

[First Reprint]

**ASSEMBLY, No. 3062**

**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

INTRODUCED JUNE 23, 2008

**Sponsored by:**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex)**

**Assemblyman UPENDRA J. CHIVUKULA**

**District 17 (Middlesex and Somerset)**

**Assemblyman ALBERT COUTINHO**

**District 29 (Essex and Union)**

**Assemblywoman LINDA R. GREENSTEIN**

**District 14 (Mercer and Middlesex)**

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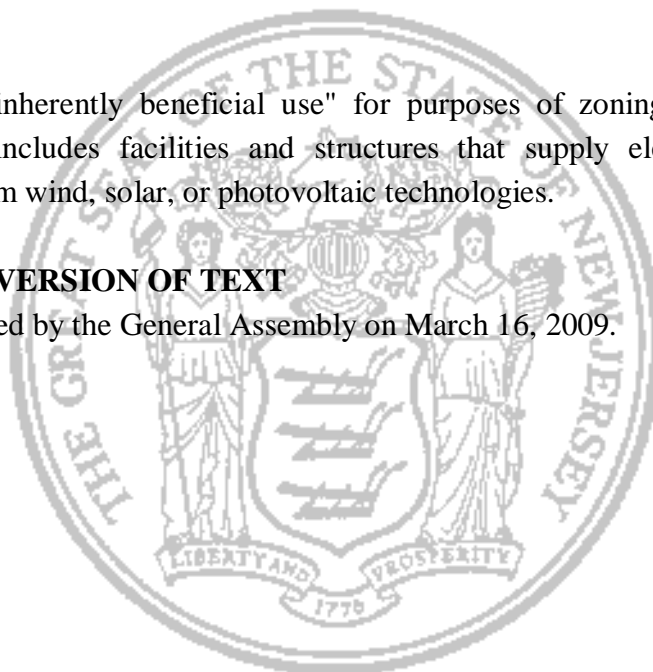
**Assemblywoman Lampitt and Assemblyman Gusciora**

**SYNOPSIS**

Defines "inherently beneficial use" for purposes of zoning variance and specifically includes facilities and structures that supply electrical energy produced from wind, solar, or photovoltaic technologies.

**CURRENT VERSION OF TEXT**

As amended by the General Assembly on March 16, 2009.



**(Sponsorship Updated As Of: 6/26/2009)**

1 AN ACT concerning certain property uses <sup>1</sup>and structures<sup>1</sup> under  
2 local zoning ordinances and amending P.L.1975, c.291.

3

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

6

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

9 3.1. "Days" means calendar days.

10 "Density" means the permitted number of dwelling units per  
11 gross area of land to be developed.

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

17 "Development" means the division of a parcel of land into two or  
18 more parcels, the construction, reconstruction, conversion,  
19 structural alteration, relocation or enlargement of any building or  
20 other structure, or of any mining excavation or landfill, and any use  
21 or change in the use of any building or other structure, or land or  
22 extension of use of land, for which permission may be required  
23 pursuant to this act.

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

30 "Development regulation" means a zoning ordinance,  
31 subdivision ordinance, site plan ordinance, official map ordinance  
32 or other municipal regulation of the use and development of land, or  
33 amendment thereto adopted and filed pursuant to this act.

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

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

41 "Drainage" means the removal of surface water or groundwater  
42 from land by drains, grading or other means and includes control of  
43 runoff during and after construction or development to minimize

**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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly floor amendments adopted March 16, 2009.

1 erosion and sedimentation, to assure the adequacy of existing and  
2 proposed culverts and bridges, to induce water recharge into the  
3 ground where practical, to lessen nonpoint pollution, to maintain  
4 the integrity of stream channels for their biological functions as  
5 well as for drainage, and the means necessary for water supply  
6 preservation or prevention or alleviation of flooding.

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

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

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

17 "Floor area ratio" means the sum of the area of all floors of  
18 buildings or structures compared to the total area of the site.

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

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

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

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

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

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

40 "Interested party" means: (a) in a criminal or quasi-criminal  
41 proceeding, any citizen of the State of New Jersey; and (b) in the  
42 case of a civil proceeding in any court or in an administrative  
43 proceeding before a municipal agency, any person, whether residing  
44 within or without the municipality, whose right to use, acquire, or  
45 enjoy property is or may be affected by any action taken under this  
46 act, or whose rights to use, acquire, or enjoy property under this act,  
47 or under any other law of this State or of the United States have

1 been denied, violated or infringed by an action or a failure to act  
2 under this act.

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

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

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

17 (cf: P.L.2004, c.2, s.33)

18

19 2. Section 3.4 of P.L.1975, c.291 (C.40:55D-7) is amended to  
20 read as follows:

21 3.4. "Sedimentation" means the deposition of soil that has been  
22 transported from its site of origin by water, ice, wind, gravity or  
23 other natural means as a product of erosion.

