ASSEMBLY, No. 3255



STATE OF NEW JERSEY

220th LEGISLATURE



INTRODUCED MARCH 7, 2022

Sponsored by:

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

Assemblywoman VERLINA REYNOLDS-JACKSON

District 15 (Hunterdon and Mercer)

SYNOPSIS

Designated the Equitable Disclosure Act of 2010, modifies provisions of MLUL concerning objectors to applications for development.

CURRENT VERSION OF TEXT

As introduced.



An Act concerning the “Municipal Land Use Law,” designated as the Equitable Disclosure Act of 2010, amending and supplementing P.L.1975, c.291 and amending P.L.1977, c.336.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. Section 3.1 of P.L.1975, c.291 (C.40:55D-4) is amended to read as follows.

3.1. "Days" means calendar days.

"Density" means the permitted number of dwelling units per gross area of land that is the subject of an application for development, including noncontiguous land, if authorized by municipal ordinance or by a planned development.

"Developer" means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

"Development" means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or of any mining excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.).

"Development potential" means the maximum number of dwelling units or square feet of nonresidential floor area that may be constructed on a specified lot or in a specified zone under the master plan and land use regulations in effect on the date of the adoption of the development transfer ordinance or on the date of the adoption of the ordinance authorizing noncontiguous cluster, and in accordance with recognized environmental constraints.

"Development regulation" means a zoning ordinance, subdivision ordinance, site plan ordinance, official map ordinance or other municipal regulation of the use and development of land, or amendment thereto adopted and filed pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.).

"Development restriction" means an agricultural restriction, a conservation restriction, or a historic preservation restriction.

"Development transfer" or "development potential transfer" means the conveyance of development potential, or the permission for development, from one or more lots to one or more other lots by deed, easement, or other means as authorized by ordinance.

"Development transfer bank" means a development transfer bank established pursuant to section 22 of P.L.2004, c.2 (C.40:55D-158) or the State TDR Bank.

"Drainage" means the removal of surface water or groundwater from land by drains, grading or other means and includes control of runoff during and after construction or development to minimize erosion and sedimentation, to assure the adequacy of existing and proposed culverts and bridges, to induce water recharge into the ground where practical, to lessen nonpoint pollution, to maintain the integrity of stream channels for their biological functions as well as for drainage, and the means necessary for water supply preservation or prevention or alleviation of flooding.

"Electric vehicle supply equipment" or "electric vehicle service equipment" or "EVSE" means the equipment, including the cables, cords, conductors, connectors, couplers, enclosures, attachment plugs, power outlets, power electronics, transformer, switchgear, switches and controls, network interfaces, and point of sale equipment and associated apparatus designed and used for the purpose of transferring energy from the electric supply system to a plug-in electric vehicle. "EVSE" may deliver either alternating current or, consistent with fast charging equipment standards, direct current electricity. "EVSE" is synonymous with "electric vehicle charging station."

"Environmental commission" means a municipal advisory body created pursuant to P.L.1968, c.245 (C.40:56A-1 et seq.).

"Erosion" means the detachment and movement of soil or rock fragments by water, wind, ice and gravity.

"Final approval" means the official action of the planning board taken on a preliminarily approved major subdivision or site plan, after all conditions, engineering plans and other requirements have been completed or fulfilled and the required improvements have been installed or guarantees properly posted for their completion, or approval conditioned upon the posting of such guarantees.

"Floor area ratio" means the sum of the area of all floors of buildings or structures compared to the total area of land that is the subject of an application for development, including noncontiguous land, if authorized by municipal ordinance or by a planned development.

"General development plan" means a comprehensive plan for the development of a planned development, as provided in section 4 of P.L.1987, c.129 (C.40:55D-45.2).

"Governing body" means the chief legislative body of the municipality. In municipalities having a board of public works, "governing body" means such board.

"Historic district" means one or more historic sites and intervening or surrounding property significantly affecting or affected by the quality and character of the historic site or sites.

"Historic preservation restriction" means a "historic preservation restriction" as defined in section 2 of P.L.1979, c.378 (C.13:8B-2).

