

ASSEMBLY, No. 3435

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED FEBRUARY 1, 2024

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.



(Sponsorship Updated As Of: 2/1/2024)

A3435 WIMBERLY, REYNOLDS-JACKSON

2

1 AN ACT concerning the "Municipal Land Use Law," designated as
2 the Equitable Disclosure Act of 2010, amending and
3 supplementing P.L.1975, c.291 and amending P.L.1977, c.336.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

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

10 3.1. "Days" means calendar days.

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

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

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

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

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

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

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

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 "Interested party" means:

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

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

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

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

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

38 "Local utility" means any sewerage authority created pursuant to
39 the "sewerage authorities law," P.L.1946, c.138 (C.40:14A-
40 1 et seq.); any utilities authority created pursuant to the "municipal
41 and county utilities authorities law," P.L.1957, c.183 (C.40:14B-
42 1 et seq.); or any utility, authority, commission, special district or
43 other corporate entity not regulated by the Board of Regulatory
44 Commissioners under Title 48 of the Revised Statutes that provides
45 gas, electricity, heat, power, water or sewer service to a
46 municipality or the residents thereof.

1 "Lot" means a designated parcel, tract or area of land established
2 by a plat or otherwise, as permitted by law and to be used,
3 developed or built upon as a unit.
4 (cf: P.L.2021, c.171, s.5)

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

8 3.2. "Maintenance guarantee" means any security which may
9 be accepted by a municipality for the maintenance of any
10 improvements required by this act, including but not limited to
11 surety bonds, letters of credit under the circumstances specified in
12 section 16 of P.L.1991, c.256 (C.40:55D-53.5), and cash.

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

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

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

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

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

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

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

1 informed determination as to whether the requirements established
2 by ordinance for approval of a minor site plan have been met.

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

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

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

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

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

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

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

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

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

46 "Office of Planning Advocacy" or "Office of Smart Growth"
47 means the Office of State Planning established pursuant to section 6
48 of P.L.1985, c.398 (C.52:18A-201) and transferred to the

1 Department of State pursuant to Governor Christie's Reorganization
2 Plan No. 002-2011, effective August 28, 2011.

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

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

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

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

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

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

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

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

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

34

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

37 7. Notices pursuant to section 7.1 and 7.2 of **[this act]**
38 P.L.1975, c.291 (C.40:55D-12 and C.40:55D-13) shall state the
39 date, time and place of the hearing, the nature of the matters to be
40 considered and, in the case of notices pursuant to **[subsection]**
41 section 7.1 of **[this act]** P.L.1975, c.291 (C.40:55D-12), an
42 identification of the property proposed for development by street
43 address, if any, or by reference to lot and block numbers as shown
44 on the current tax duplicate in the municipal tax assessor's office,
45 and the location and times at which any maps and documents for
46 which approval is sought are available pursuant to subsection **[6b]**
47 b. of section 6 of P.L.1975, c.291 (C.40:55D-10). Notices pursuant
48 to section 7.1 of P.L.1975, c.291 (C.40:55D-12) shall reference the

1 disclosure requirements of subsection d. of section 1 of P.L.1977,
2 c.336 (C.40:55D-48.1), and state that the disclosure requirements
3 shall be satisfied at the time of making an appearance and prior to
4 cross-examining any of the applicant's witnesses or providing
5 testimony on the application at the hearing.

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

7

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

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

27 b. Notice of the meeting to review the record below shall be
28 given by the governing body by personal service or certified mail to
29 the appellant, to those entitled to notice of a decision pursuant to
30 subsection h. of section 6 of P.L.1975, c.291 (C.40:55D-10) and to
31 the board from which the appeal is taken, at least 10 days prior to
32 the date of the meeting. The parties may submit oral and written
33 argument on the record at such meeting, and the governing body
34 shall provide for verbatim recording and transcripts of such meeting
35 pursuant to subsection f. of section 6 of P.L.1975, c.291 (C.40:55D-
36 10).

37 c. The appellant shall, (1) within five days of service of the
38 notice of the appeal pursuant to subsection a. hereof, arrange for a
39 transcript pursuant to subsection f. of section 6 of P.L.1975, c.291
40 (C.40:55D-10) for use by the governing body and pay a deposit of
41 \$50.00 or the estimated cost of such transcript, whichever is less, or
42 (2) within 35 days of service of the notice of appeal, submit a
43 transcript as otherwise arranged to the municipal clerk; otherwise,
44 the appeal may be dismissed for failure to prosecute.

