

## [N.J. Stat. § 40:55D-37](#)

\*\*\* Current through New Jersey 221st First Annual Session, L. 2024, c. 87 and J.R. 2 \*\*\*

**LexisNexis® New Jersey Annotated Statutes > Title 40. Municipalities and Counties (Subts. 1 — 13) > Subtitle 3. Municipality Provisions (Chs. 42 — 69) > Chapter 55D. Municipal Land Use Law (Arts. 1 — 17) > Article 6. Subdivisions (§§ 40:55D-37 — 40:55D-59)**

### **§ 40:55D-37. Grant of power; referral of proposed ordinance; county planning board approval**

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- a. The governing body may by ordinance require approval of subdivision plats by resolution of the planning board as a condition for the filing of such plats with the county recording officer and approval of site plans by resolution of the planning board as a condition for the issuance of a permit for any development, except that subdivision or individual lot applications for detached one or two dwelling-unit buildings shall be exempt from such site plan review and approval; provided that the resolution of the board of adjustment shall substitute for that of the planning board whenever the board of adjustment has jurisdiction over a subdivision or site plan pursuant to subsection 63b. of this act.
- b. Prior to the hearing on adoption of an ordinance providing for planning board approval of either subdivisions or site plans or both or any amendment thereto, the governing body shall refer any such proposed ordinance or amendment thereto to the planning board pursuant to subsection 17a. of this act.
- c. Each application for subdivision approval, where required pursuant to section 5 of P.L.1968, c. 285 ([C. 40:27-6.3](#)), and each application for site plan approval, where required pursuant to section 8 of P.L.1968, c. 285 ([C. 40:27-6.6](#)) shall be submitted by the applicant to the county planning board for review or approval, as required by the aforesaid sections, and the municipal planning board shall condition any approval that it grants upon timely receipt of a favorable report on the application by the county planning board or approval by the county planning board by its failure to report thereon within the required time period.

### **History**

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L. 1975, c. 291, 28, eff. Aug. 1, 1976.

Annotations

### **Notes**

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#### **Editor's Notes**

Approval of site plan in Abbott district, referral to New Jersey Schools Development Authority, see [18A:7G-47](#).

### **CASE NOTES**

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**Governments: Legislation: Interpretation**

§ 40:55D-37. Grant of power; referral of proposed ordinance; county planning board approval

### **Governments: Local Governments: Ordinances & Regulations**

#### **Real Property Law: Subdivisions: Local Regulation**

#### **Real Property Law: Zoning & Land Use: Administrative Procedure**

#### **Real Property Law: Zoning & Land Use: Comprehensive Plans**

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#### **Tax Law: State & Local Taxes: Real Property Tax: Collection: General Overview**

### **Governments: Legislation: Interpretation**

To permit municipalities the right to impose payment of taxes as a prerequisite to subdivision approval would be to give a strained interpretation to the Municipal Planning Act. [\*Sussex Woodlands, Inc. v. West Milford\*, 109 N.J. Super. 432, 263 A.2d 502, 1970 N.J. Super. LEXIS 571 \(Law Div. 1970\).](#)

### **Governments: Local Governments: Ordinances & Regulations**

By incorporating the Municipal Land Use Law in its site plan ordinances, a municipality effectuates the general purposes of the act by providing clear standards to guide both property owners and planning boards. [\*W.L. Goodfellows & Co. of Turnersville v. Wash. Twp. Planning Bd.\*, 345 N.J. Super. 109, 783 A.2d 750, 2001 N.J. Super. LEXIS 416 \(App.Div. 2001\).](#)

### **Real Property Law: Subdivisions: Local Regulation**

Trial court properly reversed a township land use board's denial of a developer's application for a major subdivision development and ordered conditional subdivision approval subject to the issuance of necessary storm water and sewer disposal treatment permits and approval by the New Jersey Department of Environmental Protection (DEP), as those issues were under the jurisdiction of the DEP and, if the requisite permit was ultimately granted by the DEP, the interests of the township and its citizens would be protected. [\*Dowel Assocs. v. Harmony Tp. Land Use Bd.\*, 403 N.J. Super. 1, 956 A.2d 349, 2008 N.J. Super. LEXIS 194 \(App.Div.\), certif. denied, 197 N.J. 15, 960 A.2d 745, 2008 N.J. LEXIS 1771 \(N.J. 2008\), certif. denied, 197 N.J. 15, 960 A.2d 745, 2008 N.J. LEXIS 1754 \(N.J. 2008\).](#)

[\*N.J. Stat. Ann. § 40:55D-37\*](#) reposes the subdivision approval power in the municipal planning board, and that power is not among the general powers accorded by § [40:55D-37](#) to the board of adjustment under [\*N.J. Stat. Ann. § 40:55D-70\*](#); thus, the only statutory authority for the board of adjustment's exercise of subdivision jurisdiction is [\*N.J. Stat. Ann. § 40:55D-76\(b\)\*](#), which authorizes that board to act on a subdivision application when submitted in conjunction with a variance application under [\*N.J. Stat. Ann. § 40:55D-70\(d\)\*](#). [\*Amato v. Randolph Township Planning Bd.\*, 188 N.J. Super. 439, 457 A.2d 1188, 1982 N.J. Super. LEXIS 1028 \(App.Div. 1982\).](#)

### **Real Property Law: Zoning & Land Use: Administrative Procedure**

[\*N.J. Stat. Ann. § 40:55D-37\*](#) reposes the subdivision approval power in the municipal planning board, and that power is not among the general powers accorded by § [40:55D-37](#) to the board of adjustment under [\*N.J. Stat. Ann. § 40:55D-70\*](#); thus, the only statutory authority for the board of adjustment's exercise of subdivision jurisdiction is [\*N.J. Stat. Ann. § 40:55D-76\(b\)\*](#), which authorizes that board to act on a subdivision application when submitted in conjunction with a variance application under [\*N.J. Stat. Ann. § 40:55D-70\(d\)\*](#). [\*Amato v. Randolph Township Planning Bd.\*, 188 N.J. Super. 439, 457 A.2d 1188, 1982 N.J. Super. LEXIS 1028 \(App.Div. 1982\).](#)

### **Real Property Law: Zoning & Land Use: Comprehensive Plans**

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The Municipal Land Use Law contemplates active involvement by planning boards in the review process. [W.L. Goodfellows & Co. of Turnersville v. Wash. Twp. Planning Bd.](#), 345 N.J. Super. 109, 783 A.2d 750, 2001 N.J. Super. LEXIS 416 (App.Div. 2001).

The Municipal Land Use Law provides consistency, uniformity, and predictability in the development approval process. [W.L. Goodfellows & Co. of Turnersville v. Wash. Twp. Planning Bd.](#), 345 N.J. Super. 109, 783 A.2d 750, 2001 N.J. Super. LEXIS 416 (App.Div. 2001).

By incorporating the Municipal Land Use Law in its site plan ordinances, a municipality effectuates the general purposes of the act by providing clear standards to guide both property owners and planning boards. [W.L. Goodfellows & Co. of Turnersville v. Wash. Twp. Planning Bd.](#), 345 N.J. Super. 109, 783 A.2d 750, 2001 N.J. Super. LEXIS 416 (App.Div. 2001).

Township's subdivision ordinance classification for low density subdivisions was permissible under former N.J. Stat. Ann. § 40:55-1.14 (now [N.J. Stat. Ann. § 40:55D-37](#)) where one lot subdivisions were defined as low density, and where only low density subdivisions were exempt from the requirement that subdivisions front on an existing state, county, or municipal road. [Holjes v. Planning Board of Alexandria](#), 143 N.J. Super. 295, 362 A.2d 1289, 1976 N.J. Super. LEXIS 736 (Law Div. 1976).

To permit municipalities the right to impose payment of taxes as a prerequisite to subdivision approval would be to give a strained interpretation to the Municipal Planning Act. [Sussex Woodlands, Inc. v. West Milford](#), 109 N.J. Super. 432, 263 A.2d 502, 1970 N.J. Super. LEXIS 571 (Law Div. 1970).

Township had authority under statute to amend its subdivision ordinance changing the definition of and requirements for approval of a plat as a minor subdivision, even though the ordinance was amended during the pendency of a developer's appeal from a denial of a subdivision approval. [Noble v. Chairman & Members of Township Committee](#), 91 N.J. Super. 111, 219 A.2d 335, 1966 N.J. Super. LEXIS 298 (App.Div.), certif. denied, 48 N.J. 120, 223 A.2d 497, 1966 N.J. LEXIS 510 (N.J. 1966).

### **Real Property Law: Zoning & Land Use: Judicial Review**

Trial court properly reversed a township land use board's denial of a developer's application for a major subdivision development and ordered conditional subdivision approval subject to the issuance of necessary storm water and sewer disposal treatment permits and approval by the New Jersey Department of Environmental Protection (DEP), as those issues were under the jurisdiction of the DEP and, if the requisite permit was ultimately granted by the DEP, the interests of the township and its citizens would be protected. [Dowel Assocs. v. Harmony Tp. Land Use Bd.](#), 403 N.J. Super. 1, 956 A.2d 349, 2008 N.J. Super. LEXIS 194 (App.Div.), certif. denied, 197 N.J. 15, 960 A.2d 745, 2008 N.J. LEXIS 1771 (N.J. 2008), certif. denied, 197 N.J. 15, 960 A.2d 745, 2008 N.J. LEXIS 1754 (N.J. 2008).

### **Real Property Law: Zoning & Land Use: Special Permits & Variances**

City that enacted an ordinance requiring approval of site plans as a condition for the issuance of a permit for any development was authorized by [N.J. Stat. Ann. § 40:55D-37\(a\)](#) to deny issuance of a building permit to a property owner to reconstruct the interior of a commercial garage, which was a non-conforming use under current zoning ordinances when it was damaged by a fire, without a site plan review; notwithstanding [N.J. Stat. Ann. § 40:55D-68](#), the property owner did not have an absolute right to rebuild a nonconforming structure partially destroyed by fire and the city's planning board was not acting unreasonably when it denied a request to waive the review. [Grungo v. Robles](#), 256 N.J. Super. 233, 606 A.2d 888, 1992 N.J. Super. LEXIS 161 (Law Div. 1992).

[N.J. Stat. Ann. § 40:55D-37](#) reposes the subdivision approval power in the municipal planning board, and that power is not among the general powers accorded by § [40:55D-37](#) to the board of adjustment under [N.J. Stat. Ann. § 40:55D-70](#); thus, the only statutory authority for the board of adjustment's exercise of subdivision jurisdiction is [N.J. Stat. Ann. § 40:55D-76\(b\)](#), which authorizes that board to act on a subdivision application when submitted in

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conjunction with a variance application under [N.J. Stat. Ann. § 40:55D-70\(d\)](#). [Amato v. Randolph Township Planning Bd.](#), 188 N.J. Super. 439, 457 A.2d 1188, 1982 N.J. Super. LEXIS 1028 (App.Div. 1982).

### **Tax Law: State & Local Taxes: Real Property Tax: Collection: General Overview**

To permit municipalities the right to impose payment of taxes as a prerequisite to subdivision approval would be to give a strained interpretation to the Municipal Planning Act. [Sussex Woodlands, Inc. v. West Milford](#), 109 N.J. Super. 432, 263 A.2d 502, 1970 N.J. Super. LEXIS 571 (Law Div. 1970).

## **Research References & Practice Aids**

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### **Cross References:**

Definitions; S to Z, see [40:55D-7](#).

Contents of zoning ordinance, see [40:55D-65](#).

### **Administrative Code:**

N.J.A.C. 5:21-1.4 (2013), CHAPTER RESIDENTIAL SITE IMPROVEMENT STANDARDS, Definitions and abbreviations.

N.J.A.C. 5:21-1.7 (2013), CHAPTER RESIDENTIAL SITE IMPROVEMENT STANDARDS, Administration and enforcement.

N.J.A.C. 5:21-1.9 (2013), CHAPTER RESIDENTIAL SITE IMPROVEMENT STANDARDS, Violations.

N.J.A.C. 5:23-2.14 (2013), CHAPTER UNIFORM CONSTRUCTION CODE, Construction permits—when required.

### **LAW REVIEWS & JOURNALS:**

21 Seton Hall Legis. J. 11, PROPOSAL: HOUSING MADE EASY: NEW JERSEY'S UNIFORM SITE IMPROVEMENTS STANDARDS ACT OF 1993.

34 Seton Hall Legis. J. 29, ARTICLE: SUBPAR SUBPOENA CLAUSES: WHY STATES NEED TO LEGISLATIVELY AMEND THEIR ZONING SUBPOENA LAWS.

### **NJ ICLE:**

[Commercial Real Estate Transactions in New Jersey 5.1](#) Municipal Land Use Regulations

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## [N.J. Stat. § 40:55D-38](#)

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### **§ 40:55D-38. Contents of ordinance**

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An ordinance requiring approval by the planning board of either subdivisions or site plans, or both, shall include the following:

- a. Provisions, not inconsistent with other provisions of this act, for submission and processing of applications for development, including standards for preliminary and final approval and provisions for processing of final approval by stages or sections of development;
- b. Provisions ensuring:
  - (1) Consistency of the layout or arrangement of the subdivision or land development with the requirements of the zoning ordinance;
  - (2) Streets in the subdivision or land development of sufficient width and suitable grade and suitably located to accommodate prospective traffic and to provide access for firefighting and emergency equipment to buildings and coordinated so as to compose a convenient system consistent with the official map, if any, and the circulation element of the master plan, if any, and so oriented as to permit, consistent with the reasonable utilization of land, the buildings constructed thereon to maximize solar gain; provided that no street of a width greater than 50 feet within the right-of-way lines shall be required unless said street constitutes an extension of an existing street of the greater width, or already has been shown on the master plan at the greater width, or already has been shown in greater width on the official map;
  - (3) Adequate water supply, drainage, shade trees, sewerage facilities and other utilities necessary for essential services to residents and occupants;
  - (4) Suitable size, shape and location for any area reserved for public use pursuant to section 32 [\[C.40:55D-44\]](#) of this act;
  - (5) Reservation pursuant to section 31 of P.L.1975, c.291 ([C.40:55D-43](#)) of any open space to be set aside for use and benefit of the residents of a cluster development or a planned development, resulting from the application of standards of density or intensity of land use, contained in the zoning ordinance, pursuant to section 52 of P.L.1975, c.291 ([C.40:55D-65](#));
  - (6) Regulation of land designated as subject to flooding, pursuant to subsection e. of section 52 of P.L.1975, c.291 ([C.40:55D-65](#)), to avoid danger to life or property;
  - (7) Protection and conservation of soil from erosion by wind or water or from excavation or grading;
  - (8) Conformity with standards promulgated by the Commissioner of Transportation, pursuant to the "Air Safety and Zoning Act of 1983," P.L.1983, c.260 ([C.6:1-80](#) et seq.), for any airport hazard areas delineated under that act;

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- (9) Conformity with a municipal recycling ordinance required pursuant to section 6 of P.L.1987, c.102 ([C.13:1E-99.16](#));
- (10) Conformity with the State highway access management code adopted by the Commissioner of Transportation under section 3 of the "State Highway Access Management Act," [P.L.1989, c.32 \(C.27:7-91\)](#), with respect to any State highways within the municipality;
- (11) Conformity with any access management code adopted by the county under [R.S.27:16-1](#), with respect to any county roads within the municipality;
- (12) Conformity with any municipal access management code adopted under [R.S.40:67-1](#), with respect to municipal streets;
- (13) Protection of potable water supply reservoirs from pollution or other degradation of water quality resulting from the development or other uses of surrounding land areas, which provisions shall be in accordance with any siting, performance, or other standards or guidelines adopted therefor by the Department of Environmental Protection;
- (14) Conformity with the public safety regulations concerning storm water detention facilities adopted pursuant to section 5 of [P.L.1991, c.194 \(C.40:55D-95.1\)](#) and reflected in storm water management plans and storm water management ordinances adopted pursuant to P.L.1981, c.32 ([C.40:55D-93](#) et al.); and
- (15) Conformity with the model ordinance promulgated by the Department of Environmental Protection and Department of Community Affairs pursuant to section 2 of [P.L.1993, c.81 \(C.13:1E-99.13a\)](#) regarding the inclusion of facilities for the collection or storage of source separated recyclable materials in any new multifamily housing development.
- c. Provisions governing the standards for grading, improvement and construction of streets or drives and for any required walkways, curbs, gutters, streetlights, shade trees, fire hydrants and water, and drainage and sewerage facilities and other improvements as shall be found necessary, and provisions ensuring that such facilities shall be completed either prior to or subsequent to final approval of the subdivision or site plan by allowing the posting of performance guarantees by the developer;
- d. Provisions ensuring that when a municipal zoning ordinance is in effect, a subdivision or site plan shall conform to the applicable provisions of the zoning ordinance, and where there is no zoning ordinance, appropriate standards shall be specified in an ordinance pursuant to this article; and
- e. Provisions ensuring performance in substantial accordance with the final development plan; provided that the planning board may permit a deviation from the final plan, if caused by change of conditions beyond the control of the developer since the date of final approval, and the deviation would not substantially alter the character of the development or substantially impair the intent and purpose of the master plan and zoning ordinance.

## History

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L. 1975, c. 291, § 29; amended 1980, c. 146, § 3; 1983, c. 260, § 11; 1985, c. 516, § 12; 1987, c. 102, § 27; [1989, c. 32](#), § 24; [1989, c. 208](#); [1991, c. 194](#), § 4; [1991, c. 445](#), § 8; [1993, c. 81](#), § 1; [2013, c. 106](#), § 7, eff. Aug. 7, 2013; [2013, c. 123](#), § 1, eff. Aug. 9, 2013.

Annotations

## Notes

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OLS Corrections:



## § 40:55D-38. Contents of ordinance

Pursuant to [R.S.1:3-1](#), the Office of Legislative Services, through its Legislative Counsel and with the concurrence of the Attorney General, corrected L. [2013, c. 123](#), § 1 to incorporate the inadvertently omitted provisions of the amendment of this section by L. [2013, c. 106](#), § 7.

**Publisher's Note:**

The bracketed material was added by the Publisher to provide a reference.

**Amendment Note:**

2013 amendment, by Chapter 106, in b.(5), substituted "P.L.1975, c.291 (C.40:55D-43)" for "this act", inserted "a cluster development or a", and deleted "subsection c. of" preceding "section 52"; substituted "P.L.1975, c.291 (C.40:55D-65)" for "this act" in b.(5) and b.(6); and substituted "Air Safety and Zoning Act" for "Air Safety and Hazardous Zoning Act" in b.(8).

2013 amendment, by Chapter 123, substituted "guarantees" for "bonds" in c.

## CASE NOTES

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**Administrative Law: Judicial Review: Standards of Review: Arbitrary & Capricious Review**

**Contracts Law: Defenses: Public Policy Violations**

**Environmental Law: Natural Resources & Public Lands: Wetlands Management**

**Environmental Law: Zoning & Land Use: Conditional Use Permits & Variances**

**Governments: Public Improvements: Sanitation & Water**

**Governments: State & Territorial Governments: Employees & Officials**

**Real Property Law: Eminent Domain Proceedings: Valuation**

**Real Property Law: Subdivisions: General Overview**

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**Real Property Law: Zoning & Land Use: Comprehensive Plans**

**Real Property Law: Zoning & Land Use: Judicial Review**

**Real Property Law: Zoning & Land Use: Nonconforming Uses**

**Real Property Law: Zoning & Land Use: Ordinances**

**Real Property Law: Zoning & Land Use: Special Permits & Variances**

**Administrative Law: Judicial Review: Standards of Review: Arbitrary & Capricious Review**

Where a reservoir and dam required substantial repairs and modifications, and there was a direct relationship between the plan for storm water drainage and the detention capacity of the reservoir, it was not unreasonable for a planning board to require a developer to first obtain the approval of a specific plan from the Department of

## § 40:55D-38. Contents of ordinance

Environmental Protection, pursuant to [N.J. Stat. Ann. § 40:55D-38\(b\)\(3\)](#). [Morris County Fair Housing Council v. Boonton Township, 228 N.J. Super. 635, 550 A.2d 777, 1988 N.J. Super. LEXIS 412 \(Law Div. 1988\)](#).

**Contracts Law: Defenses: Public Policy Violations**

Municipal engineer that filed a contract action to collect fees for services rendered to a private developer for a project located within the township that employed the engineer was in such a conflict of interest position that an agreement to perform the engineering work for the developer was against public policy and, therefore, void and unenforceable; among other conflicts, the engineering work to be performed by the municipal engineer would be relied upon by the developer in submitting the proposed garden apartment project to the township for its approval, and for any required subdivision approval of the property, and the municipal engineer also expected to be called upon by other municipal agencies to advise with them concerning other features of the project under the provisions of former N.J. Stat. Ann. §§ 40:55-1.20 to 40:55-1.24 (now [N.J. Stat. Ann. §§ 40:55D-38](#) to [40:55D-56](#)). [Newton v. Demas, 107 N.J. Super. 346, 258 A.2d 376, 1969 N.J. Super. LEXIS 401 \(App.Div. 1969\)](#), certif. denied, 55 N.J. 313, 261 A.2d 357, 1970 N.J. LEXIS 389 (N.J. 1970).

**Environmental Law: Natural Resources & Public Lands: Wetlands Management**

Where company received a site plan approval for soil removal operations, not under a zoning ordinance, but under a soil removal ordinance which expressly invoked the authority of [N.J. Stat. Ann. § 40:55D-67](#), the municipality's planning board's jurisdiction was conferred by [N.J. Stat. Ann. § 40:55D-26\(b\)](#), not by [N.J. Stat. Ann. § 40:55D-38](#), so the planning board's resolution did not result in site plan approval under the Municipal Land Use Law, N.J. Stat. Ann. § 40:55D, as was required for an exemption from the Freshwater Wetlands Protection Act, [N.J. Stat. Ann. § 13:9B-1](#) et seq. [Mt. Bethel Humus Co. v. Department of Env'tl. Protection & Energy, 273 N.J. Super. 421, 642 A.2d 415, 1994 N.J. Super. LEXIS 248 \(App.Div. 1994\)](#).

**Environmental Law: Zoning & Land Use: Conditional Use Permits & Variances**

Board of adjustment's denial of an owner's site plan was arbitrary, capricious, and unreasonable because the owner was entitled to a conditional-use variance and, therefore, its facility was to be deemed a permissible use subject to the traditional site plan review standard rather than the reaching review undertaken by the board. [Meridian Quality Care, Inc. v. Bd. of Adjustment, 355 N.J. Super. 328, 810 A.2d 571, 2002 N.J. Super. LEXIS 459 \(App.Div. 2002\)](#).

**Governments: Public Improvements: Sanitation & Water**

[N.J. Stat. Ann. § 40:55D-38\(b\)\(3\)](#) mandates that any municipal ordinance governing site plan applications must require plans for adequate water drainage. [W.L. Goodfellows & Co. of Turnersville v. Wash. Twp. Planning Bd., 345 N.J. Super. 109, 783 A.2d 750, 2001 N.J. Super. LEXIS 416 \(App.Div. 2001\)](#).

**Governments: State & Territorial Governments: Employees & Officials**

Municipal engineer that filed a contract action to collect fees for services rendered to a private developer for a project located within the township that employed the engineer was in such a conflict of interest position that an agreement to perform the engineering work for the developer was against public policy and, therefore, void and unenforceable; among other conflicts, the engineering work to be performed by the municipal engineer would be relied upon by the developer in submitting the proposed garden apartment project to the township for its approval, and for any required subdivision approval of the property, and the municipal engineer also expected to be called upon by other municipal agencies to advise with them concerning other features of the project under the provisions of former N.J. Stat. Ann. §§ 40:55-1.20 to 40:55-1.24 (now [N.J. Stat. Ann. §§ 40:55D-38](#) to [40:55D-56](#)). [Newton v. Demas, 107 N.J. Super. 346, 258 A.2d 376, 1969 N.J. Super. LEXIS 401 \(App.Div. 1969\)](#), certif. denied, 55 N.J. 313, 261 A.2d 357, 1970 N.J. LEXIS 389 (N.J. 1970).

**Real Property Law: Eminent Domain Proceedings: Valuation**



## § 40:55D-38. Contents of ordinance

Judgment in favor of the condemnees was reversed and a new trial on just compensation was ordered because it was error to allow their experts to offer trial testimony which was legally inadequate as the condemnees were required to show a reasonable probability the third municipality would have granted acceptance or a use variance, even if the driveway's design complied with the Residential Site Improvement Standards, as the third municipality's approval could not be assumed. [New Jersey Transit Corp. v. Franco, 447 N.J. Super. 361, 148 A.3d 424, 2016 N.J. Super. LEXIS 135 \(App.Div. 2016\)](#), certif. denied, 230 N.J. 504, 170 A.3d 301, 2017 N.J. LEXIS 692 (N.J. 2017).

### Real Property Law: Subdivisions: General Overview

While a municipality did not lack any authority to regulate the time of completion of improvements in a subdivision, as its authority under [N.J. Stat. Ann. § 40:55D-38\(c\)](#) to adopt “standards” for improvements and “provisions ensuring that such facilities shall be completed” included the authority to regulate the time of installation of improvements, that authority was activated only when a developer actively undertook to develop a subdivision. [R.J.P. Builders, Inc. v. Township of Woolwich, 361 N.J. Super. 207, 824 A.2d 1114, 2003 N.J. Super. LEXIS 205 \(App.Div.\)](#), certif. denied, 178 N.J. 31, 834 A.2d 404, 2003 N.J. LEXIS 1407 (N.J. 2003).

### Real Property Law: Subdivisions: Local Regulation

Trial court properly reversed a township land use board's denial of a developer's application for a major subdivision development and ordered conditional subdivision approval subject to the issuance of necessary storm water and sewer disposal treatment permits and approval by the New Jersey Department of Environmental Protection (DEP), as those issues were under the jurisdiction of the DEP and, if the requisite permit was ultimately granted by the DEP, the interests of the township and its citizens would be protected. [Dowel Assocs. v. Harmony Tp. Land Use Bd., 403 N.J. Super. 1, 956 A.2d 349, 2008 N.J. Super. LEXIS 194 \(App.Div.\)](#), certif. denied, 197 N.J. 15, 960 A.2d 745, 2008 N.J. LEXIS 1771 (N.J. 2008), certif. denied, 197 N.J. 15, 960 A.2d 745, 2008 N.J. LEXIS 1754 (N.J. 2008).

### Real Property Law: Torts: Nuisance

Decision that denied a homeowner's request for an injunction to prohibit the operation of two businesses in violation of a zoning ordinance was reversed, because the operation of the businesses in a residential district in violation of the ordinance constituted a public nuisance, and the homeowner had showed that he had suffered special damages that were distinct from the damages suffered by the community at large due to the noise, commotion, vibration, and smoke associated with the operation of the businesses. [Morris v. Haledon, 24 N.J. Super. 171, 93 A.2d 781, 1952 N.J. Super. LEXIS 605 \(App.Div. 1952\)](#).

### Real Property Law: Zoning & Land Use: General Overview

Township's planning board's approval of a church's site plan for a day care center was not arbitrary, capricious and unreasonable and properly considered traffic problems under [N.J. Stat. Ann. §§ 40:55D-38, 40:55D-39, and 40:55D-41](#) because the board's determination was soundly grounded on the evidence adduced during the site plan hearing; because notably, no expert testimony was presented on the issue of traffic; because the board consulted its own planners with regard to the potential impact on traffic; because the township's engineers and traffic consultants reviewed the traffic studies and trip counts, and assessed the safety of the entranceway to the church facility; because the board considered alternative sites for the driveway, as well as traffic signals and other devices to regulate traffic flow; because the board determined that a proposed entranceway would provide safe and efficient vehicular circulation; and because the board imposed a condition to the site plan approval requiring the church to contribute to the cost of signalization of the intersection of its property if the same is required in the future, as well as hiring traffic control personnel, if necessary. [Shim v. Washington Twp. Planning Bd., 298 N.J. Super. 395, 689 A.2d 804, 1997 N.J. Super. LEXIS 109 \(App.Div. 1997\)](#).

Judgment upholding a planning board's denial of a developer's subdivision application was improper because the board was required to review the application within the framework of municipality's subdivision standards together with [N.J. Stat. Ann. § 40:55D-38](#) and reference those standards in its findings, and under [N.J. Stat. Ann. § 40:55D-](#)

## § 40:55D-38. Contents of ordinance

[48](#), upon compliance with the subdivision ordinance and the Municipal Land Use Law, [N.J. Stat. Ann. §§ 40:55D-1 to 40:55D-129](#), approval of an application was mandated. [Pizzo Mantin Group v. Township of Randolph](#), 261 N.J. Super. 659, 619 A.2d 676, 1993 N.J. Super. LEXIS 38 (App.Div. 1993), aff'd in part, modified, 137 N.J. 216, 645 A.2d 89, 1994 N.J. LEXIS 635 (N.J. 1994).

**Real Property Law: Zoning & Land Use: Comprehensive Plans**

Protection of streams, including a brook feeding into a reservoir used as a county potable water supply, was a valid purpose for a zoning ordinance pursuant to [N.J. Stat. Ann. § 40:55D-38\(13\)](#); accordingly, an ordinance that reduced density withstood challenge. [Manzo v. Mayor and Tp. Council of Tp. of Marlboro](#), 365 N.J. Super. 186, 838 A.2d 534, 2002 N.J. Super. LEXIS 547 (Law Div. 2002), aff'd, 365 N.J. Super. 70, 838 A.2d 463, 2003 N.J. Super. LEXIS 341 (App.Div. 2003).

Generally, a planning board concerns itself with on-site conditions. [W.L. Goodfellows & Co. of Turnersville v. Wash. Twp. Planning Bd.](#), 345 N.J. Super. 109, 783 A.2d 750, 2001 N.J. Super. LEXIS 416 (App.Div. 2001).

[N.J. Stat. Ann. § 40:55D-38\(b\)\(3\)](#) mandates that any municipal ordinance governing site plan applications must require plans for adequate water drainage. [W.L. Goodfellows & Co. of Turnersville v. Wash. Twp. Planning Bd.](#), 345 N.J. Super. 109, 783 A.2d 750, 2001 N.J. Super. LEXIS 416 (App.Div. 2001).

Where company received a site plan approval for soil removal operations, not under a zoning ordinance, but under a soil removal ordinance which expressly invoked the authority of [N.J. Stat. Ann. § 40:55D-67](#), the municipality's planning board's jurisdiction was conferred by [N.J. Stat. Ann. § 40:55D-26\(b\)](#), not by [N.J. Stat. Ann. § 40:55D-38](#), so the planning board's resolution did not result in site plan approval under the Municipal Land Use Law, N.J. Stat. Ann. § 40:55D, as was required for an exemption from the Freshwater Wetlands Protection Act, [N.J. Stat. Ann. § 13:9B-1](#) et seq. [Mt. Bethel Humus Co. v. Department of Env'tl. Protection & Energy](#), 273 N.J. Super. 421, 642 A.2d 415, 1994 N.J. Super. LEXIS 248 (App.Div. 1994).

Judgment upholding a planning board's denial of a developer's subdivision application was improper because the board was required to review the application within the framework of municipality's subdivision standards together with [N.J. Stat. Ann. § 40:55D-38](#) and reference those standards in its findings, and under [N.J. Stat. Ann. § 40:55D-48](#), upon compliance with the subdivision ordinance and the Municipal Land Use Law, [N.J. Stat. Ann. §§ 40:55D-1 to 40:55D-129](#), approval of an application was mandated. [Pizzo Mantin Group v. Township of Randolph](#), 261 N.J. Super. 659, 619 A.2d 676, 1993 N.J. Super. LEXIS 38 (App.Div. 1993), aff'd in part, modified, 137 N.J. 216, 645 A.2d 89, 1994 N.J. LEXIS 635 (N.J. 1994).

It was proper for planning board to consider the accessibility to and from a development onto a heavily traveled state highway because while [N.J. Stat. Ann. § 40:55D-38\(b\)\(2\)](#) did not expressly provide for standards regarding ingress and egress, the requirement that a subdivision provide safe ingress and egress was logically implied from the statutory language. [El Shaer v. Planning Bd. of Lawrence](#), 249 N.J. Super. 323, 592 A.2d 565, 1991 N.J. Super. LEXIS 231 (App.Div.), certif. denied, 127 N.J. 546, 606 A.2d 360, 1991 N.J. LEXIS 855 (N.J. 1991).

Because [N.J. Stat. Ann. § 40:55D-38\(b\)\(3\)](#) provided that a subdivision ordinance must require adequate plans for storm water drainage, planning board's determination that drainage run-off from the subdivision might have an adverse impact on the environment and cause future drainage problems on contiguous properties, planning board had express power to compel adequate drainage on and from a subdivided parcel to alleviate existing bad conditions and to avoid new problems in drainage. [El Shaer v. Planning Bd. of Lawrence](#), 249 N.J. Super. 323, 592 A.2d 565, 1991 N.J. Super. LEXIS 231 (App.Div.), certif. denied, 127 N.J. 546, 606 A.2d 360, 1991 N.J. LEXIS 855 (N.J. 1991).

Street facilities are fundamentally the concern of the agency charged with overseeing planning functions pursuant to former N.J. Stat. Ann. § 40:55-1.20 (now [N.J. Stat. Ann. § 40:55D-38](#)). [Holjes v. Planning Board of Alexandria](#), 143 N.J. Super. 295, 362 A.2d 1289, 1976 N.J. Super. LEXIS 736 (Law Div. 1976).

## § 40:55D-38. Contents of ordinance

Developers' proposed subdivision did not meet the requirements of N.J. Stat. Ann. § 40:55-1.20, where the subdivision fronted on a private, unpaved, unrecorded and narrow road but did not front on any state, county, or municipal road. [Holjes v. Planning Board of Alexandria, 143 N.J. Super. 295, 362 A.2d 1289, 1976 N.J. Super. LEXIS 736 \(Law Div. 1976\)](#).

City planning board's requirement that landowner grant a right-of-way across the property in order to obtain approval to subdivide the property was within planning board's authority and was not an unconstitutional taking. [Brazer v. Mountainside, 102 N.J. Super. 497, 246 A.2d 170, 1968 N.J. Super. LEXIS 493 \(Law Div. 1968\)](#), aff'd, [104 N.J. Super. 456, 250 A.2d 418, 1969 N.J. Super. LEXIS 598 \(App.Div. 1969\)](#).

**Real Property Law: Zoning & Land Use: Judicial Review**

Trial court properly upheld a township planning board's grant of the land use approvals to a retailer for a proposed store renovation because the challenging landowners' assertion that nonconformities in the existing parking lot were not included constituted an untimely collateral attack since those nonconformities were approved in the original site plan approvals and were not part of the renovations. [Cortesini v. Hamilton Tp. Planning Bd., 417 N.J. Super. 210, 9 A.3d 185, 2010 N.J. Super. LEXIS 237 \(App.Div. 2010\)](#), certif. denied, 207 N.J. 35, 21 A.3d 1185, 2011 N.J. LEXIS 710 (N.J. 2011).

If an applicant for subdivision or site plan approval fails to apply for and obtain a necessary bulk variance, the land use approval may be challenged on that ground. However, if no party brings a timely challenge to the land use approval on that ground, a new site approval for a renovation of the premises, which does not increase or affect the existing nonconformity with the zoning ordinance, is not subject to attack on the ground that original land use approval did not include a necessary bulk variance. [Cortesini v. Hamilton Tp. Planning Bd., 417 N.J. Super. 210, 9 A.3d 185, 2010 N.J. Super. LEXIS 237 \(App.Div. 2010\)](#), certif. denied, 207 N.J. 35, 21 A.3d 1185, 2011 N.J. LEXIS 710 (N.J. 2011).

Trial court properly reversed a township land use board's denial of a developer's application for a major subdivision development and ordered conditional subdivision approval subject to the issuance of necessary storm water and sewer disposal treatment permits and approval by the New Jersey Department of Environmental Protection (DEP), as those issues were under the jurisdiction of the DEP and, if the requisite permit was ultimately granted by the DEP, the interests of the township and its citizens would be protected. [Dowel Assocs. v. Harmony Tp. Land Use Bd., 403 N.J. Super. 1, 956 A.2d 349, 2008 N.J. Super. LEXIS 194 \(App.Div.\)](#), certif. denied, 197 N.J. 15, 960 A.2d 745, 2008 N.J. LEXIS 1771 (N.J. 2008), certif. denied, 197 N.J. 15, 960 A.2d 745, 2008 N.J. LEXIS 1754 (N.J. 2008).

**Real Property Law: Zoning & Land Use: Nonconforming Uses**

Trial court properly upheld a township planning board's grant of the land use approvals to a retailer for a proposed store renovation because the challenging landowners' assertion that nonconformities in the existing parking lot were not included constituted an untimely collateral attack since those nonconformities were approved in the original site plan approvals and were not part of the renovations. [Cortesini v. Hamilton Tp. Planning Bd., 417 N.J. Super. 210, 9 A.3d 185, 2010 N.J. Super. LEXIS 237 \(App.Div. 2010\)](#), certif. denied, 207 N.J. 35, 21 A.3d 1185, 2011 N.J. LEXIS 710 (N.J. 2011).

Trial court's decision overturning an order of a local planning board denying conveyance of four non-conforming parcels of property, was reversed for further consideration of proper access by the planning board pursuant to its statutory duty under former N.J. Stat. Ann. § 40:55-1.20 (see now [N.J. Stat. Ann. § 40:55D-38](#)), despite a proper ruling by the trial court that the non-conforming parcels could be conveyed because the land owners, who had inherited the property, had a substantive right to convey the non-conforming parcels, despite zoning ordinances to the contrary. [Mac Lean v. Planning Bd. of Brick, 94 N.J. Super. 288, 228 A.2d 85, 1967 N.J. Super. LEXIS 617 \(App.Div. 1967\)](#).

**Real Property Law: Zoning & Land Use: Ordinances**

## § 40:55D-38. Contents of ordinance

Judgment in favor of the condemnees was reversed and a new trial on just compensation was ordered because it was error to allow their experts to offer trial testimony which was legally inadequate as the condemnees were required to show a reasonable probability the third municipality would have granted acceptance or a use variance, even if the driveway's design complied with the Residential Site Improvement Standards, as the third municipality's approval could not be assumed. [New Jersey Transit Corp. v. Franco, 447 N.J. Super. 361, 148 A.3d 424, 2016 N.J. Super. LEXIS 135 \(App.Div. 2016\)](#), certif. denied, 230 N.J. 504, 170 A.3d 301, 2017 N.J. LEXIS 692 (N.J. 2017).

### Real Property Law: Zoning & Land Use: Special Permits & Variances

If an applicant for subdivision or site plan approval fails to apply for and obtain a necessary bulk variance, the land use approval may be challenged on that ground. However, if no party brings a timely challenge to the land use approval on that ground, a new site approval for a renovation of the premises, which does not increase or affect the existing nonconformity with the zoning ordinance, is not subject to attack on the ground that original land use approval did not include a necessary bulk variance. [Cortesini v. Hamilton Tp. Planning Bd., 417 N.J. Super. 210, 9 A.3d 185, 2010 N.J. Super. LEXIS 237 \(App.Div. 2010\)](#), certif. denied, 207 N.J. 35, 21 A.3d 1185, 2011 N.J. LEXIS 710 (N.J. 2011).

## Opinion Notes

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### OPINIONS OF ATTORNEY GENERAL

FORMAL OPINION No. 3 (1990):, [1990 N.J. AG LEXIS 1](#).

## Research References & Practice Aids

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### Cross References:

Adoption of model ordinance on recycling in multifamily housing, see [13:1E-99.13a](#).

Minor subdivision, see [40:55D-47](#).

Guarantees required; surety; release, see [40:55D-53](#).

Minor site plan; approval, see [40:55D-46.1](#).

Municipality to assume payment of cost of street lighting, see [40:55D-53.6](#).

### Administrative Code:

N.J.A.C. 5:21-1.5 (2013), CHAPTER RESIDENTIAL SITE IMPROVEMENT STANDARDS, Scope and applicability.

### LAW REVIEWS & JOURNALS:

21 Seton Hall Legis. J. 11, PROPOSAL: HOUSING MADE EASY: NEW JERSEY'S UNIFORM SITE IMPROVEMENTS STANDARDS ACT OF 1993.

### NJ ICLE:

[Commercial Real Estate Transactions in New Jersey 5.1](#) Municipal Land Use Regulations

§ 40:55D-38. Contents of ordinance

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End of Document

## [N.J. Stat. § 40:55D-38.1](#)

\*\*\* Current through New Jersey 221st First Annual Session, L. 2024, c. 87 and J.R. 2 \*\*\*

**LexisNexis® New Jersey Annotated Statutes > Title 40. Municipalities and Counties (Subts. 1 — 13) > Subtitle 3. Municipality Provisions (Chs. 42 — 69) > Chapter 55D. Municipal Land Use Law (Arts. 1 — 17) > Article 6. Subdivisions (§§ 40:55D-37 — 40:55D-59)**

### **§ 40:55D-38.1. Solar panels not included in certain calculations relative to approval of subdivisions, site plans**

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An ordinance requiring approval by the planning board of either subdivisions or site plans, or both, shall not include solar panels in any calculation of impervious surface or impervious cover.

As used in this section, “solar panel” means an elevated panel or plate, or a canopy or array thereof, that captures and converts solar radiation to produce power, and includes flat plate, focusing solar collectors, or photovoltaic solar cells and excludes the base or foundation of the panel, plate, canopy, or array.

### **History**

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L. [2010, c. 4](#), § 9, eff. Apr. 22, 2010.

