistent with the master plan;
- The proposed ordinance is substantially inconsistent with the master plan;
- or
- The proposed ordinance is neither substantially consistent nor substantially inconsistent with the master plan.

Conclusions 1 and 2 above are clear and relatively straightforward. Conclusion 3 is more complicated and nuanced. In this case, I don’t believe the RPB will reach conclusion 3.

I should point out that the RPB’s mandate is not, as has been suggested by some, to compare existing zoning against proposed zoning and discuss the potential advantages of one versus the other. This is not what was requested by the governing bodies and is not an appropriate role for a planning board in this context. The planning board’s frame of reference for the purposes of this exercise is the master plan, not the zoning or land development regulations.

## **The Princeton Community Master Plan**

The community's most recent master plan was adopted in 1996, with subsequent amendments. The RPB adopted Reexamination Reports in 2001, and most recently in 2007, in order to satisfy the statutory requirement that a municipal master plan be reexamined at least every 6 years.

The 2007 Reexamination Report references earlier planning documents and constitutes the community's most recent official statement on planning issues. The sections of the report relevant to the issue at hand state:

*The 1996 Master Plan and the 2001 Reexamination report recognized that the major educational institutions in Princeton will need to expand and/or improve their facilities. Insuring that these improvements are at an appropriate scale will continue to be a major objective for the community. Protecting the area around the many small scale neighborhoods that border these large institutions is an important community objective. The 2001 Reexamination report requested that all educational institutions update their long-range plans and insure that any development be compatible with the surrounding neighborhood. An additional objective regarding educational institutions was to limit expansion outside the educational zones as this can limit these lands for taxable uses and erode our tax base. (2007 Reexamination Report, page 3 – emphasis added)*

*While most of what Princeton University proposes is permitted under existing zoning, the area proposed to house the University's new "arts corridor" will require zoning changes along University Place and Alexander Road. The impact from any proposed land use change in this area must include an evaluation of the impacts to our circulation system. Similarly, the University's request to relocate the Dinky Station approximately 400 feet south of its existing location will need to be evaluated. (2007 Reexamination Report, page 7).*

*Princeton University has shared an ambitious new master plan for its campus. While most of its vision can be implemented without zoning changes the proposed Arts Corridor along Alexander Road will need additional study to assess the land use and circulation impacts before a change can be recommended. (2007 Reexamination Report, page 21).*

*Impacts from Princeton University's proposed Arts Corridor and other campus expansions will need to be evaluated and suitable transportation improvements made as warranted. (2007 Reexamination Report, page 22).*

*Any relocation of the Dinky and improvements along University Place and Alexander Road must be carefully studied before any land-use changes are contemplated. (2007 Reexamination Report, page 22).*

*The permitted uses in the Borough and the Township's service zones should be reviewed and inappropriate uses removed. If necessary new service zones should be created to provide the community with areas for necessary service uses (2007 Reexamination Report, page 23 – emphasis added)*

The 2007 Reexamination Report acknowledges the University's intention to seek regulatory changes for the general area affected by the current zoning proposals. It neither rejects nor endorses these proposals. Instead, it clearly cautions that they need to be carefully evaluated.

This approach is all the more important now, since an amendment to the Municipal Land Use Law modifying New Jersey's controversial "time of decision" doctrine went into effect May 5 of this year. This amendment precludes a governing body from amending the zoning and land development regulations affecting a previously filed development application for reasons other than public health and safety. Previously, the burden of proof was on the applicant for development, who had to demonstrate that the conforming application would not be detrimental to the community. Now the community is legally held responsible for its zoning, regardless of whether it fully understands the implications and impacts of development. Without the previously available safety net, amending a zoning ordinance, without fully understanding its potential impacts, would be irresponsible and a dereliction of the public trust. Since the comprehensive evaluations called for by the RPB in the master plan have not been conducted and appropriately vetted with the community, amending the zoning ordinance to enable substantial changes would be irresponsible.

Questions related to the potential impacts of development that might occur following a rezoning are no longer deferrable to site plan review of a development application, as was suggested by RPB staff at the 7/7 meeting. At best, site plan review can seek to mitigate adverse impacts. It can no longer prevent adverse impacts – even if they are recognized as such – because the burden now lies on the municipality to troubleshoot these potentially adverse impacts prior to authorizing the development through zoning.

### **Are The Proposed Ordinances Substantially Consistent with the Princeton Community Master Plan?**

In order for the proposed ordinances to be substantially consistent with the master plan one would have to demonstrate that they are contemplated in the master plan

and that they effectuate master plan goals and objectives. This is not the case. The proposed ordinances are not substantially, or even remotely contemplated in the master plan. The Master Plan does not call for an E-5 district at the proposed location, or in any other location; nor does it call for an AET district at the proposed location, or in any other location. The master plan does not call for a substantial expansion of the university's arts program, at this or in any other location.

