

LEGISLATIVE HISTORY CHECKLIST

NJSA: 40:55D-2 et al "Municipal Land Use Law"--various amendments

LAWS OF: 1985 CHAPTER: 516

BILL NO: S2313

Sponsor(s): Stockman

Date Introduced: October 18, 1984

Committee: Assembly: Municipal Government

Senate: County and Municipal Government

Amended during passage: Yes Substituted for A3150 (not attached since identical to S2313). Amendments during passage denoted by asterisks.

Date of Passage: Assembly: January 13, 1986

Senate: May 2, 1985

Date of Approval: January 21, 1986

Following statements are attached if available:

Sponsor statement: Yes Attached: Assembly amendments, adopted 12-12-85

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: Yes

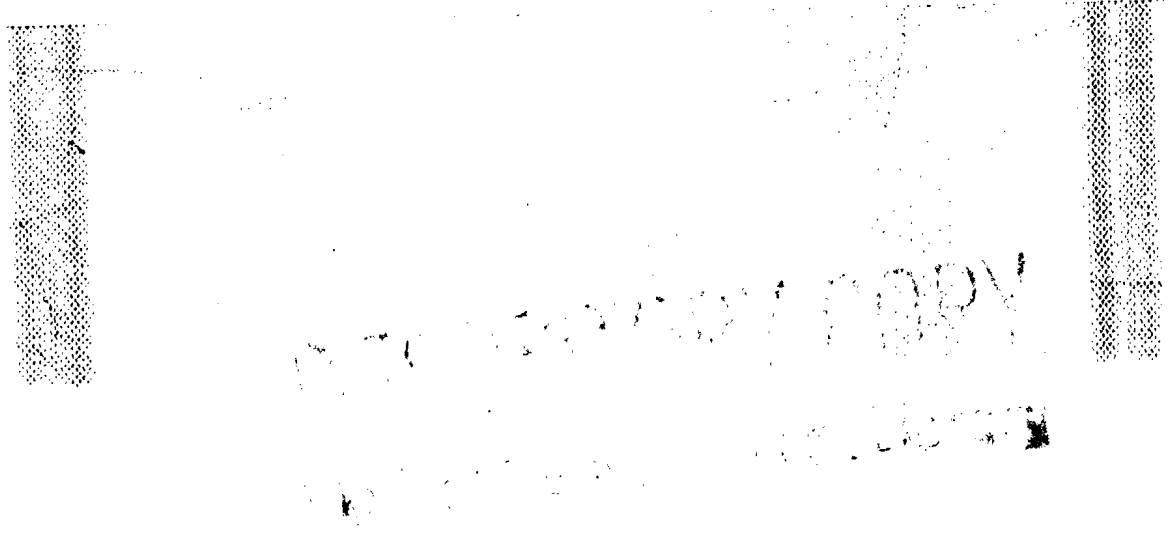
Hearings: No

Report, referred to in statements:

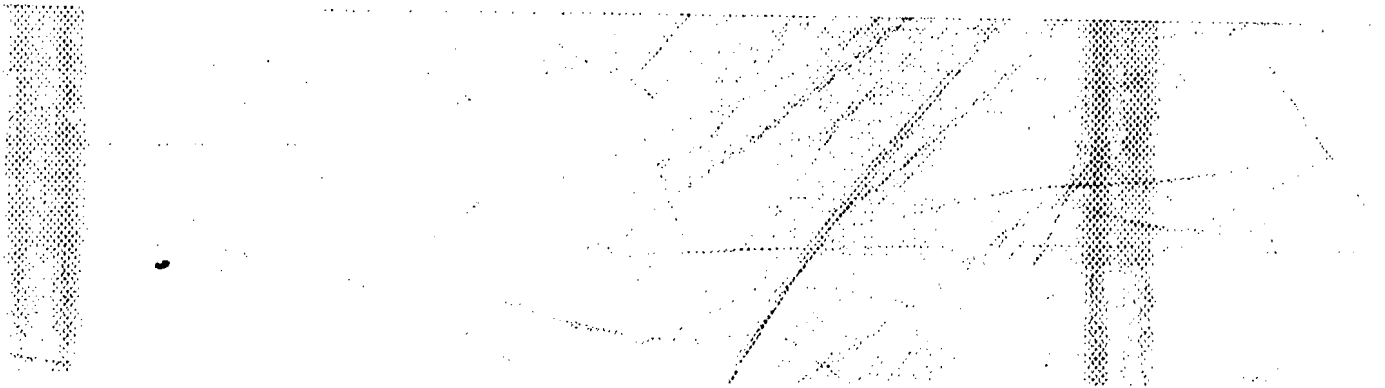
974.90 New Jersey. County and Municipal Government study Commission.
H673 Outlook for historic preservation in New Jersey ... 21st
1982L report, July, 1982. Trenton, 1982.
(see pp. 28-29)

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For further information re: Municipal Land Use Drafting Committee, contact Harry Maslow, 229 Emerson Lane, Berkeley Heights, N.J. 07922.



CHAPTER 516 LAWS OF N. J. 1985  
APPROVED 1-21-86

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SENATE, No. 2313

STATE OF NEW JERSEY

INTRODUCED OCTOBER 18, 1984

By Senator STOCKMAN

Referred to Committee on County and Municipal Government

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

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

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

3 2. Purpose of the act. It is the intent and purpose of this act:

4 a. To encourage municipal action to guide the appropriate use  
5 or development of all lands in this State, in a manner which will  
6 promote the public health, safety, morals, and general welfare;

7 b. To secure safety from fire, flood, panic and other natural and  
8 man-made disasters;

9 c. To provide adequate light, air and open space;

10 d. To ensure that the development of individual municipalities  
11 does not conflict with the development and general welfare of  
12 neighboring municipalities, the county and the State as a whole;

13 e. To promote the establishment of appropriate population densi-  
14 ties and concentrations that will contribute to the well-being of  
15 persons, neighborhoods, communities and regions and preservation  
16 of the environment;

17 use policies;

18 f. To encourage the appropriate and efficient expenditure of  
19 public funds by the coordination of public development with land

20 g. To provide sufficient space in appropriate locations for a  
21 variety of agricultural, residential, recreational, commercial and  
22 industrial uses and open space, both public and private, according

**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.

Matter enclosed in asterisks or stars has been adopted as follows:

\*—Senate committee amendments adopted December 13, 1984.

\*\*—Assembly committee amendments adopted December 5, 1985.

\*\*\*—Assembly amendment adopted December 12, 1985.

23 to their respective environmental requirements in order to meet  
24 the needs of all New Jersey citizens;

25 h. To encourage the location and design of transportation routes  
26 which will promote the free flow of traffic while discouraging loca-  
27 tion if such facilities and routes which result in congestion or  
28 blight;

29 i. To promote a desirable visual environment through creative  
30 development techniques and good civic design and arrangements;

31 j. To promote the conservation of *historic sites and districts*,  
32 open space, *energy resources* and valuable natural resources *in the*  
33 *State* and to prevent urban sprawl and degradation of the environ-  
34 ment through improper use of land;

35 k. To encourage planned unit developments which incorporate  
36 the best features of design and relate the type, design and layout  
37 of residential, commercial, industrial and recreational development  
38 to the particular site;

39 l. To encourage senior citizen community housing construction;

40 m. To encourage coordination of the various public and private  
41 procedures and activities shaping land development with a view  
42 of lessening the cost of such development and to the more efficient  
43 use of land; and

44 n. To promote [the conservation of energy through the use of  
45 planning practices designed to reduce energy consumption and to  
46 provide for maximum] utilization of renewable energy sources.

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

3 3.1. "Days" means calendar days.

4 "Density" means the permitted number of dwelling units per  
5 gross 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 preliminarily 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 quasi-criminal  
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.

67 "Governing body" means the chief legislative body of the mu-  
68 nicipality. In municipalities having a board of public works, "gov-  
69 erning body" means such board.】\*\*

69A *\*\*"Historic district" means one or more historic sites and inter-*  
69B *vening or surrounding property significantly affecting or affected*  
69C *by the quality and character of the historic site or sites.\*\**

70 "Historic site" means any 【building, structure, area or property  
71 that is significant in the history, architecture, archeology or culture  
72 of this State, its communities or the Nation and has been so desig-  
73 nated pursuant to this act】 *real property, man-made structure,*  
74 *natural object or configuration or any portion or group of the*  
75 *foregoing which have been formally designated in the master plan*  
76 *as being of historical, archeological, cultural, scenic or architectural*  
77 *significance.*

78 "Interested party" means (a) in a criminal or *\*\*【quasicrimi-*  
79 *nal】\*\* quasi-criminal\*\** proceeding, any citizen of the State of  
80 New Jersey; and (b) in the case of a civil proceeding in any court  
81 or in an administrative proceeding before a municipal agency, any  
82 person, whether residing within or without the municipality, whose  
83 right to use, acquire, or enjoy property is or may be affected by  
84 any action taken under this act, or whose rights to use, acquire, or  
85 enjoy property under this act, or under any other law of this State  
86 or of the United States have been denied, violated or infringed by  
87 an action or a failure to act under this act.

88 "Land" includes improvements and fixtures on, above or below  
89 the surface.

90 "Lot" means a designated parcel, tract or area of land estab-  
91 lished by a plat or otherwise as permitted by law and to be used,  
92 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 37d. 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 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 8 of P. L. 1979, c. 216 (C. 40:55D-10.1) is amended  
 2 to read as follows:

3 8. At the request of the developer, the planning board shall  
 4 grant an informal review of a concept plan for a development for  
 5 which the developer intends to prepare and submit an application  
 6 for development. [The developer shall not be required to submit]  
 7 *The amount of any fees for such an informal review shall be a*  
 8 *credit toward fees for reveiw of the application for development.*  
 9 The developer shall not be bound by any concept plan for which  
 10 review is requested, and the planning board shall not be bound by  
 11 any such review.

1 5. (New section) An applicant shall comply with the provisions  
 2 of this section whenever the applicant wishes to claim approval of

3 his application for development by reason of the failure of the  
4 municipal agency to grant or deny approval within the time period  
5 provided in the "Municipal Land Use Law," P. L. 1975, c. 291 (C.  
6 40:55D-1 et seq.) or any supplement thereto.

7 a. The applicant shall provide notice of the default approval to  
8 the municipal agency and to all those entitled to notice by personal  
9 service or certified mail of the hearing on the application for  
10 development; but for purposes of determining who is entitled to  
11 notice, the hearing on the application for development shall be  
12 deemed to have required public notice pursuant to subsection a. of  
13 section 7.1 of P. L. 1975, c. 291 (C. 40:55D-12).

14 b. The applicant shall arrange publication of a notice of the  
15 default approval in the official newspaper of the municipality, if  
16 there be one, or in a newspaper of general circulation in the  
17 municipality.

