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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
AN ACT concerning comments of persons interested in applications before municipal planning and zoning boards and amending P.L.1975, c.291.

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

1. Section 6 of P.L.1975, c.291 (C.40:55D-10) is amended to read as follows:

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

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

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

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

c. The officer presiding at the hearing or such person as he may designate shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, including witnesses and documents presented by the parties, and the provisions of the "County and Municipal Investigations Law," P.L.1953, c.38 (C.2A:67A-1 et seq.) shall 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.
d. (1) The testimony of all witnesses relating to an application for development shall be taken under oath or affirmation by the presiding officer, and the right of cross-examination shall be permitted to all interested parties through their attorneys, if represented, or directly, if not represented, subject to the discretion of the presiding officer and to reasonable limitations as to time and number of witnesses.

(2) Any person having an interest in an application before a municipal agency may provide written comments expressing their opinion about the application to the municipal agency. Written comments may be delivered to the municipal agency in person, by postal mail, facsimile, or electronic mail. Any written comments concerning an application before a municipal agency provided by an interested person pursuant to this paragraph must be received by the municipal agency no later than seven calendar days prior to the date of the municipal agency’s hearing on the application. Copies of written comments received by an municipal agency pursuant to this paragraph shall be provided to each member of the municipal agency, and to the applicant. The applicant may, in writing, respond to the written comments, and that response shall be provided to the municipal agency members, not later then two calendar days prior to the date of the hearing on the application. These written comments, and the applicant’s response, shall be a part of the official record and shall be considered by municipal agency members in making their decision on an application.

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

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

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

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

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

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

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

i. 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 in [this act] P.L.1975, c.291 (C.40:55D-1 et
seq.) shall be construed as preventing the applicant from arranging
such publication if he so desires. The municipality may make a reasonable charge for its publication. The period of time in which an appeal of the decision may be made shall run from the first publication of the decision, whether arranged by the municipality or the applicant.

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

2. This act shall take effect immediately.

STATEMENT

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

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

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

Under the bill, any person having an interest in an application before a planning or zoning board may provide written comments expressing their opinion about the application to the board. The bill provides that written comments may be delivered to the municipal agency in person, by postal mail, facsimile, or electronic mail. Any written comments concerning an application before a planning or zoning board provided by an interested person, provided either by mail or in person, must be received by the board no later than seven calendar days prior to the date of the board’s hearing on the
application. Copies of written comments received by a board must be provided to each member of the board, and to the applicant. The applicant may, in writing, respond to the written comments, and that response must be provided to the board members, not later than two calendar days prior to the date of the hearing on the application.

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

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