

IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY

PENNSYLVANIA

CIVIL DIVISION – LAW

(CASE NO. C-48-cv-203-00335)

On May 8, 2023, Judge Kassis of Northampton County Court of the Common Pleas declared Lower Saucon Township Ordinance No. 2022-02 to be void *ab initio*. On June 6, 2023, the Bethlehem Landfill Company filed an appeal of Judge Kassis's decision to the Commonwealth Court.

**LOWER SAUCON TOWNSHIP
NORTHAMPTON COUNTY, PENNSYLVANIA**

ORDINANCE NO. 2022-02

AMENDMENTS TO THE CODE OF THE TOWNSHIP OF LOWER SAUCON

AN ORDINANCE OF THE TOWNSHIP OF LOWER SAUCON, NORTHAMPTON COUNTY, PENNSYLVANIA, AMENDING AND REVISING THE CODE OF THE TOWNSHIP OF LOWER SAUCON BY AMENDING CHAPTER 180 (ZONING) TO REVISE THE ZONING MAP BY CHANGING APPROXIMATELY 275.70 ACRES OF LAND FROM AN RA ZONING DESIGNATION TO AN LI ZONING DESIGNATION, REVISING SECTION 180-79.1 TO ADD "LANDFILLS AND WASTE DISPOSAL FACILITIES USE TO THE LIST OF USES REQUIRING CONDITIONAL USE APPROVAL IN THE LI ZONING DISTRICT, REVISING SECTION 180-80B TO REMOVE THE LANDFILLS AND WASTE DISPOSAL FACILITIES USES FROM THE LIST OF USES REQUIRING SPECIAL EXCEPTION APPROVAL, REVISING SECTIONS 180-101 AND 180-109F TO EXEMPT LANDFILLS AND WASTE DISPOSAL FACILITIES FROM THE SITE PLAN APPROVAL PROCESS AND REQUIREMENTS IF THE USE WILL REQUIRE LAND DEVELOPMENT APPROVAL UNDER THE LOWER SAUCON TOWNSHIP SUBDIVISION AND LAND DEVELOPMENT ORDINANCE AND A PERMIT FROM THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, AND ADDING SECTION 180-109G TO PROVIDE FOR A NATURAL RESOURCE MITIGATION ALTERNATIVE IN THE LI DISTRICT WHEN APPROVED IN WRITING BY THE COUNCIL OF LOWER SAUCON TOWNSHIP; AND REPEALING ALL OTHER ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT WITH THE PROVISIONS CONTAINED HEREIN. THIS ORDINANCE CONTAINS SIGNIFICANT, SUBSTANTIVE CHANGES TO THE LOWER SAUCON TOWNSHIP ZONING MAP AND ZONING REGULATIONS, AND SHOULD BE REVIEWED IN ITS ENTIRETY FOR A COMPREHENSIVE UNDERSTANDING OF ITS PROVISIONS.

WHEREAS, Lower Saucon Township is a Township of the Second Class, Optional Plan of Government, located in Northampton County, Commonwealth of Pennsylvania; and

WHEREAS, the Township of Lower Saucon adopted Ordinance # 98-17 on May 20, 1998, enacting the Code of the Township of Lower Saucon (hereinafter referred to as the "Code"); and

WHEREAS, the Council of Lower Saucon Township desires to amend the Code of the Township of Lower Saucon to revise the Township Zoning Map, to require that landfills and waste disposal facilities obtain conditional use approval instead of special exception approval, to exempt landfills and waste disposal facilities from the site plan approval process and requirements if the use will require land development approval under the Lower Saucon Township Subdivision and Land Development Ordinance and a permit from the Pennsylvania Department of Environmental Protection, and create a natural resource mitigation alternative for industrial users requesting to disturb natural resources in the Light Industrial District; and

WHEREAS, the Council of Lower Saucon Township has determined that the adoption of this Ordinance containing the described amendments to the Zoning Map and text of the Zoning Chapter of the Code is in the best interest of the public health, safety, and welfare of the citizens of Lower Saucon Township.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Council of the Township of Lower Saucon, Northampton County, Commonwealth of Pennsylvania, that the provisions of the Code of the Township of Lower Saucon are hereby amended and revised as follows:

Section 1. Amendment to Chapter 180 (Zoning), Section 180-15 (Zoning Map), subsection A

The Zoning Map of the Township of Lower Saucon is amended in accordance with the revisions noted on the Map attached hereto and incorporated herein by reference as Exhibit "A". Specifically, the lands located in and around the Applebutter Road and Riverside Drive areas of the Township, consisting of approximately 275.70 acres of land currently zoned RA is changed to LI. The Township Manager is hereby directed to prepare a revised Zoning Map dated December 21, 2022 in accordance with the provisions of this Section.

Chapter 180, Section 180-15(A) of the Code is amended in its entirety as follows:

A map entitled "Zoning Map for the Township of Lower Saucon, Northampton County, PA, adopted: December 21, 2022 by Ordinance No. 2022- 02, as amended," attached hereto and incorporated herein by reference as Exhibit "B" accompanies this chapter and is declared a part of this chapter.

Section 2. Amendment to Chapter 180 (Zoning), Section 180-79.1 (Conditional uses)

Chapter 180, Section 180-79.1 of the Code is amended to add a new subsection B as follows:

"B. Landfills and Waste Disposal Facilities (see §180-109)."

Section 3. Amendment to Chapter 180 (Zoning), Section 180-80 (Special exception uses), subsection B (Industrial uses)

Chapter 180, Section 180-80(B) of the Code is amended to replace subsection (3) "Landfills and waste disposal facilities (see §180-109)" with the term "RESERVED".

Section 4. Amendment to Chapter 180 (Zoning), Section 180-101 (Purpose)

Chapter 180, Section 180-101 of the Code is amended to replace the first sentence therein with the following sentence: "This article requires that, unless a use is otherwise specifically exempted from this requirement elsewhere in this Article XVII, before any zoning permit is granted for the use of land or building for certain permitted, conditional and special exception uses, a site plan shall be reviewed by the Planning Commission and reviewed and approved by the Township Council."

Section 5. Amendment to Chapter 180 (Zoning), Section 180-109, subsection F (Additional requirements applying to extraction and processing of natural resources, landfills and waste disposal facilities and waste transfer and recycling facilities)

Chapter 180, Section 180-109(F) of the Code is amended to change existing Section 180-109(F)(1) (Additional site plan requirements) from 180-109(F)(1) to 180-109(F)(2), change existing 180-109(F)(2) (Standards) to 180-109(F)(3), and to add a new Section 180-109(F)(1) as follows:

"(1) If a landfill or waste disposal facility will require Land Development approval under the Lower Saucon Township Subdivision and Land Development Ordinance, and a permit from the Pennsylvania Department of Environmental Protection, it is not subject to the site plan approval process and requirements of this Article XVII."

Section 6. Amendment to Chapter 180 (Zoning), Section 180-109 (Industrial uses)

Chapter 180, Section 180-109 of the Code is amended to add the following subsection (G):

"G. Natural Resource Mitigation Alternative

An applicant proposing to develop an industrial use within the Light Industrial Zoning District shall be permitted, with the written approval of the Lower Saucon Township Council, to exceed the net buildable site area permitted by Section 180- 95(C)(2)(c) ("Permitted Net Buildable Site Area"), utilizing a greater area of natural resource protection land than would be otherwise permitted by the Resource Protection Standards contained in Section 180-95 herein ("Excess Resource Utilization"), provided the Applicant dedicates to the Township for preservation an amount of land equal to the Excess Resource Utilization in accordance with the following requirements:

- (1) The Excess Resource Utilization shall be the difference between the resource protection land calculated by the Resource Protection Land formulas in Section 180-95.C(2)(b) ("Resource Protection Land") and the Applicant's proposed resource protection land (which is the difference between the Base Site Area pursuant to Section 180-95(C)(2)(a) and Applicant's proposed buildable site area) ("Proposed Resource Protection Land"). The Applicant shall be permitted to dedicate land in excess of what is required if accepted by the Township.
- (2) The Applicant shall provide drawings and calculations clearly showing the Resource Protection Land, the Proposed Resource Protection Land, Applicant's proposed buildable site area, and the Excess Resource Utilization, and noting that it proposes to develop the use in accordance with this Subsection (G).
 - (a) An additional plan sheet showing the limits of proposed buildable area and total acreage of existing environmentally protected lands is required.
 - (b) Calculations shall be included on the plans that accurately reflect the Permitted Net Buildable Site Area, the Resource Protection Land, the Base Site Area, the Proposed Resource Protection Land, the Excess Resource Utilization, and the minimum amount of land that is required to be dedicated pursuant to this Subsection (G).
- (3) The land proposed for dedication does not need to contain the same environmental resources as those resource protection lands on the subject property.
- (4) The land proposed for dedication shall be located within the

municipal boundaries of Lower Saucon Township, shall not be within an industrial or commercially zoned area, and shall not contain any natural or man-made features that are inconsistent with the Township's Open Space Action Plan and Policies.

- (5) The land shall be offered for dedication to the Township in either fee simple or via a conservation easement that is acceptable to the Township Council.
- (6) With the approval of the Township Council, land that is currently occupied by a use but that contains significant natural or historic resources, may be also considered for dedication to the Township.
- (7) In the event that the Applicant demonstrates, to the satisfaction of the Township Council, that it was unable to obtain any or enough property for dedication pursuant to this subsection, the Applicant may meet the requirements of this Subsection (G) by submitting a fee-in-lieu of dedication in accordance with the calculations in the Lower Saucon Township Subdivision and Land Development Ordinance, Section 145-51(E), with the "tract" referenced in Section 145-15(E) therein to mean, for purposes of this Section 180-109(G), the number of acres required to be dedicated pursuant to the calculation in Section 109(G)(1). The applicable calculated fee-in lieu of dedication shall only be used by the Township for the purposes authorized by the Township's Open Space plan.
- (8) An applicant choosing to develop an industrial use in accordance with this Subsection (G) shall demonstrate and make the required dedication and/or fee-in-lieu of dedication payment prior to final land development approval by the Township Council.

Section 7. Violations and Penalties.

The Violation and Penalty provisions of the Code, where not revised herein, shall remain unchanged.

Section 8. Severability.

The provisions of this Ordinance are severable. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional, illegal, or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The Council of Lower Saucon Township hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional, illegal, or otherwise invalid.

Section 9. Repealer

All Ordinances and parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistencies.

Section 10. Effective Date.

The provisions of this Ordinance shall become effective ten (10) days after adoption.

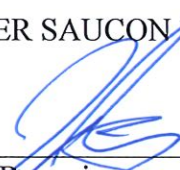
ENACTED and **ORDAINED** this 21 day of Dec. 2022.

ATTEST:

LOWER SAUCON TOWNSHIP



Mark Hudson
Township Manager



Jason Banonis
Council President

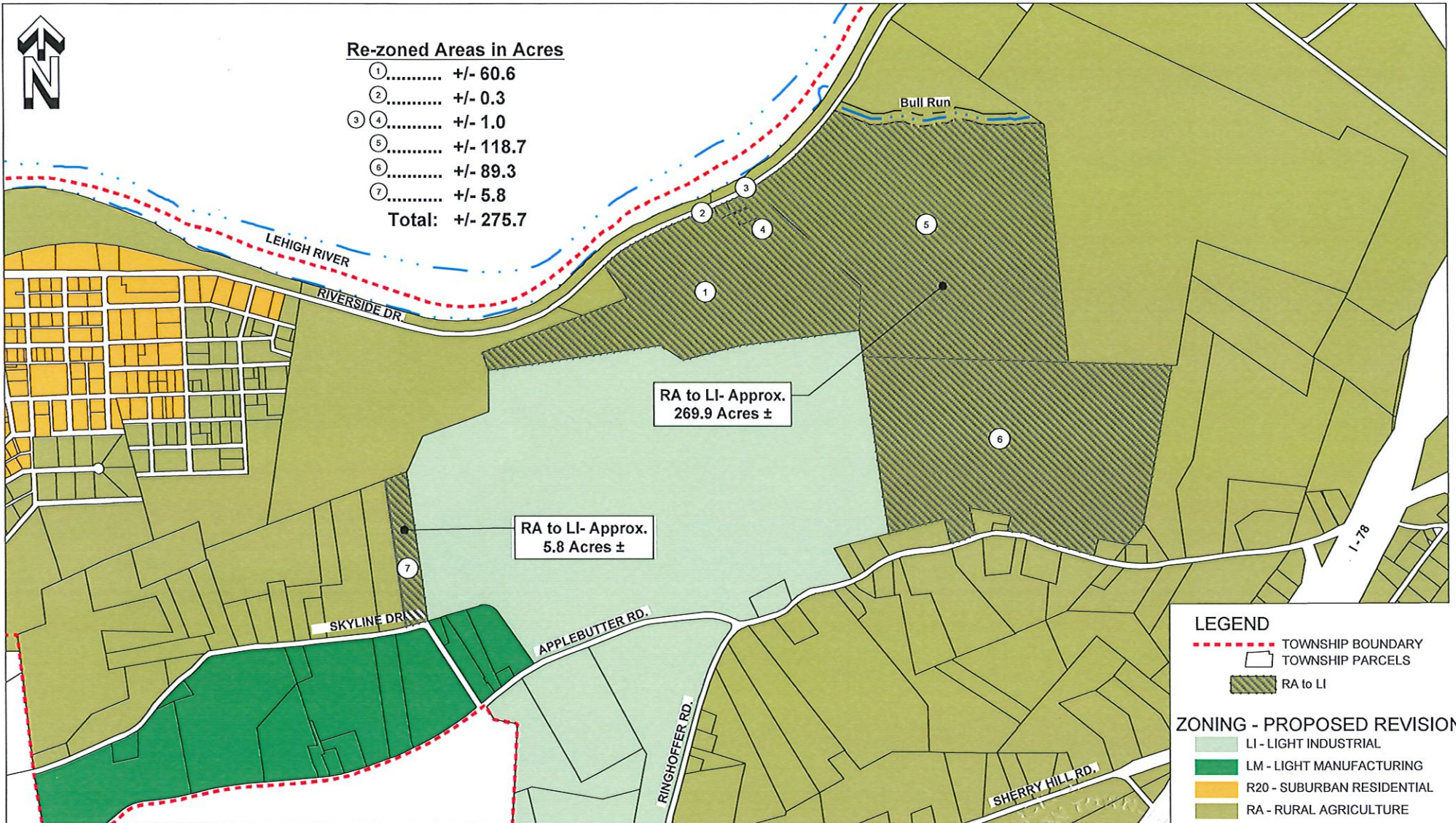
Exhibit A – Zoning Map showing parcels proposed to be changed from RA to LI
Exhibit B – December 21, 2022 new Zoning Map showing adopted changes





Re-zoned Areas in Acres

- ①..... +/- 60.6
- ②..... +/- 0.3
- ③④..... +/- 1.0
- ⑤..... +/- 118.7
- ⑥..... +/- 89.3
- ⑦..... +/- 5.8
- Total: +/- 275.7**