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## [N.J. Stat. § 40:55D-39](#)

\*\*\* Current through New Jersey 221st First Annual Session, L. 2024, c. 87 and J.R. 2 \*\*\*

**LexisNexis® New Jersey Annotated Statutes > Title 40. Municipalities and Counties (Subts. 1 — 13) > Subtitle 3. Municipality Provisions (Chs. 42 — 69) > Chapter 55D. Municipal Land Use Law (Arts. 1 — 17) > Article 6. Subdivisions (§§ 40:55D-37 — 40:55D-59)**

### **§ 40:55D-39. Discretionary contents of ordinance.**

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An ordinance requiring approval by the planning board of either subdivisions or site plans or both may include the following:

- a. Provisions for off-tract water, sewer, drainage, and street improvements which are necessitated by a subdivision or land development, subject to the provisions of section 30 of P.L.1975, c.291 ([C.40:55D-42](#));
- b. Provisions for standards encouraging and promoting flexibility, and economy in layout and design through the use of planned development, cluster development, or both; provided that such standards shall be appropriate to the type of development permitted; and provided further that the ordinance shall set forth the limits and extent of any special provisions applicable to planned developments and to cluster developments, considering the availability of existing and proposed infrastructure and the environmental characteristics of any area proposed for development and any area proposed for protection as open space, agricultural land, or historic site, so that the manner in which such special provisions differ from the standards otherwise applicable to subdivisions or site plans can be determined;
- c. Provisions for planned development:
  - (1) Authorizing the planning board to grant general development plan approval to provide the increased flexibility desirable to promote mutual agreement between the applicant and the planning board on the basic scheme of a planned development and setting forth any variations from the ordinary standards for preliminary and final approval;
  - (2) Requiring that any common open space resulting from the application of standards for density, or intensity of land use, be set aside for the use and benefit of the owners or residents in such development subject to section 31 of P.L.1975, c.291 ([C.40:55D-43](#));
  - (3) Setting forth how the amount and location of any common open space shall be determined and how its improvement and maintenance for common open space use shall be secured subject to section 31 of P.L.1975, c.291 ([C.40:55D-43](#));
  - (4) Authorizing the planning board to allow for a greater concentration of density, or intensity of land use, within a section or sections of development, whether it be earlier, later or simultaneous in the development, than in others, in order to realize the preservation of agricultural lands, open space, and historic sites, or otherwise advance the purposes of P.L.1975, c.291 ([C.40:55D-1](#) et seq.);
  - (5) Setting forth any requirement that the approval by the planning board of a greater concentration of density or intensity of land use for any section to be developed be offset by a smaller concentration in any completed prior stage or by an appropriate reservation of public open space or common open space on the remaining land, or preservation of land for historic or agricultural

## § 40:55D-39. Discretionary contents of ordinance.

purposes, by grant of development restriction, easement, or by covenant in favor of the municipality; provided that such reservation shall, as far as practicable, defer the precise location of common open space until an application for final approval is filed, so that flexibility of development can be maintained;

(6) Setting forth any requirements for timing of development among the various types of uses and subgroups thereunder and, in the case of planned unit development and planned unit residential development, whether some nonresidential uses are required to be built before, after or at the same time as the residential uses.

d. Provisions ensuring in the case of a development which proposes construction over a period of years, the protection of the interests of the public and of the residents, occupants and owners of the proposed development in the total completion of the development.

e. Provisions that require as a condition for local municipal approval the submission of proof that no taxes or assessments for local improvements are due or delinquent on the property for which any subdivision, site plan, or planned development application is made.

f. Provisions for the creation of a Site Plan Review Advisory Board for the purpose of reviewing all site plan applications and making recommendations to the planning board in regard thereto.

g. Provisions for standards governing outdoor advertising signs required to be permitted pursuant to [P.L. 1991, c. 413 \(C.27:5-5 et seq.\)](#) including, but not limited to, the location, placement, size and design thereof.

h. Provisions for cluster development:

(1) Authorizing the planning board flexibility to approve a subdivision or site plan or both through mutual agreement with an applicant to allow for the clustering of development within a section or sections of development at a greater concentration of density or intensity of land use than established for the zoning district, in order to achieve the goal of permanently protecting land as public open space or common open space, or for historic or agricultural purposes.

(2) Requiring the placement of a development restriction on any land identified for preservation in accordance with section 9 of [P.L.2013, c.106 \(C.40:55D-39.1\)](#).

i. Provisions requiring a successor developer to furnish a performance guarantee as a replacement for a performance guarantee that was previously accepted in accordance with standards adopted by ordinance and regulations adopted pursuant to section 1 of [P.L.1999, c.68 \(C.40:55D-53a\)](#) and section 41 of P.L.1975, c.291 ([C.40:55D-53](#)), or this subsection, for the purpose of assuring the installation and maintenance of on-tract improvements, and releasing the predecessor obligor and surety, if any, from liability pursuant to its performance guarantee.

## History

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L. 1975, c. 291, § 29.1; amended 1987, c. 129, § 2; [2004, c. 42](#), § 8, eff. June 29, 2004; [2013, c. 106](#), § 8, eff. Aug. 7, 2013; [2013, c. 123](#), § 2, eff. Aug. 9, 2013.

Annotations

## Notes

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OLS Corrections:

## § 40:55D-39. Discretionary contents of ordinance.

Pursuant to [R.S.1:3-1](#), the Office of Legislative Services, through its Legislative Counsel and with the concurrence of the Attorney General, corrected L. [2013, c. 123](#), § 2 to incorporate the inadvertently omitted provisions of the amendment of this section by L. [2013, c. 106](#), § 8.

**Amendment Note:**

2013 amendment, by Chapter 106, added “of P.L.1975, c.291 (C.40:55D-42)” in a.; in b., substituted “planned development, cluster development, or both” for “planned unit development, planned unit residential development and residential cluster” and “planned developments and to cluster developments, considering the availability of existing and proposed infrastructure and the environmental characteristics of any area proposed for development and any area proposed for protection as open space, agricultural land, or historic site” for “such planned developments”; substituted “P.L.1975, c.291 (C.40:55D-43)” for “this act” in c.(2) and c.(3); added “in order to realize the preservation of agricultural lands, open space, and historic sites, or otherwise advance the purposes of P.L.1975, c.291 (C.40:55D-1 et seq.)” in c.(4); in c.(5), inserted “public open space or”, “or preservation of land for historic or agricultural purposes”, and “development restriction”; added h.; and made a related change.

2013 amendment, by Chapter 123, added i.

## CASE NOTES

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### **Environmental Law: Zoning & Land Use: Conditional Use Permits & Variances**

#### **Governments: Local Governments: Administrative Boards**

#### **Governments: Local Governments: Finance**

#### **Governments: Local Governments: Ordinances & Regulations**

#### **Public Health & Welfare Law: Housing & Public Buildings: Accessibility, Construction & Design**

#### **Public Health & Welfare Law: Housing & Public Buildings: Low Income Housing**

#### **Real Property Law: Zoning & Land Use: General Overview**

#### **Real Property Law: Zoning & Land Use: Comprehensive Plans**

#### **Real Property Law: Zoning & Land Use: Judicial Review**

#### **Real Property Law: Zoning & Land Use: Planned Unit Developments**

### **Environmental Law: Zoning & Land Use: Conditional Use Permits & Variances**

Board of adjustment’s denial of an owner’s site plan was arbitrary, capricious, and unreasonable because the owner was entitled to a conditional-use variance and, therefore, its facility was to be deemed a permissible use subject to the traditional site plan review standard rather than the reaching review undertaken by the board. [Meridian Quality Care, Inc. v. Bd. of Adjustment, 355 N.J. Super. 328, 810 A.2d 571, 2002 N.J. Super. LEXIS 459 \(App.Div. 2002\)](#).

### **Governments: Local Governments: Administrative Boards**

[N.J. Stat. Ann. § 40:55D-39\(b\)](#) and [N.J. Stat. Ann. § 40:55D-40\(b\)](#) reflect the legislature’s intent to encourage economy in layout and design rather than adherence to rigid requirements; waivers which result in cost reduction should be granted by a planning board unless there are clear health and safety reasons to the contrary. [Urban League of Essex County v. Mahwah, 207 N.J. Super. 169, 504 A.2d 66, 1984 N.J. Super. LEXIS 1350 \(Law Div. 1984\)](#).

## § 40:55D-39. Discretionary contents of ordinance.

**Governments: Local Governments: Finance**

Before final approval of a subdivision, a governing body may require the installation of certain improvements, which it may deem to be necessary or appropriate to the public interest, or the furnishing of a performance guarantee in lieu thereof, under former N.J. Stat. Ann. § 40:55-1.21 (now [N.J. Stat. Ann. § 40:55D-39](#)). [Clearwater Associates, Inc. v. F. H. Bridge & Son, Contractors, 144 N.J. Super. 223, 365 A.2d 200, 1976 N.J. Super. LEXIS 665 \(App.Div. 1976\)](#).

**Governments: Local Governments: Ordinances & Regulations**

Under former N.J. Stat. Ann. § 40:55-1.20 (see now [N.J. Stat. Ann. § 40:55D-39](#)), the permissible conditions for the approval of a subdivision are only applicable to approval of a major subdivision after classification as such by the municipality. [Lakeland Parks, Inc. v. Washington Township, 147 N.J. Super. 528, 371 A.2d 762, 1977 N.J. Super. LEXIS 703 \(App.Div. 1977\)](#).

**Public Health & Welfare Law: Housing & Public Buildings: Accessibility, Construction & Design**

[N.J. Stat. Ann. § 40:55D-39\(b\)](#) and [N.J. Stat. Ann. § 40:55D-40\(b\)](#) reflect the legislature's intent to encourage economy in layout and design rather than adherence to rigid requirements; waivers which result in cost reduction should be granted by a planning board unless there are clear health and safety reasons to the contrary. [Urban League of Essex County v. Mahwah, 207 N.J. Super. 169, 504 A.2d 66, 1984 N.J. Super. LEXIS 1350 \(Law Div. 1984\)](#).

**Public Health & Welfare Law: Housing & Public Buildings: Low Income Housing**

[N.J. Stat. Ann. § 40:55D-39\(b\)](#) and [N.J. Stat. Ann. § 40:55D-40\(b\)](#) reflect the legislature's intent to encourage economy in layout and design rather than adherence to rigid requirements; waivers which result in cost reduction should be granted by a planning board unless there are clear health and safety reasons to the contrary. [Urban League of Essex County v. Mahwah, 207 N.J. Super. 169, 504 A.2d 66, 1984 N.J. Super. LEXIS 1350 \(Law Div. 1984\)](#).

**Real Property Law: Zoning & Land Use: General Overview**

Township's planning board's approval of a church's site plan for a day care center was not arbitrary, capricious and unreasonable and properly considered traffic problems under [N.J. Stat. Ann. §§ 40:55D-38, 40:55D-39, and 40:55D-41](#) because the board's determination was soundly grounded on the evidence adduced during the site plan hearing; because notably, no expert testimony was presented on the issue of traffic; because the board consulted its own planners with regard to the potential impact on traffic; because the township's engineers and traffic consultants reviewed the traffic studies and trip counts, and assessed the safety of the entranceway to the church facility; because the board considered alternative sites for the driveway, as well as traffic signals and other devices to regulate traffic flow; because the board determined that a proposed entranceway would provide safe and efficient vehicular circulation; and because the board imposed a condition to the site plan approval requiring the church to contribute to the cost of signalization of the intersection of its property if the same is required in the future, as well as hiring traffic control personnel, if necessary. [Shim v. Washington Twp. Planning Bd., 298 N.J. Super. 395, 689 A.2d 804, 1997 N.J. Super. LEXIS 109 \(App.Div. 1997\)](#).

Where a township board of adjustments granted use variances for a planned unit development without participation of the planning board and without criteria established by ordinance, such grant was completely contrary [N.J. Stat. Ann. § 40:55D-1](#) et seq., Municipal Land Use Law; it was improper for the township board of adjustment to grant land developer's application even though township had no ordinance that provided for planned unit developments. [Schride Associates v. Wall, 190 N.J. Super. 589, 464 A.2d 1189, 1983 N.J. Super. LEXIS 921 \(App.Div. 1983\)](#).

Zoning amendments that, in providing for additional housing unit capacities, failed to provide the same proportions of low- and moderate-income housing as were present in the population were legally invalid for failing to provide a

## § 40:55D-39. Discretionary contents of ordinance.

fair share of housing needs to low- and moderate-income populations; the region's needs would not be met unless the zoning amendments approximated in additional housing unit capacity the same proportion of low- and moderate-income housing as was present in the population. [Oakwood at Madison, Inc. v. Madison, 128 N.J. Super. 438, 320 A.2d 223, 1974 N.J. Super. LEXIS 686 \(Law Div. 1974\)](#), modified, [72 N.J. 481, 371 A.2d 1192, 1977 N.J. LEXIS 252 \(N.J. 1977\)](#).

**Real Property Law: Zoning & Land Use: Comprehensive Plans**

Generally, a planning board concerns itself with on-site conditions. [W.L. Goodfellows & Co. of Turnersville v. Wash. Twp. Planning Bd., 345 N.J. Super. 109, 783 A.2d 750, 2001 N.J. Super. LEXIS 416 \(App.Div. 2001\)](#).

Where a township board of adjustments granted use variances for a planned unit development without participation of the planning board and without criteria established by ordinance, such grant was completely contrary [N.J. Stat. Ann. § 40:55D-1](#) et seq., Municipal Land Use Law; it was improper for the township board of adjustment to grant land developer's application even though township had no ordinance that provided for planned unit developments. [Schride Associates v. Wall, 190 N.J. Super. 589, 464 A.2d 1189, 1983 N.J. Super. LEXIS 921 \(App.Div. 1983\)](#).

Under former N.J. Stat. Ann. § 40:55-1.20 (see now [N.J. Stat. Ann. § 40:55D-39](#)), the permissible conditions for the approval of a subdivision are only applicable to approval of a major subdivision after classification as such by the municipality. [Lakeland Parks, Inc. v. Washington Township, 147 N.J. Super. 528, 371 A.2d 762, 1977 N.J. Super. LEXIS 703 \(App.Div. 1977\)](#).

Municipal ordinance tentatively approving a planned unit development did not comply with the Municipal Planned Unit Development Act, former N.J. Stat. Ann. § [40:55-54](#) et seq. (now [N.J. Stat. Ann. § 40:55D-39](#)), which did not permit the construction of nonresidential uses beyond those intended to serve the residents of the planned community, which required that an ordinance contain provisions by which the amount and location of any common open space would be determined, and which required that a plan provide for specific districts. [Rudderow v. Township Committee of Mt. Laurel, 114 N.J. Super. 104, 274 A.2d 854, 1971 N.J. Super. LEXIS 595 \(Law Div. 1971\)](#), rev'd, [121 N.J. Super. 409, 297 A.2d 583, 1972 N.J. Super. LEXIS 373 \(App.Div. 1972\)](#).

**Real Property Law: Zoning & Land Use: Judicial Review**

Process by which a planning board determines whether a general development plan will not have an unreasonably adverse impact on an area in which it is proposed to be established is intended to be general in nature and to provide the increased flexibility desirable to promote mutual agreement between a developer and planning board regarding the basic scheme of a planned development; in applying that standard, a planning board's consideration should be from the standpoint of probable feasibility, with more detailed presentation deferred until subsequent applications for preliminary site plan and subdivision approvals are made. [Citizens United To Protect The Maurice River And Its Tributaries, Inc. v. City of Millville Planning Bd., 395 N.J. Super. 434, 929 A.2d 606, 2007 N.J. Super. LEXIS 284 \(App.Div. 2007\)](#).

City planning board's determination that a developer's general development plan (GDP), which included 950 detached age-restricted homes clustered on 239 acres, a golf course, a club house, and an undeveloped conservation area, will not have an unreasonably adverse impact upon the area was upheld on appeal as the planning board properly applied a general standard in assessing whether the GDP would have an unreasonably adverse impact and had before it sufficient evidence to support its determination. [Citizens United To Protect The Maurice River And Its Tributaries, Inc. v. City of Millville Planning Bd., 395 N.J. Super. 434, 929 A.2d 606, 2007 N.J. Super. LEXIS 284 \(App.Div. 2007\)](#).

**Real Property Law: Zoning & Land Use: Planned Unit Developments**

Process by which a planning board determines whether a general development plan will not have an unreasonably adverse impact on an area in which it is proposed to be established is intended to be general in nature and to provide the increased flexibility desirable to promote mutual agreement between a developer and planning board

## § 40:55D-39. Discretionary contents of ordinance.

regarding the basic scheme of a planned development; in applying that standard, a planning board's consideration should be from the standpoint of probable feasibility, with more detailed presentation deferred until subsequent applications for preliminary site plan and subdivision approvals are made. [Citizens United To Protect The Maurice River And Its Tributaries, Inc. v. City of Millville Planning Bd., 395 N.J. Super. 434, 929 A.2d 606, 2007 N.J. Super. LEXIS 284 \(App.Div. 2007\).](#)

City planning board's determination that a developer's general development plan (GDP), which included 950 detached age-restricted homes clustered on 239 acres, a golf course, a club house, and an undeveloped conservation area, will not have an unreasonably adverse impact upon the area was upheld on appeal as the planning board properly applied a general standard in assessing whether the GDP would have an unreasonably adverse impact and had before it sufficient evidence to support its determination. [Citizens United To Protect The Maurice River And Its Tributaries, Inc. v. City of Millville Planning Bd., 395 N.J. Super. 434, 929 A.2d 606, 2007 N.J. Super. LEXIS 284 \(App.Div. 2007\).](#)

## Research References & Practice Aids

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### Cross References:

Hearings., see [40:55D-10](#).

Notices of application, requirements., see [40:55D-12](#).

Minor subdivision, see [40:55D-47](#).

### Administrative Code:

N.J.A.C. 5:21-3.5 (2013), CHAPTER RESIDENTIAL SITE IMPROVEMENT STANDARDS, Special area standards.

### LAW REVIEWS & JOURNALS:

21 Seton Hall Legis. J. 11, PROPOSAL: HOUSING MADE EASY: NEW JERSEY'S UNIFORM SITE IMPROVEMENTS STANDARDS ACT OF 1993.

### NJ ICLE:

[Commercial Real Estate Transactions in New Jersey 5.1](#) Municipal Land Use Regulations

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## [N.J. Stat. § 40:55D-39.1](#)

\*\*\* Current through New Jersey 221st First Annual Session, L. 2024, c. 87 and J.R. 2 \*\*\*

**LexisNexis® New Jersey Annotated Statutes > Title 40. Municipalities and Counties (Subts. 1 — 13) > Subtitle 3. Municipality Provisions (Chs. 42 — 69) > Chapter 55D. Municipal Land Use Law (Arts. 1 — 17) > Article 6. Subdivisions (§§ 40:55D-37 — 40:55D-59)**

### § 40:55D-39.1. Provision for permanent protection of certain land.

- a. An ordinance authorizing the planning board to approve planned developments, subdivisions, or site plans that allow for contiguous cluster or noncontiguous cluster shall provide for the permanent protection of land proposed to be preserved as public open space or common open space, as a historic site, or as agricultural land in accordance with the provisions set forth in this section.
- b. Land identified for preservation as public open space shall be conveyed or dedicated by conservation restriction. A municipality may use a conservation restriction template prepared by the Department of Environmental Protection for this purpose. The Department of Environmental Protection shall make available to municipalities a conservation restriction template.
- c.
  - (1) Land identified for preservation as a historic site shall be conveyed or dedicated by historic preservation restriction. A municipality may use a historic preservation restriction template prepared by the New Jersey Historic Trust or obtain approval of the historic preservation restriction by the New Jersey Historic Trust. The New Jersey Historic Trust shall make available to municipalities a historic preservation restriction template.
  - (2) A municipality accepting a historic preservation restriction that has provided for and maintains an active historic preservation commission, consistent with sections 21 through 26 of P.L.1985, c.516 ([C.40:55D-107](#) et seq.), may authorize the commission to establish a mechanism for annual monitoring and enforcement of the historic preservation restriction consistent with The Secretary of the Interior's Standards for the Treatment of Historic Properties, Part 68 of title 36, Code of Federal Regulations [[36 C.F.R. § 68.1](#) et seq.].
  - (3) A municipality accepting a historic preservation restriction that has not provided for or does not maintain an active historic preservation commission, consistent with sections 21 through 26 of P.L.1985, c.516 ([C.40:55D-107](#) et seq.), or authorized the commission to establish a mechanism for annual monitoring and enforcement of the historic preservation restriction, may convey or authorize conveyance of the historic preservation restriction by municipal ordinance to a qualified public agency or non-profit preservation organization, as determined by the New Jersey Historic Trust, which has a commitment to administer, annually monitor, and enforce the terms of the historic preservation restriction consistent with The Secretary of the Interior's Standards for the Treatment of Historic Properties, Part 68 of title 36, Code of Federal Regulations.
- d.
  - (1) Land identified for preservation as agricultural land shall be conveyed or dedicated by agricultural restriction. A municipality shall use an agricultural restriction template prepared by the State Agriculture Development Committee or obtain approval of the agricultural restriction by the State Agriculture Development Committee. The State Agriculture Development Committee shall make available to municipalities an agricultural restriction template.

## § 40:55D-39.1. Provision for permanent protection of certain land.

- (2)** An agricultural restriction may contain provisions:
- (a)** to allow limited non-agricultural uses which the State Agriculture Development Committee finds compatible with agricultural use and production;
  - (b)** to allow future amendments to the area subject to the agricultural restriction in order to accommodate public improvements including but not limited to roadways, drainage facilities and other public infrastructure so long as the amendment results in only de minimis impact to the original area subject to the restriction;
  - (c)** to allow the inclusion of existing dwelling units or limited additional future housing opportunities that directly support the property's agricultural operations and are appropriate to the scale of the preserved farmland.
- (3)** The State Agriculture Development Committee shall grant or deny approval of a proposed agricultural restriction within 60 days of receipt of a request therefor. If the State Agriculture Development Committee fails to act within this period, the failure shall be deemed to be an approval of the agricultural restriction.
- (4)** Municipalities authorizing agricultural restrictions shall have an adopted "Right to Farm" ordinance consistent with the model Right to Farm ordinance adopted by the State Agriculture Development Committee pursuant to the "Right to Farm Act," P.L.1983, c.31 ([C.4:1C-1](#) et al.).
- (5)** Agricultural land subject to an agricultural restriction approved by the State Agriculture Development Committee shall be provided the right to farm benefits under the "Right to Farm Act," P.L.1983, c.31 ([C.4:1C-1](#) et al.) and other benefits that may be provided pursuant to the "Agriculture Retention and Development Act," P.L.1983, c.32 ([C.4:1C-11](#) et seq.).
- e.** Any development restriction shall be recorded in the office of the county recording officer prior to the start of construction.
- f.** Any development restriction shall be expressly enforceable by the municipality and the State of New Jersey and, if authorized by municipal ordinance, another public agency or non-profit conservation organization.
- g.** An ordinance authorizing the planning board to approve planned developments, subdivisions or site plans that allows for contiguous cluster or noncontiguous cluster may provide for:
- (1)** the assignment of bonus density or intensity of use, including, but not limited to, increased units, floor area ratio, height, or impervious cover in order to realize the preservation of agricultural lands, open space, and historic sites or otherwise advance the purposes of P.L.1975, c.291 ([C.40:55D-1](#) et seq.);
  - (2)** the conveyance of land that is subject to a preservation restriction to a separate person or entity.
- h.** An ordinance authorizing the planning board to approve planned developments, subdivisions or site plans that allows for contiguous cluster may authorize the owners of contiguous properties to jointly submit an application for development.
- i.** An ordinance authorizing the planning board to approve planned developments, subdivisions or site plans that allows for noncontiguous cluster:
- (1)** shall not authorize use of the development transfer provisions set forth in the "State Transfer of Development Rights Act," [P.L.2004, c.2](#) ([C.40:55D-137](#) et seq.);
  - (2)** may provide that areas to be developed are developed in phases, provided that the terms and conditions intended to protect the interests of the public and of the residents, occupants and owners of the proposed development in the total completion of the development are adequate;
  - (3)** shall provide that any noncontiguous cluster program is optional.

## History

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L. [2013, c. 106](#), § 9, eff. Aug. 7, 2013.

Annotations

## Notes

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### Publisher's Note:

The bracketed material was added by the Publisher to provide a reference.

## Research References & Practice Aids

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### Cross References:

Discretionary contents of ordinance., see [40:55D-39](#).

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End of Document

## [N.J. Stat. § 40:55D-40](#)

\*\*\* Current through New Jersey 221st First Annual Session, L. 2024, c. 87 and J.R. 2 \*\*\*

**LexisNexis® New Jersey Annotated Statutes > Title 40. Municipalities and Counties (Subts. 1 — 13) > Subtitle 3. Municipality Provisions (Chs. 42 — 69) > Chapter 55D. Municipal Land Use Law (Arts. 1 — 17) > Article 6. Subdivisions (§§ 40:55D-37 — 40:55D-59)**

### **§ 40:55D-40. Discretionary contents of subdivision ordinance**

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An ordinance requiring subdivision approval by the planning board pursuant to this article may also include:

- a. Provisions for minor subdivision approval pursuant to section 35 of this act; and
- b. Standards permitting lot-size averaging and encouraging and promoting flexibility, economy and environmental soundness in layout and design in accordance with which the planning board may approve the varying, within a conventional subdivision, of lot areas and dimensions, and yards and setbacks otherwise required by municipal development regulations; provided that the authorized density on the parcel or set of contiguous parcels is not exceeded; provided that such standards shall be appropriate to the type of development permitted. An ordinance authorizing the planning board to approve subdivisions with varying lot areas may set forth limitations, or impose no limitation, upon the extent of variation in lot areas.

### **History**

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L. 1975, c. 291, § 29, eff. Aug. 1, 1976; amended [2013, c. 106](#), § 10, eff. Aug. 7, 2013.

Annotations

### **Notes**

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#### **Amendment Note:**

2013 amendment, by Chapter 106, in b., in the first sentence, inserted “permitting lot-size averaging and” and substituted “provided that the authorized density on the parcel or set of contiguous parcels is not exceeded” for “in such a way that the average lot areas and dimensions, yards and setbacks within the subdivision conform to the conventional norms of the municipal development regulations” and added the second sentence.

### **CASE NOTES**

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**Governments: Local Governments: Administrative Boards**

**Public Health & Welfare Law: Housing & Public Buildings: Accessibility, Construction & Design**

**Public Health & Welfare Law: Housing & Public Buildings: Low Income Housing**

## § 40:55D-40. Discretionary contents of subdivision ordinance

**Real Property Law: Subdivisions: General Overview****Real Property Law: Zoning & Land Use: General Overview****Real Property Law: Zoning & Land Use: Comprehensive Plans****Governments: Local Governments: Administrative Boards**

[N.J. Stat. Ann. § 40:55D-39\(b\)](#) and [N.J. Stat. Ann. § 40:55D-40\(b\)](#) reflect the legislature's intent to encourage economy in layout and design rather than adherence to rigid requirements; waivers which result in cost reduction should be granted by a planning board unless there are clear health and safety reasons to the contrary. [Urban League of Essex County v. Mahwah, 207 N.J. Super. 169, 504 A.2d 66, 1984 N.J. Super. LEXIS 1350 \(Law Div. 1984\)](#).

**Public Health & Welfare Law: Housing & Public Buildings: Accessibility, Construction & Design**

[N.J. Stat. Ann. § 40:55D-39\(b\)](#) and [N.J. Stat. Ann. § 40:55D-40\(b\)](#) reflect the legislature's intent to encourage economy in layout and design rather than adherence to rigid requirements; waivers which result in cost reduction should be granted by a planning board unless there are clear health and safety reasons to the contrary. [Urban League of Essex County v. Mahwah, 207 N.J. Super. 169, 504 A.2d 66, 1984 N.J. Super. LEXIS 1350 \(Law Div. 1984\)](#).

**Public Health & Welfare Law: Housing & Public Buildings: Low Income Housing**

[N.J. Stat. Ann. § 40:55D-39\(b\)](#) and [N.J. Stat. Ann. § 40:55D-40\(b\)](#) reflect the legislature's intent to encourage economy in layout and design rather than adherence to rigid requirements; waivers which result in cost reduction should be granted by a planning board unless there are clear health and safety reasons to the contrary. [Urban League of Essex County v. Mahwah, 207 N.J. Super. 169, 504 A.2d 66, 1984 N.J. Super. LEXIS 1350 \(Law Div. 1984\)](#).

**Real Property Law: Subdivisions: General Overview**

Owner of farmland tract subject to subdivision failed to effectively challenge, as forbidden, a fiscal zoning ordinance increasing minimum lot sizes more than threefold under a local ordinance. The preservation of a rural character was permissible purpose under [N.J. Stat. Ann. § 40:55D-2](#) and the court could not be concerned with improper motives allegedly expressed by individual committee members. The ordinance also met the requirements of [N.J. Stat. Ann. § 40:55D-40](#) because it contained sufficient standards promoting flexibility, economy, and environmental soundness. [Kirby v. Twp. Comm. of Bedminster, 341 N.J. Super. 276, 775 A.2d 209, 2000 N.J. Super. LEXIS 481 \(App.Div. 2000\)](#).

**Real Property Law: Zoning & Land Use: General Overview**

Owner of farmland tract subject to subdivision failed to effectively challenge, as forbidden, a fiscal zoning ordinance increasing minimum lot sizes more than threefold under a local ordinance. The preservation of a rural character was permissible purpose under [N.J. Stat. Ann. § 40:55D-2](#) and the court could not be concerned with improper motives allegedly expressed by individual committee members. The ordinance also met the requirements of [N.J. Stat. Ann. § 40:55D-40](#) because it contained sufficient standards promoting flexibility, economy, and environmental soundness. [Kirby v. Twp. Comm. of Bedminster, 341 N.J. Super. 276, 775 A.2d 209, 2000 N.J. Super. LEXIS 481 \(App.Div. 2000\)](#).

**Real Property Law: Zoning & Land Use: Comprehensive Plans**

Owner of farmland tract subject to subdivision failed to effectively challenge, as forbidden, a fiscal zoning ordinance increasing minimum lot sizes more than threefold under a local ordinance. The preservation of a rural

## § 40:55D-40. Discretionary contents of subdivision ordinance

character was permissible purpose under [N.J. Stat. Ann. § 40:55D-2](#) and the court could not be concerned with improper motives allegedly expressed by individual committee members. The ordinance also met the requirements of [N.J. Stat. Ann. § 40:55D-40](#) because it contained sufficient standards promoting flexibility, economy, and environmental soundness. [Kirby v. Twp. Comm. of Bedminster, 341 N.J. Super. 276, 775 A.2d 209, 2000 N.J. Super. LEXIS 481 \(App.Div. 2000\)](#).

## Research References & Practice Aids

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### Cross References:

Minor subdivision, see [40:55D-47](#).

### NJ ICLE:

[Commercial Real Estate Transactions in New Jersey 5.1](#) Municipal Land Use Regulations

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## **N.J. Stat. § 40:55D-40.1**

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**LexisNexis® New Jersey Annotated Statutes > Title 40. Municipalities and Counties (Subts. 1 — 13) > Subtitle 3. Municipality Provisions (Chs. 42 — 69) > Chapter 55D. Municipal Land Use Law (Arts. 1 — 17) > Article 6. Subdivisions (§§ 40:55D-37 — 40:55D-59)**

### **§ 40:55D-40.1. Definitions**

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As used in this act:

“Board” means the Site Improvement Advisory Board established by this act;

“Commissioner” means the Commissioner of Community Affairs;

“Department” means the Department of Community Affairs; and

“Site improvement” means any construction work on, or improvement in connection with, residential development, and shall be limited to, streets, roads, parking facilities, sidewalks, drainage structures, and utilities.

### **History**

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L. [1993, c. 32](#), § 1.

Annotations

### **CASE NOTES**

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**Constitutional Law: State Constitutional Operation**

**Environmental Law: Water Quality: General Overview**

**Governments: Public Improvements: General Overview**

**Real Property Law: Eminent Domain Proceedings: Valuation**

**Real Property Law: Subdivisions: Local Regulation**

**Real Property Law: Zoning & Land Use: General Overview**

**Real Property Law: Zoning & Land Use: Administrative Procedure**

**Real Property Law: Zoning & Land Use: State & Regional Planning**

**Constitutional Law: State Constitutional Operation**

## § 40:55D-40.1. Definitions

Standards adopted by the New Jersey Department of Community Affairs under the Residential Site Improvement Standards Act, [N.J. Stat. Ann. § 40:55D-40.1](#) to -40.7 were valid because the legislative intent and purposes of the statutes authorized the department to promulgate the challenged regulations; like the Residential Site Improvement Standards Act, which defined site improvements as streets, roads, parking facilities, sidewalks, drainage structures, and utilities, [N.J. Stat. Ann. § 40:55D-40.1](#), the Model Subdivision and Site Plan Ordinance identified streets and circulation, off-street parking, water supply, sanitary sewers, and storm water management as required improvements. [New Jersey State League of Municipalities v. Department of Community Affairs, 310 N.J. Super. 224, 708 A.2d 708, 1998 N.J. Super. LEXIS 111 \(App.Div. 1998\)](#), aff'd, [158 N.J. 211, 729 A.2d 21, 1999 N.J. LEXIS 544 \(N.J. 1999\)](#).

Standards adopted by the New Jersey Department of Community Affairs under the Residential Site Improvement Standards Act, [N.J. Stat. Ann. § 40:55D-40.1](#) to -40.7 were valid because the legislative intent and purposes of the statutes authorized the department to promulgate the challenged regulations; N.J. Const. art. IV, § 6, para. 2. vested the legislature with the authority to enact general laws under which municipalities could adopt zoning ordinances. [New Jersey State League of Municipalities v. Department of Community Affairs, 310 N.J. Super. 224, 708 A.2d 708, 1998 N.J. Super. LEXIS 111 \(App.Div. 1998\)](#), aff'd, [158 N.J. 211, 729 A.2d 21, 1999 N.J. LEXIS 544 \(N.J. 1999\)](#).

**Environmental Law: Water Quality: General Overview**

New Jersey Department of Environmental Protection's (DEP's) Phase II Stormwater Management Regulations, N.J. Admin. Code §§ 7:8-1.1 to -6.3, do not include any provision for DEP review to determine compliance. Therefore, unless a developer is required to obtain a permit under another DEP regulatory program, such as the New Jersey Freshwater Wetlands Protection Act, [N.J. Stat. Ann. §§ 13:9B-1](#) to -30, the determination of compliance with the Phase II Regulations must be made by the local planning board as part of its review of a land use application under the New Jersey Municipal Land Use Law, [N.J. Stat. Ann. §§ 40:55D-1](#) to -22, and the statewide rules that govern streets, water supply, sanitary sewer systems, and stormwater management, adopted pursuant to the New Jersey Residential Site Improvement Standards Act, [N.J. Stat. Ann. §§ 40:55D-40.1](#) to -40.7. [Save Hamilton Open Space v. Hamilton Tp. Planning Bd., 404 N.J. Super. 278, 961 A.2d 732, 2008 N.J. Super. LEXIS 258 \(App.Div. 2008\)](#).

**Governments: Public Improvements: General Overview**

Standards adopted by the New Jersey Department of Community Affairs under the Residential Site Improvement Standards Act, [N.J. Stat. Ann. § 40:55D-40.1](#) to -40.7 were valid because the legislative intent and purposes of the statutes authorized the department to promulgate the challenged regulations; like the Residential Site Improvement Standards Act, which defined site improvements as streets, roads, parking facilities, sidewalks, drainage structures, and utilities, [N.J. Stat. Ann. § 40:55D-40.1](#), the Model Subdivision and Site Plan Ordinance identified streets and circulation, off-street parking, water supply, sanitary sewers, and storm water management as required improvements. [New Jersey State League of Municipalities v. Department of Community Affairs, 310 N.J. Super. 224, 708 A.2d 708, 1998 N.J. Super. LEXIS 111 \(App.Div. 1998\)](#), aff'd, [158 N.J. 211, 729 A.2d 21, 1999 N.J. LEXIS 544 \(N.J. 1999\)](#).

Standards adopted by the New Jersey Department of Community Affairs under the Residential Site Improvement Standards Act, [N.J. Stat. Ann. § 40:55D-40.1](#) to -40.7 were valid because the legislative intent and purposes of the statutes authorized the department to promulgate the challenged regulations; N.J. Const. art. IV, § 6, para. 2. vested the legislature with the authority to enact general laws under which municipalities could adopt zoning ordinances. [New Jersey State League of Municipalities v. Department of Community Affairs, 310 N.J. Super. 224, 708 A.2d 708, 1998 N.J. Super. LEXIS 111 \(App.Div. 1998\)](#), aff'd, [158 N.J. 211, 729 A.2d 21, 1999 N.J. LEXIS 544 \(N.J. 1999\)](#).

**Real Property Law: Eminent Domain Proceedings: Valuation**

## § 40:55D-40.1. Definitions

Judgment in favor of the condemnees was reversed and a new trial on just compensation was ordered because it was error to allow their experts to offer trial testimony which was legally inadequate as the condemnees were required to show a reasonable probability the third municipality would have granted acceptance or a use variance, even if the driveway's design complied with the Residential Site Improvement Standards, as the third municipality's approval could not be assumed. [New Jersey Transit Corp. v. Franco, 447 N.J. Super. 361, 148 A.3d 424, 2016 N.J. Super. LEXIS 135 \(App.Div. 2016\)](#), certif. denied, 230 N.J. 504, 170 A.3d 301, 2017 N.J. LEXIS 692 (N.J. 2017).

**Real Property Law: Subdivisions: Local Regulation**

Judgment in favor of the condemnees was reversed and a new trial on just compensation was ordered because it was error to allow their experts to offer trial testimony which was legally inadequate as the condemnees were required to show a reasonable probability the third municipality would have granted acceptance or a use variance, even if the driveway's design complied with the Residential Site Improvement Standards, as the third municipality's approval could not be assumed. [New Jersey Transit Corp. v. Franco, 447 N.J. Super. 361, 148 A.3d 424, 2016 N.J. Super. LEXIS 135 \(App.Div. 2016\)](#), certif. denied, 230 N.J. 504, 170 A.3d 301, 2017 N.J. LEXIS 692 (N.J. 2017).

**Real Property Law: Zoning & Land Use: General Overview**

Standards adopted by the New Jersey Department of Community Affairs under the Residential Site Improvement Standards Act. [N.J. Stat. Ann. § 40:55D-40.1](#) to -40.7 were valid because the legislative intent and purposes of the statutes authorized the department to promulgate the challenged regulations; like the Residential Site Improvement Standards Act, which defined site improvements as streets, roads, parking facilities, sidewalks, drainage structures, and utilities, [N.J. Stat. Ann. § 40:55D-40.1](#), the Model Subdivision and Site Plan Ordinance identified streets and circulation, off-street parking, water supply, sanitary sewers, and storm water management as required improvements. [New Jersey State League of Municipalities v. Department of Community Affairs, 310 N.J. Super. 224, 708 A.2d 708, 1998 N.J. Super. LEXIS 111 \(App.Div. 1998\)](#), aff'd, [158 N.J. 211, 729 A.2d 21, 1999 N.J. LEXIS 544 \(N.J. 1999\)](#).

Standards adopted by the New Jersey Department of Community Affairs under the Residential Site Improvement Standards Act. [N.J. Stat. Ann. § 40:55D-40.1](#) to -40.7 were valid because the legislative intent and purposes of the statutes authorized the department to promulgate the challenged regulations; N.J. Const. art. IV, § 6, para. 2. vested the legislature with the authority to enact general laws under which municipalities could adopt zoning ordinances. [New Jersey State League of Municipalities v. Department of Community Affairs, 310 N.J. Super. 224, 708 A.2d 708, 1998 N.J. Super. LEXIS 111 \(App.Div. 1998\)](#), aff'd, [158 N.J. 211, 729 A.2d 21, 1999 N.J. LEXIS 544 \(N.J. 1999\)](#).

**Real Property Law: Zoning & Land Use: Administrative Procedure**

New Jersey Department of Environmental Protection's (DEP's) Phase II Stormwater Management Regulations, N.J. Admin. Code §§ 7:8-1.1 to -6.3, do not include any provision for DEP review to determine compliance. Therefore, unless a developer is required to obtain a permit under another DEP regulatory program, such as the New Jersey Freshwater Wetlands Protection Act, [N.J. Stat. Ann. §§ 13:9B-1](#) to -30, the determination of compliance with the Phase II Regulations must be made by the local planning board as part of its review of a land use application under the New Jersey Municipal Land Use Law, [N.J. Stat. Ann. §§ 40:55D-1](#) to -22, and the statewide rules that govern streets, water supply, sanitary sewer systems, and stormwater management, adopted pursuant to the New Jersey Residential Site Improvement Standards Act, [N.J. Stat. Ann. §§ 40:55D-40.1](#) to -40.7. [Save Hamilton Open Space v. Hamilton Tp. Planning Bd., 404 N.J. Super. 278, 961 A.2d 732, 2008 N.J. Super. LEXIS 258 \(App.Div. 2008\)](#).

**Real Property Law: Zoning & Land Use: State & Regional Planning**

In a case challenging the validity of regulations promulgated by the Department of Community Affairs pursuant to the Residential Site Improvement Standards Act, [N.J. Stat. Ann. §§ 40:55D-40.1](#) to [40:55D-40.7](#), the Supreme Court of New Jersey held that the regulations were facially valid and did not impermissibly limit the zoning power of

## § 40:55D-40.1. Definitions

New Jersey's municipalities; moreover, [N.J. Stat. Ann. § 40:55D-40.6](#) could not be read to mean that uniform standards designed to reduce housing costs did not supercede contrary requirements in municipal ordinances. [New Jersey State League of Municipalities v. Department of Community Affairs, 158 N.J. 211, 729 A.2d 21, 1999 N.J. LEXIS 544 \(N.J. 1999\)](#).

## Research References & Practice Aids

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### Cross References:

Modification of site improvement standards for residential development, see [13:20-24](#).

Definitions relative to affordable housing, see [45:22A-46.4](#).

Municipal plan for flood control facilities, see [58:16A-68](#).

### Administrative Code:

N.J.A.C. 5:21-1.2 (2013), CHAPTER RESIDENTIAL SITE IMPROVEMENT STANDARDS, Authority.

N.J.A.C. 5:93-10.2 (2013), CHAPTER SUBSTANTIVE RULES OF THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING FOR THE PERIOD BEGINNING JUNE 6, 1994, Standards.

### LAW REVIEWS & JOURNALS:

21 Seton Hall Legis. J. 11, PROPOSAL: HOUSING MADE EASY: NEW JERSEY'S UNIFORM SITE IMPROVEMENTS STANDARDS ACT OF 1993.

### NJ ICLE:

[Commercial Real Estate Transactions in New Jersey 5.1](#) Municipal Land Use Regulations

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## [N.J. Stat. § 40:55D-40.2](#)

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### **§ 40:55D-40.2. Findings, declarations**

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The Legislature hereby finds and declares that:

- a. The multiplicity of standards for subdivisions and site improvements that currently exists in this State increases the costs of housing without commensurate gains in the protection of the public health and safety;
- b. It is in the public interest to avoid unnecessary cost in the construction process and uniform site improvement standards that are both sound and cost effective will advance this goal;
- c. Adoption of uniform site improvement standards will satisfy the need to ensure predictability;
- d. The public interest is best served by having development review based, to the greatest extent possible, upon sound, objective site improvement standards rather than upon discretionary design standards;
- e. The goal of streamlining the development approval process by improving the efficiency of the application process is best served by the establishment of a uniform set of technical site improvement standards for land development which represents a consensus of informed and interested parties and which adequately addresses their concerns;
- f. In order to provide the widest possible range of design freedom and promote diversity, technical requirements should be based upon uniform site improvement standards; and
- g. The policymaking aspects of development review are best separated from the making of technical determinations.

### **History**

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L. [1993, c. 32](#), § 2.

Annotations

### **Notes to Decisions**

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**Real Property Law: Eminent Domain Proceedings: Valuation**

**Real Property Law: Subdivisions: Local Regulation**

**Real Property Law: Eminent Domain Proceedings: Valuation**

## § 40:55D-40.2. Findings, declarations

Judgment in favor of the condemnees was reversed and a new trial on just compensation was ordered because it was error to allow their experts to offer trial testimony which was legally inadequate as the condemnees were required to show a reasonable probability the third municipality would have granted acceptance or a use variance, even if the driveway's design complied with the Residential Site Improvement Standards, as the third municipality's approval could not be assumed. [New Jersey Transit Corp. v. Franco, 447 N.J. Super. 361, 148 A.3d 424, 2016 N.J. Super. LEXIS 135 \(App.Div. 2016\)](#), certif. denied, 230 N.J. 504, 170 A.3d 301, 2017 N.J. LEXIS 692 (N.J. 2017).

