

ASSEMBLY, No. 2542

STATE OF NEW JERSEY

INTRODUCED DECEMBER 5, 1996

By Assemblyman WEINGARTEN

1 AN ACT concerning municipal land use, amending and supplementing
2 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 of P.L.1975, c.291 (C.40:55D-3) is amended to read
8 as follows:

9 3. For the purposes of this act, unless the context clearly indicates
10 a different meaning:

11 The term "shall" indicates a mandatory requirement, and the term
12 "may" indicates a permissive action.

13 "Administrative officer" means the clerk of the municipality, unless
14 a different municipal official or officials are designated by ordinance
15 or statute.

16 "Applicant" means a developer submitting an application for
17 development.

18 "Application for development" means the application form and all
19 accompanying documents required by ordinance for approval of a
20 subdivision plat, site plan, planned development, conditional use,
21 zoning variance or direction of the issuance of a permit pursuant to
22 section 25 or section 27 of P.L.1975, c.291 (C.40:55D-34 or
23 C.40:55D-36). "Application for development" shall also include any
24 application for a development defined by a municipality as a
25 development of intermunicipal impact pursuant to section 5 of P.L. ,
26 c. (C.) (pending before the Legislature as this bill).

27 "Approving authority" means the planning board of the
28 municipality, unless a different agency is designated by ordinance when
29 acting pursuant to the authority of P.L.1975, c.291 (C.40:55D-1 et
30 seq.).

31 "Board of adjustment" means the board established pursuant to
32 section 56 of P.L.1975, c.291 (C.40:55D-69).

33 "Building" means a combination of materials to form a construction
34 adapted to permanent, temporary, or continuous occupancy and having

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

Matter underlined thus is new matter.

1 a roof.

2 "Cable television company" means a cable television company as
3 defined pursuant to section 3 of P.L.1972, c.186 (C.48:5A-3).

4 "Capital improvement" means a governmental acquisition of real
5 property or major construction project.

6 "Circulation" means systems, structures and physical improvements
7 for the movement of people, goods, water, air, sewage or power by
8 such means as streets, highways, railways, waterways, towers,
9 airways, pipes and conduits, and the handling of people and goods by
10 such means as terminals, stations, warehouses, and other storage
11 buildings or transshipment points.

12 "Common open space" means an open space area within or related
13 to a site designated as a development, and designed and intended for
14 the use or enjoyment of residents and owners of the development.
15 Common open space may contain such complementary structures and
16 improvements as are necessary and appropriate for the use or
17 enjoyment of residents and owners of the development.

18 "Conditional use" means a use permitted in a particular zoning
19 district only upon a showing that such use in a specified location will
20 comply with the conditions and standards for the location or operation
21 of such use as contained in the zoning ordinance, and upon the
22 issuance of an authorization therefor by the planning board.

23 "Conventional" means development other than planned
24 development.

25 "County master plan" means a composite of the master plan for the
26 physical development of the county in which the municipality is
27 located, with the accompanying maps, plats, charts and descriptive and
28 explanatory matter adopted by the county planning board pursuant to
29 R.S.40:27-2 and R.S.40:27-4.

30 "County planning board" means the county planning board, as
31 defined in section 1 of P.L.1968, c.285 (C.40:27-6.1), of the county
32 in which the land or development is located.

33 (cf: P.L.1991, c.412, s.1)

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

37 3.1. "Days" means calendar days.

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

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

44 "Development" means the division of a parcel of land into two or
45 more parcels, the construction, reconstruction, conversion, structural
46 alteration, relocation or enlargement of any building or other structure,

1 or of any mining excavation or landfill, and any use or change in the
2 use of any building or other structure, or land or extension of use of
3 land, for which permission may be required pursuant to this act.

4 "Development of intermunicipal impact" means any development
5 specifically defined by ordinance as a development of intermunicipal
6 impact which, in the judgment of the municipal governing body upon
7 the advice of the planning board, is anticipated to have an adverse
8 impact on any portion of the municipality, based on criteria set forth
9 in the ordinance as provided in section 5 of P.L. , c. (C.)
10 (pending before the Legislature as this bill), for which permission may
11 or may not be required pursuant to this act.

