

ASSEMBLY, No. 153

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Assemblyman PARKER SPACE

District 24 (Morris, Sussex and Warren)

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District 24 (Morris, Sussex and Warren)

SYNOPSIS

Concerns procedures for public comment about matters before municipal planning and zoning boards.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



A153 SPACE, MCHOSE

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1 AN ACT concerning comments of persons interested in applications
2 before municipal planning and zoning boards and amending
3 P.L.1975, c.291.
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5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
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8 1. Section 6 of P.L.1975, c.291 (C.40:55D-10) is amended to
9 read as follows:

10 6. Hearings. a. The municipal agency shall hold a hearing on
11 each application for development, adoption, revision or amendment
12 of the master plan, each application for approval of an outdoor
13 advertising sign submitted to the municipal agency as required
14 pursuant to an ordinance adopted under subsection g. of section
15 29.1 of P.L.1975, c.291 (C.40:55D-39) or any review undertaken by
16 a planning board pursuant to section 22 of P.L.1975, c.291
17 (C.40:55D-31).

18 b. The municipal agency shall make the rules governing such
19 hearings. Rules made by a municipal agency pursuant to this
20 subsection shall not require that a person must appear before the
21 municipal agency in person in order to provide comment on a
22 matter before the municipal agency.

23 The municipal agency shall post on the municipality's website
24 the rules governing such hearings, and detailed procedures and rules
25 for the public to provide written, or oral, comment to the municipal
26 agency on a matter before the municipal agency. If the
27 municipality has not created a website, all rules governing such
28 hearings, and detailed procedures and rules for providing oral
29 testimony to the municipal agency, shall be maintained in written
30 form by the municipal agency and provided to any person
31 requesting those rules and procedures, at no cost to the requester.

32 Any maps and documents for which approval is sought at a
33 hearing shall be on file and available for public inspection at least
34 10 days before the date of the hearing, during normal business
35 hours in the office of the administrative officer. The applicant may
36 produce other documents, records, or testimony at the hearing to
37 substantiate or clarify or supplement the previously filed maps and
38 documents.

39 c. The officer presiding at the hearing or such person as he may
40 designate shall have power to administer oaths and issue subpoenas
41 to compel the attendance of witnesses and the production of
42 relevant evidence, including witnesses and documents presented by
43 the parties, and the provisions of the "County and Municipal
44 Investigations Law," P.L.1953, c.38 (C.2A:67A-1 et seq.) shall
45 apply.

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 d. (1) The testimony of all witnesses relating to an application
2 for development shall be taken under oath or affirmation by the
3 presiding officer, and the right of cross-examination shall be
4 permitted to all interested parties through their attorneys, if
5 represented, or directly, if not represented, subject to the discretion
6 of the presiding officer and to reasonable limitations as to time and
7 number of witnesses.

8 (2) Any person having an interest in an application before a
9 municipal agency may provide written comments expressing their
10 opinion about the application to the municipal agency. Written
11 comments may be delivered to the municipal agency in person, by
12 postal mail, facsimile, or electronic mail. Any written comments
13 concerning an application before a municipal agency provided by
14 an interested person pursuant to this paragraph must be received by
15 the municipal agency no later than seven calendar days prior to the
16 date of the municipal agency's hearing on the application. Copies
17 of written comments received by an municipal agency pursuant to
18 this paragraph shall be provided to each member of the municipal
19 agency, and to the applicant. The applicant may, in writing,
20 respond to the written comments, and that response shall be
21 provided to the municipal agency members, not later then two
22 calendar days prior to the date of the hearing on the application.
23 These written comments, and the applicant's response, shall be a
24 part of the official record and shall be considered by municipal
25 agency members in making their decision on an application.

26 e. Technical rules of evidence shall not be applicable to the
27 hearing, but the agency may exclude irrelevant, immaterial or
28 unduly repetitious evidence.

29 f. The municipal agency shall provide for the verbatim
30 recording of the proceedings by either stenographer, mechanical or
31 electronic means. The municipal agency shall furnish a transcript,
32 or duplicate recording in lieu thereof, on request to any interested
33 party at his expense; provided that the governing body may provide
34 by ordinance for the municipality to assume the expense of any
35 transcripts necessary for appeal to the governing body, pursuant to
36 section 8 of **[this act]** P.L.1975, c.291 (C.40:55D-17), of decisions
37 by the zoning board of adjustment pursuant to subsection **[57d.] d.**
38 of section 57 of **[this act]** P.L.1975, c.291 (C.40:55D-70), up to a
39 maximum amount as specified by the ordinance.

40 The municipal agency, in furnishing a transcript or tape of the
41 proceedings to an interested party at his expense, shall not charge
42 such interested party more than the actual cost of preparing the
43 transcript or tape. Transcripts shall be certified in writing by the
44 transcriber to be accurate.