18 c. The applicant shall file an affidavit of proof of service and  
19 publication with the administrative officer, who in the case of a  
20 minor subdivision or final approval of a major subdivision, shall  
21 be the officer who issues certificates pursuant to section 35, sub-  
22 section b. of section 38 or subsection c. of section 63 of P. L. 1975,  
23 c. 291 (C. 40:55D-47; C. 40:55D-50; C. 40:55D-76), as the case  
24 may be.

1 6. Section 7.5 of P. L. 1975, c. 291 (C. 40:55D-16) is amended to  
2 read as follows:

3 7.5. Filing of ordinances. [The zoning, subdivision, site plan  
4 review ordinances or any revision or amendment thereto] *Develop-*  
5 *ment regulations, except for the official map, shall not take effect*  
6 *until a copy thereof shall be filed with the county planning board.*  
7 *A zoning ordinance or amendment or revision thereto which in*  
8 *whole or in part is inconsistent with or not designed to effectuate*  
9 *the land use plan element of the master plan shall not take effect*  
10 *until a copy of the resolution required by subsection a. of section*  
11 *49 of P. L. 1975, c. 291 (C. 40:55D-62) shall be filed with the county*  
12 *planning board. The secretary of the county planning board shall*  
13 *within 10 days of the date of receipt of a written request for copies*  
14 *of any [such ordinance] development regulation make such avail-*  
15 *able to the party so requesting with said secretary's certification*  
16 *that said copies are true copies and that all filed amendments and*  
17 *resolutions are included. A reasonable charge may be made by*  
18 *the county planning board for said copies.*

19 The official map of the municipality shall not take effect until  
20 filed with the county recording officer.

21 Copies of all development regulations and any revisions or



22 amendments thereto shall be filed and maintained in the office of  
23 the municipal clerk.

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

3 14. Planning board membership. a. The governing body may, by  
4 ordinance, create a planning board of seven or nine members. The  
5 membership shall consist of, for convenience in designating the  
6 manner of appointment, the four following classes:

7 Class I — the mayor or, in the case of the council-manager form  
8 of government pursuant to the "Optional Municipal Charter Law,"  
9 P. L. 1950, c. 210 (C. 40:69A-1 et seq.) or "The Municipal Manager  
10 Form of Government Law" (Subtitle 5 of Title 40 of the Revised  
11 Statutes), the manager, if so provided by the aforesaid ordinance.

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

22 Class III—a member of the governing body to be appointed by  
23 it, except that no member for Class III shall be appointed to the  
24 planning board if the governing body consists of only three mem-  
25 bers.

26 Class IV — other citizens of the municipality, to be appointed by  
27 the mayor or, in the case of the council-manager form of govern-  
28 ment pursuant to the "Optional Municipal Charter Law," P. L.  
29 1950, c. 210 (C. 40:69A-1 et seq.) or "The Municipal Manager Form  
30 of Government Law" (Subtitle 5 of Title 40 of the Revised  
31 Statutes), by the council, if so provided by the aforesaid ordinance.

32 The members of Class IV shall hold no other municipal office,  
33 *position or employment* except that in the case of nine-member  
34 boards, one such member may be a member of the zoning board of  
35 adjustment or *historic preservation commission*. No member of  
36 the board of education may be a Class IV member of the planning  
37 board, except that in the case of a nine-member board, one Class IV  
38 member may be a member of the board of education. If there be a  
39 municipal environmental commission, the member of the environ-  
40 mental commission who is also a member of the planning board, as  
41 required by section 1 of P. L. 1968, c. 245 (C. 40:56A-1), shall be

42 a Class IV planning board member, unless there be among the  
43 Class IV or alternate members of the planning board both a mem-  
44 ber of the zoning board of adjustment *or historic preservation*  
45 *commission* and a member of the board of education, in which case  
46 the member common to the planning board and municipal environ-  
47 mental commission shall be deemed a Class II member of the  
48 planning board. *For the purpose of this section, membership on*  
49 *a municipal board or commission whose function is advisory in*  
50 *nature, and the establishment of which is discretionary and not*  
51 *required by statute, shall not be considered the holding of municipal*  
52 *office.*

53 b. The term of the member composing Class I shall correspond  
54 to his official tenure. The terms of the members composing Class  
55 II and Class III shall be for one year or terminate at the comple-  
56 tion of their respective terms of office, whichever occurs first except  
57 for a Class II member who is also a member of the environmental  
58 commission. The term of a Class II or Class IV member who is  
59 also a member of the environmental commission shall be for three  
60 years or terminate at the completion of his term of office as a  
61 member of the environmental commission, whichever occurs first.  
62 The term of a Class IV member who is also a member of the board  
63 of adjustment, or board of education shall terminate whenever he  
64 is no longer a member of such other body or at the completion of  
65 his Class IV term, whichever occurs first. The terms of all Class  
66 IV members first appointed under this act shall be so determined  
67 that to the greatest practicable extent the expiration of such terms  
68 shall be distributed evenly over the first four years after their  
69 appointment; provided that the initial Class IV term of no member  
70 shall exceed four years. Thereafter, the Class IV term of each such  
70A member shall be four years. If a vacancy in any class shall occur  
71 otherwise than by expiration of the planning board term, it shall  
72 be filled by appointment, as above provided, for the unexpired  
73 term. No member of the planning board shall be permitted to act  
74 on any matter in which he has, either directly or indirectly, any  
75 personal or financial interest. Any member other than a Class I  
76 member, after a public hearing if he requests one, may be removed  
77 by the governing body for cause.

1 8. Section 16 of P. L. 1975, c. 291 (C. 40:55D-25) is amended to  
2 read as follows:

3 16. Powers of planning board. a. The planning board shall  
4 follow the provisions of this act and shall accordingly exercise its  
5 power in regard to:

6 (1) The master plan pursuant to article 3;

7 (2) Subdivision control and site plan review pursuant to article  
8 6;

9 (3) The official map pursuant to article 5;

10 (4) The zoning ordinance including conditional uses pursuant  
11 to article 8;

12 (5) The capital improvements program pursuant to article 4;

13 (6) Variances and certain building permits in conjunction with  
14 subdivision, site plan and conditional use approval pursuant to  
15 article 7.

16 b. The planning board may:

17 (1) Participate in the preparation and review of programs or  
18 plans required by State or Federal law or regulation;

19 (2) Assemble data on a continuing basis as part of a continuous  
20 planning process; and

21 (3) Perform such other advisory duties as are assigned to it  
22 by ordinance or resolution of the governing body for the aid and  
23 assistance of the governing body or other agencies or officers.

24 c. *In a municipality having a population of 2,500 or less, a nine-*  
25 *member planning board, if so provided by ordinance, shall exercise,*  
26 *to the same extent and subject to the same restrictions, all the*  
27 *powers of a board of adjustment; but the Class I and the Class III*  
28 *members shall not participate in the consideration of applications*  
29 *for development which involve relief pursuant to subsection d. of*  
30 *section 57 of P. L. 1975, c. 291 (C. 40:55D-70).*

1 9. (New section) Any application for development submitted to  
2 the board of adjustment pursuant to lawful authority before the  
3 effective date of an ordinance pursuant to subsection c. of section  
4 16 of P. L. 1975, c. 291 (C. 40:55D-25) may be continued at the  
5 option of the applicant, and the board of adjustment shall have  
6 every power which it possessed before the effective date of the  
7 ordinance in regard to the application.

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

3 17. a. Referral powers. 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 after  
6 referral, a report including **[recommendations concerning]**  
7 *identification of any provisions in the proposed development regula-*  
8 *tion, revision or amendment which are inconsistent with the master*  
9 *plan and recommendations concerning these inconsistencies and any*  
10 *other matters as the board deems appropriate.* The governing body,  
11 when considering the adoption of a development regulation, revision  
12 or amendment thereto, shall review the report of the planning board

13 and may disapprove or change any recommendation by a vote of a  
14 majority of its full authorized membership and shall record in its  
15 minutes the reasons for not following such recommendation.  
16 Failure of the planning board to transmit its report within the  
17 35-day period provided herein shall relieve the governing body from  
18 the requirements of this subsection in regard to the proposed  
19 development regulation, revision or amendment thereto referred to  
20 the planning board. *Nothing in this section shall be construed as*  
21 *diminishing the application of the provisions of section 23 of P. L.*  
22 *1975, c. 291 (C. 40:55D-32) to any official map or an amendment or*  
23 *revision thereto or of subsection a. of section 49 of P. L. 1975, c. 291*  
24 *(C. 40:55D-62) to any zoning ordinance or any amendment or*  
25 *revision thereto.*

26 b. The governing body may by ordinance provide for the refer-  
27 ence of any matter or class of matters to the planning board before  
28 final action thereon by a municipal body or municipal officer having  
29 final authority thereon, except for any matter under the jurisdiction  
30 of the board of adjustment. Whenever the planning board shall  
31 have made a recommendation regarding a matter authorized by  
32 this act to another municipal body, such recommendation may be  
33 rejected only by a majority of the full authorized membership of  
34 such other body.

1 11. Section 19 of P. L. 1975, c. 291 (C. 40:55D-28) is amended to  
2 read as follows:

3 **\*\***[19. Preparation; contents; modification. a. The planning  
4 board may prepare and, after public hearing, adopt or amend a  
5 master plan or component parts thereof, to guide the use of lands  
6 within the municipality in a manner which protects public health  
7 and safety and promotes the general welfare.

8 b. The master plan shall generally comprise a report or state-  
9 ment and land use and development proposals, with maps, diagrams  
10 and text, presenting, *at least the following elements (1) and (2)*  
11 *and, where appropriate, the following elements (3) through (11):*

12 (1) A statement of objectives, principles, assumptions, policies  
13 and standards upon which the constituent proposals for the  
14 physical, economic and social development of the municipality are  
15 based;

16 (2) A land use plan element (a) taking into account **[the other]**  
17 *and stating its relationship to the statement provided for in sub-*  
18 *section (1) hereof, and other master plan elements **[and]** provided*  
19 *for in subsections (3) through (11) hereof and natural conditions,*  
20 including, but not necessarily limited to, topography, soil conditions,  
21 water supply, drainage, flood plain areas, marshes, and woodlands;

22 (b) showing the existing and proposed location, extent and intensity  
23 of development of land to be used in the future for varying types  
24 of residential, commercial, industrial, agricultural, recreational,  
25 educational and other public and private purposes or [combina-  
26 tion] *combination* of purposes; and *stating the relationship thereof*  
27 *to the existing and any proposed zone plan and zoning ordinance,*  
28 and (c) showing the existing and proposed location of any airports  
29 and the boundaries of any airport hazard areas delineated pursuant  
30 to the "Air Safety and Hazardous Zoning Act of 1983," *P. L. 1983,*  
31 *c. 260 (C. 6:1-80 et seq.);* and (d) including a statement of the  
32 standards of population density and development intensity recom-  
33 mended for the municipality;

34 (3) A housing plan element, including, but not limited to, resi-  
35 dential standards and proposals for the construction and improve-  
36 ment of housing;

