

ASSEMBLY CONCURRENT RESOLUTION No. 96

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 19, 1996

By Assemblyman ARNONE

1 A CONCURRENT RESOLUTION concerning legislative review of Department
2 of Community Affairs regulations pursuant to Article V, Section IV,
3 paragraph 6 of the Constitution of the State of New Jersey.

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5 BE IT RESOLVED by the General Assembly of the State of New Jersey
6 (the Senate concurring):

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8 1. Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the
9 State of New Jersey, the Legislature may review any rule or regulation of an
10 administrative agency to determine if the rule or regulation is consistent with
11 the intent of the Legislature.

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13 2. The Legislature enacted P.L.1993, c.32 (C.40:55D-40.1 et seq.), to
14 establish a Site Improvement Advisory Board to recommend residential site
15 improvement standards concerned with technical determinations in order to
16 reduce unnecessary cost in the construction process for residential dwellings.

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18 3. The Legislature finds that insofar as the Residential Site Improvement
19 Standards (RSIS), adopted by Chapter 21 of Title 5 of the New Jersey
20 Administrative Code, prescribe the number and size of parking spaces
21 required for particular types of residential uses, a municipal zoning prerogative,
22 the regulation is not only inconsistent with the underlying legislative enactment
23 which states that the act shall in no way limit the zoning power of the
24 municipality (section 6 of P.L.1993, c.32; C.40:55D-40.6), but would appear
25 to significantly detract from the municipality's exclusive power to zone which
26 is enshrined in Article IV, Section VI, paragraph 2 and Article IV, Section
27 VII, paragraph 11 of the New Jersey Constitution.

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29 4. The practical effect of implementing these standards will be to determine
30 how new residential communities will look, thereby removing the power of
31 municipalities to make this determination. One significant example of this is the
32 requirement imposed by the RSIS that sidewalks be provided in many
33 situations and with few exceptions regardless of the character of the
34 community and wishes of local residents. Other examples include width of
35 streets and cartways, requirements for curbing, road grades, and other

1 physical features of development.

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3 5. The Commissioner of Community Affairs shall, pursuant to Article V,
4 Section IV, paragraph 6 of the Constitution of the State of New Jersey, have
5 30 days following transmittal of this resolution to amend or withdraw the
6 regulation or the Legislature may, by passage of another concurrent resolution,
7 exercise its authority under the Constitution to invalidate the regulation in
8 whole or in part.

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STATEMENT

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13 This concurrent resolution embodies the finding of the Legislature that
14 Chapter 21 of Title 5 of the New Jersey Administrative Code is inconsistent
15 with the legislative intent in enacting P.L.1993, c.32 (C.40:55D-40.1 et seq.)
16 in that the regulations encroach upon traditional zoning power of municipalities
17 to determine the appearance and characteristics of their communities. The
18 regulations are overly broad in that they are not limited to specifying technical
19 standards, but would have the practical effect of determining the aesthetic
20 appearance of residential development. For example, it was the intent of the
21 Legislature in enacting P.L.1993, c.32 (C.40:55D-40.1 et seq.) that
22 regulations be adopted setting forth technical standards for width and thickness
23 and mix of concrete of sidewalks or thickness and compaction for parking
24 spaces when such items are required by the municipality. Chapter 21 of Title
25 5 significantly exceeds this intent by mandating sidewalks and parking spaces
26 in certain instances and establishing their size and number. The Commissioner
27 of Community Affairs shall have 30 days following transmittal of this resolution
28 to amend or withdraw the proposed amendment, or the Legislature may, by
29 passage of another concurrent resolution, exercise its authority under the
30 Constitution to invalidate the proposed amendment.

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36 Determines that regulations of DCA concerning residential site improvement
standards are inconsistent with Legislative intent.