

ASSEMBLY, No. 2984

STATE OF NEW JERSEY

INTRODUCED MAY 12, 1997

By Assemblymen WISNIEWSKI and ARNONE

1 AN ACT clarifying various provisions of the "Municipal Land Use  
2 Law," and amending P.L.1975, c.291 and P.L.1979, c.216.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

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

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

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

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

19 "Mayor" means the chief executive of the municipality, whatever his  
20 official designation may be, except that in the case of municipalities  
21 governed by municipal council and municipal manager the term  
22 "mayor" shall not mean the "municipal manager" but shall mean the  
23 mayor of such municipality.

24 "Minor site plan" means a development plan of one or more lots  
25 which (1) proposes new development within the scope of development  
26 specifically permitted by ordinance as a minor site plan; (2) does not  
27 involve planned development, any new street or extension of any  
28 off-tract improvement which is to be prorated pursuant to section 30  
29 of P.L.1975, c.291 (C.40:55D-42); and (3) contains the information  
30 reasonably required in order to make an informed determination as to  
31 whether the requirements established by ordinance for approval of a  
32 minor site plan have been met.

33 "Minor subdivision" means a subdivision of land for the creation of  
34 a number of lots specifically permitted by ordinance as a minor

**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 subdivision; provided that such subdivision does not involve (1) a  
2 planned development, (2) any new street or (3) the extension of any  
3 off-tract improvement, the cost of which is to be prorated pursuant to  
4 section 30 of P.L.1975, c.291 (C.40:55D-42).

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

6 "Municipal agency" means a municipal planning board or board of  
7 adjustment, or a governing body of a municipality when acting  
8 pursuant to this act and any agency which is created by or responsible  
9 to one or more municipalities when such agency is acting pursuant to  
10 this act.

11 "Municipal resident" means a person who is domiciled in the  
12 municipality.

13 "Nonconforming lot" means a lot, the area, dimension or location  
14 of which was lawful prior to the adoption, revision or amendment of  
15 a zoning ordinance, but fails to conform to the requirements of the  
16 zoning district in which it is located by reason of such adoption,  
17 revision or amendment.

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

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

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

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

33 "Offsite" means located outside the lot lines of the lot in question  
34 but within the property[( ) , of which the lot is a part( )], which is the  
35 subject of a development application or [contiguous portion of a] the  
36 closest half of the street or right-of-way abutting the property of which  
37 the lot is a part.

38 "Off-tract" means not located on the property which is the subject  
39 of a development application nor on [a contiguous portion of a] the  
40 closest half of the abutting street or right-of-way.

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

43 "On-tract" means located on the property which is the subject of a  
44 development application or on [a contiguous portion of a] the closest  
45 half of an abutting street or right-of-way.

46 "Open-space" means any parcel or area of land or water essentially

1 unimproved and set aside, dedicated, designated or reserved for public  
2 or private use or enjoyment or for the use and enjoyment of owners  
3 and occupants of land adjoining or neighboring such open space;  
4 provided that such areas may be improved with only those buildings,  
5 structures, streets and offstreet parking and other improvements that  
6 are designed to be incidental to the natural openness of the land.  
7 (cf: P.L.1991, c.256, s.1)

8  
9 2. Section 6 of P.L.1975, c.291 (C.40:55D-10) is amended to read  
10 as follows:

11 6. Hearings. a. The municipal agency shall hold a hearing on each  
12 application for development, or adoption, revision or amendment of  
13 the master plan.

14 b. The municipal agency shall make the rules governing such  
15 hearings. Any maps and documents for which approval is sought at  
16 hearing shall be on file and available for public inspection at least 10  
17 days before the date of the hearing, during normal business hours in  
18 the office of the administrative officer. The applicant may produce  
19 other documents, records, or testimony at the hearing to substantiate  
20 or clarify or supplement the previously filed maps and documents.