"Historic site" means any real property, man-made structure, natural object or configuration or any portion or group of the foregoing of historical, archeological, cultural, scenic or architectural significance.

"Inherently beneficial use" means a use which is universally considered of value to the community because it fundamentally serves the public good and promotes the general welfare. Such a use includes, but is not limited to, a hospital, school, child care center, group home, or a wind, solar or photovoltaic energy facility or structure.

"Instrument" means the easement, credit, or other deed restriction used to record a development transfer.

"Interested party" means:

(a) in a criminal or quasi-criminal proceeding, any citizen of the State of New Jersey; and

(b) in the case of a civil proceeding in any court or in an administrative proceeding before a municipal agency**[**,**]**:

(i) any party immediately concerned as defined in section 3.3 of P.L.1975, c.291 (C.40:55D-6), and

(ii) any other person, whether residing within or without the municipality, whose right to use, acquire, or enjoy property is or may be affected by any action taken under P.L.1975, c.291 (C.40:55D-1 et seq.), or whose rights to use, acquire, or enjoy property under P.L.1975, c.291 (C.40:55D-1 et seq.), or under any other law of this State or of the United States have been denied, violated or infringed by an action or a failure to act under P.L.1975, c.291 (C.40:55D-1 et seq.); however, a person, including but not limited to that person’s employees, agents, representatives, affiliates, or third party designees, shall not be an interested party unless the person discloses how the person’s right to use, acquire, or enjoy property is or may be affected by any action taken on the application, in some way other than by increased economic competition.

"Land" includes improvements and fixtures on, above or below the surface.

"Local utility" means any sewerage authority created pursuant to the "sewerage authorities law," P.L.1946, c.138 (C.40:14A-1 et seq.); any utilities authority created pursuant to the "municipal and county utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.); or any utility, authority, commission, special district or other corporate entity not regulated by the Board of Regulatory Commissioners under Title 48 of the Revised Statutes that provides gas, electricity, heat, power, water or sewer service to a municipality or the residents thereof.

"Lot" means a designated parcel, tract or area of land established by a plat or otherwise, as permitted by law and to be used, developed or built upon as a unit.

(cf: P.L.2021, c.171, s.5)

2. Section 3.2 of P.L.1975, c.291 (C.40:55D-5) is amended to read as follows.

3.2. "Maintenance guarantee" means any security which may be accepted by a municipality for the maintenance of any improvements required by this act, including but not limited to surety bonds, letters of credit under the circumstances specified in section 16 of P.L.1991, c.256 (C.40:55D-53.5), and cash.

"Major subdivision" means any subdivision not classified as a minor subdivision.

"Make-Ready" means the pre-wiring of electrical infrastructure at a parking space, or set of parking spaces, to facilitate easy and cost-efficient future installation of Electric Vehicle Supply Equipment or Electric Vehicle Service Equipment, including, but not limited to, Level Two EVSE and direct current fast chargers. Make Ready includes expenses related to service panels, junction boxes, conduit, wiring, and other components necessary to make a particular location able to accommodate Electric Vehicle Supply Equipment or Electric Vehicle Service Equipment on a "plug and play" basis. "Make-Ready" is synonymous with the term "charger ready," as used in P.L.2019, c.362 (C.48:25-1 et al.).

"Master plan" means a composite of one or more written or graphic proposals for the development of the municipality as set forth in and adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28).

"Mayor" means the chief executive of the municipality, whatever his official designation may be, except that in the case of municipalities governed by municipal council and municipal manager the term "mayor" shall not mean the "municipal manager" but shall mean the mayor of such municipality.

"Military facility" means any facility located within the State which is owned or operated by the federal government, and which is used for the purposes of providing logistical, technical, material, training, and any other support to any branch of the United States military.

"Military facility commander" means the chief official, base commander or person in charge at a military facility.

