

40:55D-3 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA: 40:55D-3 et al

("Municipal land use law-amendments)

LAWS OF: 1984

CHAPTER: 20

Bill No: A1169

Sponsor(s): Doyle

Date Introduced: Doyle

Committee: Assembly: -----

Senate: -----

Amended during passage: No

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Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly No

Senate No

Fiscal Note: No

Veto Message: No

Message on Signing: ~~No~~ Yes

Following were printed:

Reports: No

Hearings: No

See newspaper clipping

See also "Land use law reform legislation," 114 N.J.L.J. Index page 553 November 29, 1984) and 114 N.J.L.J. Index page 665 (December 27, 1984)

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CHAPTER 20 LAWS OF N. J. 1984  
APPROVED 3-22-84

ASSEMBLY, No. 1169

STATE OF NEW JERSEY

INTRODUCED JANUARY 30, 1984

By Assemblyman DOYLE

AN ACT to amend and supplement the "Municipal Land Use Law," approved January 14, 1976 (P. L. 1975, c. 291) and repealing P. L. 1980, c. 142.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

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

3 3. For the purposes of this act, unless the context clearly indi-  
4 cates a different meaning:

5 The term "shall" indicates a mandatory requirement, and the  
6 term "may" indicates a permissive action.

7 "Administrative officer" means the clerk of the municipality  
8 unless a different municipal official or officials, are designated by  
9 ordinance or statute.

10 "Applicant" means a developer submitting an application for  
11 development.

12 "Application for development" means the application form and  
13 all accompanying documents required by ordinance for approval  
14 of a subdivision plat, site plan, planned development, conditional  
15 use, zoning variance or direction of the issuance of a permit pur-  
16 suant to section 25 or section 27 of this act.

17 "Approving authority" means the planning board of the munici-  
18 pality unless a different agency is designated by ordinance when  
19 acting pursuant to the authority of this act.

20 "Board of adjustment" means the board established pursuant to  
21 section 56 of this act.

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

22 "Building" means a combination of materials to form a con-  
23 struction adapted to permanent, temporary, or continuous occu-  
24 pancy and having a roof.

25 "Capital improvement" means a governmental acquisition of  
26 real property or major construction project.

27 "Circulation" means systems, structures and physical improve-  
28 ments for the movement of people, goods, water, air, sewage or  
29 power by such means as streets, highways, railways, waterways,  
30 towers, airways, pipes and conduits, and the handling of people  
31 and goods by such means as terminals, stations, warehouses, and  
32 other storage buildings or transshipment points.

33 "Common open space" means an open space area within or re-  
34 lated to a site designated as a development, and designed and in-  
35 tended for the use or enjoyment of residents and owners of the  
36 development. Common open space may contain such comple-  
37 mentary structures and improvements as are necessary and  
38 appropriate for the use or enjoyment of residents and owners of  
39 the development.

40 ["Complete application" means an application form completed  
41 as specified by ordinance and the rules and regulations of the  
42 municipal agency, and all accompanying documents required by  
43 ordinance for approval of the application for development, includ-  
44 ing where applicable, but not limited to, a site plan or subdivision  
45 plat; provided that the municipal agency may require such addi-  
46 tional information not specified in the ordinance, or any revisions  
47 in the accompanying documents, as are reasonably necessary to  
48 make an informed decision as to whether the requirements neces-  
49 sary for approval of the application for development have been  
50 met. The application shall not be deemed incomplete for lack of  
51 any such additional information or any revisions in the accompany-  
52 ing documents so required by the municipal agency. An applica-  
53 tion shall be certified as complete immediately upon the meeting  
54 of all requirements specified in the ordinance and in the rules and  
55 regulations of the municipal agency, and shall be deemed complete  
56 as of the day it is so certified by the administrative officer for  
57 purposes of the commencement of the time period for action by  
58 the municipal agency.]

59 "Conditional use" means a use permitted in a particular zoning  
60 district only upon a showing that such use in a specified location  
61 will comply with the conditions and standards for the location or  
62 operation of such use as contained in the zoning ordinance, and  
63 upon the issuance of an authorization therefor by the planning  
64 board.

65 "Conventional" means development other than planned develop-  
66 ment.

67 "County master plan" means a composite of the master plan  
68 for the physical development of the county in which the municipi-  
69 pality is located, with the accompanying maps, plats, charts and  
70 descriptive and explanatory matter adopted by the county planning  
71 board pursuant to R. S. 40:27-2 and R. S. 40:27-4.

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

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

3 3.1. "Days" means calendar days.

4 "*Density*" means the permitted number of dwelling units per gross  
5 area of land to be developed.

6 "Developer" means the legal or beneficial owner or owners of  
7 a lot or of any land proposed to be included in a proposed develop-  
8 ment including the holder of an option or contract to purchase,  
9 or other person having an enforceable proprietary interest in such  
10 land.

11 "Development" means the division of a parcel of land into two  
12 or more parcels, the construction, reconstruction, conversion, struc-  
13 tural alterations, relocation or enlargement of any building or other  
14 structure, or of any mining, excavation or landfill, and any use or  
15 change in the use of any building or other structure, or land or  
16 extension of use of land, for which permission may be required  
17 pursuant to this act.

18 "Development regulation" means a zoning ordinance, subdivi-  
19 sion ordinance, site plan ordinance, official map ordinance or other  
20 municipal regulation of the use and development of land, or amend-  
21 ment thereto adopted and filed pursuant to this act.

22 "Division" means the Division of State and Regional Planning  
23 in the Department of Community Affairs.

24 "Drainage" means the removal of surface water or groundwater  
25 from land by drains, grading or other means and includes control  
26 of runoff during and after construction or development to minimize  
27 erosion and sedimentation, to assure the adequacy of existing and  
28 proposed culverts and bridges, to induce water recharge into the  
29 ground where practical, to lessen nonpoint pollution, to maintain  
30 the integrity of stream channels for their biological functions as  
31 well as for drainage, and the means necessary for water supply  
32 preservation or prevention or alleviation of flooding.

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

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

37 "Final approval" means the official action of the planning board  
38 taken on a preliminary approved major subdivision or site plan  
39 after all conditions, engineering plans and other requirements have  
40 been completed or fulfilled and the required improvements have  
41 been installed or guarantees properly posted for their completion,  
42 or approval conditioned upon the posting of such guarantees.