37 (4) A circulation plan element [showing the location and types  
38 of facilities for all modes of transportation required for] *designed*  
39 *to effectuate* the efficient movement of people and goods into, about,  
40 and through the municipality, *taking into account the functional*  
41 *highway classification system of the Federal Highway Administra-*  
42 *tion and the types, locations, conditions and availability of existing*  
43 *and proposed transportation facilities, including air, water, road*  
44 *and rail;*

45 (5) A utility service plan element analyzing the need for and  
46 showing the *present and* future general location of water supply  
47 and distribution facilities, drainage and flood control facilities,  
48 sewerage and waste treatment, solid waste disposal and provision  
49 for other related utilities *and including any storm water manage-*  
50 *ment plan required pursuant to the provisions of P. L. 1981, c. 32*  
51 *(C. 40:55D-93 et seq.);*

52 (6) A community facilities plan element showing the *existing*  
53 *and proposed* location and type of educational or cultural facilities,  
54 historic sites, libraries, hospitals, firehouses, police stations and  
55 other related facilities, including their relation to the surrounding  
56 areas;

57 (7) A recreation plan element showing a comprehensive system  
58 of areas and public sites for recreation;

59 (8) A conservation plan element providing for the preservation,  
60 conservation and utilization of natural resources, including, to the  
61 extent appropriate, *energy,* open space, water *supply,* forest, soil,  
62 marshes, wetlands, harbors, rivers and other waters, fisheries, wild-  
63 life and other [natural] resources, *and which systematically*  
64 *analyzes the impact of each other component and element of the*

65 *master plan on the present and future preservation, conservation*  
66 *and utilization of these resources;*

67 (9) [An energy conservation plan element which systematically  
68 analyzes the impact of each other component and element of the  
69 master plan on the present and future use of energy in the munici-  
70 pality, details specific measures contained in the other plan elements  
71 designed to reduce energy consumption, and proposes other  
72 measures that the municipality may take to reduce energy consump-  
73 tion and to provide for the maximum utilization of renewable  
74 energy sources; and]

75 *An economic plan element considering all aspects of economic*  
76 *development and sustained economic vitality, including (a) a*  
77 *comparison of the types of employment expected to be provided by*  
78 *the economic development to be promoted with the characteristics*  
79 *of the labor pool resident in the municipality and nearby areas and*  
80 *(b) an analysis of the stability and diversity of the economic*  
81 *development to be promoted;*

82 (10) *An historic preservation plan element indicating the loca-*  
83 *tion, significance, proposed utilization and means for preservation*  
84 *of historic sites; and*

85 [(10)] (11) Appendices or separate reports containing the  
86 technical foundation for the master plan and its constituent ele-  
87 ments.

88 c. The master plan and its plan elements may be divided into  
89 subplans and subplan elements projected according to periods of  
90 time or staging sequences.

91 d. The master plan shall include a specific policy statement in-  
92 dicating the relationship of the proposed development of the  
93 municipality, as developed in the master plan to (1) the master  
94 plans of contiguous municipalities, (2) the master plan of the  
95 county in which the municipality is located and (3) any compre-  
96 hensive guide plan pursuant to section 15 of P. L. 1961, c. 47 (C.  
97 13:1B-15.52).]\*\* \*\*19. Preparation; contents; modification.

98 a. The planning board may prepare and, after public hearing,  
99 adopt or amend a master plan or component parts thereof, to guide  
100 the use of lands within the municipality in a manner which protects  
101 public health and safety and promotes the general welfare.

102 b. The master plan shall generally comprise a report or state-  
103 ment and land use and development proposals, with maps, diagrams  
104 and text, presenting, *at least the following elements (1) and (2)*  
105 *and, where appropriate, the following elements (3) through (11):*

106 (1) A statement of objectives, principles, assumptions, policies  
107 and standards upon which the constituent proposals for the physi-

108 cal, economic and social development of the municipality are based;  
109 (2) A land use plan element (a) taking into account [the other]  
110 *and stating its relationship to the statement provided for in sub-*  
111 *section (1) hereof, and other master plan elements [and] provided*  
112 *for in subsections (3) through (11) hereof and natural conditions,*  
113 *including, but not necessarily limited to, topography, soil condi-*  
114 *tions, water supply, drainage, flood plain areas, marshes, and wood-*  
115 *lands; (b) showing the existing and proposed location, extent and*  
116 *intensity of development of land to be used in the future for vary-*  
117 *ing types of residential, commercial, industrial, agricultural, rec-*  
118 *reational, educational and other public and private purposes or*  
119 *combination of purposes; and stating the relationship thereof to*  
120 *the existing and any proposed zone plan and any proposed zone*  
121 *plan and zoning ordinance; and (c) showing the existing and pro-*  
122 *posed location of any airports and the boundaries of any airport*  
123 *hazard areas delineated pursuant to the "Air Safety and Hazardous*  
124 *Zoning Act of 1983," P. L. 1983, c. 260 (C. 6:1-80 et seq.); and (d)*  
125 *including a statement of the standards of population density and*  
126 *development intensity recommended for the municipality;*  
127 (3) A housing plan element pursuant to section 10 of P. L. 1985,  
128 c. 222 (C. 52:27D-310), including, but not limited to, residential  
129 standards and proposals for the construction and improvement of  
130 housing;  
131 (4) A circulation plan element showing the location and types of  
132 facilities for all modes of transportation required for the efficient  
133 movement of people and goods into, about, and through the munici-  
134 pality, *taking into account the functional highway classification*  
135 *system of the federal Highway Administration and the types, loca-*  
136 *tions, conditions and availability of existing and proposed trans-*  
137 *portation facilities, including air, water, road and rail;*  
138 (5) A utility service plan element analyzing the need for and  
139 showing the future general location of water supply and distribu-  
140 tion facilities, drainage and flood control facilities, sewerage and  
141 waste treatment, solid waste disposal and provision for other re-  
142 lated utilities, *and including any storm water management plan re-*  
143 *quired pursuant to the provisions of P. L. 1981, c. 32 (C. 40:55D-93*  
144 *et seq.);*  
145 (6) A community facilities plan element showing the *existing*  
146 *and proposal* location and type of educational or cultural facilities,  
147 historic sites, libraries, hospitals, firehouses, police stations and  
148 other related facilities, including their relation to the surrounding  
149 areas;

150 (7) A recreation plan element showing a comprehensive system  
151 of areas and public sites for recreation;

152 (8) A conservation plan element providing for the preservation,  
153 conservation, and utilization of natural resources, including, to the  
154 extent appropriate, *energy*, open space, water *supply*, forests, soil,  
155 marshes, wetlands, harbors, rivers and other waters, fisheries, *en-*  
156 *dangered or threatened species* wildlife and other [natural] *re-*  
157 *sources, and which systematically analyzes the impact of each other*  
158 *component and element of the master plan on the present and fu-*  
159 *ture presentation, conservation and utilization of those resources;*

160 (9) [An energy conservation plan element which systematically  
161 analyzes the impact of each other component and element of the  
162 master plan on the present and future use of energy in the mu-  
163 nicipality, details specific measures contained in the other plan  
164 elements designed to reduce energy consumption, and proposes  
165 other measures that the municipality may take to reduce energy  
166 consumption and to provide for the maximum utilization of re-  
167 newable energy sources; and] *An economic plan element consider-*  
168 *ing all aspects of economic development and sustained economic*  
169 *vitality, including (a) a comparison of the types of employment*  
170 *expected to be provided by the economic development to be pro-*  
171 *moted with the characteristics of the labor pool resident in the*  
172 *municipality and nearby areas and (b) an analysis of the stability*  
173 *and diversity of the economic development to be promoted;*

174 (10) *A historic preservation plan element (a) indicating the lo-*  
175 *cation, significance, proposed utilization and means for preserva-*  
176 *tion of historic sites and historic districts, and (b) identifying the*  
177 *standards used to assess worthiness for historic site or district*  
178 *designation; and*

179 [(10)] (11) Appendices or separate reports containing the tech-  
180 nical foundation for the master plan and its constituent elements.

181 c. The master plan and its plan elements may be divided into  
182 subplans and subplan elements projected according to periods of  
183 time or staging sequences.

184 d. The master plan shall include a specific policy statement in-  
185 dicating the relationship of the proposed development of the mu-  
186 nicipality, as developed in the master plan to (1) the master plans  
187 of contiguous municipalities, (2) the master plan of the county in  
188 which the municipality is located and (3) any comprehensive guide  
189 plan pursuant to section 15 of P. L. 1961, c. 47 (C. 13:1B-15.52).\*\*

1 12. Section 29 of P. L. 1975, c. 291 (C. 40:55D-38) is amended  
2 to read as follows:



3 29. Contents of ordinance. An ordinance requiring approval by  
4 the planning board of either subdivisions or site plans, or both,  
5 shall include the following:

6 a. Provisions, not inconsistent with other provisions of this act,  
7 for submission and processing of applications for development,  
8 including standards for preliminary and final approval and pro-  
9 visions for processing of final approval by stages or sections of  
10 development;

11 b. Provisions ensuring:

12 (1) Consistency of the layout or arrangement of the subdivision

14 (2) Streets in the subdivision or land development of sufficient  
13 or land development with the requirements of the zoning ordinance;  
15 width and suitable grade and suitably located to accommodate  
16 prospective traffic and to provide access for firefighting and emer-  
17 gency equipment to buildings and coordinated so as to compose  
18 a convenient system consistent with the official map, if any, and  
19 the circulation element of the master plan, if any, and so oriented  
20 as to permit, [within the limits of practicability and feasibility,]  
21 *consistent with the reasonable utilization of land*, the buildings  
22 constructed thereon to maximize solar gain; provided that no  
23 street of a width greater than 50 feet within the right-of-way  
24 lines shall be required unless said street constitutes an extension  
25 of an existing street of the greater width, or already has been  
26 shown on the master plan at the greater width, or already has  
27 been shown in greater width on the official map;

28 (3) Adequate water supply, drainage, shade trees, sewerage  
29 facilities and other utilities necessary for essential services to  
30 residents and occupants;

31 (4) Suitable size, shape and location for any area reserved for  
32 public use pursuant to section 32 of this act;

33 (5) Reservation pursuant to section 31 of this act of any open  
34 space to be set aside for use and benefit of the residents of  
35 planned development, resulting from the application of standards  
36 of density or intensity of land use, contained in the zoning  
37 ordinance, pursuant to subsection 52 c. of this act;

38 (6) Regulation of land designated as subject to flooding, pur-  
39 suant to subsection 52 e., to avoid danger to life or property;

40 (7) Protection and conservation of soils from erosion by wind  
41 or water or from excavation or grading; and

42 (8) Conformity with standards promulgated by the Commis-  
43 sioner of Transportation, pursuant to the "Air Safety and Hazard-  
44 ous Zoning Act of 1983," P. L. 1983, c. 260 (C. 6:1-80 *et seq.*), for  
45 any airport hazard areas delineated under that act;

46 c. Provisions governing the standards for grading, improvement  
 47 and construction of streets or drives and for any required walk-  
 48 ways, curbs, gutters, streetlights, shade trees, fire hydrants and  
 49 water, and drainage and sewerage facilities and other improve-  
 50 ments as shall be found necessary, and provisions ensuring that  
 51 such facilities shall be completed either prior to or subsequent to  
 52 final approval of the subdivision or site plan *\*\*by allowing the*  
 52A *posting of performance bonds by the developer\*\**.