**Real Property Law: Subdivisions: Local Regulation**

Judgment in favor of the condemnees was reversed and a new trial on just compensation was ordered because it was error to allow their experts to offer trial testimony which was legally inadequate as the condemnees were required to show a reasonable probability the third municipality would have granted acceptance or a use variance, even if the driveway's design complied with the Residential Site Improvement Standards, as the third municipality's approval could not be assumed. [New Jersey Transit Corp. v. Franco, 447 N.J. Super. 361, 148 A.3d 424, 2016 N.J. Super. LEXIS 135 \(App.Div. 2016\)](#), certif. denied, 230 N.J. 504, 170 A.3d 301, 2017 N.J. LEXIS 692 (N.J. 2017).

## [N.J. Stat. § 40:55D-40.3](#)

\*\*\* Current through New Jersey 221st First Annual Session, L. 2024, c. 87 and J.R. 2 \*\*\*

**LexisNexis® New Jersey Annotated Statutes > Title 40. Municipalities and Counties (Subts. 1 — 13) > Subtitle 3. Municipality Provisions (Chs. 42 — 69) > Chapter 55D. Municipal Land Use Law (Arts. 1 — 17) > Article 6. Subdivisions (§§ 40:55D-37 — 40:55D-59)**

### § 40:55D-40.3. Site Improvement Advisory Board

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a. There is established in, but not of, the department a Site Improvement Advisory Board, to devise statewide site improvement standards pursuant to section 4 of [P.L.1993, c.32 \(C.40:55D-40.4\)](#). The board shall consist of the commissioner or the commissioner's designee, who shall be a non-voting member of the board, the Director of the Division of Codes and Standards in the Department of Community Affairs, who shall be a voting member of the board, the Executive Director of the New Jersey Housing and Mortgage Finance Agency, or the executive director's designee, who shall be a voting member of the board, and nine other voting members, to be appointed by the commissioner. The other members shall include two professional planners, one of whom serves as a planner for a governmental entity or whose professional experience is predominantly in the public sector and who has worked in the public sector for at least the previous five years and the other of whom serves as a planner in private practice and has particular expertise in private residential development and has been involved in private sector planning for at least the previous five years, and one representative each from:

- (1) The New Jersey Society of Professional Engineers;
- (2) The New Jersey Society of Municipal Engineers;
- (3) The New Jersey Association of County Engineers;
- (4) The New Jersey Federation of Planning Officials;
- (5) (Deleted by amendment, [P.L.2024, c.2](#));
- (6) The New Jersey Builders' Association;
- (7) The New Jersey Institute of Technology;
- (8) The New Jersey State League of Municipalities.

b. Among the members to be appointed by the commissioner who are first appointed, four shall be appointed for terms of two years each, four shall be appointed for terms of three years each, and two shall be appointed for terms of four years each. Thereafter, each appointee shall serve for a term of four years. Vacancies in the membership shall be filled in the same manner as original appointments are made, for the unexpired term. The board shall select a chair from among its members. Members may be removed by the commissioner for cause.

c. Board members shall serve without compensation, but may be entitled to reimbursement, from moneys appropriated or otherwise made available for the purposes of this act, for expenses incurred in the performance of their duties.

### **History**

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## § 40:55D-40.3. Site Improvement Advisory Board

L. [1993, c. 32](#), § 3; amended by [2024, c. 2](#), § 19, effective March 20, 2024.

Annotations

## Notes

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### Effective Dates

Section 39 of L. [2024, c. 2](#) provides: “This act shall take effect immediately and shall apply to each new round of affordable housing obligations that begins following enactment.” Chapter 2, L. 2024, was approved on March 20, 2024.

## Research References & Practice Aids

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### Cross References:

Modification of site improvement standards for residential development, see [13:20-24](#).

### LAW REVIEWS & JOURNALS:

21 Seton Hall Legis. J. 11, PROPOSAL: HOUSING MADE EASY: NEW JERSEY'S UNIFORM SITE IMPROVEMENTS STANDARDS ACT OF 1993.

### NJ ICLE:

[Commercial Real Estate Transactions in New Jersey 5.1](#) Municipal Land Use Regulations

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## [N.J. Stat. § 40:55D-40.4](#)

\*\*\* Current through New Jersey 221st First Annual Session, L. 2024, c. 87 and J.R. 2 \*\*\*

**LexisNexis® New Jersey Annotated Statutes > Title 40. Municipalities and Counties (Subts. 1 — 13) > Subtitle 3. Municipality Provisions (Chs. 42 — 69) > Chapter 55D. Municipal Land Use Law (Arts. 1 — 17) > Article 6. Subdivisions (§§ 40:55D-37 — 40:55D-59)**

### **§ 40:55D-40.4. Submission of recommendations for Statewide site improvement standards for residential development**

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a. The board shall, no later than 180 days following the appointment of its full membership, prepare and submit to the commissioner recommendations for Statewide site improvement standards for residential development. The site improvement standards shall implement the recommendations with respect to streets, off-street parking, water supply, sanitary sewers and storm water management of Article Six (with the exhibits appended thereto) of the January 1987 “Model Subdivision and Site Plan Ordinance” prepared for the department by The Center for Urban Policy Research at Rutgers, The State University, except to the extent that the recommendations set forth in the “Model Subdivision and Site Plan Ordinance” are inconsistent with the requirements of other law; provided, however, that, in the case of inconsistency between the “Model Subdivision and Site Plan Ordinance” and the “Municipal Land Use Law,” P.L.1975, c.291 ([C.40:55D-1](#) et seq.), the site improvement standards recommended by the board shall conform to the provisions of the “Model Subdivision and Site Plan Ordinance;” and provided, further, that the board may in developing its recommendations, replace or modify any of the specific standards set forth in the aforesaid model ordinance in light of any recommended site improvement standards promulgated under similarly authoritative auspices of any academic or professional institution or organization.

In addition to those recommended standards, the board shall develop, and shall submit with recommendation to the commissioner, a model application form for use throughout the State.

At the time the board submits its recommendations for Statewide site improvement standards and a model Statewide application form, the board shall submit to the commissioner, the Governor and the Legislature any recommendations it may deem necessary, in view of the recommended site improvement standards and the model statewide application form, for changes in the “Municipal Land Use Law,” P.L.1975, c.291 ([C.40:55D-1](#) et seq.).

b. The commissioner shall review the recommendations submitted by the board and, following his review, shall establish, by regulation adopted pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 ([C.52:14B-1](#) et seq.), a set of Statewide site improvement standards to be followed by municipalities in granting development approval pursuant to P.L.1975, c.291 ([C.40:55D-1](#) et seq.) and a standard application form that shall be used throughout the State. The commissioner shall promulgate the recommendations of the board with regard to Statewide site improvement standards without making a change in any recommended standard unless, in the commissioner’s judgment, a standard would: (1) place an unfair economic burden on some municipalities or developers relative to others; or (2) result in a danger to the public health or safety. The commissioner may veto any site improvement standard on the abovementioned grounds; however, any veto of the commissioner may be overridden by a two-thirds vote of the board. The regulations shall be adopted within one year of their submission by the board to the commissioner.

c. A municipality or developer may seek a waiver of any site improvement standard adopted by the board in connection with a specific development if, in the judgment of the municipal engineer or the developer, to

§ 40:55D-40.4. Submission of recommendations for Statewide site improvement standards for residential development

adhere to the standard would jeopardize the public health and safety. Any application for a waiver shall be submitted in writing to the commissioner, who shall direct the application to a technical subcommittee, as described below, if the commissioner deems the application to be justified according to the standards set forth in this subsection. The technical subcommittee shall consist of those representatives set forth in paragraphs (1), (2) and (6) of subsection a. of section 3 of this act appointed by the commissioner to serve on the Site Improvement Advisory Board. Any decision of the technical subcommittee shall be adopted by resolution explaining the subcommittee's rationale for granting the waiver. The subcommittee shall render its decision within 30 days of the commissioner's determination that the application is justified. Any decision of the technical subcommittee may be appealed to the entire board; however, the board shall render any final decision of an appeal within 10 days of the hearing on the appeal and the decision of the full board shall be final. The waiver process shall not extend the time guidelines which constrain development applications which are set forth in the "Municipal Land Use Law," P.L.1975, c.291 ([C.40:55D-1](#) et seq.).

d. The board shall annually review the regulations adopted pursuant to subsection b. of this section, and shall recommend to the commissioner any changes in those regulations which the board deems necessary based on recommended site improvement standards promulgated under the authoritative auspices of any academic or professional institution or organization. Any changes made in the regulations pursuant to this subsection shall be made according to the same procedure and shall be subject to the same waiver provisions as those set forth in subsections a., b. and c. of this section.

## History

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L. [1993, c. 32](#), § 4.

Annotations

## CASE NOTES

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### Real Property Law: Zoning & Land Use

Although the literal language of [N.J. Stat. Ann. § 40:55D-40.4\(b\)](#) authorizes the Commissioner of the Department of Community Affairs to veto any site improvement standard and does not explicitly authorize the Commissioner to change or modify standards proposed by the Advisory Board, the statute's mandate that the Commissioner promulgate the standards without changes or modifications unless danger to public safety would result could be interpreted as authorizing the Commissioner to change the proposed standards if she determined that there was a concern for public safety; the Commissioner thus had the authority to add a regulation requiring sidewalks in certain residential developments located near schools or recreational facilities. [New Jersey State League of Municipalities v. Department of Community Affairs, 158 N.J. 211, 729 A.2d 21, 1999 N.J. LEXIS 544 \(N.J. 1999\)](#).

## Research References & Practice Aids

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### Administrative Code:

[N.J.A.C. 5:21](#) (2013), CHAPTER RESIDENTIAL SITE IMPROVEMENT STANDARDS, 5, Chapter 21 — Chapter Notes.

N.J.A.C. 5:21-3.2 (2013), CHAPTER RESIDENTIAL SITE IMPROVEMENT STANDARDS, Waiver request.

N.J.A.C. 5:21-3.3 (2013), CHAPTER RESIDENTIAL SITE IMPROVEMENT STANDARDS, Waiver review.

§ 40:55D-40.4. Submission of recommendations for Statewide site improvement standards for residential development

N.J.A.C. 5:21-3.5 (2013), CHAPTER RESIDENTIAL SITE IMPROVEMENT STANDARDS, Special area standards.

**LAW REVIEWS & JOURNALS:**

21 Seton Hall Legis. J. 11, PROPOSAL: HOUSING MADE EASY: NEW JERSEY'S UNIFORM SITE IMPROVEMENTS STANDARDS ACT OF 1993.

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[Commercial Real Estate Transactions in New Jersey 5.1](#) Municipal Land Use Regulations

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## [N.J. Stat. § 40:55D-40.5](#)

\*\*\* Current through New Jersey 221st First Annual Session, L. 2024, c. 87 and J.R. 2 \*\*\*

**LexisNexis® New Jersey Annotated Statutes > Title 40. Municipalities and Counties (Subts. 1 — 13) > Subtitle 3. Municipality Provisions (Chs. 42 — 69) > Chapter 55D. Municipal Land Use Law (Arts. 1 — 17) > Article 6. Subdivisions (§§ 40:55D-37 — 40:55D-59)**

### § 40:55D-40.5. Supersedure of site improvement standards

Notwithstanding any provision to the contrary of the “Municipal Land Use Law,” P.L. 1975, c.291 ([C.40:55D-1](#) et seq.), the standards set forth in the regulations adopted pursuant to subsection b. of section 4 of this act shall supersede any site improvement standards incorporated within the development ordinances of any municipality, as provided hereunder. The regulations adopted by the commissioner pursuant to subsection b. of section 4 of this act and any subsequent amendments thereto shall take effect 180 days following the adoption of those regulations and any municipal ordinances in effect on that date shall be deemed to have been repealed and have no further force or effect; provided, however, that the development ordinances of any municipality shall continue to govern any project which has received preliminary approval on or before the effective date of any site improvement standards or amendments adopted thereto.

### History

L. [1993, c. 32](#), § 5.

Annotations

### Notes to Decisions

**Real Property Law: Eminent Domain Proceedings: Valuation**

**Real Property Law: Subdivisions: Local Regulation**

**Real Property Law: Eminent Domain Proceedings: Valuation**

Judgment in favor of the condemnees was reversed and a new trial on just compensation was ordered because it was error to allow their experts to offer trial testimony which was legally inadequate as the condemnees were required to show a reasonable probability the third municipality would have granted acceptance or a use variance, even if the driveway's design complied with the Residential Site Improvement Standards, as the third municipality's approval could not be assumed. [New Jersey Transit Corp. v. Franco, 447 N.J. Super. 361, 148 A.3d 424, 2016 N.J. Super. LEXIS 135 \(App.Div. 2016\)](#), certif. denied, 230 N.J. 504, 170 A.3d 301, 2017 N.J. LEXIS 692 (N.J. 2017).

**Real Property Law: Subdivisions: Local Regulation**

Judgment in favor of the condemnees was reversed and a new trial on just compensation was ordered because it was error to allow their experts to offer trial testimony which was legally inadequate as the condemnees were

## § 40:55D-40.5. Supersedure of site improvement standards

required to show a reasonable probability the third municipality would have granted acceptance or a use variance, even if the driveway's design complied with the Residential Site Improvement Standards, as the third municipality's approval could not be assumed. [New Jersey Transit Corp. v. Franco, 447 N.J. Super. 361, 148 A.3d 424, 2016 N.J. Super. LEXIS 135 \(App.Div. 2016\)](#), certif. denied, 230 N.J. 504, 170 A.3d 301, 2017 N.J. LEXIS 692 (N.J. 2017).

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## [N.J. Stat. § 40:55D-40.6](#)

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### **§ 40:55D-40.6. Municipal zoning power not limited**

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Nothing contained in this act shall in any way limit the zoning power of any municipality.

#### **History**

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L. [1993, c. 32](#), § 6.

Annotations

#### **CASE NOTES**

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##### **Real Property Law: Zoning & Land Use: General Overview**

##### **Real Property Law: Zoning & Land Use: State & Regional Planning**

##### **Real Property Law: Zoning & Land Use: General Overview**

New Jersey Department of Community Affairs did not act outside its delegated authority when it promulgated regulations for residential site improvement standards because under the Residential Site Improvement Standards Act (RSISA), the Department of Community Affairs had the authority to promulgate the regulations despite the Legislature's inclusion of the RSISA, [N.J. Stat. Ann. § 40:55D-40.6](#). [New Jersey State League of Municipalities v. Department of Community Affairs](#), 310 N.J. Super. 224, 708 A.2d 708, 1998 N.J. Super. LEXIS 111 (App.Div. 1998), aff'd, 158 N.J. 211, 729 A.2d 21, 1999 N.J. LEXIS 544 (N.J. 1999).

##### **Real Property Law: Zoning & Land Use: State & Regional Planning**

In a case challenging the validity of regulations promulgated by the Department of Community Affairs pursuant to the Residential Site Improvement Standards Act, [N.J. Stat. Ann. §§ 40:55D-40.1 to 40:55D-40.7](#), the Supreme Court of New Jersey held that the regulations were facially valid and did not impermissibly limit the zoning power of New Jersey's municipalities; moreover, [N.J. Stat. Ann. § 40:55D-40.6](#) could not be read to mean that uniform standards designed to reduce housing costs did not supercede contrary requirements in municipal ordinances. [New Jersey State League of Municipalities v. Department of Community Affairs](#), 158 N.J. 211, 729 A.2d 21, 1999 N.J. LEXIS 544 (N.J. 1999).



§ 40:55D-40.6. Municipal zoning power not limited

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## [N.J. Stat. § 40:55D-40.7](#)

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### **§ 40:55D-40.7. Construction of act**

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- a. Nothing in this act shall be construed to modify the provisions of the “Pinelands Protection Act,” P.L.1979, c.111 ([C.13:18A-1](#) et seq.) or any regulations promulgated pursuant thereto and section 502 of the “National Parks and Recreation Act of 1978” ([Pub.L 95-625](#)).
- b. Nothing in this act shall be construed to prohibit, preempt or in any way affect the exercise of any authority by the State or any county government with respect to site improvements conferred by any other State law or regulation promulgated thereunder.

### **History**

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L. [1993, c. 32](#), § 7.

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## [N.J. Stat. § 40:55D-41](#)

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### **§ 40:55D-41. Contents of site plan ordinance**

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An ordinance requiring site plan review and approval pursuant to this article shall include and shall be limited to, except as provided in sections 29 and 29.1 of this act standards and requirements relating to:

- a. Preservation of existing natural resources on the site;
- b. Safe and efficient vehicular and pedestrian circulation, parking and loading;
- c. Screening, landscaping and location of structures;
- d. Exterior lighting needed for safety reasons in addition to any requirements for street lighting;
- e. Conservation of energy and use of renewable energy sources; and
- f. Recycling of designated recyclable materials.

### **History**

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L. 1975, c. 291, § 29.3; amended by L. 1980, c. 146, § 4; 1987, c. 102, § 28.

Annotations

### **Notes**

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#### **Editor's Notes**

Site plan approval required, any person who undertakes the closure of a legacy landfill, or the owner or operator of a closed sanitary landfill facility, who accepts for any reason, solid waste, recyclable material, contaminated soil, cover material, wastewater treatment residual material, dredge material, construction debris, or any other waste or material, see [13:1E-125.3](#).

### **CASE NOTES**

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**Environmental Law: Zoning & Land Use: Conditional Use Permits & Variances**

**Real Property Law: Zoning & Land Use: General Overview**

**Real Property Law: Zoning & Land Use: Comprehensive Plans**

## Real Property Law: Zoning & Land Use: State & Regional Planning

### Environmental Law: Zoning & Land Use: Conditional Use Permits & Variances

Board of adjustment's denial of an owner's site plan was arbitrary, capricious, and unreasonable because the owner was entitled to a conditional-use variance, and, therefore, its facility was to be deemed a permissible use subject to the traditional site plan review standard rather than the reaching review undertaken by the board. [Meridian Quality Care, Inc. v. Bd. of Adjustment, 355 N.J. Super. 328, 810 A.2d 571, 2002 N.J. Super. LEXIS 459 \(App.Div. 2002\).](#)

### Real Property Law: Zoning & Land Use: General Overview

Township's planning board's approval of a church's site plan for a day care center was not arbitrary, capricious and unreasonable and properly considered traffic problems under [N.J. Stat. Ann. §§ 40:55D-38, 40:55D-39, and 40:55D-41](#) because the board's determination was soundly grounded on the evidence adduced during the site plan hearing; because notably, no expert testimony was presented on the issue of traffic; because the board consulted its own planners with regard to the potential impact on traffic; because the township's engineers and traffic consultants reviewed the traffic studies and trip counts, and assessed the safety of the entranceway to the church facility; because the board considered alternative sites for the driveway, as well as traffic signals and other devices to regulate traffic flow; because the board determined that a proposed entranceway would provide safe and efficient vehicular circulation; and because the board imposed a condition to the site plan approval requiring the church to contribute to the cost of signalization of the intersection of its property if the same is required in the future, as well as hiring traffic control personnel, if necessary. [Shim v. Washington Twp. Planning Bd., 298 N.J. Super. 395, 689 A.2d 804, 1997 N.J. Super. LEXIS 109 \(App.Div. 1997\).](#)

### Real Property Law: Zoning & Land Use: Comprehensive Plans

Generally, a planning board concerns itself with on-site conditions. [W.L. Goodfellows & Co. of Turnersville v. Wash. Twp. Planning Bd., 345 N.J. Super. 109, 783 A.2d 750, 2001 N.J. Super. LEXIS 416 \(App.Div. 2001\).](#)

Under [N.J. Stat. Ann. § 40:55D-41](#), acquisition costs could be added to installation costs in determining a developer's pro rata share for street improvements, however, developer was not obligated to acquire non-owned property in order to provide for off-site improvements required by planning board. [Tennis Club Assocs. v. Planning Bd. of Teaneck, 262 N.J. Super. 422, 621 A.2d 79, 1993 N.J. Super. LEXIS 68 \(App.Div. 1993\).](#)

Under [N.J. Stat. Ann. §§ 40:55D-7](#) and [40:55D-41\(b\)](#), a planning board should consider off-site traffic flow and safety in reviewing proposals for vehicular ingress to and egress from a site. [Sheston Oil Co. v. Avalon, Planning Bd., 214 N.J. Super. 593, 520 A.2d 802, 1987 N.J. Super. LEXIS 1017 \(App.Div.\), certif. denied, 107 N.J. 134, 526 A.2d 199, 1987 N.J. LEXIS 1558 \(N.J. 1987\).](#)

### Real Property Law: Zoning & Land Use: State & Regional Planning

Under [N.J. Stat. Ann. §§ 40:55D-7](#) and [40:55D-41\(b\)](#), a planning board should consider off-site traffic flow and safety in reviewing proposals for vehicular ingress to and egress from a site. [Sheston Oil Co. v. Avalon, Planning Bd., 214 N.J. Super. 593, 520 A.2d 802, 1987 N.J. Super. LEXIS 1017 \(App.Div.\), certif. denied, 107 N.J. 134, 526 A.2d 199, 1987 N.J. LEXIS 1558 \(N.J. 1987\).](#)

Under the language of N.J. Stat Ann. § 40:550-41, the planning board of a municipality could deny a site plan application only if the ingress and egress proposed by the developer created an unsafe and inefficient vehicular circulation; therefore, the planning board could not deny a site plan because of the intensity of vehicular traffic on adjoining roadways or in other parts of the municipality. [Lionel's Appliance Center, Inc. v. Citta, 156 N.J. Super. 257, 383 A.2d 773, 1978 N.J. Super. LEXIS 721 \(Law Div. 1978\).](#)

## Research References & Practice Aids

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**Cross References:**

Preliminary approval, extension, see [40:55D-49](#).

**Administrative Code:**

N.J.A.C. 5:21-1.5 (2013), CHAPTER RESIDENTIAL SITE IMPROVEMENT STANDARDS, Scope and applicability.

**LAW REVIEWS & JOURNALS:**

21 Seton Hall Legis. J. 11, PROPOSAL: HOUSING MADE EASY: NEW JERSEY'S UNIFORM SITE IMPROVEMENTS STANDARDS ACT OF 1993.

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## [N.J. Stat. § 40:55D-42](#)

\*\*\* Current through New Jersey 221st First Annual Session, L. 2024, c. 87 and J.R. 2 \*\*\*

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### **§ 40:55D-42. Contribution for off-tract water, sewer, drainage, and street improvements**

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

### **History**

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L. 1975, c. 291, 30, eff. Aug. 1, 1976; amended [1998, c. 95](#), § 8, eff. Nov. 1, 1998.

Annotations

### **Notes**

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#### **Effective Dates:**

Section 10 of L. [1998, c. 95](#) provides: "This act shall take effect 60 days following enactment." Chapter 95, L. 1998, was approved on September 2, 1998.

### **CASE NOTES**

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**Environmental Law: Zoning & Land Use: Statutory & Equitable Limits**

**Governments: Local Governments: Duties & Powers**

**Governments: Public Improvements: General Overview**

§ 40:55D-42. Contribution for off-tract water, sewer, drainage, and street improvements

**Governments: Public Improvements: Assessments**

**Governments: Public Improvements: Bridges & Roads**

**Governments: Public Improvements: Financing**

**Governments: Public Improvements: Sanitation & Water**

**Public Health & Welfare Law: Housing & Public Buildings: Accessibility, Construction & Design**

**Public Health & Welfare Law: Housing & Public Buildings: Low Income Housing**

**Real Property Law: Zoning & Land Use: Administrative Procedure**

**Real Property Law: Zoning & Land Use: Comprehensive Plans**

**Real Property Law: Zoning & Land Use: Impact Fees**

**Real Property Law: Zoning & Land Use: Local Planning**

**Real Property Law: Zoning & Land Use: Special Permits & Variances**

**Torts: Premises Liability & Property: General Premises Liability: General Overview**

#### **Environmental Law: Zoning & Land Use: Statutory & Equitable Limits**

Although maintaining common open space and recreational areas are important goals of the New Jersey Municipal Land Use Law, [N.J. Stat. Ann. §§ 40:55D-1](#) to -163, municipalities do not have unlimited authority to effectuate those goals. A municipality's authority to obtain set-asides for common open space and recreational areas is limited to planned developments, and to off-site contributions to water, sewer, drainage, and street improvements. [New Jersey Shore Builders Ass'n v. Township of Jackson, 401 N.J. Super. 152, 949 A.2d 312, 2008 N.J. Super. LEXIS 139 \(App.Div. 2008\)](#), aff'd, [199 N.J. 449, 972 A.2d 1151, 2009 N.J. LEXIS 666 \(N.J. 2009\)](#).

[N.J. Stat. Ann. § 40:55D-42](#) limits a municipality's authority to require contributions for off-site improvements to those specifically enumerated in § [40:55D-42](#). Because common open space and recreational areas are not listed in § [40:55D-42](#), a municipality may not condition a development approval on those exactions. [New Jersey Shore Builders Ass'n v. Township of Jackson, 401 N.J. Super. 152, 949 A.2d 312, 2008 N.J. Super. LEXIS 139 \(App.Div. 2008\)](#), aff'd, [199 N.J. 449, 972 A.2d 1151, 2009 N.J. LEXIS 666 \(N.J. 2009\)](#).

#### **Governments: Local Governments: Duties & Powers**

Although maintaining common open space and recreational areas are important goals of the New Jersey Municipal Land Use Law, [N.J. Stat. Ann. §§ 40:55D-1](#) to -163, municipalities do not have unlimited authority to effectuate those goals. A municipality's authority to obtain set-asides for common open space and recreational areas is limited to planned developments, and to off-site contributions to water, sewer, drainage, and street improvements. [New Jersey Shore Builders Ass'n v. Township of Jackson, 401 N.J. Super. 152, 949 A.2d 312, 2008 N.J. Super. LEXIS 139 \(App.Div. 2008\)](#), aff'd, [199 N.J. 449, 972 A.2d 1151, 2009 N.J. LEXIS 666 \(N.J. 2009\)](#).

[N.J. Stat. Ann. § 40:55D-42](#) limits a municipality's authority to require contributions for off-site improvements to those specifically enumerated in § [40:55D-42](#). Because common open space and recreational areas are not listed in § [40:55D-42](#), a municipality may not condition a development approval on those exactions. [New Jersey Shore Builders Ass'n v. Township of Jackson, 401 N.J. Super. 152, 949 A.2d 312, 2008 N.J. Super. LEXIS 139 \(App.Div. 2008\)](#), aff'd, [199 N.J. 449, 972 A.2d 1151, 2009 N.J. LEXIS 666 \(N.J. 2009\)](#).



## § 40:55D-42. Contribution for off-tract water, sewer, drainage, and street improvements

Under [N.J. Stat. Ann. § 40:55D-42](#) a municipality may, by ordinance, require an applicant to pay its pro-rata share of off-site improvements necessitated by its site plan. [W.L. Goodfellows & Co. of Turnersville v. Wash. Twp. Planning Bd.](#), 345 N.J. Super. 109, 783 A.2d 750, 2001 N.J. Super. LEXIS 416 (App.Div. 2001).

### **Governments: Public Improvements: General Overview**

Municipal ordinance that imposed an impact fee on developers for the purpose of raising money to defray the costs of basis services local government provided to its citizens violated the limited power given to municipalities under [N.J. Stat. Ann. § 40:55D-42](#); municipal authority to require off-site improvements was limited only to improvements needed as a direct consequence of the particular subdivision or development under review. [New Jersey Builders Asso. v. Bernards Township](#), 108 N.J. 223, 528 A.2d 555, 1987 N.J. LEXIS 340 (N.J. 1987).

### **Governments: Public Improvements: Assessments**

Where individual lot owners applied for permits to construct houses rather than for “subdivision” or “site plan” approval, [N.J. Stat. Ann. § 40:55D-42](#), which authorized “fair share” agreements, was inapplicable as a statutory proscription barring the municipality from charging more than the “pro rata share” of the cost of off-site improvements as a condition of issuing the permits. [Vrabel v. Sayreville](#), 253 N.J. Super. 109, 601 A.2d 229, 1992 N.J. Super. LEXIS 6 (App.Div. 1992).

### **Governments: Public Improvements: Bridges & Roads**

Defendant planning board had no statutory right to condition its approval of plaintiff’s subdivision on the latter agreeing to pave an unopened road beyond the subdivision line to a public thoroughfare; nothing in the planning statute made it probable that such transfer to planning boards over street improvements was intended by the legislature. [Longridge Builders, Inc. v. Planning Bd. of Princeton](#), 98 N.J. Super. 67, 236 A.2d 154, 1967 N.J. Super. LEXIS 369 (App.Div. 1967), aff’d, 52 N.J. 348, 245 A.2d 336, 1968 N.J. LEXIS 246 (N.J. 1968).

### **Governments: Public Improvements: Financing**

Major off-site improvements in a public housing project, where required, should be constructed in the most cost efficient manner and paid for in accordance with the statutory mandate of [N.J. Stat. Ann. § 40:55D-42](#). [Urban League of Essex County v. Mahwah](#), 207 N.J. Super. 169, 504 A.2d 66, 1984 N.J. Super. LEXIS 1350 (Law Div. 1984).

### **Governments: Public Improvements: Sanitation & Water**

Subdivision developer who protested a condition of his planning site approval, installation of off-site water lines at the developer’s expense, was within his rights when he instituted a suit against the township planning board pursuant to [N.J. Stat. Ann. § 40:55D-42](#) within one year of its ruling for recovery of costs beyond a pro-rata share because the water lines were installed prior to judicial resolution between the parties and had benefitted properties beyond what the developer was building in the subdivision. [Baltica Constr. Co. v. Planning Bd. of Franklin](#), 222 N.J. Super. 428, 537 A.2d 319, 1988 N.J. Super. LEXIS 30 (App.Div. 1988).

### **Public Health & Welfare Law: Housing & Public Buildings: Accessibility, Construction & Design**

Major off-site improvements in a public housing project, where required, should be constructed in the most cost efficient manner and paid for in accordance with the statutory mandate of [N.J. Stat. Ann. § 40:55D-42](#). [Urban League of Essex County v. Mahwah](#), 207 N.J. Super. 169, 504 A.2d 66, 1984 N.J. Super. LEXIS 1350 (Law Div. 1984).

### **Public Health & Welfare Law: Housing & Public Buildings: Low Income Housing**

## § 40:55D-42. Contribution for off-tract water, sewer, drainage, and street improvements

Major off-site improvements in a public housing project, where required, should be constructed in the most cost efficient manner and paid for in accordance with the statutory mandate of [N.J. Stat. Ann. § 40:55D-42](#). [Urban League of Essex County v. Mahwah, 207 N.J. Super. 169, 504 A.2d 66, 1984 N.J. Super. LEXIS 1350 \(Law Div. 1984\)](#).

**Real Property Law: Zoning & Land Use: Administrative Procedure**

When a trial court properly found that a requirement that a developer contribute a significant sum to the improvement of a municipal park that was not part of the developer's project, when the developer sought certain variances for the project, was an illegal exaction, it was error for the court to merely delete this condition and affirm a zoning board of adjustment's approval of the project because, while the contribution was a good faith gesture to provide recreational facilities in the park for the entire community and the payment had some nexus to the developer's project, in light of the project's proximity to the park, the donation was not incidental or a relatively minor factor in approval of the developer's application, as the contribution was characterized by a township's administrator as "major," and the court should have remanded the matter to the zoning board for further public hearing. [Pond Run Watershed Ass'n v. Township of Hamilton Zoning Bd. of Adjustment, 397 N.J. Super. 335, 937 A.2d 334, 2008 N.J. Super. LEXIS 9 \(App.Div. 2008\)](#).

**Real Property Law: Zoning & Land Use: Comprehensive Plans**

Under [N.J. Stat. Ann. § 40:55D-42](#) a municipality may, by ordinance, require an applicant to pay its pro-rata share of off-site improvements necessitated by its site plan. [W.L. Goodfellows & Co. of Turnersville v. Wash. Twp. Planning Bd., 345 N.J. Super. 109, 783 A.2d 750, 2001 N.J. Super. LEXIS 416 \(App.Div. 2001\)](#).

Exactions, in the form of cash contributions for recreational, fire department, and street and road improvements, while violative of [N.J. Stat. Ann. § 40:55D-42](#), were not a blatant quid pro quo for development approvals, were reasonably related to the impact of the project on the public streets, traffic safety, and drainage, and did not mandate the invalidation of the approvals, but merely the deletion of the inappropriate exactions. [Township of Marlboro v. Planning Bd., 279 N.J. Super. 638, 653 A.2d 1183, 1995 N.J. Super. LEXIS 80 \(App.Div.\)](#), certif. denied, 141 N.J. 98, 660 A.2d 1196, 1995 N.J. LEXIS 367 (N.J. 1995), certif. denied sub nom. [Township of Colts Neck v. Planning Bd., 141 N.J. 98, 660 A.2d 1196, 1995 N.J. LEXIS 366 \(N.J. 1995\)](#).

Planning board could, pursuant to the Municipal Land Use Law, [N.J. Stat. Ann. § 40:55D-42](#), properly require developer to pay its pro-rata share of improvements to the side of a street contiguous to the side upon which developer proposed to conduct construction, if planning board found developer's construction on its property required such improvements. [Cameron & Cameron, Inc. v. Planning Bd. of Warren, 250 N.J. Super. 296, 593 A.2d 1250, 1991 N.J. Super. LEXIS 273 \(App.Div. 1991\)](#).

Subdivision developer who protested a condition of his planning site approval, installation of off-site water lines at the developer's expense, was within his rights when he instituted a suit against the township planning board pursuant to [N.J. Stat. Ann. § 40:55D-42](#) within one year of its ruling for recovery of costs beyond a pro-rata share because the water lines were installed prior to judicial resolution between the parties and had benefitted properties beyond what the developer was building in the subdivision. [Baltica Constr. Co. v. Planning Bd. of Franklin, 222 N.J. Super. 428, 537 A.2d 319, 1988 N.J. Super. LEXIS 30 \(App.Div. 1988\)](#).

Amendatory land-subdivision ordinance that required a developer of three or more building lots to install certain public improvements prior to final subdivision approval and to post performance guarantees to insure the completion of the remaining required improvements did not conflict with former N.J. Stat. Ann. § 40:55-1.21 (now [N.J. Stat. Ann. § 40:55D-42](#)) of the Municipal Planning Act, [N.J. Stat. Ann. § 40:55-1.1](#) et seq. (now [N.J. Stat. Ann. § 40:55D-1](#) et seq.), because it was actually less restrictive than the statute. [Savonick v. Lawrence, 91 N.J. Super. 288, 219 A.2d 902, 1966 N.J. Super. LEXIS 318 \(Law Div. 1966\)](#).

**Real Property Law: Zoning & Land Use: Impact Fees**

## § 40:55D-42. Contribution for off-tract water, sewer, drainage, and street improvements

Township and planning board, under [N.J. Stat. Ann. § 40:55D-42](#), had the independent power to assess fees on developer for future traffic improvements that were necessary because of the approval of the developer's proposed subdivision plan. [F & W Assocs. v. County of Somerset, 276 N.J. Super. 519, 648 A.2d 482, 1994 N.J. Super. LEXIS 416 \(App.Div. 1994\)](#).

Municipal ordinance that imposed an impact fee on developers for the purpose of raising money to defray the costs of basis services local government provided to its citizens violated the limited power given to municipalities under [N.J. Stat. Ann. § 40:55D-42](#); municipal authority to require off-site improvements was limited only to improvements needed as a direct consequence of the particular subdivision or development under review. [New Jersey Builders Asso. v. Bernards Township, 108 N.J. 223, 528 A.2d 555, 1987 N.J. LEXIS 340 \(N.J. 1987\)](#).

Township's off-tract improvement ordinance, which established a program to determine the amount that had to be paid by a developer for off-tract improvements as a condition of preliminary subdivision or site plan approval, was not authorized by [N.J. Stat. Ann. § 40:55D-42](#) was ultra vires; the relationship between the development and the need for the improvement must be clear, direct and substantial, the ordinance, based on the premise that all future development would impact all of the township's roads without regard to the location or particular characteristics of each development, did not satisfy the relationship requirement by the statute. [New Jersey Builders Asso. v. Bernards Township, 211 N.J. Super. 290, 511 A.2d 740, 1985 N.J. Super. LEXIS 1670 \(Law Div. 1985\)](#), aff'd, [219 N.J. Super. 539, 530 A.2d 1254, 1986 N.J. Super. LEXIS 1616 \(App.Div. 1986\)](#).

### **Real Property Law: Zoning & Land Use: Local Planning**

Under the Municipal Land Use Law, a developer cannot be compelled to shoulder more than its pro-rata share of the cost of off-tract improvements, and the imposition of a condition of approval unrelated to the needs generated by the development violates the law even if the developer agrees to the condition in a separate developer's agreement. [Toll Bros., Inc. v. Board of Chosen Freeholders of Burlington, 194 N.J. 223, 944 A.2d 1, 2008 N.J. LEXIS 310 \(N.J. 2008\)](#).

When a significant reduction in the scope of a proposed development affects the need for off-tract improvement, a developer is entitled to an opportunity to demonstrate that a recalculation of its contribution is warranted, and the existence of a developer's agreement is of no consequence to that entitlement. [Toll Bros., Inc. v. Board of Chosen Freeholders of Burlington, 194 N.J. 223, 944 A.2d 1, 2008 N.J. LEXIS 310 \(N.J. 2008\)](#).

### **Real Property Law: Zoning & Land Use: Special Permits & Variances**

Under the Municipal Land Use Law, a developer cannot be compelled to shoulder more than its pro-rata share of the cost of off-tract improvements, and the imposition of a condition of approval unrelated to the needs generated by the development violates the law even if the developer agrees to the condition in a separate developer's agreement. [Toll Bros., Inc. v. Board of Chosen Freeholders of Burlington, 194 N.J. 223, 944 A.2d 1, 2008 N.J. LEXIS 310 \(N.J. 2008\)](#).

When a significant reduction in the scope of a proposed development affects the need for off-tract improvement, a developer is entitled to an opportunity to demonstrate that a recalculation of its contribution is warranted, and the existence of a developer's agreement is of no consequence to that entitlement. [Toll Bros., Inc. v. Board of Chosen Freeholders of Burlington, 194 N.J. 223, 944 A.2d 1, 2008 N.J. LEXIS 310 \(N.J. 2008\)](#).

When a trial court properly found that a requirement that a developer contribute a significant sum to the improvement of a municipal park that was not part of the developer's project, when the developer sought certain variances for the project, was an illegal exaction, it was error for the court to merely delete this condition and affirm a zoning board of adjustment's approval of the project because, while the contribution was a good faith gesture to provide recreational facilities in the park for the entire community and the payment had some nexus to the developer's project, in light of the project's proximity to the park, the donation was not incidental or a relatively minor factor in approval of the developer's application, as the contribution was characterized by a township's administrator

§ 40:55D-42. Contribution for off-tract water, sewer, drainage, and street improvements

as “major,” and the court should have remanded the matter to the zoning board for further public hearing. [Pond Run Watershed Ass'n v. Township of Hamilton Zoning Bd. of Adjustment](#), 397 N.J. Super. 335, 937 A.2d 334, 2008 N.J. Super. LEXIS 9 (App.Div. 2008).

### **Torts: Premises Liability & Property: General Premises Liability: General Overview**

When an off-site improvement is in the public domain and controlled and maintained by a public entity, it makes no sense to impose on the property's developer, who is otherwise without fault, a duty to provide pedestrians with a safe means of passage across the improvement or to warn of the dangers inherent in traversing the improvement simply because the developer was required to construct the improvement or to pay a part of the construction cost as part of its development approval. [MacGrath v. Levin Properties](#), 256 N.J. Super. 247, 606 A.2d 1108, 1992 N.J. Super. LEXIS 176 (App.Div.), certif. denied, 130 N.J. 19, 611 A.2d 656, 1992 N.J. LEXIS 524 (N.J. 1992).

## **Research References & Practice Aids**

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### **Cross References:**

Definitions; M to O, see [40:55D-5](#).

Discretionary contents of ordinance., see [40:55D-39](#).

Actions prior to adoption, amendment., see [40:55D-140](#).

### **Administrative Code:**

N.J.A.C. 5:21-1.4 (2013), CHAPTER RESIDENTIAL SITE IMPROVEMENT STANDARDS, Definitions and abbreviations.

### **NJ ICLE:**

New Jersey Environmental Law 9.32 Other Flood Control Case Law

[Commercial Real Estate Transactions in New Jersey 5.1](#) Municipal Land Use Regulations

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## [N.J. Stat. § 40:55D-43](#)

\*\*\* Current through New Jersey 221st First Annual Session, L. 2024, c. 87 and J.R. 2 \*\*\*

**LexisNexis® New Jersey Annotated Statutes > Title 40. Municipalities and Counties (Subts. 1 — 13) > Subtitle 3. Municipality Provisions (Chs. 42 — 69) > Chapter 55D. Municipal Land Use Law (Arts. 1 — 17) > Article 6. Subdivisions (§§ 40:55D-37 — 40:55D-59)**

### **§ 40:55D-43. Standards for the establishment of open space organization**

a. An ordinance pursuant to this article permitting planned unit development, planned unit residential development or cluster development may provide that the municipality or other governmental agency may, at any time and from time to time, accept the dedication of land or any interest therein for public use and maintenance, but the ordinance shall not require, as a condition of the approval of a planned development, that land proposed to be set aside for common open space be dedicated or made available to public use.

An ordinance pursuant to this article providing for planned unit development, planned unit residential development, or cluster development shall require that the developer provide for an organization for the ownership and maintenance of any open space for the benefit of owners or residents of the development, if said open space is not dedicated to the municipality or other governmental agency or otherwise conveyed to or owned by a separate person or entity. Such organization shall not be dissolved and the organization, person, or entity shall not dispose of any open space, by sale or otherwise, except to an organization conceived and established to own and maintain the open space for the benefit of such development, and thereafter such organization shall not be dissolved or the organization, person, or entity dispose of any of its open space without first offering to dedicate the same to the municipality or municipalities wherein the land is located.

b. In the event that such organization, person, or entity shall fail to maintain the open space in reasonable order and condition, the municipal body or officer designated by ordinance to administer this subsection may serve written notice upon such organization, person, or entity or upon the owners of the development setting forth the manner in which the organization, person, or entity has failed to maintain the open space in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be cured within 35 days thereof, and shall state the date and place of a hearing thereon which shall be held within 15 days of the notice. At such hearing, the designated municipal body or officer, as the case may be, may modify the terms of the original notice as to deficiencies and may give a reasonable extension of time not to exceed 65 days within which they shall be cured. If the deficiencies set forth in the original notice or in the modification thereof shall not be cured within said 35 days or any permitted extension thereof, the municipality, in order to preserve the open space and maintain the same for a period of 1 year may enter upon and maintain such land. Said entry and maintenance shall not vest in the public any rights to use the open space except when the same is voluntarily dedicated to the public by the owners. Before the expiration of said year, the designated municipal body or officer, as the case may be, shall, upon its initiative or upon the request of the organization, person, or entity theretofore responsible for the maintenance of the open space, call a public hearing upon 15 days' written notice to such organization, person, or entity and to the owners of the development, to be held by such municipal body or officer, at which hearing such organization, person, or entity and the owners of the development shall show cause why such maintenance by the municipality shall not, at the election of the municipality, continue for a succeeding year. If the designated municipal body or officer, as the case may be, shall determine that such organization, person, or entity is ready and able to maintain said open space in reasonable condition, the municipality shall cease to maintain said open space at the end of said year. If the municipal body or officer,

## § 40:55D-43. Standards for the establishment of open space organization

as the case may be, shall determine such organization, person, or entity is not ready and able to maintain said open space in a reasonable condition, the municipality may, in its discretion, continue to maintain said open space during the next succeeding year, subject to a similar hearing and determination, in each year thereafter. The decision of the municipal body or officer in any such case shall constitute a final administrative decision subject to judicial review.