43 "*Floor area ratio*" means the sum of the area of all floors of  
44 buildings or structures compared to the total area of the site.

45 "Governing body" means the chief legislative body of the mu-  
46 nicipality. In municipalities having a board of public works, "gov-  
47 erning body" means such board.

48 "Historic site" means any building, structure, area or property  
49 that is significant in the history, architecture, archeology or culture  
50 of this State, its communities or the Nation and has been so desig-  
51 nated pursuant to this act.

52 "Interested party" means (a) in a criminal or quasicriminal  
53 proceeding, any citizen of the State of New Jersey; and (b) in the  
54 case of a civil proceeding in any court or in an administrative pro-  
55 ceeding before a municipal agency, any person whether residing  
56 within or without the municipality, whose right to use, acquire, or  
57 enjoy property is or may be affected by any action taken under  
58 this act, or whose rights to use, acquire, or enjoy property under  
59 this act, or under any other law of this State or of the United  
60 States have been denied, violated or infringed by an action or a  
61 failure to act under this act.

62 "Land" includes improvements and fixtures on, above or below  
63 the surface.

64 "Lot" means a designated parcel, tract or area of land estab-  
65 lished by a plat or otherwise as permitted by law and to be used,  
66 developed or built upon as a unit.

1 3. Section 5 of P. L. 1975, c. 291 (C. 40:55D-9) is amended to  
2 read as follows:

3 5. Meetings; municipal agency. a. Every municipal agency shall  
4 by its rules fix the time and place for holding its regular meetings  
5 for business authorized to be conducted by such agency. Regular  
6 meetings of the municipal agency shall be scheduled not less than  
7 once a month and shall be held as scheduled unless canceled for  
8 lack of applications for development to process. The municipal  
9 agency may provide for special meetings, at the call of the chair-

10 man, or on the request of any two of its members, which shall be  
11 held on notice to its members and the public in accordance with  
12 municipal regulations. No action shall be taken at any meeting  
13 without a quorum being present. All actions shall be taken by a  
14 majority vote of the members of the municipal agency present at  
15 the meeting except as otherwise required by sections 23, 25, 49,  
16 50, and subsections 8e., 17a., 17b. and 57d. of this act. *Failure of a*  
17 *motion to receive the number of votes required to approve an*  
18 *application for development pursuant to the exceptional vote re-*  
19 *quirements of section 25 or subsection 57d. of this act shall be*  
20 *deemed an action denying the application.* Nothing herein shall be  
21 construed to contravene any act providing for procedures for  
22 governing bodies.

23 b. All regular meetings and all special meetings shall be open  
24 to the public. Notice of all such meetings shall be given in accor-  
25 dance with municipal regulations. An executive session for the  
26 purpose of discussing and studying any matters to come before  
27 the agency shall not be deemed a regular or special meeting within  
28 the meaning of this act.

29 c. Minutes of every regular or special meeting shall be kept  
30 and shall include the names of the persons appearing and address-  
31 ing the municipal agency and of the persons appearing by attorney,  
32 the action taken by the municipal agency, the findings, if any, made  
33 by it and reasons therefor. The minutes shall thereafter be made  
34 available for public inspection during normal business hours at  
35 the office of the administrative officer. Any interested party shall  
36 have the right to compel production of the minutes for use as  
37 evidence in any legal proceedings concerning the subject matter  
38 of such minutes. Such interested party may be charged a reason-  
39 able fee for reproduction of the minutes for his use.

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

3 6. Hearings. a. The municipal agency shall hold a hearing on  
4 each application for development, or adoption, revision or amend-  
5 ment of the master plan.

6 b. The municipal agency shall make the rules governing such  
7 hearings. Any maps and documents for which approval is sought at  
8 hearing shall be on file and available for public inspection at least  
9 10 days before the date of the hearing during normal business  
10 hours in the office of the administrative officer. The applicant may  
11 produce other documents, records, or testimony at the hearing to  
12 substantiate or clarify or supplement the previously filed maps and  
13 documents.

14 c. The officer presiding at the hearing or such person as he may  
15 designate shall have power to administer oaths and issue subpoenas  
16 to compel the attendance of witnesses and the production of rele-  
17 vant evidence, including witnesses and documents presented by the  
18 parties, and the provisions of the "County and Municipal Investiga-  
19 tions Law," P. L. 1953, c. 38 (C. 2A:67A-1 et seq.) shall apply.

20 d. The testimony of all witnesses relating to an application for  
21 development shall be taken under oath or affirmation by the pre-  
22 siding officer, and the right of cross-examination shall be permitted  
23 to all interested parties through their attorneys, if represented,  
24 or directly, if not represented, subject to the discretion of the  
25 presiding officer and to reasonable limitations as to time and number  
26 of witnesses.

27 e. Technical rules of evidence shall not be applicable to the  
28 hearing, but the agency may exclude irrelevant, immaterial or  
29 unduly repetitious evidence.

30 f. The municipal agency shall provide for the verbatim recording  
31 of the proceedings by either stenographer, mechanical or electronic  
32 means. The municipal agency shall furnish a transcript, or dupli-  
33 cate recording in lieu thereof, on request to any interested party  
34 at his expense; provided that the governing body may provide by  
35 ordinance for the municipality to assume the expense of any tran-  
36 scripts necessary for appeal to the governing body pursuant to  
37 section 8 of this act of decisions by the zoning board of adjustment  
38 pursuant to subsection 57d. of this act, upon to a maximum amount  
39 as specified by the ordinance.

40 The municipal agency in furnishing a transcript of the proceed-  
41 ings of an interested party at his expense shall not charge such  
42 interested party more than the maximum permitted in N. J. S.  
43 2A:11-15. Said transcript shall be certified in writing by the tran-  
44 scriber to be accurate.

45 g. [Each decision on any application for development shall be  
46 reduced to writing as provided in this subsection, and shall include  
47 findings of facts and conclusions based thereon.

48 Failure of a motion to approve an application for development  
49 to receive the number of votes required for approval shall be  
50 deemed an action denying the application.