"Minor site plan" means a development plan of one or more lots which (1) proposes new development within the scope of development specifically permitted by ordinance as a minor site plan; (2) does not involve planned development, any new street or extension of any off-tract improvement which is to be prorated pursuant to section 30 of P.L.1975, c.291 (C.40:55D-42); and (3) contains the information reasonably required in order to make an informed determination as to whether the requirements established by ordinance for approval of a minor site plan have been met.

"Minor subdivision" means a subdivision of land for the creation of a number of lots specifically permitted by ordinance as a minor subdivision; provided that such subdivision does not involve (1) a planned development, (2) any new street or (3) the extension of any off-tract improvement, the cost of which is to be prorated pursuant to section 30 of P.L.1975, c.291 (C.40:55D-42).

"Municipality" means any city, borough, town, township or village.

"Municipal agency" means a municipal planning board or board of adjustment, or a governing body of a municipality when acting pursuant to this act and any agency which is created by or responsible to one or more municipalities when such agency is acting pursuant to this act.

"Municipal resident" means a person who is domiciled in the municipality.

"Nonconforming lot" means a lot, the area, dimension or location of which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.

"Nonconforming structure" means a structure the size, dimension or location of which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption, revision or amendment.

"Nonconforming use" means a use or activity which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption, revision or amendment.

"Noncontiguous cluster" means noncontiguous areas to be developed as a single entity according to a plan containing an area, or a section or sections thereof, to be developed for residential purposes, nonresidential purposes, or a combination thereof, at a greater concentration of density or intensity of land use than authorized within the area, section, or sections, under conventional development, in exchange for the permanent preservation of another area, or a section or sections thereof, as common or public open space, or for historic or agricultural purposes, or a combination thereof.

"Non-profit organization" means a non-profit corporation, non-profit partnership, charitable trust or conservancy, or other non-profit or not-for-profit entity.

"Office of Planning Advocacy" or "Office of Smart Growth" means the Office of State Planning established pursuant to section 6 of P.L.1985, c.398 (C.52:18A-201) and transferred to the Department of State pursuant to Governor Christie's Reorganization Plan No. 002-2011, effective August 28, 2011.

"Official county map" means the map, with changes and additions thereto, adopted and established, from time to time, by resolution of the board of chosen freeholders of the county pursuant to R.S.40:27-5.

"Official map" means a map adopted by ordinance pursuant to article 5 of P.L.1975, c.291.

"Offsite" means located outside the lot lines of the lot in question but within the property, of which the lot is a part, which is the subject of a development application or the closest half of the street or right-of-way abutting the property of which the lot is a part.

"Off-tract" means not located on the property which is the subject of a development application nor on the closest half of the abutting street or right-of-way.

"Onsite" means located on the lot in question and excluding any abutting street or right-of-way.

"On-tract" means located on the property which is the subject of a development application or on the closest half of an abutting street or right-of-way.

"Open-space" means any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space; provided that such areas may be improved with only those buildings, structures, streets and offstreet parking and other improvements that are designed to be incidental to the natural openness of the land or support its use for recreation and conservation purposes.

"Organization" means a corporation, partnership, trust, limited liability company, limited liability partnership, limited partnership, or any other for-profit entity.

(cf: P.L.2021, c.171, s.6)

3. Section 7 of P.L.1975, c.291 (C.40:55D-11) is amended to read as follows:

7. Notices pursuant to section 7.1 and 7.2 of **[**this act**]** P.L.1975, c.291 (C.40:55D-12 and C.40:55D-13) shall state the date, time and place of the hearing, the nature of the matters to be considered and, in the case of notices pursuant to **[**subsection**]** section 7.1 of **[**this act**]** P.L.1975, c.291 (C.40:55D-12), an identification of the property proposed for development by street address, if any, or by reference to lot and block numbers as shown on the current tax duplicate in the municipal tax assessor's office, and the location and times at which any maps and documents for which approval is sought are available pursuant to subsection **[**6b**]** b. of section 6 of P.L.1975, c.291 (C.40:55D-10). Notices pursuant to section 7.1 of P.L.1975, c.291 (C.40:55D-12) shall reference the disclosure requirements of subsection d. of section 1 of P.L.1977, c.336 (C.40:55D-48.1), and state that the disclosure requirements shall be satisfied at the time of making an appearance and prior to cross-examining any of the applicant’s witnesses or providing testimony on the application at the hearing.