As such, the two proposed ordinances can not, in my opinion be deemed substantially consistent with the master plan.

### **Are The Proposed Ordinances Substantially Inconsistent with the Princeton Community Master Plan?**

I believe this is the case. Two major inconsistencies relative to the proposed zoning changes immediately jump out:

- The elimination of the NB district and its replacement with an E-5 district violates the policy of limiting expansion of educational institutions outside the existing educational districts. The replacement of a neighborhood commercial district with a tax-exempt educational district will clearly erode the tax base. As such, this proposal is clearly and substantially inconsistent with the master plan.
- The proposed replacement of the S-1 district in the Township with the AET district goes well beyond what the master plan contemplates. The master plan contemplates that the S-1 zoning be re-examined with a view towards eliminating or restricting those uses currently permitted which may no longer be desirable.

The S-1 district allows the following permitted uses:

- a) uses conducive to heavy trucking and to bus transportation;
- b) uses characterized by a moderate amount of dust and noise, such as storage, handling, sale and delivery, either retail or wholesale, of lumber, coal, mason materials, grain and feed, solid and liquid fuels and similar goods;
- c) storage of inflammable materials other than explosives;
- d) storage warehouses;
- e) public utility structures and uses;
- f) freight yards, railroad sidings and other necessary railroad uses;
- g) commercial garages and gasoline service stations;
- h) printing establishments and newspaper offices;
- i) banks and savings institutions;
- j) retail stores and bakeries;

- k) hotels and motels; and
- l) business offices.

The AET district would allow the following uses:

- a) classrooms;
- b) offices;
- c) library;
- d) theaters;
- e) retail;
- f) housing;
- g) railroad sidings;
- h) rail, light rail and alternate modes of transit;
- i) bicycle sales and rentals;
- j) museums;
- k) restaurants;
- l) parking garages;
- m) banks;
- n) offices
- o) theaters; and
- p) child care.

The master plan clearly does not contemplate replacing the S-1 district wholesale with something completely different. The proposed AET zoning bears no resemblance to the existing S-1 zoning. As such, the proposed AET zoning, in my opinion is substantially inconsistent with the master plan.

### **The Big Picture Analysis**

The RPB may also wish to take this opportunity to reflect on whether some or all of the proposals in question fit in with sound planning principles and with the RPB's overall vision for the future development of the Princeton community.

This requires stepping back from the minutia of the proposals (ie, the building with the "curved wall") and taking a look at the big planning picture. It might involve asking questions such as the following:

- What is the community's long-term vision for the Alexander Road corridor? Is this an appropriate corridor to plan for substantial new development? What types of uses would be appropriate? What types of uses would the community like to attract, or attract more of, that would make sense at this location? What scale (building height, massing) would be appropriate? What is an appropriate interface between campus and community?

- What is the long-term vision for transit in this corridor, and in town? Should we be planning for a future system that not only preserves what we have today but also seeks to expand it into town? Where else should we consider zoning changes to create a land use pattern that would justify a transit extension into town?
- How can the existing rail right-of-way be transformed to maximize the transportation, recreational and environmental benefits to the community? Is a “rail with trail” scenario feasible, to provide a bicycle and pedestrian connection from town to the D+R Canal and to Princeton Junction? (This would require a partnership with West Windsor and NJ Transit. Would they be supportive?)
- The area around the Dinky terminus is the only real “transit-oriented development (TOD)” opportunity we have today. How should this area be zoned to appropriately maximize its TOD potential, recognizing that the majority landowner seems uninterested in pursuing this at the moment?
- How should the Alexander Road corridor be positioned relative to the other corridors with redevelopment potential: Bayard Lane, North Harrison Street and Witherspoon Street?
- What technical studies and tools need to be available to appropriately evaluate alternative visions for the community’s future?

## Conclusions

Based on the above, I believe a close reading of the master plan and a careful assessment of what is proposed under the E5 and AET districts strongly suggest that the two proposed ordinances are, in whole or in part, substantially inconsistent with the master plan.

With respect to the broader planning issues touched upon, I also believe the community needs to be more assertive in defining its vision for the future and its planning priorities, and needs an updated planning framework that can provide individual property owners, as well as the community at large, with a clear picture of what to expect.

I would be happy to answer any questions you may have regarding this.

Sincerely,



Carlos Rodriguez, PP / AICP  
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