51 The municipal agency may provide such written decision and  
52 findings and conclusions either on the date of the meeting at which  
53 the municipal agency takes to grant or deny approval, or, if the  
54 meeting at which such action is taken occurs within the final 45 days  
55 of the applicable time period for rendering a decision on the appli-  
56 cation for development, within 45 days of such meeting by the

57 adoption of a resolution of memorialization setting forth the deci-  
58 sion and the findings and conclusions of the municipal agency  
59 thereon. An action resulting from the failure of a motion to approve  
60 an application shall be memorialized by resolution as provided  
61 above, notwithstanding the time at which such action occurs within  
62 the applicable time period for rendering a decision on the applica-  
63 tion.

64 The adoption of a resolution of memorialization pursuant to this  
65 subsection shall not be construed to alter the applicable time period  
66 for rendering a decision on the application for development. Such  
67 resolution shall be adopted by a vote of a majority of the members  
68 of the municipal agency who voted for the action previously taken,  
69 and no other member shall vote thereon. The vote on such resolu-  
70 tion shall be deemed to be a memorialization of an action of the  
71 municipal agency, and not to be an action of the municipal agency;  
72 except that failure to adopt such a resolution within the 45 day  
73 period shall result in the approval of the application for develop-  
74 ment, notwithstanding any prior action taken thereon.

75 Whenever a resolution of memorialization is adopted in accor-  
76 dance with this subsection, the date of such adoption shall constitute  
77 the date of the decision for purposes of the mailings, filings and  
78 publications required by subsections h. and i. of this section.】

79 *The municipal agency shall include findings of fact and con-*  
80 *clusions based thereon in each decision on any application for*  
81 *development and shall reduce the decision to writing. The*  
82 *municipal agency shall provide the findings and conclusions*  
83 *through:*

84 (1) *A resolution adopted at a meeting held within the time*  
85 *period provided in the act for action by the municipal agency on*  
86 *the application for development; or*

87 (2) *A memorializing resolution adopted at a meeting held not*  
88 *later than 45 days after the date of the meeting at which the*  
89 *municipal agency voted to grant or deny approval. Only the mem-*  
90 *bers of the municipal agency who voted for the action taken may*  
91 *vote on the memorializing resolution, and the vote of a majority*  
92 *of such members present at the meeting at which the resolution is*  
93 *presented for adoption shall be sufficient to adopt the resolution.*  
94 *An action pursuant to section 5 of the act (C. 40:55D-9) (resulting*  
95 *from the failure of a motion to approve an application) shall be*  
96 *memorialized by resolution as provided above, with those members*  
97 *voting against the motion for approval being the members eligible*  
98 *to vote on the memorializing resolution. The vote on any such*  
99 *resolution shall be deemed to be a memorialization of the action of*



100 *the municipal agency and not to be an action of the municipal*  
101 *agency; however, the date of the adoption of the resolution shall*  
102 *constitute the date of the decision for purposes of the mailings,*  
103 *filings and publications required by subsections h. and i. of this*  
104 *section (C. 40:55D-10). If the municipal agency fails to adopt a*  
105 *resolution or memorializing resolution as hereinabove specified,*  
106 *any interested party may apply to the Superior Court in a sum-*  
107 *mary manner for an order compelling the municipal agency to*  
108 *reduce its findings and conclusions to writing within a stated time*  
109 *and the cost of the application, including attorney's fees, shall be*  
110 *assessed against the municipality.*

111 h. A copy of the decision shall be mailed by the municipal agency  
112 within 10 days of the date of decision to the applicant, or if repre-  
113 sented then to his attorney, without separate charge, and to all  
114 who request a copy of the decision for a reasonable fee. A copy  
115 of the decision shall also be filed by the municipal agency in the  
116 office of the administrative officer. The administrative officer shall  
117 make a copy of such filed decision available to any interested party  
118 for a reasonable fee and available for public inspection at his office  
119 during reasonable hours.

120 i. A brief notice of the decision shall be published in the official  
121 newspaper of the municipality, if there be one, or in a newspaper  
122 of general circulation in the municipality. Such publication shall  
123 be arranged by the applicant unless a particular municipal officer  
124 is so designated by ordinance; provided that nothing contained in  
125 this act shall be construed as preventing the applicant from arrang-  
126 ing such publication if he so desires. The municipality may make a  
127 reasonable charge for its publication. The period of time in which  
128 an appeal of the decision may be made shall run from the first  
129 publication of the decision, whether arranged by the municipality  
130 or the applicant.

1 5. (New section) An application for development shall be com-  
2 plete for purposes of commencing the applicable time period for  
3 action by a municipal agency when so certified by the municipal  
4 agency or its authorized committee or designee. In the event  
5 that the agency, committee or designee does not certify the ap-  
6 plication to be complete within 45 days of the date of its sub-  
7 mission, the application shall be deemed complete upon the expira-  
8 tion of the 45-day period for purposes of commencing the applicable  
9 time period unless a. the application lacks information indicated  
10 on a checklist adopted by ordinance and provided to the applicant  
11 and b. the municipal agency or its authorized committee or de-  
12 signee has notified the applicant, in writing, of the deficiencies

13 in the application within 45 days of submission of the application.  
14 The applicant may request that one or more of the submission  
15 requirements be waived, in which event the agency or its authorized  
16 committee shall grant or deny the request within 45 days. Nothing  
17 herein shall be construed as diminishing the applicant's obligation  
18 to prove in the application process that he is entitled to approval  
19 of the application. The municipal agency may subsequently require  
20 correction of any information found to be in error and submission  
21 of additional information not specified in the ordinance or any  
22 revisions in the accompanying documents, as are reasonably neces-  
23 sary to make an informed decision as to whether the requirements  
24 necessary for approval of the application for development have  
25 been met. The application shall not be deemed incomplete for lack  
26 of any such additional information or any revisions in the ac-  
27 companying documents so required by the municipal agency.

1 6. Section 8 of P. L. 1975, c. 291 (C. 40:55D-17) is amended to  
2 read as follows:

3 8. Appeal to the governing body; time; notice; modification; stay  
4 of proceedings.