53 d. Provisions ensuring that when a municipal zoning ordinance  
 54 is in effect, a subdivision or site plan shall conform to the applica-  
 55 ble provisions of the zoning ordinance, and where there is no  
 56 zoning ordinance, appropriate standards shall be specified in an  
 57 ordinance, pursuant to this article; and

58 e. Provisions ensuring performance in substantial accordance  
 59 with the final development plan; provided that the planning board  
 60 may permit a deviation from the final plan, if caused by change of  
 61 conditions beyond the control of the developer since the date of  
 62 final approval, and the deviation would not substantially alter the  
 63 character of the development or substantially impair the intent  
 64 and purpose of the master plan and zoning ordinance.

1 13. Section 49 of P. L. 1975, c. 291 (C. 40:55D-62) is amended  
 2 to read as follows:

3 **\*\*[49. Power to zone. a.** The governing body may adopt or amend  
 4 a zoning ordinance relating to the nature and extent of the uses  
 5 of land and of buildings and structures thereon. Such ordinance  
 6 shall be adopted after the planning board has adopted the land  
 7 use plan element of a master plan, and all of the provisions of  
 8 such zoning ordinance or any amendment or revision thereto shall  
 9 either be substantially consistent with the land use plan element  
 10 of the master plan or designed to effectuate such plan element;  
 11 provided that the governing body may adopt a zoning ordinance  
 12 or amendment or revision thereto which in whole or in part is in-  
 13 consistent with or not designed to effectuate the land use plan  
 14 element, but only by affirmative vote of a majority of the full  
 15 authorized membership of the governing body, with the reasons  
 16 of the governing body for so acting *set forth in a resolution and*  
 17 *recorded in its minutes when adopting such a zoning ordinance;*  
 18 and provided further that, notwithstanding anything aforesaid,  
 19 the governing body may adopt an interim zoning ordinance pur-  
 20 suant to subsection 77 b. of this act.

21 The zoning ordinance shall be drawn with reasonable considera-  
 22 tion to the character of each district and its peculiar suitability for  
 23 particular uses and to encourage the most appropriate use of land.  
 24 The regulations in the zoning ordinance shall be uniform throughout

25 each district for each class or kind of buildings or other structures  
26 or uses of land, including planned unit development, planned unit  
27 residential development and residential cluster, but the regulations  
28 in one district may differ from those in other districts.

29 b. No zoning ordinance and no amendment or revision to any  
30 zoning ordinance shall be submitted to or adopted by initiative or  
31 referendum.

32 c. The zoning ordinance shall provide for the regulation of any  
33 airport hazard areas delineated under the "Air Safety and Hazard-  
34 ous Zoning Act of 1983," P. L. 1983, c. 260 (C. 6:1-80 *et seq.*), in  
35 conformity with standards promulgated by the Commissioner of  
36 Transportation]\*\*.

36A \*\*49. Power to zone.

37 a. The governing body may adopt or amend a zoning ordinance  
38 relating to the nature and extent of the uses of land and of build-  
39 ings and structures thereon. Such ordinance shall be adopted after  
40 the planning board has adopted the land use plan element and the  
41 housing plan element of a master plan, and all of the provisions of  
42 such zoning ordinance or any amendment or revision thereto shall  
43 either be substantially consistent with the land use plan element  
44 and the housing plan element of the master plan or designed to  
45 effectuate such plan elements; provided that the governing body  
46 may adopt a zoning ordinance or amendment or revision thereto  
47 which in whole or part is inconsistent with or not designed to  
48 effectuate the land use plan element and the housing plan element,  
49 but only by affirmative vote of a majority of the full authorized  
50 membership of the governing body, with the reasons of the govern-  
51 ing body for so acting *set forth in a resolution and* recorded in its  
52 minutes when adopting such a zoning ordinance; and provided  
53 further that, notwithstanding anything aforesaid, the governing  
54 body may adopt an interim zoning ordinance pursuant to subsec-  
55 tion [77 b. of this act] *b. of section 64 of P. L. 1975, c. 291 (C.*  
56 *40:55D-77).*

57 The zoning ordinance shall be drawn with reasonable considera-  
58 tion to the character of each district and its peculiar suitability for  
59 particular uses and to encourage the most appropriate use of land.  
60 The regulations in the zoning ordinance shall be uniform through-  
61 out each district for each class or kind of buildings or other struc-  
62 tures or uses of land, including planned unit development, planned  
63 unit residential development and residential cluster, but the regu-  
64 lations in one district may differ from those in other districts.

65 b. No zoning ordinance and no amendment or revision to any  
66 zoning ordinance shall be submitted to or adopted by initiative or  
67 referendum.

68 c. The zoning ordinance shall provide for the regulation of any  
69 airport hazard areas delineated under the "Air Safety and Haz-  
70 arduous Zoning Act of 1983," P. L. 1983, c. 260 (C. 6:1-80 et seq.),  
71 in conformity with standards promulgated by the Commissioner  
72 of Transportation.\*\*

1 14. Section 52 of P. L. 1975, c. 291 (C. 40:55D-65) is amended  
2 to read as follows:

3 52. Contents of zoning ordinance. A zoning ordinance may:

4 a. Limit and restrict buildings and structures to specified districts  
5 and regulate buildings and structures according to their type and  
6 the nature and extent of their use, and regulate the nature and  
7 extent of the use of land for trade, industry, residence, open space  
8 or other purposes.

9 b. Regulate the bulk, height, number of stories, orientation, and  
10 size of buildings and the other structures, and require that  
11 buildings and structures use renewable energy sources, within the  
12 limits of practicability and feasibility, in certain places; the per-  
13 centage of lot or development area may be occupied by structures;  
14 lot sizes and dimensions; and for these purposes may specify  
15 floor area ratios and other ratios and regulatory techniques govern-  
16 ing the intensity of land use and the provision of adequate light  
17 and air, *including, but not limited to the potential for utilization of*  
18 *renewable energy sources.*

19 c. Provide districts for planned developments; provided that an  
20 ordinance providing for approval of subdivisions and site plans by  
21 the planning board has been adopted and incorporates therein the  
22 provisions for such planned developments in a manner consistent  
23 with article 6 of this act. The zoning ordinance shall establish  
24 standards governing the type and density, or intensity of land use,  
25 in a planned development. Said standards shall take into account  
26 that the density, or intensity of land use, otherwise allowable may  
27 not be appropriate for a planned development. The standards may  
28 vary the type and density, or intensity of land use, otherwise appli-  
29 cable to the land within a planned development in consideration of  
30 the amount, location and proposed use of common open space; the  
31 location and physical characteristics of the site of the proposed  
32 planned development; and the location, design and type of dwelling  
33 units and other uses. Such standards may, in order to encourage  
34 the flexibility of housing density, design and type, authorize a  
35 deviation in various residential clusters from the density, or inten-  
36 sity of use, established for an entire planned development. The  
37 standards and criteria by which the design, bulk and location of  
38 buildings are to be evaluated, shall be set forth in the zoning ordi-

39 nance and all standards and criteria for any feature of a planned  
40 development shall be set forth in such ordinance with sufficient  
41 certainty to provide reasonable criteria by which specific proposals  
42 for planned development can be evaluated.

43 d. Establish, for particular uses or classes of uses, reasonable  
44 standards of performance and standards for the provision of  
45 adequate physical improvements including, but not limited to, off-  
46 street parking and loading areas, marginal access roads and road-  
47 ways, other circulation facilities and water, sewerage and drainage  
48 facilities; provided that section 41 of this act shall apply to such  
49 improvements.

50 e. Designate and regulate areas subject to flooding (1) pursuant  
51 to P. L. 1972, c. 185 (C. 58:16A-55 et seq.) or (2) as otherwise  
52 necessary in the absence of appropriate flood hazard area designa-  
53 tions pursuant to P. L. 1962, c. 19 (C. 58:16A-50 et seq.) or flood-  
54 way regulations pursuant to P. L. 1972, c. 185 or minimum standards  
55 for local flood fringe area regulation pursuant to P. L. 1972, c. 185.

56 f. Provide for conditional uses pursuant to section 54 of this act.

57 g. Provide for senior citizen community housing.

58 h. Require that as a condition for any approval which is required  
59 pursuant to such ordinance and the provisions of this chapter, that  
60 no taxes or assessments for local improvements are due or de-  
61 linquent on the property for which any application is made.

62 i. *\*\*[Limit and restrict the use and alteration and encourage  
63 preservation and restoration of historic sites.]\*\* \*\*Designate  
64 historic sites or historic districts, regulate them and provide design  
65 criteria and guidelines for this regulation. Designation and regula-  
66 tion pursuant to this subsection shall be in addition to such  
67 designation and regulation as the zoning ordinance may otherwise  
68 provide.\*\**

1 15. Section 55 of P. L. 1975, c. 291 (C. 40:55D-68) is amended  
2 to read as follows:

3 55. Nonconforming structures and uses. Any nonconforming use  
4 or structure existing at the time of the passage of an ordinance  
5 may be continued upon the lot or in the structure so occupied and  
6 any such structure may be restored or repaired in the event of  
7 partial destruction thereof.

8 *The prospective purchaser, prospective mortgagee, or any other  
9 person interested in any land upon which a nonconforming use or  
10 structure exists may apply in writing for the issuance of a certifi-  
11 cate certifying that the use or structure existing before the  
12 adoption of the ordinance which rendered the use or structure  
13 nonconforming. The applicant shall have the burden of proof.*

14 *Application pursuant hereto may be made to the administrative*  
15 *officer within one year of the adoption of the ordinance which*  
16 *rendered the use or structure nonconforming or at any time to*  
17 *the board of adjustment. The administrative officer shall be en-*  
18 *titled to demand and receive for such certificate issued by him a*  
19 *reasonable fee not in excess of those provided in R. S. 54:5-14 and*  
20 *R. S. 54:5-15. The fees collected by the official shall be paid by*  
21 *him to the municipality. Denial by the administrative officer shall*  
22 *be appealable to the board of adjustment. Sections 59 through 62*  
23 *of P. L. 1979, c. 291 (C. 40:55D-72 to C. 40:55D-75) shall apply*  
24 *to applications or appeals to the board of adjustment.*

1 16. (New section) The board of adjustment shall, at least once  
2 a year, review its decisions on applications and appeals for vari-  
3 ances and prepare and adopt by resolution a report on its findings  
4 on zoning ordinance provisions which were the subject of variance  
5 requests and its recommendations for zoning ordinance amendment  
6 or revision, if any. The board of adjustment shall send copies of  
7 the report and resolution to the governing body and planning board.