12 "Development regulation" means a zoning ordinance, subdivision
13 ordinance, site plan ordinance, official map ordinance or other
14 municipal regulation of the use and development of land, or
15 amendment thereto adopted and filed pursuant to this act.

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

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

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

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

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

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

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

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

46 "Historic site" means any real property, man-made structure,

1 natural object or configuration or any portion or group of the
2 foregoing of historical, archeological, cultural, scenic or architectural
3 significance.

4 "Interested party" means: (a) in a criminal or quasi-criminal
5 proceeding, any citizen of the State of New Jersey; and (b) in the case
6 of a civil proceeding in any court or in an administrative proceeding
7 before a municipal agency, any person, whether residing within or
8 without the municipality, whose right to use, acquire, or enjoy
9 property is or may be affected by any action taken under this act, or
10 whose rights to use, acquire, or enjoy property under this act, or under
11 any other law of this State or of the United States have been denied,
12 violated or infringed by an action or a failure to act under this act.

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

15 "Local utility" means any sewerage authority created pursuant to
16 the "sewerage authorities law," P.L.1946, c.138 (C.40:14A-1 et seq.);
17 any utilities authority created pursuant to the "municipal and county
18 utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.); or any
19 utility, authority, commission, special district or other corporate entity
20 not regulated by the Board of Regulatory Commissioners under Title
21 48 of the Revised Statutes that provides gas, electricity, heat, power,
22 water or sewer service to a municipality or the residents thereof.

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

26 (cf: P.L.1991, c.412, s.2)

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28 3. Section 7.1 of P.L.1975, c.291 (C.40:55D-12) is amended to
29 read as follows:

30 7.1. Notice pursuant to subsections a., b., d., e., f., g. and h. of
31 this section shall be given by the applicant unless a particular municipal
32 officer is so designated by ordinance; provided that nothing contained
33 herein shall prevent the applicant from giving such notice if he so
34 desires. Notice pursuant to subsections a., b., d., e., f., g. and h. of
35 this section shall be given at least 10 days prior to the date of the
36 hearing.

37 a. Public notice of a hearing on an application for development
38 shall be given, except for (1) conventional site plan review pursuant to
39 section 34 of P.L.1975, c.291 (C.40:55D-46), (2) minor subdivisions
40 pursuant to section 35 of P.L.1975, c.291 (C.40:55D-47) or (3) final
41 approval pursuant to section 38 of P.L.1975, c.291 (C.40:55D-50);
42 provided that the governing body may by ordinance require public
43 notice for such categories of site plan review as may be specified by
44 ordinance; and provided further that public notice shall be given in the
45 event that relief is requested pursuant to section 47 or 63 of P.L.1975,
46 c.291 (C.40:55D-60 or C.40:55D-76) as part of an application for

1 development otherwise excepted herein from public notice. Public
2 notice shall be given by publication in the official newspaper of the
3 municipality, if there be one, or in a newspaper of general circulation
4 in the municipality.

5 b. Notice of a hearing requiring public notice pursuant to
6 subsection a. of this section shall be given to the owners of all real
7 property as shown on the current tax duplicates, located in the State
8 and within 200 feet in all directions of the property which is the
9 subject of such hearing; provided that this requirement shall be deemed
10 satisfied by notice to the (1) condominium association, in the case of
11 any unit owner whose unit has a unit above or below it, or (2)
12 horizontal property regime, in the case of any co-owner whose
13 apartment has an apartment above or below it. Notice shall be given
14 by: (1) serving a copy thereof on the property owner as shown on the
15 said current tax duplicate, or his agent in charge of the property, or (2)
16 mailing a copy thereof by certified mail to the property owner at his
17 address as shown on the said current tax duplicate.

18 Notice to a partnership owner may be made by service upon any
19 partner. Notice to a corporate owner may be made by service upon its
20 president, a vice president, secretary or other person authorized by
21 appointment or by law to accept service on behalf of the corporation.
22 Notice to a condominium association, horizontal property regime,
23 community trust or homeowners' association, because of its ownership
24 of common elements or areas located within 200 feet of the property
25 which is the subject of the hearing, may be made in the same manner
26 as to a corporation without further notice to unit owners, co-owners,
27 or homeowners on account of such common elements or areas.