5 a. Any interested party [desiring to appeal the decision of a  
6 municipal agency shall] *may* appeal to the governing body [(1)]  
7 any final decision of a board of adjustment approving an applica-  
8 tion for development pursuant to subsection 57 d. of this act[, and  
9 (2)] if so permitted by ordinance[, any other final decision of a  
10 board of adjustment or planning board on any class of applications  
11 for development]. Such appeal shall be made within 10 days of the  
12 date of publication of such final decision pursuant to subsection 6 i.  
13 In the case of any board established pursuant to article 10 of this  
14 act, the governing body of the municipality in which the land is  
15 situated shall be the "governing body" for purposes of this section.  
16 The appeal to the governing body shall be made by serving the  
17 municipal clerk in person or by certified mail with a notice of appeal  
18 specifying the grounds thereof and the name and address of the  
19 appellant and name and address of his attorney, if represented.  
20 Such appeal shall be decided by the governing body only upon the  
21 record established before the planning board or board of adjust-  
22 ment.

23 b. Notice of the meeting to review the record below shall be  
24 given by the governing body by personal service or certified mail  
25 to the appellant, to those entitled to notice of a decision pursuant  
26 to subsection 6 h. and to the board from which the appeal is taken  
27 at least 10 days prior to the date of the meeting. The parties may  
28 submit oral and written argument on the record at such meeting,

29 and the governing body shall provide for verbatim recording and  
30 transcripts of such meeting pursuant to subsection 6 f.

31 c. The appellant shall, (1) within five days of service of the notice  
32 of the appeal pursuant to subsection a. hereof, arrange for a  
33 transcript pursuant to subsection f. of section 6 of this act (C.  
34 40:55D-10) for use by the governing body and pay a deposit of  
35 \$50.00 or the estimated cost of such transcription, whichever is less,  
36 or (2) within 35 days of service of the notice of appeal, submit a  
37 transcript as otherwise arranged to the municipal clerk; otherwise,  
38 the appeal may be dismissed for failure to prosecute.

39 The governing body shall conclude a review of the record below  
40 not later than 95 days from the date of publication of notice of the  
41 decision below pursuant to subsection i. of section 6 of this act  
42 (C. 40:55D-10) unless the applicant consents in writing to an  
43 extension of such period. Failure of the governing body to hold a  
44 hearing and conclude a review of the record below and to render  
45 a decision within such specified period shall constitute a decision  
46 affirming the action of the board.

47 d. **【**The governing body may reverse, remand or affirm, wholly  
48 or in part, or may modify the final decision of the planning board  
49 or board of adjustment, as the case may be.**】** *The governing body*  
50 *may reverse, remand, or affirm with or without the imposition of*  
51 *conditions the final decision of the board of adjustment approving*  
52 *a variance pursuant to subsection d. of section 57 of P. L. 1975, c.*  
53 *291 (C. 40:55D-70). The review shall be made on the record made*  
54 *before the board of adjustment.*

55 e. The affirmative vote of a majority of the full authorized  
56 membership of the governing body shall be necessary to reverse,  
57 remand, or affirm with or without conditions **【**or modify**】** any final  
58 action of **【**either**】** the board of adjustment.

59 f. An appeal to the governing body shall stay all proceedings  
60 in furtherance of the action in respect to which the decision  
61 appealed from was made unless the board from whose action the  
62 appeal is taken certifies to the governing body, after the notice  
63 of appeal shall have been filed with such board, that by reasons  
64 of facts stated in the certificate a stay would, in its opinion, cause  
65 imminent peril to life or property. In such case, proceedings shall  
66 not be stayed other than by an order of the Superior Court on  
67 application upon notice to the board from whom the appeal is taken  
68 and on good cause shown.

69 g. The governing body shall mail a copy of the decision to the  
70 appellant or if represented then to his attorney, without separate  
71 charge, and for a reasonable charge to any interested party who

72 has requested it, not later than 10 days after the date of the  
73 decision. A brief notice of the decision shall be published in the  
74 official newspaper of the municipality, if there be one, or in a news-  
75 paper of general circulation in the municipality. Such publication  
76 shall be arranged by the applicant unless a particular municipal  
77 officer is so designated by ordinance; provided that nothing con-  
78 tained herein shall be construed as preventing the applicant from  
79 arranging such publication if he so desires. The governing body  
80 may make a reasonable charge for its publication. The period of  
81 time in which an appeal to a court of competent jurisdiction may  
82 be made shall run from the first publication, whether arranged by  
83 the municipality or the applicant.

84 h. Nothing in this act shall be construed to restrict the right of  
85 any party to obtain a review by any court of competent juris-  
86 diction according to law.

1 7. Section 17 of P. L. 1975, c. 291 (C. 40:55D-26) is amended to  
2 read as follows:

3 17. Referral powers. a. Prior to the adoption of a development  
4 regulation, revision, or amendment thereto, the planning board  
5 shall make and transmit to the governing body, within 35 days  
6 after referral a report including recommendations concerning the  
7 proposed development regulation, revision or amendment. The  
8 governing body, when considering the adoption of a development  
9 regulation, revision or amendment thereto, shall review the report  
10 of the planning board and may disapprove or change any recom-  
11 mendation by a vote of a majority of its full authorized member-  
12 ship and shall record in its minutes the reasons for not following  
13 such recommendations. Failure of the planning board to transmit  
14 its report within the 35-day period provided herein shall relieve  
15 the governing body from the requirements of this subsection in  
16 regard to the proposed development regulation, revision or amend-  
17 ment thereto referred to the planning board.

18 b. The governing body may by ordinance provide for the refer-  
19 ence of any matter or class of matters to the planning board before  
20 final action thereon by a municipal body or municipal officer having  
21 final authority thereon *except for any matter under the jurisdiction*  
22 *of the board of adjustment.* [Such reference shall not extend the  
23 time for action by the referring body, whether or not the planning  
24 board has submitted its report.] Whenever the planning board  
25 shall have made a recommendation regarding a matter authorized  
26 by this act to another municipal body, such recommendation may  
27 be rejected only by a majority of the full authorized membership  
28 of such other body.