1 17. (New section) a. In the case of any final decision of a re-  
2 gional planning board or regional zoning board of adjustment  
3 approving an application for development, the governing body of  
4 the municipality in which the land is situated which is the subject  
5 of the application for development may hear and decide an appeal  
6 by any interested party of this approval if the application for  
7 development is of a class of applications for development specified  
8 by ordinance as so subject to appeal. The appeal shall be made  
9 within 10 days of the date of publication of the final decision pur-  
10 suant to subsection i. of section 6 of P. L. 1975, c. 291 (C. 40:55D-10).  
11 The appeal to the governing body shall be made by serving the  
12 municipal clerk in person or by certified mail with a notice of  
13 appeal specifying the grounds thereof and the name and address  
14 of the appellant and name and address of his attorney, if repre-  
15 sented. The appeal shall be decided by the governing body only  
16 upon the record established before the regional board.

17 b. Notice of the meeting to review the record below shall be  
18 given by the governing body by personal service or certified mail  
19 to the appellant, to those entitled to notice of a decision pursuant  
20 to subsection h. of section 6 of P. L. 1975, c. 291 (C. 40:55D-10)  
21 and to the board from which the appeal is taken at least 10 days  
22 prior to the date of the meeting. The parties may submit oral and  
23 written argument on the record at the meeting, and the governing  
24 body shall provide for verbatim recording and transcripts of the

25 meeting pursuant to subsection f. of section 6 of P. L. 1975, c. 291  
26 (C. 40:55D-10).

27 c. The appellant shall, (1) within five days of service of the  
28 notice of the appeal pursuant to subsection a. hereof, arrange for  
29 a transcript pursuant to subsection f. of section 6 of P. L. 1975,  
30 c. 291 (C. 40:55D-10) for use by the governing body and pay a  
31 deposit of \$50.00 or the estimated cost of such transcription, which-  
32 ever is less, or (2) within 35 days of service of the notice of appeal,  
33 submit a transcript as otherwise arranged to the municipal clerk;  
34 otherwise, the appeal may be dismissed for failure to prosecute.

35 The governing body shall conclude a review of the record not  
36 later than 95 days from the date of publication of notice of the  
37 decision below pursuant to subsection i. of section 6 of P. L. 1975,  
38 c. 291 (C. 40:55D-10) unless the applicant consents in writing to  
39 an extension of the period. Failure of the governing body to hold  
40 a hearing and conclude a review of the record below and to render  
41 a decision within the specified period shall constitute a decision  
42 affirming the action of the board.

43 d. The governing body may reverse, remand, or affirm with or  
44 without the imposition of conditions the final decision of the re-  
45 gional board.

46 e. The affirmative vote of a majority of the full authorized  
47 membership of the governing body shall be necessary to reverse,  
48 remand, or affirm with or without conditions any final action of  
49 the regional board.

50 f. An appeal to the governing body shall stay all proceedings in  
51 furtherance of the action in respect to which the decision appealed  
52 from was made unless the board from whose action the appeal is  
53 taken certifies to the governing body, after the notice of appeal  
54 shall have been filed with the board, that by reasons of acts stated  
55 in the certificate a stay would, in its opinion, cause imminent peril  
56 to life or property. In such case, proceedings shall not be stayed  
57 other than by an order of the Superior Court on application upon  
58 notice to the board from whom the appeal is taken and on good  
59 cause shown.

60 g. The governing body shall mail a copy of the decision to the  
61 appellant or if represented then to his attorney, without separate  
62 charge, and for a reasonable charge to any interested party who  
63 has requested it, not later than 10 days after the date of the de-  
64 cision. A brief notice of the decision shall be published in the  
65 official newspaper of the municipality, if there is one, or in a news-  
66 paper of general circulation in the municipality. The publication  
67 shall be arranged by the applicant unless a particular municipal

68 officer is so designated by ordinance; but nothing contained herein  
 69 shall be construed as preventing the applicant from arranging the  
 70 publication if he so desires. The governing body may make a rea-  
 71 sonable charge for its publication. The period of time in which  
 72 an appeal to a court of competent jurisdiction may be made shall  
 73 run from the first publication, whether arranged by the munici-  
 74 pality or the applicant.

75 h. Nothing in this act shall be construed to restrict the right of  
 76 any party to obtain a review by any court of competent jurisdiction  
 77 according to law.

1 18. Section 76 of P. L. 1975, c. 291 (C. 40:55D-89) is amended to  
 2 read as follows:

3 76. Periodic reexamination. The governing body shall, at least  
 4 every six years, provide for a general reexamination of its master  
 5 plan and development regulations by the planning board which shall  
 6 prepare *and adopt by resolution* a report on the findings of such  
 7 reexamination, a copy of which *report and resolution* shall be sent  
 8 to the county planning board and the municipal clerks of each  
 9 adjoining municipality. **[The six-year period shall commence with**  
 10 **the adoption or termination of the last general reexamination of**  
 11 **such plan and regulations.]** The first such reexamination shall **[be**  
 12 **completed within six years after the effective date of this act]** *have*  
 13 *been completed by August 1, 1982. The next reexamination shall be*  
 14 *completed by August 1, 1988. Thereafter, a reexamination shall be*  
 15 *completed at least once every six years from the previous reexam-*  
 16 *ination.*

17 **[Such]** *The reexamination* report shall state:

18 a. The major problems and objectives relating to land develop-  
 19 ment in the municipality at the time of **[such adoption, last revision**  
 20 **or reexamination, if any]** *the adoption of the last reexamination*  
 21 *report.*

22 b. The extent to which such problems and objectives have been  
 23 reduced or have increased subsequent to such date.

24 c. The extent to which there have been significant changes in the  
 25 assumptions, policies and objectives forming the basis for **[such]**  
 26 *the master plan or development* regulations as last revised, with  
 27 particular regard to the density and distribution of population and  
 28 land uses, housing conditions, circulation, conservation of natural  
 29 resources, energy conservation, and changes in State, county and  
 30 municipal policies and objectives.

31 d. The specific changes recommended for **[such]** *the master plan*  
 32 *or development* regulations, if any, including underlying objectives,



33 policies and standards, or whether a new plan or regulations should  
34 be prepared.

1 19. (New section) The absence of the adoption by the planning  
2 board of a reexamination report pursuant to section 76 of P. L.  
3 1975, c. 291 (C. 40:55D-89) shall constitute a rebuttable presump-  
4 tion that the municipal development regulations are no longer  
5 reasonable.

1 20. Section 77 of P. L. 1975, c. 291 (C. 40:55D-90) is amended to  
2 read as follows:

3 77. Moratoriums; interim zoning. a. The prohibition of develop-  
4 ment in order to prepare a master plan and development regula-  
5 tions is prohibited.

6 b. [A municipality may adopt a reasonable interim zoning ordi-  
7 nance not related to the land use plan element of the municipal  
8 master plan without special vote as required pursuant to sub-  
9 section 49 a. of this act, pending the adoption of a new or sub-  
10 stantially revised master plan or new or substantially revised  
11 development regulations. Such interim zoning ordinances shall not  
12 be valid for a period longer than one year unless extended by ordi-  
13 nance for a period no longer than an additional year for good  
14 cause and upon the exercise of diligence in the preparation of a  
15 master plan, development regulations or substantial revisions  
16 thereto, as the case may be; provided, however, that, notwithstand-  
17 ing the provisions of this section or of any ordinance heretofore  
18 adopted pursuant to this section, any such extending ordinance in  
19 effect on January 31, 1979 shall be valid until May 31, 1979.] *No*  
20 *moratoria on applications for development or interim zoning*  
21 *ordinances shall be permitted except in cases where the municipality*  
22 *demonstrates on the basis of a written opinion by an \*\*[appropri-*  
23 *ate]\*\* \*\*qualified health\*\* professional that a clear \*\*[potential]\*\* \*\**  
24 *imminent danger to \*\*[health and safety]\*\* \*\*the health of the*  
25 *inhabitants of the municipality\*\* exists, and in no case shall the*  
26 *moratorium or interim ordinance exceed a six-month term. \*\*[Ex-*  
27 *tensions may be made only upon leave of court.])\*\**

1 21. (New section) a. The governing body may by ordinance  
2 provide for \*\*[an historic preservation body either by authorizing  
3 the chairman of the planning board to appoint an historic preser-  
4 vation committee of the planning board or by creating]\*\* an historic  
5 preservation commission.

6 b. Every historic preservation \*\*[body]\*\* \*\*commission\*\* shall  
7 include, in designating the category of appointment, *\*\*at least\*\**  
8 one member of each of the following classes:

9 Class A—a person who is knowledgeable in building design and  
10 construction or architectural history and who may reside outside  
11 the municipality; and

12 Class B—a person who is knowledgeable or with a demonstrated  
13 interest in, local history and who may reside outside the munici-  
14 pality.

15 c. **[An]** *A* historic preservation commission shall consist  
16 of five, seven or nine regular members and may have not more than  
17 two alternate members. *Of the regular members a total of at*  
17A *least one less than a majority shall be of Classes A and B.*

18 Those regular members who are not designated as Class A or B  
19 shall be designated as Class C. Class C members shall be citizens  
20 of the municipality who shall hold no other municipal office, position  
21 or employment except **[that one may be a member of the planning**  
22 **board]** *for membership on the planning board or board of*  
22A *adjustment*.

23 Alternate members shall meet the qualifications of Class C mem-  
24 bers. The **[appointing authority]** *mayor or, if so specified by*  
25 *ordinance, the chairman of the planning board* shall appoint all  
26 members of the commission and shall designate at the time of ap-  
27 pointment the regular members by class and the alternate members  
28 as "Alternate No. 1" and "Alternate No. 2." The terms of the mem-  
29 bers first appointed under this act shall be so determined that to the  
30 greatest practicable extent, the expiration of the terms shall be dis-  
31 tributed, in the case of regular members, evenly over the first four  
31A years after their appointment, and in the case of alternate members,  
32 evenly over the first two years after their appointment; provided  
33 that the initial term of no regular member shall exceed four years  
34 and that the initial term of no alternate member shall exceed two  
35 years. Thereafter, the term of a regular member shall be four  
36 years; and the term of an alternate member shall be two years.  
37 A vacancy occurring otherwise than by expiration of term shall be  
38 filled for the unexpired term only. Notwithstanding any other pro-  
39 vision herein, the term of any member common to the historic  
40 preservation commission and the planning board shall be for the  
41 terms of membership on the planning board; *and the term of any*  
41A *member common to the historic preservation commission and the*  
41B *board of adjustment shall be for the term of membership on the*  
41C *board of adjustment*.

42 The historic preservation commission shall elect a chairman and  
43 vice-chairman from its members and select a secretary who may or  
44 may not be a member of the historic preservation commission or  
45 a municipal employee.

