

LexisNexis (TM) New Jersey Annotated Statutes

*** This section is current through New Jersey 216th Legislature ***
*** First Annual Session, 2014 c. 10 and J.R. 1 ***

TITLE 40. MUNICIPALITIES AND COUNTIES
SUBTITLE 3. MUNICIPALITY PROVISIONS
CHAPTER 55D. MUNICIPAL LAND USE LAW
ARTICLE 6. SUBDIVISIONS

GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 40:55D-37 (2014)

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

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.

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N.J. Stat. § 40:55D-38 (2014)

§ 40:55D-38. Contents of ordinance

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;

(9) Conformity with a municipal recycling ordinance required pursuant to section 6 of P.L.1987, c.102 (C.13:1E-99.16);

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(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.

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N.J. Stat. § 40:55D-38.1 (2014)

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

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.

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N.J. Stat. § 40:55D-39 (2014)

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

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 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;

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(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 non-residential 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.

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N.J. Stat. § 40:55D-39.1 (2014)

§ 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.

(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.

(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;

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(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.

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N.J. Stat. § 40:55D-40 (2014)

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

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.

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N.J. Stat. § 40:55D-40.1 (2014)

§ 40:55D-40.1. Definitions

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.

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N.J. Stat. § 40:55D-40.2 (2014)

§ 40:55D-40.2. Findings, declarations

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.

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N.J. Stat. § 40:55D-40.3 (2014)

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

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 this act. The board shall consist of the commissioner or his designee, who shall be a non-voting member of the board, the Director of the Division of Housing in the Department of Community Affairs, who shall be a voting member of the board, and 10 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) The Council on Affordable Housing;
- (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 commission shall select from among its members a chairman. 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.

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N.J. Stat. § 40:55D-40.4 (2014)

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

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 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

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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.

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N.J. Stat. § 40:55D-40.5 (2014)

§ 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.

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N.J. Stat. § 40:55D-40.6 (2014)

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

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

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N.J. Stat. § 40:55D-40.7 (2014)

§ 40:55D-40.7. Construction of act

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.

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N.J. Stat. § 40:55D-41 (2014)

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

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.

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N.J. Stat. § 40:55D-42 (2014)

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

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.

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N.J. Stat. § 40:55D-43 (2014)

§ 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, 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

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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.

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N.J. Stat. § 40:55D-44 (2014)

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

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.

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N.J. Stat. § 40:55D-45 (2014)

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

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.

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N.J. Stat. § 40:55D-45.1 (2014)

§ 40:55D-45.1. General development plan

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.

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N.J. Stat. § 40:55D-45.2 (2014)

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

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;

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 ac-

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crue 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.

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N.J. Stat. § 40:55D-45.3 (2014)

§ 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.

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N.J. Stat. § 40:55D-45.4 (2014)

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

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.

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N.J. Stat. § 40:55D-45.5 (2014)

§ 40:55D-45.5. Variation approval

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.

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N.J. Stat. § 40:55D-45.6 (2014)

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

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.

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N.J. Stat. § 40:55D-45.7 (2014)

§ 40:55D-45.7. Notification of completion

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.

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N.J. Stat. § 40:55D-45.8 (2014)

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

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.

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N.J. Stat. § 40:55D-46 (2014)

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

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.

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N.J. Stat. § 40:55D-46.1 (2014)

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

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.

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N.J. Stat. § 40:55D-46.2 (2014)

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

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.

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N.J. Stat. § 40:55D-47 (2014)

§ 40:55D-47. Minor subdivision

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 legally required approvals from other governmental or quasi-governmental entities and (2) that the developer applied promptly for and diligently

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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.

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N.J. Stat. § 40:55D-48 (2014)

§ 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.

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N.J. Stat. § 40:55D-48.1 (2014)

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

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.

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N.J. Stat. § 40:55D-48.2 (2014)

§ 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.

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N.J. Stat. § 40:55D-48.3 (2014)

§ 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.

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N.J. Stat. § 40:55D-48.4 (2014)

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

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.*).

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N.J. Stat. § 40:55D-49 (2014)

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

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 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 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 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 devel-

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oper 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.

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N.J. Stat. § 40:55D-50 (2014)

§ 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.

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N.J. Stat. § 40:55D-51 (2014)

§ 40:55D-51. Exception in application of subdivision or site plan regulation; simultaneous review and approval

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.

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N.J. Stat. § 40:55D-52 (2014)

§ 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.

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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.

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N.J. Stat. § 40:55D-53 (2014)

§ 40:55D-53. Guarantees required; surety; release

a. Before recording of final subdivision plats 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 approving authority 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 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 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) The furnishing of a performance guarantee in favor of the municipality in an amount not to exceed 120% of the cost of 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*), for improvements which the approving authority may deem necessary or appropriate including: streets, grading, pavement, gutters, curbs, sidewalks, street lighting, shade 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.*), water mains, culverts, storm sewers, sanitary sewers or other means of sewage disposal, drainage structures, erosion control and sedimentation control devices, public improvements of open space and, in the case of site plans only, other on-site improvements and landscaping.