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

27 d. The testimony of all witnesses relating to an application for  
28 development shall be taken under oath or affirmation by the presiding  
29 officer, and the right of cross-examination shall be permitted to all  
30 interested parties through their attorneys, if represented, or directly,  
31 if not represented, subject to the discretion of the presiding officer and  
32 to reasonable limitations as to time and number of witnesses.

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

36 f. The municipal agency shall provide for the verbatim recording of  
37 the proceedings by either stenographer, mechanical or electronic  
38 means. The municipal agency shall furnish a transcript, or duplicate  
39 recording in lieu thereof, on request to any interested party at his  
40 expense; provided that the governing body may provide by ordinance  
41 for the municipality to assume the expense of any transcripts necessary  
42 for appeal to the governing body, pursuant to section 8 of this act, of  
43 decisions by the zoning board of adjustment pursuant to subsection  
44 57d. of this act, up to a maximum amount as specified by the  
45 ordinance.

46 The municipal agency, in furnishing a transcript or tape of the

1 proceedings to an interested party at his expense, shall not charge such  
2 interested party more than the [maximum permitted in  
3 N.J.S.2A:11-15] actual cost of preparing the transcript or tape. [Said  
4 transcript] Transcripts shall be certified in writing by the transcriber to  
5 be accurate.

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

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

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

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

1 i. A brief notice of the decision shall be published in the official  
2 newspaper of the municipality, if there be one, or in a newspaper of  
3 general circulation in the municipality. Such publication shall be  
4 arranged by the applicant unless a particular municipal officer is so  
5 designated by ordinance; provided that nothing contained in this act  
6 shall be construed as preventing the applicant from arranging such  
7 publication if he so desires. The municipality may make a reasonable  
8 charge for its publication. The period of time in which an appeal of  
9 the decision may be made shall run from the first publication of the  
10 decision, whether arranged by the municipality or the applicant.

11 (cf: P.L.1984, c.20, s.4)

12

13 3. Section 9 of P.L.1979, c.216 (C.40:55D-10.2) is amended to  
14 read as follows:

15 9. A member of a municipal agency who was absent for one or  
16 more of the meetings at which a hearing was held or was not a member  
17 of the municipal agency at that time, shall be eligible to vote on the  
18 matter upon which the hearing was conducted, notwithstanding his  
19 absence from one or more of the meetings; provided, however, that  
20 such board member has available to him the transcript or recording of  
21 all of the hearing from which he was absent or was not a member, and  
22 certifies in writing to the board that he has read such transcript or  
23 listened to such recording.

24 (cf. P.L.1979, c.216, s.9)

25

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

28 7.1. Notice pursuant to subsections a., b., d., e., f., g. and h. of this  
29 section shall be given by the applicant unless a particular municipal  
30 officer is so designated by ordinance; provided that nothing contained  
31 herein shall prevent the applicant from giving such notice if he so  
32 desires. Notice pursuant to subsections a., b., d., e., f., g. and h. of  
33 this section shall be given at least 10 days prior to the date of the  
34 hearing.

35 a. Public notice of a hearing [on an application] shall be given for  
36 an extension of approvals for five or more years under subsection d.  
37 of section 37 of P.L.1975, c.291 (C.40:55D-49) and subsection b. of  
38 section 40 of P.L.1975, c.291 (C.40:55D-52); for modification or  
39 elimination of a significant condition or conditions in a memorializing  
40 resolution in any situation wherein the application for development for  
41 which the memorializing resolution is proposed for adoption required  
42 public notice, and for any other applications for development [shall be  
43 given, except for], with the following exceptions: (1) conventional  
44 site plan review pursuant to section 34 of P.L.1975, c.291  
45 (C.40:55D-46), (2) minor subdivisions pursuant to section 35 of  
46 P.L.1975, c.291 (C.40:55D-47) or (3) final approval pursuant to