If a municipal body or officer is not designated by ordinance to administer this subsection, the governing body shall have the same powers and be subject to the same restrictions as provided in this subsection.

c. The cost of such maintenance by the municipality shall be assessed pro rata against the properties within the development that have a right of enjoyment of the open space in accordance with assessed value at the time of imposition of the lien, and shall become a lien and tax on said properties and be added to and be a part of the taxes to be levied and assessed thereon, and enforced and collected with interest by the same officers and in the same manner as other taxes.

## History

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L. 1975, c. 291, § 31, eff. Aug. 1, 1976; amended [2013, c. 106](#), § 11, eff. Aug. 7, 2013.

Annotations

## Notes

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### Amendment Note:

2013 amendment, by Chapter 106, in a., substituted “cluster development” for “residential cluster” in the first and second paragraphs and in the second paragraph, added “or otherwise conveyed to or owned by a separate person or entity” in the first sentence and inserted “the organization, person, or entity” twice in the second sentence; and inserted “person, or entity” throughout the first paragraph of b.

## CASE NOTES

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**Environmental Law: Zoning & Land Use: Statutory & Equitable Limits**

**Real Property Law: Zoning & Land Use: General Overview**

**Real Property Law: Zoning & Land Use: Comprehensive Plans**

**Real Property Law: Zoning & Land Use: Planned Unit Developments**

**Environmental Law: Zoning & Land Use: Statutory & Equitable Limits**

Provisions of the New Jersey Municipal Land Use Law relating to open space set-asides are limited to Planned Unit Developments ([N.J. Stat. Ann. §§ 40:55D-43, -45](#)). [New Jersey Shore Builders Ass'n v. Township of Jackson, 199 N.J. 449, 972 A.2d 1151, 2009 N.J. LEXIS 666 \(N.J. 2009\)](#).

**Real Property Law: Zoning & Land Use: General Overview**

As far as planning for public use is concerned, former N.J. Rev. Stat. § 40:55-7 (now [N.J. Stat. Ann. § 40:55D-43](#)) provides that the planning board submit its report in writing to the governing body. [Rubenstein v. Cranford, 63 N.J. Super. 1, 163 A.2d 486, 1960 N.J. Super. LEXIS 391 \(Law Div. 1960\)](#).



**Real Property Law: Zoning & Land Use: Comprehensive Plans**

Township planning board's construction of a township cluster ordinance to preclude the use of conservation easements to make up a significant shortfall from the 70 percent open space requirement under the ordinance was entirely reasonable and consistent with the overall goals of the zone plan. [Fallone Properties, L.L.C. v. Bethlehem Tp. Planning Bd.](#), 369 N.J. Super. 552, 849 A.2d 1117, 2004 N.J. Super. LEXIS 203 (App.Div. 2004).

**Real Property Law: Zoning & Land Use: Planned Unit Developments**

Provisions of the New Jersey Municipal Land Use Law relating to open space set-asides are limited to Planned Unit Developments ([N.J. Stat. Ann. §§ 40:55D-43](#), -45). [New Jersey Shore Builders Ass'n v. Township of Jackson](#), 199 N.J. 449, 972 A.2d 1151, 2009 N.J. LEXIS 666 (N.J. 2009).

**Research References & Practice Aids**

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**Cross References:**

Contents of ordinance, see [40:55D-38](#).

Discretionary contents of ordinance., see [40:55D-39](#).

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## [N.J. Stat. § 40:55D-44](#)

\*\*\* Current through New Jersey 221st First Annual Session, L. 2024, c. 87 and J.R. 2 \*\*\*

**LexisNexis® New Jersey Annotated Statutes > Title 40. Municipalities and Counties (Subts. 1 — 13) > Subtitle 3. Municipality Provisions (Chs. 42 — 69) > Chapter 55D. Municipal Land Use Law (Arts. 1 — 17) > Article 6. Subdivisions (§§ 40:55D-37 — 40:55D-59)**

### **§ 40:55D-44. Reservation of public areas**

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If the master plan or the official map provides for the reservation of designated streets, public drainageways, flood control basins, or public areas within the proposed development, before approving a subdivision or site plan, the planning board may further require that such streets, ways, basins or areas be shown on the plat in locations and sizes suitable to their intended uses. The planning board may reserve the location and extent of such streets, ways, basins or areas shown on the plat for a period of 1 year after the approval of the final plat or within such further time as may be agreed to by the developer. Unless during such period or extension thereof the municipality shall have entered into a contract to purchase or institute condemnation proceedings according to law for the fee or a lesser interest in the land comprising such streets, ways, basins or areas, the developer shall not be bound by such reservations shown on the plat and may proceed to use such land for private use in accordance with applicable development regulations. The provisions of this section shall not apply to the streets and roads, flood control basins or public drainageways necessitated by the subdivision or land development and required for final approval.

The developer shall be entitled to just compensation for actual loss found to be caused by such temporary reservation and deprivation of use. In such instance, unless a lesser amount has previously been mutually agreed upon, just compensation shall be deemed to be the fair market value of an option to purchase the land reserved for the period of reservation; provided that determination of such fair market value shall include, but not be limited to, consideration of the real property taxes apportioned to the land reserved and prorated for the period of reservation. The developer shall be compensated for the reasonable increased cost of legal, engineering, or other professional services incurred in connection with obtaining subdivision approval or site plan approval, as the case may be, caused by the reservation. The municipality shall provide by ordinance for a procedure for the payment of all compensation payable under this section.

### **History**

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L. 1975, c. 291, 32, eff. Aug. 1, 1976.

Annotations

### **CASE NOTES**

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**Governments: Legislation: Statutory Remedies & Rights**

**Governments: Public Improvements: Bridges & Roads**

## § 40:55D-44. Reservation of public areas

**Real Property Law: Eminent Domain Proceedings: General Overview****Real Property Law: Subdivisions: General Overview****Real Property Law: Zoning & Land Use: General Overview****Real Property Law: Zoning & Land Use: Constitutional Limits****Governments: Legislation: Statutory Remedies & Rights**

Under [N.J. Stat. Ann. § 40:55D-44](#), in connection with subdivision or site plan approval, a property designated in a master plan or on an official map is subject to acquisition, and the statute permits a planning board to reserve the location and extent of streets, drainageways, basins and public areas for a period of one year after approval of a final plat of a development during which it may arrange for the acquisition of the reserved areas. [Sheerr v. Evesham, 184 N.J. Super. 11, 445 A.2d 46, 1982 N.J. Super. LEXIS 747 \(Law Div. 1982\)](#).

**Governments: Public Improvements: Bridges & Roads**

Defendant planning board had no statutory right to condition its approval of plaintiff's subdivision on the latter agreeing to pave an unopened road beyond the subdivision line to a public thoroughfare; nothing in the planning statute made it probable that such transfer to planning boards over street improvements was intended by the legislature. [Longridge Builders, Inc. v. Planning Bd. of Princeton, 98 N.J. Super. 67, 236 A.2d 154, 1967 N.J. Super. LEXIS 369 \(App.Div. 1967\)](#), aff'd, [52 N.J. 348, 245 A.2d 336, 1968 N.J. LEXIS 246 \(N.J. 1968\)](#).

**Real Property Law: Eminent Domain Proceedings: General Overview**

Just compensation, pursuant to [N.J. Stat. Ann. § 40:55D-44](#), is deemed to be the fair market value of an option to purchase the land for the period of reservation. [Tocco v. New Jersey Council on Affordable Housing, 242 N.J. Super. 218, 576 A.2d 328, 1990 N.J. Super. LEXIS 229 \(App.Div. 1990\)](#), cert. denied, 122 N.J. 403, 585 A.2d 401, 1990 N.J. LEXIS 1313 (N.J. 1990), cert. denied, 499 U.S. 937, 111 S. Ct. 1389, 113 L. Ed. 2d 446, 1991 U.S. LEXIS 1809 (U.S. 1991).

**Real Property Law: Subdivisions: General Overview**

Under [N.J. Stat. Ann. § 40:55D-44](#), in connection with subdivision or site plan approval, a property designated in a master plan or on an official map is subject to acquisition, and the statute permits a planning board to reserve the location and extent of streets, drainageways, basins and public areas for a period of one year after approval of a final plat of a development during which it may arrange for the acquisition of the reserved areas. [Sheerr v. Evesham, 184 N.J. Super. 11, 445 A.2d 46, 1982 N.J. Super. LEXIS 747 \(Law Div. 1982\)](#).

**Real Property Law: Zoning & Land Use: General Overview**

Adoption of resolutions expressing a borough's desire to acquire a tract of land for park purposes and authorizing applications for state and federal funds with which to accomplish that desired result had no legal impact on the ownership, possession, or use of the property and thus did not constitute a compensable taking or make out a case of constructive condemnation. [Far-Gold Constr. Co. v. Chatham, 141 N.J. Super. 164, 357 A.2d 765, 1976 N.J. Super. LEXIS 853 \(App.Div. 1976\)](#).

**Real Property Law: Zoning & Land Use: Constitutional Limits**

Adoption of resolutions expressing a borough's desire to acquire a tract of land for park purposes and authorizing applications for state and federal funds with which to accomplish that desired result had no legal impact on the ownership, possession, or use of the property and thus did not constitute a compensable taking or make out a case

§ 40:55D-44. Reservation of public areas

of constructive condemnation. [Far-Gold Constr. Co. v. Chatham, 141 N.J. Super. 164, 357 A.2d 765, 1976 N.J. Super. LEXIS 853 \(App.Div. 1976\)](#).

## Research References & Practice Aids

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### Cross References:

Contents of ordinance, see [40:55D-38](#).

### NJ ICLE:

[Commercial Real Estate Transactions in New Jersey 5.3](#) Due Diligence

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## [N.J. Stat. § 40:55D-45](#)

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### **§ 40:55D-45. Findings for planned developments**

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Every ordinance pursuant to this article that provides for planned developments shall require that prior to approval of such planned developments the planning board shall find the following facts and conclusions:

- a. That departures by the proposed development from zoning regulations otherwise applicable to the subject property conform to the zoning ordinance standards pursuant to subsection 52c. of this act;
- b. That the proposals for maintenance and conservation of the common open space are reliable, and the amount, location and purpose of the common open space are adequate;
- c. That provision through the physical design of the proposed development for public services, control over vehicular and pedestrian traffic, and the amenities of light and air, recreation and visual enjoyment are adequate;
- d. That the proposed planned development will not have an unreasonably adverse impact upon the area in which it is proposed to be established;
- e. In the case of a proposed development which contemplates construction over a period of years, that the terms and conditions intended to protect the interests of the public and of the residents, occupants and owners of the proposed development in the total completion of the development are adequate.

### **History**

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L. 1975, c. 291, 33, eff. Aug. 1, 1976.

Annotations

### **CASE NOTES**

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**Environmental Law: Zoning & Land Use: Statutory & Equitable Limits**

**Real Property Law: Subdivisions: Local Regulation**

**Real Property Law: Zoning & Land Use: Judicial Review**

**Real Property Law: Zoning & Land Use: Local Planning**

**Real Property Law: Zoning & Land Use: Planned Unit Developments**

**Environmental Law: Zoning & Land Use: Statutory & Equitable Limits**

## § 40:55D-45. Findings for planned developments

Provisions of the New Jersey Municipal Land Use Law relating to open space set-asides are limited to Planned Unit Developments ([N.J. Stat. Ann. §§ 40:55D-43, -45](#)). [New Jersey Shore Builders Ass'n v. Township of Jackson, 199 N.J. 449, 972 A.2d 1151, 2009 N.J. LEXIS 666 \(N.J. 2009\)](#).

**Real Property Law: Subdivisions: Local Regulation**

Trial court properly reversed a township land use board's denial of a developer's application for a major subdivision development and ordered conditional subdivision approval subject to the issuance of necessary storm water and sewer disposal treatment permits and approval by the New Jersey Department of Environmental Protection (DEP), as those issues were under the jurisdiction of the DEP and, if the requisite permit was ultimately granted by the DEP, the interests of the township and its citizens would be protected. [Dowel Assocs. v. Harmony Tp. Land Use Bd., 403 N.J. Super. 1, 956 A.2d 349, 2008 N.J. Super. LEXIS 194 \(App.Div.\)](#), certif. denied, 197 N.J. 15, 960 A.2d 745, 2008 N.J. LEXIS 1771 (N.J. 2008), certif. denied, 197 N.J. 15, 960 A.2d 745, 2008 N.J. LEXIS 1754 (N.J. 2008).

**Real Property Law: Zoning & Land Use: Judicial Review**

City planning board's determination that a developer's general development plan (GDP), which included 950 detached age-restricted homes clustered on 239 acres, a golf course, a club house, and an undeveloped conservation area, will not have an unreasonably adverse impact upon the area was upheld on appeal as the planning board properly applied a general standard in assessing whether the GDP would have an unreasonably adverse impact and had before it sufficient evidence to support its determination. [Citizens United To Protect The Maurice River And Its Tributaries, Inc. v. City of Millville Planning Bd., 395 N.J. Super. 434, 929 A.2d 606, 2007 N.J. Super. LEXIS 284 \(App.Div. 2007\)](#).

Process by which a planning board determines whether a general development plan will not have an unreasonably adverse impact on an area in which it is proposed to be established is intended to be general in nature and to provide the increased flexibility desirable to promote mutual agreement between a developer and planning board regarding the basic scheme of a planned development; in applying that standard, a planning board's consideration should be from the standpoint of probable feasibility, with more detailed presentation deferred until subsequent applications for preliminary site plan and subdivision approvals are made. [Citizens United To Protect The Maurice River And Its Tributaries, Inc. v. City of Millville Planning Bd., 395 N.J. Super. 434, 929 A.2d 606, 2007 N.J. Super. LEXIS 284 \(App.Div. 2007\)](#).

**Real Property Law: Zoning & Land Use: Local Planning**

Trial court properly reversed a township land use board's denial of a developer's application for a major subdivision development and ordered conditional subdivision approval subject to the issuance of necessary storm water and sewer disposal treatment permits and approval by the New Jersey Department of Environmental Protection (DEP), as those issues were under the jurisdiction of the DEP and, if the requisite permit was ultimately granted by the DEP, the interests of the township and its citizens would be protected. [Dowel Assocs. v. Harmony Tp. Land Use Bd., 403 N.J. Super. 1, 956 A.2d 349, 2008 N.J. Super. LEXIS 194 \(App.Div.\)](#), certif. denied, 197 N.J. 15, 960 A.2d 745, 2008 N.J. LEXIS 1771 (N.J. 2008), certif. denied, 197 N.J. 15, 960 A.2d 745, 2008 N.J. LEXIS 1754 (N.J. 2008).

**Real Property Law: Zoning & Land Use: Planned Unit Developments**

Provisions of the New Jersey Municipal Land Use Law relating to open space set-asides are limited to Planned Unit Developments ([N.J. Stat. Ann. §§ 40:55D-43, -45](#)). [New Jersey Shore Builders Ass'n v. Township of Jackson, 199 N.J. 449, 972 A.2d 1151, 2009 N.J. LEXIS 666 \(N.J. 2009\)](#).

City planning board's determination that a developer's general development plan (GDP), which included 950 detached age-restricted homes clustered on 239 acres, a golf course, a club house, and an undeveloped conservation area, will not have an unreasonably adverse impact upon the area was upheld on appeal as the

## § 40:55D-45. Findings for planned developments

planning board properly applied a general standard in assessing whether the GDP would have an unreasonably adverse impact and had before it sufficient evidence to support its determination. [Citizens United To Protect The Maurice River And Its Tributaries, Inc. v. City of Millville Planning Bd., 395 N.J. Super. 434, 929 A.2d 606, 2007 N.J. Super. LEXIS 284 \(App.Div. 2007\).](#)

Process by which a planning board determines whether a general development plan will not have an unreasonably adverse impact on an area in which it is proposed to be established is intended to be general in nature and to provide the increased flexibility desirable to promote mutual agreement between a developer and planning board regarding the basic scheme of a planned development; in applying that standard, a planning board's consideration should be from the standpoint of probable feasibility, with more detailed presentation deferred until subsequent applications for preliminary site plan and subdivision approvals are made. [Citizens United To Protect The Maurice River And Its Tributaries, Inc. v. City of Millville Planning Bd., 395 N.J. Super. 434, 929 A.2d 606, 2007 N.J. Super. LEXIS 284 \(App.Div. 2007\).](#)

## Research References & Practice Aids

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## [N.J. Stat. § 40:55D-45.1](#)

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### **§ 40:55D-45.1. General development plan**

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a. The general development plan shall set forth the permitted number of dwelling units, the amount of nonresidential floor space, the residential density, and the nonresidential floor area ratio for the planned development, in its entirety, according to a schedule which sets forth the timing of the various sections of the development.

The planned development shall be developed in accordance with the general development plan approved by the planning board notwithstanding any provision of P.L. 1975, c. 291 ([C. 40:55D-1](#) et seq.), or an ordinance or regulation adopted pursuant thereto after the effective date of the approval.

b. The term of the effect of the general development plan approval shall be determined by the planning board using the guidelines set forth in subsection c. of this section, except that the term of the effect of the approval shall not exceed 20 years from the date upon which the developer receives final approval of the first section of the planned development pursuant to P.L. 1975, c. 291 ([C. 40:55D-1](#) et seq.).

c. In making its determination regarding the duration of the effect of approval of the development plan, the planning board shall consider: the number of dwelling units or amount of nonresidential floor area to be constructed, prevailing economic conditions, the timing schedule to be followed in completing the development and the likelihood of its fulfillment, the developer's capability of completing the proposed development, and the contents of the general development plan and any conditions which the planning board attaches to the approval thereof.

### **History**

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L. 1987, c. 129, 3.

Annotations

### **CASE NOTES**

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**Real Property Law: Zoning & Land Use: Judicial Review**

**Real Property Law: Zoning & Land Use: Planned Unit Developments**

**Real Property Law: Zoning & Land Use: Special Permits & Variances**

**Real Property Law: Zoning & Land Use: Judicial Review**



## § 40:55D-45.1. General development plan

In a developer's action in lieu of prerogative writs, a trial court erred by requiring inclusion of parking garages in the gross floor area calculation required by a township's development regulations as the court was not permitted to write in an additional qualification which the township pointedly omitted in drafting its own enactment. [\*Mountain Hill, L.L.C. v. Zoning Bd. of Adjustment of Tp. of Middletown\*, 403 N.J. Super. 210, 958 A.2d 42, 2008 N.J. Super. LEXIS 196 \(App.Div. 2008\)](#), certif. denied, 197 N.J. 475, 963 A.2d 844, 2009 N.J. LEXIS 137 (N.J. 2009).

City planning board's determination that a developer's general development plan (GDP), which included 950 detached age-restricted homes clustered on 239 acres, a golf course, a club house, and an undeveloped conservation area, will not have an unreasonably adverse impact upon the area was upheld on appeal as the planning board properly applied a general standard in assessing whether the GDP would have an unreasonably adverse impact and had before it sufficient evidence to support its determination. [\*Citizens United To Protect The Maurice River And Its Tributaries, Inc. v. City of Millville Planning Bd.\*, 395 N.J. Super. 434, 929 A.2d 606, 2007 N.J. Super. LEXIS 284 \(App.Div. 2007\)](#).

Process by which a planning board determines whether a general development plan will not have an unreasonably adverse impact on an area in which it is proposed to be established is intended to be general in nature and to provide the increased flexibility desirable to promote mutual agreement between a developer and planning board regarding the basic scheme of a planned development; in applying that standard, a planning board's consideration should be from the standpoint of probable feasibility, with more detailed presentation deferred until subsequent applications for preliminary site plan and subdivision approvals are made. [\*Citizens United To Protect The Maurice River And Its Tributaries, Inc. v. City of Millville Planning Bd.\*, 395 N.J. Super. 434, 929 A.2d 606, 2007 N.J. Super. LEXIS 284 \(App.Div. 2007\)](#).

### **Real Property Law: Zoning & Land Use: Planned Unit Developments**

City planning board's determination that a developer's general development plan (GDP), which included 950 detached age-restricted homes clustered on 239 acres, a golf course, a club house, and an undeveloped conservation area, will not have an unreasonably adverse impact upon the area was upheld on appeal as the planning board properly applied a general standard in assessing whether the GDP would have an unreasonably adverse impact and had before it sufficient evidence to support its determination. [\*Citizens United To Protect The Maurice River And Its Tributaries, Inc. v. City of Millville Planning Bd.\*, 395 N.J. Super. 434, 929 A.2d 606, 2007 N.J. Super. LEXIS 284 \(App.Div. 2007\)](#).

Process by which a planning board determines whether a general development plan will not have an unreasonably adverse impact on an area in which it is proposed to be established is intended to be general in nature and to provide the increased flexibility desirable to promote mutual agreement between a developer and planning board regarding the basic scheme of a planned development; in applying that standard, a planning board's consideration should be from the standpoint of probable feasibility, with more detailed presentation deferred until subsequent applications for preliminary site plan and subdivision approvals are made. [\*Citizens United To Protect The Maurice River And Its Tributaries, Inc. v. City of Millville Planning Bd.\*, 395 N.J. Super. 434, 929 A.2d 606, 2007 N.J. Super. LEXIS 284 \(App.Div. 2007\)](#).

### **Real Property Law: Zoning & Land Use: Special Permits & Variances**

In a developer's action in lieu of prerogative writs, a trial court erred by requiring inclusion of parking garages in the gross floor area calculation required by a township's development regulations as the court was not permitted to write in an additional qualification which the township pointedly omitted in drafting its own enactment. [\*Mountain Hill, L.L.C. v. Zoning Bd. of Adjustment of Tp. of Middletown\*, 403 N.J. Super. 210, 958 A.2d 42, 2008 N.J. Super. LEXIS 196 \(App.Div. 2008\)](#), certif. denied, 197 N.J. 475, 963 A.2d 844, 2009 N.J. LEXIS 137 (N.J. 2009).

## **Research References & Practice Aids**

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§ 40:55D-45.1. General development plan

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## [N.J. Stat. § 40:55D-45.2](#)

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### § 40:55D-45.2. Contents of general development plan

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A general development plan may include, but not be limited to, the following:

- a.** A general land use plan at a scale specified by ordinance indicating the tract area and general locations of the land uses to be included in the planned development. The total number of dwelling units and amount of nonresidential floor area to be provided and proposed land area to be devoted to residential and nonresidential use shall be set forth. In addition, the proposed types of nonresidential uses to be included in the planned development shall be set forth, and the land area to be occupied by each proposed use shall be estimated. The density and intensity of use of the entire planned development shall be set forth, and a residential density and a nonresidential floor area ratio shall be provided;
- b.** A circulation plan showing the general location and types of transportation facilities, including facilities for pedestrian access, within the planned development and any proposed improvements to the existing transportation system outside the planned development;
- c.** An open space plan showing the proposed land area and general location of parks and any other land area to be set aside for conservation and recreational purposes and a general description of improvements proposed to be made thereon, including a plan for the operation and maintenance of parks and recreational lands;
- d.** A utility plan indicating the need for and showing the proposed location of sewage and water lines, any drainage facilities necessitated by the physical characteristics of the site, proposed methods for handling solid waste disposal, and a plan for the operation and maintenance of proposed utilities;
- e.** A storm water management plan setting forth the proposed method of controlling and managing storm water on the site;
- f.** An environmental inventory including a general description of the vegetation, soils, topography, geology, surface hydrology, climate and cultural resources of the site, existing man-made structures or features and the probable impact of the development on the environmental attributes of the site;
- g.** A community facility plan indicating the scope and type of supporting community facilities which may include, but not be limited to, educational or cultural facilities, historic sites, libraries, hospitals, firehouses, and police stations;
- h.** A housing plan outlining the number of housing units to be provided and the extent to which any housing obligation assigned to the municipality pursuant to P.L. 1985, c. 222 ([C. 52:27D-301](#) et al.) will be fulfilled by the development;
- i.** A local service plan indicating those public services which the applicant proposes to provide and which may include, but not be limited to, water, sewer, cable and solid waste disposal;

## § 40:55D-45.2. Contents of general development plan

- j. A fiscal report describing the anticipated demand on municipal services to be generated by the planned development and any other financial impacts to be faced by municipalities or school districts as a result of the completion of the planned development. The fiscal report shall also include a detailed projection of property tax revenues which will accrue to the county, municipality and school district according to the timing schedule provided under subsection k. of this section, and following the completion of the planned development in its entirety;
- k. A proposed timing schedule in the case of a planned development whose construction is contemplated over a period of years, including any terms or conditions which are intended to protect the interests of the public and of the residents who occupy any section of the planned development prior to the completion of the development in its entirety; and
- l. A municipal development agreement, which shall mean a written agreement between a municipality and a developer relating to the planned development.

## History

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L. 1987, c. 129, 4.

Annotations

## CASE NOTES

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**Governments: Local Governments: Duties & Powers**

**Real Property Law: Common Interest Communities: Homeowners Associations**

**Real Property Law: Zoning & Land Use: Comprehensive Plans**

**Real Property Law: Zoning & Land Use: Constitutional Limits**

**Real Property Law: Zoning & Land Use: Judicial Review**

**Real Property Law: Zoning & Land Use: Local Planning**

**Real Property Law: Zoning & Land Use: Planned Unit Developments**

**Real Property Law: Zoning & Land Use: Special Permits & Variances**

**Governments: Local Governments: Duties & Powers**

Nothing in either the Municipal Land Use Law, [N.J. Stat. Ann. §§ 40:55D-1](#) to -99, or the Municipal Services Act, [N.J. Stat. Ann. § 40:67-23.2](#) et seq., prohibits a limited bargained-for delegation of a municipality's obligations to a developer. Under a properly adopted development agreement as provided in the Municipal Land Use Law, a municipality may delegate its statutory obligations under [N.J. Stat. Ann. § 40:67-23.3](#) until such time as the developer's control of the executive board of a homeowners association established pursuant to the Planned Real Estate Development Full Disclosure Act, [N.J. Stat. Ann. §§ 45:22A-21](#) to -56, terminates. [Ramapo River Reserve Homeowners Ass'n v. Borough of Oakland, 186 N.J. 439, 896 A.2d 459, 2006 N.J. LEXIS 172 \(N.J. 2006\)](#).

**Real Property Law: Common Interest Communities: Homeowners Associations**

Nothing in either the Municipal Land Use Law, [N.J. Stat. Ann. §§ 40:55D-1](#) to -99, or the Municipal Services Act, [N.J. Stat. Ann. § 40:67-23.2](#) et seq., prohibits a limited bargained-for delegation of a municipality's obligations to a developer. Under a properly adopted development agreement as provided in the Municipal Land Use Law, a

## § 40:55D-45.2. Contents of general development plan

municipality may delegate its statutory obligations under [N.J. Stat. Ann. § 40:67-23.3](#) until such time as the developer's control of the executive board of a homeowners association established pursuant to the Planned Real Estate Development Full Disclosure Act, [N.J. Stat. Ann. §§ 45:22A-21](#) to -56, terminates. [Ramapo River Reserve Homeowners Ass'n v. Borough of Oakland, 186 N.J. 439, 896 A.2d 459, 2006 N.J. LEXIS 172 \(N.J. 2006\)](#).

**Real Property Law: Zoning & Land Use: Comprehensive Plans**

Failure to meet the development checklist requirements, under [N.J. Stat. Ann. § 40:55D-45.2](#), is a ground for avoiding default certification of completeness, but only if the checklist has been adopted by ordinance. [Eastampton Ctr., LLC v. Planning Bd., 354 N.J. Super. 171, 805 A.2d 456, 2002 N.J. Super. LEXIS 388 \(App.Div. 2002\)](#).

Law division erred in granting developer approval of its general development plan, where it lacked compliance with statutory checklist under [N.J. Stat. Ann. § 40:55D-45.2](#), and was, thus, incomplete. [Eastampton Ctr., LLC v. Planning Bd., 354 N.J. Super. 171, 805 A.2d 456, 2002 N.J. Super. LEXIS 388 \(App.Div. 2002\)](#).

Failure to meet the development checklist requirements, under [N.J. Stat. Ann. § 40:55D-45.2](#), was a ground for avoiding default certification of completeness, but only if the checklist was adopted by ordinance. [N.J. Stat. Ann. § 40:55D-10.3. Eastampton Ctr., LLC v. Planning Bd., 354 N.J. Super. 171, 805 A.2d 456, 2002 N.J. Super. LEXIS 388 \(App.Div. 2002\)](#).

**Real Property Law: Zoning & Land Use: Constitutional Limits**

Refusal of a city to allow a variation in the zoning regulations so that prosecutor could build a gasoline service station on a main thoroughfare with heavy pedestrian traffic was not unreasonable under N.J. Const. art. IV, § 6, para. 5. [Citizens Nat'l Bank & Trust Co. v. Englewood, 128 N.J.L. 147, 24 A.2d 819, 1942 N.J. Sup. Ct. LEXIS 157 \(N.J. Sup. Ct. 1942\)](#).

**Real Property Law: Zoning & Land Use: Judicial Review**

City planning board's determination that a developer's general development plan (GDP), which included 950 detached age-restricted homes clustered on 239 acres, a golf course, a club house, and an undeveloped conservation area, will not have an unreasonably adverse impact upon the area was upheld on appeal as the planning board properly applied a general standard in assessing whether the GDP would have an unreasonably adverse impact and had before it sufficient evidence to support its determination. [Citizens United To Protect The Maurice River And Its Tributaries, Inc. v. City of Millville Planning Bd., 395 N.J. Super. 434, 929 A.2d 606, 2007 N.J. Super. LEXIS 284 \(App.Div. 2007\)](#).

Process by which a planning board determines whether a general development plan will not have an unreasonably adverse impact on an area in which it is proposed to be established is intended to be general in nature and to provide the increased flexibility desirable to promote mutual agreement between a developer and planning board regarding the basic scheme of a planned development; in applying that standard, a planning board's consideration should be from the standpoint of probable feasibility, with more detailed presentation deferred until subsequent applications for preliminary site plan and subdivision approvals are made. [Citizens United To Protect The Maurice River And Its Tributaries, Inc. v. City of Millville Planning Bd., 395 N.J. Super. 434, 929 A.2d 606, 2007 N.J. Super. LEXIS 284 \(App.Div. 2007\)](#).

**Real Property Law: Zoning & Land Use: Local Planning**

Under the Municipal Land Use Law, a developer cannot be compelled to shoulder more than its pro-rata share of the cost of off-tract improvements, and the imposition of a condition of approval unrelated to the needs generated by the development violates the law even if the developer agrees to the condition in a separate developer's agreement. [Toll Bros., Inc. v. Board of Chosen Freeholders of Burlington, 194 N.J. 223, 944 A.2d 1, 2008 N.J. LEXIS 310 \(N.J. 2008\)](#).

## § 40:55D-45.2. Contents of general development plan

When a significant reduction in the scope of a proposed development affects the need for off-tract improvement, a developer is entitled to an opportunity to demonstrate that a recalculation of its contribution is warranted, and the existence of a developer's agreement is of no consequence to that entitlement. [Toll Bros., Inc. v. Board of Chosen Freeholders of Burlington, 194 N.J. 223, 944 A.2d 1, 2008 N.J. LEXIS 310 \(N.J. 2008\)](#).

**Real Property Law: Zoning & Land Use: Planned Unit Developments**

City planning board's determination that a developer's general development plan (GDP), which included 950 detached age-restricted homes clustered on 239 acres, a golf course, a club house, and an undeveloped conservation area, will not have an unreasonably adverse impact upon the area was upheld on appeal as the planning board properly applied a general standard in assessing whether the GDP would have an unreasonably adverse impact and had before it sufficient evidence to support its determination. [Citizens United To Protect The Maurice River And Its Tributaries, Inc. v. City of Millville Planning Bd., 395 N.J. Super. 434, 929 A.2d 606, 2007 N.J. Super. LEXIS 284 \(App.Div. 2007\)](#).

Process by which a planning board determines whether a general development plan will not have an unreasonably adverse impact on an area in which it is proposed to be established is intended to be general in nature and to provide the increased flexibility desirable to promote mutual agreement between a developer and planning board regarding the basic scheme of a planned development; in applying that standard, a planning board's consideration should be from the standpoint of probable feasibility, with more detailed presentation deferred until subsequent applications for preliminary site plan and subdivision approvals are made. [Citizens United To Protect The Maurice River And Its Tributaries, Inc. v. City of Millville Planning Bd., 395 N.J. Super. 434, 929 A.2d 606, 2007 N.J. Super. LEXIS 284 \(App.Div. 2007\)](#).

**Real Property Law: Zoning & Land Use: Special Permits & Variances**

Under the Municipal Land Use Law, a developer cannot be compelled to shoulder more than its pro-rata share of the cost of off-tract improvements, and the imposition of a condition of approval unrelated to the needs generated by the development violates the law even if the developer agrees to the condition in a separate developer's agreement. [Toll Bros., Inc. v. Board of Chosen Freeholders of Burlington, 194 N.J. 223, 944 A.2d 1, 2008 N.J. LEXIS 310 \(N.J. 2008\)](#).

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Refusal of a city to allow a variation in the zoning regulations so that prosecutor could build a gasoline service station on a main thoroughfare with heavy pedestrian traffic was not unreasonable under N.J. Const. art. IV, § 6, para. 5. [Citizens Nat'l Bank & Trust Co. v. Englewood, 128 N.J.L. 147, 24 A.2d 819, 1942 N.J. Sup. Ct. LEXIS 157 \(N.J. Sup. Ct. 1942\)](#).

**Research References & Practice Aids**

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**Cross References:**

Definitions; D to L, see [40:55D-4](#).

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§ 40:55D-45.2. Contents of general development plan

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## [N.J. Stat. § 40:55D-45.3](#)

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### § 40:55D-45.3. Submission of general development plan

a.

(1) Any developer of a parcel of land greater than 100 acres in size for which the developer is seeking approval of a planned development pursuant to P.L.1975, c.291 ([C.40:55D-1](#) et seq.) may submit a general development plan to the planning board prior to the granting of preliminary approval of that development by the planning board pursuant to section 34 of P.L.1975, c.291 ([C.40:55D-46](#)) or section 36 of P.L.1975, c.291 ([C.40:55D-48](#)).

(2) Any developer of a parcel of land 100 acres or less in size for which parcel the developer is seeking approval of a planned development pursuant to P.L.1975, c.291 ([C.40:55D-1](#) et seq.), consisting of not less than 150,000 square feet of nonresidential floor area or not less than 100 residential dwelling units, or consisting of a combination of square feet of nonresidential floor area and residential dwelling units, which when proportionately aggregated at a rate of 1,500 square feet of nonresidential floor area to one residential dwelling unit, are equivalent to at least 150,000 square feet of nonresidential floor area or 100 residential dwelling units, may submit a general development plan to the planning board prior to the granting of preliminary approval of that development by the planning board pursuant to section 34 of P.L.1975, c.291 ([C.40:55D-46](#)) or section 36 of P.L.1975, c.291 ([C.40:55D-48](#)).

b. The planning board shall grant or deny general development plan approval within 95 days after submission of a complete application to the administrative officer, or within such further time as may be consented to by the applicant. Failure of the planning board to act within the period prescribed shall constitute general development plan approval of the planned development.

### History

L. 1987, c. 129, § 5; amended [2011, c. 86](#), § 1, eff. July 1, 2011.

Annotations

### Notes

#### OLS Corrections:

Pursuant to [R.S.1:3-1](#), the Office of Legislative Services, through its Legislative Counsel and with the concurrence of the Attorney General, corrected a technical error in L. [2011, c. 86](#), § 1.

Editor's Notes

## § 40:55D-45.3. Submission of general development plan

L. [2011, c. 86](#), as enacted, contains recommendations made by the Governor on conditional veto of the legislation (Senate Bill No. 483). The Governor's recommendations, in new a.(2), included the deletion of "located in a smart growth area" following "100 acres or less in size" and the insertion of "or consisting of a combination of square feet of nonresidential floor area and residential dwelling units, which when proportionately aggregated at a rate of 1,500 square feet of nonresidential floor area to 1 residential dwelling unit, are equivalent to at least 150,000 square feet of nonresidential floor area or 100 residential dwelling units."

**Amendment Note:**

2011 amendment, by Chapter 86, added a.(2) and designated the former provisions of a. as a.(1).

**Research References & Practice Aids**

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**Cross References:**

Inapplicability of certain provisions of law imposing fee upon developer of certain non-residential property, see [40:55D-8.6](#).

**Administrative Code:**

N.J.A.C. 5:21-3.2 (2013), CHAPTER RESIDENTIAL SITE IMPROVEMENT STANDARDS, Waiver request.

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## [N.J. Stat. § 40:55D-45.4](#)

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### § 40:55D-45.4. Modification of timing schedule

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In the event that the developer seeks to modify the proposed timing schedule, such modification shall require the approval of the planning board. The planning board shall, in deciding whether or not to grant approval of the modification, take into consideration prevailing economic and market conditions, anticipated and actual needs for residential units and nonresidential space within the municipality and the region, and the availability and capacity of public facilities to accommodate the proposed development.

### History

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L. 1987, c. 129, 6.

Annotations

### Research References & Practice Aids

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## [N.J. Stat. § 40:55D-45.5](#)

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### **§ 40:55D-45.5. Variation approval**

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- a. Except as provided hereunder, the developer shall be required to gain the prior approval of the planning board if, after approval of the general development plan, the developer wishes to make any variation in the location of land uses within the planned development or to increase the density of residential development or the floor area ratio of nonresidential development in any section of the planned development.
- b. Any variation in the location of land uses or increase in density or floor area ratio proposed in reaction to a negative decision of, or condition of development approval imposed by, the Pinelands Commission pursuant to P.L. 1979, c. 111 ([C. 13:18A-1](#) et seq.) or the Department of Environmental Protection pursuant to P.L. 1973, c. 185 ([C. 13:19-1](#) et seq.) shall be approved by the planning board if the developer can demonstrate, to the satisfaction of the planning board, that the variation being proposed is a direct result of such determination by the Pinelands Commission or the Department of Environmental Protection, as the case may be.

### **History**

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L. 1987, c. 129, 7.

Annotations

### **Research References & Practice Aids**

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## [N.J. Stat. § 40:55D-45.6](#)

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### **§ 40:55D-45.6. Revision of general development plan**

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- a. Except as provided hereunder, once a general development plan has been approved by the planning board, it may be amended or revised only upon application by the developer approved by the planning board.
- b. A developer, without violating the terms of the approval pursuant to this act, may, in undertaking any section of the planned development, reduce the number of residential units or amounts of nonresidential floor space by no more than 15% or reduce the residential density or nonresidential floor area ratio by no more than 15%; provided, however, that a developer may not reduce the number of residential units to be provided pursuant to P.L.1985, c. 222 ([C. 52:27D-301](#) et al.), without prior municipal approval.

### **History**

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L. 1987, c. 129, 8.

Annotations

### **Research References & Practice Aids**

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## [N.J. Stat. § 40:55D-45.7](#)

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### **§ 40:55D-45.7. Notification of completion**

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a. Upon the completion of each section of the development as set forth in the approved general development plan, the developer shall notify the administrative officer, by certified mail, as evidence that the developer is fulfilling his obligations under the approved plan. For the purposes of this section, “completion” of any section of the development shall mean that the developer has acquired a certificate of occupancy for every residential unit or every nonresidential structure, as set forth in the approved general development plan and pursuant to section 15 of P.L.1975, c. 217 ([C. 52:27D-133](#)). If the municipality does not receive such notification at the completion of any section of the development, the municipality shall notify the developer, by certified mail, in order to determine whether or not the terms of the approved plan are being complied with.

If a developer does not complete any section of the development within eight months of the date provided for in the approved plan, or if at any time the municipality has cause to believe that the developer is not fulfilling his obligations pursuant to the approved plan, the municipality shall notify the developer, by certified mail, and the developer shall have 10 days within which to give evidence that he is fulfilling his obligations pursuant to the approved plan. The municipality thereafter shall conduct a hearing to determine whether or not the developer is in violation of the approved plan. If, after such a hearing, the municipality finds good cause to terminate the approval, it shall provide written notice of same to the developer and the approval shall be terminated 30 days thereafter.

b. In the event that a developer who has general development plan approval does not apply for preliminary approval for the planned development which is the subject of that general development plan approval within five years of the date upon which the general development plan has been approved by the planning board, the municipality shall have cause to terminate the approval.

### **History**

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L. 1987, c. 129, 9.

Annotations

### **CASE NOTES**

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#### **Real Property Law: Zoning & Land Use: Comprehensive Plans**

Because a residential developer’s approved Grand Development Plan (GDP) for development had changed dramatically, and those changes, which included the removal of an entire planned development parcel, were not approved by the local planning board, the township had under [N.J. Stat. Ann. § 40:55D-45.7](#) the requisite statutory

§ 40:55D-45.7. Notification of completion

“cause to believe” that the residential developer was not then, nor would it in the future be, capable of fulfilling its obligations pursuant to the originally approved GDP. [Centex Homes, LLC v. Township Committee of Tp. of Mansfield, 372 N.J. Super. 186, 857 A.2d 649, 2004 N.J. Super. LEXIS 352 \(Law Div. 2004\)](#).

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## [N.J. Stat. § 40:55D-45.8](#)

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### **§ 40:55D-45.8. Approval terminated upon completion**

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In the event that a development which is the subject of an approved general development plan is completed before the end of the term of the approval, the approval shall terminate with the completion of the development. For the purposes of this section, a development shall be considered complete on the date upon which a certificate of occupancy has been issued for the final residential or nonresidential structure in the last section of the development in accordance with the timing schedule set forth in the approved general development plan and the developer has fulfilled all of his obligations pursuant to the approval.

### **History**

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L. 1987, c. 129, 10.