1 8. Section 34 of P. L. 1975, c. 291 (C. 40:55D-46) is amended to  
2 read as follows:

3 34. Procedure for preliminary site plan approval. a. An ordi-  
4 nance requiring site plan review and approval shall require that  
5 the developer submit to the administrative officer a site plan and  
6 such other information as is reasonably necessary to make an  
7 informed decision as to whether the requirements necessary for  
8 preliminary site plan approval have been met. The site plan and  
9 any engineering documents to be submitted shall be required in  
10 tentative form for discussion purposes for preliminary approval.  
11 If any architectural plans are required to be submitted for site  
12 plan approval, the preliminary plans and elevations shall be suf-  
13 ficient. [If an application for development is found to be incom-  
14 plete, the developer shall be notified in writing of the deficiencies  
15 therein by the board or the board's designee for the determination  
16 of completeness within 45 days of the submission of such applica-  
17 tion or it shall be deemed to be properly submitted.]

18 b. If the planning board required any substantial amendment in  
19 the layout of improvements proposed by the developer that have  
20 been the subject of a hearing, an amended application for develop-  
21 ment shall be submitted and proceeded upon, as in the case of the  
22 original application for development. The planning board shall,  
23 if the proposed development complies with the ordinance and this  
24 act, grant preliminary site plan approval.

25 c. Upon the submission to the administrative officer of a complete  
26 application for a site plan which involves 10 acres of land or less,  
27 and 10 dwelling units or less, the planning board shall grant or  
28 deny preliminary approval within 45 days of the date of such  
29 submission or within such further time as may be consented to  
30 by the developer. Upon the submission of a complete application  
31 for a site plan which involves more than 10 acres, or more than  
32 10 dwelling units, the planning board shall grant or deny pre-  
33 liminary approval within 95 days of the date of such submission or  
34 within such further time as may be consented to by the developer.  
35 Otherwise, the planning board shall be deemed to have granted  
36 preliminary approval of the site plan.

1 9. Section 36 of P. L. 1975, c. 291 (C. 40:55D-48) is amended to  
2 read as follows:

3 36. Procedure for preliminary major subdivision approval. a. An  
4 ordinance requiring subdivision approval by the planning board  
5 shall require that the developer submit to the administrative officer  
6 a plat and such other information as is reasonably necessary to  
7 make an informed decision as to whether the requirements neces-

8 sary for preliminary approval have been met; provided that minor  
9 subdivisions pursuant to section 35 of this act shall not be subject  
10 to this section. The plat and any other engineering documents  
11 to be submitted shall be required in tentative form for discussion  
12 purposes for preliminary approval. [If the application for devel-  
13 opment is found to be incomplete, the developer shall be notified  
14 in writing of the deficiencies therein by the board or the board's  
15 designee for the determination of completeness within 45 days of  
16 submission of such application or it shall be deemed to be properly  
17 submitted.]

18 b. If the planning board required any substantial amendment  
19 in the layout of improvements proposed by the developer that  
20 have been the subject of a hearing, an amended application shall  
21 be submitted and proceeded upon, as in the case of the original  
22 application for development. The planning board shall, if the  
23 proposed subdivision complies with the ordinance and this act,  
24 grant preliminary approval to the subdivision.

25 c. Upon the submission to the administrative officer of a complete  
26 application for a subdivision of 10 or fewer lots, the planning board  
27 shall grant or deny preliminary approval within 45 days of the  
28 date of such submission or within such further time as may be  
29 consented to by the developer. Upon the submission of a complete  
30 application for a subdivision of more than 10 lots, the planning  
31 board shall grant or deny preliminary approval within 95 days  
32 of the date of such submission or within such further time as may  
33 be consented to by the developer. Otherwise, the planning board  
34 shall be deemed to have granted preliminary approval to the  
35 subdivision.

1 10. Section 47 of P. L. 1975, c. 291 (C. 40:55D-60) is amended to  
2 read as follows:

3 47. Planning board review in lieu of board of adjustment. [The  
4 planning board when reviewing applications for approval of sub-  
5 division plats, site plans or conditional uses] *Whenever the pro-*  
6 *posed development requires approval pursuant to this act of a*  
7 *subdivision, site plan or conditional use, but not a variance pur-*  
8 *suant to subsection d. of section 57 of this act (C. 40:55D-70), the*  
9 *planning board shall have the power to grant to the same extent*  
10 *and subject to the same restrictions as the board of adjustment;*

11 a. Variances pursuant to subsection 57 c. of this act;

12 b. Direction pursuant to section 25 of this act for issuance of a  
13 permit for a building or structure in the bed of a mapped street or  
14 public drainage way, flood control basin or public area reserved  
15 pursuant to section 23 of this act; and,

16 c. Direction pursuant to section 27 of this act for issuance of a  
17 permit for a building or structure not related to a street.

18 Whenever relief is requested pursuant to this section, notice of  
19 the hearing on the application for development shall include  
20 reference to the request for a variance, or direction for issuance of  
21 a permit, as the case may be.

22 *The developer may elect to submit a separate application re-*  
23 *questing approval of the variance or direction of the issuance of*  
24 *a permit and a subsequent application for any required approval*  
25 *of a subdivision, site plan or conditional use. The separate ap-*  
26 *proval of the variance or direction of the issuance of a permit shall*  
27 *be conditioned upon grant of all required subsequent approvals by*  
28 *the planning board. No such subsequent approval shall be granted*  
29 *unless the approval can be granted without substantial detriment*  
30 *to the public good and without substantial impairment of the intent*  
31 *and purpose of the zone plan and zoning ordinance.*

1 11. Section 48 of P. L. 1975, c. 291 (C. 40:55D-61) is amended  
2 to read as follows:

3 48. Time periods. Whenever an application for approval of a  
4 subdivision plat, site plan or conditional use includes a request  
5 for relief pursuant to section 47 of this act, the planning board  
6 shall grant or deny approval of the application within 120 days  
7 after submission by a developer of a complete application to the  
8 administrative officer or within such further time as may be con-  
9 sented to by the applicant. *In the event that the developer elects*  
10 *to submit separate consecutive applications, the aforesaid provi-*  
11 *sion shall apply to the application for approval of the variance*  
12 *or direction for issuance of a permit. The period for granting or*  
13 *denying and subsequent approval shall be as otherwise provided*  
14 *in this act.* Failure of the planning board to act within the period  
15 prescribed shall constitute approval of the application and a  
16 certificate of the administrative officer as to the failure of the  
17 planning board to act shall be issued on request of the applicant,  
18 and it shall be sufficient in lieu of the written endorsement or other  
19 evidence of approval, herein required, and shall be so accepted by  
20 the county recording officer for purposes of filing subdivision plats.