45 The governing body shall conclude a review of the record below
46 not later than 95 days from the date of publication of notice of the
47 decision below pursuant to subsection i. of section 6 of P.L.1975,
48 c.291 (C.40:55D-10), unless the applicant consents in writing to an

1 extension of such period. Failure of the governing body to hold a
2 hearing and conclude a review of the record below and to render a
3 decision within such specified period shall constitute a decision
4 affirming the action of the board.

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

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

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

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

42 h. Nothing in this act shall be construed to restrict the right of
43 any interested party to obtain a review by any court of competent
44 jurisdiction, according to law, however, an interested party shall not
45 have standing to institute an action or proceeding challenging any
46 final decision of a board of adjustment approving an application for
47 development unless that interested party appeared at the public

1 hearing and satisfied the disclosure requirements of subsection d. of
2 section 1 of P.L.1977, c.336 (C.40:55D-48.1).

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

4

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

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

44 b. The court, on motion of a defendant whose application for
45 development is affected by the commencement of an action or
46 proceeding pursuant to subsection a. of this section, or of a
47 municipality or municipal agency joined as a defendant in the

1 action or proceeding, may require the posting of security or other
2 equitable terms as it deems appropriate.

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

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

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

40

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

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

46 (1) The master plan pursuant to article 3;

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

48 6;

- 1 (3) The official map pursuant to article 5;
- 2 (4) The zoning ordinance including conditional uses pursuant to
3 article 8;
- 4 (5) The capital improvement program pursuant to article 4;
- 5 (6) Variances and certain building permits in conjunction with
6 subdivision, site plan and conditional use approval pursuant to
7 article 7.
- 8 b. The planning board may:
- 9 (1) Participate in the preparation and review of programs or
10 plans required by State or federal law or regulation;
- 11 (2) Assemble data on a continuing basis as part of a continuous
12 planning process; **[and]**
- 13 (3) Perform such other advisory duties as are assigned to it by
14 ordinance or resolution of the governing body for the aid and
15 assistance of the governing body or other agencies or officers;
- 16 (4) (a) Establish committees consisting of less than a quorum of
17 board members, with or without the board's attorney, experts, and
18 technical staff, for the purpose of reviewing an application for
19 development filed with the board, except when reviewing a
20 variance, pursuant to subsection d. of section 57 of P.L.1975, c.291
21 (C.40:55D-70). Any such committee may review procedural or
22 substantive issues relating to the application for development or
23 changes suggested by the technical staff with the applicant, the
24 applicant's professionals, or both, prior to the commencement of a
25 public hearing on the application. Any matter considered or
26 discussed by the committee or any recommendation made by the
27 committee shall not be binding on either the board or the applicant.
28 A meeting of any such committee shall not constitute a meeting of
29 the board, and notice shall not be required.
- 30 (b) Nothing herein shall be construed to prevent or prohibit a
31 board's attorney, experts, and technical staff from meeting with the
32 applicant's counterparts before or after commencement of a public
33 hearing on an application; and
- 34 (5) Meet jointly with the governing body, zoning board of
35 adjustment, or both, for the purpose of discussing the annual report
36 prepared pursuant to section 16 of P.L.1985, c.516 (C.40:55D-
37 70.1).
- 38 c. (1) In a municipality having a population of 15,000 or less,
39 a nine-member planning board, if so provided by ordinance, shall
40 exercise, to the same extent and subject to the same restrictions, all
41 the powers of a board of adjustment; but the Class I and the Class
42 III members shall not participate in the consideration of
43 applications for development which involve relief pursuant to
44 subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70).
- 45 (2) In any municipality, a nine-member planning board, if so
46 provided by ordinance, subject to voter referendum, shall exercise,
47 to the same extent and subject to the same restrictions, all the
48 powers of a board of adjustment; but the Class I and the Class III

1 members shall not participate in the consideration of applications
2 for development which involve relief pursuant to subsection d. of
3 section 57 of P.L.1975, c.291 (C.40:55D-70).

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

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

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

19

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

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

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

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

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

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

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

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

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

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

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

28
29 8. Section 2 of P.L.1977, c.336 (C.40:55D-48.2) is amended to
30 read:

31 2. If **【a corporation or partnership】** an organization owns an
32 interest equivalent to 10% or more of **【the stock of a corporation, or**
33 **10% or greater interest in a partnership,】** an organization that is
34 subject to the disclosure requirements pursuant to section 1 of **【this**
35 **act】** P.L.1977, c.336 (C.40:55D-48.1), that **【corporation or**
36 **partnership】** organization shall list the names and addresses of its
37 **【stockholders】** interest holders holding 10% or **【more of its stock**
38 **or of 10% or】** greater interest in the **【partnership, as the case may**
39 **be, and this requirement shall be followed by every corporate**
40 **stockholder or partner in a partnership, until the names and**
41 **addresses of the noncorporate stockholders and individual partners,**
42 **exceeding the 10% ownership criterion established in this act, have**
43 **been listed】** organization.