28 c. Upon the written request of an applicant, the administrative
29 officer of a municipality shall, within seven days, make and certify a
30 list from said current tax duplicates of names and addresses of owners
31 to whom the applicant is required to give notice pursuant to subsection
32 b. of this section. In addition, the administrative officer shall include
33 on the list the names, addresses and positions of those persons who,
34 not less than seven days prior to the date on which the applicant
35 requested the list, have registered to receive notice pursuant to
36 subsection h. of this section. The applicant shall be entitled to rely
37 upon the information contained in such list, and failure to give notice
38 to any owner or to any public utility, cable television company, or
39 local utility not on the list shall not invalidate any hearing or
40 proceeding. A sum not to exceed \$0.25 per name, or \$10.00,
41 whichever is greater, may be charged for such list.

42 d. Notice of hearings on applications for development involving
43 property located within 200 feet of an adjoining municipality shall be
44 given by personal service or certified mail to the clerk of such
45 municipality.

46 e. Notice shall be given by personal service or certified mail to the

1 county planning board of a hearing on an application for development
2 of property adjacent to an existing county road or proposed road
3 shown on the official county map or on the county master plan,
4 adjoining other county land or situated within 200 feet of a municipal
5 boundary.

6 f. Notice shall be given by personal service or certified mail to the
7 Commissioner of Transportation of a hearing on an application for
8 development of property adjacent to a State highway.

9 g. Notice shall be given by personal service or certified mail to the
10 State Planning Commission of a hearing on an application for
11 development of property which exceeds 150 acres or 500 dwelling
12 units. The notice shall include a copy of any maps or documents
13 required to be on file with the municipal clerk pursuant to subsection
14 b. of section 6 of P.L.1975, c.291 (C.40:55D-10).

15 h. Notice of hearings on applications for approval of a major
16 subdivision or a site plan not defined as a minor site plan under this act
17 requiring public notice pursuant to subsection a. of this section shall
18 be given, in the case of a public utility, cable television company or
19 local utility which possesses a right-of-way or easement within the
20 municipality and which has registered with the municipality in
21 accordance with section 5 of P.L.1991. c.412 (C. 40:55D-12.1), by (1)
22 serving a copy of the notice on the person whose name appears on the
23 registration form on behalf of the public utility, cable television
24 company or local utility or (2) mailing a copy thereof by certified mail
25 to the person whose name appears on the registration form at the
26 address shown on that form.

27 i. The applicant shall file an affidavit of proof of service with the
28 municipal agency holding the hearing on the application for
29 development in the event that the applicant is required to give notice
30 pursuant to this section.

31 j. Notice pursuant to subsections d., e., f., g. and h. of this section
32 shall not be deemed to be required, unless public notice pursuant to
33 subsection a. and notice pursuant to subsection b. of this section are
34 required.

35 k. Notice of hearings on an application for development defined as
36 a development of intermunicipal impact shall be given by personal
37 service or certified mail to the clerk of any municipality which will be
38 adversely affected by the development according to an ordinance
39 adopted pursuant to section 5 of P.L. , c. (C.) (pending
40 before the Legislature as this bill).

41 (cf: P.L.1991, c.412, s.4)

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43 4. Section 7.2 of P.L.1975, c.291 (C.40:55D-13) is amended to
44 read as follows:

45 7.2. The planning board shall give:

46 (1) Public notice of a hearing on adoption, revision or amendment

1 of the master plan; such notice shall be given by publication in the
2 official newspaper of the municipality, if there be one, or in a
3 newspaper of general circulation in the municipality at least 10 days
4 prior to the date of the hearing;

5 (2) Notice by personal service or certified mail to the clerk of an
6 adjoining municipality of all hearings on adoption, revision or
7 amendment of a master plan [involving property situated within 200
8 feet of such adjoining municipality] at least [10] 35 days prior to the
9 date of any such hearing;

10 (3) Notice by personal service or certified mail to the county
11 planning board of (a) all hearings on the adoption, revision or
12 amendment of the municipal master plan at least 10 days prior to the
13 date of the hearing; such notice shall include a copy of any such
14 proposed master plan, or any revision or amendment thereto; and (b)
15 the adoption, revision or amendment of the master plan not more than
16 30 days after the date of such adoption, revision or amendment; such
17 notice shall include a copy of the master plan or revision or
18 amendment thereto.