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## [N.J. Stat. § 40:55D-46](#)

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### **§ 40:55D-46. Procedure for preliminary site plan approval**

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- a. An ordinance requiring site plan review and approval shall require that the developer submit to the administrative officer a site plan and such other information as is reasonably necessary to make an informed decision as to whether the requirements necessary for preliminary site plan approval have been met. The site plan and any engineering documents to be submitted shall be required in tentative form for discussion purposes for preliminary approval. If any architectural plans are required to be submitted for site plan approval, the preliminary plans and elevations shall be sufficient.
- b. If the planning board requires any substantial amendment in the layout of improvements proposed by the developer that have been the subject of a hearing, an amended application for development shall be submitted and proceeded upon, as in the case of the original application for development. The planning board shall, if the proposed development complies with the ordinance and this act, grant preliminary site plan approval.
- c. Upon the submission to the administrative officer of a completed application for a site plan which involves 10 acres of land or less, and 10 dwelling units or less, the planning board shall grant or deny preliminary approval within 45 days of the date of such submission or within such further time as may be consented to by the developer. Upon the submission of a completed application for a site plan which involves more than 10 acres, or more than 10 dwelling units, the planning board shall grant or deny preliminary approval within 95 days of the date of such submission or within such further time as may be consented to by the developer. Otherwise, the planning board shall be deemed to have granted preliminary approval of the site plan.

### **History**

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L. 1975, c. 291, § 34, eff. Aug. 1, 1976; Amended by L. 1979, c. 216, § 15; L. 1984, c. 20, § 8, eff. March 22, 1984.

Annotations

### **Notes**

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#### **Editor's Notes**

Approval of site plan in Abbott district, referral to New Jersey Schools Development Authority, see [18A:7G-47](#).

### **CASE NOTES**

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## § 40:55D-46. Procedure for preliminary site plan approval

**Administrative Law: Judicial Review: Standards of Review: Arbitrary & Capricious Review****Real Property Law: Zoning & Land Use: Administrative Procedure****Real Property Law: Zoning & Land Use: Comprehensive Plans****Real Property Law: Zoning & Land Use: Local Planning****Real Property Law: Zoning & Land Use: Ordinances****Real Property Law: Zoning & Land Use: Special Permits & Variances****Administrative Law: Judicial Review: Standards of Review: Arbitrary & Capricious Review**

Ordinance enacted by a township that changed the zoning of an owner's property from commercial to office park was deemed inverse spot zoning and an arbitrary and unreasonable action by the township since it only affected the owner's property and prevented its development for a drug store and other purposes. The ordinance was adjudged unenforceable by a reviewing court since the township's planning board had otherwise no problems with the owner's site plan application for development, the decision to enact the ordinance conflicted with the township's master plan, and the decision was made only in response to objecting residents. [\*Riya Finnegan, LLC v. Township Council of South Brunswick\*, 386 N.J. Super. 255, 900 A.2d 325, 2006 N.J. Super. LEXIS 178 \(Law Div. 2006\)](#), rev'd, [\*394 N.J. Super. 303, 926 A.2d 402, 2007 N.J. Super. LEXIS 203 \(App.Div. 2007\)\*](#).

**Real Property Law: Zoning & Land Use: Administrative Procedure**

Site plan ordinance was valid as of the day it was filed, even though a builder had a site plan application pending for approval as of the time the ordinance was adopted; furthermore, the two 45-day periods for approval contained in [\*N.J. Stat. Ann. § 40:55D-46\(a\)\*](#) and (c) began to run from the date the application was filed, even before the review ordinance was adopted. [\*Burcam Corp. v. Planning Bd. of Medford\*, 168 N.J. Super. 508, 403 A.2d 921, 1979 N.J. Super. LEXIS 783 \(App.Div. 1979\)](#).

**Real Property Law: Zoning & Land Use: Comprehensive Plans**

City ordinance that was not properly filed with planning board could not operate retroactively and was not effective until filed as required by [\*N.J. Stat. Ann. § 40:55D-46 \(c\)\*](#). [\*Burcam Corp. v. Planning Board of Medford\*, 160 N.J. Super. 258, 389 A.2d 522, 1978 N.J. Super. LEXIS 968 \(Law Div. 1978\)](#), aff'd in part, modified, [\*168 N.J. Super. 508, 403 A.2d 921, 1979 N.J. Super. LEXIS 783 \(App.Div. 1979\)\*](#).

**Real Property Law: Zoning & Land Use: Local Planning**

Trial court properly dismissed a city's suit seeking to stop a developer's construction of an apartment building as the developer did not lose the benefit of the original approvals it obtained authorizing the project after unsuccessfully seeking approvals for a larger development. [\*Price v. Martinetti\*, 421 N.J. Super. 290, 23 A.3d 483, 2011 N.J. Super. LEXIS 145 \(App.Div. 2011\)](#).

In the absence of any ordinance or provision in the subsequent land use approvals conditioning those approvals upon rescission of the original approvals, a landowner that has obtained the approvals required for a development project different from the one originally approved retains the right to develop the property in accordance with the original plan. [\*Price v. Martinetti\*, 421 N.J. Super. 290, 23 A.3d 483, 2011 N.J. Super. LEXIS 145 \(App.Div. 2011\)](#).

Ordinance enacted by a township that changed the zoning of an owner's property from commercial to office park was deemed inverse spot zoning and an arbitrary and unreasonable action by the township since it only affected the owner's property and prevented its development for a drug store and other purposes. The ordinance was adjudged unenforceable by a reviewing court since the township's planning board had otherwise no problems with the owner's site plan application for development, the decision to enact the ordinance conflicted with the township's

## § 40:55D-46. Procedure for preliminary site plan approval

master plan, and the decision was made only in response to objecting residents. [Riya Finnegan, LLC v. Township Council of South Brunswick, 386 N.J. Super. 255, 900 A.2d 325, 2006 N.J. Super. LEXIS 178 \(Law Div. 2006\)](#), rev'd, [394 N.J. Super. 303, 926 A.2d 402, 2007 N.J. Super. LEXIS 203 \(App.Div. 2007\)](#).

### Real Property Law: Zoning & Land Use: Ordinances

Ordinance enacted by a township that changed the zoning of an owner's property from commercial to office park was deemed inverse spot zoning and an arbitrary and unreasonable action by the township since it only affected the owner's property and prevented its development for a drug store and other purposes. The ordinance was adjudged unenforceable by a reviewing court since the township's planning board had otherwise no problems with the owner's site plan application for development, the decision to enact the ordinance conflicted with the township's master plan, and the decision was made only in response to objecting residents. [Riya Finnegan, LLC v. Township Council of South Brunswick, 386 N.J. Super. 255, 900 A.2d 325, 2006 N.J. Super. LEXIS 178 \(Law Div. 2006\)](#), rev'd, [394 N.J. Super. 303, 926 A.2d 402, 2007 N.J. Super. LEXIS 203 \(App.Div. 2007\)](#).

Site plan ordinance was valid as of the day it was filed, even though a builder had a site plan application pending for approval as of the time the ordinance was adopted; furthermore, the two 45-day periods for approval contained in [N.J. Stat. Ann. § 40:55D-46\(a\)](#) and (c) began to run from the date the application was filed, even before the review ordinance was adopted. [Burcam Corp. v. Planning Bd. of Medford, 168 N.J. Super. 508, 403 A.2d 921, 1979 N.J. Super. LEXIS 783 \(App.Div. 1979\)](#).

### Real Property Law: Zoning & Land Use: Special Permits & Variances

Trial court properly dismissed a city's suit seeking to stop a developer's construction of an apartment building as the developer did not lose the benefit of the original approvals it obtained authorizing the project after unsuccessfully seeking approvals for a larger development. [Price v. Martinetti, 421 N.J. Super. 290, 23 A.3d 483, 2011 N.J. Super. LEXIS 145 \(App.Div. 2011\)](#).

In the absence of any ordinance or provision in the subsequent land use approvals conditioning those approvals upon rescission of the original approvals, a landowner that has obtained the approvals required for a development project different from the one originally approved retains the right to develop the property in accordance with the original plan. [Price v. Martinetti, 421 N.J. Super. 290, 23 A.3d 483, 2011 N.J. Super. LEXIS 145 \(App.Div. 2011\)](#).

## Opinion Notes

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### OPINIONS OF ATTORNEY GENERAL

FORMAL OPINION No. 3 (1990);, [1990 N.J. AG LEXIS 1](#).

## Research References & Practice Aids

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### Cross References:

Definitions; P to R, see [40:55D-6](#).

Notices of application, requirements., see [40:55D-12](#).

Preliminary approval, extension, see [40:55D-49](#).

Inapplicability of certain provisions of law imposing fee upon developer of certain non-residential property, see [40:55D-8.6](#).

§ 40:55D-46. Procedure for preliminary site plan approval

Return of non-residential development fees, see [40:55D-8.8](#).

Submission of general development plan, see [40:55D-45.3](#).

**Administrative Code:**

N.J.A.C. 5:21-1.4 (2013), CHAPTER RESIDENTIAL SITE IMPROVEMENT STANDARDS, Definitions and abbreviations.

N.J.A.C. 5:97-1.4 (2013), CHAPTER SUBSTANTIVE RULES OF THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING FOR THE PERIOD BEGINNING JUNE 2, 2008, Definitions.

N.J.A.C. 7:7A-1.4 (2013), CHAPTER FRESHWATER WETLANDS PROTECTION ACT RULES, Definitions.

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## [N.J. Stat. § 40:55D-46.1](#)

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### **§ 40:55D-46.1. Minor site plan; approval**

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An ordinance requiring, pursuant to section 7.1 of P.L.1975, c.291 ([C.40:55D-12](#)), notice of hearings on applications for development for conventional site plans, may authorize the planning board to waive notice and public hearing for an application for development, if the planning board or site plan subcommittee of the board appointed by the chairman finds that the application for development conforms to the definition of “minor site plan.” Minor site plan approval shall be deemed to be final approval of the site plan by the board, provided that the board or said subcommittee may condition such approval on terms ensuring the provision of improvements pursuant to sections 29, 29.1, 29.3 and 41 of P.L.1975, c.291 ([C.40:55D-38](#), [40:55D-39](#), [40:55D-41](#) and [40:55D-53](#)).

- a. Minor site plan approval shall be granted or denied within 45 days of the date of submission of a complete application to the administrative officer, or within such further time as may be consented to by the applicant. Failure of the planning board to act within the period prescribed shall constitute minor site plan approval.
- b. Whenever review or approval of the application by the county planning board is required by section 8 of P.L.1968, c.285 ([C.40:27-6.6](#)), the municipal planning board shall condition any approval that it grants upon timely receipt of a favorable report on the application by the county planning board or approval by the county planning board by its failure to report thereon within the required time period.
- c. The zoning requirements and general terms and conditions, whether conditional or otherwise, upon which minor site plan approval was granted, shall not be changed for a period of two years after the date of minor site plan approval. The planning board shall grant an extension of this period for a period determined by the board but not exceeding one year from what would otherwise be the expiration date, if the developer proves to the reasonable satisfaction of the board that the developer was barred or prevented, directly or indirectly, from proceeding with the development because of delays in obtaining legally required approvals from other governmental entities and that the developer applied promptly for and diligently pursued the approvals. A developer shall apply for this extension before: (1) what would otherwise be the expiration date, or (2) the 91st day after the date on which the developer receives the last of the legally required approvals from the other governmental entities, whichever occurs later.

### **History**

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L. 1979, c. 216, § 14; amended [1991, c. 256](#), § 8.

Annotations

### **CASE NOTES**

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## § 40:55D-46.1. Minor site plan; approval

**Governments: Local Governments: Administrative Boards****Real Property Law: Zoning & Land Use: Constitutional Limits****Real Property Law: Zoning & Land Use: State & Regional Planning****Governments: Local Governments: Administrative Boards**

Municipal Land Use Law, [N.J. Stat. Ann. § 40:55D-1](#) et seq., provides that a planning board shall grant or deny site plan approval within 45 days after an applicant submits a complete application or within such further time as may be consented to by an applicant, and, under [N.J. Stat. Ann. § 40:55D-46.1\(a\)](#) and (b), failure to act within that period constitutes an approval; thus, if a planning board delays approving a site plan, the consequence is not a violation of some constitutionally-protected interest of an applicant, but it is, in fact, an approval of the applicant's plans. [Anastasio v. Planning Bd. of West Orange, 209 N.J. Super. 499, 507 A.2d 1194, 1986 N.J. Super. LEXIS 1227 \(App.Div.\)](#), certif. denied, 107 N.J. 46, 526 A.2d 136, 1986 N.J. LEXIS 2260 (N.J. 1986).

**Real Property Law: Zoning & Land Use: Constitutional Limits**

Municipal Land Use Law, [N.J. Stat. Ann. § 40:55D-1](#) et seq., provides that a planning board shall grant or deny site plan approval within 45 days after an applicant submits a complete application or within such further time as may be consented to by an applicant, and, under [N.J. Stat. Ann. § 40:55D-46.1\(a\)](#) and (b), failure to act within that period constitutes an approval; thus, if a planning board delays approving a site plan, the consequence is not a violation of some constitutionally-protected interest of an applicant, but it is, in fact, an approval of the applicant's plans. [Anastasio v. Planning Bd. of West Orange, 209 N.J. Super. 499, 507 A.2d 1194, 1986 N.J. Super. LEXIS 1227 \(App.Div.\)](#), certif. denied, 107 N.J. 46, 526 A.2d 136, 1986 N.J. LEXIS 2260 (N.J. 1986).

**Real Property Law: Zoning & Land Use: State & Regional Planning**

Municipal Land Use Law, [N.J. Stat. Ann. § 40:55D-1](#) et seq., provides that a planning board shall grant or deny site plan approval within 45 days after an applicant submits a complete application or within such further time as may be consented to by an applicant, and, under [N.J. Stat. Ann. § 40:55D-46.1\(a\)](#) and (b), failure to act within that period constitutes an approval; thus, if a planning board delays approving a site plan, the consequence is not a violation of some constitutionally-protected interest of an applicant, but it is, in fact, an approval of the applicant's plans. [Anastasio v. Planning Bd. of West Orange, 209 N.J. Super. 499, 507 A.2d 1194, 1986 N.J. Super. LEXIS 1227 \(App.Div.\)](#), certif. denied, 107 N.J. 46, 526 A.2d 136, 1986 N.J. LEXIS 2260 (N.J. 1986).

**Research References & Practice Aids**

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## [N.J. Stat. § 40:55D-46.2](#)

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### **§ 40:55D-46.2. Application to collocate wireless communications equipment; terms defined**

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- a. An application for development to collocate wireless communications equipment on a wireless communications support structure or in an existing equipment compound shall not be subject to site plan review provided the application meets the following requirements:
- (1) the wireless communications support structure shall have been previously granted all necessary approvals by the appropriate approving authority;
  - (2) the proposed collocation shall not increase (a) the overall height of the wireless communications support structure by more than ten percent of the original height of the wireless communications support structure, (b) the width of the wireless communications support structure, or (c) the square footage of the existing equipment compound to an area greater than 2,500 square feet;
  - (3) the proposed collocation complies with the final approval of the wireless communications support structure and all conditions attached thereto and does not create a condition for which variance relief would be required pursuant to P.L. 1975, c.291 ([C.40:55D-1](#) et seq.), or any other applicable law, rule or regulation.
- b. For purposes of this section:
- “Equipment compound” means an area surrounding or adjacent to the base of a wireless communications support structure within which is located wireless communications equipment.
- “Collocate” means to place or install wireless communications equipment on a wireless communications support structure.
- “Wireless communications equipment” means the set of equipment and network components used in the provision of wireless communications services: including, but not limited to, antennas, transmitters, receivers, base stations, equipment shelters, cabinets, emergency generators, power supply cabling, and coaxial and fiber optic cable, but excluding wireless communications support structures.
- “Wireless communications support structure” means a structure that is designed to support, or is capable of supporting, wireless communications equipment, including a monopole, self-supporting lattice tower, guyed tower, water tower, utility pole, or building.

### **History**

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L. [2011, c. 199](#), § 1, eff. Jan. 17, 2012.

Annotations

## Notes

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### Editor's Notes

This section, as enacted, contains recommendations made by the Governor on conditional veto of the legislation (Senate Bill No. 2989) earlier in the session. The Governor recommended the addition of “and does not create a condition for which variance relief would be required pursuant to P.L.1975, c.291 ([C.40:55D-1](#) et seq.), or any other applicable law, rule or regulation” in a.(3).

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## [N.J. Stat. § 40:55D-47](#)

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### **§ 40:55D-47. Minor subdivision**

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- a. An ordinance requiring approval of subdivisions by the planning board may authorize the planning board to waive notice and public hearing for an application for development if the planning board or subdivision committee of the board appointed by the chairman find that the application for development conforms to the definition of “minor subdivision” in section 3.2 of P.L.1975, c.291 ([C.40:55D-5](#)). Minor subdivision approval shall be deemed to be final approval of the subdivision by the board; provided that the board or said subcommittee may condition such approval on terms ensuring the provision of improvements pursuant to sections 29, 29.1, 29.2 and 41 of P.L.1975, c.291 ([C.40:55D-38](#), [C.40:55D-39](#), [C.40:55D-40](#), and [C.40:55D-53](#)).
- b. Minor subdivision approval shall be granted or denied within 45 days of the date of submission of a complete application to the administrative officer, or within such further time as may be consented to by the applicant. Failure of the planning board to act within the period prescribed shall constitute minor subdivision approval and a certificate of the administrative officer as to the failure of the planning board to act shall be issued on request of the applicant; and it shall be sufficient in lieu of the written endorsement or other evidence of approval, herein required, and shall be so accepted by the county recording officer for purposes of filing subdivision plats.
- c. Whenever review or approval of the application by the county planning board is required by section 5 of P.L.1968, c.285 ([C.40:27-6.3](#)), the municipal planning board shall condition any approval that it grants upon timely receipt of a favorable report on the application by the county planning board or approval by the county planning board by its failure to report thereon within the required time period.
- d. Except as provided in subsection f. of this section, approval of a minor subdivision shall expire 190 days from the date on which the resolution of municipal approval is adopted unless within such period a plat in conformity with such approval and the provisions of the “Map Filing Law,” P.L.1960, c.141 ([C.46:23-9.9](#) et seq.), or a deed clearly describing the approved minor subdivision is filed by the developer with the county recording officer, the municipal engineer and the municipal tax assessor. Any such plat or deed accepted for such filing shall have been signed by the chairman and secretary of the planning board. In reviewing the application for development for a proposed minor subdivision the planning board may be permitted by ordinance to accept a plat not in conformity with the “Map Filing Law,” P.L.1960, c.141 ([C.46:23-9.9](#) et seq.); provided that if the developer chooses to file the minor subdivision as provided herein by plat rather than deed such plat shall conform with the provisions of said act.
- e. The zoning requirements and general terms and conditions, whether conditional or otherwise, upon which minor subdivision approval was granted, shall not be changed for a period of two years after the date on which the resolution of minor subdivision approval is adopted; provided that the approved minor subdivision shall have been duly recorded as provided in this section.
- f. The planning board may extend the 190-day period for filing a minor subdivision plat or deed pursuant to subsection d. of this section if the developer proves to the reasonable satisfaction of the planning board (1) that the developer was barred or prevented, directly or indirectly, from filing because of delays in obtaining

## § 40:55D-47. Minor subdivision

legally required approvals from other governmental or quasi-governmental entities and (2) that the developer applied promptly for and diligently pursued the required approvals. The length of the extension shall be equal to the period of delay caused by the wait for the required approvals, as determined by the planning board. The developer may apply for the extension either before or after what would otherwise be the expiration date.

**g.** The planning board shall grant an extension of minor subdivision approval for a period determined by the board but not exceeding one year from what would otherwise be the expiration date, if the developer proves to the reasonable satisfaction of the board that the developer was barred or prevented, directly or indirectly, from proceeding with the development because of delays in obtaining legally required approvals from other governmental entities and that the developer applied promptly for and diligently pursued the required approvals. A developer shall apply for the extension before (1) what would otherwise be the expiration date of minor subdivision approval or (2) the 91st day after the developer receives the last legally required approval from other governmental entities, whichever occurs later.

## History

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L. 1975, c. 291, § 35; amended [1991, c. 256](#), § 9.

Annotations

## CASE NOTES

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**Real Property Law: Subdivisions: General Overview**

**Real Property Law: Subdivisions: State Regulation**

**Real Property Law: Zoning & Land Use: Comprehensive Plans**

**Real Property Law: Zoning & Land Use: Local Planning**

**Real Property Law: Zoning & Land Use: Special Permits & Variances**

**Real Property Law: Subdivisions: General Overview**

Planning board's decision denying an application for a subdivision and related variances pursuant to the negative criteria of [N.J.Stat. Ann. § 40:55D-70](#) was arbitrary, capricious and unreasonable, because the granting of a variance to have a side yard of 8.6 feet instead of 10 feet and a front yard of 44 feet instead of 38 feet to 42 feet, where the violations currently existed and would exist whether or not the variance was granted, would not cause substantial detriment to the neighborhood, and because the granting of the application would not have been contrary to the intent of the zoning ordinance at the time of the application hearing. The "time of decision rule" did not apply because the applicant became vested with protection under [N.J.Stat. Ann. § 40:55D-47](#) when he submitted his conforming application to the board, and because general equitable principles required an applicant to have the benefit of the statutory protection against zoning amendments outlawing his or her wrongly denied relief. [Dinizo v. Planning Bd., 312 N.J. Super. 225, 711 A.2d 425, 1998 N.J. Super. LEXIS 203 \(Law Div. 1998\)](#).

**Real Property Law: Subdivisions: State Regulation**

Trial court dismissed with prejudice the action in lieu of prerogative writs brought by the owners of a parcel of land they sought to subdivide as their second application, which was at issue, was not automatically approved under [N.J. Stat. Ann. § 40:55D-61](#) for the local planning board's failure to timely act as the appeal on their first application involving an adjacent lot was pending and stayed the matter. As a result, the appeal of the first application denial

## § 40:55D-47. Minor subdivision

divested the local planning board of any jurisdiction over the second application; plus, the owners had consented to an adjournment of the appeal in the second action for a time period after which the local planning board would have been required to act under § [40:55D-61](#). [Cicchine v. Township of Woodbridge, 413 N.J. Super. 393, 995 A.2d 318, 2010 N.J. Super. LEXIS 85 \(Law Div. 2010\)](#).

**Real Property Law: Zoning & Land Use: Comprehensive Plans**

[N.J. Stat. Ann. § 40:55D-47](#) is quite clear in its meaning and is not discretionary so that the failure of the township planning board to act constitutes minor subdivision approval. [Purwin v. Bernards Township Planning Bd., 221 N.J. Super. 243, 534 A.2d 96, 1987 N.J. Super. LEXIS 1390 \(Law Div. 1987\)](#), overruled in part, [Eastampton Ctr., LLC v. Planning Bd., 354 N.J. Super. 171, 805 A.2d 456, 2002 N.J. Super. LEXIS 388 \(App.Div. 2002\)](#).

**Real Property Law: Zoning & Land Use: Local Planning**

Trial court dismissed with prejudice the action in lieu of prerogative writs brought by the owners of a parcel of land they sought to subdivide as their second application, which was at issue, was not automatically approved under [N.J. Stat. Ann. § 40:55D-61](#) for the local planning board's failure to timely act as the appeal on their first application involving an adjacent lot was pending and stayed the matter. As a result, the appeal of the first application denial divested the local planning board of any jurisdiction over the second application; plus, the owners had consented to an adjournment of the appeal in the second action for a time period after which the local planning board would have been required to act under § [40:55D-61](#). [Cicchine v. Township of Woodbridge, 413 N.J. Super. 393, 995 A.2d 318, 2010 N.J. Super. LEXIS 85 \(Law Div. 2010\)](#).

**Real Property Law: Zoning & Land Use: Special Permits & Variances**

Planning board's decision denying an application for a subdivision and related variances pursuant to the negative criteria of [N.J. Stat. Ann. § 40:55D-70](#) was arbitrary, capricious and unreasonable, because the granting of a variance to have a side yard of 8.6 feet instead of 10 feet and a front yard of 44 feet instead of 38 feet to 42 feet, where the violations currently existed and would exist whether or not the variance was granted, would not cause substantial detriment to the neighborhood, and because the granting of the application would not have been contrary to the intent of the zoning ordinance at the time of the application hearing. The "time of decision rule" did not apply because the applicant became vested with protection under [N.J. Stat. Ann. § 40:55D-47](#) when he submitted his conforming application to the board, and because general equitable principles required an applicant to have the benefit of the statutory protection against zoning amendments outlawing his or her wrongly denied relief. [Dinizo v. Planning Bd., 312 N.J. Super. 225, 711 A.2d 425, 1998 N.J. Super. LEXIS 203 \(Law Div. 1998\)](#).

**Research References & Practice Aids**

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**Cross References:**

Notices of application, requirements., see [40:55D-12](#).

Recording of final approval of major subdivision; filing of all subdivision plats, see [40:55D-54](#).

Default approval, see [40:55D-10.4](#).

**Administrative Code:**

N.J.A.C. 7:50-4.1 (2013), CHAPTER PINELANDS COMPREHENSIVE MANAGEMENT PLAN, Applicability.

N.J.A.C. 7:50-4.70 (2013), CHAPTER PINELANDS COMPREHENSIVE MANAGEMENT PLAN, Effect of grant of waiver; expiration; recordation; effective date.

§ 40:55D-47. Minor subdivision

**NJ ICLE:**

[Commercial Real Estate Transactions in New Jersey 5.1](#) Municipal Land Use Regulations

[Commercial Real Estate Transactions in New Jersey 5.3](#) Due Diligence

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## [N.J. Stat. § 40:55D-48](#)

\*\*\* Current through New Jersey 221st First Annual Session, L. 2024, c. 87 and J.R. 2 \*\*\*

**LexisNexis® New Jersey Annotated Statutes > Title 40. Municipalities and Counties (Subts. 1 — 13) > Subtitle 3. Municipality Provisions (Chs. 42 — 69) > Chapter 55D. Municipal Land Use Law (Arts. 1 — 17) > Article 6. Subdivisions (§§ 40:55D-37 — 40:55D-59)**

### **§ 40:55D-48. Procedure for preliminary major subdivision approval**

- a. An ordinance requiring subdivision approval by the planning board shall require that the developer submit to the administrative officer a plat and such other information as is reasonably necessary to make an informed decision as to whether the requirements necessary for preliminary approval have been met; provided that minor subdivisions pursuant to section 35 of this act shall not be subject to this section. The plat and any other engineering documents to be submitted shall be required in tentative form for discussion purposes for preliminary approval.
- b. If the planning board requires any substantial amendment in the layout of improvements proposed by the developer that have been the subject of a hearing, an amended application shall be submitted and proceeded upon, as in the case of the original application for development. The planning board shall, if the proposed subdivision complies with the ordinance and this act, grant preliminary approval to the subdivision.
- c. Upon the submission to the administrative officer of a completed application for a subdivision of 10 or fewer lots, the planning board shall grant or deny preliminary approval within 45 days of the date of such submission or within such further time as may be consented to by the developer. Upon the submission of a completed application for a subdivision of more than 10 lots, the planning board shall grant or deny preliminary approval within 95 days of the date of such submission or within such further time as may be consented to by the developer. Otherwise, the planning board shall be deemed to have granted preliminary approval to the subdivision.

### **History**

L. 1975, c. 291, § 36, eff. Aug. 1, 1976; Amended by L. 1979, c. 216, § 16; L. 1984, c. 20, § 9, eff. March 22, 1984.

Annotations

### **CASE NOTES**

**Real Property Law: Subdivisions: General Overview**

**Real Property Law: Zoning & Land Use: General Overview**

**Real Property Law: Zoning & Land Use: Comprehensive Plans**

**Real Property Law: Subdivisions: General Overview**

## § 40:55D-48. Procedure for preliminary major subdivision approval

In an action commenced by a developer against a planning board seeking a declaration of rights, a summary judgment in the developer's favor deeming approval of his application for subdivision plan was affirmed because the planning board took no action on the developer's plan within the time prescribed by [N.J. Stat. Ann. 40:55D-48\(c\)](#); additional requirements did not render the developer's application incomplete and [N.J. Stat. Ann. § 40:27-6.3](#) did not permit the planning board to extend the statutory period under § 40:55D-48(c) by deferring action. [Manalapan Holding Co. v. Planning Bd. of Hamilton, 184 N.J. Super. 99, 445 A.2d 410, 1982 N.J. Super. LEXIS 754 \(App.Div. 1982\)](#), rev'd, [92 N.J. 466, 457 A.2d 441, 1983 N.J. LEXIS 2359 \(N.J. 1983\)](#).

**Real Property Law: Zoning & Land Use: General Overview**

Judgment upholding a planning board's denial of a developer's subdivision application was improper because the board was required to review the application within the framework of municipality's subdivision standards together with [N.J. Stat. Ann. § 40:55D-38](#) and reference those standards in its findings, and under [N.J. Stat. Ann. § 40:55D-48](#), upon compliance with the subdivision ordinance and the Municipal Land Use Law, [N.J. Stat. Ann. §§ 40:55D-1 to 40:55D-129](#), approval of an application was mandated. [Pizzo Mantin Group v. Township of Randolph, 261 N.J. Super. 659, 619 A.2d 676, 1993 N.J. Super. LEXIS 38 \(App.Div. 1993\)](#), aff'd in part, modified, [137 N.J. 216, 645 A.2d 89, 1994 N.J. LEXIS 635 \(N.J. 1994\)](#).

**Real Property Law: Zoning & Land Use: Comprehensive Plans**

Site development applicant was not entitled to automatic statutory approval of its application when a township planning board as a legitimate dispute existed between the parties as to whether a development application filed by the contract purchaser required the consent of the property owner to be considered complete, the time for the automatic statutory approval to begin to run did not start until the board deemed the application complete, and no evidence of bad faith appeared in the record. [Fallone Properties, L.L.C. v. Bethlehem Tp. Planning Bd., 369 N.J. Super. 552, 849 A.2d 1117, 2004 N.J. Super. LEXIS 203 \(App.Div. 2004\)](#).

Township planning board's construction of a township cluster ordinance to preclude the use of conservation easements to make up a significant shortfall from the 70 percent open space requirement under the ordinance was entirely reasonable and consistent with the overall goals of the zone plan. [Fallone Properties, L.L.C. v. Bethlehem Tp. Planning Bd., 369 N.J. Super. 552, 849 A.2d 1117, 2004 N.J. Super. LEXIS 203 \(App.Div. 2004\)](#).

Although seven members of the borough's planning board had a conflict of interest because they were yacht club members and had an interest in how the land contiguous to the yacht club would be developed, the members were permitted under the doctrine of public necessity to review the developer's application in order that the planning board would have a quorum; the developer was attempting to use the automatic approval procedure under [N.J. Stat. Ann. § 40:55D-48\(c\)](#) as a loophole to circumvent review, the courts would act as the developer's safeguard, and substitute members from an adjustment board could not be obtained to replace the conflicted planning board members because the borough's board was unitary. [Gunther v. Planning Bd., 335 N.J. Super. 452, 762 A.2d 710, 2000 N.J. Super. LEXIS 446 \(Law Div. 2000\)](#).

Judgment upholding a planning board's denial of a developer's subdivision application was improper because the board was required to review the application within the framework of municipality's subdivision standards together with [N.J. Stat. Ann. § 40:55D-38](#) and reference those standards in its findings, and under [N.J. Stat. Ann. § 40:55D-48](#), upon compliance with the subdivision ordinance and the Municipal Land Use Law, [N.J. Stat. Ann. § 40:55D-1 to 40:55D-129](#), approval of an application was mandated. [Pizzo Mantin Group v. Township of Randolph, 261 N.J. Super. 659, 619 A.2d 676, 1993 N.J. Super. LEXIS 38 \(App.Div. 1993\)](#), aff'd in part, modified, [137 N.J. 216, 645 A.2d 89, 1994 N.J. LEXIS 635 \(N.J. 1994\)](#).

Developer was not entitled to automatic preliminary approval, provided by [N.J. Stat. Ann. § 40:55D-48\(c\)](#), of its revised application for a major subdivision where a substitute clerk of the township's planning board inadvertently misfiled the revised application and the board failed to take action within the statutory time requirements, because [§ 40:55D-48\(c\)](#) was intended to remedy municipal inaction and inattention rather than innocent inadvertence; absent prejudice to the developer or bad faith by the board, the automatic approval of the preliminary subdivision



## § 40:55D-48. Procedure for preliminary major subdivision approval

application was not justified. *D'Anna v. Planning Bd. of Washington*, 256 N.J. Super. 78, 606 A.2d 417, 1992 N.J. Super. LEXIS 164 (App.Div.), certif. denied, 130 N.J. 18, 611 A.2d 656, 1992 N.J. LEXIS 768 (N.J. 1992).

While the settlement agreement between the township and the public advocate did not specify a time period within which the expedited disposition of site plan applications covered by such agreement were to be completed, the agreement required “expedited disposition,” which was construed to require such applications to be processed at least as quickly as would have been mandated by the Municipal Land Use Law; thus such applications were to be decided within not more than either 95 days, under *N.J. Stat. Ann. § 40:55D-48(c)*, or 120 days, under *N.J. Stat. Ann. §§ 40:55D-60* and *40:55D-61*, depending on whether a variance or other relief from the provisions of the zoning ordinance was requested. *Morris County Fair Housing Council v. Boonton Township*, 220 N.J. Super. 388, 532 A.2d 280, 1987 N.J. Super. LEXIS 1326 (Law Div. 1987), aff'd, 230 N.J. Super. 345, 553 A.2d 814, 1989 N.J. Super. LEXIS 37 (App.Div. 1989).

Municipality may not unilaterally defer action on an application for subdivision approval to await receipt of county approval under *N.J. Stat. Ann. § 40:27-6.3*, and in future cases, such unilateral deferment would likely result in automatic approval after 95 days under *N.J. Stat. Ann. § 40:55D-48(c)*. *Manalapan Holding Co. v. Planning Bd. of Hamilton*, 92 N.J. 466, 457 A.2d 441, 1983 N.J. LEXIS 2359 (N.J. 1983).

Township had authority under statute to amend its subdivision ordinance changing the definition of and requirements for approval of a plat as a minor subdivision, even though the ordinance was amended during the pendency of a developer's appeal from a denial of a subdivision approval. *Noble v. Chairman & Members of Township Committee*, 91 N.J. Super. 111, 219 A.2d 335, 1966 N.J. Super. LEXIS 298 (App.Div.), certif. denied, 48 N.J. 120, 223 A.2d 497, 1966 N.J. LEXIS 510 (N.J. 1966).

## Research References & Practice Aids

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### Cross References:

Definitions; P to R, see [40:55D-6](#).

Preliminary approval, extension, see [40:55D-49](#).

Submission of general development plan, see [40:55D-45.3](#).

### Administrative Code:

N.J.A.C. 5:97-1.4 (2013), CHAPTER SUBSTANTIVE RULES OF THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING FOR THE PERIOD BEGINNING JUNE 2, 2008, Definitions.

### LAW REVIEWS & JOURNALS:

[23 Seton Hall L. Rev. 844](#).

### NJ ICLE:

New Jersey Environmental Law 5.13 Construction Permit Statute

[Commercial Real Estate Transactions in New Jersey 5.1](#) Municipal Land Use Regulations

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## [N.J. Stat. § 40:55D-48.1](#)

\*\*\* Current through New Jersey 221st First Annual Session, L. 2024, c. 87 and J.R. 2 \*\*\*

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### **§ 40:55D-48.1. Application by corporation or partnership; list of stockholders owning 10% of stock or 10% interest in partnership**

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A corporation or partnership applying to a planning board or a board of adjustment or to the governing body of a municipality for permission to subdivide a parcel of land into six or more lots, or applying for a variance to construct a multiple dwelling of 25 or more family units or for approval of a site to be used for commercial purposes shall list the names and addresses of all stockholders or individual partners owning at least 10% of its stock of any class or at least 10% of the interest in the partnership, as the case may be.

### **History**

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L. 1977, c. 336, 1, eff. Jan. 24, 1978.

Annotations

### **Research References & Practice Aids**

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**NJ ICLE:**

[Commercial Real Estate Transactions in New Jersey 5.1](#) Municipal Land Use Regulations

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## [N.J. Stat. § 40:55D-48.2](#)

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### **§ 40:55D-48.2. Disclosure of 10% ownership interest of corporation or partnership which is 10% owner of applying corporation or partnership**

If a corporation or partnership owns 10% or more of the stock of a corporation, or 10% or greater interest in a partnership, subject to disclosure pursuant to section 1 of this act, that corporation or partnership shall list the names and addresses of its stockholders holding 10% or more of its stock or of 10% or greater interest in the partnership, as the case may be, and this requirement shall be followed by every corporate stockholder or partner in a partnership, until the names and addresses of the noncorporate stockholders and individual partners, exceeding the 10% ownership criterion established in this act, have been listed.

### **History**

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L. 1977, c. 336, 2, eff. Jan. 24, 1978.

Annotations

### **Research References & Practice Aids**

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**NJ ICLE:**

[Commercial Real Estate Transactions in New Jersey 5.1](#) Municipal Land Use Regulations

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## **N.J. Stat. § 40:55D-48.3**

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### **§ 40:55D-48.3. Failure to comply with act; disapproval of application**

No planning board, board of adjustment or municipal governing body shall approve the application of any corporation or partnership which does not comply with this act.

### **History**

L. 1977, c. 336, 3, eff. Jan. 24, 1978.

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## [N.J. Stat. § 40:55D-48.4](#)

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### **§ 40:55D-48.4. Concealing ownership interest; fine**

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Any corporation or partnership which conceals the names of the stockholders owning 10% or more of its stock, or of the individual partners owning a 10% or greater interest in the partnership, as the case may be, shall be subject to a fine of \$1,000.00 to \$10,000.00 which shall be recovered in the name of the municipality in any court of record in the State in a summary manner pursuant to “The Penalty Enforcement Law” ([N.J.S. 2A:58-1](#) et seq.).

### **History**

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L. 1977, c. 336, 4, eff. Jan. 24, 1978.

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## [N.J. Stat. § 40:55D-49](#)

\*\*\* Current through New Jersey 221st First Annual Session, L. 2024, c. 87 and J.R. 2 \*\*\*

**LexisNexis® New Jersey Annotated Statutes > Title 40. Municipalities and Counties (Subts. 1 — 13) > Subtitle 3. Municipality Provisions (Chs. 42 — 69) > Chapter 55D. Municipal Land Use Law (Arts. 1 — 17) > Article 6. Subdivisions (§§ 40:55D-37 — 40:55D-59)**

### **§ 40:55D-49. Preliminary approval, extension**

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Preliminary approval of a major subdivision pursuant to section 36 of P.L.1975, c.291 ([C.40:55D-48](#)) or of a site plan pursuant to section 34 of P.L.1975, c.291 ([C.40:55D-46](#)) shall, except as provided in subsections d. and g. of this section, confer upon the applicant the following rights for a three-year period from the date on which the resolution of preliminary approval is adopted:

- a. That the general terms and conditions on which preliminary approval was granted shall not be changed, including but not limited to use requirements; layout and design standards for streets, curbs and sidewalks; lot size; yard dimensions and off-tract improvements; and, in the case of a site plan, any requirements peculiar to site plan approval pursuant to section 29.3 of P.L.1975, c.291 ([C.40:55D-41](#)); except that nothing herein shall be construed to prevent the municipality from modifying by ordinance such general terms and conditions of preliminary approval as relate to public health and safety;
- b. That the applicant may submit for final approval on or before the expiration date of preliminary approval the whole or a section or sections of the preliminary subdivision plat or site plan, as the case may be; and
- c. That the applicant may apply for and the planning board may grant extensions on such preliminary approval for additional periods of at least one year but not to exceed a total extension of two years, provided that if the design standards have been revised by ordinance, such revised standards may govern.
- d. In the case of a subdivision of or site plan for an area of 50 acres or more, the planning board may grant the rights referred to in subsections a., b., and c. of this section for such period of time, longer than three years, as shall be determined by the planning board to be reasonable taking into consideration (1) the number of dwelling units and nonresidential floor area permissible under preliminary approval, (2) economic conditions, and (3) the comprehensiveness of the development. The applicant may apply for thereafter and the planning board may thereafter grant an extension to preliminary approval for such additional period of time as shall be determined by the planning board to be reasonable taking into consideration (1) the number of dwelling units and nonresidential floor area permissible under preliminary approval, and (2) the potential number of dwelling units and nonresidential floor area of the section or sections awaiting final approval, (3) economic conditions and (4) the comprehensiveness of the development; provided that if the design standards have been revised, such revised standards may govern.
- e. Whenever the planning board grants an extension of preliminary approval pursuant to subsection c., d., or g. of this section and preliminary approval has expired before the date on which the extension is granted, the extension shall begin on what would otherwise be the expiration date. The developer may apply for the extension either before or after what would otherwise be the expiration date.
- f. The planning board shall grant an extension of preliminary approval for a period determined by the board but not exceeding one year from what would otherwise be the expiration date, if the developer

## § 40:55D-49. Preliminary approval, extension

proves to the reasonable satisfaction of the board that the developer was barred or prevented, directly or indirectly, from proceeding with the development because of delays in obtaining legally required approvals from other governmental entities and that the developer applied promptly for and diligently pursued the required approvals. A developer shall apply for the extension before (1) what would otherwise be the expiration date of preliminary approval or (2) the 91st day after the developer receives the last legally required approval from other governmental entities, whichever occurs later. An extension granted pursuant to this subsection shall not preclude the planning board from granting an extension pursuant to subsection c. or d. of this section.

**g.** In the case of a site plan for a development consisting of not less than 150,000 square feet of nonresidential floor area or not less than 100 residential dwelling units, or consisting of a combination of square feet of nonresidential floor area and residential dwelling units, which when proportionately aggregated at a rate of 1,500 square feet of nonresidential floor area to one residential dwelling unit, are equivalent to at least 150,000 square feet of nonresidential floor area or 100 residential dwelling units, the planning board may grant the rights referred to in subsections a., b., and c. of this section for such period of time beyond three years, as shall be determined by the planning board to be reasonable taking into consideration (1) the number of dwelling units and non-residential floor area permissible under preliminary approval, (2) economic conditions, and (3) the comprehensiveness of the development. The applicant may apply for thereafter, and the planning board may thereafter grant, an extension to the preliminary approval for such additional period of time as shall be determined by the planning board to be reasonable taking into consideration (1) the number of dwelling units and nonresidential floor area permissible under preliminary approval, (2) the potential number of dwelling units and nonresidential floor area of the section or sections awaiting final approval, (3) economic conditions, and (4) the comprehensiveness of the development; provided that if the design standards have been revised, such revised standards may govern.

## History

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L. 1975, c. 291, § 37; amended [1991, c. 256](#), § 10; [2011, c. 86](#), § 2, eff. July 1, 2011.

Annotations

## Notes

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### Editor's Notes

L. [2011, c. 86](#), as enacted, contains recommendations made by the Governor on conditional veto of the legislation (Senate Bill No. 483). The Governor's recommendations, in the first sentence of new subsection g., included the deletion of "in a smart growth area" following "In the case of a site plan for a development" and the insertion of "or consisting of a combination of square feet of nonresidential floor area and residential dwelling units, which when proportionately aggregated at a rate of 1,500 square feet of nonresidential floor area to one residential dwelling unit, are equivalent to at least 150,000 square feet of nonresidential floor area or 100 residential dwelling units."