1 section 38 of P.L.1975, c.291 (C.40:55D-50); [provided that]  
2 notwithstanding the foregoing, the governing body may by ordinance  
3 require public notice for such categories of site plan review as may be  
4 specified by ordinance[; and provided further that public], for appeals  
5 of determinations of administrative officers pursuant to subsection a.  
6 of section 57 of P.L.1975, c.291 (C.40:55D-70), and for requests for  
7 interpretation pursuant to subsection b. of section 57 of P.L.1975,  
8 c.291 (C.40:55D-70). Public notice shall also be given in the event  
9 that relief is requested pursuant to section 47 or 63 of P.L.1975, c.291  
10 (C.40:55D-60 or C.40:55D-76) as part of an application for  
11 development otherwise excepted herein from public notice. Public  
12 notice shall be given by publication in the official newspaper of the  
13 municipality, if there be one, or in a newspaper of general circulation  
14 in the municipality.

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

28 Notice to a partnership owner may be made by service upon any  
29 partner. Notice to a corporate owner may be made by service upon its  
30 president, a vice president, secretary or other person authorized by  
31 appointment or by law to accept service on behalf of the corporation.  
32 Notice to a condominium association, horizontal property regime,  
33 community trust or homeowners' association, because of its ownership  
34 of common elements or areas located within 200 feet of the property  
35 which is the subject of the hearing, may be made in the same manner  
36 as to a corporation without further notice to unit owners, co-owners,  
37 or homeowners on account of such common elements or areas.

38 c. Upon the written request of an applicant, the administrative  
39 officer of a municipality shall, within seven days, make and certify a  
40 list from said current tax duplicates of names and addresses of owners  
41 to whom the applicant is required to give notice pursuant to subsection  
42 b. of this section. In addition, the administrative officer shall include  
43 on the list the names, addresses and positions of those persons who,  
44 not less than seven days prior to the date on which the applicant  
45 requested the list, have registered to receive notice pursuant to  
46 subsection h. of this section. The applicant shall be entitled to rely

1 upon the information contained in such list, and failure to give notice  
2 to any owner or to any public utility, cable television company, or  
3 local utility not on the list shall not invalidate any hearing or  
4 proceeding. A sum not to exceed \$0.25 per name, or \$10.00,  
5 whichever is greater, may be charged for such list.

6 d. Notice of hearings on applications for development involving  
7 property located within 200 feet of an adjoining municipality shall be  
8 given by personal service or certified mail to the clerk of such  
9 municipality.

10 e. Notice shall be given by personal service or certified mail to the  
11 county planning board of a hearing on an application for development  
12 of property adjacent to an existing county road or proposed road  
13 shown on the official county map or on the county master plan,  
14 adjoining other county land or situated within 200 feet of a municipal  
15 boundary.

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

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

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

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

41 j. Notice pursuant to subsections d., e., f., g. and h. of this section  
42 shall not be deemed to be required, unless public notice pursuant to  
43 subsection a. and notice pursuant to subsection b. of this section are  
44 required.

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

1       5. Section 14 of P.L.1975, c.291 (C.40:55D-23) is amended to  
2 read as follows:

3       14. Planning board membership. a. The governing body may, by  
4 ordinance, create a planning board of seven or nine members. All  
5 members of the planning board, except for the Class II members set  
6 forth below, shall be municipal residents. The membership shall  
7 consist of, for convenience in designating the manner of appointment,  
8 the four following classes:

9       Class I--the mayor or the mayor's designee in the absence of the  
10 mayor or, in the case of the council-manager form of government  
11 pursuant to the Optional Municipal Charter Law, P.L.1950, c.210  
12 (C.40:69A-1 et seq.) or "the municipal manager form of government  
13 law" (R.S.40:79-1 et seq.), the manager, if so provided by the  
14 aforesaid ordinance.