24 "Sending zone" means an area or areas designated in a master  
25 plan and zoning ordinance, adopted pursuant to P.L.1975, c.291  
26 (C.40:55D-1 et seq.), within which development may be restricted  
27 and which is otherwise consistent with the provisions of section 8  
28 of P.L.2004, c.2 (C.40:55D-144).

29 "Site plan" means a development plan of one or more lots on  
30 which is shown (1) the existing and proposed conditions of the lot,  
31 including but not necessarily limited to topography, vegetation,  
32 drainage, flood plains, marshes and waterways, (2) the location of  
33 all existing and proposed buildings, drives, parking spaces,  
34 walkways, means of ingress and egress, drainage facilities, utility  
35 services, landscaping, structures and signs, lighting, screening  
36 devices, and (3) any other information that may be reasonably  
37 required in order to make an informed determination pursuant to an  
38 ordinance requiring review and approval of site plans by the  
39 planning board adopted pursuant to article 6 of this act.

40 "Standards of performance" means standards (1) adopted by  
41 ordinance pursuant to subsection 52d. regulating noise levels, glare,  
42 earthborne or sonic vibrations, heat, electronic or atomic radiation,  
43 noxious odors, toxic matters, explosive and inflammable matters,  
44 smoke and airborne particles, waste discharge, screening of  
45 unsightly objects or conditions and such other similar matters as  
46 may be reasonably required by the municipality or (2) required by  
47 applicable federal or State laws or municipal ordinances.

1 "State Transfer of Development Rights Bank," or "State TDR  
2 Bank," means the bank established pursuant to section 3 of  
3 P.L.1993, c.339 (C.4:1C-51).

4 "Street" means any street, avenue, boulevard, road, parkway,  
5 viaduct, drive or other way (1) which is an existing State, county or  
6 municipal roadway, or (2) which is shown upon a plat heretofore  
7 approved pursuant to law, or (3) which is approved by official  
8 action as provided by this act, or (4) which is shown on a plat duly  
9 filed and recorded in the office of the county recording officer prior  
10 to the appointment of a planning board and the grant to such board  
11 of the power to review plats; and includes the land between the  
12 street lines, whether improved or unimproved, and may comprise  
13 pavement, shoulders, gutters, curbs, sidewalks, parking areas and  
14 other areas within the street lines.

15 "Structure" means a combination of materials to form a  
16 construction for occupancy, use or ornamentation whether installed  
17 on, above, or below the surface of a parcel of land.

18 "Subdivision" means the division of a lot, tract or parcel of land  
19 into two or more lots, tracts, parcels or other divisions of land for  
20 sale or development. The following shall not be considered  
21 subdivisions within the meaning of this act, if no new streets are  
22 created: (1) divisions of land found by the planning board or  
23 subdivision committee thereof appointed by the chairman to be for  
24 agricultural purposes where all resulting parcels are 5 acres or  
25 larger in size, (2) divisions of property by testamentary or intestate  
26 provisions, (3) divisions of property upon court order, including but  
27 not limited to judgments of foreclosure, (4) consolidation of  
28 existing lots by deed or other recorded instrument and (5) the  
29 conveyance of one or more adjoining lots, tracts or parcels of land,  
30 owned by the same person or persons and all of which are found  
31 and certified by the administrative officer to conform to the  
32 requirements of the municipal development regulations and are  
33 shown and designated as separate lots, tracts or parcels on the tax  
34 map or atlas of the municipality. The term "subdivision" shall also  
35 include the term "resubdivision."

36 "Transcript" means a typed or printed verbatim record of the  
37 proceedings or reproduction thereof.

38 "Variance" means permission to depart from the literal  
39 requirements of a zoning ordinance pursuant to sections 47 and  
40 subsections 29.2b., 57c. and 57d. of this act.

41 "Wind, solar or photovoltaic energy facility 'or structure' "  
42 means a facility 'or structure' for the purpose of supplying  
43 electrical energy produced from wind, solar, or photovoltaic  
44 technologies<sup>1</sup>, whether such facility or structure is a principal use,  
45 a part of the principal use, or an accessory use or structure<sup>1</sup>.

46 "Zoning permit" means a document signed by the administrative  
47 officer (1) which is required by ordinance as a condition precedent  
48 to the commencement of a use or the erection, construction,

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1 reconstruction, alteration, conversion or installation of a structure or  
2 building and (2) which acknowledges that such use, structure or  
3 building complies with the provisions of the municipal zoning  
4 ordinance or variance therefrom duly authorized by a municipal  
5 agency pursuant to sections 47 and 57 of this act.

6 (cf: P.L.2004, c.2, s.36)

7

8 3. This act shall take effect immediately.