### Amendment Note:

2011 amendment, by Chapter 86, added g.; and substituted "subsections d. and g." for "subsection d." in the opening language and "subsection c., d., or g." for "subsection c. or d." in the first sentence of e.

## CASE NOTES

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§ 40:55D-49. Preliminary approval, extension

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**Governments: Local Governments: Administrative Boards**

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**Real Property Law: Zoning & Land Use: State & Regional Planning**

**Administrative Law: Judicial Review: Reviewability: General Overview**

Court held that plaintiff had the right to rely on the initial approved plan because once that plan had been agreed upon, and no appeal was taken, under former N.J. Stat. Ann. § 40:55-1.18 (now [N.J. Stat. Ann. § 40:55D-49](#)), the general terms and conditions under which the tentative approval was granted should not have been changed. [Highpoint, Inc. v. Bloomfield Planning Board, 80 N.J. Super. 570, 194 A.2d 378, 1963 N.J. Super. LEXIS 371 \(Law Div. 1963\)](#), rev'd, [87 N.J. Super. 58, 208 A.2d 149, 1964 N.J. Super. LEXIS 498 \(App.Div. 1964\)](#).

**Civil Procedure: Settlements: Settlement Agreements: Validity**

As a developer's period of statutory protection under [N.J. Stat. Ann. § 40:55D-49](#) remained in force when its property was rezoned, the stricter density requirements of the new zoning ordinance did not pertain to the development. And as its settlement agreement with the local land use board focused primarily upon the project's change of use rather than a change of density, it was not required to obtain density variances as part of the settlement. [Friends of Peapack-Gladstone v. Borough of Peapack-Gladstone Land Use Bd., 407 N.J. Super. 404, 971 A.2d 449, 2009 N.J. Super. LEXIS 132 \(App.Div. 2009\)](#).

**Governments: Local Governments: Administrative Boards**

Utilities commission had authority under statute, as delegated by a planning board, to withhold approval of real estate developer's proposed subdivision plat due to problems with the location of a sewage plant and water supply. [Retsky v. Municipal Utilities Authority, 91 N.J. Super. 74, 219 A.2d 197, 1966 N.J. Super. LEXIS 296 \(Law Div. 1966\)](#).

**Governments: Local Governments: Duties & Powers**

## § 40:55D-49. Preliminary approval, extension

[N.J. Stat. Ann. § 40:55D-49\(a\)](#) expressly authorizes planning boards to impose general terms, conditions, and requirements peculiar to site plan approval as related to public health and safety. [W.L. Goodfellows & Co. of Turnersville v. Wash. Twp. Planning Bd., 345 N.J. Super. 109, 783 A.2d 750, 2001 N.J. Super. LEXIS 416 \(App.Div. 2001\)](#).

**Governments: Local Governments: Ordinances & Regulations**

[N.J. Stat. Ann. § 46:23-9.9](#) et seq. is entirely permissive in the sense that there is no requirement that a subdivision plat must be approved and filed before any land forming a part of the subdivision may be conveyed, even where new streets are shown, in a municipality which has not adopted a subdivision ordinance pursuant to the Planning Act, while under former N.J. Stat. Ann. § 40:55-1.18 (now [N.J. Stat. Ann. § 40:55D-49](#)), the contrary is true where the municipality has enacted such an ordinance; while the primary purpose of [§ 46:23-9.9](#) et seq. is to upgrade and standardize filed maps, from an engineering standpoint, for the protection of purchasers of platted land, it is to be observed that some elementary land planning and control incidentally flows from the requirement of municipal approval of the map and the streets indicated thereon. [Kligman v. Lautman, 53 N.J. 517, 251 A.2d 745, 1969 N.J. LEXIS 271 \(N.J. 1969\)](#).

**Governments: Public Improvements: Community Redevelopment**

Since a city's planning board had granted approval to an apartment building owner's site plan to renovate the building, which was located in a redevelopment area, the owner had a vested right in that approval and the city could not thereafter impose additional conditions on that plan. Ordinances that purported to impose obligations on owners to make contributions to off-site improvements for renovations did not apply to the owner since the city's planning board had already approved the owner's site plan and had already ruled that the owner was not obligated to make such contributions. [Britwood Urban Renewal, LLC v. City of Asbury Park, 376 N.J. Super. 552, 871 A.2d 129, 2005 N.J. Super. LEXIS 123 \(App.Div. 2005\)](#).

Both the Local Redevelopment and Housing Law (LRHL), [N.J. Stat. Ann. § 40A:12A-13](#), and the Municipal Land Use Law (MLUL), N.J. Stat. Ann. § 40:55D-25a(2), vest authority to decide site plan applications in the planning board. Once the planning board approves a site plan, [N.J. Stat. Ann. § 40:55D-49](#) vests in the site plan applicant the right not to have that preliminary approval changed for three years. [Britwood Urban Renewal, LLC v. City of Asbury Park, 376 N.J. Super. 552, 871 A.2d 129, 2005 N.J. Super. LEXIS 123 \(App.Div. 2005\)](#).

**Real Property Law: Subdivisions: General Overview**

Where a property owner and developer filed their application for final subdivision approval, which was deemed incomplete, they did not have to then seek a variance pursuant to N.J. Stat. Ann. § 40A:55-70 from new lot size requirements that had been enacted in zoning changes because once their application was filed, they were afforded the statutory protections from such changes pursuant to N.J. Stat. Ann. § 40:55D-49b; although a separate statutory protective period attached to a final subdivision application approval pursuant to [N.J. Stat. Ann. § 40:55D-52](#), where the application was submitted but not approved during the preliminary subdivision protection period, it was covered by the protections of N.J. Stat. Ann. § 40:55D-49b. [Toll Bros., Inc. v. Planning Bd., Tp. of Pohatcong, 359 N.J. Super. 448, 820 A.2d 122, 2003 N.J. Super. LEXIS 144 \(App.Div.\), certif. denied, 177 N.J. 492, 828 A.2d 920, 2003 N.J. LEXIS 982 \(N.J. 2003\)](#).

Former N.J. Stat. Ann. § 40:55-1.18 (see now [N.J. Stat. Ann. § 40:55D-49](#)), providing statutory immunity from changed terms and conditions, was inapplicable to defendant property owners who had subdivided their lots for the purpose of combining the properties and had not incurred any expenses; the immunity provision was only intended to apply to large subdivisions where a substantial amount of money being spent for improvements such as roads and sewers. [Sandler v. Board of Adjustment, 113 N.J. Super. 333, 273 A.2d 775, 1971 N.J. Super. LEXIS 698 \(App.Div. 1971\)](#).

[N.J. Stat. Ann. § 46:23-9.9](#) et seq. is entirely permissive in the sense that there is no requirement that a subdivision plat must be approved and filed before any land forming a part of the subdivision may be conveyed, even where

## § 40:55D-49. Preliminary approval, extension

new streets are shown, in a municipality which has not adopted a subdivision ordinance pursuant to the Planning Act, while under former N.J. Stat. Ann. § 40:55-1.18 (now [N.J. Stat. Ann. § 40:55D-49](#)), the contrary is true where the municipality has enacted such an ordinance; while the primary purpose of § [46:23-9.9](#) et seq. is to upgrade and standardize filed maps, from an engineering standpoint, for the protection of purchasers of platted land, it is to be observed that some elementary land planning and control incidentally flows from the requirement of municipal approval of the map and the streets indicated thereon. [Kligman v. Lautman, 53 N.J. 517, 251 A.2d 745, 1969 N.J. LEXIS 271 \(N.J. 1969\)](#).

Planning board's tentative approval of a subdivision plan did not constitute tentative approval under former N.J. Stat. Ann. § 40:55-1.18 (now [N.J. Stat. Ann. § 40:55D-49](#)), where the approval was conditioned on the chairman of the planning board signing the plat, upon the endorsement by the borough engineer, and upon a revision of the plat. [Purich v. Weininger, 72 N.J. Super. 344, 178 A.2d 348, 1962 N.J. Super. LEXIS 687 \(App.Div.\)](#), certif. denied, 37 N.J. 221, 181 A.2d 8, 1962 N.J. LEXIS 431 (N.J. 1962).

### Real Property Law: Subdivisions: Local Regulation

At the preliminary site plan phase, a local land use board properly granted a developer an initial 10 years of protection from zoning changes pursuant to [N.J. Stat. Ann. § 40:55D-49\(a\)](#). However, pursuant to [N.J. Stat. Ann. § 40:55D-52\(a\)](#), the period of protection was terminated by operation of law when the developer subsequently obtained final site plan approval. [Friends of Peapack-Gladstone v. Borough of Peapack-Gladstone Land Use Bd., 407 N.J. Super. 404, 971 A.2d 449, 2009 N.J. Super. LEXIS 132 \(App.Div. 2009\)](#).

Under the time of decision rule, a land use agency should not approve a land use application under a zoning ordinance that has been amended to change the land use regulations in the zone on the ground that the amendment's effective date has not yet arrived. [Maragliano v. Land Use Bd. of Tp. of Wantage, 403 N.J. Super. 80, 957 A.2d 213, 2008 N.J. Super. LEXIS 208 \(App.Div. 2008\)](#), certif. denied, 197 N.J. 476, 963 A.2d 845, 2009 N.J. LEXIS 129 (N.J. 2009).

### Real Property Law: Zoning & Land Use: General Overview

Final subdivision application did not need to be "completed" in order to trigger the protections afforded by [N.J. Stat. Ann. § 40:55D-49\(b\)](#), which protected the land against new zoning changes. [Toll Bros., Inc. v. Planning Bd., Tp. of Pohatcong, 359 N.J. Super. 448, 820 A.2d 122, 2003 N.J. Super. LEXIS 144 \(App.Div.\)](#), certif. denied, 177 N.J. 492, 828 A.2d 920, 2003 N.J. LEXIS 982 (N.J. 2003).

Grant of final site-plan approval terminates the three-year protected time period of preliminary approval provided by [N.J. Stat. Ann. § 40:55D-49](#). [YM-YWHA of Bergen Cty. v. Washington, 192 N.J. Super. 340, 470 A.2d 11, 1983 N.J. Super. LEXIS 1037 \(App.Div. 1983\)](#).

Landowners, who received final approval from the township for its plan to build a nursery school, were protected under [N.J. Stat. Ann. § 40:55D-49](#) from modification of its plan by the township. [Bleznak v. Evesham, 170 N.J. Super. 216, 406 A.2d 201, 1979 N.J. Super. LEXIS 896 \(Law Div. 1979\)](#).

### Real Property Law: Zoning & Land Use: Administrative Procedure

As [N.J. Stat. Ann. §§ 40:55D-49](#) and [40:55D-52\(a\)](#) allowed property owners to retain the rights conferred upon them by final site plan approval for at least two years, a zoning board of adjustment improperly imposed a one-year time limit for the owners to comply with the conditions subsequent for site approval—paving, landscaping, and constructing new storage containers. [Darst v. Blairstown Tp. Zoning Bd. of Adjustment, 410 N.J. Super. 314, 982 A.2d 27, 2009 N.J. Super. LEXIS 231 \(App.Div. 2009\)](#).

At the preliminary site plan phase, a local land use board properly granted a developer an initial 10 years of protection from zoning changes pursuant to [N.J. Stat. Ann. § 40:55D-49\(a\)](#). However, pursuant to [N.J. Stat. Ann. § 40:55D-52\(a\)](#), the period of protection was terminated by operation of law when the developer subsequently

## § 40:55D-49. Preliminary approval, extension

obtained final site plan approval. [\*Friends of Peapack-Gladstone v. Borough of Peapack-Gladstone Land Use Bd.\*, 407 N.J. Super. 404, 971 A.2d 449, 2009 N.J. Super. LEXIS 132 \(App.Div. 2009\).](#)

**Real Property Law: Zoning & Land Use: Comprehensive Plans**

When preliminary site plan approval is granted subject to specific terms, conditions, and requirements, a developer has three years in which to seek final approval or a limited extension. [\*W.L. Goodfellows & Co. of Turnersville v. Wash. Twp. Planning Bd.\*, 345 N.J. Super. 109, 783 A.2d 750, 2001 N.J. Super. LEXIS 416 \(App.Div. 2001\).](#)

[\*N.J. Stat. Ann. § 40:55D-49\(a\)\*](#) expressly authorizes planning boards to impose general terms, conditions, and requirements peculiar to site plan approval as related to public health and safety. [\*W.L. Goodfellows & Co. of Turnersville v. Wash. Twp. Planning Bd.\*, 345 N.J. Super. 109, 783 A.2d 750, 2001 N.J. Super. LEXIS 416 \(App.Div. 2001\).](#)

Because an applicant's preliminary site plan was specific enough to require the local planning board to grant preliminary approval conditioned upon procurement of a proposed drainage easement, the applicant was entitled to the benefit of the statutory protection against a subsequent change in use requirement. [\*W.L. Goodfellows & Co. of Turnersville v. Wash. Twp. Planning Bd.\*, 345 N.J. Super. 109, 783 A.2d 750, 2001 N.J. Super. LEXIS 416 \(App.Div. 2001\).](#)

Utilities commission had authority under statute, as delegated by a planning board, to withhold approval of real estate developer's proposed subdivision plat due to problems with the location of a sewage plant and water supply. [\*Retsky v. Municipal Utilities Authority\*, 91 N.J. Super. 74, 219 A.2d 197, 1966 N.J. Super. LEXIS 296 \(Law Div. 1966\).](#)

Court could not find that a reference to "tentative approval" encompassed the statutory meaning set forth in former N.J. Stat. Ann. § 40:55-1.18 (now [\*N.J. Stat. Ann. § 40:55D-49\*](#), substituting "preliminary approval" for "tentative approval") where the judge made no findings of fact on the parties' intention. [\*Deerhurst Estates v. Meadow Homes, Inc.\*, 64 N.J. Super. 134, 165 A.2d 543, 1960 N.J. Super. LEXIS 349 \(App.Div. 1960\)](#), certif. denied, 34 N.J. 66, 167 A.2d 55, 1961 N.J. LEXIS 268 (N.J. 1961).

**Real Property Law: Zoning & Land Use: Judicial Review**

City was prohibited from enforcing two zoning ordinances to prevent a development from continuing as the ordinances at issue were unquestionably zoning ordinances subject to the limitations of [\*N.J. Stat. Ann. § 40:55D-21\*](#), the plain language of which contained no exception for the retroactive application of changes in zoning requirements within two years of the issuance of a final approval. [\*Shipyard Assocs., LP v. City of Hoboken\*, 242 N.J. 23, 230 A.3d 278, 2020 N.J. LEXIS 508 \(N.J. 2020\).](#)

**Real Property Law: Zoning & Land Use: Local Planning**

[\*N.J. Stat. Ann. § 46:23-9.9\*](#) et seq. is entirely permissive in the sense that there is no requirement that a subdivision plat must be approved and filed before any land forming a part of the subdivision may be conveyed, even where new streets are shown, in a municipality which has not adopted a subdivision ordinance pursuant to the Planning Act, while under former N.J. Stat. Ann. § 40:55-1.18 (now [\*N.J. Stat. Ann. § 40:55D-49\*](#)), the contrary is true where the municipality has enacted such an ordinance; while the primary purpose of [§ 46:23-9.9](#) et seq. is to upgrade and standardize filed maps, from an engineering standpoint, for the protection of purchasers of platted land, it is to be observed that some elementary land planning and control incidentally flows from the requirement of municipal approval of the map and the streets indicated thereon. [\*Kligman v. Lautman\*, 53 N.J. 517, 251 A.2d 745, 1969 N.J. LEXIS 271 \(N.J. 1969\).](#)

**Real Property Law: Zoning & Land Use: Ordinances**

## § 40:55D-49. Preliminary approval, extension

City was prohibited from enforcing two zoning ordinances to prevent a development from continuing as the ordinances at issue were unquestionably zoning ordinances subject to the limitations of [N.J. Stat. Ann. § 40:55D-21](#), the plain language of which contained no exception for the retroactive application of changes in zoning requirements within two years of the issuance of a final approval. [Shipyard Assocs., LP v. City of Hoboken, 242 N.J. 23, 230 A.3d 278, 2020 N.J. LEXIS 508 \(N.J. 2020\)](#).

Under the time of decision rule, a land use agency should not approve a land use application under a zoning ordinance that has been amended to change the land use regulations in the zone on the ground that the amendment's effective date has not yet arrived. [Maragliano v. Land Use Bd. of Tp. of Wantage, 403 N.J. Super. 80, 957 A.2d 213, 2008 N.J. Super. LEXIS 208 \(App.Div. 2008\)](#), certif. denied, 197 N.J. 476, 963 A.2d 845, 2009 N.J. LEXIS 129 (N.J. 2009).

### Real Property Law: Zoning & Land Use: Special Permits & Variances

As [N.J. Stat. Ann. §§ 40:55D-49](#) and [40:55D-52\(a\)](#) allowed property owners to retain the rights conferred upon them by final site plan approval for at least two years, a zoning board of adjustment improperly imposed a one-year time limit for the owners to comply with the conditions subsequent for site approval—paving, landscaping, and constructing new storage containers. [Darst v. Blairstown Tp. Zoning Bd. of Adjustment, 410 N.J. Super. 314, 982 A.2d 27, 2009 N.J. Super. LEXIS 231 \(App.Div. 2009\)](#).

As a developer's period of statutory protection under [N.J. Stat. Ann. § 40:55D-49](#) remained in force when its property was rezoned, the stricter density requirements of the new zoning ordinance did not pertain to the development. And as its settlement agreement with the local land use board focused primarily upon the project's change of use rather than a change of density, it was not required to obtain density variances as part of the settlement. [Friends of Peapack-Gladstone v. Borough of Peapack-Gladstone Land Use Bd., 407 N.J. Super. 404, 971 A.2d 449, 2009 N.J. Super. LEXIS 132 \(App.Div. 2009\)](#).

Where a property owner and developer filed their application for final subdivision approval, which was deemed incomplete, they did not have to then seek a variance pursuant to N.J. Stat. Ann. § 40A:55-70 from new lot size requirements that had been enacted in zoning changes because once their application was filed, they were afforded the statutory protections from such changes pursuant to N.J. Stat. Ann. § 40:55D-49b; although a separate statutory protective period attached to a final subdivision application approval pursuant to [N.J. Stat. Ann. § 40:55D-52](#), where the application was submitted but not approved during the preliminary subdivision protection period, it was covered by the protections of N.J. Stat. Ann. § 40:55D-49b. [Toll Bros., Inc. v. Planning Bd., Tp. of Pohatcong, 359 N.J. Super. 448, 820 A.2d 122, 2003 N.J. Super. LEXIS 144 \(App.Div.\)](#), certif. denied, 177 N.J. 492, 828 A.2d 920, 2003 N.J. LEXIS 982 (N.J. 2003).

### Real Property Law: Zoning & Land Use: State & Regional Planning

Final subdivision application did not need to be "completed" in order to trigger the protections afforded by [N.J. Stat. Ann. § 40:55D-49\(b\)](#), which protected the land against new zoning changes. [Toll Bros., Inc. v. Planning Bd., Tp. of Pohatcong, 359 N.J. Super. 448, 820 A.2d 122, 2003 N.J. Super. LEXIS 144 \(App.Div.\)](#), certif. denied, 177 N.J. 492, 828 A.2d 920, 2003 N.J. LEXIS 982 (N.J. 2003).

## Opinion Notes

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### OPINIONS OF ATTORNEY GENERAL

FORMAL OPINION No. 3 (1990);, [1990 N.J. AG LEXIS 1](#).

## Research References & Practice Aids

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**Cross References:**

Definitions; P to R, see [40:55D-6](#).

Notices of application, requirements., see [40:55D-12](#).

Final approval of site plan or major subdivision; extension, see [40:55D-52](#).

**Administrative Code:**

N.J.A.C. 5:97-1.4 (2013), CHAPTER SUBSTANTIVE RULES OF THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING FOR THE PERIOD BEGINNING JUNE 2, 2008, Definitions.

N.J.A.C. 5:97-6.4 (2013), CHAPTER SUBSTANTIVE RULES OF THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING FOR THE PERIOD BEGINNING JUNE 2, 2008, Zoning for inclusionary development.

**LAW REVIEWS & JOURNALS:**

[23 Seton Hall L. Rev. 844](#).

**NJ ICLE:**

[Commercial Real Estate Transactions in New Jersey 5.1](#) Municipal Land Use Regulations

[Commercial Real Estate Transactions in New Jersey 5.3](#) Due Diligence

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## [N.J. Stat. § 40:55D-50](#)

\*\*\* Current through New Jersey 221st First Annual Session, L. 2024, c. 87 and J.R. 2 \*\*\*

**LexisNexis® New Jersey Annotated Statutes > Title 40. Municipalities and Counties (Subts. 1 — 13) > Subtitle 3. Municipality Provisions (Chs. 42 — 69) > Chapter 55D. Municipal Land Use Law (Arts. 1 — 17) > Article 6. Subdivisions (§§ 40:55D-37 — 40:55D-59)**

### § 40:55D-50. Final approval of site plans and major subdivisions

a. The planning board shall grant final approval if the detailed drawings, specifications and estimates of the application for final approval conform to the standards established by ordinance for final approval, the conditions of preliminary approval and, in the case of a major subdivision, the standards prescribed by [N.J.S.46:26B-1](#) et seq.; provided that in the case of a planned development, the planning board may permit minimal deviations from the conditions of preliminary approval necessitated by change of conditions beyond the control of the developer since the date of preliminary approval without the developer being required to submit another application for development for preliminary approval.

b. Final approval shall be granted or denied within 45 days after submission of a complete application to the administrative officer, or within such further time as may be consented to by the applicant. Failure of the planning board to act within the period prescribed shall constitute final approval and a certificate of the administrative officer as to the failure of the planning board to act shall be issued on request of the applicant, and it shall be sufficient in lieu of the written endorsement or other evidence of approval, herein required, and shall be so accepted by the county recording officer for purposes of filing subdivision plats.

Whenever review or approval of the application by the county planning board is required by section 5 of P.L.1968, c. 285 ([C. 40:27-6.3](#)), in the case of a subdivision, or section 8 of P.L.1968, c. 285 ([C. 40:27-6.6](#)), in the case of a site plan, the municipal planning board shall condition any approval that it grants upon timely receipt of a favorable report on the application by the county planning board or approval by the county planning board by its failure to report thereon within the required time period.

### History

L. 1975, c. 291, § 38, eff. Aug. 1, 1976; amended [2013, c. 106](#), § 12, eff. Aug. 7, 2013.

Annotations

### Notes

#### **Amendment Note:**

2013 amendment, by Chapter 106, in a., substituted “N.J.S.46:26B-1 et seq.” for “the ‘Map Filing Law,’ P.L.1960, c. 141 (C. 46:23-9.9 et seq.)” and “planned development” for “planned unit development, planned unit residential development or residential cluster.”

### CASE NOTES

**Governments: Local Governments: Ordinances & Regulations****Real Property Law: Restrictive Covenants: Enforcement****Real Property Law: Subdivisions: Local Regulation****Real Property Law: Zoning & Land Use****Real Property Law: Zoning & Land Use: Comprehensive Plans****Real Property Law: Zoning & Land Use: Local Planning****Real Property Law: Zoning & Land Use: Special Permits & Variances****Governments: Local Governments: Ordinances & Regulations**

Where municipal ordinance provided that the time period during which final approval of a plat plan should remain in force should be determined by the terms of a written agreement by the township and the developer, that “developer’s agreement” provided for unlimited “freezing,” it permitted zoning by contract and the ordinance was, therefore, invalid. [Mountcrest Estates, Inc. v. Rockaway, 96 N.J. Super. 149, 232 A.2d 674, 1967 N.J. Super. LEXIS 479 \(App.Div.\)](#), certif. denied, 50 N.J. 295, 234 A.2d 402, 1967 N.J. LEXIS 469 (N.J. 1967).

**Real Property Law: Restrictive Covenants: Enforcement**

In an action in lieu of prerogative writs, a trial court misapplied the governing standards for considering an application to eliminate a deed restriction by default under [N.J. Stat. Ann. § 40:55D-50\(b\)](#) based on changed circumstances as it had to consider alternate reasons for the imposition of the deed restriction and the adjacent landowner’s assertion that the subdivision developer acted with unclean hands. [American Dream at Marlboro, L.L.C. v. Planning Bd. of the Tp. of Marlboro, 209 N.J. 161, 35 A.3d 1198, 2012 N.J. LEXIS 151 \(N.J. 2012\)](#).

**Real Property Law: Subdivisions: Local Regulation**

In an action in lieu of prerogative writs, a trial court misapplied the governing standards for considering an application to eliminate a deed restriction by default under [N.J. Stat. Ann. § 40:55D-50\(b\)](#) based on changed circumstances as it had to consider alternate reasons for the imposition of the deed restriction and the adjacent landowner’s assertion that the subdivision developer acted with unclean hands. [American Dream at Marlboro, L.L.C. v. Planning Bd. of the Tp. of Marlboro, 209 N.J. 161, 35 A.3d 1198, 2012 N.J. LEXIS 151 \(N.J. 2012\)](#).

**Real Property Law: Zoning & Land Use**

Planning board had jurisdiction to review the final site plan of a fast food restaurant because the modifications from the preliminary plans to the final plans were not significant or substantial revisions of the preliminary site plan, [N.J. Stat. Ann. § 40:55D-50\(a\)](#). [Davis v. Planning Bd., 327 N.J. Super. 535, 744 A.2d 222, 2000 N.J. Super. LEXIS 46 \(App.Div. 2000\)](#).

**Real Property Law: Zoning & Land Use: Comprehensive Plans**

The Municipal Land Use Law, [N.J. Stat. Ann. § 40:55D-1](#) et seq., permitted approval subject to fulfillment of certain terms and conditions at some unspecified future time, but that did not include preliminary approval on an essential element of the development plan, such as sewage disposal. [Field v. Franklin, 190 N.J. Super. 326, 463 A.2d 391, 1983 N.J. Super. LEXIS 908 \(App.Div.\)](#), certif. denied, 95 N.J. 183, 470 A.2d 409, 1983 N.J. LEXIS 3278 (N.J. 1983).



## § 40:55D-50. Final approval of site plans and major subdivisions

Where the governing body failed to take action to approve or disapprove a developer's subdivision plat within the time specified in former N. J. Stat. Ann. § 40:55-1.18 (see now [N.J. Stat. Ann. § 40:55D-50](#)) the plat was deemed to have been approved by the terms of the statute, and poor past performance on subdivisions unconnected with the one under consideration by the governing body was not a valid reason for withholding approval. [Levitt & Sons, Inc. v. Freehold, 120 N.J. Super. 595, 295 A.2d 397, 1972 N.J. Super. LEXIS 450 \(Law Div. 1972\)](#).

Under the former Municipal Planning Act, N.J. Stat. Ann. § 40:55-1.18 (now [N.J. Stat. Ann. § 40:55D-50](#)) an amendatory ordinance requiring certain improvements as a prerequisite for final approval of plats which was passed prior to a developer's application for final approval was enforceable against the developer. [Pennyton Homes, Inc. v. Planning Bd. of Stanhope, 78 N.J. Super. 588, 189 A.2d 838, 1963 N.J. Super. LEXIS 486 \(App.Div. 1963\)](#), aff'd, [41 N.J. 578, 197 A.2d 870, 1964 N.J. LEXIS 264 \(N.J. 1964\)](#).

Planning board's revocation of its final approval of a certain section of a subdivision plan was unwarranted where the revocation was based on a zoning amendment increasing minimum lot sizes which was passed subsequent to a tentative approval of the subdivision plan. [Hilton Acres v. Klein, 64 N.J. Super. 281, 165 A.2d 819, 1960 N.J. Super. LEXIS 361 \(App.Div. 1960\)](#), modified, [35 N.J. 570, 174 A.2d 465, 1961 N.J. LEXIS 179 \(N.J. 1961\)](#).

### **Real Property Law: Zoning & Land Use: Local Planning**

In the absence of any ordinance or provision in the subsequent land use approvals conditioning those approvals upon rescission of the original approvals, a landowner that has obtained the approvals required for a development project different from the one originally approved retains the right to develop the property in accordance with the original plan. [Price v. Martinetti, 421 N.J. Super. 290, 23 A.3d 483, 2011 N.J. Super. LEXIS 145 \(App.Div. 2011\)](#).

Trial court properly dismissed a city's suit seeking to stop a developer's construction of an apartment building as the developer did not lose the benefit of the original approvals it obtained authorizing the project after unsuccessfully seeking approvals for a larger development. [Price v. Martinetti, 421 N.J. Super. 290, 23 A.3d 483, 2011 N.J. Super. LEXIS 145 \(App.Div. 2011\)](#).

### **Real Property Law: Zoning & Land Use: Special Permits & Variances**

In the absence of any ordinance or provision in the subsequent land use approvals conditioning those approvals upon rescission of the original approvals, a landowner that has obtained the approvals required for a development project different from the one originally approved retains the right to develop the property in accordance with the original plan. [Price v. Martinetti, 421 N.J. Super. 290, 23 A.3d 483, 2011 N.J. Super. LEXIS 145 \(App.Div. 2011\)](#).

Trial court properly dismissed a city's suit seeking to stop a developer's construction of an apartment building as the developer did not lose the benefit of the original approvals it obtained authorizing the project after unsuccessfully seeking approvals for a larger development. [Price v. Martinetti, 421 N.J. Super. 290, 23 A.3d 483, 2011 N.J. Super. LEXIS 145 \(App.Div. 2011\)](#).

## **Research References & Practice Aids**

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### **Cross References:**

Notices of application, requirements., see [40:55D-12](#).

Inapplicability of certain provisions of law imposing fee upon developer of certain non-residential property, see [40:55D-8.6](#).

Return of non-residential development fees, see [40:55D-8.8](#).

§ 40:55D-50. Final approval of site plans and major subdivisions

Default approval, see [40:55D-10.4](#).

**NJ ICLE:**

[Commercial Real Estate Transactions in New Jersey 5.1](#) Municipal Land Use Regulations

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## [N.J. Stat. § 40:55D-51](#)

\*\*\* Current through New Jersey 221st First Annual Session, L. 2024, c. 87 and J.R. 2 \*\*\*

**LexisNexis® New Jersey Annotated Statutes > Title 40. Municipalities and Counties (Subts. 1 — 13) > Subtitle 3. Municipality Provisions (Chs. 42 — 69) > Chapter 55D. Municipal Land Use Law (Arts. 1 — 17) > Article 6. Subdivisions (§§ 40:55D-37 — 40:55D-59)**

### **§ 40:55D-51. Exception in application of subdivision or site plan regulation; simultaneous review and approval**

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- a. The planning board when acting upon applications for preliminary or minor subdivision approval shall have the power to grant such exceptions from the requirements for subdivision approval as may be reasonable and within the general purpose and intent of the provisions for subdivision review and approval of an ordinance adopted pursuant to this article, if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.
- b. The planning board when acting upon applications for preliminary site plan approval shall have the power to grant such exceptions from the requirements for site plan approval as may be reasonable and within the general purpose and intent of the provisions for site plan review and approval of an ordinance adopted pursuant to this article, if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.
- c. The planning board shall have the power to review and approve or deny conditional uses or site plans simultaneously with review for subdivision approval without the developer being required to make further application to the planning board, or the planning board being required to hold further hearings. The longest time period for action by the planning board, whether it be for subdivision, conditional use or site plan approval, shall apply. Whenever approval of a conditional use is requested by the developer pursuant to this subsection, notice of the hearing on the plat shall include reference to the request for such conditional use.

### **History**

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L. 1975, c. 291, 39, eff. Aug. 1, 1976.

Annotations

### **CASE NOTES**

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**Real Property Law: Subdivisions: Local Regulation**

**Real Property Law: Zoning & Land Use: Administrative Procedure**

**Real Property Law: Zoning & Land Use: Judicial Review**

**Real Property Law: Zoning & Land Use: Local Planning**

§ 40:55D-51. Exception in application of subdivision or site plan regulation; simultaneous review and approval

### **Real Property Law: Zoning & Land Use: Special Permits & Variances**

### **Real Property Law: Zoning & Land Use: State & Regional Planning**

#### **Real Property Law: Subdivisions: Local Regulation**

Street improvement restrictions placed on property owners by planning board could not be properly reviewed where a planning board's resolution on such restrictions contained no factual findings upon which a reviewing court could base its review and was completely silent as to the considerations set forth by [N.J. Stat. Ann. § 40:55D-51\(a\)](#) governing disposition of an application for relief. [Amato v. Randolph Township Planning Bd., 188 N.J. Super. 439, 457 A.2d 1188, 1982 N.J. Super. LEXIS 1028 \(App.Div. 1982\).](#)

#### **Real Property Law: Zoning & Land Use: Administrative Procedure**

Street improvement restrictions placed on property owners by planning board could not be properly reviewed where a planning board's resolution on such restrictions contained no factual findings upon which a reviewing court could base its review and was completely silent as to the considerations set forth by [N.J. Stat. Ann. § 40:55D-51\(a\)](#) governing disposition of an application for relief. [Amato v. Randolph Township Planning Bd., 188 N.J. Super. 439, 457 A.2d 1188, 1982 N.J. Super. LEXIS 1028 \(App.Div. 1982\).](#)

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Street improvement restrictions placed on property owners by planning board could not be properly reviewed where a planning board's resolution on such restrictions contained no factual findings upon which a reviewing court could base its review and was completely silent as to the considerations set forth by [N.J. Stat. Ann. § 40:55D-51\(a\)](#) governing disposition of an application for relief. [Amato v. Randolph Township Planning Bd., 188 N.J. Super. 439, 457 A.2d 1188, 1982 N.J. Super. LEXIS 1028 \(App.Div. 1982\).](#)

#### **Real Property Law: Zoning & Land Use: Local Planning**

Trial court properly dismissed a city's suit seeking to stop a developer's construction of an apartment building as the developer did not lose the benefit of the original approvals it obtained authorizing the project after unsuccessfully seeking approvals for a larger development. [Price v. Martinetti, 421 N.J. Super. 290, 23 A.3d 483, 2011 N.J. Super. LEXIS 145 \(App.Div. 2011\).](#)

In the absence of any ordinance or provision in the subsequent land use approvals conditioning those approvals upon rescission of the original approvals, a landowner that has obtained the approvals required for a development project different from the one originally approved retains the right to develop the property in accordance with the original plan. [Price v. Martinetti, 421 N.J. Super. 290, 23 A.3d 483, 2011 N.J. Super. LEXIS 145 \(App.Div. 2011\).](#)

#### **Real Property Law: Zoning & Land Use: Special Permits & Variances**

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Trial court improperly suggested that a planning board could deal with safety factors in a site plan by referring the plan to the zoning board for a variance under [N.J. Stat. Ann. § 40:55D-60](#) when the board could have granted an

§ 40:55D-51. Exception in application of subdivision or site plan regulation; simultaneous review and approval

exception under [N.J. Stat. Ann. § 40:55D-51\(b\)](#). [Sheston Oil Co. v. Avalon, Planning Bd., 214 N.J. Super. 593, 520 A.2d 802, 1987 N.J. Super. LEXIS 1017 \(App.Div.\)](#), certif. denied, 107 N.J. 134, 526 A.2d 199, 1987 N.J. LEXIS 1558 (N.J. 1987).

### **Real Property Law: Zoning & Land Use: State & Regional Planning**

Trial court improperly suggested that a planning board could deal with safety factors in a site plan by referring the plan to the zoning board for a variance under [N.J. Stat. Ann. § 40:55D-60](#) when the board could have granted an exception under [N.J. Stat. Ann. § 40:55D-51\(b\)](#). [Sheston Oil Co. v. Avalon, Planning Bd., 214 N.J. Super. 593, 520 A.2d 802, 1987 N.J. Super. LEXIS 1017 \(App.Div.\)](#), certif. denied, 107 N.J. 134, 526 A.2d 199, 1987 N.J. LEXIS 1558 (N.J. 1987).

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## [N.J. Stat. § 40:55D-52](#)

\*\*\* Current through New Jersey 221st First Annual Session, L. 2024, c. 87 and J.R. 2 \*\*\*

**LexisNexis® New Jersey Annotated Statutes > Title 40. Municipalities and Counties (Subts. 1 — 13) > Subtitle 3. Municipality Provisions (Chs. 42 — 69) > Chapter 55D. Municipal Land Use Law (Arts. 1 — 17) > Article 6. Subdivisions (§§ 40:55D-37 — 40:55D-59)**

### § 40:55D-52. Final approval of site plan or major subdivision; extension

- a. The zoning requirements applicable to the preliminary approval first granted and all other rights conferred upon the developer pursuant to section 37 of P.L.1975, c.291 ([C.40:55D-49](#)), whether conditionally or otherwise, shall not be changed for a period of two years after the date on which the resolution of final approval is adopted; provided that in the case of a major subdivision the rights conferred by this section shall expire if the plat has not been duly recorded within the time period provided in section 42 of P.L.1975, c.291 ([C.40:55D-54](#)). If the developer has followed the standards prescribed for final approval, and, in the case of a subdivision, has duly recorded the plat as required in section 42 of P.L.1975, c.291 ([C.40:55D-54](#)), the planning board may extend such period of protection for extensions of one year but not to exceed three extensions. Notwithstanding any other provisions of this act, the granting of final approval terminates the time period of preliminary approval pursuant to section 37 of P.L.1975, c.291 ([C.40:55D-49](#)) for the section granted final approval.
- b. In the case of a subdivision or site plan for a planned development of 50 acres or more, conventional subdivision or site plan for 150 acres or more, or site plan for development of a nonresidential floor area of 200,000 square feet or more, the planning board may grant the rights referred to in subsection a. of this section for such period of time, longer than two years, as shall be determined by the planning board to be reasonable taking into consideration (1) the number of dwelling units and nonresidential floor area permissible under final approval, (2) economic conditions and (3) the comprehensiveness of the development. The developer may apply for thereafter, and the planning board may thereafter grant, an extension of final approval for such additional period of time as shall be determined by the planning board to be reasonable taking into consideration (1) the number of dwelling units and nonresidential floor area permissible under final approval, (2) the number of dwelling units and nonresidential floor area remaining to be developed, (3) economic conditions and (4) the comprehensiveness of the development.
- c. Whenever the planning board grants an extension of final approval pursuant to subsection a., b., or e. of this section and final approval has expired before the date on which the extension is granted, the extension shall begin on what would otherwise be the expiration date. The developer may apply for the extension either before or after what would otherwise be the expiration date.
- d. The planning board shall grant an extension of final approval for a period determined by the board but not exceeding one year from what would otherwise be the expiration date, if the developer proves to the reasonable satisfaction of the board that the developer was barred or prevented, directly or indirectly, from proceeding with the development because of delays in obtaining legally required approvals from other governmental entities and that the developer applied promptly for and diligently pursued these approvals. A developer shall apply for the extension before (1) what would otherwise be the expiration date of final approval or (2) the 91st day after the developer receives the last legally required approval from other governmental entities, whichever occurs later. An extension granted pursuant to this subsection shall not preclude the planning board from granting an extension pursuant to subsection a., b., or e. of this section.

## § 40:55D-52. Final approval of site plan or major subdivision; extension

e. In the case of a site plan for a development consisting of not less than 150,000 square feet of nonresidential floor area or not less than 100 residential dwelling units, or consisting of a combination of square feet of nonresidential floor area and residential dwelling units, which when proportionately aggregated at a rate of 1,500 square feet of nonresidential floor area to one residential dwelling unit, are equivalent to at least 150,000 square feet of nonresidential floor area or 100 residential dwelling units, the planning board may grant the rights referred to in subsection a. of this section for such period of time beyond two years, as shall be determined by the planning board to be reasonable taking into consideration (1) the number of dwelling units and nonresidential floor area permissible under final approval, (2) economic conditions, and (3) the comprehensiveness of the development. The developer may apply for thereafter, and the planning board may thereafter grant, an extension of final approval for such additional period of time as shall be determined by the planning board to be reasonable taking into consideration (1) the number of dwelling units and nonresidential floor area permissible under final approval, (2) the number of dwelling units and nonresidential floor area remaining to be developed, (3) economic conditions, and (4) the comprehensiveness of the development.

## History

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L. 1975, c. 291, § 40; amended 1985, c. 93; [1991, c. 256](#), § 11; [2011, c. 86](#), § 3, eff. July 1, 2011.

Annotations

## Notes

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### Editor's Notes

L. [2011, c. 86](#), as enacted, contains recommendations made by the Governor on conditional veto of the legislation (Senate Bill No. 483). The Governor's recommendations, in the first sentence of new subsection e., included the deletion of "in a smart growth area" following "In the case of a site plan for a development" and the insertion of "or consisting of a combination of square feet of nonresidential floor area and residential dwelling units, which when proportionately aggregated at a rate of 1,500 square feet of nonresidential floor area to one residential dwelling unit, are equivalent to at least 150,000 square feet of nonresidential floor area or 100 residential dwelling units."

### Amendment Note:

2011 amendment, by Chapter 86, added e.; and substituted "subsection a., b., or e." for "subsection a. or b." in the first sentence of c. and the last sentence of d.

## CASE NOTES

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**Civil Procedure: Settlements: Settlement Agreements: Validity**

**Real Property Law: Subdivisions: General Overview**

**Real Property Law: Subdivisions: Local Regulation**

**Real Property Law: Subdivisions: State Regulation**

**Real Property Law: Zoning & Land Use: General Overview**

**Real Property Law: Zoning & Land Use: Administrative Procedure**



§ 40:55D-52. Final approval of site plan or major subdivision; extension

**Real Property Law: Zoning & Land Use: Comprehensive Plans**

**Real Property Law: Zoning & Land Use: Judicial Review**

**Real Property Law: Zoning & Land Use: Local Planning**

**Real Property Law: Zoning & Land Use: Ordinances**

**Real Property Law: Zoning & Land Use: Special Permits & Variances**

**Civil Procedure: Settlements: Settlement Agreements: Validity**

In its settlement of litigation with a developer, a local land use board was not authorized under [N.J. Stat. Ann. § 40:55D-52\(a\)](#) to give the developer a six-year extension of protection from zoning changes, because the approval generated by the settlement was not of a “preliminary” nature. Consequently, the board did not have the authority to go beyond the ordinary two-year period protecting “final” approvals in § [40:55D-52\(a\)](#), subject to three one-year extensions, for a total of five years. [Friends of Peapack-Gladstone v. Borough of Peapack-Gladstone Land Use Bd.](#), 407 N.J. Super. 404, 971 A.2d 449, 2009 N.J. Super. LEXIS 132 (App.Div. 2009).

**Real Property Law: Subdivisions: General Overview**

Because [N.J. Stat. Ann. §§ 40:55D-54\(a\)](#) and [40:55D-52\(a\)](#) contemplated that there could be delays of up to two years, and longer where approvals of other governmental agencies were required, before the start of a project which had received major subdivision approval, a planning board’s condition on approval of a builder’s subdivision that all improvements had to be completed within 18 months of final approval conflicted with these provisions because the period for completing improvements could expire before final subdivision approval became effective. [R.J.P. Builders, Inc. v. Township of Woolwich](#), 361 N.J. Super. 207, 824 A.2d 1114, 2003 N.J. Super. LEXIS 205 (App.Div.), cert. denied, 178 N.J. 31, 834 A.2d 404, 2003 N.J. LEXIS 1407 (N.J. 2003).