(cf: P.L.1975, c.291, s.7)

4. Section 8 of P.L.1975, c.291 (C.40:55D-17) is amended to read as follows:

8. Appeal to the governing body; time; notice; modification; stay of proceedings. a. Any interested party may appeal to the governing body any final decision of a board of adjustment approving an application for development pursuant to subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70), if so permitted by ordinance. Such appeal shall be made within 10 days of the date of publication of such final decision pursuant to subsection i. of section 6 of P.L.1975, c.291 (C.40:55D-10). In the case of any board established pursuant to article 10 of P.L.1975, c.291, the governing body of the municipality in which the land is situated shall be the "governing body" for purposes of this section. The appeal to the governing body shall be made by serving the municipal clerk in person or by certified mail with a notice of appeal, specifying the grounds thereof and the name and address of the appellant and name and address of his attorney, if represented. Such appeal shall be decided by the governing body only upon the record established before the board of adjustment.

b. Notice of the meeting to review the record below shall be given by the governing body by personal service or certified mail to the appellant, to those entitled to notice of a decision pursuant to subsection h. of section 6 of P.L.1975, c.291 (C.40:55D-10) and to the board from which the appeal is taken, at least 10 days prior to the date of the meeting. The parties may submit oral and written argument on the record at such meeting, and the governing body shall provide for verbatim recording and transcripts of such meeting pursuant to subsection f. of section 6 of P.L.1975, c.291 (C.40:55D-10).

c. The appellant shall, (1) within five days of service of the notice of the appeal pursuant to subsection a. hereof, arrange for a transcript pursuant to subsection f. of section 6 of P.L.1975, c.291 (C.40:55D-10) for use by the governing body and pay a deposit of $50.00 or the estimated cost of such transcript, whichever is less, or (2) within 35 days of service of the notice of appeal, submit a transcript as otherwise arranged to the municipal clerk; otherwise, the appeal may be dismissed for failure to prosecute.

The governing body shall conclude a review of the record below not later than 95 days from the date of publication of notice of the decision below pursuant to subsection i. of section 6 of P.L.1975, c.291 (C.40:55D-10), unless the applicant consents in writing to an extension of such period. Failure of the governing body to hold a hearing and conclude a review of the record below and to render a decision within such specified period shall constitute a decision affirming the action of the board.

d. The governing body may reverse, remand, or affirm with or without the imposition of conditions the final decision of the board of adjustment approving a variance pursuant to subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70). The review shall be made on the record made before the board of adjustment.

e. The affirmative vote of a majority of the full authorized membership of the governing body shall be necessary to reverse or remand to the board of adjustment or to impose conditions on or alter conditions to any final action of the board of adjustment. Otherwise the final action of the board of adjustment shall be deemed to be affirmed; a tie vote of the governing body shall constitute affirmance of the decision of the board of adjustment.

f. An appeal to the governing body shall stay all proceedings in furtherance of the action in respect to which the decision appealed from was made, unless the board from whose action the appeal is taken certifies to the governing body, after the notice of appeal shall have been filed with such board, that by reason of facts stated in the certificate, a stay would, in its opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by an order of the Superior Court on application upon notice to the board from whom the appeal is taken and on good cause shown.

g. The governing body shall mail a copy of the decision to the appellant or, if represented, then to his attorney, without separate charge, and for a reasonable charge to any interested party who has requested it, not later than 10 days after the date of the decision. A brief notice of the decision shall be published in the official newspaper of the municipality, if there be one, or in a newspaper of general circulation in the municipality. Such publication shall be arranged by the applicant unless a particular municipal officer is so designated by ordinance; provided that nothing contained herein shall be construed as preventing the applicant from arranging such publication if he so desires. The governing body may make a reasonable charge for its publication. The period of time in which an appeal to a court of competent jurisdiction may be made shall run from the first publication, whether arranged by the municipality or the applicant.

h. Nothing in this act shall be construed to restrict the right of any interested party to obtain a review by any court of competent jurisdiction, according to law, however, an interested party shall not have standing to institute an action or proceeding challenging any final decision of a board of adjustment approving an application for development unless that interested party appeared at the public hearing and satisfied the disclosure requirements of subsection d. of section 1 of P.L.1977, c.336 (C.40:55D-48.1).