15       Class II--one of the officials of the municipality other than a  
16 member of the governing body, to be appointed by the mayor;  
17 provided that if there be an environmental commission, the member of  
18 the environmental commission who is also a member of the planning  
19 board as required by section 1 of P.L.1968, c.245 (C.40:56A-1), shall  
20 be deemed to be the Class II planning board member for purposes of  
21 this act in the event that there be among the Class IV or alternate  
22 members of the planning board both a member of the zoning board of  
23 adjustment and a member of the board of education.

24       Class III--a member of the governing body to be appointed by it.

25       Class IV--other citizens of the municipality, to be appointed by the  
26 mayor or, in the case of the council-manager form of government  
27 pursuant to the Optional Municipal Charter Law, P.L.1950, c.210  
28 (C.40:69A-1 et seq.) or "the municipal manager form of government  
29 law" (R.S.40:79-1 et seq.), by the council, if so provided by the  
30 aforesaid ordinance.

31       The members of Class IV shall hold no other municipal office,  
32 position or employment, except that in the case of nine-member  
33 boards, one such member may be a member of the zoning board of  
34 adjustment or historic preservation commission. No member of the  
35 board of education may be a Class IV member of the planning board,  
36 except that in the case of a nine-member board, one Class IV member  
37 may be a member of the board of education. If there be a municipal  
38 environmental commission, the member of the environmental  
39 commission who is also a member of the planning board, as required  
40 by section 1 of P.L.1968, c.245 (C.40:56A-1), shall be a Class IV  
41 planning board member, unless there be among the Class IV or  
42 alternate members of the planning board both a member of the zoning  
43 board of adjustment or historic preservation commission and a member  
44 of the board of education, in which case the member common to the  
45 planning board and municipal environmental commission shall be  
46 deemed a Class II member of the planning board. For the purpose of

1 this section, membership on a municipal board or commission whose  
2 function is advisory in nature, and the establishment of which is  
3 discretionary and not required by statute, shall not be considered the  
4 holding of municipal office.

5 b. The term of the member composing Class I shall correspond to  
6 the mayor's or manager's official tenure or if the member is the mayor's  
7 designee in the absence of the mayor, the designee shall serve at the  
8 pleasure of the mayor during the mayor's official tenure. The terms of  
9 the members composing Class II and Class III shall be for one year or  
10 terminate at the completion of their respective terms of office,  
11 whichever occurs first, except for a Class II member who is also a  
12 member of the environmental commission. The term of a Class II or  
13 Class IV member who is also a member of the environmental  
14 commission shall be for three years or terminate at the completion of  
15 his term of office as a member of the environmental commission,  
16 whichever occurs first. The term of a Class IV member who is also a  
17 member of the board of adjustment or board of education shall  
18 terminate whenever he is no longer a member of such other body or at  
19 the completion of his Class IV term, whichever occurs first. The terms  
20 of all Class IV members first appointed under this act shall be so  
21 determined that to the greatest practicable extent the expiration of  
22 such terms shall be distributed evenly over the first four years after  
23 their appointments; provided that the initial Class IV term of no  
24 member shall exceed four years. Thereafter, the Class IV term of each  
25 such member shall be four years. If a vacancy in any class shall occur  
26 otherwise than by expiration of the planning board term, it shall be  
27 filled by appointment, as above provided, for the unexpired term. No  
28 member of the planning board shall be permitted to act on any matter  
29 in which he has, either directly or indirectly, any personal or financial  
30 interest. Any member other than a Class I member, after a public  
31 hearing if he requests one, may be removed by the governing body for  
32 cause.

33 c. In any municipality in which the term of the municipal governing  
34 body commences on January 1, the governing body may, by ordinance,  
35 provide that the term of appointment of any class of member of the  
36 planning board appointed pursuant to this section shall commence on  
37 January 1. In any municipality in which the term of the municipal  
38 governing body commences on July 1, the governing body may, by  
39 ordinance, provide that the term of appointment of any class of  
40 member appointed pursuant to this section commence on July 1.