Where a property owner and developer filed their application for final subdivision approval, which was deemed incomplete, they did not have to then seek a variance pursuant to N.J. Stat. Ann. § 40A:55-70 from new lot size requirements that had been enacted in zoning changes because once their application was filed, they were afforded the statutory protections from such changes pursuant to N.J. Stat. Ann. § 40:55D-49b; although a separate statutory protective period attached to a final subdivision application approval pursuant to [N.J. Stat. Ann. § 40:55D-52](#), where the application was submitted but not approved during the preliminary subdivision protection period, it was covered by the protections of N.J. Stat. Ann. § 40:55D-49b. [Toll Bros., Inc. v. Planning Bd., Tp. of Pohatcong](#), 359 N.J. Super. 448, 820 A.2d 122, 2003 N.J. Super. LEXIS 144 (App.Div.), cert. denied, 177 N.J. 492, 828 A.2d 920, 2003 N.J. LEXIS 982 (N.J. 2003).

Developer’s inability to point to unreasonable delays by the agencies from which it required certain approvals to go forward with a subdivision’s development, and evidence of the developer’s unexplained delays in making applications, responding to agency requests for information, and performing needed work, supported the board’s ruling that the developer failed to show entitlement to an extension under [N.J. Stat. Ann. § 40:55D-52\(d\)](#) of the Municipal Land Use Law, [N.J. Stat. Ann. §§ 40:55D-1](#) to [40:55D-136](#), of its subdivision approval, which would have exempted the developer’s land from rezoning. [Knowlton Riverside Estates, Inc. v. Planning Bd.](#), 347 N.J. Super. 362, 790 A.2d 194, 2002 N.J. Super. LEXIS 56 (App.Div.), cert. denied, 172 N.J. 357, 798 A.2d 1270, 2002 N.J. LEXIS 825 (N.J. 2002).

**Real Property Law: Subdivisions: Local Regulation**

At the preliminary site plan phase, a local land use board properly granted a developer an initial 10 years of protection from zoning changes pursuant to [N.J. Stat. Ann. § 40:55D-49\(a\)](#). However, pursuant to [N.J. Stat. Ann. § 40:55D-52\(a\)](#), the period of protection was terminated by operation of law when the developer subsequently



## § 40:55D-52. Final approval of site plan or major subdivision; extension

obtained final site plan approval. [\*Friends of Peapack-Gladstone v. Borough of Peapack-Gladstone Land Use Bd.\*, 407 N.J. Super. 404, 971 A.2d 449, 2009 N.J. Super. LEXIS 132 \(App.Div. 2009\)](#).

### Real Property Law: Subdivisions: State Regulation

In its settlement of litigation with a developer, a local land use board was not authorized under [\*N.J. Stat. Ann. § 40:55D-52\(a\)\*](#) to give the developer a six-year extension of protection from zoning changers, because the approval generated by the settlement was not of a “preliminary” nature. Consequently, the board did not have the authority to go beyond the ordinary two-year period protecting “final” approvals in [\*§ 40:55D-52\(a\)\*](#), subject to three one-year extensions, for a total of five years. [\*Friends of Peapack-Gladstone v. Borough of Peapack-Gladstone Land Use Bd.\*, 407 N.J. Super. 404, 971 A.2d 449, 2009 N.J. Super. LEXIS 132 \(App.Div. 2009\)](#).

### Real Property Law: Zoning & Land Use: General Overview

Landowners, who received final approval from the township for its plan to build a nursery school, were protected under [\*N.J. Stat. Ann. § 40:55D-52\*](#) from modification of its plan by the township. [\*Bleznak v. Evesham\*, 170 N.J. Super. 216, 406 A.2d 201, 1979 N.J. Super. LEXIS 896 \(Law Div. 1979\)](#).

### Real Property Law: Zoning & Land Use: Administrative Procedure

As [\*N.J. Stat. Ann. §§ 40:55D-49\*](#) and [\*40:55D-52\(a\)\*](#) allowed property owners to retain the rights conferred upon them by final site plan approval for at least two years, a zoning board of adjustment improperly imposed a one-year time limit for the owners to comply with the conditions subsequent for site approval—paving, landscaping, and constructing new storage containers. [\*Darst v. Blairstown Tp. Zoning Bd. of Adjustment\*, 410 N.J. Super. 314, 982 A.2d 27, 2009 N.J. Super. LEXIS 231 \(App.Div. 2009\)](#).

Pendency of property owners’ suit against a zoning board of adjustment, which was based upon good-faith (albeit not successful) arguments challenging the board’s conditions for site approval, equitably tolled the two-year period of protection afforded by [\*N.J. Stat. Ann. § 40:55D-52\(a\)\*](#). [\*Darst v. Blairstown Tp. Zoning Bd. of Adjustment\*, 410 N.J. Super. 314, 982 A.2d 27, 2009 N.J. Super. LEXIS 231 \(App.Div. 2009\)](#).

At the preliminary site plan phase, a local land use board properly granted a developer an initial 10 years of protection from zoning changes pursuant to [\*N.J. Stat. Ann. § 40:55D-49\(a\)\*](#). However, pursuant to [\*N.J. Stat. Ann. § 40:55D-52\(a\)\*](#), the period of protection was terminated by operation of law when the developer subsequently obtained final site plan approval. [\*Friends of Peapack-Gladstone v. Borough of Peapack-Gladstone Land Use Bd.\*, 407 N.J. Super. 404, 971 A.2d 449, 2009 N.J. Super. LEXIS 132 \(App.Div. 2009\)](#).

### Real Property Law: Zoning & Land Use: Comprehensive Plans

Where approvals, including an extension of the site plan, were granted by a township planning board for the construction of a cogeneration facility and then vacated in a judicial proceeding, the board properly reinstated the extensions under [\*N.J. Stat. Ann. § 40:55D-52\*](#) because the developer proved that it was prevented from proceeding with the development due to delays in obtaining legally required approvals, which it diligently pursued. [\*Aronowitz v. Planning Bd. of Lakewood\*, 257 N.J. Super. 347, 608 A.2d 451, 1992 N.J. Super. LEXIS 230 \(Law Div. 1992\)](#).

[\*N.J. Stat. Ann. § 40:55D-52\*](#) provides that the zoning requirements applicable to the preliminary approval first granted and all other rights conferred upon the developer shall not be changed for a period of two years after the date of final approval. [\*B. & W. Assoc. v. Planning Bd. of Hackettstown\*, 242 N.J. Super. 1, 575 A.2d 1371, 1990 N.J. Super. LEXIS 234 \(App.Div. 1990\)](#).

### Real Property Law: Zoning & Land Use: Judicial Review

City was prohibited from enforcing two zoning ordinances to prevent a development from continuing as the ordinances at issue were unquestionably zoning ordinances subject to the limitations of [\*N.J. Stat. Ann. § 40:55D-\*](#)

## § 40:55D-52. Final approval of site plan or major subdivision; extension

[21](#), the plain language of which contained no exception for the retroactive application of changes in zoning requirements within two years of the issuance of a final approval. [Shipyard Assocs., LP v. City of Hoboken, 242 N.J. 23, 230 A.3d 278, 2020 N.J. LEXIS 508 \(N.J. 2020\)](#).

### Real Property Law: Zoning & Land Use: Local Planning

Under the time of decision rule, a land use agency should not approve a land use application under a zoning ordinance that has been amended to change the land use regulations in the zone on the ground that the amendment's effective date has not yet arrived. [Maragliano v. Land Use Bd. of Tp. of Wantage, 403 N.J. Super. 80, 957 A.2d 213, 2008 N.J. Super. LEXIS 208 \(App.Div. 2008\)](#), certif. denied, 197 N.J. 476, 963 A.2d 845, 2009 N.J. LEXIS 129 (N.J. 2009).

### Real Property Law: Zoning & Land Use: Ordinances

City was prohibited from enforcing two zoning ordinances to prevent a development from continuing as the ordinances at issue were unquestionably zoning ordinances subject to the limitations of [N.J. Stat. Ann. § 40:55D-21](#), the plain language of which contained no exception for the retroactive application of changes in zoning requirements within two years of the issuance of a final approval. [Shipyard Assocs., LP v. City of Hoboken, 242 N.J. 23, 230 A.3d 278, 2020 N.J. LEXIS 508 \(N.J. 2020\)](#).

Under the time of decision rule, a land use agency should not approve a land use application under a zoning ordinance that has been amended to change the land use regulations in the zone on the ground that the amendment's effective date has not yet arrived. [Maragliano v. Land Use Bd. of Tp. of Wantage, 403 N.J. Super. 80, 957 A.2d 213, 2008 N.J. Super. LEXIS 208 \(App.Div. 2008\)](#), certif. denied, 197 N.J. 476, 963 A.2d 845, 2009 N.J. LEXIS 129 (N.J. 2009).

### Real Property Law: Zoning & Land Use: Special Permits & Variances

As [N.J. Stat. Ann. §§ 40:55D-49](#) and [40:55D-52\(a\)](#) allowed property owners to retain the rights conferred upon them by final site plan approval for at least two years, a zoning board of adjustment improperly imposed a one-year time limit for the owners to comply with the conditions subsequent for site approval—paving, landscaping, and constructing new storage containers. [Darst v. Blairstown Tp. Zoning Bd. of Adjustment, 410 N.J. Super. 314, 982 A.2d 27, 2009 N.J. Super. LEXIS 231 \(App.Div. 2009\)](#).

Pendency of property owners' suit against a zoning board of adjustment, which was based upon good-faith (albeit not successful) arguments challenging the board's conditions for site approval, equitably tolled the two-year period of protection afforded by [N.J. Stat. Ann. § 40:55D-52\(a\)](#). [Darst v. Blairstown Tp. Zoning Bd. of Adjustment, 410 N.J. Super. 314, 982 A.2d 27, 2009 N.J. Super. LEXIS 231 \(App.Div. 2009\)](#).

Where a property owner and developer filed their application for final subdivision approval, which was deemed incomplete, they did not have to then seek a variance pursuant to N.J. Stat. Ann. § 40A:55-70 from new lot size requirements that had been enacted in zoning changes because once their application was filed, they were afforded the statutory protections from such changes pursuant to N.J. Stat. Ann. § 40:55D-49b; although a separate statutory protective period attached to a final subdivision application approval pursuant to [N.J. Stat. Ann. § 40:55D-52](#), where the application was submitted but not approved during the preliminary subdivision protection period, it was covered by the protections of N.J. Stat. Ann. § 40:55D-49b. [Toll Bros., Inc. v. Planning Bd., Tp. of Pohatcong, 359 N.J. Super. 448, 820 A.2d 122, 2003 N.J. Super. LEXIS 144 \(App.Div.\)](#), certif. denied, 177 N.J. 492, 828 A.2d 920, 2003 N.J. LEXIS 982 (N.J. 2003).

## Research References & Practice Aids

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### Cross References:

§ 40:55D-52. Final approval of site plan or major subdivision; extension

Notices of application, requirements., see [40:55D-12](#).

**Administrative Code:**

N.J.A.C. 7:50-4.1 (2013), CHAPTER PINELANDS COMPREHENSIVE MANAGEMENT PLAN, Applicability.

N.J.A.C. 7:50-4.70 (2013), CHAPTER PINELANDS COMPREHENSIVE MANAGEMENT PLAN, Effect of grant of waiver; expiration; recordation; effective date.

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## [N.J. Stat. § 40:55D-53](#)

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### § 40:55D-53. Guarantees required; surety; release

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a. Before filing of final subdivision plats or recording of minor subdivision deeds or as a condition of final site plan approval or as a condition to the issuance of a zoning permit pursuant to subsection d. of section 52 of P.L.1975, c.291 ([C.40:55D-65](#)), the municipality may require and shall accept in accordance with the standards adopted by ordinance and regulations adopted pursuant to section 1 of [P.L.1999, c.68 \(C.40:55D-53a\)](#) for the purpose of assuring the installation and maintenance of certain on-tract improvements, the furnishing of a performance guarantee, and provision for a maintenance guarantee in accordance with paragraphs (1) and (2) of this subsection. If a municipality has adopted an ordinance requiring a successor developer to furnish a replacement performance guarantee, as a condition to the approval of a permit update under the State Uniform Construction Code, for the purpose of updating the name and address of the owner of property on a construction permit, the governing body may require and shall accept in accordance with the standards adopted by ordinance and regulations adopted pursuant to section 1 of [P.L.1999, c.68 \(C.40:55D-53a\)](#) for the purpose of assuring the installation and maintenance of certain on-tract improvements, the furnishing of a performance guarantee, and provision for a maintenance guarantee, in accordance with paragraphs (1) and (2) of this subsection.

(1)

(a) If required by ordinance, the developer shall furnish a performance guarantee in favor of the municipality in an amount not to exceed 120% of the cost of installation of only those improvements required by an approval or developer's agreement, ordinance, or regulation to be dedicated to a public entity, and that have not yet been installed, which cost shall be determined by the municipal engineer, according to the method of calculation set forth in section 15 of [P.L.1991, c.256 \(C.40:55D-53.4\)](#), for the following improvements as shown on the approved plans or plat: streets, pavement, gutters, curbs, sidewalks, street lighting, street trees, surveyor's monuments, as shown on the final map and required by "the map filing law," P.L.1960, c.141 ([C.46:23-9.9](#) et seq.; repealed by section 2 of [P.L.2011, c.217](#)) or [N.J.S.46:26B-1](#) through [N.J.S.46:26B-8](#), water mains, sanitary sewers, community septic systems, drainage structures, public improvements of open space, and any grading necessitated by the preceding improvements.

The municipal engineer shall prepare an itemized cost estimate of the improvements covered by the performance guarantee, which itemized cost estimate shall be appended to each performance guarantee posted by the obligor.

(b) A municipality may also require a performance guarantee to include, within an approved phase or section of a development privately-owned perimeter buffer landscaping, as required by local ordinance or imposed as a condition of approval.

At the developer's option, a separate performance guarantee may be posted for the privately-owned perimeter buffer landscaping.

## § 40:55D-53. Guarantees required; surety; release

**(c)** In the event that the developer shall seek a temporary certificate of occupancy for a development, unit, lot, building, or phase of development, as a condition of the issuance thereof, the developer shall, if required by an ordinance adopted by the municipality, furnish a separate guarantee, referred to herein as a “temporary certificate of occupancy guarantee,” in favor of the municipality in an amount equal to 120% of the cost of installation of only those improvements or items which remain to be completed or installed under the terms of the temporary certificate of occupancy and which are required to be installed or completed as a condition precedent to the issuance of the permanent certificate of occupancy for the development, unit, lot, building or phase of development and which are not covered by an existing performance guarantee. Upon posting of a “temporary certificate of occupancy guarantee,” all sums remaining under a performance guarantee, required pursuant to subparagraph (a) of this paragraph, which relate to the development, unit, lot, building, or phase of development for which the temporary certificate of occupancy is sought, shall be released. The scope and amount of the “temporary certificate of occupancy guarantee” shall be determined by the zoning officer, municipal engineer, or other municipal official designated by ordinance. At no time may a municipality hold more than one guarantee or bond of any type with respect to the same line item. The “temporary certificate of occupancy guarantee” shall be released by the zoning officer, municipal engineer, or other municipal official designated by ordinance upon the issuance of a permanent certificate of occupancy with regard to the development, unit, lot, building, or phase as to which the temporary certificate of occupancy relates.

**(d)** A developer shall, if required by an ordinance adopted by the municipality, furnish to the municipality a “safety and stabilization guarantee,” in favor of the municipality. At the developer’s option, a “safety and stabilization guarantee” may be furnished either as a separate guarantee or as a line item of the performance guarantee. A “safety and stabilization guarantee” shall be available to the municipality solely for the purpose of returning property that has been disturbed to a safe and stable condition or otherwise implementing measures to protect the public from access to an unsafe or unstable condition, only in the circumstance that:

**(i)** site disturbance has commenced and, thereafter, all work on the development has ceased for a period of at least 60 consecutive days following such commencement for reasons other than force majeure, and

**(ii)** work has not recommenced within 30 days following the provision of written notice by the municipality to the developer of the municipality’s intent to claim payment under the guarantee. A municipality shall not provide notice of its intent to claim payment under a “safety and stabilization guarantee” until a period of at least 60 days has elapsed during which all work on the development has ceased for reasons other than force majeure. A municipality shall provide written notice to a developer by certified mail or other form of delivery providing evidence of receipt.

The amount of a “safety and stabilization guarantee” for a development with bonded improvements in an amount not exceeding \$100,000 shall be \$5,000.

The amount of a “safety and stabilization guarantee” for a development with bonded improvements exceeding \$100,000 shall be calculated as a percentage of the bonded improvement costs of the development or phase of development as follows:

\$5,000 for the first \$100,000 of bonded improvement costs, plus two and a half percent of bonded improvement costs in excess of \$100,000 up to \$1,000,000, plus one percent of bonded improvement costs in excess of \$1,000,000.

A municipality shall release a separate “safety and stabilization guarantee” to a developer upon the developer’s furnishing of a performance guarantee which includes a line item for safety and stabilization in the amount required under this paragraph.

## § 40:55D-53. Guarantees required; surety; release

A municipality shall release a "safety and stabilization guarantee" upon the municipal engineer's determination that the development of the project site has reached a point that the improvements installed are adequate to avoid any potential threat to public safety.

**(2)**

**(a)** If required by ordinance, the developer shall post with the municipality, prior to the release of a performance guarantee required pursuant to subparagraph (a), subparagraph (b), or both subparagraph (a) and subparagraph (b) of paragraph (1) of this subsection, a maintenance guarantee in an amount not to exceed 15% of the cost of the installation of the improvements which are being released.

**(b)** If required, the developer shall post with the municipality, upon the inspection and issuance of final approval of the following private site improvements by the municipal engineer, a maintenance guarantee in an amount not to exceed 15% of the cost of the installation of the following private site improvements: stormwater management basins, in-flow and water quality structures within the basins, and the out-flow pipes and structures of the stormwater management system, if any, which cost shall be determined according to the method of calculation set forth in section 15 of [P.L.1991, c.256 \(C.40:55D-53.4\)](#).

**(c)** The term of the maintenance guarantee shall be for a period not to exceed two years and shall automatically expire at the end of the established term.

**(3)** In the event that other governmental agencies or public utilities automatically will own the utilities to be installed or the improvements are covered by a performance or maintenance guarantee to another governmental agency, no performance or maintenance guarantee, as the case may be, shall be required by the municipality for such utilities or improvements.

**b.** The time allowed for installation of the bonded improvements for which the performance guarantee has been provided may be extended by the governing body by resolution. As a condition or as part of any such extension, the amount of any performance guarantee shall be increased or reduced, as the case may be, to an amount not to exceed 120% of the cost of the installation, which cost shall be determined by the municipal engineer according to the method of calculation set forth in section 15 of [P.L.1991, c.256 \(C.40:55D-53.4\)](#) as of the time of the passage of the resolution.

**c.** If the required bonded improvements are not completed or corrected in accordance with the performance guarantee, the obligor and surety, if any, shall be liable thereon to the municipality for the reasonable cost of the improvements not completed or corrected and the municipality may either prior to or after the receipt of the proceeds thereof complete such improvements. Such completion or correction of improvements shall be subject to the public bidding requirements of the "Local Public Contracts Law," P.L.1971, c.198 ([C.40A:11-1](#) et seq.).

**d.**

**(1)** Upon substantial completion of all required street improvements (except for the top course) and appurtenant utility improvements, and the connection of same to the public system, the obligor may request of the governing body in writing, by certified mail addressed in care of the municipal clerk, that the municipal engineer prepare, in accordance with the itemized cost estimate prepared by the municipal engineer and appended to the performance guarantee pursuant to subsection a. of this section, a list of all uncompleted or unsatisfactory completed bonded improvements. If such a request is made, the obligor shall send a copy of the request to the municipal engineer. The request shall indicate which bonded improvements have been completed and which bonded improvements remain uncompleted in the judgment of the obligor. Thereupon the municipal engineer shall inspect all bonded improvements covered by obligor's request and shall file a detailed list and report, in writing, with the governing body, and shall simultaneously send a copy thereof to the obligor not later than 45 days after receipt of the obligor's request.

## § 40:55D-53. Guarantees required; surety; release

(2) The list prepared by the municipal engineer shall state, in detail, with respect to each bonded improvement determined to be incomplete or unsatisfactory, the nature and extent of the incompleteness of each incomplete improvement or the nature and extent of, and remedy for, the unsatisfactory state of each completed bonded improvement determined to be unsatisfactory. The report prepared by the municipal engineer shall identify each bonded improvement determined to be complete and satisfactory together with a recommendation as to the amount of reduction to be made in the performance guarantee relating to the completed and satisfactory bonded improvement, in accordance with the itemized cost estimate prepared by the municipal engineer and appended to the performance guarantee pursuant to subsection a. of this section.

e.

(1) The governing body, by resolution, shall either approve the bonded improvements determined to be complete and satisfactory by the municipal engineer, or reject any or all of these bonded improvements upon the establishment in the resolution of cause for rejection, and shall approve and authorize the amount of reduction to be made in the performance guarantee relating to the improvements accepted, in accordance with the itemized cost estimate prepared by the municipal engineer and appended to the performance guarantee pursuant to subsection a. of this section. This resolution shall be adopted not later than 45 days after receipt of the list and report prepared by the municipal engineer. Upon adoption of the resolution by the governing body, the obligor shall be released from all liability pursuant to its performance guarantee, with respect to those approved bonded improvements, except for that portion adequately sufficient to secure completion or correction of the improvements not yet approved; provided that 30% of the amount of the total performance guarantee and "safety and stabilization guarantee" posted may be retained to ensure completion and acceptability of all improvements. The "safety and stabilization guarantee" shall be reduced by the same percentage as the performance guarantee is being reduced at the time of each performance guarantee reduction.

For the purpose of releasing the obligor from liability pursuant to its performance guarantee, the amount of the performance guarantee attributable to each approved bonded improvement shall be reduced by the total amount for each such improvement, in accordance with the itemized cost estimate prepared by the municipal engineer and appended to the performance guarantee pursuant to subsection a. of this section, including any contingency factor applied to the cost of installation. If the sum of the approved bonded improvements would exceed 70 percent of the total amount of the performance guarantee, then the municipality may retain 30 percent of the amount of the total performance guarantee and "safety and stabilization guarantee" to ensure completion and acceptability of bonded improvements, as provided above, except that any amount of the performance guarantee attributable to bonded improvements for which a "temporary certificate of occupancy guarantee" has been posted shall be released from the performance guarantee even if such release would reduce the amount held by the municipality below 30 percent.

(2) If the municipal engineer fails to send or provide the list and report as requested by the obligor pursuant to subsection d. of this section within 45 days from receipt of the request, the obligor may apply to the court in a summary manner for an order compelling the municipal engineer to provide the list and report within a stated time and the cost of applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party.

If the governing body fails to approve or reject the bonded improvements determined by the municipal engineer to be complete and satisfactory or reduce the performance guarantee for the complete and satisfactory improvements within 45 days from the receipt of the municipal engineer's list and report, the obligor may apply to the court in a summary manner for an order compelling, within a stated time, approval of the complete and satisfactory improvements and approval of a reduction in the performance guarantee for the approvable complete and satisfactory improvements in accordance with the itemized cost estimate prepared by the municipal engineer and appended to the performance guarantee pursuant to subsection a. of this section; and the cost of applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party.



## § 40:55D-53. Guarantees required; surety; release

- (3)** In the event that the obligor has made a cash deposit with the municipality or approving authority as part of the performance guarantee, then any partial reduction granted in the performance guarantee pursuant to this subsection shall be applied to the cash deposit in the same proportion as the original cash deposit bears to the full amount of the performance guarantee, provided that if the developer has furnished a “safety and stabilization guarantee,” the municipality may retain cash equal to the amount of the remaining “safety and stabilization guarantee”.
- f.** If any portion of the required bonded improvements is rejected, the approving authority may require the obligor to complete or correct such improvements and, upon completion or correction, the same procedure of notification, as set forth in this section shall be followed.
- g.** Nothing herein, however, shall be construed to limit the right of the obligor to contest by legal proceedings any determination of the governing body or the municipal engineer.
- h.**
- (1)** The obligor shall reimburse the municipality for reasonable inspection fees paid to the municipal engineer for the foregoing inspection of improvements; which fees shall not exceed the sum of the amounts set forth in subparagraphs (a) and (b) of this paragraph. The municipality may require the developer to post the inspection fees in escrow in an amount:
- (a)** not to exceed, except for extraordinary circumstances, the greater of \$500 or 5% of the cost of bonded improvements that are subject to a performance guarantee under subparagraph (a), subparagraph (b), or both subparagraph (a) and subparagraph (b) of paragraph (1) of subsection a. of this section; and
- (b)** not to exceed 5% of the cost of private site improvements that are not subject to a performance guarantee under subparagraph (a) of paragraph (1) of subsection a. of this section, which cost shall be determined pursuant to section 15 of [P.L.1991, c.256 \(C.40:55D-53.4\)](#).
- (2)** For those developments for which the inspection fees total less than \$10,000, fees may, at the option of the developer, be paid in two installments. The initial amount deposited in escrow by a developer shall be 50% of the inspection fees. When the balance on deposit drops to 10% of the inspection fees because the amount deposited by the developer has been reduced by the amount paid to the municipal engineer for inspections, the developer shall deposit the remaining 50% of the inspection fees.
- (3)** For those developments for which the inspection fees total \$10,000 or greater, fees may, at the option of the developer, be paid in four installments. The initial amount deposited in escrow by a developer shall be 25% of the inspection fees. When the balance on deposit drops to 10% of the inspection fees because the amount deposited by the developer has been reduced by the amount paid to the municipal engineer for inspection, the developer shall make additional deposits of 25% of the inspection fees.
- (4)** If the municipality determines that the amount in escrow for the payment of inspection fees, as calculated pursuant to subparagraphs (a) and (b) of paragraph (1) of this subsection, is insufficient to cover the cost of additional required inspections, the municipality may require the developer to deposit additional funds in escrow provided that the municipality delivers to the developer a written inspection escrow deposit request, signed by the municipal engineer, which: informs the developer of the need for additional inspections, details the items or undertakings that require inspection, estimates the time required for those inspections, and estimates the cost of performing those inspections.
- i.** In the event that final approval is by stages or sections of development pursuant to subsection a. of section 29 of P.L.1975, c.291 ([C.40:55D-38](#)), the provisions of this section shall be applied by stage or section.
- j.** To the extent that any of the improvements have been dedicated to the municipality on the subdivision plat or site plan, the municipal governing body shall be deemed, upon the release of any performance guarantee required pursuant to subsection a. of this section, to accept dedication for public use of streets or



## § 40:55D-53. Guarantees required; surety; release

roads and any other improvements made thereon according to site plans and subdivision plats approved by the approving authority, provided that such improvements have been inspected and have received final approval by the municipal engineer.

## History

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L. 1975, c. 291, § 41; amended 1979, c. 216, § 17; [1991, c. 256](#), § 12; [1991, c. 301](#); [1991, c. 311](#); [1997, c. 126](#); [1999, c. 68](#), § 3, eff. April 22, 1999; [2013, c. 123](#), § 3, eff. Aug. 9, 2013; [2017, c. 312](#), § 1, effective January 16, 2018.

Annotations

## Notes

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### Amendment Note:

2013 amendment, by Chapter 123, in the first paragraph of a., added “the furnishing of a performance guarantee, and provision for a maintenance guarantee in accordance with paragraphs (1) and (2) of this subsection” in the first sentence and added the second sentence.

2017 amendment, by Chapter 312, in a., substituted “filing” for “recording”, inserted “recording of minor subdivision deeds or”, substituted “municipality” for “approving authority”, and “certain on-tract improvements” for “on-tract improvements” twice; added a.(1)(b) through a.(1)(d), and redesignated former a.(1) as a.(1)(a); rewrote a.(1)(a); added a.(2)(c), and redesignated former a.(2) as a.(2)(a), a.(2)(b), and a.(3); rewrote a.(2)(a) and a.(2)(b); inserted “bonded” in b., c., four times in d.(1) and d.(2), three times in e.(1), in e.(2), and f.; in e.(1), inserted “and ‘safety and stabilization guarantee’” in the opening and next paragraphs, inserted the last sentence in opening paragraph, and the language beginning “except that any amount of the performance” through “below 30 percent” in the second sentence of the next paragraph; inserted the language beginning “provided that if the developer has furnished” through “stabilization guarantee” in e.(3); added h.(4), and redesignated former h. as h.(1), h.(1)(a), h.(1)(b), h.(2), and h.(3); rewrote h.(1), h.(1)(a) and h.(1)(b); substituted “total less” for “are less” in h.(2) and h.(3); in h.(3), inserted “in escrow” and deleted “The municipal engineer shall not perform any inspection if sufficient funds to pay for those inspections are not on deposit” at the end; and made stylistic changes.

## CASE NOTES

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**Contracts Law: Types of Contracts: Guaranty Contracts**

**Governments: Local Governments: Claims By & Against**

**Governments: Local Governments: Duties & Powers**

**Governments: Local Governments: Finance**

**Governments: Local Governments: Ordinances & Regulations**

**Governments: Public Improvements: Financing**

**Public Contracts Law: Contract Provisions: General Overview**

**Public Health & Welfare Law: Housing & Public Buildings: Accessibility, Construction & Design**

§ 40:55D-53. Guarantees required; surety; release

**Public Health & Welfare Law: Housing & Public Buildings: Low Income Housing**

**Real Property Law: Ownership & Transfer: Transfer Not By Deed: Dedication: General Overview**

**Real Property Law: Subdivisions: General Overview**

**Real Property Law: Subdivisions: Local Regulation**

**Real Property Law: Zoning & Land Use: Comprehensive Plans**

**Contracts Law: Types of Contracts: Guaranty Contracts**

Performance bonds securing a developer's duty to install certain improvements in a development in a township could not be reduced by the installation of some of the improvements, where the bonds were for lump sums covering all the improvements in a specific area, and where the township did not pass a resolution pursuant to former N.J. Stat. Ann. § 40:55-1.22 (now [N.J. Stat. Ann. § 40:55D-53](#)) reducing the bonds when portions of the improvements were completed. [Berkeley v. Republic Ins. Co., 194 N.J. Super. 407, 477 A.2d 346, 1983 N.J. Super. LEXIS 1081 \(App.Div. 1983\).](#)

**Governments: Local Governments: Claims By & Against**

Where former N.J. Stat. Ann. § 40:55-1.22 (now [N.J. Stat. Ann. § 40:55D-53](#)) established the surety's obligation to the borough, the borough could assign its rights under the performance bond because the assignment was for the purpose of obtaining the performance guaranteed by the bond and the guaranteed improvements had been made. [Clearwater Associates, Inc. v. F. H. Bridge & Son, Contractors, 144 N.J. Super. 223, 365 A.2d 200, 1976 N.J. Super. LEXIS 665 \(App.Div. 1976\).](#)

**Governments: Local Governments: Duties & Powers**

Where developer obtained cash performance bonds pursuant to [N.J. Stat. Ann. § 40:55D-53\(a\)\(1\)](#) for nursing home project, and the lienholder later negotiated debts in bankruptcy proceeding where it acquired, and later sold, the property 'as is,' ownership of the bond was not transferred with the property; the developer was entitled to return of the cash bonds upon completion of the improvements and was protected regardless of bond ownership. [K. Woodmere Assocs., L.P. v. Menk Corp., 316 N.J. Super. 306, 720 A.2d 386, 1998 N.J. Super. LEXIS 457 \(App.Div. 1998\).](#)

Cost of electricity is not an improvement and is therefore not bondable under [N.J. Stat. Ann. § 40:55D-53\(a\)](#). Electricity is intangible and is not analogous to buildings or other permanent structures. [New Jersey Shore Builders Ass'n v. Marlboro, 248 N.J. Super. 508, 591 A.2d 950, 1991 N.J. Super. LEXIS 194 \(App.Div. 1991\).](#)

Under [N.J. Stat. Ann. § 40:55D-53\(a\)](#), a township could not require a performance bond from a developer for the installation of subdivision electric facilities because a franchised public utility would own the facilities upon their completion. [New Jersey Shore Builders Ass'n v. Marlboro, 248 N.J. Super. 508, 591 A.2d 950, 1991 N.J. Super. LEXIS 194 \(App.Div. 1991\).](#)

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**Governments: Local Governments: Finance**

## § 40:55D-53. Guarantees required; surety; release

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Township could not require pursuant to [N.J. Stat. Ann. § 40:55D-53](#) a performance bond to compel a developer to form a homeowner's association. [Eastern Planned Communities at Lincroft, Inc. v. Middletown Township, 235 N.J. Super. 467, 563 A.2d 81, 1989 N.J. Super. LEXIS 322 \(Law Div. 1989\)](#).

### **Governments: Local Governments: Ordinances & Regulations**

Township's ordinances providing for the dedication of stormwater management facilities and how they would be maintained were a valid exercise of municipal legislative power and did not violate the New Jersey Municipal Land Use Law, [N.J. Stat. Ann. § 40:55D-1](#) et seq., [N.J. Stat. Ann. § 40:55D-53\(a\)\(2\)](#), or any other authority; the township was lawfully permitted to require the maintenance of voluntarily dedicated and voluntarily accepted basins for a reasonable amount of time. [Talcott Fromkin Freehold Associates v. Freehold Tp., 383 N.J. Super. 298, 891 A.2d 690, 2005 N.J. Super. LEXIS 388 \(Law Div. 2005\)](#).

Under former N.J. Stat. Ann. § 40:55-1.22 (see now [N.J. Stat. Ann. § 40:55D-53](#)) respondent was empowered to ensure adequate performance guarantees through maintenance bond requirements, and implicit in that power was the right to reserve to itself the decision whether to release a bond, and therefore respondent could provide for public notice. [Legion Manor, Inc. v. Municipal Council of Wayne, 49 N.J. 420, 231 A.2d 201, 1967 N.J. LEXIS 245 \(N.J. 1967\)](#), cert. denied, *Falow v. Grievance Comm.*, 525 U.S. 1067, 119 S. Ct. 796, 142 L. Ed. 2d 658, 1999 U.S. LEXIS 116 (U.S. 1999).

### **Governments: Public Improvements: Financing**

Where builders were required to post a performance bond in accordance with [N.J. Stat. Ann. § 40:55D-53\(d\)](#) to insure completion of certain on-site and off-site improvements, release of the performance bond did not constitute final acceptance of the improvements to a particular right of way and final acceptance of the dedication of the right of way under [N.J. Stat. Ann. § 40:55D-53\(a\)\(2\)](#); acceptance by the municipality occurred when affirmative action by a municipality clearly evidenced an intention to exercise dominion and control over the dedicated land. [Home Builders League, Inc. v. Evesham, 182 N.J. Super. 357, 440 A.2d 1361, 1981 N.J. Super. LEXIS 782 \(App.Div. 1981\)](#).

Municipality could not exact a performance guarantee in excess of the provisions of former N.J. Stat. Ann. §§ 40:55-1.21 and 40:55D-1.22 (now [N.J. Stat. Ann. § 40:55D-53](#)), which related the amount of the bond to the cost of subdivision site improvements. [J. D. Land Corp. v. Allen, 114 N.J. Super. 503, 277 A.2d 404, 1971 N.J. Super. LEXIS 643 \(App.Div. 1971\)](#).

### **Public Contracts Law: Contract Provisions: General Overview**

Developer was not entitled to interest on a performance guarantee to ensure completion of a development. [Warren Realty Co. v. East Windsor, 174 N.J. Super. 322, 416 A.2d 443, 1980 N.J. Super. LEXIS 571 \(App.Div.\)](#), certif. denied, 85 N.J. 128, 425 A.2d 285, 1980 N.J. LEXIS 1719 (N.J. 1980).

### **Public Health & Welfare Law: Housing & Public Buildings: Accessibility, Construction & Design**

Although authorized by [N.J. Stat. Ann. § 40:55D-53\(h\)](#), a five percent unstaged escrow fund to cover engineering inspection or other inspections of a low income housing project is unreasonable, as it will unnecessarily add to the cost of housing; this statutory requirement, although valid in other types of development, is unnecessarily cost

§ 40:55D-53. Guarantees required; surety; release

generative in a public housing development. [Urban League of Essex County v. Mahwah, 207 N.J. Super. 169, 504 A.2d 66, 1984 N.J. Super. LEXIS 1350 \(Law Div. 1984\).](#)

### **Public Health & Welfare Law: Housing & Public Buildings: Low Income Housing**

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### **Real Property Law: Ownership & Transfer: Transfer Not By Deed: Dedication: General Overview**

Where builders were required to post a performance bond in accordance with [N.J. Stat. Ann. § 40:55D-53\(d\)](#) to insure completion of certain on-site and off-site improvements, release of the performance bond did not constitute final acceptance of the improvements to a particular right of way and final acceptance of the dedication of the right of way under [N.J. Stat. Ann. § 40:55D-53\(a\)\(2\)](#); acceptance by the municipality occurred when affirmative action by a municipality clearly evidenced an intention to exercise dominion and control over the dedicated land. [Home Builders League, Inc. v. Evesham, 182 N.J. Super. 357, 440 A.2d 1361, 1981 N.J. Super. LEXIS 782 \(App.Div. 1981\).](#)

### **Real Property Law: Subdivisions: General Overview**

Township's ordinances providing for the dedication of stormwater management facilities and how they would be maintained were a valid exercise of municipal legislative power and did not violate the New Jersey Municipal Land Use Law, [N.J. Stat. Ann. § 40:55D-1](#) et seq., [N.J. Stat. Ann. § 40:55D-53\(a\)\(2\)](#), or any other authority; the township was lawfully permitted to require the maintenance of voluntarily dedicated and voluntarily accepted basins for a reasonable amount of time. [Talcott Fromkin Freehold Associates v. Freehold Tp., 383 N.J. Super. 298, 891 A.2d 690, 2005 N.J. Super. LEXIS 388 \(Law Div. 2005\).](#)

Conclusion that [N.J. Stat. Ann. § 40:55D-53\(a\)](#) authorized a municipality to require a developer to provide both performance and maintenance guarantees before a subdivision plat could be recorded was supported by [N.J. Stat. Ann. § 40:55D-54\(b\)](#), which provided that a subdivision plat could not be signed prior to recording until the developer had posted the "guarantees" required pursuant to [N.J. Stat. Ann. § 40:55D-53](#), which encompassed both the performance guarantee required by [N.J. Stat. Ann. § 40:55D-53\(a\)\(1\)](#) and the maintenance guarantee required by [N.J. Stat. Ann. § 40:55D-53\(a\)\(2\)](#). [R.J.P. Builders, Inc. v. Township of Woolwich, 361 N.J. Super. 207, 824 A.2d 1114, 2003 N.J. Super. LEXIS 205 \(App.Div.\),](#) certif. denied, 178 N.J. 31, 834 A.2d 404, 2003 N.J. LEXIS 1407 (N.J. 2003).

Fact that [N.J. Stat. Ann. § 40:55D-53\(a\)\(2\)](#) used the future tense "to be posted" could not be read to negate the evident intent of the introductory language of [N.J. Stat. Ann. § 40:55D-53\(a\)](#), authorizing a municipality to require both performance and maintenance guarantees before a subdivision plat could be recorded. [R.J.P. Builders, Inc. v. Township of Woolwich, 361 N.J. Super. 207, 824 A.2d 1114, 2003 N.J. Super. LEXIS 205 \(App.Div.\),](#) certif. denied, 178 N.J. 31, 834 A.2d 404, 2003 N.J. LEXIS 1407 (N.J. 2003).

Under the introductory language in [N.J. Stat. Ann. § 40:55D-53\(a\)](#), a builder could be required to post a maintenance guarantee, regarding improvements in its development, under [N.J. Stat. Ann. § 40:55D-53\(a\)\(2\)](#), before recording its subdivision plat, and the phrasing of [§ 40:55D-53\(a\)\(2\)](#) in terms of "provision for" a maintenance guarantee did not undercut this conclusion, as "furnish" and "provide" were often synonyms. [R.J.P. Builders, Inc. v. Township of Woolwich, 361 N.J. Super. 207, 824 A.2d 1114, 2003 N.J. Super. LEXIS 205 \(App.Div.\),](#) certif. denied, 178 N.J. 31, 834 A.2d 404, 2003 N.J. LEXIS 1407 (N.J. 2003).

### **Real Property Law: Subdivisions: Local Regulation**

## § 40:55D-53. Guarantees required; surety; release

Cost of electricity is not an improvement and is therefore not bondable under [N.J. Stat. Ann. § 40:55D-53\(a\)](#). Electricity is intangible and is not analogous to buildings or other permanent structures. [New Jersey Shore Builders Ass'n v. Marlboro, 248 N.J. Super. 508, 591 A.2d 950, 1991 N.J. Super. LEXIS 194 \(App.Div. 1991\)](#).

Under [N.J. Stat. Ann. § 40:55D-53\(a\)](#), a township could not require a performance bond from a developer for the installation of subdivision electric facilities because a franchised public utility would own the facilities upon their completion. [New Jersey Shore Builders Ass'n v. Marlboro, 248 N.J. Super. 508, 591 A.2d 950, 1991 N.J. Super. LEXIS 194 \(App.Div. 1991\)](#).

### Real Property Law: Zoning & Land Use: Comprehensive Plans

Developers did not have to provide performance guarantees for utilities or improvements that public utilities automatically owned on installation because it was not required by [N.J. Stat. Ann. § 40:55D-53\(a\)](#). [New Jersey Shore Builders Ass'n v. Marlboro, 248 N.J. Super. 508, 591 A.2d 950, 1991 N.J. Super. LEXIS 194 \(App.Div. 1991\)](#).

[N.J. Stat. Ann. § 40:55D-53\(a\)\(1\)](#) a developer could not be required to install site improvements before the planning board would consider its application for final subdivision approval. [Toll Bros., Inc. v. Greenwich, 244 N.J. Super. 514, 582 A.2d 1276, 1990 N.J. Super. LEXIS 432 \(App.Div. 1990\)](#).

Inspection by the municipal engineer and completion or substantial completion of the improvements were required prior a contractor requesting the municipality to release performance bonds; the trial court erred in dismissing the municipality's complaint because, on the record before him, the judge could not determine that the improvements were completed or substantially completed, pursuant to [N.J. Stat. Ann. § 40:55D-53\(d\)](#), (e). [Barnegat v. DCA of New Jersey, Inc., 181 N.J. Super. 394, 437 A.2d 909, 1981 N.J. Super. LEXIS 731 \(App.Div. 1981\)](#), certif. denied, 89 N.J. 404, 446 A.2d 138, 1982 N.J. LEXIS 1948 (N.J. 1982).