21 Whenever review or approval of the application by the county  
22 planning board is required by section 5 of P. L. 1968, c. 285  
23 (C. 40:27-6.3), in the case of a subdivision, or section 8 of P. L.  
24 1968, c. 285 (C. 40:27-6.6), in the case of a site plan, the municipal  
25 planning board shall condition any approval that it grants upon  
26 timely receipt of a favorable report on the application by the  
27 county planning board or approval by the county planning board  
28 by its failure to report thereon within the required time period.

1 12. Section 57 of P. L. 1975, c. 291 (C. 40:55D-70) is amended  
2 to read as follows:

3 57. Powers. The board of adjustment shall have the power to:

4 a. Hear and decide appeals where it is alleged by the appellant  
5 that there is error in any order, requirement, decision or refusal  
6 made by an administrative officer based on or made in the enforce-  
7 ment of the zoning ordinance;

8 b. Hear and decide [in accordance with the provisions of any  
9 such ordinance,] requests for interpretation of the zoning map or  
10 ordinance or for decisions upon other special questions upon which  
11 such board is authorized to pass by any zoning or official map ordi-  
12 nance in accordance with this act;

13 c. (1) Where (a) by reason of exceptional narrowness, shallow-  
14 ness or shape of a specific piece of property, (b) or by reason of  
15 exceptional topographic conditions or physical features uniquely  
16 affecting a specific piece of property, or (c) by reason of [other]  
17 an extraordinary and exceptional situation [or condition of such]  
18 uniquely affecting a specific piece of property or the structures  
19 lawfully existing thereon, the strict application of any regulation  
20 pursuant to article 8 of this act would result in peculiar and ex-  
21 ceptional practical difficulties to, or exceptional and undue hardship  
22 upon the developer of such property, grant, upon an application  
23 or an appeal relating to such property, a variance from such strict  
24 application of such regulation so as to relieve such difficulties or  
25 hardship], including a variance for a conditional use]; (2) where  
26 in an application or appeal relating to a specific piece of property  
27 the purposes of this act would be advanced by a deviation from the  
28 zoning ordinance requirements and the benefits of the deviation  
29 would substantially outweigh any detriment, grant a variance to  
30 allow departure from regulations pursuant to article 8 of this act;  
31 provided, however, that no variance from those departures enu-  
32 merated in subsection d. of this section shall be granted under this  
33 subsection [to allow a structure or use in a district restricted  
34 against such structure or use]; and provided further that the pro-  
35 posed development does not require approval by the planning board  
36 of a subdivision, site plan or conditional use in conjunction with  
37 which the planning board [shall] has power to review a request  
38 for a variance pursuant to subsection 47 a. of this act; and,

39 d. In particular cases and for special reasons, grant a variance  
40 to allow departure from regulations pursuant to article 8 of this  
41 act], including, but not limited to, allowing] to permit (1) a [struc-  
42 ture or] use or principal structure in a district restricted against  
43 such [structure or] use or principal structure, [but] (2) an ex-



44 *pension of a nonconforming use, (3) deviation from a specification*  
 45 *or standard pursuant to section 54 of P. L. 1975, c. 291 (C.*  
 46 *40:55D-67) pertaining solely to a conditional use, (4) an increase*  
 47 *in the permitted floor area ratio as defined in section 3.1 of P. L.*  
 48 *1975, c. 291 (C. 40:55D-4), (5) an increase in the permitted density*  
 49 *as defined in section 3.1 of P. L. 1975, c. 291 (C. 40:55D-4) except*  
 50 *as applied to the required lot area for a lot or lots for detached*  
 51 *one or two dwelling unit buildings which lot or lots are either an*  
 52 *isolated undersized lot or lots resulting from a minor subdivision.*  
 53 *A variance under this subsection shall be granted only by affirma-*  
 54 *tive vote of at least five members, in the case of a municipal board,*  
 55 *or  $\frac{2}{3}$  of the full authorized membership, in the case of a regional*  
 56 *board pursuant to article 10 of this act.*

57 No variance or other relief may be granted under the terms of  
 58 this section unless such variance or other relief can be granted  
 59 without substantial detriment to the public good and will not sub-  
 60 stantially impair the intent and the purpose of the zone plan and  
 61 zoning ordinance. In respect of any airport hazard areas delineated  
 62 under the "Air Safety and Hazardous Zoning Act of 1983," P. L.  
 63 1983, c. 260 (C. 6:1-80 et seq.) no variance or other relief may be  
 64 granted under the terms of this section permitting the creation or  
 65 establishment of a nonconforming use which would be prohibited  
 66 under the standards promulgated pursuant to that act except upon  
 67 issuance of a permit by the Commissioner of Transportation.  
 68 An application under this section may be referred to any appro-  
 69 priate person or agency, including the planning board pursuant  
 70 to section 17 of this act, for its report; provided that such refer-  
 71 ence shall not extend the period of time within which the zoning  
 72 board of adjustment shall act.

1 13. Section 63 of P. L. 1975, c. 291 (C. 40:55D-76) is amended to  
 2 read as follows:

3 63. Other powers. a. Sections 59 through 62 of this article shall  
 4 apply to the power of the board of adjustment to:

5 (1) Direct issuance of a permit pursuant to section 25 of this  
 6 act for a building or structure in the bed of a mapped street or  
 7 public drainage way, flood control basin or public area reserved  
 8 pursuant to section 23 of this act; or

9 (2) Direct issuance of a permit pursuant to section 27 of this  
 10 act for a building or structure not related to a street.