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

45
46 9. Section 3 of P.L.1977, c.336 (C.40:55D-48.3) is amended to
47 read as follows:

1 3. a. No municipal planning board, board of adjustment or
2 **【municipal】** governing body shall approve the application of any
3 **【corporation or partnership】** organization or non-profit organization
4 which does not comply with **【this act】** P.L.1977, c.336 (C.40:55D-
5 48.1 et seq.). Any approval not in compliance with P.L.1977, c.336
6 (C.40:55D-48.1 et seq.) shall be voidable in a proceeding in lieu of
7 prerogative writ in the Superior Court.

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

18 c. No planning board, board of adjustment or municipal
19 governing body shall consider any testimony or evidence submitted
20 on behalf of any person, organization, or nonprofit organization
21 which does not comply with P.L.1977, c.336 (C.40:55D-
22 48.1 et seq.). Any condition of any approval or any denial based on
23 testimony or evidence submitted by a person, organization, or non-
24 profit organization not in compliance with P.L.1977, c.336
25 (C.40:55D-48.1 et seq.) shall be voidable in proceeding in lieu of
26 prerogative writ in the Superior Court.

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

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

41
42 10. Section 4 of P.L.1977, c.336 (C.40:55D-48.4) is amended to
43 read as follows:

44 4. Any **【corporation or partnership which conceals the names**
45 **of the stockholders owning 10% or more of its stock, or of the**
46 **individual partners owning a 10% or greater interest in the**
47 **partnership, as the case may be,】** organization or non-profit

1 organization failing to disclose in accordance with P.L.1977, c.336
2 (C.40:55D-48.1 et seq.), shall be subject to a fine of \$1,000.00 to
3 \$10,000.00 which shall be **[recovered]** recoverable in the name of
4 the municipality in any court of record in the State in a summary
5 manner pursuant to **["The Penalty Enforcement Law" (N.J.S.**
6 **2A:58-1 et seq.)]** the "Penalty Enforcement Law of 1999,"
7 P.L.1999, c.274 (C.2A:58-10 et seq.).
8 (cf: P.L.1977, c.336, s.4)

9
10 11. (New section) Unless a stay has been issued by a court of
11 competent jurisdiction, a planning board or a board of adjustment
12 shall have continuing jurisdiction to hear an application for
13 development, and a developer may perfect approvals,
14 notwithstanding the pendency of an appeal concerning an
15 application for development of the same parcel.

16
17 12. This act shall take effect immediately.

20 STATEMENT

21
22 This bill, designated the Equitable Disclosure Act of 2010
23 applies the same rules for objectors and applicants in the land use
24 approval and appeals process. The goal is to make sure land use
25 boards and other boards of jurisdictions receive full disclosure of
26 applicants and objectors. Due process rights are fully maintained
27 under this bill. Disclosure requirements are applied to objectors and
28 applicants on a level playing field.

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

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

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

- 1 1. Clarifies the definition of interested party in the MLUL to
2 exclude economic competition as the sole reason for standing while
3 at the same time protects economic competitors standing as “a party
4 immediately concerned” and gives them an opportunity to make
5 their case as to how the approval would negatively impact their
6 position on land use grounds (language modeled after case law);
- 7 2. Adds transparency and fairness by applying disclosure
8 requirements to objectors similar to the ownership disclosure
9 requirements for the applicant. They include providing: name and
10 address, employer, affiliation with an economic competitor, who is
11 paying for professional fees if any, and a statement on how the right
12 to use, acquire, or enjoy property is affected;
- 13 3. Empowers court, in its discretion, to award attorney’s fees
14 that were paid with public funds should an approval be upheld on
15 appeal;
- 16 4. Empowers court, in its discretion, to award applicant’s
17 attorney’s fees should the case be deemed to be frivolous (language
18 modeled from court rules);
- 19 5. Empowers court, at its discretion, to order appellant to post
20 security (modeled after court rules);
- 21 6. Provides planning or zoning board with continuing
22 jurisdiction over an application notwithstanding an appeal unless a
23 stay has been issued by the reviewing court;
- 24 7. Requires participation in public hearing process in order to
25 have standing to appeal to courts.