Ordinance that required a developer of three or more building lots to post performance guarantees to insure the completion of the remaining required improvements did not conflict with the Municipal Planning Act, former N.J. Stat. Ann. § [40:55-1.1](#) et seq. (now [N.J. Stat. Ann. § 40:55D-1](#) et seq.), because the words "performance guarantees" in former N.J. Stat. Ann. § 40:55-1.22 (now [N.J. Stat. Ann. § 40:55D-53](#)) meant a flexible type of security that a municipality might require in a given situation. [Savonick v. Lawrence, 91 N.J. Super. 288, 219 A.2d 902, 1966 N.J. Super. LEXIS 318 \(Law Div. 1966\)](#).

## Research References & Practice Aids

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### Cross References:

Discretionary contents of ordinance., see [40:55D-39](#).

Minor subdivision, see [40:55D-47](#).

Recording of final approval of major subdivision; filing of all subdivision plats, see [40:55D-54](#).

Contents of zoning ordinance, see [40:55D-65](#).

Interest on deposits with municipalities, see [40:55D-53.1](#).

Municipal payments to professionals for services rendered; determination, see [40:55D-53.2](#).

Maintenance, performance guarantees, see [40:55D-53.3](#).

Municipal engineer to estimate cost of installation of improvements, see [40:55D-53.4](#).

§ 40:55D-53. Guarantees required; surety; release

Performance of maintenance guarantee, acceptance, see [40:55D-53.5](#).

Standardized form for performance guarantee, maintenance guarantee, letter of credit, see [40:55D-53a](#).

Acceptance of standardized form, see [40:55D-53b](#).

Acceptance of performance guarantee from successor developer, see [40:55D-53c](#).

Existing government approval; extension period, see [40:55D-136.4](#).

Filing of revised preliminary subdivision or site plan with municipal engineer, see [45:22A-46.10](#).

Adoption of ordinance requiring replacement for performance guarantee, see [52:27D-130.8](#).

**Administrative Code:**

N.J.A.C. 19:31C-3.12 (2013), FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY, Stormwater management and control.

N.J.A.C. 5:21-7, Appx. B (2013), CHAPTER RESIDENTIAL SITE IMPROVEMENT STANDARDS, APPENDIX B.

N.J.A.C. 5:23-4.5 (2013), CHAPTER UNIFORM CONSTRUCTION CODE, Municipal enforcing agencies—administration and enforcement.

N.J.A.C. 5:36-4.1 (2013), CHAPTER DEVELOPMENT AND REDEVELOPMENT ACTIVITIES, Performance surety bonds.

N.J.A.C. 5:36-4.2 (2013), CHAPTER DEVELOPMENT AND REDEVELOPMENT ACTIVITIES, Maintenance surety bond.

N.J.A.C. 5:36-4.3 (2013), CHAPTER DEVELOPMENT AND REDEVELOPMENT ACTIVITIES, Irrevocable standby letter of credit (performance).

N.J.A.C. 5:36-4.4 (2013), CHAPTER DEVELOPMENT AND REDEVELOPMENT ACTIVITIES, Irrevocable standby letter of credit (maintenance).

N.J.A.C. 7:8-5.8 (2013), CHAPTER STORMWATER MANAGEMENT, Maintenance requirements.

N.J.A.C. 7:45-8.8 (2013), CHAPTER RULES FOR THE REVIEW ZONE OF THE DELAWARE AND RARITAN CANAL STATE PARK, Specific stormwater management maintenance requirements.

**NJ ICLE:**

[Commercial Real Estate Transactions in New Jersey 5.1](#) Municipal Land Use Regulations



## [N.J. Stat. § 40:55D-53a](#)

\*\*\* Current through New Jersey 221st First Annual Session, L. 2024, c. 87 and J.R. 2 \*\*\*

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### **§ 40:55D-53a. Standardized form for performance guarantee, maintenance guarantee, letter of credit**

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The Department of Community Affairs shall adopt by regulation a standardized form for a performance guarantee, maintenance guarantee and letter of credit required by an approving authority pursuant to section 41 of P.L. 1975, c. 291 ([C. 40:55D-53](#)).

### **History**

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L. [1999, c. 68](#), § 1, eff. April 22, 1999.

Annotations

### **Research References & Practice Aids**

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#### **Cross References:**

Discretionary contents of ordinance., see [40:55D-39](#).

Guarantees required; surety; release, see [40:55D-53](#).

Acceptance of standardized form, see [40:55D-53b](#).

Adoption of ordinance requiring replacement for performance guarantee, see [52:27D-130.8](#).

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## [N.J. Stat. § 40:55D-53b](#)

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### **§ 40:55D-53b. Acceptance of standardized form**

Notwithstanding any ordinance to the contrary, an approving authority shall accept the standardized form for a performance guarantee, maintenance guarantee or letter of credit adopted by regulation by the Department of Community Affairs pursuant to section 1 of [P.L. 1999, c. 68](#) ([C. 40:55D-53a](#)) as complying with the provisions of section 41 of P.L. 1975, c. 291 ([C. 40:55D-53](#)).

### **History**

L. [1999, c. 68](#), § 2, eff. April 22, 1999.

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## [N.J. Stat. § 40:55D-53c](#)

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**LexisNexis® New Jersey Annotated Statutes > Title 40. Municipalities and Counties (Subts. 1 — 13) > Subtitle 3. Municipality Provisions (Chs. 42 — 69) > Chapter 55D. Municipal Land Use Law (Arts. 1 — 17) > Article 6. Subdivisions (§§ 40:55D-37 — 40:55D-59)**

### **§ 40:55D-53c. Acceptance of performance guarantee from successor developer**

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a. The governing body or an approving authority may accept a performance guarantee in favor of the municipality from a successor developer as a replacement for a performance guarantee that was previously furnished, pursuant to section 41 of P.L. 1975, c.291 ([C.40:55D-53](#)), for the purpose of assuring the installation of improvements. Except as otherwise provided by an ordinance requiring a successor developer to furnish a replacement performance guarantee, the governing body or approving authority shall not accept a replacement performance guarantee without securing:

(1) written confirmation from the new obligor that the intent of the new obligor is to furnish a replacement performance guarantee, relieving the predecessor obligor and surety, if any, of any obligation to install improvements, and

(2) written verification from the municipal engineer that the replacement performance guarantee is of an amount sufficient to cover the cost of the installation of improvements, but not to exceed 120% of the cost of the installation, which verification shall be determined consistent with section 41 of P.L. 1975, c.291 ([C.40:55D-53](#)).

b. An approving authority shall notify the governing body whenever it accepts a replacement performance guarantee. Notice shall contain a copy of the written confirmation of the new obligor's intent to furnish a replacement performance guarantee and the municipal engineer's written verification of the sufficiency of the amount of that replacement performance guarantee.

c. Within 30 days after receiving notice from the approving authority of its acceptance of a replacement performance guarantee, the governing body, by resolution, shall release the predecessor obligor from liability pursuant to its performance guarantee.

### **History**

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L. [2013, c. 123](#), § 4, eff. Aug. 9, 2013.

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## [N.J. Stat. § 40:55D-53.1](#)

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### § 40:55D-53.1. Interest on deposits with municipalities

Whenever an amount of money in excess of \$5,000.00 shall be deposited by an applicant with a municipality for professional services employed by the municipality to review applications for development, for municipal inspection fees in accordance with subsection h. of section 41 of P.L. 1975, c. 291 ([C. 40:55D-53](#)) or to satisfy the guarantee requirements of subsection a. of section 41 of P.L. 1975, c. 291 ([C. 40:55D-53](#)), the money, until repaid or applied to the purposes for which it is deposited, including the applicant's portion of the interest earned thereon, except as otherwise provided in this section, shall continue to be the property of the applicant and shall be held in trust by the municipality. Money deposited shall be held in escrow. The municipality receiving the money shall deposit it in a banking institution or savings and loan association in this State insured by an agency of the federal government, or in any other fund or depository approved for such deposits by the State, in an account bearing interest at the minimum rate currently paid by the institution or depository on time or savings deposits. The municipality shall notify the applicant in writing of the name and address of the institution or depository in which the deposit is made and the amount of the deposit. The municipality shall not be required to refund an amount of interest paid on a deposit which does not exceed \$100.00 for the year. If the amount of interest exceeds \$100.00, that entire amount shall belong to the applicant and shall be refunded to him by the municipality annually or at the time the deposit is repaid or applied to the purposes for which it was deposited, as the case may be; except that the municipality may retain for administrative expenses a sum equivalent to no more than 33  $\frac{1}{3}$ % of that entire amount, which shall be in lieu of all other administrative and custodial expenses.

The provisions of this act shall apply only to that interest earned and paid on a deposit after the effective date of this act.

### History

L. 1985, c. 315, 1, eff. Aug. 28, 1985.

Annotations

### Research References & Practice Aids

#### **Cross References:**

Municipal payments to professionals for services rendered; determination, see [40:55D-53.2](#).

**Administrative Code:**

§ 40:55D-53.1. Interest on deposits with municipalities

N.J.A.C. 5:23-4.17 (2013), CHAPTER UNIFORM CONSTRUCTION CODE, Municipal enforcing agency fees.

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## [N.J. Stat. § 40:55D-53.2](#)

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### **§ 40:55D-53.2. Municipal payments to professionals for services rendered; determination**

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a. The chief financial officer of a municipality shall make all of the payments to professionals for services rendered to the municipality or approving authority for review of applications for development, review and preparation of documents, inspection of improvements or other purposes under the provisions of P.L.1975, c.291 ([C.40:55D-1](#) et seq.). Such fees or charges shall be based upon a schedule established by resolution. The application review and inspection charges shall be limited only to professional charges for review of applications, review and preparation of documents and inspections of developments under construction and review by outside consultants when an application is of a nature beyond the scope of the expertise of the professionals normally utilized by the municipality. The only costs that shall be added to any such charges shall be actual out-of-pocket expenses of any such professionals or consultants including normal and typical expenses incurred in processing applications and inspecting improvements. The municipality or approving authority shall not bill the applicant, or charge any escrow account or deposit authorized under subsection b. of this section, for any municipal clerical or administrative functions, overhead expenses, meeting room charges, or any other municipal costs and expenses except as provided for in this section, nor shall a municipal professional add any such charges to his bill. If the salary, staff support and overhead for a municipal professional are provided by the municipality, the charge shall not exceed 200% of the sum of the products resulting from multiplying (1) the hourly base salary, which shall be established annually by ordinance, of each of the professionals by (2) the number of hours spent by the respective professional upon review of the application for development or inspection of the developer's improvements, as the case may be. For other professionals the charge shall be at the same rate as all other work of the same nature by the professional for the municipality when fees are not reimbursed or otherwise imposed on applicants or developers.

b. If the municipality requires of the developer a deposit toward anticipated municipal expenses for these professional services, the deposit shall be placed in an escrow account pursuant to section 1 of P.L.1985, c.315 ([C.40:55D-53.1](#)). The amount of the deposit required shall be reasonable in regard to the scale and complexity of the development. The amount of the initial deposit required shall be established by ordinance. For review of applications for development proposing a subdivision, the amount of the deposit shall be calculated based on the number of proposed lots. For review of applications for development proposing a site plan, the amount of the deposit shall be based on one or more of the following: the area of the site to be developed, the square footage of buildings to be constructed, or an additional factor for circulation-intensive sites, such as those containing drive-through facilities. Deposits for inspection fees shall be established in accordance with subsection h. of section 41 of P.L.1975, c.291 ([C.40:55D-53](#)).

c. Each payment charged to the deposit for review of applications, review and preparation of documents and inspection of improvements shall be pursuant to a voucher from the professional, which voucher shall identify the personnel performing the service, and for each date the services performed, the hours spent to one-quarter hour increments, the hourly rate and the expenses incurred. All professionals shall submit vouchers to the chief financial officer of the municipality on a monthly basis in accordance with schedules

## § 40:55D-53.2. Municipal payments to professionals for services rendered; determination

and procedures established by the chief financial officer of the municipality. If the services are provided by a municipal employee, the municipal employee shall prepare and submit to the chief financial officer of the municipality a statement containing the same information as required on a voucher, on a monthly basis. The professional shall send an informational copy of all vouchers or statements submitted to the chief financial officer of the municipality simultaneously to the applicant. The chief financial officer of the municipality shall prepare and send to the applicant a statement which shall include an accounting of funds listing all deposits, interest earnings, disbursements, and the cumulative balance of the escrow account. This information shall be provided on a quarterly basis, if monthly charges are \$1,000 or less, or on a monthly basis if monthly charges exceed \$1,000. If an escrow account or deposit contains insufficient funds to enable the municipality or approving authority to perform required application reviews or improvement inspections, the chief financial officer of the municipality shall provide the applicant with a notice of the insufficient escrow or deposit balance. In order for work to continue on the development or the application, the applicant shall within a reasonable time period post a deposit to the account in an amount to be agreed upon by the municipality or approving authority and the applicant. In the interim, any required health and safety inspections shall be made and charged back against the replenishment of funds.

**d.** The following close-out procedure shall apply to all deposits and escrow accounts established under the provisions of P.L.1975, c.291 ([C.40:55D-1](#) et seq.) and shall commence after the approving authority has granted final approval and signed the subdivision plat or site plan, in the case of application review escrows and deposits, or after the improvements have been approved as provided in section 41 of P.L.1975, c.291 ([C.40:55D-53](#)), in the case of improvement inspection escrows and deposits. The applicant shall send written notice by certified mail to the chief financial officer of the municipality and the approving authority, and to the relevant municipal professional, that the application or the improvements, as the case may be, are completed. After receipt of such notice, the professional shall render a final bill to the chief financial officer of the municipality within 30 days, and shall send a copy simultaneously to the applicant. The chief financial officer of the municipality shall render a written final accounting to the applicant on the uses to which the deposit was put within 45 days of receipt of the final bill. Any balances remaining in the deposit or escrow account, including interest in accordance with section 1 of P.L.1985, c.315 ([C.40:55D-53.1](#)), shall be refunded to the developer along with the final accounting.

**e.** All professional charges for review of an application for development, review and preparation of documents or inspection of improvements shall be reasonable and necessary, given the status and progress of the application or construction. Review fees shall be charged only in connection with an application for development presently pending before the approving authority or upon review of compliance with conditions of approval, or review of requests for modification or amendment made by the applicant. A professional shall not review items which are subject to approval by any State governmental agency and not under municipal jurisdiction except to the extent consultation with a State agency is necessary due to the effect of State approvals in the subdivision or site plan. Inspection fees shall be charged only for actual work shown on a subdivision or site plan or required by an approving resolution. Professionals inspecting improvements under construction shall charge only for inspections that are reasonably necessary to check the progress and quality of the work and such inspections shall be reasonably based on the approved development plans and documents.

**f.** If the municipality retains a different professional or consultant in the place of the professional originally responsible for development, application review, or inspection of improvements, the municipality or approving authority shall be responsible for all time and expenses of the new professional to become familiar with the application or the project, and the municipality or approving authority shall not bill the applicant or charge the deposit or the escrow account for any such services.

## History

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L. [1991, c. 256](#), § 13; amended [1995, c. 54](#), § 1.

Annotations

## CASE NOTES

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### Civil Procedure: Class Actions: General Overview

### Real Property Law: Zoning & Land Use: Building & Housing Codes

### Real Property Law: Zoning & Land Use: Local Planning

### Real Property Law: Zoning & Land Use: Special Permits & Variances

### Civil Procedure: Class Actions: General Overview

Class action filed by a developer asserting common law causes of action against a municipally-retained professional was not authorized under [N.J. Stat. Ann. § 40:55D-53.2\(a\)](#). [Wynfield Corp. v. Killam Associates, 385 N.J. Super. 20, 895 A.2d 1192, 2006 N.J. Super. LEXIS 120 \(App.Div. 2006\)](#).

### Real Property Law: Zoning & Land Use: Building & Housing Codes

Class action filed by a developer asserting common law causes of action against a municipally-retained professional was not authorized under [N.J. Stat. Ann. § 40:55D-53.2a](#). [Wynfield Corp. v. Killam Associates, 385 N.J. Super. 20, 895 A.2d 1192, 2006 N.J. Super. LEXIS 120 \(App.Div. 2006\)](#).

Statutory remedy set forth in [N.J. Stat. Ann. § 40:55D-53.2a](#) for billing disputes provided the exclusive remedy for a developer's action. [Wynfield Corp. v. Killam Associates, 385 N.J. Super. 20, 895 A.2d 1192, 2006 N.J. Super. LEXIS 120 \(App.Div. 2006\)](#).

[N.J. Stat. Ann. § 40:55D-53.2\(a\)](#) does not prohibit the reimbursement of municipal secretarial/overhead costs, but simply imposes a limit on the amount of reimbursement that can be sought for such costs, while leaving intact the ban on any separate billing for an independent engineer's own secretarial costs. Secretarial fees are not intended to be billed separately, but to be part of the overhead that is generally included within an independent professional's hourly rate. [Wynfield Corp. v. Killam Associates, 385 N.J. Super. 20, 895 A.2d 1192, 2006 N.J. Super. LEXIS 120 \(App.Div. 2006\)](#).

[N.J. Stat. Ann. § 40:55D-53.2\(a\)](#) does not permit a municipally-retained engineer to separately bill for secretarial time, because this expense does not qualify as either a "professional" charge, or a separately reimbursable out-of-pocket expense. [Wynfield Corp. v. Killam Associates, 385 N.J. Super. 20, 895 A.2d 1192, 2006 N.J. Super. LEXIS 120 \(App.Div. 2006\)](#).

### Real Property Law: Zoning & Land Use: Local Planning

With regard to a township planning board's decision approving a site plan application for a large retail complex, it did not improperly delegate its authority to its professional consultants as such assistance in the evaluation of the revised plan was well within the scope of service anticipated and it was the Board, and not any consultant, that exercised the authority to approve the application. [Shakoor Supermarkets, Inc. v. Old Bridge Twp. Planning Bd., 420 N.J. Super. 193, 19 A.3d 1038, 2011 N.J. Super. LEXIS 108 \(App.Div.\)](#), certif. denied, 208 N.J. 598, 34 A.3d 780, 2011 N.J. LEXIS 1371 (N.J. 2011).

### Real Property Law: Zoning & Land Use: Special Permits & Variances

Fee-shifting provisions of an ordinance under which a variance applicant had to pay the fees of a public advocate and the experts he retained were invalid because they were fundamentally inconsistent with [N.J. Stat. Ann.](#)

§ 40:55D-53.2. Municipal payments to professionals for services rendered; determination

[§ 40:55D-53.2](#), the purpose of which was to limit and control the costs of applying for land-use approvals. *Cerebral Palsy Center, Bergen County, Inc. v. Mayor and Council of Borough of Fair Lawn*, 374 N.J. Super. 437, 864 A.2d 1184, 2005 N.J. Super. LEXIS 32 (App.Div.), certif. denied, 183 N.J. 586, 874 A.2d 1105, 2005 N.J. LEXIS 698 (N.J. 2005).

## Research References & Practice Aids

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### Cross References:

Applicant notification to dispute charges; appeals; rules, regulations, see [40:55D-53.2a](#).

Completed application, decision, see [45:22A-46.9](#).

Construction board of appeals, see [52:27D-127](#).

### Administrative Code:

N.J.A.C. 5:23-4.17 (2013), CHAPTER UNIFORM CONSTRUCTION CODE, Municipal enforcing agency fees.

[N.J.A.C. 5:23A](#) (2013), CHAPTER CONSTRUCTION BOARDS OF APPEALS, 5, Chapter 23A — Chapter Notes.

### NJ ICLE:

[Commercial Real Estate Transactions in New Jersey 5.1](#) Municipal Land Use Regulations

### PRACTICE GUIDES & TREATISES:

[New Jersey Transaction Guide § 122.20](#) et seq. Powers Reserved to Municipal Authority

### PRACTICE FORMS:

7-122 [New Jersey Transaction Guide § 122.126](#), Developer's Escrow Agreement

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## [N.J. Stat. § 40:55D-53.2a](#)

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### **§ 40:55D-53.2a. Applicant notification to dispute charges; appeals; rules, regulations**

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a. An applicant shall notify in writing the governing body with copies to the chief financial officer, the approving authority and the professional whenever the applicant disputes the charges made by a professional for service rendered to the municipality in reviewing applications for development, review and preparation of documents, inspection of improvements, or other charges made pursuant to the provisions of P.L.1975, c.291 ([C.40:55D-1](#) et seq.). The governing body, or its designee, shall within a reasonable time period attempt to remediate any disputed charges. If the matter is not resolved to the satisfaction of the applicant, the applicant may appeal to the county construction board of appeals established under section 9 of P.L.1975, c.217 ([C.52:27D-127](#)) any charge to an escrow account or a deposit by any municipal professional or consultant, or the cost of the installation of improvements estimated by the municipal engineer pursuant to section 15 of [P.L.1991, c.256 \(C.40:55D-53.4\)](#). An applicant or his authorized agent shall submit the appeal in writing to the county construction board of appeals. The applicant or his authorized agent shall simultaneously send a copy of the appeal to the municipality, approving authority, and any professional whose charge is the subject of the appeal. An applicant shall file an appeal within 45 days from receipt of the informational copy of the professional's voucher required by subsection c. of section 13 of [P.L.1991, c.256 \(C.40:55D-53.2\)](#), except that if the professional has not supplied the applicant with an informational copy of the voucher, then the applicant shall file his appeal within 60 days from receipt of the municipal statement of activity against the deposit or escrow account required by subsection c. of section 13 of [P.L.1991, c.256 \(C.40:55D-53.2\)](#). An applicant may file an appeal for an ongoing series of charges by a professional during a period not exceeding six months to demonstrate that they represent a pattern of excessive or inaccurate charges. An applicant making use of this provision need not appeal each charge individually.

b. The county construction board of appeals shall hear the appeal, render a decision thereon, and file its decision with a statement of the reasons therefor with the municipality or approving authority not later than 10 business days following the submission of the appeal, unless such period of time has been extended with the consent of the applicant. The decision may approve, disapprove, or modify the professional charges appealed from. A copy of the decision shall be forwarded by certified or registered mail to the party making the appeal, the municipality, the approving authority, and the professional involved in the appeal. Failure by the board to hear an appeal and render and file a decision thereon within the time limits prescribed in this subsection shall be deemed a denial of the appeal for purposes of a complaint, application, or appeal to a court of competent jurisdiction.

c. The county construction board of appeals shall provide rules for its procedure in accordance with this section. The board shall have the power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, and the provisions of the "County and Municipal Investigations Law," P.L.1953, c.38 ([C.2A:67A-1](#) et seq.) shall apply.



## § 40:55D-53.2a. Applicant notification to dispute charges; appeals; rules, regulations

d. During the pendency of any appeal, the municipality or approving authority shall continue to process, hear, and decide the application for development, and to inspect the development in the normal course, and shall not withhold, delay, or deny reviews, inspections, signing of subdivision plats or site plans, the reduction or the release of performance or maintenance guarantees, the issuance of construction permits or certificates of occupancy, or any other approval or permit because an appeal has been filed or is pending under this section. The chief financial officer of the municipality may pay charges out of the appropriate escrow account or deposit for which an appeal has been filed. If a charge is disallowed after payment, the chief financial officer of the municipality shall reimburse the deposit or escrow account in the amount of any such disallowed charge or refund the amount to the applicant. If a charge is disallowed after payment to a professional or consultant who is not an employee of the municipality, the professional or consultant shall reimburse the municipality in the amount of any such disallowed charge.

e. The Commissioner of Community Affairs shall promulgate rules and regulations pursuant to the "Administrative Procedure Act," P.L. 1968, c.410 ([C.52:14B-1](#) et seq.), to effectuate the purposes of this section. Within two years of the effective date of [P.L.1995, c.54](#) ([C.40:55D-53.2a](#) et al.), the commissioner shall prepare and submit a report to the Governor, the President of the Senate, and the Speaker of the General Assembly. The report shall describe the appeals process established by section 3 of [P.L.1995, c.54](#) ([C.40:55D-53.2a](#)) and shall make recommendations for legislative or administrative action necessary to provide a fair and efficient appeals process.

## History

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L. [1995, c. 54](#), § 3.

Annotations

## CASE NOTES

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### Civil Procedure: Class Actions: General Overview

### Real Property Law: Zoning & Land Use: Building & Housing Codes

#### Civil Procedure: Class Actions: General Overview

Class action filed by a developer asserting common law causes of action against a municipally-retained professional was not authorized under [N.J. Stat. Ann. § 40:55D-53.2a](#). [Wynfield Corp. v. Killam Associates, 385 N.J. Super. 20, 895 A.2d 1192, 2006 N.J. Super. LEXIS 120 \(App.Div. 2006\)](#).

#### Real Property Law: Zoning & Land Use: Building & Housing Codes

Statutory remedy set forth in [N.J. Stat. Ann. § 40:55D-53.2a](#) for billing disputes provided the exclusive remedy for a developer's action. [Wynfield Corp. v. Killam Associates, 385 N.J. Super. 20, 895 A.2d 1192, 2006 N.J. Super. LEXIS 120 \(App.Div. 2006\)](#).

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## [N.J. Stat. § 40:55D-53.3](#)

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### **§ 40:55D-53.3. Maintenance, performance guarantees**

A municipality shall not require that a maintenance guarantee required pursuant to section 41 of P.L.1975, c.291 ([C.40:55D-53](#)) be in cash or that more than 10% of a performance guarantee pursuant to that section be in cash. A developer may, however, provide at his option some or all of a maintenance guarantee in cash, or more than 10% of a performance guarantee in cash.

### **History**

L. [1991, c. 256](#), § 14.

Annotations

### **Research References & Practice Aids**

#### **Administrative Code:**

N.J.A.C. 5:21-1.4 (2013), CHAPTER RESIDENTIAL SITE IMPROVEMENT STANDARDS, Definitions and abbreviations.

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## [N.J. Stat. § 40:55D-53.4](#)

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### **§ 40:55D-53.4. Municipal engineer to estimate cost of installation of improvements**

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The cost of the installation of improvements for the purposes of section 41 of P.L.1975, c.291 ([C.40:55D-53](#)) shall be estimated by the municipal engineer based on documented construction costs for public improvements prevailing in the general area of the municipality. The developer may appeal the municipal engineer's estimate to the county construction board of appeals established under section 9 of P.L.1975, c.217 ([C.52:27D-127](#)).

### **History**

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L. [1991, c. 256](#), § 15; amended [1995, c. 54](#), § 2.

Annotations

### **Research References & Practice Aids**

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#### **Cross References:**

Guarantees required; surety; release, see [40:55D-53](#).

Applicant notification to dispute charges; appeals; rules, regulations, see [40:55D-53.2a](#).

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## [N.J. Stat. § 40:55D-53.5](#)

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### § 40:55D-53.5. Performance of maintenance guarantee, acceptance

The approving authority shall, for the purposes of section 41 of P.L.1975, c.291 ([C.40:55D-53](#)), accept a performance guarantee or maintenance guarantee which is an irrevocable letter of credit if it:

- a. Constitutes an unconditional payment obligation of the issuer running solely to the municipality for an express initial period of time in the amount determined pursuant to section 41 of P.L.1975, c.291 ([C.40:55D-53](#));
- b. Is issued by a banking or savings institution authorized to do and doing business in this State;
- c. Is for a period of time of at least one year; and
- d. Permits the municipality to draw upon the letter of credit if the obligor fails to furnish another letter of credit which complies with the provisions of this section 30 days or more in advance of the expiration date of the letter of credit or such longer period in advance thereof as is stated in the letter of credit.

### History

L. [1991, c. 256](#), § 16.

Annotations

### Research References & Practice Aids

#### **Cross References:**

Definitions; M to O, see [40:55D-5](#).

Definitions; P to R, see [40:55D-6](#).

#### **Administrative Code:**

N.J.A.C. 5:21-1.4 (2013), CHAPTER RESIDENTIAL SITE IMPROVEMENT STANDARDS, Definitions and abbreviations.

N.J.A.C. 5:36-4.3 (2013), CHAPTER DEVELOPMENT AND REDEVELOPMENT ACTIVITIES, Irrevocable standby letter of credit (performance).

§ 40:55D-53.5. Performance of maintenance guarantee, acceptance

N.J.A.C. 5:36-4.4 (2013), CHAPTER DEVELOPMENT AND REDEVELOPMENT ACTIVITIES, Irrevocable standby letter of credit (maintenance).

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## [N.J. Stat. § 40:55D-53.6](#)

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### **§ 40:55D-53.6. Municipality to assume payment of cost of street lighting**

If an approving authority includes as a condition of approval of an application for development pursuant to P.L.1975, c.291 ([C.40:55D-1](#) et seq.) the installation of street lighting on a dedicated public street connected to a public utility, then upon notification in writing by the developer to the approving authority and governing body of the municipality that (1) the street lighting on a dedicated public street has been installed and accepted for service by the public utility and (2) that certificates of occupancy have been issued for at least 50% of the dwelling units and 50% of the floor area of the nonresidential uses on the dedicated public street or portion thereof indicated by section pursuant to section 29 of P.L.1975, c.291 ([C.40:55D-38](#)), the municipality shall, within 30 days following receipt of the notification, make appropriate arrangements with the public utility for, and assume the payment of, the costs of the street lighting on the dedicated public street on a continuing basis. Compliance by the municipality with the provisions of this section shall not be deemed to constitute acceptance of the street by the municipality.

### **History**

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L. [1991, c. 256](#), § 17.

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## [N.J. Stat. § 40:55D-54](#)

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### **§ 40:55D-54. Recording of final approval of major subdivision; filing of all subdivision plats**

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- a. Final approval of a major subdivision shall expire 95 days from the date of signing of the plat unless within such period the plat shall have been duly filed by the developer with the county recording officer. The planning board may for good cause shown extend the period for recording for an additional period not to exceed 190 days from the date of signing of the plat. The planning board may extend the 95-day or 190-day period if the developer proves to the reasonable satisfaction of the planning board (1) that the developer was barred or prevented, directly or indirectly, from filing because of delays in obtaining legally required approvals from other governmental or quasi-governmental entities and (2) that the developer applied promptly for and diligently pursued the required approvals. The length of the extension shall be equal to the period of delay caused by the wait for the required approvals, as determined by the planning board. The developer may apply for an extension either before or after the original expiration date.
- b. No subdivision plat shall be accepted for filing by the county recording officer until it has been approved by the planning board as indicated on the instrument by the signature of the chairman and secretary of the planning board or a certificate has been issued pursuant to sections 35, 38, 44, 48, 54 or 63 of P.L.1975, c.291 ([C.40:55D-47](#), [40:55D-50](#), [40:55D-56](#), [40:55D-61](#), [40:55D-67](#), [40:55D-76](#)). The signatures of the chairman and secretary of the planning board shall not be affixed until the developer has posted the guarantees required pursuant to section 41 of P.L.1975, c.291 ([C.40:55D-53](#)). If the county recording officer records any plat without such approval, such recording shall be deemed null and void, and upon request of the municipality, the plat shall be expunged from the official records.
- c. It shall be the duty of the county recording officer to notify the planning board in writing within seven days of the filing of any plat, identifying such instrument by its title, date of filing, and official number.

### **History**

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L. 1975, c. 291, § 42; amended [1991, c. 256](#), § 18.

Annotations

### **CASE NOTES**

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**Real Property Law: Subdivisions: General Overview**

**Real Property Law: Title Quality: Marketable Title: Abstracts**

§ 40:55D-54. Recording of final approval of major subdivision; filing of all subdivision plats

## Real Property Law: Zoning & Land Use: Special Permits & Variances

### Real Property Law: Subdivisions: General Overview

Because [N.J. Stat. Ann. §§ 40:55D-54\(a\)](#) and [40:55D-52\(a\)](#) contemplated that there could be delays of up to two years, and longer where approvals of other governmental agencies were required, before the start of a project which had received major subdivision approval, a planning board's condition on approval of a builder's subdivision that all improvements had to be completed within 18 months of final approval conflicted with these provisions because the period for completing improvements could expire before final subdivision approval became effective. [R.J.P. Builders, Inc. v. Township of Woolwich, 361 N.J. Super. 207, 824 A.2d 1114, 2003 N.J. Super. LEXIS 205 \(App.Div.\)](#), certif. denied, 178 N.J. 31, 834 A.2d 404, 2003 N.J. LEXIS 1407 (N.J. 2003).

### Real Property Law: Title Quality: Marketable Title: Abstracts

The fact that a minor subdivision plan was not recorded pursuant to former N.J. Stat. Ann. § 40:55-1.17 (now [N.J. Stat. Ann. § 40:55D-54](#)) did not constitute a defective recording sufficient to qualify as a covered title risk under plaintiff's policy of title insurance. [Aldrich v. Hawrylo, 281 N.J. Super. 201, 656 A.2d 1304, 1995 N.J. Super. LEXIS 165 \(App.Div. 1995\)](#).

### Real Property Law: Zoning & Land Use: Special Permits & Variances

Even though planning board never submitted approved variance for filing or recording, as required by former N.J. Stat. Ann. § 40:55-1.17 (now [N.J. Stat. Ann. § 40:55D-54](#)), variance was binding on subsequent owners, even if those owners lacked knowledge or notice. [Aldrich v. Schwartz, 258 N.J. Super. 300, 609 A.2d 507, 1992 N.J. Super. LEXIS 273 \(App.Div. 1992\)](#).

## Opinion Notes

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### OPINIONS OF ATTORNEY GENERAL

FORMAL OPINION No. 3 (1990):, [1990 N.J. AG LEXIS 1](#).

## Research References & Practice Aids

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### Cross References:

Final approval of site plan or major subdivision; extension, see [40:55D-52](#).

### NJ ICLE:

[Commercial Real Estate Transactions in New Jersey 5.1](#) Municipal Land Use Regulations

[Commercial Real Estate Transactions in New Jersey 5.3](#) Due Diligence

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## **N.J. Stat. § 40:55D-54.1**

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### **§ 40:55D-54.1. Notification to tax assessor of municipality**

Upon the filing of a plat showing the subdivision or resubdivision of land, the county recording officer shall, at the same time that notification is given to the planning board of the municipality pursuant to section 42 of the act to which this act is a supplement, send a copy of such notification to the tax assessor of the municipality in which such land is situated of the filing of said plat.

### **History**

L. 1977, c. 174, 1, eff. Aug. 16, 1977.

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## [N.J. Stat. § 40:55D-55](#)

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### **§ 40:55D-55. Selling before approval; penalty; suits by municipalities**

If, before final subdivision approval has been granted, any person transfers or sells or agrees to transfer or sell, except pursuant to an agreement expressly conditioned on final subdivision approval, as owner or agent, any land which forms a part of a subdivision for which municipal approval is required by ordinance pursuant to this act, such person shall be subject to a penalty not to exceed \$1,000.00, and each lot disposition so made may be deemed a separate violation.

In addition to the foregoing, the municipality may institute and maintain a civil action:

- a. For injunctive relief; and
- b. To set aside and invalidate any conveyance made pursuant to such a contract of sale if a certificate of compliance has not been issued in accordance with section 44 of this act, but only if the municipality (1) has a planning board and (2) has adopted by ordinance standards and procedures in accordance with section 29 of this act.

In any such action, the transferee, purchaser or grantee shall be entitled to a lien upon the portion of the land, from which the subdivision was made that remains in the possession of the developer or his assigns or successors, to secure the return of any deposits made or purchase price paid, and also, a reasonable search fee, survey expense and title closing expense, if any. Any such action must be brought within 2 years after the date of the recording of the instrument of transfer, sale or conveyance of said land or within 6 years, if unrecorded.

### **History**

L. 1975, c. 291, 43, eff. Aug. 1, 1976.

Annotations

### **CASE NOTES**

**Civil Procedure: Justiciability: Standing: General Overview**

**Governments: Legislation: Statutes of Limitations: Time Limitations**

**Public Health & Welfare Law: Housing & Public Buildings: General Overview**

**Real Property Law: Zoning & Land Use: General Overview**

**Real Property Law: Zoning & Land Use: Comprehensive Plans**

## § 40:55D-55. Selling before approval; penalty; suits by municipalities

**Civil Procedure: Justiciability: Standing: General Overview**

In a developer's action against the municipality for denial of request to amend the plans for a condominium project, the developer did have standing to file suit. [Bonner Properties, Inc. v. Planning Bd. of Franklin, 185 N.J. Super. 553, 449 A.2d 1350, 1982 N.J. Super. LEXIS 876 \(Law Div. 1982\).](#)

**Governments: Legislation: Statutes of Limitations: Time Limitations**

Attempted subdivision by plaintiffs, two individuals and a partnership, of a large land parcel without prior approval as required by the Municipal Land Use Law, [N.J. Stat. Ann. § 40:55D-1](#) et seq., was ineffective even though defendant township failed to institute a civil action under [N.J. Stat. Ann. § 40:55D-55](#) against plaintiffs within two years of the recording of the deeds by which the subdivision was attempted. [Fox v. Twp. of W. Milford, 357 N.J. Super. 123, 814 A.2d 637, 2003 N.J. Super. LEXIS 29 \(App.Div.\),](#) certif. denied, 176 N.J. 279, 822 A.2d 608, 2003 N.J. LEXIS 498 (N.J. 2003).

**Public Health & Welfare Law: Housing & Public Buildings: General Overview**

Where planning board approval was required pursuant to [N.J. Stat. Ann. § 40:55D-37](#), conveyance of a subdivision to a housing authority was void where the housing authority failed to file the relevant maps and documents with the planning board and make them available for public inspection at least ten days before the date of the hearing, as requested by the municipality and permitted by [N.J. Stat. Ann. § 40:55D-55. Township Committee of Edgewater Park v. Edgewater Park Housing Authority, 187 N.J. Super. 578, 455 A.2d 569, 1982 N.J. Super. LEXIS 986 \(Law Div. 1982\).](#)

**Real Property Law: Zoning & Land Use: General Overview**

Zoning Board of Adjustment's and Municipal Corporation's denial of landowners' request for a zoning variance was proper because landowners' ignorance of the lot's title history did not create a hardship and landowners could have insisted on a conditional contract pending the grant of a variance; thus the nonconforming lot was not grandfathered by a zoning ordinance provision. [Dalton v. Ocean Township Zoning Bd. of Adjustment, 245 N.J. Super. 453, 586 A.2d 262, 1991 N.J. Super. LEXIS 27 \(App.Div.\),](#) certif. denied, 126 N.J. 324, 598 A.2d 884, 1991 N.J. LEXIS 302 (N.J. 1991).

**Real Property Law: Zoning & Land Use: Comprehensive Plans**

In a developer's action against the municipality for denial of request to amend the plans for a condominium project, the developer did have standing to file suit. [Bonner Properties, Inc. v. Planning Bd. of Franklin, 185 N.J. Super. 553, 449 A.2d 1350, 1982 N.J. Super. LEXIS 876 \(Law Div. 1982\).](#)

Where planning board approval was required pursuant to [N.J. Stat. Ann. § 40:55D-37](#), conveyance of a subdivision to a housing authority was void where the housing authority failed to file the relevant maps and documents with the planning board and make them available for public inspection at least ten days before the date of the hearing, as requested by the municipality and permitted by [N.J. Stat. Ann. § 40:55D-55. Township Committee of Edgewater Park v. Edgewater Park Housing Authority, 187 N.J. Super. 578, 455 A.2d 569, 1982 N.J. Super. LEXIS 986 \(Law Div. 1982\).](#)

## [N.J. Stat. § 40:55D-56](#)

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### **§ 40:55D-56. Certificates showing approval; contents**

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The prospective purchaser, prospective mortgagee, or any other person interested in any land which forms part of a subdivision, or which formed part of such a subdivision 3 years preceding the effective date of this act, may apply in writing to the administrative officer of the municipality, for the issuance of a certificate certifying whether or not such subdivision has been approved by the planning board. Such application shall contain a diagram showing the location and dimension of the land to be covered by the certificate and the name of the owner thereof.

The administrative officer shall make and issue such certificate within 15 days after the receipt of such written application and the fees therefor. Said officer shall keep a duplicate copy of each certificate, consecutively numbered, including a statement of the fee charged, in a binder as a permanent record of his office.

Each such certificate shall be designated a “certificate as to approval of subdivision of land,” and shall certify:

- a. Whether there exists in said municipality a duly established planning board and whether there is an ordinance controlling subdivision of land adopted under the authority of this act.
- b. Whether the subdivision, as it relates to the land shown in said application, has been approved by the planning board, and, if so, the date of such approval and any extensions and terms thereof, showing that subdivision of which the lands are a part is a validly existing subdivision.
- c. Whether such subdivision, if the same has not been approved, is statutorily exempt from the requirement of approval as provided in this act.

The administrative officer shall be entitled to demand and receive for such certificate issued by him a reasonable fee not in excess of those provided in [R.S. 54:5-14](#) and [54:5-15](#). The fees so collected by such official shall be paid by him to the municipality.

### **History**

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L. 1975, c. 291, 44, eff. Aug. 1, 1976; Amended by L. 1979, c. 216, 18.

## [N.J. Stat. § 40:55D-57](#)

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### § 40:55D-57. Right of owner of land covered by certificate

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Any person who shall acquire for a valuable consideration an interest in the lands covered by any such certificate of approval of a subdivision in reliance upon the information therein contained shall hold such interest free of any right, remedy or action which could be prosecuted or maintained by the municipality pursuant to the provisions of section 43 of this act.

If the administrative officer designated to issue any such certificate fails to issue the same within 15 days after receipt of an application and the fees therefor, any person acquiring an interest in the lands described in such application shall hold such interest free of any right, remedy or action which could be prosecuted or maintained by the municipality pursuant to section 43 of this act.

Any such application addressed to the clerk of the municipality shall be deemed to be addressed to the proper designated officer and the municipality shall be bound thereby to the same extent as though the same was addressed to the designated official.

### History

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L. 1975, c. 291, 45, eff. Aug. 1, 1976.

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## [N.J. Stat. § 40:55D-58](#)

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### **§ 40:55D-58. Condominiums and cooperative structures and uses**

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This act and all development regulations pursuant thereto shall be construed and applied with reference to the nature and use of a condominium or cooperative structures or uses without regard to the form of ownership. No development regulation shall establish any requirement concerning the use, location, placement or construction of buildings or other improvements for condominiums or cooperative structures or uses unless such requirement shall be equally applicable to all buildings and improvements of the same kind not then or thereafter under the condominium or cooperative corporate form of ownership. No approval pursuant to this act shall be required as a condition precedent to the recording of a condominium master deed or the sale of any unit therein unless such approval shall also be required for the use or development of the lands described in the master deed in the same manner had such lands not been under the condominium form of ownership.

### **History**

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L. 1975, c. 291, 46, eff. Aug. 1, 1976.

Annotations

### **CASE NOTES**

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#### **Real Property Law: Zoning & Land Use: General Overview**

Under [N.J. Stat. Ann. §§ 46:8B-29](#), [40:55D-58](#), municipalities are prohibited from enacting discriminatory zoning ordinances based upon form of ownership. [Hampshire House Sponsor Corp. v. Ft. Lee](#), 172 N.J. Super. 426, 412 A.2d 816, 1979 N.J. Super. LEXIS 1023 (Law Div. 1979).

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**N.J. Stat. § 40:55D-59**

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**§ 40:55D-59. Repealed by L. 1983, c. 253, § 1, eff. July 7, 1983**

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