(cf: P.L.1991, c.256, s.3)

5. Section 9 of P.L.1975, c.291 (C.40:55D-18) is amended to read as follows:

9. Enforcement. a. The governing body of a municipality shall enforce this act and any ordinance or regulation made and adopted hereunder. To that end, the governing body may require the issuance of specified permits, certificates or authorizations as a condition precedent to (1) the erection, construction, alteration, repair, remodeling, conversion, removal or destruction of any building or structure, (2) the use or occupancy of any building, structure or land, and (3) the subdivision or resubdivision of any land; and shall establish an administrative officer and offices for the purpose of issuing such permits, certificates or authorizations; and may condition the issuance of such permits, certificates and authorizations upon the submission of such data, materials, plans, plats and information as is authorized hereunder and upon the express approval of the appropriate State, county or municipal agencies; and may establish reasonable fees to cover administrative costs for the issuance of such permits, certificates and authorizations. The administrative officer shall issue or deny a zoning permit within 10 business days of receipt of a request therefor. If the administrative officer fails to grant or deny a zoning permit within this period, the failure shall be deemed to be an approval of the application for the zoning permit. In case any building or structure is erected, constructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of this act or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality or an interested party, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises; however, an interested party shall not have standing to institute an action or proceeding challenging any final decision of a board of adjustment or planning board approving an application for development unless the interested party appeared at the public hearing and satisfied the disclosure requirements of subsection d. of section 1 of P.L.1977, c.336 (C.40:55D-48.1).

b. The court, on motion of a defendant whose application for development is affected by the commencement of an action or proceeding pursuant to subsection a. of this section, or of a municipality or municipal agency joined as a defendant in the action or proceeding, may require the posting of security or other equitable terms as it deems appropriate.

c. Whenever the court determines in an action or proceeding commenced pursuant to subsection a. of this section that a municipality or municipal agency joined as a defendant acted properly within the scope of its delegated authority and that the challenged action of the municipality or municipal agency should be upheld, the court may award attorneys’ fees, costs, and expenses to the municipality or municipal agency, if and to the extent the attorneys’ fees, costs, and expenses were paid out of public funds and not funded or reimbursed by an applicant, developer, or other third party.

d. Actions or proceedings commenced pursuant to subsection a. of this section shall not be commenced or prosecuted for any improper purpose, such as to harass or to cause unnecessary delay or costs of litigation. The claims asserted therein shall be warranted by existing law, or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. A defendant, within 10 days of receipt of the summons and complaint, may demand in writing the discontinuance of an action or proceeding, on the ground that the claims asserted therein are frivolous or that the action or proceeding has been commenced for an improper purpose. If the plaintiff does not discontinue the action or proceeding in response to the defendant’s demand, and the court subsequently determines the claims asserted therein to be frivolous, or that the action or proceeding was commenced for an improper purpose, then in connection with the dismissal thereof, and in addition to the security posted, if any, the court may award to each of the defendants reasonable attorneys’ fees and all costs and expenses of the action or proceedings, as and to the extent provided by applicable court rule; provided, however, that nothing in this subsection shall be construed as limiting or restricting an award of attorneys’ fees, costs, and expenses to a prevailing municipality or municipal agency pursuant to subsection c. of this section. In addition, the court may impose sanctions on the plaintiff, the attorney for plaintiff, or both, in addition to awarding attorneys' fees, costs, and expenses to a defendant, as and to the extent provided by applicable court rule.