45 g. The municipal agency shall include findings of fact and
46 conclusions based thereon in each decision on any application for
47 development and shall reduce the decision to writing. The

1 municipal agency shall provide the findings and conclusions
2 through:

3 (1) A resolution adopted at a meeting held within the time
4 period provided in the act for action by the municipal agency on the
5 application for development; or

6 (2) A memorializing resolution adopted at a meeting held not
7 later than 45 days after the date of the meeting at which the
8 municipal agency voted to grant or deny approval. Only the
9 members of the municipal agency who voted for the action taken
10 may vote on the memorializing resolution, and the vote of a
11 majority of such members present at the meeting at which the
12 resolution is presented for adoption shall be sufficient to adopt the
13 resolution. If only one member who voted for the action attends the
14 meeting at which the resolution is presented for adoption, the
15 resolution may be adopted upon the vote of that member. An action
16 pursuant to section 5 of the act (C.40:55D-9) (resulting from the
17 failure of a motion to approve an application) shall be memorialized
18 by resolution as provided above, with those members voting against
19 the motion for approval being the members eligible to vote on the
20 memorializing resolution. The vote on any such resolution shall be
21 deemed to be a memorialization of the action of the municipal
22 agency and not to be an action of the municipal agency; however,
23 the date of the adoption of the resolution shall constitute the date of
24 the decision for purposes of the mailings, filings and publications
25 required by subsections h. and i. of this section (C.40:55D-10). If
26 the municipal agency fails to adopt a resolution or memorializing
27 resolution as hereinabove specified, any interested party may apply
28 to the Superior Court in a summary manner for an order compelling
29 the municipal agency to reduce its findings and conclusions to
30 writing within a stated time, and the cost of the application,
31 including attorney's fees, shall be assessed against the municipality.

32 h. A copy of the decision shall be mailed by the municipal
33 agency within 10 days of the date of decision to the applicant or, if
34 represented, then to his attorney, without separate charge, and to all
35 who request a copy of the decision, for a reasonable fee. A copy of
36 the decision shall also be filed by the municipal agency in the office
37 of the administrative officer. The administrative officer shall make
38 a copy of such filed decision available to any interested party for a
39 reasonable fee and available for public inspection at his office
40 during reasonable hours.

41 i. A brief notice of the decision shall be published in the
42 official newspaper of the municipality, if there be one, or in a
43 newspaper of general circulation in the municipality. Such
44 publication shall be arranged by the applicant unless a particular
45 municipal officer is so designated by ordinance; provided that
46 nothing contained in **[this act]** P.L.1975, c.291 (C.40:55D-1 et
47 seq.) shall be construed as preventing the applicant from arranging

1 such publication if he so desires. The municipality may make a
2 reasonable charge for its publication. The period of time in which
3 an appeal of the decision may be made shall run from the first
4 publication of the decision, whether arranged by the municipality or
5 the applicant.

6 (cf: P.L.2004, c.42, s.5)

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8 2. This act shall take effect immediately.

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STATEMENT

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13 This bill would require municipal planning and zoning boards to
14 accept, and make available for review by members and applicants
15 before the board, written comments about applications before
16 municipal planning and zoning boards. The bill would also prohibit
17 planning and zoning boards from requiring that a person must
18 appear before them in person in order to provide comment on a
19 matter before a board, and would require planning and zoning
20 boards to post on the municipality's website, or to provide in
21 written form if no such website exists, rules about planning and
22 zoning board hearings and detailed procedures and rules for
23 members of the public to provide written or oral comments to the
24 board.

25 Current law authorizes municipal planning and zoning boards to
26 make their own rules governing hearings before them. This bill
27 would require that rules made by a municipal agency cannot require
28 that a person must appear before a board in person in order to
29 provide comment on a matter before the board.

30 The bill also requires that planning and zoning boards must post
31 on the municipality's website the rules governing those hearings,
32 and detailed procedures and rules for the public to provide written,
33 or oral, comment to the municipal agency on a matter before a
34 board. If the municipality has not created a website, all rules
35 governing such hearings, and detailed procedures and rules for
36 providing oral testimony to a planning or zoning board must be
37 maintained in written form by the board and provided to any person
38 requesting those rules and procedures, at no cost to the requester.

39 Under the bill, any person having an interest in an application
40 before a planning or zoning board may provide written comments
41 expressing their opinion about the application to the board. The bill
42 provides that written comments may be delivered to the municipal
43 agency in person, by postal mail, facsimile, or electronic mail. Any
44 written comments concerning an application before a planning or
45 zoning board provided by an interested person, provided either by
46 mail or in person, must be received by the board no later than seven
47 calendar days prior to the date of the board's hearing on the

1 application. Copies of written comments received by a board must
2 be provided to each member of the board, and to the applicant. The
3 applicant may, in writing, respond to the written comments, and that
4 response must be provided to the board members, not later than two
5 calendar days prior to the date of the hearing on the application.

6 The bill specifically provides that these written comments, and
7 the applicant's response, become part of the official record and
8 shall be considered by board members in making their decision on
9 an application.

10 The provisions of the bill are intended to provide a mechanism
11 whereby people who cannot get to planning and zoning board
12 meetings may still make their concerns and opinions known to the
13 members of the planning or zoning board.