41 (cf: P.L.1994, c.158, s.1)

42

43 6. Section 13 of P.L.1979, c.216 (C.40:55D-23.1) is amended to  
44 read as follows:

45 13. The governing body may, by ordinance, provide for the  
46 appointment to the planning board of not more than two alternate

1 members, who shall be municipal residents. Alternate members shall  
2 be appointed by the appointing authority for Class IV members, and  
3 shall meet the qualifications of Class IV members of nine-member  
4 planning boards. Alternate members shall be designated at the time of  
5 appointment by the mayor as "Alternate No. 1" and "Alternate No. 2."  
6 The terms of the alternate members shall be for 2 years, except that the  
7 terms of the alternate members shall be such that the term of not more  
8 than one alternate member shall expire in any 1 year; provided,  
9 however, that in no instance shall the terms of the alternate members  
10 first appointed exceed 2 years. A vacancy occurring otherwise than by  
11 expiration of term shall be filled by the appointing authority for the  
12 unexpired term only.

13 No alternate member shall be permitted to act on any matter in  
14 which he has either directly or indirectly any personal or financial  
15 interest. An alternate member may, after public hearing if he requests  
16 one, be removed by the governing body for cause.

17 Alternate members may participate in [discussions of the  
18 proceedings] all matters but may not vote except in the absence or  
19 disqualification of a regular member of any class. Participation of  
20 alternate members shall not be deemed to increase the size of the  
21 planning board established by ordinance of the governing body  
22 pursuant to section 14 of P.L.1975, c.291 (C.40:55D-23). A vote  
23 shall not be delayed in order that a regular member may vote instead  
24 of an alternate member. In the event that a choice must be made as to  
25 which alternate member is to vote, Alternate No. 1 shall vote.

26 (cf: P.L.1979, c.216, s.13)

27

28 7. Section 15 of P.L.1975, c.291 (C.40:55D-24) is amended to  
29 read as follows:

30 15. Organization of planning board. The planning board shall elect  
31 a chairman and vice chairman from the members of Class IV, select a  
32 secretary who may or may not be a member or alternate member of the  
33 planning board or a municipal employee, and create and fill such other  
34 offices as established by ordinance. An alternate member shall not  
35 serve as chairman or vice-chairman of the planning board. It may  
36 employ, or contract for, and fix the compensation of legal counsel,  
37 other than the municipal attorney, and experts, and other staff and  
38 services as it may deem necessary, not exceeding, exclusive of gifts or  
39 grants, the amount appropriated by the governing body for its use.  
40 The governing body shall make provision in its budget and appropriate  
41 funds for the expenses of the planning board.

42 (cf: P.L.1975, c.291, s.15)

43

44 8. Section 30 of P.L.1975, c.291 (C.40:55D-42) is amended to  
45 read as follows:

46 30. Contribution for off-tract water, sewer, drainage, and street

1 improvements. The governing body may by ordinance adopt  
2 regulations requiring a developer, as a condition for approval of a  
3 subdivision or site plan, to pay [his] the pro-rata share of the cost of  
4 providing only reasonable and necessary street improvements and  
5 water, sewerage and drainage facilities, and easements therefor,  
6 located [outside the property limits of the subdivision or development]  
7 off-tract but necessitated or required by construction or improvements  
8 within such subdivision or development. Such regulations shall be  
9 based on circulation and comprehensive utility service plans pursuant  
10 to subsections 19b.(4) and 19b.(5) of this act, respectively, and shall  
11 establish fair and reasonable standards to determine the proportionate  
12 or pro-rata amount of the cost of such facilities that shall be borne by  
13 each developer or owner within a related and common area, which  
14 standards shall not be altered subsequent to preliminary approval.  
15 Where a developer pays the amount determined as his pro-rata share  
16 under protest he shall institute legal action within 1 year of such  
17 payment in order to preserve the right to a judicial determination as to  
18 the fairness and reasonableness of such amount.