(cf: P.L.2001, c.49, s.1)

6. Section 16 of P.L.1975, c.291 (C.40:55D-25) is amended to read as follows:

16. a. The planning board shall follow the provisions of **[**this act**]** P.L.1975, c.291 (C.40:55D-1 et seq.) and shall accordingly exercise its power in regard to:

(1) The master plan pursuant to article 3;

(2) Subdivision control and site plan review pursuant to article 6;

(3) The official map pursuant to article 5;

(4) The zoning ordinance including conditional uses pursuant to article 8;

(5) The capital improvement program pursuant to article 4;

(6) Variances and certain building permits in conjunction with subdivision, site plan and conditional use approval pursuant to article 7.

b. The planning board may:

(1) Participate in the preparation and review of programs or plans required by State or federal law or regulation;

(2) Assemble data on a continuing basis as part of a continuous planning process; **[**and**]**

(3) Perform such other advisory duties as are assigned to it by ordinance or resolution of the governing body for the aid and assistance of the governing body or other agencies or officers;

(4) (a) Establish committees consisting of less than a quorum of board members, with or without the board's attorney, experts, and technical staff, for the purpose of reviewing an application for development filed with the board, except when reviewing a variance, pursuant to subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70). Any such committee may review procedural or substantive issues relating to the application for development or changes suggested by the technical staff with the applicant, the applicant's professionals, or both, prior to the commencement of a public hearing on the application. Any matter considered or discussed by the committee or any recommendation made by the committee shall not be binding on either the board or the applicant. A meeting of any such committee shall not constitute a meeting of the board, and notice shall not be required.

(b) Nothing herein shall be construed to prevent or prohibit a board's attorney, experts, and technical staff from meeting with the applicant's counterparts before or after commencement of a public hearing on an application; and

(5) Meet jointly with the governing body, zoning board of adjustment, or both, for the purpose of discussing the annual report prepared pursuant to section 16 of P.L.1985, c.516 (C.40:55D-70.1).

c. (1) In a municipality having a population of 15,000 or less, a nine-member planning board, if so provided by ordinance, shall exercise, to the same extent and subject to the same restrictions, all the powers of a board of adjustment; but the Class I and the Class III members shall not participate in the consideration of applications for development which involve relief pursuant to subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70).

(2) In any municipality, a nine-member planning board, if so provided by ordinance, subject to voter referendum, shall exercise, to the same extent and subject to the same restrictions, all the powers of a board of adjustment; but the Class I and the Class III members shall not participate in the consideration of applications for development which involve relief pursuant to subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70).

d. In a municipality having a population of 2,500 or less, the planning board, if so provided by ordinance, shall exercise, to the same extent and subject to the same restrictions, all of the powers of an historic preservation commission, provided that at least one planning board member meets the qualifications of a Class A member of an historic preservation commission and at least one member meets the qualifications of a Class B member of that commission.

e. In any municipality in which the planning board exercises the power of a zoning board of adjustment pursuant to subsection c. of this section, a zoning board of adjustment may be appointed pursuant to law, subject to voter referendum permitting reconstitution of the board. The public question shall be initiated through an ordinance adopted by the governing body.

(cf: P.L.1999, c.27, s.1)

7. Section 1 of P.L.1977, c.336 (C.40:55D-48.1) is amended to read as follows:

1. **[**A corporation or partnership applying to a planning board or a board of adjustment or to the governing body of a municipality for permission to subdivide a parcel of land into six or more lots, or applying for a variance to construct a multiple dwelling of 25 or more family units or for approval of a site to be used for commercial purposes**]** a. An application for development submitted by an organization, as defined in section 3.2 of P.L.1975, c.291 (C.40:55D-5), shall list the names and addresses of all members, stockholders or individual partners **[**owning**]** holding at least a 10% **[**of its stock of any class or at least 10% of the**]** ownership interest in the **[**partnership, as the case may be**]** organization, including any other organization holding at least a 10% ownership interest in the organization submitting the application for development, and shall also identify the owner of the property that is the subject of the application for development, including any organization holding at least a 10% ownership interest in the property.