11 b. The board of adjustment shall have the power to grant to the  
 12 same extent and subject to the same restrictions as the planning  
 13 board subdivision or site plan approval pursuant to article 6 of  
 14 this act or conditional use approval pursuant to section 54 of this

15 act whenever the proposed development requires approval by the  
16 board of adjustment of a variance pursuant to subsection d. of  
17 section 57 of this act (C. 40:55D-70). The developer may elect to  
18 submit a separate application requesting approval of the variance  
19 and a subsequent application for any required approval of a sub-  
20 division, site plan or conditional use. The separate approval of  
21 the variance shall be conditioned upon grant of all required sub-  
22 sequent approvals by the board of adjustment. No such subsequent  
23 approval shall be granted unless such approval can be granted  
24 without substantial detriment to the public good and without sub-  
25 stantial impairment of the intent and purpose of the zone plan  
26 and zoning ordinance. The number of votes of board members  
27 required to grant any such subsequent approval shall be as other-  
28 wise provided in this act for the approval in question, and the  
29 special vote pursuant to the aforesaid subsection d. of section 57  
30 shall not be required.

31 c. Whenever an application for development requests relief  
32 pursuant to subsection b. of this section, the board of adjustment  
33 shall grant or deny approval of the application within 120 days  
34 after submission by a developer of a complete application to the  
35 administrative officer or within such further time as may be con-  
36 sented to by the applicant. In the event that the developer elects  
37 to submit separate consecutive applications, the aforesaid provi-  
38 sion shall apply to the application for approval of the variance.  
39 The period for granting or denying any subsequent approval shall  
40 be as otherwise provided in this act. Failure of the board of ad-  
41 justment to act within the period prescribed shall constitute  
42 approval of the application and a certificate of the administrative  
43 officer as to the failure of the board of adjustment to act shall be  
44 issued on request of the applicant, and it shall be sufficient in lieu  
45 of the written endorsement or other evidence of approval, herein  
46 required, and shall be so accepted by the county recording officer  
47 for purposes of filing subdivision plats.

48 Whenever review or approval of the application by the county  
49 planning board is required by section 5 of P. L. 1968, c. 285  
50 (C. 40:27-6.3), in the case of a subdivision, or section 8 of P. L.  
51 1968, c. 285 (C. 40:27-6.6), in the case of a site plan, the municipal  
52 board of adjustment shall condition any approval that it grants  
53 upon timely receipt of a favorable report on the application by the  
54 county planning board or approval by the county planning board  
55 by its failure to report thereon within the required time.

56 An application under this section may be referred to any appro-  
57 priate person or agency, including the planning board pursuant

58 to section 17 of this act,] for its report; provided that such refer-  
59 ence shall not extend the period of time within which the zoning  
60 board of adjustment shall act.

1 14. (New section) Any application for development submitted  
2 before the effective date of this amendatory and supplementary  
3 act to a municipal agency pursuant to lawful authority may be  
4 continued at the option of the applicant, and the municipal agency  
5 shall have every power which it possessed before the effective date  
6 of this amendatory and supplementary act in regard to any such  
7 application.

1 15. P. L. 1980, c. 142 (C. 40:55D-73.1) is repealed.

1 16. This act shall take effect on the first day of the fourth month  
2 following its enactment.

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#### STATEMENT

This bill amends and supplements the "Municipal Land Use Law," P. L. 1975, c. 291 (C. 40:55D-1 et seq.) and repeals the provisions of P. L. 1980, c. 142.

The bill is the result of extensive deliberations by the Municipal Land Use Law Drafting Committee convened by the New Jersey State League of Municipalities. The drafting committee was instrumental in the preparation of the basic draft documents of what ultimately became the Municipal Land Use Law and the 1979 comprehensive amendments thereto. The committee has been monitoring the working of the law as amended, including review of all of the reported as well as many of the unreported decisions by the courts on the amended law. It also invited the comments of, and consulted with local officials and other concerned citizens on their experiences under the amended law.

The bill represents the conclusions of the drafting committee on variances, appeals to the governing body, completeness of an application, resolutions stating the reasons for approving or denying an application for development, and related matters.

Section 1 amends P. L. 1975, c. 291, s. 3 (C. 40:55D-3) to delete the definition of "complete application" because its purpose is better served by section 5 discussed below.

Section 2 amends P. L. 1975, c. 291, s. 4 (C. 40:55D-4) to add definitions of "density" and "floor area ratio".

Section 3 amends P. L. 1975, c. 291, s. 5 (C. 40:55D-9) to place in the proper context the provision that had been in the second paragraph of subsection g. of section 6 of P. L. 1975, c. 291 (C. 40:55D-10), on the effect of failure of a motion to approve an

application for development to receive the number of votes required for approval, and to clarify that the provision applies to the exceptional vote requirements of certain sections of the Municipal Land Use Law.

Section 4 amends P. L. 1975, c. 291, s. 6 (C. 40:55D-10) to clarify the provisions on reducing decisions on applications for development to writing with findings of fact and conclusions based thereon, including the use of memorializing resolutions. A provision is added allowing any interested party to apply for a court order compelling reduction of the findings and conclusions to writing and for the costs, including attorney's fees, to be assessed against the municipality. The provision is deleted under which failure to provide the detailed written decision constitutes an approval of the application for development.

Section 5 clarifies what determines whether an application for development is complete for purposes of commencing the time period for action by the board.

Section 6 amends P. L. 1975, c. 291, s. 8 (C. 40:55D-17) to (1) limit appeals to the governing body to approvals of "special reasons" or "use" variances, (2) give the governing body the option of determining by ordinance whether it will offer to hear these appeals, (3) give the objector the option of going directly to court even if a governing body appeal is available and (4) clarify the governing body's powers over an appealed decision. These amendments will preserve the governing body appeal for approvals of the most drastic departures from municipal development regulations (if this is agreeable to the governing body and the objector).

Section 7 amends P. L. 1975, c. 291, s. 17 (C. 40:55D-26) to exclude board of adjustment matters from those which the governing body may require by ordinance to be referred to the planning board for its recommendations. Referral to the planning board will still be possible but on a case-by-case basis at the option of the board of adjustment.

Section 8 amends P. L. 1975, c. 291, s. 34 (C. 40:55D-46) to remove a provision for which a provision is substituted in section 5.

Section 9 amends P. L. 1975, c. 291, s. 36 (C. 40:55D-48) the same as section 8, except that a major subdivision is involved instead of a site plan.