19 (cf: P.L.1975, c.291, s.7.2)

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21 5. (New section) a. The governing body of any municipality may,
22 by ordinance, require approval by resolution of the planning board or
23 zoning board, as appropriate, of a development defined in the
24 ordinance as a development of intermunicipal impact which is
25 proposed to be situated within 100 feet of that municipality's
26 boundaries, as a condition of approval of the application for
27 development by the approving authority of the municipality in which
28 the development is situated.

29 A development may be defined as a development of intermunicipal
30 impact if the planning board determines that the development will (1)
31 increase traffic congestion, crime, noise, population density or
32 otherwise contribute to the environmental degradation of the
33 neighborhood adjacent to the area in which the development is to be
34 undertaken; (2) change the character of the neighborhood; or (3)
35 increase the need for municipal services in the municipality in order
36 to address the spillover effects of the proposed development.

37 b. Within 10 days following any determination by a planning or
38 zoning board of adjustment with respect to a development of
39 intermunicipal impact, the planning or zoning board secretary, as
40 appropriate, shall forward a copy of the vote taken thereon to the
41 planning or zoning board secretary of the municipality in which the
42 proposed development is to be situated. Any decision by an adjacent
43 municipality regarding a development of intermunicipal impact shall be
44 made in accordance with the planning and zoning ordinances adopted
45 by the municipality and may be appealed by the developer to the
46 Superior Court.

1 Any municipality which adopts such an ordinance shall, within 15
2 days of final adoption, provide a copy of the ordinance to the
3 municipal clerk and planning board secretary of every municipality
4 within 100 feet of the municipality's boundaries.

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6 6. This act shall take effect 90 days next following enactment.

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9 STATEMENT

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11 This bill would create a process whereby a municipality may gain
12 some involvement in the land use decisions made by an adjacent
13 municipality within 100 feet of the municipality's boundaries. This bill
14 addresses an increasingly common situation in the State whereby a
15 municipality must accommodate the deleterious effects of major
16 developments situated proximate to municipal borders with no
17 recourse or involvement in those decisions.

18 Specifically, the bill authorizes any municipality to define, by
19 ordinance, a development of intermunicipal impact which, in the
20 judgment of the municipal governing body, upon the advice of the
21 planning board, is anticipated to have an adverse impact on any
22 portion of the municipality, based on criteria set forth in the ordinance.
23 Any development could be so defined, even though it fulfills all the
24 conditions of planning and zoning ordinances in the host municipality.

25 In making the determination, the governing body must find that the
26 proposed development will fulfill certain negative criteria, including
27 various indicators of environmental degradation, change in the
28 character of the neighborhood, or increase in the demand for
29 municipal services in the adjacent municipality. An applicant
30 proposing a development defined as a development of intermunicipal
31 impact would be required to give notice to the planning or zoning
32 board, as appropriate, of the adjacent municipality even though the
33 development may conform to the planning or zoning regulations of the
34 host municipality. Approval of a development of intermunicipal
35 impact by the adjacent municipality would be required as a condition
36 of development approval by the host municipality.

37 The bill requires that the adjacent planning or zoning board notify
38 the planning or zoning board of the host municipality within 10 days
39 of making its decision and that decision would be appealable to the
40 Superior Court, as are other determinations under the "Municipal Land
41 Use Law."

42 The bill is not intended to remove any decision making power from
43 municipalities in granting approvals under the "Municipal Land Use
44 Law;" in other words, a favorable opinion of an adjacent municipality
45 cannot override the denial of an application for a development by the
46 host municipality under this bill. It merely provides an extra level of

1 land use decision making power to those municipalities concerned
2 about the impacts of development on municipal borders.

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7 Provides for review of developments of intermunicipal impact by
8 affected municipalities.