b. An organization other than the applicant appearing at a hearing shall, at the time of making its appearance and prior to cross-examining any of the applicant’s witnesses or providing testimony on the application, submit to the municipal agency a certification or affidavit of an authorized officer or representative of the organization, disclosing the names and addresses of all members, stockholders or individual partners holding at least a 10% ownership interest in the organization, including any other organization holding at least a 10% ownership interest in the organization.

c. An application for development submitted by a nonprofit organization shall list the names and addresses of all officers and trustees of the non-profit organization. A nonprofit organization that is not the applicant shall, at the time of making its appearance at the hearing and prior to cross-examining any of the applicant’s witnesses or providing testimony on the application, submit to the municipal agency a certification or affidavit disclosing the names and addresses of all officers and trustees of the nonprofit organization.

d. At the time of making an appearance at the hearing and prior to cross-examining any of the applicant’s witnesses or providing testimony on the application, a person, organization or nonprofit organization other than the applicant shall disclose under oath:

1. the full name and address of the person, organization or nonprofit organization;

2. the name of the person’s employer, if any;

3. any affiliation with, or financial support provided to the person, organization or nonprofit organization directly or indirectly by, an economic competitor of the applicant or developer;

4. the full name and address of any other person, organization or nonprofit organization responsible for the payment of fees and costs of professionals appearing or presenting testimony on behalf of the person, organization or nonprofit organization; and

5. a statement explaining how that person’s or organization’s or nonprofit organization’s right to use, acquire, or enjoy property is or may be affected by any action taken on the application.

(cf: P.L.1977, c.336, s.1)

8. Section 2 of P.L.1977, c.336 (C.40:55D-48.2) is amended to read:

2. If **[**a corporation or partnership**]** an organization owns an interest equivalent to 10% or more of **[**the stock of a corporation, or 10% or greater interest in a partnership,**]** an organization that is subject to the disclosure requirements pursuant to section 1 of **[**this act**]** P.L.1977, c.336 (C.40:55D-48.1), that **[**corporation or partnership**]** organization shall list the names and addresses of its **[**stockholders**]** interest holders holding 10% or **[**more of its stock or of 10% or**]** greater interest in the **[**partnership, as the case may be, and this requirement shall be followed by every corporate stockholder or partner in a partnership, until the names and addresses of the noncorporate stockholders and individual partners, exceeding the 10% ownership criterion established in this act, have been listed**]** organization.

(cf: P.L.1977, c.336, s.2)

9. Section 3 of P.L.1977, c.336 (C.40:55D-48.3) is amended to read as follows:

3. a. No municipal planning board, board of adjustment or **[**municipal**]** governing body shall approve the application of any **[**corporation or partnership**]** organization or non-profit organization which does not comply with **[**this act**]** P.L.1977, c.336 (C.40:55D-48.1 et seq.)*.*  Any approval not in compliance with P.L.1977, c.336 (C.40:55D-48.1 et seq.) shall be voidable in a proceeding in lieu of prerogative writ in the Superior Court.

b. Subject to the applicable provisions of subsection h. of section 8 of P.L.1975, c.291 (C.40:55D-17) and subsection a. of section 9 of P.L.1975, c.291 (C.40:55D-18), an interested party may institute a proceeding in lieu of prerogative writ in the Superior Court to challenge any approval granted by a municipal planning board, board of adjustment, or governing body on the grounds that such action is void for the reasons stated in subsection a. of this section, and if the court shall find that the approval was not in compliance with P.L.1977, c.336 (C.40:55D-48.1 et seq.), the court may declare the approval to be void.

c. No planning board, board of adjustment or municipal governing body shall consider any testimony or evidence submitted on behalf of any person, organization, or nonprofit organization which does not comply with P.L.1977, c.336 (C.40:55D-48.1 et seq.).  Any condition of any approval or any denial based on testimony or evidence submitted by a person, organization, or non-profit organization not in compliance with P.L.1977, c.336 (C.40:55D-48.1 et seq.) shall be voidable in proceeding in lieu of prerogative writ in the Superior Court.

d. An applicant may institute a proceeding in lieu of prerogative writ in the Superior Court to challenge any condition of any approval or any denial of an application for development by a municipal planning board, board of adjustment, or governing body on the grounds that such action is voidable pursuant to subsection c. of this section, and if the court shall find that the condition of approval or denial was based substantially on testimony or evidence submitted by a person, organization, or non-profit organization not in compliance with P.L.1977, c.336 (C.40:55D-48.1 et seq.), the court may declare the condition of approval to be void or in the case of denial of the application for development, may reverse the denial and remand the application to the appropriate board for approval of the application with the imposition of appropriate conditions.