Section 10 amends P. L. 1975, c. 291, s. 47 (C. 40:55D-60) to allow the developer to ascertain from the planning board whether the proposed development meets the statutory criteria for a "c." variance before the developer undergoes the expense of having a site plan or subdivision plat prepared. This amendment parallels

the amendment made by P. L. 1979, c. 216 to P. L. 1975, c. 291, s. 63 (C. 40:55D-76) for proposed developments which require approval by the board of adjustment of a "d." variance and a site plan, subdivision or conditional use.

Section 11 amends P. L. 1975, c. 291, s. 48 (C. 40:55D-61) to (1) specify the applicable time periods for planning board action when the planning board rules on a variance and then on a subsequent application for site plan, subdivision or conditional use approval and (2) give the planning board as much time as the board of adjustment when ruling on variances.

Section 12 amends P. L. 1975, c. 291, s. 57 (C. 40:55D-70) which confers on the board of adjustment its principal powers.

(1) Subsection b. is amended to make the power of the board of adjustment to hear and decide requests for interpretation of the zoning map or ordinance as clearly a statutory power of the board as is the variance power. This is accomplished by removing language which makes the zoning interpretation power appear dependent upon an ordinance expressly providing for this power. This amendment, in turn, makes possible the repeal by section 14 of P. L. 1980, c. 142 (C. 40:55D-73.1) to provide for zoning interpretations whether or not the ordinance expressly provided for them.

(2) One of the comprehensive set of amendments to the "Municipal Land Use Law" contained in P. L. 1979, c. 216 clarified the language in subsection d. of section 57 of P. L. 1975, c. 291 (C. 40:55D-70) to indicate that a variance for special reasons was not limited to allowing a structure or use in a district restricted against such structure or use. This clarification plus the very restrictive interpretation by the courts of the "hardship" variance power in subsection e. of section 57 of P. L. 1975, c. 291 (C. 40:55D-70) has led to a shift of applications from the planning board to the board of adjustment. (The planning board has ancillary jurisdiction over "c." variances if the proposed development also requires subdivision, site plan or conditional use approval; but, if the proposed development requires a "d." variance, the board of adjustment has ancillary jurisdiction over any required approval of a subdivision plat, site plan or conditional use.)

In many of these applications shifted to the board of adjustment the subdivision, site plan and planning aspects are dominant and the zoning variance issue relatively incidental. The boards of adjustment are being overburdened with applications for which the planning boards are more suitable. Also, the falling of the applications under the "d." variance rather than the "c." variance

means that many more applications are subject to the requirement for approval that five out of the full authorized membership of seven on the board of adjustment must vote in favor of the variance for it to be approved. Even with provision for two alternate members, disqualification of board members from voting because of conflicts of interest and absences result frequently in situations in which only five or six members are present and applicants are reluctant to proceed. For truly major variances the five-vote requirement is justified but too many lesser variances are covered by this requirement now.

The solution is to broaden the c. variance by adding alternative criteria therefor and to limit the d. variance to major specific types of variances.

(3) Another amendment to subsection c. deletes confusing language situated between the end of the conferral of the hardship variance power and the beginning of the provisos to that power. This confusing language had been added by P. L. 1979, c. 216, which as a bill had been Senate Bill No. 1125 of 1978. The bill had proposed making all variances for conditional uses "d." variances. In rejecting this recommendation, the Legislature added at the end of the conferral of the hardship variance power in subsection c. the words "including a variance for a conditional use." Planning boards have the power to grant "c." variances when reviewing applications for conditional uses. The language to be deleted gave the impression that the developer who proposed a conditional use with a "c." variance had a choice of forums in applying for the "c." variance—either the planning board in the same application as the conditional use or a separate application to the board of adjustment. In line with the philosophy of one board or the other processing a proposed development but not both, the provision is being deleted in this bill. Thus it will be clear that a "c." variance for a conditional use falls exclusively within the jurisdiction of the planning board. Section 10 of this bill amends C. 40:55D-60 to allow the developer the option of submitting separate applications to the planning board on the conditional use aspect and the "c." variance.

(4) Technical amendments to provisos at the end of subsection c. are made to conform to changes made in subsection d.

(5) The concluding paragraph of P. L. 1975, c. 291, s. 57 (C. 40:55D-70) is amended to delete the specific reference to referral of board of adjustment applications to the planning board pursuant to P. L. 1975, c. 291, s. 17 (C. 40:55D-26) because of the amend-

ment made by section 7 of this bill to P. L. 1975, c. 291, s. 17 (C. 40:55D-26).

Section 13 amends P. L. 1975, c. 291, s. 63 (C. 40:55D-76) for reasons similar to "(5)" above for section 12.

Section 14 provides for the continuance of applications which were submitted prior to the effective date of this act.

Section 15 repeals P. L. 1980, c. 142 (C. 40:55D-73.1) for the reasons set forth in subsection (1) of the explanatory note on section 12.

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# OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001

Contact: PAUL WOLCOTT

609-292-6000, Ext. 285

TRENTON, N. J. 08625

Release: MONDAY, MARCH 26, 1984

MAR 26 1984

Governor Thomas H. Kean has signed the following bills:

185 W. State Street  
Trenton, N. J.

S-1058, sponsored by State Senator Edward T. O'Connor, Jr., D-Hudson, which increases the number of Superior Court judges in Hudson County from 14 to 16.

S-1430, sponsored by State Senator John A. Lynch, D-Middlesex, which gives the counties a temporary, one-year extension for certain budget cap exemptions which were recently disallowed by the Attorney General. The bill allows counties to continue to take an exemption for tax levies used to operate certain government-supported facilities such as county hospitals and nursing homes.

S-1461, sponsored by State Senator Walter Rand, D-Camden, which allows a budget cap exemption for Deptford Township to pay budget overexpenditures. The Township overspent its 1983 budget by approximately \$1.5 million. Without the exemption the payment of overexpenditures would have to be paid from within the cap, leaving the municipality without sufficient funds to pay other necessary obligations.

A-1169, sponsored by Assemblyman John P. Doyle, D-Ocean, which updates the Municipal Land Use Law. The bill incorporates into the law a series of technical amendments recommended by the Municipal Land Use Drafting Committee convened by the League of Municipalities. The amendment address such issues as variances from zoning ordinances, completeness of an application for development, resolutions stating reasons for approval or denial of an application for development and related areas.

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