46 Alternate members may participate in discussions of the pro-  
 47 ceedings but may not vote except in the absence or disqualification  
 48 of a regular member. A vote shall not be delayed in order that a  
 49 regular member may vote instead of an alternate member. In the  
 50 event that a choice must be made as to which alternate member  
 51 is to vote, Alternate No. 1 shall vote.

52 **\*\*[d. Every historic preservation committee of the planning**  
 53 **board shall consist of five members—three members of the board**  
 54 **and a Class A and a Class B member. Appointments shall be made**  
 55 **annually. Alternate members may be appointed by the board chair-**  
 56 **men from the board membership to substitute for committee mem-**  
 57 **bers who are board members.]\*\***

58 **\*\*[e.]\*\* *d.*** No member of any historic preservation  
 59 **\*\*[body]\*\* *commission*** shall be permitted to act on any  
 60 matter in which he has, either directly or indirectly, any per-  
 61 sonal or financial interest.

62 **\*\*[f.]\*\* *e.*** A member of **\*\*[an]\*\* *a*** historic preserva-  
 63 tion body may, after public hearing if he requests it, be removed  
 64 by the governing body for cause.

1 22. (New section) a. The governing body shall make provision in  
 2 its budget and appropriate funds for the expenses of the historic  
 3 preservation commission.

4 b. The historic preservation commission may employ, contract  
 5 for, and fix the compensation of experts and other staff and services  
 6 as it shall deem necessary. The commission shall obtain its legal  
 7 counsel from the municipal attorney at the rate of compensation  
 8 determined by the governing body. Expenditures pursuant to this  
 9 subsection shall not exceed, exclusive of gifts or grants, the amount  
 10 appropriated by the governing body for the commission's use.

1 23. (New section) The historic preservation **\*\*[body]\*\* *com-***  
 2 ***mission*** shall have the responsibility to:

3 a. Prepare a survey of historic sites of the municipality **\*\*pur-**  
 3A ***suant to criteria identified in the survey report***.

4 b. Make recommendations to the planning board on the historic  
 5 preservation plan element of the master plan and on the implications  
 6 for preservation of historic sites of any other master plan elements;

7 c. Advise the planning board on the inclusion of historic sites in  
 8 the recommended capital improvement program;

9 d. Advise the planning board and board of adjustment on appli-  
 10 cations for development **\*\*pursuant to section 24 of this amendatory**  
 10A ***and supplementary act***;

11 e. Provide **\*\*[the administrative officer with]\*\*** written reports  
 12 ***pursuant to section 25 of this amendatory and supplementary***

13 *act*\*\* on the application of the zoning ordinance provisions con-  
 13A cerning historic preservation; and

14 f. Carry out such other advisory, educational and informational  
 15 functions as will promote historic preservation in the municipality.

1 24. (New section) The planning board and board of adjustment  
 2 shall make available to the historic preservation **\*\*[body]\*\*** *\*\*com-*  
 3 *mission\*\** an informational copy of every application submitted to  
 4 either board for development in historic zoning districts or on his-  
 5 toric sites designated on the zoning or official map or in any com-  
 6 ponent element of the master plan. Failure to make the informa-  
 7 tional copy available shall not invalidate any hearing or proceeding.  
 8 The historic preservation **\*\*[body]\*\*** *\*\*commission\*\** may provide  
 9 its advice which shall be conveyed through its delegation of one of  
 10 its members *\*\*or staff\*\** to testify orally at the hearing on the  
 11 application *\*\*and to explain any written report which may have*  
 12 *been submitted\*\**.

1 25. (New section) **\*\*[The]\*\*** *\*\*If the zoning ordinance desig-*  
 2 *nates and regulates historic sites or districts pursuant to subsection*  
 3 *i. of section 52 of P. L. 1975, c. 291 (C. 40:55D-65), the\*\** govern-  
 4 ing body **\*\*[may]\*\*** *\*\*shall\*\** by ordinance provide for reference  
 5 of applications for issuance of permits pertaining to historic  
 6 sites or property in historic districts to the historic preservation  
 7 **\*\*[body]\*\*** *\*\*commission\*\** for a written report on the application  
 8 of the zoning ordinance provisions concerning historic preserva-  
 9 tion to any of those aspects of the change proposed which aspects  
 10 were not determined by approval of an application for development  
 11 by a municipal agency pursuant to the "Municipal Land Use Law,"  
 12 P. L. 1975, c. 291 (C. 40:55D-1 et seq.). *\*\*The historic preserva-*  
 13 *tion commission shall submit its report either to the administrative*  
 14 *officer or the planning board, as specified by ordinance. If the*  
 15 *ordinance specifies the submission of the historic preservation com-*  
 16 *mission's report to the planning board, the planning board shall*  
 17 *report to the administrative officer.\*\**

18 **\*\*[The historic preservation body shall report within 10 days**  
 19 **from its receipt of the referred application. If the historic pre-**  
 20 **servation body fails to report within the 10-day period, the historic**  
 21 **preservation body shall be deemed to have reported in favor of**  
 22 **issuance of the permit and without the recommendation of con-**  
 23 **ditions to the permit.]\*\*** *\*\*The historic preservation commission*  
 24 *or the planning board, as the case may be, shall report to the*  
 25 *administrative officer within 45 days of his referral of the applica-*  
 26 *tion to the historic preservation commission. If within the 45-day*

27 *period the historic preservation commission or the planning board,*  
28 *as the case may be, recommends to the administrative officer against*  
29 *the issuance of a permit or recommends conditions to the permit*  
30 *to be issued, the administrative officer shall deny issuance of the*  
31 *permit or include the conditions in the permit, as the case may be.*  
32 *Failure to report within the 45-day period shall be deemed to con-*  
33 *stitute a report in favor of issuance of the permit and without the*  
34 *recommendation of conditions to the permit.\*\**

1 26. (New section) The word "landmark" may substitute, in any  
2 ordinance, resolution, determination or official action pursuant to  
3 the "Municipal Land Use Law" (C. 40:55D-1 et seq.) and this  
4 amendatory and supplementary act, for "historic," "historic preser-  
5 vation" and "historic site."

1 \*27. Section 56 of P. L. 1975, c. 291 (C. 40:55D-69) is amended to  
2 read as follows:

3 56. Zoning board of adjustment. Upon the adoption of a zoning  
4 ordinance, the governing body shall create, by ordinance, a zoning  
5 board of adjustment **[which]** *unless the municipality is eligible for,*  
6 *and exercises, the option provided by subsection c. of section 16 of*  
7 *P. L. 1975, c. 291 (C. 40:55D-25). A zoning board of adjustment*  
8 *shall consist of seven regular members and \*\*[which]\*\* may have*  
9 *not more than two alternate members. Notwithstanding the pro-*  
10 *visions of any other law or charter heretofore adopted, such ordin-*  
11 *ance shall provide the method of appointment of all such members.*  
12 *Alternate members shall be designated at the time of appointment by*  
13 *the authority appointing them as "Alternate No. 1" and "Alternate*  
14 *No. 2." The terms of the members first appointed under this act*  
15 *shall be so determined that to the greatest practicable extent, the*  
16 *expiration of such terms shall be distributed, in the case of regular*  
17 *members, evenly over the first four years after their appointment,*  
18 *and in the case of alternate members, evenly over the first two years*  
19 *after their appointment; provided that the initial term of no*  
20 *regular member shall exceed four years and that the initial term of*  
21 *no alternate member shall exceed two years. Thereafter, the term*  
22 *of each regular member shall be four years; and the term of each*  
23 *alternate member shall be two years. No member may hold any*  
24 *elective office or position under the municipality. No member of the*  
25 *board of adjustment shall be permitted to act on any matter in which*  
26 *he has, either directly or indirectly, any personal or financial*  
27 *interest. A member may, after public hearing if he requests it, be*  
28 *removed by the governing body for cause. A vacancy occurring*  
29 *otherwise than by expiration of term shall be filled for the unexpired*  
30 *term only.*

31 The board of adjustment shall elect a chairman and vice-chair-  
32 man from its members and select a secretary who may or may not  
33 be a member of the board of adjustment or a municipal employee.

34 Alternate members may participate in discussions of the pro-  
35 ceedings but may not vote except in the absence or disqualification  
36 of a regular member. A vote shall not be delayed in order that a  
37 regular member may vote instead of an alternate member. In the  
38 event that a choice must be made as to which alternate member is  
39 to vote, Alternate No. 1 shall vote.\*

1 \*~~[27.]~~\* \*28.\* This act shall take effect 60 days following enact-  
2 ment.

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10 The historic preservation body shall report within 10 days from  
11 its receipt of the referred application. If the historic preservation  
12 body fails to report within the 10-day period, the historic preserva-  
13 tion body shall be deemed to have reported in favor of issuance  
14 of the permit and without the recommendation of conditions to  
15 the permit.

1 26. (New section) The word "landmark" may substitute, in any  
2 ordinance, resolution, determination or official action pursuant to  
3 the "Municipal Land Use Law" (C. 40:55D-1 et seq.) and this  
4 amendatory and supplementary act, for "historic," "historic preser-  
5 vation" and "historic site."

1 27. This act shall take effect 60 days following enactment.

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#### STATEMENT

This 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, the 1979 comprehensive amendments thereto, and the 1984 amendments 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. This bill completes the recent work of the committee. The committee has been monitoring the working of the Municipal Land Use Law, including review of reported as well as some unreported decisions by the courts on the law. It also invited and reviewed the comments of local officials and other concerned citizens on their experiences under the law.

This bill represents the conclusions of the Drafting Committee on historic preservation and other matters.

The contents of the bill are as follows:

Section 1 amends P. L. 1975, c. 291, s. 2 (C. 40:55D-2) to (1) broaden the conservation subsection of the purposes section of the law to include historic sites and districts and (2) readjust the language on energy by including energy in the conservation subsection and by clarifying that utilization of renewable energy sources is not, strictly speaking, conservation of energy.

Section 2 amends P. L. 1975, c. 291, s. 3.1 (C. 40:55D-4) to add a new definition of "historic site," derived from a report of the County and Municipal Government Study Commission, to substitute for the current definition in the law.

Section 3 amends P. L. 1975, c. 291, s. 5 (C. 40:55D-9) to broaden the application of the provision that the failure of a motion to receive the number of votes required to approve an application for development, results in a denial of the application. The restriction to be deleted prevented the application of the provision to tie votes on those types of applications which require for approval only the favorable vote of a majority of the board members present and voting, rather than a majority of the full authorized membership of the board.

Section 4 amends P. L. 1979, c. 216, s. 8 (C. 40:55D-10.1) to allow the municipality to charge a fee for informal review of a concept plan but the amount of this fee is made a credit toward fees for review of the formal application. This change will encourage the municipal board to obtain its own independent professional planning review of the proposed development at the stage at which it can be of the greatest benefit but at the same time recognizes the functional relationship of concept review in making easier review of the formal application.