19 (cf: P.L.1975, c.291, s.30)

20

21 9. Section 56 of P.L.1975, c.291 (C.40:55D-69) is amended to  
22 read as follows:

23 56. Zoning board of adjustments. Upon the adoption of a zoning  
24 ordinance, the governing body shall create, by ordinance, a zoning  
25 board of adjustment unless the municipality is eligible for, and  
26 exercises, the option provided by subsection c. of section 16 of  
27 P.L.1975, c.291 (C.40:55D-25). A zoning board of adjustment shall  
28 consist of seven regular members and may have not more than two  
29 alternate members. All regular members and any alternate members  
30 shall be municipal residents. Notwithstanding the provisions of any  
31 other law or charter heretofore adopted, such ordinance shall provide  
32 the method of appointment of all such members. Alternate members  
33 shall be designated at the time of appointment by the authority  
34 appointing them as "Alternate No. 1" and "Alternate No. 2." The terms  
35 of the members first appointed under this act shall be so determined  
36 that to the greatest practicable extent, the expiration of such terms  
37 shall be distributed, in the case of regular members, evenly over the  
38 first four years after their appointment, and in the case of alternate  
39 members, evenly over the first two years after their appointment;  
40 provided that the initial term of no regular members shall exceed four  
41 years and that the initial term of no alternate member shall exceed two  
42 years. Thereafter, the term of each regular member shall be four years,  
43 and the term of each alternate member shall be two years. No member  
44 may hold any elective office or position under the municipality. No  
45 member of the board of adjustment shall be permitted to act on any  
46 matter in which he has, either directly or indirectly, any personal or

1 financial interest. A member may, after public hearing if he requests  
2 it, be removed by the governing body for cause. A vacancy occurring  
3 otherwise than by expiration of term shall be filled for the unexpired  
4 term only.

5 The board of adjustment shall elect a chairman and vice-chairman  
6 from its regular members and select a secretary, who may or may not  
7 be a member of the board of adjustment or a municipal employee.

8 Alternate members may participate in [discussions of the  
9 proceedings] all matters but may not vote except in the absence or  
10 disqualification of a regular member. Participation of alternate  
11 members shall not be deemed to increase the size of the zoning board  
12 of adjustment established by ordinance of the governing body pursuant  
13 to section 56 of P.L.1975, c.291 (C.40:55D-69). A vote shall not be  
14 delayed in order that a regular member may vote instead of an  
15 alternate member. In the event that a choice must be made as to which  
16 alternate member is to vote, Alternate No. 1 shall vote.

17 (cf: P.L.1985, c.516, s.27)

18

19 10. This act shall take effect 60 days following enactment.

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21

## 22 STATEMENT

23

24 This bill would amend the "Municipal Land Use Law," P.L.1975,  
25 c.291 (C.40:55D-1 et seq.) as follows:

26 Sections 1 and 8 would amend section 3.2 of P.L.1975, c.291  
27 (C.40:55D-5) and section 30 of P.L.1975, c.291 (C.40:55D-42) to  
28 resolve an inconsistency concerning land improvements associated  
29 with subdivision and site plan approvals. In Cameron & Cameron Inc.  
30 v. Planning Board of the Township of Warren, 250 N.J. Super. 296  
31 (App. Div. 1991), the court observed that the headnote of section 30  
32 of P.L.1975, c.291 (C.40:55D-42) referenced "off-tract"  
33 improvements as being subject to a pro-rata formula, whereas the body  
34 of that section referenced improvements located "outside the property  
35 limits" - a slightly broader category. Additional confusion resulted  
36 from the imprecision of the phrase "contiguous portion of a street or  
37 right-of-way" which is found in the definitions of off-site, off-tract and  
38 on-tract. To remedy this situation, these amendments insert the term  
39 "off-tract" within the body of section 30 of P.L.1975, c.291  
40 (C.40:55D-42), thereby making it consistent with the definitional  
41 section. Additionally, the definitions of off-site, off-tract, on-site and  
42 on-tract are to be altered generally by replacing the reference to a  
43 "contiguous portion" of a street by the more precise "closest half of  
44 the abutting street".