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.

(2) Provision for a maintenance guarantee to be posted with the governing body for a period not to exceed two years after final acceptance of the improvement, in an amount not to exceed 15% of the cost of the improvement, 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*). 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 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.

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c. If the required 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 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 improvements have been completed and which improvements remain uncompleted in the judgment of the obligor. Thereupon the municipal engineer shall inspect all 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.

(2) The list prepared by the municipal engineer shall state, in detail, with respect to each 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 improvement determined to be unsatisfactory. The report prepared by the municipal engineer shall identify each 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 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 improvements determined to be complete and satisfactory by the municipal engineer, or reject any or all of these 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 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 posted may be retained to ensure completion and acceptability of all improvements.

For the purpose of releasing the obligor from liability pursuant to its performance guarantee, the amount of the performance guarantee attributable to each approved 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 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 to ensure completion and acceptability of all improvements, as provided above.

(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 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.

(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.

f. If any portion of the required 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. The obligor shall reimburse the municipality for all reasonable inspection fees paid to the municipal engineer for the foregoing inspection of improvements; provided that the municipality may require of the developer a deposit for the inspection fees in an amount not to exceed, except for extraordinary circumstances, the greater of \$ 500 or 5% of the cost of improvements, which cost shall be determined pursuant to section 15 of P.L.1991, c.256 (C.40:55D-53.4). For those developments for which the inspection fees are less than \$ 10,000, fees may, at the option of the developer, be paid in two installments. The initial amount deposited 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 inspection, the developer shall deposit the remaining 50% of the inspection fees. For those developments for which the inspection fees are \$ 10,000 or greater, fees may, at the option of the developer, be paid in four installments. The initial amount deposited 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. The municipal engineer shall not perform any inspection if sufficient funds to pay for those inspections are not on deposit.

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 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.

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N.J. Stat. § 40:55D-53a (2014)

§ 40:55D-53a. Standardized form for performance guarantee, maintenance guarantee, letter of credit

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).

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N.J. Stat. § 40:55D-53b (2014)

§ 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*).

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N.J. Stat. § 40:55D-53c (2014)

§ 40:55D-53c. Acceptance of performance guarantee from successor developer

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.

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N.J. Stat. § 40:55D-53.1 (2014)

§ 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 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.

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N.J. Stat. § 40:55D-53.2 (2014)

§ 40:55D-53.2. Municipal payments to professionals for services rendered; determination

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 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

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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.

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N.J. Stat. § 40:55D-53.2a (2014)

§ 40:55D-53.2a. Applicant notification to dispute charges; appeals; rules, regulations

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.

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 mu-

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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.

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N.J. Stat. § 40:55D-53.3 (2014)

§ 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.

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N.J. Stat. § 40:55D-53.4 (2014)

§ 40:55D-53.4. Municipal engineer to estimate cost of installation of improvements

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*).

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N.J. Stat. § 40:55D-53.5 (2014)

§ 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.

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N.J. Stat. § 40:55D-53.6 (2014)

§ 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.

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N.J. Stat. § 40:55D-54 (2014)

§ 40:55D-54. Recording of final approval of major subdivision; filing of all subdivision plats

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.

LexisNexis (TM) New Jersey Annotated Statutes

*** This section is current through New Jersey 216th Legislature ***
*** First Annual Session, 2014 c. 10 and J.R. 1 ***

TITLE 40. MUNICIPALITIES AND COUNTIES
SUBTITLE 3. MUNICIPALITY PROVISIONS
CHAPTER 55D. MUNICIPAL LAND USE LAW
ARTICLE 6. SUBDIVISIONS

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N.J. Stat. § 40:55D-54.1 (2014)

§ 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.

LexisNexis (TM) New Jersey Annotated Statutes

*** This section is current through New Jersey 216th Legislature ***
*** First Annual Session, 2014 c. 10 and J.R. 1 ***

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N.J. Stat. § 40:55D-55 (2014)

§ 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.

LexisNexis (TM) New Jersey Annotated Statutes

*** This section is current through New Jersey 216th Legislature ***
*** First Annual Session, 2014 c. 10 and J.R. 1 ***

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N.J. Stat. § 40:55D-56 (2014)

§ 40:55D-56. Certificates showing approval; contents

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.

LexisNexis (TM) New Jersey Annotated Statutes

*** This section is current through New Jersey 216th Legislature ***
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N.J. Stat. § 40:55D-57 (2014)

§ 40:55D-57. Right of owner of land covered by certificate

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.

LexisNexis (TM) New Jersey Annotated Statutes

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N.J. Stat. § 40:55D-58 (2014)

§ 40:55D-58. Condominiums and cooperative structures and uses

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.

LexisNexis (TM) New Jersey Annotated Statutes

*** This section is current through New Jersey 216th Legislature ***
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N.J. Stat. § 40:55D-59 (2014)

§ 40:55D-59. Repealed by L. 1983, c. 253, § 1, eff. July 7, 1983