LEGEND

- - - TOWNSHIP BOUNDARY
- TOWNSHIP PARCELS
- RA to LI

ZONING - PROPOSED REVISION

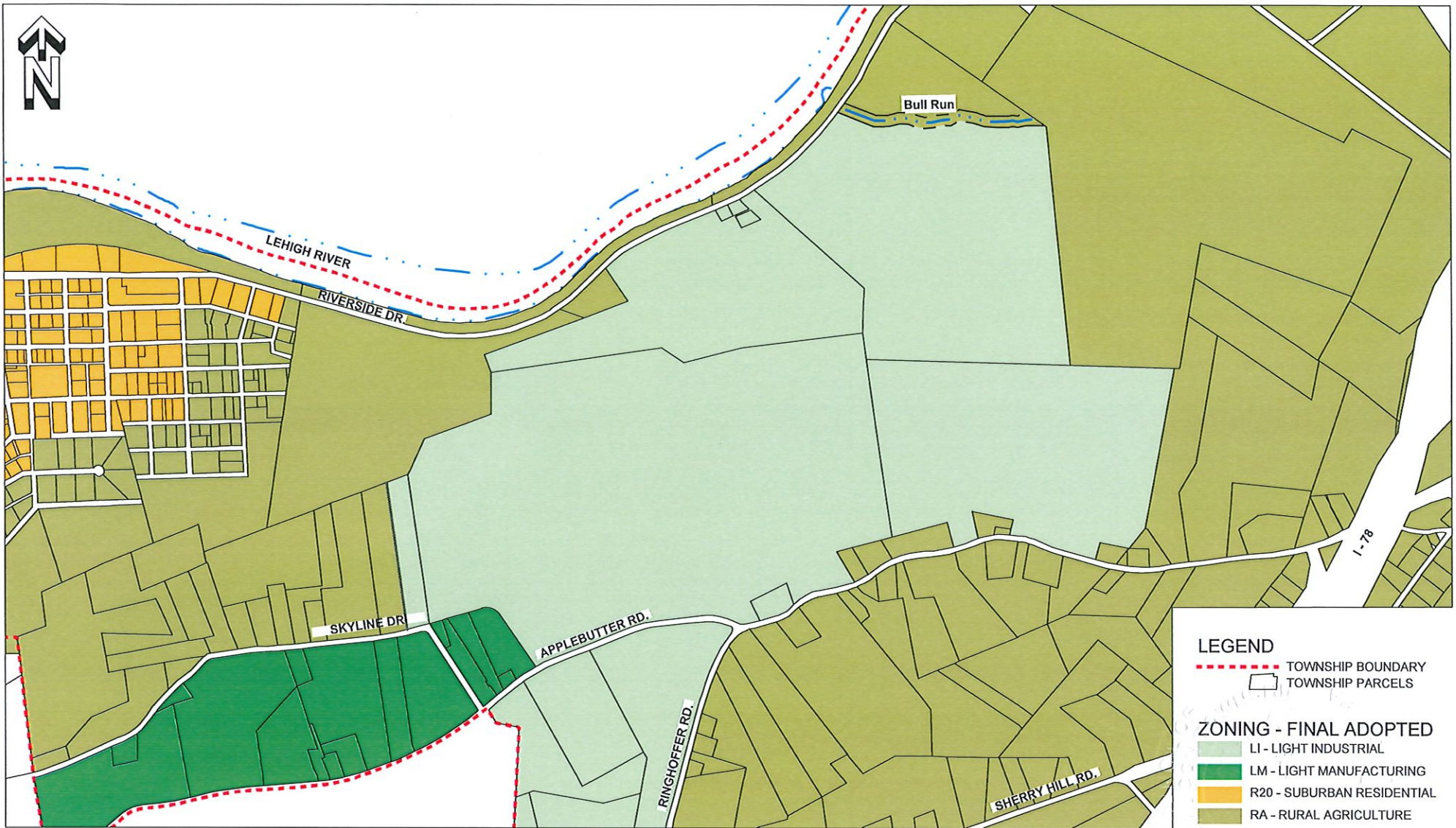
- LI - LIGHT INDUSTRIAL
- LM - LIGHT MANUFACTURING
- R20 - SUBURBAN RESIDENTIAL
- RA - RURAL AGRICULTURE

PREPARED BY:
martin and martin incorporated
 37 south main street • suite A
 chambersburg, pennsylvania . 17201

NOTE:
 PARCEL DATA FROM COUNTY OF NORTHAMPTON (GIS DATA).
 ZONING DATA FROM LOWER SAUCON TOWNSHIP.

800' 0' 800' 1600'

Map Amendment Exhibit A



LEGEND

- - - TOWNSHIP BOUNDARY
- TOWNSHIP PARCELS

ZONING - FINAL ADOPTED

- LI - LIGHT INDUSTRIAL
- LM - LIGHT MANUFACTURING
- R20 - SUBURBAN RESIDENTIAL
- RA - RURAL AGRICULTURE

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NOTE:
 PARCEL DATA FROM COUNTY OF NORTHAMPTON (GIS DATA).
 ZONING DATA FROM LOWER SAUCON TOWNSHIP.

800' 0' 800' 1600'

Map Amendment Exhibit B