Section 5 (new) requires the developer to provide notice to owners of neighboring properties and certain others whenever the developer intends to claim an approval of his application for development by reason of the failure of the municipal board to make a decision on the application within the time period provided by statute. This will also answer certain of the questions raised by *Lizak v. Faria*, 191 N. J. Super. 10. and facilitate the orderly taking of appeals.

Section 6 amends P. L. 1975, c. 291, s. 7.5 (C. 40:55D-16) to require the filing with the county planning board of the resolution of the governing body which states the reasons for adopting any zoning ordinance with provisions which are inconsistent with the land use element of the master plan.

Section 7 amends P. L. 1975, c. 291, s. 14 (C. 40:55D-23) to (1) clarify that Class IV planning board members are to be otherwise entirely independent of the municipal government except for the exceptions stated, (2) allow a member of the historic preservation commission to serve as a Class IV member on a nine-member planning board if there is no Class IV member who is also a member of the board of adjustment and (3) clarify that members of municipal boards and commissions which are strictly advisory, and the establishment of which is not required by statute, may be appointed as Class IV planning board members.

Section 8 amends P. L. 1975, c. 291, s. 16 (C. 40:55D-25) to allow



a municipality with a population of 2,500 or less to confer by ordinance all the powers of a zoning board of adjustment upon a nine-member planning board. However, the mayor and governing body member are prohibited from participating if a "d." or "special reasons" variance is under consideration.

Section 9 (new) provides for the continuance of applications which were submitted to the board of adjustment prior to the effective date of an ordinance pursuant to section 5.1 above.

Section 10 amends P. L. 1975, c. 291, s. 17 (C. 40:55D-26) to clarify that the planning board's report to the governing body on proposed development regulations is to include identification of, and recommendations concerning, any proposed provisions which are inconsistent with the master plan. Failure of the planning board to identify an inconsistency does not relieve the governing body of its obligations regarding inconsistencies under other sections of the Municipal Land Use Law.

Section 11 amends P. L. 1975, c. 291, s. 19 (C. 40:55D-28) to (1) expressly require that every municipal master plan include at least a land use plan element and a statement of the objectives, principles, assumptions, policies and standards upon which the master plan is based, (2) require that the land use plan element include statements indicating the element's relationship to the rest of the master plan and natural conditions and to the existing and any proposed zone plan and zoning ordinance, (3) restructure the language on the circulation plan element, including the addition of reference to the functional highway classification system of the federal Highway Administration, (4) include any storm water management plan within the utility service plan element, (5) replace the provisions for an energy conservation plan element with the appropriate changes in the language providing for a conservation plan element, and (6) provide for an economic plan element and an historic preservation plan element.

Section 12 amends P. L. 1975, c. 291, s. 29 (C. 40:55D-38), regarding the requirement that new streets be so oriented as to permit the buildings to be constructed thereon to maximize solar gain. The existing qualification to this requirement is replaced to provide more flexibility and to move in the direction of common sense.

Section 13 amends P. L. 1975, c. 291, s. 49 (C. 40:55D-62) to require the setting forth in a resolution of the reasons of the governing body for adopting a zoning ordinance or amendment

which is inconsistent with the land use plan element of the master plan.

Section 14 amends P. L. 1975, c. 291, s. 52 (C. 40:55D-65) to (1) relate the concept of utilization of renewable energy resources in a more appropriate way to zoning and (2) add protection of historic sites to the list of possible types of contents of a zoning ordinance.

Section 15 amends P. L. 1975, c. 291, s. 55 (C. 40:55D-68) to expressly provide the opportunity to parties with an interest in a use or structure which does not conform to the zoning ordinance, to obtain a ruling from the board of adjustment, and in certain instances an administrative officer, whether or not the use or structure preexisted the zoning and is therefore lawful.

Section 16 (new) requires an annual report by the board of adjustment to the governing body and the planning board on variances, including any recommendations for amendments to the zoning ordinance.

Section 17 (new) allows the governing body of a municipality which has entered into a joint agreement with one or more other municipalities for the establishment of a regional planning board or board of adjustment to hear appeals of approvals by the regional board of applications for development of whatever classes of application the governing body specifies by ordinance.

Section 18 amends P. L. 1975, c. 291, s. 76 (C. 40:55D-89) to clarify the provisions on periodic reexamination of the master plan and development regulations.

Section 19 (new) creates a conditional sanction for failure to make the periodic reexamination.

Section 20 amends section 77 of P. L. 1975, c. 291 (C. 40:55D-90) to replace the provisions on interim zoning ordinances with other provisions which pertain also to moratoria on applications for development.

Section 21 (new) expressly provides for the creation of an historic preservation body, either an historic preservation commission or an historic preservation committee of the planning board, at the option of the governing body.

Section 22 (new) provides for the expenses of and staff and professional services for, an historic preservation commission.

Section 23 (new) lists the responsibilities of the historic preservation body.

Section 24 (new) provides for the advice of the historic preservation body to the planning board and board of adjustment on applications which involve historic preservation.

Section 25 (new) provides for written reports by the historic preservation body to the administrative officer on the application of zoning ordinance provisions concerning historic preservation.

Section 26 (new) allows the term "landmark" to be substituted for "historic," "historic preservation" and "historic site," at the option of the municipality.

Section 27 is the effective date.

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SENATE COUNTY AND MUNICIPAL GOVERNMENT  
COMMITTEE

STATEMENT TO  
**SENATE, No. 2313**  
with Senate committee amendments

**STATE OF NEW JERSEY**

DATED: DECEMBER 13, 1984

Senate Bill No. 2313 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," P. L. 1975, c. 291 (C. 40:55D-1 et seq.), the 1979 comprehensive amendments thereto, and the 1984 amendments 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. This bill completes the recent work of the committee. The committee has been monitoring the working of the "Municipal Land Use Law," including review of reported, as well as some unreported decisions by the courts on that law. It also invited and reviewed the comments of local officials and other concerned citizens on their experiences under the law. The contents of the bill, as referred to the committee, are as follows:

Section 1 amends section 2 of P. L. 1975, c. 291 (C. 40:55D-2) to (1) broaden the conservation subsection of the purposes section of the law to include historic sites and districts, and (2) readjust the language on energy by including energy in the conservation subsection and by making clear that utilization of renewable energy sources is not, strictly speaking, conservation of energy.

Section 2 amends section 3.1 of P. L. 1975, c. 291 (C. 40:55D-4) to add a new definition of "historic site," derived from a report of the County and Municipal Government Study Commission, to substitute for the current definition in the law.

Section 3 amends section 5 of P. L. 1975, c. 291 (C. 40:55D-9) to broaden the application of the provision that the failure of a motion to receive the number of votes required to approve an application for development results in a denial of the application. The restriction to be deleted prevented the application of the provision to tie votes on those types of applications which require for approval only the favor-

able vote of a majority of the board members present and voting, rather than a majority of the full authorized membership of the board.

Section 4 amends section 8 of P. L. 1979, c. 216 (C. 40:55D-10.1) to allow the municipality to charge a fee for informal review of a concept plan, but the amount of this fee is made a credit toward fees for review of the formal application. This change will encourage the municipal board to obtain its own independent professional planning review of the proposed development at the stage at which it can be of the greatest benefit, but at the same time recognizes the functional relationship of concept review in making easier review of the formal application.

Section 5 adds a new section that requires the developer to provide notice to owners of neighboring properties and certain others whenever the developer intends to claim an approval of his application for development by reason of the failure of the municipal board to make a decision on the application within the time period provided by statute. This will also answer certain of the questions raised by *Lizak v. Faria*, 191 N. J. Super. 10 (1983) and facilitate the orderly taking of appeals.

Section 6 amends section 7.5 of P. L. 1975, c. 291 (C. 40:55D-16) to require the filing with the county planning board of the resolution of the governing body which states the reasons for adopting any zoning ordinance with provisions which are inconsistent with the land use element of the master plan.

Section 7 amends section 14 of P. L. 1975, c. 291 (C. 40:55D-23) to (1) clarify that Class IV planning board members are to be otherwise entirely independent of the municipal government except for the exceptions stated, (2) allow a member of the historic preservation commission to serve as a Class IV member on a nine-member planning board if there is no Class IV member who is also a member of the board of adjustment, and (3) make clear that members of municipal boards and commissions which are strictly advisory, and the establishment of which is not required by statute, may be appointed as Class IV planning board members.

Section 8 amends section 16 of P. L. 1975, c. 291 (C. 40:55D-25) to allow a municipality with a population of 2,500 or less to confer by ordinance all the powers of a zoning board of adjustment upon a nine-member planning board. However, the mayor and governing body member are prohibited from participating if a "d." or "special reasons" variance is under consideration.

Section 9 adds a new section that provides for the continuance of applications which were submitted to the board of adjustment prior to the effective date of an ordinance pursuant to section 5.1 above.

Section 10 amends section 17 of P. L. 1975, c. 291 (C. 40:55D-26) to make clear that the planning board's report to the governing body on

proposed development regulations is to include identification of, and recommendations concerning, any proposed provisions which are inconsistent with the master plan. Failure of the planning board to identify an inconsistency does not relieve the governing body of its obligations regarding inconsistencies under other sections of the "Municipal Land Use Law."

Section 11 amends section 19 of P. L. 1975 c. 291 (C. 40:55D-28) to (1) expressly require that every municipal master plan include at least a land use plan element and a statement of the objectives, principles, assumptions, policies and standards upon which the master plan is based, (2) require that the land use plan element include statements indicating the element's relationship to the rest of the master plan and natural conditions and to the existing, and any proposed, zone plan and zoning ordinance, (3) restructure the language on the circulation plan element, including the addition of a reference to the functional highway classification system of the federal Highway Administration, (4) include any storm water management plan within the utility service plan element, (5) replace the provisions for an energy conservation plan element with the appropriate changes in the language providing for a conservation plan element, and (6) provide for an economic plan element and an historic preservation plan element.

Section 12 amends section 29 of P. L. 1975, c. 291 (C. 40:55D-38), regarding the requirement that new streets be so oriented as to permit the buildings to be constructed thereon to maximize solar gain. The existing qualification to this requirement is replaced to provide more flexibility and to move in the direction of common sense.

Section 13 amends section 49 of P. L. 1975, c. 291 (C. 40:55D-62) to require the setting forth in a resolution of the reasons of the governing body for adopting a zoning ordinance or amendment which is inconsistent with the land use plan element of the master plan.

Section 14 amends section 52 of P. L. 1975, c. 291 (C. 40:55D-65) to (1) relate the concept of utilization of renewable energy resources in a more appropriate way to zoning, and (2) add protection of historic sites to the list of possible types of contents of a zoning ordinance.

Section 15 amends section 55 of P. L. 1975, c. 291 (C. 40:55D-68) to expressly provide the opportunity to parties with an interest in a use or structure which does not conform to the zoning ordinance to obtain a ruling from the board of adjustment and, in certain instances, from an administrative officer, whether or not the use or structure was in existence before the zoning and is, therefore, lawful.