45 Section 1 would also define the term "municipal resident" as a  
46 person who is domiciled in the municipality.

1 Section 2 would amend subsection g. of section 6 of P.L.1975,  
2 c.291 (C.40:55D-10) to clarify that if only one member who voted for  
3 an action taken by a municipal planning or zoning board attends a  
4 subsequent meeting at which a memorializing resolution is presented,  
5 the vote of that single member shall be sufficient to adopt the  
6 resolution. The provision is not intended to change quorum  
7 requirements for the subsequent meeting, but only to clarify the  
8 number of votes required to adopt a memorializing resolution. This  
9 amendment responds to Patel v. Planning Board, 258 N.J. Super. 437  
10 (Law Div. 1992) in which the judge ruled that the vote of one such  
11 member was not sufficient.

12 Section 2 would also amend section 6 of P.L.1975, c.291  
13 (C.40:55D-10) to provide that a municipality furnishing a transcript or  
14 tape of the proceedings to an interested party may not charge the  
15 interested party more than the actual cost of preparation of the  
16 transcript or tape. This amendment was necessitated by the fact that  
17 court reporters doing work outside of court charge at a higher rate  
18 than the rate prescribed by N.J.S.2A:11-15.

19 Section 3 would expand section 9 of P.L.1979, c.216  
20 (C.40:55D-10.2) to provide with reference to continuing applications  
21 that members who may not have been members at the time of a  
22 particular hearing may vote if the matter is pending and the new  
23 member reads the transcript or listens to a recording of the prior  
24 hearing.

25 Section 4 would clarify the notice provisions of section 7.1 of  
26 P.L.1975, c.291 (C.40:55D-12) as to appeals of determinations of  
27 administrative officers pursuant to paragraph (a) of section 57 of  
28 P.L.1975, c.291 (C.40:55D-70), and requests for interpretation  
29 pursuant to paragraph (b) of that section. In both cases, an option is  
30 given to the municipality to require statutory notice by enacting a  
31 procedural ordinance. In addition, section 4 would clarify that notice  
32 pursuant to the section being amended would be required for  
33 extensions of more than five years granted pursuant to subsection d.  
34 of section 37 of P.L.1975, c.291 (C.40:55D-49) and subsection b. of  
35 section 40 of P.L.1975, c.291 (C.40:55D-52), and for the modification  
36 or elimination of significant conditions in a resolution in those  
37 instances where the original application required the provision of  
38 public notice.

39 Section 5 would clarify that all members of planning boards, except  
40 for Class II members, must be municipal residents.

41 Section 6 would: clarify the right of alternate members of a  
42 planning board to participate in all matters; require alternate members  
43 to be municipal residents; and provide that the participation of  
44 alternates in all matters does not change current quorum requirements.

45 Section 7 would amend section 15 of P.L.1975, c.291  
46 (C.40:55D-24) to make uniform the provisions governing planning

1 boards and boards of adjustment with regard to governmental  
2 appropriations. The language proposed to be added to this section  
3 corresponds with the language found in section 58 of P.L.1975, c.291  
4 (C.40:55D-71). In addition, this section would preclude an alternate  
5 member from serving as the chairman or vice-chairman of the planning  
6 board.

7 Section 9 would amend section 56 of P.L.1975, c.291  
8 (C.40:55D-69) to: clarify the right of alternate members of a board of  
9 adjustment to participate in all matters; require all zoning board  
10 members and alternates to be municipal residents; specify that the  
11 chairman and vice-chairman must be elected from the regular  
12 members; and provide that the participation of alternatives in all  
13 matters does not effect current quorum requirements.

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18 Clarifies various provisions of the Municipal Land Use Law.