(cf: P.L.1977, c.336, s.3)

10. Section 4 of P.L.1977, c.336 (C.40:55D-48.4) is amended to read as follows:

4. Any **[**corporation or partnership which conceals the names of the stockholders owning 10% or more of its stock, or of the individual partners owning a 10% or greater interest in the partnership, as the case may be,**]** organization or non-profit organization failing to disclose in accordance with P.L.1977, c.336 (C.40:55D-48.1 et seq.), shall be subject to a fine of $1,000.00 to $10,000.00 which shall be **[**recovered**]** recoverable in the name of the municipality in any court of record in the State in a summary manner pursuant to **[**"The Penalty Enforcement Law" (N.J.S. 2A:58-1 et seq.)**]**  the “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.).

(cf: P.L.1977, c.336, s.4)

11. (New section) Unless a stay has been issued by a court of competent jurisdiction, a planning board or a board of adjustment shall have continuing jurisdiction to hear an application for development, and a developer may perfect approvals, notwithstanding the pendency of an appeal concerning an application for development of the same parcel.

12. This act shall take effect immediately.

STATEMENT

This bill, designated the Equitable Disclosure Act of 2010 applies the same rules for objectors and applicants in the land use approval and appeals process. The goal is to make sure land use boards and other boards of jurisdictions receive full disclosure of applicants and objectors. Due process rights are fully maintained under this bill. Disclosure requirements are applied to objectors and applicants on a level playing field.

The proposed legislation applies current case law and court rules for the disclosure of all interests before a land use board or court. The legislation addresses coordinated efforts to delay approvals that are oftentimes undertaken by economic competitors and are at times clandestine. The Wall Street Journal reports how these covert operations are proudly referred to as “black arts” by the groups undertaking them. (“Rival Chains Secretly Fund Opposition to Walmart,” The Wall Street Journal, June 7, 2010.)

The approval and appeal process outline in the "Municipal Land Use Law" (MLUL), P.L.1975, c.291 (C40:55D-1 et seq.) has become a tool for economic competitors of land use applicants. The tactic is to delay final approval of projects at the expense of taxpayers, businesses, and developers. Economic competitors who have no legitimate land use based objections to an application are manipulating the MLUL with a strategy of delay and deception.

This bill does not limit anyone’s rights, including economic competitors, with legitimate, land-use based objections from appearing and testifying. The bill contains the following components:

1. Clarifies the definition of interested party in the MLUL to exclude economic competition as the sole reason for standing while at the same time protects economic competitors standing as “a party immediately concerned” and gives them an opportunity to make their case as to how the approval would negatively impact their position on land use grounds (language modeled after case law);

2. Adds transparency and fairness by applying disclosure requirements to objectors similar to the ownership disclosure requirements for the applicant. They include providing: name and address, employer, affiliation with an economic competitor, who is paying for professional fees if any, and a statement on how the right to use, acquire, or enjoy property is affected;

3. Empowers court, in its discretion, to award attorney’s fees that were paid with public funds should an approval be upheld on appeal;

4. Empowers court, in its discretion, to award applicant’s attorney’s fees should the case be deemed to be frivolous (language modeled from court rules);

5. Empowers court, at its discretion, to order appellant to post security (modeled after court rules);

6. Provides planning or zoning board with continuing jurisdiction over an application notwithstanding an appeal unless a stay has been issued by the reviewing court;

7. Requires participation in public hearing process in order to have standing to appeal to courts.