Section 16 adds a new section that requires an annual report by the board of adjustment to the governing body and the planning board on

variances, including any recommendations for amendments to the zoning ordinance.

Section 17 adds a new section that allows the governing body of a municipality which has entered into a joint agreement with one or more other municipalities for the establishment of a regional planning board or board of adjustment to hear appeals of approvals by the regional board of applications for development of whatever classes of application the governing body specifies by ordinance.

Section 18 amends section 76 of P. L. 1975, c. 291 (C. 40:55D-89) to clarify the provisions on periodic reexamination of the master plan and development regulations.

Section 19 adds a new section that creates a conditional sanction for failure to make the periodic reexamination.

Section 20 amends section 77 of P. L. 1975, c. 291 (C. 40:55D-90) to replace the provisions on interim zoning ordinances with other provisions which pertain also to moratoria on applications for development.

Section 21 adds a new section that expressly provides for the creation of an historic preservation body, either an historic preservation commission or an historic preservation committee of the planning board, at the option of the governing body.

Section 22 adds a new section that provides for the expenses of, and staff and professional services for, an historic preservation commission.

Section 23 lists the responsibilities of the historic preservation body.

Section 24 adds a new section that provides for the advice of the historic preservation body to the planning board and board of adjustment on applications which involve historic preservation.

Section 25 adds a new section that provides for written reports by the historic preservation body to the administrative officer on the application of zoning ordinance provisions concerning historic preservation.

Section 26 adds a new section that allows the term "landmark" to be substituted for "historic," "historic preservation," and "historic site," at the option of the municipality.

Section 27 sets forth the effective date.

The committee amended the bill to make certain technical revisions.

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ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

STATEMENT TO

**SENATE, No. 2313**

with Assembly committee amendments

**STATE OF NEW JERSEY**

DATED: DECEMBER 5, 1985

Senate Bill No. 2313 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 become the "Municipal Land Use Law," P. L. 1975, c. 291 (C. 40:55D-1 et seq.), the 1979 comprehensive amendments thereto, and the 1984 amendments on variances, appeals to the governing body, completeness of an application, resolution stating the reasons for approving or denying an application for development, and related matters. This bill completes the recent work of the committee. The committee has been monitoring the working of the "Municipal Land Use Law," including review of reported, as well as some unreported, decisions by the courts on that law. It also invited and reviewed the comments of local officials and other concerned citizens on their experiences under the law. The contents of the bill, as referred to the Committee, are as follows.

Section 1 amends section 2 of P. L. 1975, c. 291 (C. 40:55D-2) to: (1) broaden the conservation subsection of the purposes section of the law to include historic sites and districts; and (2) readjust the language on energy by including energy in the conservation subsection and by making clear that utilization of renewable energy sources is not, strictly speaking, conservation of energy.

Section 2 amends section 3.1 of P. L. 1975, c. 291 (C. 40:55D-4) to add a new definition of "historic site," derived from a report of the County and Municipal Government Study Commission, to substitute for the current definition in the law.

Section 3 amends section 5 of P. L. 1975, c. 291 (C. 40:55D-9) to broaden the application of the provision that the failure of a motion to receive the number of votes required to approve an application for development results in a denial of the application. The restriction to be deleted prevented the application of the provision to tie votes on those types of applications which require for approval only the favorable



vote of a majority of the board members present and voting, rather than a majority of the full authorized membership of the board.

Section 4 amends section 8 of P. L. 1979, c. 216 (C. 40:55D-10.1) to allow the municipality to charge a fee for informal review of a concept plan, but the amount of this fee is made a credit toward fees for review of the formal application. This change will encourage the municipal board to obtain its own independent professional planning review of the proposed development at the stage at which it can be of the greatest benefit, but at the same time recognizes the functional relationship of concept review in making easier review of the formal application.

Section 5 adds a new section that requires the developer to provide notice to owners of neighboring properties and certain others whenever the developer intends to claim an approval of his application for development by reason of the failure of the municipal board to make a decision on the application within the time period provided by statute. This will also answer certain of the questions raised by *Lizak v. Faria*, 191 N. J. Super. 10 (1983) and facilitate the orderly taking of appeals.

Section 6 amends section 7.5 of P. L. 1975, c. 291 (C. 40:55D-16) to require the filing with the county planning board of the resolution of the governing body which states the reasons for adopting any zoning ordinance with provisions which are inconsistent with the land use element of the master plan.

Section 7 amends section 14 of P. L. 1975, c. 291 (C. 40:55D-23) to: (1) clarify that Class IV planning board members are to be entirely independent of the municipal government unless otherwise provided; (2) allow a member of the historic preservation commission to serve as a Class IV member on a nine-member planning board if there is no Class IV member who is also a member of the board of adjustment; and (3) make clear that members of municipal boards and commissions which are strictly advisory, and the establishment of which is not required by statute, may be appointed as Class IV planning board members.

Section 8 amends section 16 of P. L. 1975, c. 291 (C. 40:55D-25) to allow a municipality with a population of 2500 or less to confer by ordinance all the powers of a zoning board of adjustment upon a nine-member planning board. However, the mayor and governing body member are prohibited from participating if a "d." or "special reasons" variance is under consideration.

Section 9 adds a new section that provides for the continuance of applications which were submitted to the board of adjustment prior to the effective date of an ordinance pursuant to section 5.1 above.

Section 10 amends section 17 of P. L. 1975, c. 291 (C. 40:55D-26) to make clear that the planning board's report to the governing body on

proposed development regulations is to include identification of, and recommendations concerning, any proposed provisions which are inconsistent with the master plan. Failure of the planning board to identify an inconsistency does not relieve the governing body of its obligations regarding inconsistencies under other sections of the "Municipal Land Use Law."

Section 11 amends section 19 of P. L. 1975, c. 291 (C. 40:55D-28) to: (1) expressly require that every municipal master plan include at least a land use plan element and a statement of the objectives, principles, assumptions, policies and standards upon which the master plan is based; (2) require that the land use plan element include statements indicating the element's relationship to the rest of the master plan and natural conditions and to the existing, and any proposed, zone plan and zoning ordinance; (3) restructure the language on the circulation plan element, including the addition of a reference to the functional highway classification system of the Federal Highway Administration; (4) include any storm water management plan within the utility service plan element, (5) replace the provisions for an energy conservation plan element with the appropriate changes in the language providing for a conservation plan element; and (6) provide for an economic plan element and an historic preservation plan element.

Section 12 amends section 29 of P. L. 1975, c. 291 (C. 40:55D-38), regarding the requirement that new streets be so oriented as to permit the buildings to be constructed thereon to maximize solar gain. The existing qualification to this requirement is replaced to provide more flexibility and to move in the direction of common sense.

Section 13 amends section 49 of P. L. 1975, c. 291 (C. 40:55D-62) to require the setting forth in a resolution of the reasons of the governing body for adopting a zoning ordinance or amendment which is inconsistent with the land use plan element of the master plan.

Section 14 amends section 52 of P. L. 1975, c. 291 (C. 40:55D-65) to: (1) relate the concept of utilization of renewable energy resources in a more appropriate way to zoning; and (2) add protection of historic sites to the list of possible types of contents of a zoning ordinance.

Section 15 amends section 55 of P. L. 1975, c. 291 (C. 40:55D-68) to expressly provide the opportunity to parties with an interest in a use or structure which does not conform to the zoning ordinance to obtain a ruling from the board of adjustment and, in certain instances, from an administrative officer, whether or not the use or structure was in existence before the zoning and is, therefore, lawful.

Section 16 adds a new section that requires an annual report by the board of adjustment to the governing body and the planning board on

variances, including any recommendations for amendments to the zoning ordinance.

Section 17 adds a new section that allows the governing body of a municipality which has entered into a joint agreement with one or more other municipalities for the establishment of a regional planning board or board of adjustment to hear appeals of approvals by the regional board of applications for development of whatever classes of application the governing body specifies by ordinance.

Section 18 amends section 76 of P. L. 1975, c. 291 (C. 40:55D-89) to clarify the provisions on periodic reexamination of the master plan and development regulations.

Section 19 adds a new section that creates a conditional sanction for failure to make the periodic reexamination.

Section 20 amends section 77 of P. L. 1975, c. 291 (C. 40:55D-90) to replace the provisions on interim zoning ordinances with other provisions which pertain also to moratoria on applications for development and interim zoning ordinances.

Section 21 adds a new section that expressly provides for the creation of an historic preservation body, either an historic preservation commission or an historic preservation committee of the planning board, at the option of the governing body.

Section 22 adds a new section that provides for the expenses of, and staff and professional services for, an historic preservation commission.

Section 23 lists the responsibilities of the historic preservation body.

Section 24 adds a new section that provides for the advice of the historic preservation body to the planning board and board of adjustment on applications which involve historic preservation.

Section 25 adds a new section that provides for written reports by the historic preservation body to the administrative officer on the application of zoning ordinance provisions concerning historic preservation.

Section 26 adds a new section that allows the term "landmark" to be substituted for "historic," "historic preservation," and "historic site," at the option of the municipality.

The Assembly committee amendments add a definition of "historic district," clarify the contents of historic preservation plans, and clarify the status, composition and procedures of historic preservation commissions. The amendments also ensure that the conservation element of a municipal master plan will provide for the protection of endangered species. In addition, the amendments would limit interim zoning ordinances and moratoria on development applications to situa-

tions involving imminent health dangers, upon the written opinion of a qualified health professional, and to six months duration. Other amendments are technical in nature, and conform certain sections of the bill to the "Fair Housing Act," P. L. 1985, c. 222 (C. 52:27D-301 et al.).

The committee reported the bill favorably.

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A-2003 Et al. Signed  
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A-4100, sponsored by Assemblyman Robert Littell, R-Sussex, to establish a 13-member New Jersey Monorail Legislative Commission and to designate the Department of Transportation as the exclusive department for the development of a monorail system.

A-4351, sponsored by Assemblyman Wayne Bryant, D-Camden, to require casino licensees to phase in mandatory minority and women business enterprise participation in contracts over a seven-year period.

S-315, sponsored by Senator Wayne Dumont, R-Warren, to permit school districts in Warren, Sussex, and Hunterdon counties to provide transportation to and from school to pupils attending non-public schools out of state but within 20 miles of the pupil's residence.

S-1128, sponsored by Senator John Caufield, D-Essex, to increase from \$2,500 to \$12,500 the minimum for advertised bidding for the University of Medicine and Dentistry.

Senate Committee Substitute for S-2107, S-1229, and A-2355, to extend to widowers eligibility for both the \$50 veterans' tax deduction as well as the exemption from taxation for disabled veterans.

S-2313, sponsored by Senator Gerald Stockman, D-Mercer, to make a number of technical amendments to and remove obsolete language from the Municipal Land Use Law.

A-647, sponsored by Senator C. William Haines, R-Burlington, to authorize the New Jersey Turnpike Authority to construct an interchange at the crossover of Interstate Route 295 and the Turnpike in Burlington County.